



EQUITY WATCH 2014

NEPAL: ACCESS TO JUSTICE FOR DALITS



SAMATA foundation

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SAMATA foundation, 2015

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Authors:

Dr. Yam Bahadur Kisan
Ram Bahadur Charmakar
Prakash Nepali

Series Editor: Edwin, Open Space, India

Editing Support: Dr. Jayshree Mangubhai

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Sanepa-2, Lalitpur, Nepal

P.O. Box: 6330

Tel. No. +977 1 5520851, 5521715

E-mail: info@samatafoundation.org

Website: www.samatafoundation.org

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ABBREVIATIONS/ACRONYMS

BS	: Bikram Sambat, the official calendar of Nepal. It is 56.7 years ahead of the ‘common era’ (Gregorian) calendar
BBD	: Badi Development Board
CA	: Constituent Assembly
CAT	: Committee on Torture
CBD	: Caste-based Discrimination
CBD & U (O & P) Act	: Caste-based Discrimination and Untouchability (Offence and Punishment) Act, 2011
CBS	: Central Bureau of Statistics
CCPR	: Committee on Civil and Political Rights
CDO	: Chief District Officer
CEDAW	: Committee on the Elimination of Discrimination against Women
CRC	: Committee on Rights of Child
CRPD	: Committee on Persons with Disabilities
CSO	: Civil Society Organisation
DDB	: Dalit Development Board
DDC	: District Development Committee
DGA	: District Government Attorney
DHRD	: Dalit Human Rights Defender
DPO	: District Police Office
FIR	: First Information Report
GoN	: Government of Nepal
HR	: Human Rights
HRC	: Human Rights Council
ICCPR	: International Convention on Civil and Political Rights
ICEDAW	: International Convention on the Elimination of all forms of Discrimination Against Women
ICERD	: International Convention on the Elimination of all forms of Racial Discrimination
ICESCR	: International Convention on the Economic, Social and Cultural Rights
ILO	: International Labour Organisation
INSEC	: Informal Sector Service Centre
LANCAU	: Lawyers’ National Campaign against Untouchability
NDC	: National Dalit Commission
NGO	: Non Governmental Organisation
NHRC	: National Human Rights Commission
NPL	: Nepal
NNDSWO	: Nepal National Dalit Social Welfare Organisation
NWC	: National Women Commission
SPCBN	: Support to Participatory Constitution Building in Nepal
UNDP	: United Nations Development Programme
UN	: United Nations
UPR	: Universal Periodic Review
VDC	: Village Development Committee

FOREWORD

Dalit in Nepal are economically disadvantaged, socio-culturally boycotted and discriminated, excluded from resources, opportunities and services of the State, underrepresented at all State structures and agencies, and treated as untouchables for centuries.

There have been some significant changes in the country after the Peoples' Movement-II, 2006 that transformed the Maoist insurgency into peace process & nation building. The new government took some initiatives to address centuries long caste based discrimination and untouchability against Dalit by provisioning the right to equality (Article 13), right against untouchability & racial discrimination (Article 14), right to social justice (Article 21) in the Interim Constitution of Nepal, 2007. The government further declared Nepal as Untouchability Free Nation in 2006 & enacted Caste based Discrimination & Untouchability (Offense & Punishment) Act, 2011 which made caste based discrimination & untouchability punishable.

Despite government's effort to eliminate caste based discrimination and untouchability (CBD & U) by enacting laws and introducing various program and policies, it is still rampant across the country. Because of poor implementation of the laws, policies and program, lack of proper monitoring mechanism, irresponsibility of law enforcement actors, caste biasness of non-Dalit government officials, Dalits are not getting proper justice in CBD & U & human rights violation cases which make them more vulnerable.

This report titled "Equity Watch 2014 - Nepal: Access to Justice for Dalits" is an effort to bring out the facts on discrimination against Dalits and state's response on it. Since, it has been four years of the enactment of this Anti-discrimination Act. In this period, many incidences of CBD & U, & HR violations have taken place & state actors have responded on them accordingly. Therefore, this report highlights the status of *Dalit's Access to Justice* focusing on the implementation status of Anti-discrimination Act, the competence & efficiency of the state machineries on its implementation, & a relook at the intrinsic lacunae in the Act itself.

This report is an outcome of the collective involvement of many people. I would like to show my greatest appreciation to the authors Dr. Yam Bahadur Kisan, Mr. Ram Bahadur Charmakar and Adv. Prakash Nepali for successfully carrying out this study. I express my sincere gratitude to Edwin, Open Space & Dr. Jayshree Mangubhai for providing valuable inputs & editing this report.

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Thanking you!



Mr. Padam Sundas

Executive Chairperson,
SAMATA foundation,
Lalitpur, Nepal

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EXECUTIVE SUMMARY

The context

Nepal is a multi-caste, multi-ethnic, multi-lingual, multi-religious, secular, inclusive and democratic country. As per the 2011 census, there are more than 125 caste and ethnic groups speaking 123 languages and dialects. Dalits are 13.21% of the population of Nepal, and comprise 26 different communities including Hill, Tarai and Newar Dalits. The Dalits of Nepal are economically disadvantaged and exploited, socio-culturally boycotted and discriminated against, excluded from political decision making, resources, opportunities and services of the state, underrepresented at all levels in state structures and agencies, and treated as untouchables and sub-human for centuries.

The legal framework

Despite a long history of fighting against caste-based discrimination and untouchability (CBD & U) in Nepal, the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act [CBD & U (O & P) Act] was enacted only in May 2011. However, this Act has several gaps and lacunae leading to calls for its amendment. The rules for its implementation have not yet been passed.

The Nepali State has expressed its commitment to eliminate CBD by ratifying several international human rights treaties such as ICERD, ICESCR, ICCPR, CEDAW, CAT and CRC as well as submission to the Universal Periodic Review (UPR) process, though it still has not made domestic laws compatible with these international standards.

The Nepali State has been trying to respond to CBD & U and human rights violations by making Dalit friendly policies, laws, plans, programmes and schemes, by establishing development and monitoring bodies like the Dalit Development Board and National Dalit Commission, by making prosecution under the CBD & U (O & P) Act the responsibility of the state, prodding the police to act (though with limited effect) and progressive decisions from the judiciary.

The Interim Constitution of Nepal, 2007 has recognised the rights to equality (Article 13), right against untouchability and racial discrimination (Article 14), and right to social justice (Article 21). Similarly, there are several laws, including the CBD & U (O & P) Act, which have provided rights against CBD & U. However, implementation of all these laws is still very poor.

General findings

CBD & U is prevalent across Nepal with different manifestations of segregation, untouchability, restriction, subjugation, exclusion and physical violence. These manifestations range from restriction to enter temples and houses, refusal to accept inter-caste marriages and forced displacement of the couple from the village, ostracism, social and economic boycott, restrictions in the use of public utilities, discrimination in service delivery and employment, physical assault and atrocities such as mass attack, gang rape and beating. There are myriad direct and indirect continuing manifestations of CBD & U practices.

Though there are several such incidents, only a few reach the police station, fewer are registered and fewer still reach trial under the CBD & U (O & P) Act, meandering through the various stages of registering FIR, investigation, filing cases into court, judicial trial and final verdict. The 18 cases analysed in this report on the implementation of CBD & U (O & P) Act show that in most of the cases where verdicts have been pronounced by the district courts, all the perpetrators were only fined and some compensation was given to the victims. The perpetrators were seldom imprisoned. All appellate courts confirmed these verdicts and did not see it fit to either enhance the fines or imprison the perpetrators.

Adding to this is the fact that most incidents of CBD & U, including torture, physical assault and related atrocities could not even reach the FIR registration stage. They were usually suppressed by local level ‘mediation’ in the name of maintaining ‘communal harmony’. Most of this ‘mediation’ was by local and district police using direct or indirect force against the victims. Poor investigation by the police officers, weak prosecution by government attorneys who demanded only paltry fines and minimal punishment during trial, and bailing out perpetrators on token amounts during the trial are other aspects that should be further studied.

Based on these 18 cases that reached the judiciary for trial from different parts of the country, it can be said that, in actual implementation, the CBD & U (O & P) Act is only for imposing paltry fines on the perpetrators and providing some compensation to the victims. It is not putting perpetrators in jail nor is it being a deterrent. In fact, these paltry fines and compensation actually increase impunity.

Key Recommendations

To ensure the elimination of CBD & U and access to justice for Dalits, some significant and non-negotiable initiatives are required from the Government of Nepal (GoN) such as:

- Constitutional safeguards are vital and a priority. The preamble of the Constitution should include the provision of a ‘State free of CBD & U’. In the chapter on fundamental rights, there should be a separate Article with strong and unambiguous provisions against CBD & U.
- Amend the CBD & U (O & P) Act to include important missing provisions such as a zero

tolerance policy that will compel law enforcement officials to start legal and judicial prosecution without delay, witness protection, time bound investigation and trial, increase in the period of imprisonment up to five years, no bail during trial, enhance the fines and compensation and several other aspects. Moreover, the GoN should formulate the rules (specific procedures) and notify them in the gazette at the earliest for the effective implementation of this Act.

- Repeal laws that protect CBD & U practices for whatever reason, including religion, custom and tradition. The three dozen other laws and Acts regarding CBD & U should be amended at the earliest to restrain such practices.
- Amend laws that have not yet incorporated affirmative action provisions to ensure proportionate inclusion of Dalits and their access to justice. There are 103 laws regarding the representation of Dalits in various sectors, levels and in the state structure. Some of these laws have already incorporated affirmative action policies to ensure proportional representation of Dalits in police, judiciary, public prosecutors and as administrators. The affirmative action enshrined in these laws should be strictly enforced to ensure compliance.
- Empower a high level mechanism headed by the Chief Secretary, GoN to instruct the local police, quasi-judicial bodies and district administration for effective implementation of the CBD & U (O & P) Act and ensure accountability.
- Design and implement a comprehensive Dalit development plan with sufficient budget allocation, scientific programme design and a realistic action plan to implement the CBD & U (O & P) Act effectively to ensure access to justice.
- Revitalise the National Dalit Commission into a strong, autonomous and independent constitutional body. This should be ensured in the constitution making process itself.
- Formulate a simple, time bound procedure for registering the FIR, investigation and judicial procedures with a scientific data keeping system at all levels in the courts, office of the attorney general and all its branches, police and the National Dalit Commission in all cases relating to Dalits. This information should be made available to the victims, DHRDs and CSOs working on CBD & U. It should also be publicised and disseminated to the public periodically.

1.1 Dalits in Nepal

Nepal is a multi-caste, multi-ethnic, multi-lingual, multi-religious, secular, inclusive and democratic country. As per the 2011 census, there are more than 125 caste and ethnic groups speaking 123 languages and dialects, with Nepali in the devanagary script as the official language. The religious diversity is an equally important feature of Nepal. The majority of the population is Hindu (81.3%), followed by Buddhists (9%), Muslims (4.4%), Kirant (3.1%), and Christians (1.4%). Nature worshippers (0.5%) and Bon, Sikhs, Jains and Bahai are in very small numbers (Central Bureau of Statistics, 2011:4).

Dalits comprise 13.21% of the population of Nepal¹ and are from 26 different communities,² including Hills, Tarai and Newar Dalits. The Dalits of Nepal are economically disadvantaged and exploited. They are socio-culturally boycotted and discriminated against and also excluded from de-facto political decision making, resources, opportunities and services of the state. Dalits are underrepresented in all state structures and agencies and have been treated as untouchables for centuries.

1.2 Addressing Caste-based Discrimination and Untouchability

The Dalits in Nepal have a history of more than 60 years of mass movement against CBD & U and for equality, justice and dignity. However, it is only after the restoration of democracy in 1990 that the constitution provided the right against CBD & U. A draft bill against CBD & U was tabled by an MP of CPN (Masal) Mr. Pari Thapa, on 7 June 1996 (Kisan, 2005: 66). The Interim Constitution of Nepal, 2007 promulgated after the April Movement of 2006 and backed by the Maoist People's War group, was more progressive and realistic. It incorporated a separate Article (14) against CBD & U. In 2007 the bill was tabled by the Government of Nepal under Article 14 of the Interim Constitution. Finally, on 24 May 2011, four years after its endorsement by the parliamentary secretariat, the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2011 [CBD & U (O & P) Act] was

1 The census report completely missed the population data of 5 Dalit communities (Kakahiya, Khatic, Pode, Chyame and Pasi), but has counted 155,354 Dalits under 'other Dalits'. This consolidated data (which should have been disaggregated) is causing confusion about the actual Dalit population.

2 Kami, Damai, Sarki, Chamar, Musahar, Dushadh, Tatma, Khatwe, Dhobi, Bantar, Chidimar, Dom, Gaine, Badi, Halkhor, Kalar, Natuwa, Dhandi, Dhankar, Kori, Sarbariya, Khatic, Kakahiya, Pode, Chyame and Pasi.

enacted. However, the rules to implement it have not been passed even in 2014. The Act itself is flawed and needs significant amendments to make it comprehensive and effective.

The Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2011 came into force after it was ratified by the President of Nepal on 1 June 2011. Taking stock on 1 June 2014, three years after it came into force, the only conclusion that can be drawn is that its implementation is not satisfactory. During these three years, there were hundreds of incidents of CBD & U and related intolerant behaviour³ against Dalits in different parts of the country. According to coverage by the national media,⁴ in the 16 months from April 2013 to August 2014 there were 60 such acts against Dalits i.e. five incidents per month on average. However, these are only the incidents covered by the national media. The numerous CBD & U incidents that happen in remote areas of the country are not reported by the national media. The number of incidents would increase if those reported by the local media and other local sources of information are taken into account. Of the 60 incidents, 15 were due to inter-caste marriages, 28 direct untouchability acts, 9 rapes and 8 physical assault related cases. Moreover, FIRs are not filed in all cases. This demonstrates that there is no assurance of justice for the Dalits by the State. It is clear that the CBD & U (O & P) Act has not yet been fully implemented. There is a long way to go for access to justice for Dalits to become a reality.

According to media coverage, the eastern part of the country is more affected from such discrimination than the other parts of the country. Ironically, it is Eastern Nepal which is considered comparatively developed with more 'educated' citizens. It is a telling comment on the education system of this country that schooling does not lead to education but reinforces CBD & U.

1.3 Why this report

It is now three years since the enactment of the CBD & U (O & P) Act, long enough to have an insight into its shortcomings. During this period many incidents of CBD & U have taken place, making it imperative to review the implementation of the Act, the competence and efficiency of the state machinery tasked with its implementation, and a relook at the intrinsic lacunae in the Act itself, if any. This report is an overview of the implementation of CBD & U (O & P) Act during this period, which is the first step for further research.

Another aspect of this report is access to justice. The United Nations Development Programme (UNDP) states in its Practice Note on Access to Justice (2004: 6): 'Access to justice entails much more than improving an individual's access to courts or guaranteeing legal representation. It must be defined in terms of ensuring that legal and judicial outcomes are just and equitable. This definition indicates that

3 Section: 4/2 (b) CBD & U (O & P) Act, 2011.

4 Unpublished report on media monitoring of SAMATA foundation, August 2014.

representation in legal as well as judicial bodies and just and equitable judicial outcomes constitute access to justice.

The report is structured in eight chapters. Chapter-1 is the introduction to the report. Chapter-2 has an overview of the international standards and obligations of Nepal according to the treaties ratified, while Chapter-3 looks at the corresponding national standards including constitutional and legal provisions. Chapter-4 then analyses the compatibility and gaps of national policies and laws with the international standards. Chapter-5 onwards is an analysis of the ground situation. Chapter 5 discusses the status of caste-based discrimination in the country. The implementation of CBD & U (O & P) Act—the premier legislation to combat CBD & U is analysed in chapter-6, from the FIR filing stage to investigation and the judicial process up to conviction. Chapter-7 talks about good practices in addressing CBD & U and Chapter-8 has recommendations for the government implementation machinery including the police, judicial officers and the courts. Detailed information on 18 CBD & U cases (June 2011-June 2014) is provided in the annex.

INTERNATIONAL STANDARDS AND OBLIGATIONS

The Nepali State has expressed its commitment to eradicate caste-based discrimination (CBD) to the international community by ratifying several international human rights treaties such as ICERD,⁵ ICESCR, ICCPR, CEDAW, CAT, CRC and CRPD that include several standards on rights and access to justice for all sections of citizens. Similarly, ratifying the optional protocols of some treaties, the recommendations and concluding observations of treaty bodies, programmes of action of world conferences and Universal Periodic Review (UPR) system are other mechanisms that continuously encourage the State to apply those standards of human rights and access to justice. Moreover, sections 9 (1) and 9 (2) of the Treaty Act, 1991 are one of the main doors for domestication of international human rights treaties and standards into Nepali law.

The international standards and obligations applicable with respect to access to justice are elaborated below.

2.1 Legal standards

There are some legal standards concerning access to justice with respect to first information reports (FIR), police investigation, judicial prosecution, legal representation, legal and judicial outcomes and training in general. However, there are insufficient standards particularly in the CBD & U (O & P) Act, whereas the recommendations of treaty bodies have specifics on these areas. For instance, the ICERD has standards of right to equal treatment before the tribunals and all other organs administering justice⁶ and the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.⁷

5 ICERD-International Convention on the Elimination of all forms of Racial Discrimination-1965 is one of the UN treaties that provide rights against all forms of racial discrimination including work and descent based discrimination.

6 ICERD/art.5/a.

7 ICERD/art.6.

2.2 Recommendations of Treaty Bodies and UPR

2.2.1 Legal reform

A number of recommendations have been made by treaty bodies and the Human Rights Council (HRC) through the UPR process to improve access to judicial and administrative remedies in cases of alleged violations⁸ by enacting laws to criminalise all forms of discrimination.⁹ Similarly, the draft UN Principles and Guidelines on the Effective Elimination of Discrimination based on Work and Descent urge judicial, legislative and law enforcement bodies to take specific and concrete measures to ensure equal protection of the law for affected communities.¹⁰

2.2.2 FIR and police investigation

In this regard, the CERD Committee recommends that any refusal by a police official to accept a complaint involving an act of racism should lead to disciplinary or penal sanctions and those sanctions should be increased if corruption is involved.¹¹ Moreover, it further recommends that the procedure relating to the investigation of complaints with respect to the work of the police be conducted and overseen by a body independent of the police.¹² The UN draft Principles and Guidelines urge that national and local governments should investigate, prosecute and punish perpetrators of all forms of (caste based) violence and atrocities, and prosecute anyone found preventing or discouraging victims from reporting such incidents, including public officials.¹³

2.2.3 Judicial prosecution

Regarding this aspect, the CESCR has raised its concerns about the obstacles that victims of CBD reportedly face in accessing justice.¹⁴ The Czech Republic raised the issue through the UPR system that

8 Concluding observations of the Committee on Economic, Social and Cultural Rights NEPAL, 2008 (E/C.12/NPL/CO/2), para 32.

9 Report of the Working Group on the Universal Periodic Review Nepal, 2011 (A/HRC/17/5), para 108.10. (UK).

10 Draft United Nations Principles and Guidelines for the Effective Elimination of Discrimination Based on Work and Descent: A Comprehensive Legal Framework to Eliminate Caste Discrimination Globally, 2009 (A/HRC/11/CRP.3), para 28.

11 General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, 2005. (CERD/A/60/18, pp. 98-108), para 12.

12 Concluding observations of the Committee on the Elimination of Racial Discrimination NEPAL, 2004 (CERD/C/64/CO/5), para 15.

13 Draft United Nations Principles and Guidelines for the Effective Elimination of Discrimination Based on Work and Descent: A Comprehensive Legal Framework to Eliminate Caste Discrimination Globally, 2009 (A/HRC/11/CRP.3), para 26.

14 Concluding observations of the Committee on Economic, Social and Cultural Rights NEPAL, 2008 (E/C.12/NPL/CO/2), para 13.

the State should ensure full implementation of existing constitutional and legal provisions on CBD by the local authorities in rural and remote areas.¹⁵

2.2.4 Legal representation

Regarding the issue of legal representation, the UN Committee Against Torture recommended that the State Parties should take specific steps to safeguard their physical integrity, ensure that accountability mechanisms are in place, guaranteeing that caste is not used as a basis for abuses, unlawful detention and torture, and take steps to ensure more diverse caste and ethnic representation in its police and security forces.¹⁶ Similarly, the CERD Committee pointed out the insufficient representation of persons facing racial (caste) discrimination among the ranks of the police, in the system of justice, including judges and jurors, and in other law enforcement departments.¹⁷ Moreover, the Committee recommended that the State should promote proper representation of persons belonging to racial and ethnic groups in the police and the system of justice¹⁸ and further, the State should encourage the recruitment of members of descent-based communities into the police and other law enforcement agencies.¹⁹ In addition, the Committee further recommended that the Nepali State consider issues of political representation, personal security, employment and education, in line with general recommendations XXV (2000) on gender-related dimensions of racial discrimination and XXIX (2002) on descent-based discrimination, in taking measures to eliminate multiple-discrimination against women belonging to vulnerable groups.²⁰

2.2.5 Just and equitable legal and judicial outcomes

The CERD Committee has recommended that the State should ensure, where relevant, that judicial decisions and official actions take the prohibition of descent-based discrimination fully into account.²¹

15 Report of the Working Group on the Universal Periodic Review Nepal, 2011 (A/HRC/17/5), para 106.24. (Czech Republic)

16 Conclusions and recommendations of the Committee against Torture NEPAL, 2005 (CAT/C/NPL/CO/2), Para 26.

17 General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, 2005. (CERD/A/60/18, pp. 98-108), para 1/g.

18 General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, 2005. (CERD/A/60/18, pp. 98-108), para 5/d.

19 General recommendation XXIX, General recommendation on descent-based discrimination, 2002 (CERD/C/61/Misc.29/rev.1), para 24.

20 Concluding observations of the Committee on the Elimination of Racial Discrimination NEPAL, 2004 (CERD/C/64/CO/5), para 16.

21 General recommendation XXIX, General recommendation on descent-based discrimination, 2002 (CERD/C/61/Misc.29/rev.1), para 22.

Similarly, the Human Rights Committee has recommended that the State Party should strengthen its measures to implement the CBD & U (O & P) Act and to eliminate all forms of discrimination against the Dalit community. It should also ensure that the National Dalit Commission (NDC) can carry out its mandate effectively with sufficient resources, and that its recommendations are effectively implemented.²² The Czech Republic recommended through the UPR system that cases of CBD should be reported, investigated, perpetrators prosecuted and victims of such violence are compensated.²³ These recommendations are to orient the State towards systems that promote just and equitable legal and judicial outcomes.

2.2.6 Training and awareness

The CEDAW Committee has recommended that the State should continue to provide the police, public prosecutors, the judiciary, other relevant government bodies, as well as health-care providers, with the necessary training in domestic and sexual violence and undertake wider awareness-raising programmes in all communities, including the Dalit community, specifically targeting men and boys.²⁴ The CERD Committee has recommended that in order to facilitate access to justice for the victims of racism, States Parties should strive to supply the requisite legal information to persons belonging to the most vulnerable social groups, who are often unaware of their rights.²⁵ The Committee has further recommended that the State should organise training programmes for public officials and law-enforcement agencies with a view to prevent injustice based on prejudice against descent-based communities²⁶ and it should encourage and facilitate constructive dialogue between the police and other law enforcement agencies and members of the communities.²⁷ The draft UN Principles and Guidelines²⁸ recommend that law enforcement officials, including police, judges and prosecutors should be provided with adequate

22 Concluding observations on the second periodic report of Nepal, 2014 (CCPR/C/NPL/CO/2), para 9

23 Report of the Working Group on the Universal Periodic Review Nepal, 2011 (A/HRC/17/5), para 108.12. (Czech Republic)

24 Concluding observations of the Committee on the Elimination of Discrimination against Women Nepal, 2011 (CEDAW/C/NPL/CO/4-5), para 20/d.

25 General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, 2005. (CERD/A/60/18, pp. 98-108), para 7.

26 General recommendation XXIX, General recommendation on descent-based discrimination, 2002 (CERD/C/61/Misc.29/rev.1), para 25.

27 General recommendation XXIX, General recommendation on descent-based discrimination, 2002 (CERD/C/61/Misc.29/rev.1), para 26.

28 Draft United Nations Principles and Guidelines for the Effective Elimination of Discrimination Based on Work and Descent: A Comprehensive Legal Framework to Eliminate Caste Discrimination Globally, 2009 (A/HRC/11/CRP.3), para 31.

training in the prevention, investigation, and prosecution of cases involving discrimination based on work and descent.²⁹

2.2.7 Free legal aid

Regarding this issue, the CERD Committee has recommended that States Parties should promote, in the areas where such persons live, institutions such as free legal help and advice centres, legal information centres and centres for conciliation and mediation.³⁰ Moreover, it has recommended that States should take the necessary steps to secure equal access to the justice system for all members of descent-based communities, including by the provision of legal aid, facilitation of group claims, and encouragement of non-governmental organisations to defend community rights.³¹

29 The term ‘work and descent based discrimination’ is UN terminology for caste based discrimination. It means, ‘any distinction, exclusion, restriction, or preference based on inherited status such as caste, including present or ancestral occupation, family, community or social origin, name, birth place, place of residence, dialect and accent that 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 life. This type of discrimination is typically associated with the notion of purity and pollution and practices of untouchability, and is deeply rooted in societies and cultures where this discrimination is practiced’ (Draft United Nations Principles and Guidelines, para 1).

30 General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, 2005. (CERD/A/60/18, pp. 98-108), para 8.

31 General recommendation XXIX, General recommendation on descent-based discrimination, 2002 (CERD/C/61/Misc.29/rev.1), para 21.

Nepal has a long history of national codes to govern its people and to regulate the functions of state mechanisms. In 1854 the Prime Minister (and de facto ruler) Janga Bahadur Rana codified practices based on Hindu philosophical and cultural norms and values, which later came to be called the 'Muluki Ain'. The Muluki Ain recognised the Hindu caste system and CBD & U as legitimate practices (Kisan, 2005).

In 1963, King Mahendra amended the Muluki Ain and deleted the discriminatory sections from it. However, he did not make it a crime, nor was it made a punishable offence, to practice CBD & U. Only after the restoration of democracy in Nepal in 1990, the Constitution of the Kingdom of Nepal 1990 declared CBD & U a punishable crime, which later on was enshrined in law by amending section 10 (a) of the Muluki Ain on moral conduct.

After the Maoist People's War and Joint April Movement 2006, the new Interim Constitution of Nepal included a separate 'right against caste-based discrimination and untouchability' (Article 14) and started making new laws and amendments accordingly. Article 14 of the Interim Constitution became the foundation stone of the CBD & U (O & P) Act five years later.

3.1 Constitutional provisions

Article 13 (right to equality) of the Interim Constitution, 2007 comprises three principles of equality. Article 13 (1) says, all citizens shall be equal before the law and no person shall be denied the equal protection of the law. Similarly, Article 13 (2) says, no discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, gender, caste, tribe, origin, language or ideological conviction or any of these. Likewise, Article 13 (3) says, nothing shall be deemed to prevent the making of special provisions by law for the protection, empowerment or advancement of women, Dalits, indigenous people, Madhesis or farmers, labourers or those who belong to a class which is economically, socially or culturally backward, or children, the aged, disabled or those who are physically or mentally incapacitated, and no discrimination with regard to remuneration and social security between men and women for the same work.

Article 14 (right against untouchability and racial discrimination) of the constitution comprises two major aspects: no person shall, on the ground of caste, descent, community or occupation be subject to racial discrimination and untouchability in any form; such a discriminatory act shall be liable to punishment and the victim shall be entitled to compensation as provided by the law.

Article 21 (right to social justice) of the constitution recognises the right to participate in State structures on the basis of the principle of proportional inclusion for women, Dalits, indigenous ethnic groups, Madhesi communities, oppressed groups, the poor farmers and labourers, who are economically, socially or educationally backward.

3.2 Legal provisions

There are several laws, including the CBD & U (O & P) Act, that have provided rights against CBD & U such as the Press and Publication Act, 1991; Motion Picture (Production, Exhibition and Distribution) Act, 1991; National Broadcasting Act, 1992; Nepal Sanskrit University Act, 1987; Political Party Related Act, 1992 and Civil Rights Protection Act, 1955. Likewise, Scholarship (fourth amendment) Regulation, 2010; Local Self-governance (fourth amendment) Regulation, 2010; Legislative-Parliament Secretariat Service Act, 1993 (amended 2007); Army Act, 2001 (amended 2009); Police Act, 1955 (amended 2009); Armed-Police Act, 2006 (amended 2009), Nepal Special (intelligence) Service Act, 1985 (amended 2009); Development Committee Act, 1956 (amended 2009); Education Act, 1971 (amended 2009); and Nepal Health Service Act, 1997 (amended 2009). The Constituent Assembly Members Election Act, 2007 provides rights to inclusion and access to justice.

3.2.1 Caste-based Discrimination and Untouchability (Offence and Punishment) Act, 2011

Section 4: Crime of caste-based discrimination and untouchability: (1) If anyone commits or causes to commit any act as referred to in this section on the ground of custom, tradition, religion, culture, rituals, caste, ethnicity, descent community or occupation, he/she shall be deemed to have committed caste-based discrimination and untouchability.

- (2) No one shall, on the ground of tradition, custom, religion, culture, cultural practices, caste, ethnicity, descent, community or occupation, commit or cause to commit any of the following acts in any public or private place against a person subjecting him or her to caste-based discrimination or untouchability:
 - (a) To prevent, control, restrict or prohibit anyone in any way from entering, attending or participating, or
 - (b) To expel anyone individually or collectively from public place or public occasion or to commit social exclusion or discrimination of any kind or to impose restriction on such act or to demonstrate any other kind of intolerant behaviour.
- (3) No one shall, on the ground of caste, ethnicity, descent, community or occupation, deprive a person of using or enjoying public service.

- (4) No one shall, on the ground of caste, ethnicity, descent, community or occupation, deprive a person of organising a public event or carrying out any activity organised publicly.
- (5) No one shall instigate or provoke a person to commit an act that causes caste-based discrimination or untouchability or abet a person to commit such acts, or knowingly participate in such acts.
- (6) No one shall, on the ground of caste, ethnicity, descent, community or occupation, prohibit or prevent a person from taking up any profession or business or compel a person to take on any occupation or business.
- (7) No one shall, on the ground of caste, ethnicity, descent, community or occupation, deprive or cause to deprive a person from performing any religious acts.
- (8) No one shall, on the ground of caste, ethnicity, descent, community or occupation, prevent or cause to prevent a person from producing, selling or distributing any goods, services or facilities.
- (9) No one shall, while producing, selling or distributing any goods, services or facility, produce sell or distribute any goods, services or facility only for a particular caste or ethnicity.
- (10) No one shall, on the ground of caste or ethnicity, exclude any member of family or prevent him/her from entering the house or evict him/her from the house or village, or compel him/her to leave the house or village.
- (11) No one shall, on the ground of caste ethnicity, descent or community, prevent a person of marriageable age pursuant to prevailing law from an inter-caste marriage to which they consent or prevent the naming ceremony of a child born from such marriage, or compel or cause to compel the divorce of persons in an inter-caste marriage.
- (12) No one shall, by dissemination, publication or exhibition of audio visual materials, articles, pictures, figures, cartoons, posters, books or literature or by any other means, denote hierarchical supremacy of a person belonging to a particular caste or ethnicity or commit an act that justifies social discrimination on the ground of caste or ethnicity or transmit the views based on caste supremacy or hatred or use derogatory words or indicate thereof, by his/her conduct gesture or behaviour, or instigate or abet or cause to do so in any way that promotes caste-based discrimination.
- (13) No one shall on the ground of caste, ethnicity, decent or community, deny a person work or dismiss a person from employment or discriminate in remuneration or cause to do so.

Section 7. Penalty: (1) The following penalty shall be imposed on the person who commits the following offence:

- (a) Whosoever commits an offence pursuant to sub-section (2), (3), (4), (5), (6) or (7) of section 4 shall be liable to the punishment of imprisonment for a term ranging from three months to three years, or a fine ranging from one thousand NPR to twenty-five thousand, or both.
 - (b) Whosoever commits an offence pursuant to sub-section (8), (9), (10), (11), (12) or (13) of section 4 shall be liable to imprisonment for a term ranging from one month to one year, or to a fine ranging from five hundred NPR to ten thousand NPR, or both.
 - (c) Whosoever aids, abets or instigates a person to commit caste-based discrimination or untouchability or to attempt such act shall be liable to half of the punishment prescribed to the principal offender.
- (2) If a person holding a public post commits an offence pursuant to subsection (1) he/she shall be liable to the punishment of an additional fifty per cent in addition to the punishment as mentioned in that subsection.

3.2.2 Press and Publication Act, 1991

Section 14 (d) (e): The State can ban publications and materials that spread discrimination among various castes and religions and harms cordial relationship subsisting among the people of different castes and communities, race, caste, class, religion, region and that affects against moral virtue and social prestige.

3.2.3 Motion Picture (Production, Exhibition and Distribution) Act, 1991

Section 8 (3): No one shall produce or distribute movies that harm relationship among the different groups of races, castes, classes, public security, moral virtue and contempt of courts or a person.

3.2.4 National Broadcasting Act, 1992

Section 15 (f): No broadcasting institution shall broadcast advertisements or programmes that misinterprets, neglects, insults, and devaluates of any race, caste, language, religion and culture.

3.2.5 Nepal Sanskrit University Act, 1987

Section (12): There shall be no discrimination against any citizen to hold any position of the University or to award the degree of Master, Bachelor, and Certificate or other any academic degrees or to study or to get any opportunities on grounds of religion, race, gender, caste, tribe, or ideological conviction or any of these.

3.2.6 Political Party Related Act, 1992

Section 5 (E): No political party shall on the ground of caste, ethnicity, decent or community, deny a person from party membership.

3.2.7 Civil Rights Protection Act, 1955

Section (4): There shall be no discrimination against any citizen on grounds of religion, race, gender, caste, or any of these.

To some extent, however, there are still some laws existing which encourage CBD & U practices. Examples are the preamble of the National Civil Code (Muluki Ain); Section 10 of the Chapter of Decency of Muluki Ain; Section 7 (A) of Civil Rights Protection Act, 1955; Section 10 of the Old Heritage Protection Act, 1956; Section 10 (1,4) of the Pasupati Area Development Fund Act, 1987; and section 2 (E) of the Some Public (Crime and Punishment) Act, 1971. All these laws contain provisions that encourage such discriminatory practices. Section 10 of the Chapter of Decency of Muluki Ain, for instance, upholds the right to discriminatory practices in the name of ‘traditional social norms and values’ and allows the denial of entry to Dalits in the name of the same traditional rituals, norms and values. In sum, there is an urgent need to streamline all laws in order to eliminate any possibility of the legal safeguarding of CBD & U practices.

4

GAPS/COMPATIBILITY OF NATIONAL POLICIES/LAWS WITH INTERNATIONAL STANDARDS

There are many international standards and obligations that have been fulfilled by the State. However, some still remain to be achieved and this chapter focuses on those standards and obligations which have not been achieved, and the gaps.

International standard	National standard	Gap analysis
Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organisation (ICERD/art. 2/1/d).	Article 14 of the Constitution and Section 4 (2/b) of CBD & U (O & P) Act	No provision against 'organisation'
Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof (ICERD/art. 4/a).	Article 14 (1&4) of the Constitution and Section 4 (5) of CBD & U (O & P) Act	No provision against 'financing'
Shall declare illegal and prohibit organisations, and also organised and all other propaganda activities, which promote and incite racial discrimination, and shall recognise participation in such organisations or activities as an offence punishable by law (ICERD/art. 4/b).	Article 14 (4) of the Constitution and Section 4 (5) of CBD & U (O & P) Act	No provision against 'organisational activities and propaganda'

International standard	National standard	Gap analysis
Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination (ICERD/art. 4/c).	Article 13 (1 & 2) of the Constitution and Section 2 (2) of CBD & U (O & P) Act	Public authorities and institutions not clearly mentioned
The right to equal treatment before the tribunals and all other organs administering justice. (ICERD/art. 5/a)	Article 24 of the Constitution	No provision on tribunals
The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration (ICERD/art. 5/e/i).	Article 18, 29 & 30 of the Constitution and Section 2 (2) of CBD & U (O & P) Act	No provision on 'protection against unemployment, just and favourable remuneration'
States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination (ICERD/art. 6).	Article 13 (1) & 14 (1) of the Constitution and Section 9 of CBD & U (O & P) Act	No provision of tribunal for just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination
Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law (ICCPR/art. 20/2).	Article 14 (4) of the Constitution and Section 4 (4) of CBD & U (O & P) Act	Not clearly mentioned
Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State (ICCPR/art. 24/1).	Article 22 of the Constitution and Section 3 (1) of CRC Act	Protection against discriminatory aspects not clearly mentioned

International standard	National standard	Gap analysis
<p>...Take steps to ensure more diverse caste and ethnic representation in its police and security forces (para 26 CAT Conclusions and recommendations 2005; CAT/C/NPL/CO/2). To promote representation of persons belonging to those groups among the ranks of the police, in the system of justice, including judges and jurors, and in other law enforcement departments (para 1/g CERD General recommendation XXXI 2005; A/60/18, pp. 98-108). To promote proper representation of persons belonging to racial and ethnic groups in the police and the system of justice (para 5/d CERD General recommendation XXXI 2005; A/60/18, pp. 98-108). To encourage the recruitment of members of descent-based communities into the police and other law enforcement agencies (para 24 CERD General Recommendation XXIX 2002; CERD/C/61/Misc. 29/rev.1).</p>	<p>Article 21 of the Constitution provides rights of proportional representation of Dalits at all organs, sections, level and structures of the State. However, Sec. 7 (7) of Civil Service Act; Scholarship Regulation, 2010; Local Self-governance (4th amendment) Regulation, 2010; Legislative-Parliament Secretariat Service Act, 1993 (amended on 2007); Army Act, 2001 (amended on 2009); Police Act, 1955 (amended on 2009); Armed-Police Act, 2006 (amended on 2009), Nepal Special (intelligence) Service Act, 1985 (amended on 2009); Development Committee Act, 1956 (amended on 2009); Education Act, 1971 (amended on 2009); and Nepal Health Service Act, 1997 (amended on 2009) and Constituent Assembly Members Election Act, 2007 /2013) are provided only for nominal representation and not proportionate as accordance of Constitutional provision.</p>	<p>No provision of proportional representation that orients Article 21 of Constitution. For inclusiveness of all sectors and levels of State structure 103 laws need to be amended in the light of Article 21 of the Constitution.</p>

International standard	National standard	Gap analysis
<p>Law enforcement officials, including police, judges and prosecutors should be provided with adequate training in the prevention, investigation, and prosecution of cases involving discrimination based on work and descent (Guideline 31 draft UN Principles and Guidelines 2009; A/HRC/11/CRP. 3) and necessary training in domestic and sexual violence and undertake wider awareness-raising programmes in all communities, including the Dalit community, specifically targeting men and boys(para 20/d CEDAW Concluding observations 2011; CEDAW/C/NPL/CO/4-5).</p>		<p>There are no constitutional or legal provisions to conduct such trainings and awareness-raising programmes</p>
<p>The persistence of sexual exploitation, in particular among the Dalit community, and the persistence of the root causes of trafficking and prostitution, including poverty (para 21 CEDAW Concluding observations 2011; CEDAW/C/NPL/CO/4-5).</p>	<p>Article 20 of the Constitution; Anti-trafficking Act, 1986</p>	<p>Persistence of the root cause of trafficking especially based on caste/ethnicity not clearly mentioned</p>
<p>The Committee is deeply concerned about the multiple forms of discrimination against disadvantaged groups of women such as Dalit and indigenous women, widows and women with disabilities (para 39 CEDAW Concluding observations 2011; CEDAW/C/NPL/CO/4-5).</p>		<p>There is no provision or measures taken in this regard</p>
<p>In order to facilitate access to justice for the victims of racism, States parties should strive to supply the requisite legal information to persons belonging to the most vulnerable social groups, who are often unaware of their rights (para 7 CERD General recommendation XXXI 2005; A/60/18, pp. 98-108).</p>		<p>There is no such provision</p>

International standard	National standard	Gap analysis
<p>In that regard, States parties should promote, in the areas where such persons live, institutions such as free legal help and advice centres, legal information centres and centres for conciliation and mediation (para 8 CERD General recommendation XXXI 2005; A/60/18, pp. 98-108).</p>		<p>No such exact provision</p>
<p>Any refusal by a police official to accept a complaint involving an act of racism should lead to disciplinary or penal sanctions, and those sanctions should be increased if corruption is involved (para 12 CERD General recommendation XXXI 2005; A/60/18, pp. 98-108).</p>	<p>There is a symbolic provision in Police Act</p>	<p>No such exact provision as result of which police officers refuse to register FIRs. 'Zero tolerance policy on CBD & U (O & P)Act' should be included</p>
<p>To take the necessary steps to secure equal access to the justice system for all members of descent-based communities, including by provision of legal aid, facilitation of group claims, and encouragement of non-governmental organisations to defend community rights (para 21 CERD General Recommendation XXIX 2002; CERD/C/61/Misc. 29/rev.1).</p>		<p>No such exact laws and measures</p>
<p>To ensure where relevant that judicial decisions and official actions take the prohibition of descent-based discrimination fully into account (para 22 CERD General Recommendation XXIX 2002; CERD/C/61/Misc. 29/rev.1).</p>		<p>Not ensured at all</p>

International standard	National standard	Gap analysis
<p>To organise training programmes for public officials and law-enforcement agencies with a view to preventing injustices based on prejudice against descent-based communities (para 25 CERD General Recommendation XXIX 2002; CERD/C/61/Misc. 29/rev.1). To encourage and facilitate constructive dialogue between the police and other law enforcement agencies and members of the communities (para 26 CERD General Recommendation XXIX 2002; CERD/C/61/Misc. 29/rev.1).</p>		<p>Not organised such trainings and constructive dialogue at all</p>
<p>To take steps to identify areas prone to descent-based violence in order to prevent the recurrence of such violence (para 31 CERD General Recommendation XXIX 2002; CERD/C/61/Misc. 29/rev.1).</p>		<p>Not identified at all</p>
<p>To take resolute measures to secure rights of marriage for members of descent-based communities who wish to marry outside the community (para 32 CERD General Recommendation XXIX 2002; CERD/C/61/Misc. 29/rev.1).</p>	<p>Constitutionally and legally safeguarded and award system</p>	<p>Not secured at all</p>
<p>State party consider, as a priority, the adoption of the relevant statutory law to enable the National Dalit Commission to carry out its mandate effectively (para 11 CERD Concluding observations 2004; CERD/C/64/CO/5). Continue promoting the work of the National Commissions for Women and for Dalit, through the reinforcement of resources that allows them to work in an efficient manner (Bolivia) (para 106.8 UPR Nepal 2011; A/HRC/17/5). Provide the National Dalit Commission and the National Women's Commission with sufficient resources to effectively realise their mandate (Slovenia) (para 107.6 UPR Nepal 2011; A/HRC/17/5).</p>	<p>The bill of National Dalit Commission is under process in CA/Parliament</p>	<p>Neither has the bill for the National Dalit Commission been passed, nor have resources been provided</p>

International standard	National standard	Gap analysis
<p>Take measures to prevent, prohibit and eliminate private and public practices that constitute segregation of any kind, and make determined efforts to ensure the practical and effective implementation of these measures. The Committee further requests that information be included in the next periodic report on any follow-up measures taken by the State party to general recommendation XXIX on descent-based discrimination (para 12 CERD Concluding observations 2004; CERD/C/64/CO/5).</p>	<p>CBD & U (O & P) Act and other laws</p>	<p>No clear strategies to effectively implement the Act, proclamation of ‘Untouchability Free State’ and ‘National Day against Untouchability (4 June)’ or even to pass the ‘Regulation of CBD’.</p>
<p>The State party intensify its efforts to end such discriminatory practices. It further recommends that the procedure relating to the investigation of complaints with respect to the work of the police be conducted and overseen by a body independent of the police (para 15 CERD Concluding observations 2004; CERD/C/64/CO/5).</p>	<p>State Case Act</p>	<p>No specific provision in this regard</p>
<p>In taking measures to eliminate multiple discrimination against women who belong to vulnerable groups (para 16 CERD Concluding observations 2004; CERD/C/64/CO/5).</p>		<p>No special measures taken in this regard</p>
<p>The State party should strengthen its measures to implement the CBD & U (O & P) Act and to eliminate all forms of discrimination against the Dalit community. It should also ensure that the National Dalit Commission can carry out its mandate effectively with sufficient resources, and that its recommendations are effectively implemented (para 9 HRC Concluding observations 2014; CCPR/C/NPL/CO/2).</p>	<p>CBD & U (O & P) Act</p>	<p>No strengthening measures taken. Recommendations of NDC have not been implemented</p>

International standard	National standard	Gap analysis
<p>Committee notes with concern that, in spite of the provisions in the Interim Constitution prohibiting caste-based discrimination, such discrimination persists with impunity. The Committee is particularly concerned about the obstacles that victims of caste-based discrimination reportedly face in accessing justice (para 13 CESCR Concluding observations 2008; E/C.12/NPL/CO/2).</p>		<p>Impunity is widespread and victims have reportedly been facing hurdles in accessing justice</p>
<p>The Committee further recommends that special units be established to monitor the implementation of programmes to protect and promote the full enjoyment without discrimination of their economic, social and cultural rights by disadvantaged and marginalised groups, in particular the Dalit, the Madhesi and indigenous communities, and especially women within these groups (para 32 CESCR Concluding observations 2008; E/C.12/NPL/CO/2).</p>	<p>National Human Rights Commission (NHRC), National Women Commission (NWC), NDC, Ad hoc committee in converyorship with Prime Minister, Chief Secretary and Chief District Officers (CDOs) in general</p>	<p>No effective monitoring</p>
<p>While appreciating the fact that the Government's priorities include combating caste-based discrimination, ensure that the policy is fully implemented also by the local authorities in rural and remote areas (Czech Republic) (para 106.24 UPR Nepal 2011; A/HRC/17/5).</p>		<p>Not been ensured yet</p>
<p>Ensure that all girls, Dalit children and children belonging to ethnic minorities have equal access to quality education (Finland) (para 106.53 UPR Nepal 2011; A/HRC/17/5).</p>		<p>No such policy and quality education has not been ensured</p>

International standard	National standard	Gap analysis
<p>Review and adopt relevant legislation and policies, including bills related to caste-based discrimination, the Women’s Commission, the Dalit Commission, the rights of indigenous peoples and the rights of the child, to ensure full compliance with international human rights standards (Norway) (para 108.11 UPR Nepal 2011; A/HRC/17/5).</p>	<p>CBD & U (O & P) Act, Women Commission Act</p>	<p>No Dalit Commission Act</p>
<p>That cases of caste-based discriminations be reported, investigated, perpetrators prosecuted and victims of such violence are compensated (Czech Republic) (para 108.12 UPR Nepal 2011; A/HRC/17/5).</p>		<p>Not ensured yet</p>
<p>Formulate effective strategies and programmes in order to provide employment and income-generating opportunities for the population, in particular, the rural population, Dalits and ethnic minorities (Malaysia) (para 108.31 UPR Nepal 2011; A/HRC/17/5). Pay special attention to helping Dalit children, girls, and children belonging to ethnic minorities to complete their education cycle, and to ensure their employment opportunities after education in order to enable them to claim their rights and work as agents of change for their communities (Finland) (para 108.35 UPR Nepal 2011; A/HRC/17/5).</p>		<p>Not ensured yet</p>
<p>Judicial, legislative, and law enforcement bodies should take specific and concrete measures to ensure equal protection of the law for affected communities (Guideline 28 HRC draft UN Principles and Guidelines 2009; A/HRC/11/CRP.3).</p>		<p>Not ensured yet</p>

5

STATUS OF CASTE-BASED DISCRIMINATION IN THE COUNTRY

CBD, including segregation,³² untouchability practices and sanctions against inter-caste marriages, and caste-based atrocities including rape, physical assault and murder of Dalits are increasing every year. According to the records of one human rights organisation, there were 72 cases of CBD & U reported in 2011 (INSEC, 2013: 6-7), 111 cases in 2012 and 101 cases in 2013 (INSEC, 2014: 6). Another organisation, NNDSWO has monitored and tracked 78 cases related to Dalit human rights violations and CBD in 2011 (NNDSWO, 2012: 10). Officially only seven districts in the country reported 12 incidents relating to segregation and untouchability practices in 2012 (Nepali, 2013: 25). According to the INSEC report there were 101 cases in 2013, whereas only 22 (22%) cases were registered for judicial prosecution. This shows that the number of incidents of CBD & U is increasing every year, but is heavily under-reported.

The committee reports of the first Constituent Assembly (CA, 2008-2012) show that CBD was discussed extensively. Four³³ of the ten thematic committees³⁴ discussed CBD and recommended provisions against CBD & U. These four committees' reports recognised the bases of CBD such as caste, occupation, descent, birth, community and varna. Likewise, the committees extended the prohibition of CBD & U from the public sphere [provided in the Country Code, 1963 (Adal ko 10 A) and Article 14 of the Interim Constitution, 2007] to the private sphere. This constitutes a radical step in strengthening the constitutional right against CBD & U. Later on, based on these proposed provisions, the Constituent Assembly/Parliament passed the CBD & U (O & P) Act restricting CBD & U in any sphere of human life and behaviour.

32 Not allowed to rent the room, denial of entry to temple, boycott of common feast (inter-dining) and restrictions in access to water resources etc.

33 The committees on the Protection of the Rights of Minorities and Marginalized Communities; Fundamental Rights and Directive Principles; Basis of Cultural and Social Solidarity and Restructuring of the State and Distribution of State Power.

34 There were 10 thematic committees in first Constituent Assembly (2008) such as Committee on the Protection of the Rights of Minorities and Marginalized Communities; Constitutional Bodies; Basis of Cultural and Social Solidarity; Determination of the Form of the Legislative Body; Judicial System; Preserving the National Interests; Determination of Forms of Governance; Fundamental Rights and Directive Principles; Natural Resources, Economic Rights and Revenue Allocation and Restructuring of the State and Distribution of State Power.

The Constituent Assembly committees acknowledged manifestations of CBD & U such as discrimination, mistreatment, intolerance behaviour, untouchability acts, caste-based intolerance, defamation, and hatred. The committees further acknowledged CBD & U as a serious social crime against humanity.³⁵ Finally, the full house of the first Constituent Assembly made CBD & U a punishable and serious social offence, prohibiting it in any place, public or private, and criminalised all such behaviour. The second Constituent Assembly has already accepted the provisions passed by the full house of the first Constituent Assembly and forwarded them to the Constitution Drafting Committee.

5.1 Nature and forms of CBD and HR violations

Though, there are constitutional and legal provisions against CBD & U and various state mechanisms have been set up to take action against this discrimination, aside from several civil society initiatives, CBD & U is practiced all over the country in different forms. The media coverage of incidents after the promulgation of the CBD & U (O & P) Act shows the real status of CBD and caste related rights violations in the country.

5.1.1 Restriction from entering Hindu temples

Dalits are routinely prevented from entering Hindu places of worship, especially temples. Two such instances prove the rampant nature of this discrimination. A married couple and a group of Dalits were prevented from entering the temple and performing the marriage ceremony and physically assaulted in central Tarai (Brahmasthan Temple, Pipariya Dostiya-5, Rautahat) by non-Dalits.³⁶ Similarly, a group of Dalits were prevented from entering the temple (Malika) to worship in western hill (Darbar Devasthan VDC, Raksedanda, Gulmi) by local non-Dalits including the chair of the Temple Management Committee.³⁷

5.1.2 Prevention of inter-caste marriage and externment

CBD based on inter-caste marriage is a crime as per section 4 (11) of CBD & U (O & P) Act. However, such discrimination is on the increase. Even the promulgation of this law has not been a deterrent. For instance, a Dalit school teacher had to leave his hometown due to the threats from his bride's relatives because the bride belonged to the Thakuri caste in mid-western hill (Janakalyan Lower secondary school Chamunda-5, Dailekh).³⁸ Another inter-caste couple (Dalit groom) and his family were forced to leave their home in western Tarai (Sipuwa-8, Rupandehi, near Lumbini) by non-Dalits and the relatives

35 Constituent Assembly Committee on the Protection of the Rights of Minorities and Marginalized Communities, 2010.

36 Nagarik, national daily newspaper, 9 June 2013.

37 Nagarik, national daily newspaper, 24 November 2013.

38 Gorakhapatra, national daily newspaper, 22 April 2014.

of the bride.³⁹ Likewise, a family (mainly relatives of the bride) of an inter-caste married couple (Dalit groom) in the neighbouring district of Kathmandu (Nuwakot) rejected their relationship, physically tortured them and finally forced them to leave from their village.⁴⁰ In eastern Nepal an inter-caste married couple, both of them were teachers (Dalit bride) of eastern hill (Sirise Lower Secondary School, Tharpu-7, Panchthar), Dalit bride was not only mistreated by his colleagues, relatives and local people, but was forced to relocate to the district headquarter Phidim since he was terminated from his job.⁴¹ Another inter-caste married couple (Dalit groom) was compelled to leave their home town in central hill (Nalang-4, Dhading) and even go underground due to threats from the relatives of the bride.⁴² An inter-caste married couple (Dalit groom) of mid-western hill (Bhalchaur-9, Salyan) was forced from the groom's hometown by continuous threats from the bride's family.⁴³ The same happened in eastern Tarai (Itahari, Sunsari) where an inter-caste married couple (Dalit bride) disappeared after continuous threats from the dominant caste groom's family.⁴⁴

Displacement caused by inter-caste marriage is only one of several consequences of CBD. In one case of inter-caste marriage (Dalit groom) in central hill (Tandrang VDC-4 & Gorkha Municipality-10, Gorkha) the relatives of the bride filed a fake robbery case against the couple to separate them. However the police, to their credit, refused to separate the married couple as demanded by the bride's family, though they proceeded to investigate the robbery.⁴⁵ Likewise, a family of a Yadav groom (and Dalit bride) in eastern Tarai (Lohajara-5, Saptari) not only rejected the bride as a family member, but also beat her severely and force-fed her poison in the absence of her husband.⁴⁶ In a rather strange case, a Dalit groom who had got married to a Janajati girl (Gurung) in western hill (Lapu, Gorkha) was kidnapped and 'fined' NPR 100,000.00 by the bride's family for his marriage with a so-called 'upper caste' girl.⁴⁷ An inter-caste married couple (Dalit groom and Brahman girl) were forcibly separated by police in eastern Tarai (Biratnagar-5, Morang) due to the girl's parents foisting a fake case of 'missing persons' on them. This was despite their marriage certificate and despite a court verdict confirming the validity of the marriage and acknowledging the marital relationship.⁴⁸

39 Annapurna, national daily newspaper, 11 July 2013.

40 Nayan Patrika and Kantipur national daily newspapers, 5 May 2013.

41 Annapurna Post, national daily newspaper, 21 June 2013.

42 Annapurna Post, national daily newspaper, 30 June 2013.

43 Kantipur, national daily newspaper, 6 August 2013.

44 Nagarik, national daily newspaper, 24 August 2013.

45 Nagarik, national daily newspaper, 3 November 2013.

46 Gorkhapatra, national daily newspaper, 20 December 2013.

47 Nayanpatrika, national daily newspaper, 19 December 2013.

48 Nayapatrika, national daily newspaper, 7 August 2014.

5.1.3 Restriction in use of public spaces and utilities

There are strong constitutional and legal provisions against CBD & U in using public spaces and utilities. However, discrimination prevails even after the promulgation of the Act. There is a long litany of cases even within the last two years, as the following examples show. A local milk dairy owned and operated by non-Dalits in eastern Tarai (Damak, Jhapa) refused to purchase the milk produced by cattle owned by Dalit women.⁴⁹ Similarly, a non-Dalit (Chhetri) chairman of Kalikasthan Forest Users' Committee of mid-western hill (Lakandra VDC, Dailekh) refused to provide firewood for the cremation of a Dalit woman.⁵⁰ A Dalit man was prevented from putting *tika* to the (non-Dalit) bride and bridegroom at his neighbour's daughter's wedding by her father in central hill (Saipu-3, Manthali, Ramechhap).⁵¹ A Dalit woman of eastern Tarai (Chandrodaya-7, Siraha) was accused of touching a public well and was severely beaten by a mob of non-Dalit hill janajatis.⁵²

A Dalit bridegroom was prevented from performing the wedding ceremony in a temple by the priest in western hill (Shiva Temple of Pokhara-7) though he had taken permission a couple of days before. As a result, he was forced to complete his marriage rituals in another temple.⁵³ Similarly, a Dalit man was prevented from worship and abused by the priest in Kathmandu (Ganesh Temple premises of Narayansthan VDC, Kathmandu) because he was a Dalit.⁵⁴ A Dalit woman was prevented from using water from the public tap by non-Dalit neighbours in central hill (Sangachowk-4, Singhupalchowk) though her family has also paid NPR 1,050.00 for the tap like others.⁵⁵ Madhesi Dalits (Saday/Mushar) in eastern Tarai (Chandrodayapur-7, Ghobiyajhar, Siraha) were prevented from using the common well before the non-Dalits (Pahade and Madhesi) to draw water and, therefore, were compelled to wait hours to fill their pots.⁵⁶ More than 250 Dalit households are still denied use of the public forest by non-Dalits in western hill (Lahachock, Kaski).⁵⁷

5.1.4 Discrimination in service delivery and jobs

The refusal to provide public services, citing one or another fake excuse, by public servants and donor funded projects operated by joint ventures with government agencies or NGOs is another manifestation

49 Annapurna, national daily newspaper, 8 May 2013.

50 Kantipur national daily newspaper, 22 May 2013.

51 Gorkhapatra, 2 June 2013.

52 The Kathmandu Post, national English newspaper, 28 February 2014.

53 Nagarik, national daily newspaper, 27 February 2014.

54 Annapurna Post, national daily newspaper, 19 February 2014.

55 Gorakhapatra, national daily newspaper, operated by the GoN, 23 March 2014.

56 Annapurna Post, national daily newspaper, 1 June 2014.

57 Himalayan Times, national English daily newspaper, 20 June 2014.

of CBD in Nepal. For example, 25 Dalit households of far-western hill (Shirsha VDC-9, Banarasi village, Dadeldhura) were denied the service of drinking water to their water taps in their homes by non-Dalits simply because the water would be sent through the same pipe to both Dalit and non-Dalit habitations—and so it would become ‘impure’ for the non-Dalits.⁵⁸

Similarly, the refusal to provide jobs for Dalits and terminating them from existing jobs is another manifestation of CBD. A Dalit employee of a three-star hotel (Hotel Jenial) in eastern Nepal (Biratnagar-16) was dismissed from service when it became known that he was a Dalit.⁵⁹

5.1.5 Physical assault and other atrocities

Physical assault and other atrocities on the basis of caste have been prevalent in Nepal for centuries and continue to pose a huge challenge. There were several such incidents reported in the three years since the promulgation of the CBD & U (O & P) Act. For instance, a Dalit girl of mid-western hill (Dhawang-1, Rolpa) was severely beaten up by a ‘witch doctor’ in the presence of relatives by accusing her of being a witch.⁶⁰ Similarly, non-Dalits publicly assaulted and tortured a Dalit woman along with a Dalit youth who supported her by blackening their faces and garlanding them with shoes in eastern Tarai (Belbari Morang) because they had filed a complaint of attempted rape against a non-Dalit man in the local police station.⁶¹ Likewise, a pregnant Dalit woman was prevented from using a public water tap and severely beaten by non-Dalits (Chhetri) when she had gone to fetch drinking water in western Tarai (Mainabagar, Butwal). She miscarried and lost her baby as a result of their attack.⁶²

A 62-year old Dalit woman was beaten by a non-Dalit family (Kebat/Madhesi) for touching the public water tap donated by the VDC in western Tarai (Manmateriya-3, Rupandehi,) solely because she was a Dalit.⁶³ A Dalit girl was killed by non-Dalit women (Newar) in eastern hill (Nangkholang-3, Taplejung) because she (the victim) had uploaded a picture on Facebook that showed the perpetrator’s husband in the background.⁶⁴ These cases indicate that no matter what the reason, real or imagined, Dalits women, men, girls and boys become victims in such assaults and murder.

58 Gorkhapatra, daily newspaper, 28 May 2013.

59 Nayan Patrika, national daily newspaper, 18 April 2013.

60 Kantipur, national daily newspaper, 8 July 2013.

61 Kantipur, national daily newspaper, 5 August 2013.

62 Republica, national English daily newspaper, 22 May 2014.

63 Gorkhapatra, national daily newspaper, 25 June 2014.

64 Gorkhapatra, national daily newspaper, 18 July 2014.

5.1.6 Rape

In theory, rape, or the threat thereof, is a sword of Damocles hanging over every woman in a patriarchal society. However, in practice, women who are the most vulnerable to rape belong to those lower in the social hierarchy (i.e. socially excluded communities), economically poor and generally with little or no power. In Nepal, Dalit women and girls often become victims of rape because they are vulnerable in all aspects mentioned above.

According to media coverage, during the last two years (2013 and 2014) there have been several reported cases of rape of Dalit women and girls. Given the sensitive nature of such cases, there are likely to be many more cases that were not reported. For instance, a 13-year old disabled Dalit girl from eastern Tarai (Letang-2, Morang) was raped time and again by two old Newar men (aged 77 and 60). The girl was denied justice since the gynecologist of Koshi Zonal Hospital falsified the medical report of the crime to support the perpetrators.⁶⁵ Similarly, a four-year old Dalit girl was raped by an 'unknown person' in eastern hill (Khotang).⁶⁶ Another Dalit girl was raped and made pregnant by a non-Dalit man in eastern Tarai (Mechinagar-13, Ghailadubba, Jhapa).⁶⁷

A Dalit woman gave birth to a daughter after being raped by a non-Dalit in western hill (Gulmi Balithum-3, Sano Lumpek) but he did not accept the baby as his daughter. The case was suppressed via local level 'mediation' in an 'agreement' providing NPR 30,000.00 as compensation in the presence of local people in 2011. The woman and her family kept the case a secret because of threats from the non-Dalit family. When the daughter was growing up, however, she wanted to know about her father. So, the local people pointed to the rapist as her father, after which the man's family wanted to kill the girl. Consequently, the girl now is being housed in a woman's rehabilitation centre for security.⁶⁸ The list goes on: A 14 year old Dalit girl was sexually harassed by a non-Dalit boy in far-western Tarai (Dhangadi Municipality-7, Jokertal, Kailali);⁶⁹ a 7-year old Dalit girl was raped by a non-Dalit man in eastern Tarai (Barahakshetra-7, Sunsari);⁷⁰ an orphaned Dalit girl (15) in eastern Tarai (Satasidham-5, Jhapa) was repeatedly raped and made pregnant by a non-Dalit boy (Tamang/Janajati).⁷¹ The cases of rape have been reported from all regions of Nepal, and most of the rapists are from non-Dalit communities.

65 Nayanpatrika, national daily newspaper, 5 August 2013.

66 Nagarik, national daily newspaper, 12 August 2013.

67 Kantipur, national daily newspaper, 19 July 2013.

68 Nagarik, national daily newspaper, 4 September 2013.

69 From the field study by Parbati Agri on 9 September 2013.

70 The Kathmandu Post, a national daily English newspaper, 24 September 2013.

71 Nayapatrika, national daily newspaper, 5 August 2014.

5.1.7 Direct /indirect untouchability practices

CBD & U practices manifest in various forms and in varying magnitude all over the country. After the enactment of CBD & U (O & P) Act direct discrimination and untouchability practices seemingly are decreasing, but indirect discrimination and untouchability (such as houses ‘for rent’ suddenly becoming ‘unavailable’ when the landlord realises that the would-be tenants are Dalits) are increasing. According to the media coverage during this period, untouchability practices occurred all over the country.

According to media coverage, a Dalit school teacher in far-western hills (Kalika Primary School, Malumela VDC, Bajhang) was prohibited from touching the food and water by non-Dalit teachers and the headmaster of the school.⁷² Three Dalit students were evicted from the room they had rented for a few days during their School Leaving Certificate exam by the dominant caste house owner (Khadka/Chhetri) in eastern hill (Simpani, Khotang).⁷³ Similarly, in eastern hills (Jyamire-5, Okhaldhunga) two Dalit youth faced CBD and misbehaviour from non-Dalits (Magar) when putting *tika* to the bride and bridegroom in a marriage ceremony.⁷⁴ Food (lito) provided by the World Food Programme was distributed in separate queues for Dalits and non-Dalits in 14 primary schools of far-western hills (Chwangadh, Baitadi).⁷⁵

A Dalit police constable faced CBD and misbehaviour from the non-Dalit post in-charge Assistant Sub-Inspector (Karki/Chhetri) in eastern hill (temporary area police post of Dandabazaar- Okhre, Dhankuta), who would not accept food from the Dalit. Moreover, the post in-charge ordered other staff not to eat food and water touched by the Dalit constable and also banned all Dalit staff from entering his room.⁷⁶ Ironically, all those involved are ‘officers of the law’ supposed to uphold the constitution.

In eastern Tarai (Public Higher Secondary School-Rangeli, Morang) a Dalit student studying in grade three had to quit school because of the misbehaviour of teachers who refused to touch the books of the Dalit students. The teachers also made the Dalit students sit on the last benches. As a result, the 12 Dalit students from Marik (Dom Community) did not want to go to school.⁷⁷

These incidents of human rights violations of Dalits are only the tip of the iceberg, but they are indicative of the status of CBD & U after the promulgation of CBD & U (O & P) Act and the prevailing situation in the country.

72 Republica, national English daily newspaper, 22 February 2014.

73 Nayapatika, national daily newspaper, 2 April 2014.

74 Gorakhapatra, national daily newspaper, 15 May 2014.

75 Gorakhapatra, national daily newspaper, 14 June 2014.

76 Nayapatika, national daily newspaper, 4 June 2014.

77 Kantipur, national daily newspaper, 28 July 2013.

5.2. Responses to CBD & U and HR violations by state

5.2.1 Response of the judiciary

The Supreme Court of Nepal has passed several landmark judgements against discriminatory traditions and practices in public places and utilities.⁷⁸ It has ordered that Dalit students be permitted to reside in the Sanskrit University hostels,⁷⁹ ordered the provision and correction of citizenship cards for Dalits as per their actual surname in the place of derogatory caste surname,⁸⁰ ordered public awareness programmes against CBD & U practices⁸¹ and ordered accountability of public servants regarding anti-discrimination.⁸²

Though these decisions of the Supreme Court of Nepal are not sufficient for ensuring access to justice to Dalits and reducing CBD & U practices, even these orders of the Court are not effectively implemented (Kisan, 2013). The district and appellate courts have made perpetrators liable only for the amount of fines and provided compensation to the victims, but have seldom imprisoned the perpetrators. Hence, the message of zero tolerance for CBD & U is diluted in effect.

5.2.2 Response of the police

The 'First Information Report (FIR)' is the door through which the CBD & U (O & P) Act related cases enter into the criminal justice system. According to the CBD & U (O & P) Act and the State Case Act, the FIR should be registered at the local police station at first and then the police will investigate and submit the charge sheet to the district government attorney. The attorney will then file the case in the court for trial. However, the response of local police depends on the power relations of the perpetrator as well as victim at the local level on the one hand and the attitude and role of local police officer and district police chief on the other.

(i) Positive response

The role of the police is critical in any CBD & U case, especially those involving inter-caste marriages. For example, in a case of forced displacement of an inter-caste married couple in Sipuwa-8, Rupandehi District by non-Dalits and the family of the bride the police registered a complaint and started an investigation.⁸³ In a similar case in Nalang-4, Dhading District the police also registered the case and

78 Mana Bahadur Bishwokarma vs. His Majesties' Government of Nepal, writ no. 2505 of 1992 AD.

79 Dil Bahadur Bishwokarma vs. His Majesties' Government of Nepal, writ no.44 of 2005 AD.

80 Dil Bahadur Bishwokarma vs. His Majesties' Government of Nepal, writ no.3138 of 2004 AD.

81 Ratna Bagchand vs. Government of Nepal, writ no.3138 of 2005 AD and Suk Lal Nepali vs. His Majesties' Government of Nepal, writ no.2873 of 2005 AD.

82 Durga Sob vs. His Majesties' Government of Nepal, writ no.3644 of 2001 AD.

83 Annapurna national daily newspaper, 11 July 2013.

started the investigation.⁸⁴ In Tandrang VDC-4 & Gorkha Municipality-10, Gorkha District, where the parents of bride intended to separate them by filing a fake case of robbery, the police supported the couple.⁸⁵ In a case of beating and force-feeding poison to a Dalit bride in the absence of her husband by his relatives, the police registered her complaint and started the investigation.⁸⁶ When the Dalit groom in Lapu, Gorkha District was kidnapped and fined NPR 100,000.00 by the family of the bride, the police acted on his petition, investigated the matter and made the perpetrators return his money.⁸⁷

In a case of Chandrodaya-7, Siraha District where a Dalit woman was beaten severely by non-Dalit hill indigenous people who accused her of touching the public well, the police immediately initiated an investigation.⁸⁸ Similarly, when worship was restricted for Dalits in a temple (Ganesh Mandir premises of Narayansthan VDC) of Kathmandu, the police started an investigation immediately on the basis of the complaint.⁸⁹ In Ghalan VDC-6, Myagdi District, where a Dalit woman was abused by a non-Dalit man and socially boycotted, the perpetrator was arrested by police as per the complaint of the victims.⁹⁰

(ii) Negative response

However, all too often, the response of the police has not been quite in the spirit of the law or justice. In a case of restricting temple entry and obstruction of performing the marriage ceremony in Brahmasthan Temple, Pipariya Dostiya-5, Rautahat District, the police pressured the victims to withdraw the complaint against the non-Dalits, after which the case was dismissed by ‘mediation’.⁹¹ Similarly, in a case of inter-caste marriage in Nuwakot District where the married couple was physically tortured and exiled from the village by the bride’s family, the police, instead of prosecuting the perpetrators, abused the newly married couple and accused them of early marriage.⁹² The police did not implement the CBD & U (O & P) Act when an inter-caste couple were forcibly displaced by the bride’s family in Bhalchaur-9, Salyan District.⁹³

In Itahari, Sunsari District the police office supported the release of the perpetrator when the newly married Dalit bride (in an inter-caste marriage) disappeared.⁹⁴ An inter-caste married couple in Biratnagar-5, Morang District were forcefully separated by police based on a fake case of missing girl

84 Annapurna Post, national daily Newspaper, 30 June 2013.

85 Nagarik national daily Newspaper, 3 November 2013.

86 Gorkhapatra national daily newspaper, 20 December 2013.

87 Nayanpatrika national daily Newspaper, 19 December 2013.

88 The Kathmandu Post, national English newspaper, 28 February 2014.

89 Annapurna Post national daily newspaper, 19 February 2014.

90 Annapurna Post, national daily newspaper, 20 June 2013.

91 Nagarik, national daily newspaper, 9 June 2013.

92 Nayan Patrika and Kantipur national daily newspapers, 5 May 2013.

93 Kantipur, national daily newspaper, 6 August 2013.

94 Nagarik National Daily News Paper, 24 August 2013.

filed by the girl's parents, though they had a marriage certificate and court's verdict of husband-wife relationship.⁹⁵

In the initial phase of the Belbari incidents, where a Dalit woman was publicly assaulted and tortured by blackening her face and a garland of shoes was put around her neck by non-Dalits, the local police office did not intervene on behalf of the victim.⁹⁶

In conclusion, CBD & U is not a fading phenomenon in Nepali society. It is well and truly alive as a social problem affecting a significant population in the country. Moreover, the number of reported cases of varying manifestations of discrimination and violence are on the increase. This situation is matched by the differential nature of responses to the various rights violations that Dalits experience. While there are positive responses from the judiciary and the police, who are the key actors in the criminal justice system who can ensure the right to a legal remedy for CBD & U to Dalits, there are equally a number of instances where police biases against Dalits in their non-enforcement of the law are clear. More detailed analysis of the hurdles Dalits face in accessing justice as per the main law enacted to protect them against CBD & U is presented in the next chapter.

95 Nayapatrika National Daily News Paper, 7 August 2014.

96 Kantipur National Daily News Paper, 5 August 2013.

6

ANALYSIS OF THE IMPLEMENTATION OF THE CBD & U (O & P) ACT

There are several cases of CBD & U that have completed their journey through the criminal justice system, from the police station to the courts—and final verdicts have been pronounced. However, most of these cases of CBD & U have been prosecuted under Section 10A of the *Adalko Mahal* or Civil Code, 1963. Given the relatively small number of cases to date, this report takes 18 cases booked under the CBD & U (O & P) Act during the three year period 2011-2014 for detailed analysis of the implementation of this Act, based on available documents and fact-finding reports. To identify the trends in implementation and draw lessons as to the efficiency of the Act, the analysis has been divided into different procedural stages such as FIR and investigation, cases filed in court, trial and final verdict of the courts.

6.1 First Information Report (FIR) and investigation of cases

Registering an FIR against the perpetrators of CBD & U is in itself can be a harrowing struggle for Dalits. Many such experiences were found when collecting information of these cases from different parts of the country. Most of the FIRs had been registered only after social and political pressure was created by Dalit CSOs, political organisations and activists.

A case of CBD & U by restricting temple entry and worship and subsequent mass attack on Dalits by non-Dalits at Bhindawar, Rautahat District⁹⁷ is an instance of the police repeatedly refusing to register the FIR. Similarly, the case of CBD & U by public assault on a Dalit woman and man at Belbari, Morang District,⁹⁸ a case of CBD & U by denying participation in a celebration and physical assault on a Dalit teacher at Kotdanda, Kaski District,⁹⁹ and a case of CBD & U denying *prasad* (food offered to a idol), *tika* (sectarian mark made with saffron, etc) and entering into temple at Dhiring, Parbat District¹⁰⁰ are other examples where a lot of consistent effort by the Dalit community and CSOs was required for registering the cases under the CBD & U (O & P) Act.

97 Annex I, case no. 12; by FIR of Sripatidevi Chamar and Sushila Devi Chamar, GoN v/s 46 persons of Yadav caste.

98 Annex I, case no. 11; by FIR of Maya Sarki, GoN v/s Chetan Bhetwal and others, 2013.

99 Annex I, case no. 9; by FIR of Karna Bahadur Nepali, GoN v/s 8 Gurung people.

100 Annex I, case no. 8; by FIR of Chandre Damai, GoN v/s Krishna Prasad Acharya and others.

After registering the FIR, in most of the cases, the police were found to be comparatively active and positive in arresting the accused persons, presenting them in court for the approval of investigation, and making the charge-sheet in collaboration with the government attorneys. In many of the cases it was found that ultimately the police arrested the accused and started the investigation on taking the perpetrators into custody.

However, in some of the cases (Rautahat, Morang, Kaski and Parbat mentioned above), the police were found to be influenced by the dominant caste perpetrators and, therefore, indifferent in arresting them, in the investigation and in other procedural work. In some places, the police themselves were biased against the Dalit victim/survivors and in some places these law enforcement officials have been used by local dominant caste/ethnic groups and political leaders and parties to influence the Dalits into withdrawing their complaints. A significant challenge is to free the police from internal bias, insulate them from external influences and ensure accountability.

The continuing caste biases of the police were highlighted at the 'National Peoples' Hearing' held in Kathmandu on 29 December 2014 on access to justice for Dalits. The jury panel, which examined 10 cases of CBD & U, found the following lapses by the police:

- Widespread and systematic failure to register crimes properly under the CBD & U (O & P) Act. In addition to non-registration of cases, the police engaged in improper registration of cases. The cases to be registered under CBD & U (O & P) Act were often registered under the Libel and Slander Act, 1959 AD. Improper and under- registration of Dalit cases were the result of police reluctance to entertain complaints by Dalits as well as their lack of familiarity with the CBD & U (O & P) Act.
- Investigation is weak. It is oriented towards statement collection rather than investigation. Investigation officers often did not take any help from the Dalit community or individuals and organisations working for the protection and promotion of Dalit rights as required by Section 6 of the CBD & U (O & P) Act. Additionally, the police promoted a culture of forced 'negotiation' rather than adopting the proper legal measures.
- All perpetrators of CBD & U are not arrested, thus providing them a chance to escape.
- Police neglect physical violence and verbal threats to evict Dalits from the villages as a result of caste-based discrimination, as often seen in the case of inter-caste marriages.
- Police allow perpetrators to be in the custody of a political party and not in the police station.
- Police release the offenders due to pressure from the local dominant caste village leaders.

6.2 Filing cases in court

After the completion of police investigation within the legally prescribed time frame the District Police Office is to make a charge sheet as per the CBD & U (O & P) Act and submit it to the District Attorney. In all the 18 cases monitored,¹⁰¹ the police were found to be making the charge sheet as per the legal provision of the CBD & U (O & P) Act. Similarly, in all 18 cases the District Attorneys were found to be filing the case in the District Court, demanding the higher fine and punishment as high as under the Section 7 (1) and compensation under the Section 9 (1) of the Act. This suggests that the District Attorneys are performing their duties in terms of the timely making of the charge sheets, demanding the verdict of higher fine and punishment against perpetrators, and higher compensation for victims from the Courts, as per sections 7 (1) & 9 (1) of the CBD & U (O & P) Act. However, the judgements of the courts are not reflecting all the demands as per the charge sheets. In contrast, at the National Peoples' Hearing held in Kathmandu on 29 December 2014, the jury panel noted the District Attorneys in some cases did not seek compensation from the government duty bearers as prescribed by the CBD & U (O & P) Act.¹⁰²

6.3 Trial

In all 18 cases, during the period of investigation the police arrested perpetrators and submitted them along with the charge sheet to the courts. In all the 18 cases, all the perpetrators were found to be released from police custody on furnishing bail as per the order of the courts in a simple, routine and regular fashion, regardless of the magnitude of the crime. Some of the accused were released in a general attendance liability without any deposit of money.¹⁰³ This was most prevalent in the Baglung District Court where the same judge meted the same lenient treatment to the perpetrators in several cases.

The courts were found to be imposing liabilities of NPR 1500.00¹⁰⁴ up to NPR 75,000.00¹⁰⁵ in order to grant bail. This shows the vast difference in taking deposits as bail in different courts in the country.

101 See Annex I for the case details.

102 As per the FIR of Ram Bahadur BK, in the case of GoN vs Sita Ram Subedi including 7 persons in Dhading district, the District Attorney did not demand for extra fine and punishment as per section 7(2) CBD & U (O & P) Act for two public servants. Similarly, as per the FIR of Mohan Singh Bhul, in the case of GoN vs Dharma Raj Joshi and Tek Raj Josi in Doti district, the District Attorney did not argue for the amount of compensation due to the victim as per section 9(1) of the Act.

103 Case no. 11: Case of Chandre Damail in Parbat and Case no. 6: Case of Maya Pariyar in Baglung.

104 Case no.17: Case of Akash Bhujel in Urlabari-1, Morang District, Annex I.

105 Case of Karna Bahadur Nepali, Kaski District Court; and case no.1: Case of Yogendra Kumar Bhul, Doti District.

The 'National Peoples' Hearing' held in Kathmandu on 29 December 2014 on access to justice for Dalits noted the following issues arising during the trial of CBD & U cases:

- District Courts did not consider documents prepared at the place of the incidents as evidence.
- The oral statements of witnesses on behalf of the complainant were not taken into consideration as evidence. Instead, it was considered 'normal' that such witnesses would give statements in support of the victim and so these statements were disregarded.
- Medical documents were ignored by the court.
- Difficulties in gathering evidence on the issues of CBD & U were ignored by the courts.
- Government institutions were found to be less concerned about CBD & U related incidents.

6.4 Final verdict of courts

Among these 18 cases, of the cases where the final verdict has been pronounced by the District Courts, all the perpetrators have been only fined and asked to pay compensation. A consistent pattern is that not one perpetrator has been imprisoned. Equally consistently, all the appellate courts have confirmed the verdict of the district courts.

The fines imposed ranged from NPR 2,500.00¹⁰⁶ up to NPR 15,000.00¹⁰⁷, whereas the courts are empowered to impose fines up to NPR 25,000.00 as per the Act. The compensation ordered by the courts ranged from NPR 12,500.00¹⁰⁸ to NPR 80,000.00.¹⁰⁹

Among the 18 cases, two cases were converted from CBD & U (O & P) Act into other cases. One case of CBD & U was converted into a case of beating,¹¹⁰ while another was converted into a case of slander¹¹¹ without any apparent justifiable reason. Similarly, the perpetrators were acquitted of the charges in six cases.¹¹²

106 Case no.1: Case of Yougendra Bhul, Doti.

107 Case no. 11: Case of Maya Sarki, Morang.

108 Case no.1: Case of Yougendra Bhul, Doti.

109 Case no. 9: Case of Karna Bahadur Nepali, Kaski.

110 Case no. 2: Case of Shyam Luhar, Doti District.

111 Case no. 4: Case of Sagar Nepali, Kanchanpur District.

112 Cases of Mohan Singh Bhul (case no. 5, Doti), Maya Pariyar (case no. 6, Baglung), Saraswati Bohora (case no. 7, Baglung), Chanred Damai (case no. 8, Parbat), Nabraj Sinar (case no. 14, Dhading) and Binod Basfor (case no.18, Sunsari).

6.5 Gaps in CBD & U (O & P) Act and its implementation

The amount of compensation in the Act seems reasonable. However, the duration of imprisonment (up to 3 years) is low and the amount of fine (up to 25,000.00) also is low, compounded by the fact that judges are given discretionary powers to award punishments that exclude any period of imprisonment. Moreover, currently judges are compelled to send the accused into detention without bail only in those cases where the prescribed punishment of imprisonment is more than three years as per the Nepali criminal justice system. That is perhaps the reason all the courts release the perpetrators of CBD & U on bail without any detention. To fill this gap, the duration of imprisonment should be increased at least up to 5 years and in the same way the amount of fine also should be increased up to NPR 100,000.00.

Regulations to detail the procedures for implementation of the CBD & U (O & P) Act have not yet been formulated. This should be formulated as soon as possible to implement the Act effectively. In addition, there still are some important provisions that need to be included in the CBD & U (O & P) Act, such as protection of victims and witness, zero tolerance policy on CBD & U and compensation from the State fund.

Moreover, there are no specific policies, provisions, schemes, programmes and strategies for effective implementation of the CBD & U (O & P) Act. These should be formulated and applied as soon as possible. More importantly, for the effective implementation of this Act, there should be a clear provision of proportional representation of Dalits as police officers, government attorneys, judges and chief district officers as well.

All this has to be accompanied by concerted efforts to raise awareness among the concerned populations about this significant protective law and encourage Dalits to come forward to file cases where CBD & U is still practised.

6.6 Findings and lessons

Most of the incidents of CBD & U are found to be caste-based misbehaviour, torture, derogatory language against Dalits, preventing the use of public places and utilities, rejecting inter-caste marriage, physical assault and related atrocities. However, news or information on most of these incidents seldom reach the public. FIRs are seldom registered. More common is for the suppression of these cases through so-called 'local level mediation' by dominant castes under the pretext of 'maintaining communal harmony'. Likewise, local and district police officers 'mediate' in some cases by using direct or indirect power, both of which are misuse of their position. This abuse of power works against victims.

The police and government attorneys are found to be demanding high levels of fine, punishment and compensation as per law in the charge sheet. However, most of courts were found to be releasing the

perpetrators by taking a small amount of money as bail or even without any deposit. Furthermore, no court ordered imprisonment of the perpetrators in imposing punishment for their crimes. The vast difference in action demanded in the charge sheet and the verdict of the courts are important aspects that need to be further studied.

Based on these 18 cases, it can be concluded that the implementation of CBD & U (O & P) Act results in imposition of a meagre fine and providing some compensation to the victim/survivors, but the perpetrators can rest assured that it will not result in their imprisonment.

7

GOOD PRACTICES IN ADDRESSING CBD & U

7.1 Protecting an inter-caste married couple

The case: A Dalit boy named Jit Bahadur Sunar and a non-Dalit girl Sunita Gurung married at Lapu V.D.C. ward No.8, Gorkha District (western hills) on 6 October, 2013 and escaped from the village to stay at the home of one of Jit Bahadur's relative in Barpak V.D.C., Gorkha District. After some days when they returned home, Sunita's relatives called them to her natal house where the couple were threatened into paying a fine of NPR 100,000.00 for entering into the inter-caste marriage. However, afterwards the couple were continuously threatened and even assaulted by the non-Dalit villagers due to caste discrimination and anger at the Dalit boy for entering into the marriage. Consequently the couple fled the village to the district headquarter of Gorkha. There, they came in contact with local political leaders, the media and finally their situation was publicly disclosed. After that, with the support and discussion of local political leader and human right activist, the couple had registered an application in the Office of the District Administration (a quasi- judicial body) on 12 December 2013 demanding protection and the return of the fine amount which was forcibly imposed by the villagers. With the help of the police, the fine amount was returned to the victims on 17 December 2013.

The intervention: SAMATA foundation initiated a fact finding mission and after its completion, in collaboration with other local civil society organizations, pushed for the FIR to be registered with charges under the CBD & U (O & P) Act at the district police office at Gorkha on 19 December 2013. After the FIR, the police immediately took action and arrested one of the accused and started the investigation. After submission of the case to the Court, one of the accused was released by submitting NPR 10,000.00 as bail and also NPR 25,000.00 as compensation from the accused to the bride by the order of District court of Gorkha. Meanwhile, the lawyer of SAMATA attended the case hearings in the district court in order to provide legal support to the victims. Moreover, during that period of judicial prosecution SAMATA continued to support the couple for the registration of their marriage so as to further legitimise their living as husband and wife. Based on the certificate of marriage, SAMATA was able to ensure the bride got her citizenship card from the CDO office.

7.2 Systematically addressing Dalit rights violations

The case: At Belbari VDC ward no. 3, Morang District Maya Sarki, whose husband is working outside the country, complained to the local police office against Chetan Bhetwal, a non-Dalit for attempting to rape her on the night of 21 July, 2013. Manoj Bishwakarma, a Dalit male journalist supported her to file the complaint. However, police investigation proved that Maya Sarki had been mistaken in naming the perpetrator and the man was freed from police custody. Maya Sarki then offered her apologies to Chetan Bhetwal and his relatives for her mistake. The next day, however, Maya Sarki and Manoj Bishwakarma were called by the man's relatives and villagers for further discussion about the incident at Annapurna Boarding school. During the discussions, both Dalits were attacked, beaten and verbally abused using caste derogatory language by the family and relatives of Chetan Bhetwal. Moreover, both their faces were smeared black soot and they were also garlanded with shoes to humiliate them further.

The intervention: After the collective fact finding and interventions of Dalit civil society organizations with the police, the police registered an FIR against 16 dominant caste accused in the nearest police station under the Some Public (Crime and Punishment) Act, 1970 on 21 June, 2013, which meant that the case would be prosecuted by the local CDO office. However, CSOs then supported Manoj Bishwokarma to file another FIR against 17 persons under the CBD & U (O & P) Act at the District Police Office on 24 June, 2013. The same support and guidance was extended to Maya Sarki to also register the same type of FIR under the CBD & U (O & P) Act against the same persons in the District Police Office separately on 29 June, 2013. Dalit CSOs also mobilised the media to publicise the incident in order to bring awareness on this caste-motivated crime as well as pressurise the local officials into taking action on the case.

In this case 7 perpetrators were arrested immediately after the first FIR and other were directly presented at the court and all were released by taking bail. Civil society organisations, including SAMATA, then stepped in to provide legal advice and support to the victims throughout the judicial process. The final hearing of this case was held on 11 March 2014 and the judgement saw nine accused penalised NPR 15,000.00 each and eight accused acquitted. Maya Sarki and Manoj Biswakarma were compensated NPR 25,000.00 each, which amounts to partial implementation of the CBD & U (O & P) Act since no jail sentence was imposed on the accused. Now, as the victims are not happy with the verdict of nominal punishment for some accused and acquittals of other accused, SAMATA Foundation and REDEF Nepal lobbied the district attorney to file an appeal before the Appellate Court.

7.3 Hundred-days campaign: a joint effort of Nepali government and civil society against CBD & U

This campaign was jointly launched by the National Dalit Commission and the Office of the High Commissioner for Human Rights-Nepal office, with the support of dozens of civil society organizations,

from 16 September to 24 December 2011. The purpose was to highlight the need for the effective implementation of Nepalese law and its provisions to end the deep-rooted practices of caste based discrimination and untouchability. The campaign was inaugurated by the President of Nepal Dr. Ram Varan Yadad with hundreds of participants, including government representatives, human rights defenders and media participating. In a video message the then UN High Commissioner for Human Rights Navi Pillay endorsed the campaign and called for the implementation of laws to end caste based discrimination and untouchability. The 100 days of campaigning involved a number of awareness-raising activities organized across the country such as a cycle march from eastern to western part of the country, several rally demonstrations in major cities, the distribution of T-shirts printed with the slogan "I commit to end caste-based discrimination and untouchability", national and regional level workshops on the elimination of CBD & U, the printing and distribution of booklets, pamphlets and stickers and thousands of copies of the CBD & U Act in collaboration with government authorities, human rights defenders, media and civil society members.

7.4 Collaborative annual campaign by Dalit CSOs to eradicate CBD & U

Dalit civil society organizations have started an annual 12-day campaign against caste based discrimination and untouchability since 2013 with the purpose of creating pressure and providing policy feedback to the concerned government authorities on the need for the fair and effective implementation of anti-discrimination laws and provisions, sensitising the wider society and stakeholders about the state commitment to end CBD & U, and generating collective action for ending CBD & U from Nepali society. The campaign was inaugurated by hon'ble Madhav Paudel, Minister for Information and Communications in 2013. Addressing the gathering, recognised that despite strong constitutional and legal safeguards, "untouchability has remained a national issue, and I can without hesitation say that the implementation aspect is pathetic." During the annual campaign, several interactions are organized with other stakeholders such as the Nepal police, National Human Rights Commission, Election Commission, etc. Each day, events are organised around different themes of Dalit rights by different Dalit civil society organization and culminate in a rally to publicise the call for the end to CBD & U.

8.1 Constitutional safeguards against CBD & U

- The preamble of the Constitution should include a commitment to a ‘State free of CBD & U’.
- In the chapter on fundamental rights, there should be a separate Article with strong and unambiguous provisions against CBD & U.
- There should be separate Articles on Dalits’ rights, proportional representation and another on the socio-economic and educational rights of Dalits.

8.2 Legal and policy recommendations

- The State should formulate and effectively implement laws, regulations, policies, directives, plans, action plan and strategies to eliminate CBD & U and ensure access to justice.
- The National Dalit Commission should be made a constitutional body through the passage of the new constitution as soon as possible. The bill establishing the NDC should be passed as soon as possible by CA/Parliament to make it a statutory body.
- The GoN should immediately formulate the rules and regulations (specific procedures) for effective implementation of the CBD & U (O & P) Act.
- The State should draft and table the amendment bill of CBD & U (O & P) Act to add several important missing provisions and gaps in the Act such as zero tolerance policy, victim and witness rights, fast-track investigation and trial, increase the period of imprisonment up to five years, and enhanced fines and compensation.
- A high level mechanism headed by the Chief Secretary, GoN should be empowered to instruct the local police, quasi-judicial bodies and the district administration for effective implementation of the CBD & U (O & P) Act and to ensure accountability.
- The current provision of providing free legal aid to the poor in general should be enlarged to include all Dalits regardless of their economic status. The legal aid project launched by the

Nepal Bar Association should be made Dalit friendly for enlarging the opportunities of Dalits to access justice.

- There are still around three dozen laws/Acts that should be amended to control and ultimately eliminate CBD & U practices. All laws that protect, and not prohibit, CBD & U practices should be repealed immediately.
- There are 103 laws/Acts that should be amended to ensure social inclusion of Dalits and access to justice. The requisite amendments should be done on a priority.
- The burden of proof should be shifted to the accused (defendant) rather than the victim in all CBD & U cases.

8.3 Plan, programmatic and budgetary recommendations

- There should be effective and coordinated implementation of the various state measures to address CBD & U, namely the CBD & U (O & P) Act, the parliament's promulgation of 'CBD & U Free State, 2006', national day against CBD & U and 'Mechanism of Dalit Rights Promotion and Elimination of CBD & U, 2011' at the central, district and local levels.
- The State should make a special Dalit development plan with sufficient budget allocation, scientific programme design and realistic action plan to implement the CBD & U (O & P) Act effectively to ensure access to justice.
- The State should allocate sufficient budget, provide physical infrastructure and assets and human resources for the National Dalit Commission to enhance its effectiveness in monitoring the implementation of the CBD & U (O & P) Act and human rights violations of Dalits.
- The National Human Rights Commission should be made responsible to monitor CBD & U practices in general and the National Women's Commission should be made responsible to monitor the violations of the rights of Dalit women in particular.
- There should be security, shelter and rehabilitation schemes for inter-caste married couples. Special programmes, including budget allocations, should be made for the safety and sustainability of such couples and their families. The incentive scheme amount for inter-caste marriages should be increased and distributed effectively on time.
- The state should focus on the socio-economic situation of Dalits and bring programmes for their economic empowerment and education so that they can challenge such inhuman practices and seek for legal remedies if required.

8.4 Access to justice

- The State should ensure proportional representation of Dalits in all law enforcement agencies of the country, i.e. in the police, public prosecutors, judges and general administrators, to ensure access to justice.
- A proper mechanism needs to be created with rigorous standards and protocols for the collection, maintenance, access and disposal of scientific data and records at all levels in courts, Office of the Attorney General and its branches, police and NDC in all cases related to Dalits. This information should be publicly available, publicised and disseminated regularly. Disaggregated data on CBD & U cases against Dalit women should form part of this data collection and management system.
- Short, quick and simple systems and procedures should be formulated with respect to FIR and investigation of CBD & U and other human rights violations, including sexual violence and torture.

8.5 Recommendations to police

- All concerned authorities dealing with criminal justice administration, especially police officers at all levels, and civil society should be made aware of CBD & U (O & P) Act.
- Cases of CBD & U should not be booked under other laws.
- ‘Negotiations’ for out of court settlements should be discouraged. Victims should not be pressurised into negotiation by anyone, especially not the police.
- Action should be taken against police officials reluctant to file CBD & U cases and those who are uncooperative.
- Implement the provision in CBD & U (O & P) Act that the investigating officer can take the help of the Dalit community and individuals and representatives of the civil society working for protection and promotion of Dalit human rights during investigation of the case.
- Police should not come under, nor succumb to, political pressure to obstruct the passage of legal justice in CBD & U cases.

8.6 Recommendations to attorneys and courts

- The court should take into account all the documents and evidence collected before the final verdict.

- Attorneys should order reinvestigation if the police investigation is not carried out properly into CBD & U cases.

8.7 Training/orientation on CBD & U (O & P) Act and HR violations

- There should be compulsory representation of Dalits in all national institutions as resource persons and trainers during all training/orientation programmes in institutions such as NHRC, NDC, NWC, Judicial Academy, Administrative Staff Collage, Local Development Training Academy, and the Police Academy. The syllabus should have specific content on CBD & U, human rights violations and social inclusion.
- Dalit trainers and human rights defenders should be provided training to enhance their capacity to provide training in local level officials, law enforcing agents/agencies to investigate and prosecute the cases related to CBD & U.
- The State and concerned stakeholders should organise awareness programmes to make the citizens and law enforcing agents aware about the CBD & U (O & P) Act.

Annex I

DETAILED INFORMATION OF CBD & U CASES (JUNE 2011-JUNE 2014)

Case 1: Using derogatory words and mistreatment

Description of case

A teacher from Dalit community named Yogendra Kumar Bhul had been teaching in the private Little Star Bidhya Niketan Boarding School at Toleni VDC-6, Saingaun, Doti. On 15 October 2012 a meeting of the school management committee (SMC) was arranged. During the meeting two non-Dalit men, Bhim Bahadru Bogati and Gorakh Bahadru Bogati, used caste-based derogatory words against the teacher and told him ‘you Dum should not teach our high caste children, you have to depart from this school’.

First Information Report (FIR)

The FIR registered by victim in the District Police Office (DPO), Doti on 19 October 2012 without any kind of barrier. The police swung into action immediately after filing the FIR and arrested one of the perpetrators. The police completed the investigation after one month period and submitted to the District Government Attorney (DGA).

Case filed in court

The DGA immediately filed the case in the District Court of Doti on 20 November 2012 by demanding the maximum fine and imprisonment as per Section 4 (1, 2, 3 & 6) of CBD & U (O & P) Act and compensation as per Section 9 (1) of CBD & U (O & P) Act. According to Section 4 (1, 2, 3 & 6) of the Act the perpetrator shall be liable to the punishment of imprisonment for a term from three months to three years, a fine from NPR 1,000.00 to NPR 25,000.00 or both. As per section 9 (1) the court may order the offender to provide NPR 25,000.00 to NPR 100,000.00 as compensation.

Judicial trial

During the trial, Doti District Court took NPR 75,000.00 as bail and released the perpetrator on the same day of filing the case on 20 November 2012 and started the trial. During trial, the court took the statements of two witnesses from the victim's side and continued the procedure.

Court's verdict

On completion of trial, the Court gave its verdict on 4 March 2013 by announcing a fine of NPR 2,500.00 per person and a compensation of NPR 12,500.00 per person. The Court did not imprison any of the perpetrators. The fine is much less than the demand and the compensation is the minimum provided under the law.¹¹³

Case 2: CBD & U by using derogatory words and beating

Description of case

According to victim Shyam Luhar Kami, on 25 July 2013 evening perpetrators Man Bahadur Bogati and Mahadev Bogati used derogatory words against him like 'you Dom, son of witch' etc, beat him brutally and looted his mobile and cash.

First Information Report (FIR)

The FIR was registered immediately by DPO, Doti on 26 July 2013 without any obstacle. The police swung into action immediately and arrested the perpetrators and after the completion of investigation submitted the case to the DGA.

Case filed in court

The DGA immediately filed the case in the District Court of Doti on 11 August 2013 as per Section 4 (1) and Section 4 (2) (a) (b) and by demanding the highest possible fine and imprisonment as per the Section & (1) of CBD & U (O & P) Act and compensation as per Section 9 (1) of CBD & U (O & P) Act. According to Section 4 (1) (2) of the Act the perpetrator shall be liable to the punishment of imprisonment for a term from three months to three years imprisonment or the fine from NPR 1000.00 to NPR 25,000.00 or both. As per the section 9 (1) (2) the court may order the offender to give NPR 25,000.00 to NPR 100,000.00 to the victim as compensation.

Judicial trial

During the trial, District Court of Doti took NPR 50,000.00 as bail from each person and released the perpetrators on 12 August 2013 and started the trial.

¹¹³ It also makes mockery of the spirit of the law. Using this logic, if 50 people abuse a Dalit, they just pay NPR 500.00 each and get away with it.

Court's verdict

After completion of the trial, the court gave its verdict on 20 January 2014. In the decision, the court converted the CBD & U case into case of beating under Section 27 of State Case Act, 1990 and left it to the victim to file the new case against perpetrators under the section covering beating in the Civil Code (Muluki Ain). Later on, the Appellate Court, Dipayal upheld the decision of District Court of Doti on 19 March 2014. There is no information whether the case of beating has been filed or not.

Case 3: Restriction in use of public water-tap and beating

Description of case

A family of non-Dalits (Bipat Kewat and Phula Kewat) prevented Anari Harijan a Dalit woman from using a public water-tap and beat her brutally at Madhuwani VDC-3, Manmateria, Rupandehi District on 22 June 2014.

First Information Report

On 23 June 2014 an FIR was registered against perpetrators in the DPO, Rupandehi easily. The police swung into action immediately and arrested the perpetrators on 24 June 2014. They started the investigation and other procedures immediately.

Case filed in court

The DGA filed the case in the District Court of Rupandehi on 17 July 2014 by demanding the highest possible fine and imprisonment under the Section 3; Section 4 (2) (a) (b) and Section 7 (1) (a).

Court's verdict

After completion of trial, finally the Court announced its verdict on 25 November 2014. It fined NPR 2,000.00 for perpetrator Phula Kewat and NPR 3,000.00 for perpetrator Bipat Kewat as well and ordered each of them to pay NPR 12,500.00 each (NPR 25,000.00 in total) as compensation. The court did not imprison anyone, and both the fine and compensation are far below the prosecution demand. The compensation is the minimum possible according to the law.

Case 4: CBD & U by using derogatory words and physical assault

Description of case

Sagar Nepali and Suraj Nepali, residents of Kanchanpur District, Bhimdatta Municipality Ward No.18 were insulted by using derogatory words such as *Dum* (low caste) and *Dholi* (drumer) and battered by the Jiban Bahdur Bam and Harka Bahadur Bam, residents of the same place on 24 October 2012. The incident happened because the victims played football in the road in front of the perpetrators.

First Information Report (FIR)

The mother of victims, Hiradevi Nepali registered the FIR in the DPO, Kanchanpur on 25 October 2012 against Jiban Bahdur Bam and Harka Bahadur Bam demanding prosecution as per the CBD & U (O & P) Act. The police took action immediately. Chaturbhujh Ojha was appointed as the investigating officer of this case and one of the perpetrators, Jiban Bahadur Bam was arrested on the same day, 25 October 2012, itself.

Case filed in court

The DGA of Kanchanpur Daman Sing Bista prepared the charge sheet on 11 November 2012 after the completion of investigation process. It was registered in the Court with charges as per the Section 3, 4 (1) and 4 (2) (b), and demanded compensation as per the Section 9 (1) under the CBD & U (O & P) Act.

Judicial trial

The District Court of Kanchanpur started the judicial trial. The arrested perpetrator Jiban Bahdur Bam was released the same day on a bail of NPR 52,000.00 by order of *Shrestedar* Sher Bahadur Bista on 11 November 2012. This order was approved by Judge Umesh Raj Paudel on 2 December 2012. Another perpetrator Harka Bahadur Bam who was absconding at the time of the investigation attended the court on 7 January 2013 and was released on a bail of NPR 10,000.00 by the order of District court, Hon' Judge Umesh Raj Paudel on the same day.

Court's verdict

The final hearing of District Court of Kanchanpur was on 23 March 2014. The Hon' Judge Bhoj Raj Adhikari converted the case to one of libel and slander, to be tried under the Libel and Slander Act, 1959. He absolved the perpetrators from legal punishment and liability under the CBD & U (O & P) Act. Now this case is under trial as a libel and slander offence.

Case 5: Insult and domination in the SMC meeting

Description of case

Mohan Singh Bhul (a Dalit man), resident of Ranagaun V.D.C. Ward No. 1, Doti was dominated and insulted by Dharma Raj Joshi and Tek Raj Joshi, (residents of the same place) during the guardians meeting of Bhuwaneshwari Secondary school on 3 January 2014.

During the school management committee (SMC) meeting, the immediate appointment of a school helper was being discussed. The victim Mohan Singh Bhul supported the appointment. The perpetrators Dharma Raj Joshi and Tek Raj Joshi, using derogatory words like *Dom*, untouchable, lower caste and other offensive language, said that 'you *Dom* people have no right to participate in decision making' and 'this place is made impure by your presence'.

First Information Report (FIR)

The FIR was registered in the DPO, Doti against two perpetrators Dharma Raj Joshi and Tek Raj Joshi under the CBD & U (O & P) Act on 8 January 2013. After the FIR was registered, the perpetrators were immediately arrested and Inspector Dipak Babu K.C was appointed as investigation officer of this case.

Case filed in court

After completion of the investigation process, the DGA Tara Singh Dhama filed the case in the District Court of Doti against the perpetrators demanding fine and punishment under the Section 4 (1), Sec 7 (1) (c) and Section 9 (a) (1) of CBD & U (O & P) Act. The perpetrators were presented at the District Court of Doti on 17 January 2014.

Judicial trial

At the bail plea Dharma Raj Joshi was let out on a deposit of NPR 25,000.00 and Tek Raj Joshi was released on general attendance system.

Court's verdict

The final hearing was held on 23 March 2014. Hon' Justice Dhan Singh Mahara of District Court of Doti gave clean chit to both perpetrators. Appeal was made in Appellate Court of Dipayal immediately against the decision of District Court's verdict. However, Honorable Judge Rebant Bahadur Kuwar and Himaj Raj Pathak of the Appellate Court also gave the clean chit to both perpetrators by confirming the verdict of the District Court on 3 June 2014.

So, in this way, ended the futile journey of 'access to justice' of Mohan Singh Bhul.

Case 6: CBD & U by denying giving house on rent

Description of case

The house owner refused to give a room on rent to Maya Pariyar. Maya Pariyar, permanent resident of Lekhani V.D.C ward No. 4, Baglung District had already booked that room (located at Baglung Municipality Ward no. 2) 15 days earlier but when she went to live there, the house owner refused to provide the room saying that they needed the room for themselves. The reality was that the owner had come to know that Maya Pariyar belongs to the Dalit community on 1st December 2011. A quarrel broke out and Maya Pariyar was insulted on the basis of her origin.

First Information Report (FIR)

An FIR was registered on the same day against four persons (Shankar Sharma, Sabitri Sharma, Krishna Prasad Sharma and Bishnu Maya Kandel) demanding appropriate legal treatment under CBD & U (O

& P) Act. Of the four, police arrested three people immediately and investigation was started under this Act under the leadership of Police Inspector Shiva Raj Dhugana.

Case filed in court

After completion of the investigation, the offenders were presented at the District Court of Baglung through the District Attorney Office. District Government Attorney Krishna Prasad Sharma charged them with CBD & U offences under the CBD & U (O & P) Act on 12 December 2011.

Judicial trial

All three offenders were released in general attendance by the order of Judge Dilli Raman Tiwari on 13 December 2011 without any deposit amount. Later on, one of the offenders who absconded presented himself in the court, and was also released on 26 December 2011 in the same general attendance basis.

Court's verdict

The final hearing was held on 24 April 2012 and all the offenders got clean chit from Judge Dilli Raman Tiwari. On the recommendation of District Attorney's Office, an appeal was made through the Appellate Court Attorney Narayan Prasad Paudel in the Appellate Court of Baglung against the decision of District Court of Baglung on 26 September 2012. The Appellate court Judges also gave clean chit to all offenders on 4 December 2012 by concurring with the earlier decision of District Court of Baglung.

Case 7: CBD & U by rejecting to replace the full drum of water to a Dalit girl

Description of case

Devi K.C., a non-Dalit women, resident of Bhim Pokhara V.D.C. ward no 1, Satipokhari, Baglung (western hill) executed an untouchability acts to Saraswati Bohora, a Dalit girl, resident of same VDC and ward no but another village (Khatidanda) by saying that the girl touched her water pot on 20 November 2012 at public water tap.

First Information Report

The FIR was registered at District Police Office Baglung against Devi K.C. by demanding legal treatment according to CBD & U (O & P) Act on 21 November 2012. Immediately the offender was arrested by the police and investigation process was started under the leadership of investigation officer, Inspector Prakash Sapkota.

Case filed in court

After completion of the investigation, the case was presented at the District Court of Baglung by District Government Attorney Rama Nath Paudyal by charging the crime under the CBD & U (O & P) Act on 27 November 2012.

Judicial trial

After the jail bail argument, the District Court Judge Dilli Raman Tiwari issued an order to deposit NPR 5,000.00 as bail. On depositing the amount, offender was released from police custody on 28 November 2012.

Court's verdict

The final hearing of this case was held on 6 March 2014 and court gave clean chit to the offender. Now the appeal is registered in the Appellate Court of Baglung through the Appellate Government Attorney's Office on 6 July 2014 on the recommendation of the DGA's office. The litigation process is ongoing.

Case 8: Denial of Prasad, Tika and entering temple entry

Description of case

When Krishna Prasad Acharya, permanent resident of Dhairing V.D.C ward no. 5, Parbat District (Priest of that temple), Him Nath Acharya, permanent resident of same district and V.D.C ward no. 7 (Teacher and chairperson of temple management committee) and Rudra Prasad Acharya, permanent resident of same place, ward no. 8 (Central representative of general convention from Nepali Congress Party) denied *Prasad* and *Tika* to Chandre Damai, resident of Dhairing V.D.C ward No. 9, Parbat District and restricted him from entry into *Bhumeko Than* temple on 1st December 2012.

The incident was publicised widely all over the district and even at the national level. A lot of activities like press notices and demonstrations were done against the priest and management of the temple.

First Information Report (FIR)

A complaint was made at the DPO, Parbat on 4 December 2012 but the police was reluctant to register an FIR. After high pressure through demonstrations by Dalit civil society organisations and political sister organisations, ultimately the FIR was registered on 7 December 2012. Only 12 days after registering the FIR, the police arrested all offenders on 19 December 2012 and the investigation was done as a case of CBD & U under the CBD & U (O & P) Act by Inspector Shyamu Aryal.

Case filed in court

After completion of investigation, the case was presented at District Court of Parbat by Government District Attorney Gobinda Giri, with charges framed under the CBD & U (O & P) Act on 21 December 2012.

Judicial trial

All offenders were released in general attendance without any deposit by the order of Judge Sudarshan Raj Panndey on 21 December 2012 after completion of jail bail argument.

Court's verdict

The final hearing was on 26 September 2013 when all offenders were given a clean chit by the District Judge Madhbendra Raj Regmi. An appeal was filed in the Appellate Court of Baglung through the Appellate Government Attorney Kumud Prasad Sharma on 12 December 2013. Final hearing of the appeal was held on 28 January 2014 where the acquittal of all offenders was confirmed.

Case 9: Denying participation in a feast and physical assault

Description of case

Dalits were prohibited from partaking a feast on completion of a drinking water project at Ghandruk VDC ward no. 2, Kotdanda, Kaski District. The Head Master (Karna Bahadur Nepali) of Talbarahi Primary School, a Dalit, who was instrumental in the success of that project, was assaulted on 12 November 2011. Not only did the Gurungs refuse to participate in the feast, they brutally beat Karna Bahadur Nepali, smeared black soot on his face and paraded him around the village.

First Information Report (FIR)

The FIR was registered against eight people (Ram Prasad Gurung, Renuka Gurung, Yam Bahadur Gurung, Dyabin Gurung, Bishnu Bahadur Gurung, Kiran Gurung, Durga Maya Gurung and Kumar Gurung) at the District Police Office, Kaski under the CBD & U (O & P) Act, 2011 on 16 November 2011. All the offenders were arrested by the police.

Case filed in Court

After investigation a case was filed under the CBD & U Act on 1st December 2011 and all offenders were presented at the court through the district attorney's office on same day.

Judicial trial

After completion of the jail bail argument, the District Court of Kaski ordered NPR 75,000.00 as bail each for two offenders and NPR 50,000.00 each for six offenders. All offenders were released from police custody after posting bail as ordered by court.

Court's Verdict

The final hearing was in the District Court of Kaski by Judge Hem Raj Panta on 28 February 2013. Six offenders were fined NPR 10,000.00 each and two were fined NPR 15,000.00 each. Compensation of NPR 80,000.00 was paid to the victim Karna Bahadur Nepali (NPR 10,000.00 per offender).

This case created national ripples since the level of compensation was high. However, no one was imprisoned.

Case 10: CBD & U by battering a Dalit woman at the water tap by non-Dalits

Description of case

Sabita B.K., resident of Lekhnath Municipality ward No. 2, Kaski; Ridhdhepani was discriminated on the basis of CBD & U at the public water tap on 25 November 2013. Sabita was brutally beaten by using *Gagri* (water jar made by metal) by Rama Kumal, resident of the same place. The major cause of incident was that Sabita touched the water tap.

First Information Report (FIR)

The FIR was registered by Purna Bahadur Sunar, father of the victim, against Rama Kumal at DPO, Kaski on the basis of CBD & U (O & P) Act by demanding the appropriate legal treatment of offenders on 26 November 2013. After that, the offender was immediately arrested by the police. Inspector Ram Bahadur Adhikari was appointed as investigation officer.

Case filed in court

After completion of investigation, the offender was presented at the District Court of Kaski DGA Rajan Raj Ghimire with charges of offences against CBD & U on 5 December 2013.

Judicial trial

After completion of the Jail Bail argument, the District Court Judge Purushuttam Prasad Dhakal gave an order to deposit NPR 25,000.00 as bail from the offender on 5 December 2013 and she was released from police custody after depositing the money.

Court's verdict

Now the litigation process is going on in the court.

Case 11: Public battering and physical assault

Description of case

An unknown person attempted to rape Mrs. Maya Sarki, resident of Belbari V.D.C. ward no. 3, Morang District on 21 July 2013. That incident was informed to the nearest police office through the support

of Manoj Bishwakarma and complaint has registered against Chetan Bhetwal on the suspicion that he was the culprit. Immediately Chetan Bhetwal was arrested by the police who then started the investigation. After a short investigation, he was freed due to absence a bite wound his hand (which was stated Maya Sarki in her statement). Then Maya Sarki requested excuse from Chetan Bhetwal and his relatives for the wrong assumption and both parties went to their respective homes after settling of the dispute.

The next day, Maya Sarki and Manoj Bishwakarma were called by the relatives and villagers of Chetan Bhetwal for the further discussion about the incident at Annapurna Boarding School, located at the same place. During that discussion, Maya Sarki and Manoj Bishwakarma were attacked and beaten by the family and relatives of Chetan Bhetwal, who, using of derogatory language, insulted them using words like Sarki, Dum and so on which directly indicate CBD & U. That incident was broadcast by social media mysansar.com and was flashed by the national daily papers of Nepal.

First Information Report (FIR)

The first FIR was registered against the 16 persons in the nearest police station demanding legal treatment according to Some Public (Crime and Punishment) Act, 1970 on 21 June 2013. Among them, seven persons were arrested by the police. The others disappeared from their locality. The investigation was carried out as per the Some Public (Crime and Punishment), Act.

Again, Manoj Biswakarma and Maya Sarki registered an FIR separately against the 17 persons demanding legal treatment according to CBD & U (O & P) Act on 24 June 2013 and 29 June 2013 respectively.

Case filed in court

After the completion of the investigation, offenders were presented at the C.D.O. office and District Court of Morang for Jail Bailed order through the DGA.

Judicial trial

In the jail bailed processing, the C.D.O. Office demanded NPR 28,000.00 deposit as bail for everybody. Likewise Morang district court had demanded NPR 7,000.00 deposit as bail for everybody. The appeal was registered at Biratnagar Appellate Court of Morang against the order of District Court of Morang demanding the cancelation of the district court order and requesting appropriate and justifiable order in favour of victims. As per the application, the Appellate Court of Biratnagar, Morang had violated the order of the District Court of Morang and demanded Rsupees 30,000.00 deposit as bail per person. They were released after the submission of the demanded amount by the Appellate Court of Biratnagar, Morang on 19 December 2013.

Court's verdict

The final hearing was held on 11 April 2014 in the District Court of Morang by Judge Rishi Ram Niraula. According to the decision, nine offenders were penalised NPR 15,000.00 each and eight were given a clean chit. Maya Sarki and Manoj Biswakarma were paid a compensation of NPR 25,000.00 each.

Case 12: Restricting temple entry and worship and mass-attack

Description of case

That incident occurred on 13 May 2013 when Dalits were restricted from worship and getting blessing for a wedding ceremony in the temple located at Pipariya Dostiya V.D.C. Ward No. 8, Bhindawar, Rautahat District. When some sisters of the bridegroom went to the temple for getting blessing and worship, some non-Dalits (Yadav community) prevented them from worship and told them 'you people are lower caste Chamar. Your ancestors also did not enter the temple, they used to worship from outside. If you come inside the temple, you will touch the god, you will be killed' and did not let them to enter.

After that other people also came and started to beat the Dalits. At that the Dalits ran away to their houses.

First Information Report (FIR)

After three days, on 16 May 2013, the victims went to the area police office and registered their application demanding settlement of the temple entry dispute and to ensure their security. Dalits and non-Dalits both were called to the police office at same day of application to discuss the matter. During the discussion at that two proposals were put up for negotiation: the first was to conduct an awareness programme about the CBD & U (O & P) Act for non-Dalits and second was accepting the right to enter the temple for Dalits in a peaceful manner by 24 May 2013 (one week later) without repetition of these types of issue anymore. The non-Dalits those who presented at the meeting said that they would discuss with their community first and only then would they be ready to do so. However, there was no action taken or response given to these proposals from the perpetrators, police and local administration till 24 May 2013, the deadline fixed on 16th May's discussion.

An FIR was registered by Sripatidevi Chamar and Sushila Devi Chamar against seven people on 31 May 2013 in an Area Police Station situated in Garuda demanding fine and punishment under the CBD & U (O & P) Act. Until 7 June 2013, no action was taken by the police against those people. The police did not take any initiative to create mutual understanding between them either. During this time, Dalits were threatened by non-Dalits repeatedly and were under immense pressure to withdraw the case. Nevertheless, Dalits continuously refused to withdraw the case, so that, hundreds of non-Dalits joined

in a pre-planned mass-attack on the Dalits. After the attack on the entire Dalit community, in which more than 40 people were beaten, 18 had to be hospitalised. Among the 18 hospitalised people, two were in critical condition. More than 65 houses were plundered and ransacked, damaging roofs and household assets and televisions, cattle were beaten and grants were damaged. The handles of six water hand pumps were broken on 7 June 2013.

This mass attack was publicised on 8 and 9 June 2013 through the local Dalit organisations and a number of national and local media. A Dalit Civil Society meeting was held on 10 June 2013 in Kathmandu for planning further action. A fact finding team was formed under the leadership of Bhakta Bishwakarma from NNDSWO including members of SAMATA foundation. During the fact finding, the team found a gross violation of human rights and caste-base discrimination and untouchability.

After that two FIRs were registered against 39 people in DPO, Rautahat. The first FIR was filed as attempt to murder according to chapter of murder and robbery under the chapter of theft under the civil code and second one was offence under CBD & U (O & P) Act. After registering the case, two people were arrested by the police, and the others were disappeared from the locality. The police started the further investigation according to the demand of FIR.

Case filed in court

After completing the investigation, the offenders were presented at the District Court of Rautahat through the DGA under charges of an attempt to murder, robbery and CBD & U.

Judicial trial

After completion the jail bail argument, the court set the bail at NPR 27,000.00. The accused were released from police custody on furnishing bail. Later on, some others came to court directly and demanded that their bail too be set at NPR 27,000.00.

Court's verdict

Presently the prosecution is going on and it is near the final hearing.

Case 13: CBD & U and physical assault

Description of case

The incident at Kapan arose during the negotiation of the rate of transportation. During the discussion, the family of Damber Pariyar (Rekha Pariyar, Sita Pariyar and Tika Pariyar) was physically attacked by the villagers of the automobile driver and Dambar Pariyar was hospitalised at Bir Hospital, Kathmandu for the treatment of serious injury.

First Information Report (FIR)

Rekha Pariyar (one of the victims) registered the FIR on 2 April 2013 at Maharajgunj Police Office, Kathmandu against five persons (Mrs. Sonu Shrestha, Mr. Shri Krishna Shrestha, Mr. Harish Chandra Shrestha, Mr. Amar Shrestha and Mrs. Menuka Shrestha) as an attempt to murder according to chapter of murder under the civil code and the CBD & U (O & P) Act. After registering the case, one person (Mrs. Sonu Shrestha) was arrested by the police and investigated as per the demand of the FIR.

Case filed in court

After completion of the investigation, Sonu Shrestha was presented at the court by the DGA under charges of attempt to murder and CBD & U.

Judicial trial

She was freed from the police custody by the order of district court of Kathmandu in general attendance after completion of the jail bail argument on 27 April 2013. After that the other offenders presented themselves in court directly and the District Court of Kathmandu demanded NPR 10,000.00 each as bail for two offenders and two were released in general attendance on 1 August 2013. During the litigation process, an agreement was made between the two sides and victims were provided NPR 175,000.00 for the treatment by the perpetrators on 25 April 2013.

Court verdict

Now the prosecution is ongoing under the District Court of Kathmandu.

Case 14: CBD & U by refusing inter-caste marriage and physical attack

Description of case

That incident occurred due to the inter-caste marriage between Nabraj Sunar (a Dalit boy), resident of Pida V.D.C. ward no. 5, Dhading District and Samjhana Subedi (a non-Dalit girl) in the same place. After the marriage, relatives of groom and other villagers from the Dalit community were called by the relatives of girl for a discussion and negotiation about the dispute of inter-caste marriage. Meanwhile Dalit peoples including the father, mother and sister of the groom were attacked by the Subedi family by using the domestic weapons like iron rods, khukuri, axe, torchlight and wooden weapons.

First Information Report (FIR)

After the incident, the FIR was registered by Mr. Ram Bahadur B. K., father of the groom at DPO Dhading on 8 July 2012 against the eight offenders demanding appropriate legal action under the CBD & U (O & P) Act. Of the eight, two offenders were arrested but the others disappeared after registration of the FIR.

Case filed in court

After completing the investigation, the DGA made the charge-sheet against all the offenders under the CBD & U (O & P) Act and submitted the case in the District Court of Dhading.

Judicial trial

After completion of jail bail argument the District Court of Dhading demanded NPR 10,000.00 each as bail. The accused were released after depositing the amount. Before that, the bride's family had registered a case against the groom for 'child marriage'. The groom was also released on general attendance by the court order.

Court's verdict

After the litigation process, the final hearing was held. The court gave a clean chit to all the offenders. Nabraj Sunar (the victim-bridegroom) was fined NPR 500.00 for the offence of 'attempt of child marriage'. An appeal was made against the decision of District Court of Dhading at the Appellate Court of Patan, Lalitpur but the appellate court also gave a clean chit to the all offenders on 31 December 2013.

Case 15: CBD & U by using derogatory words and beating to a Dalit student by non-Dalit teachers

Description of case

A Dalit student named Buddilal Harijan was beaten up simply because he requested the non-Dalit teachers (Mr. Shashi Bhushan Pandey, Santos Tiwari, Jaya Prakash Singh and Santaraj Yadav) at Kushma VDC ward no. 7, Nawalparasi District not to use derogative words like Chamar etc.

First Information Report

The FIR was registered under the CBD & U (O & P) Act against four offenders—Shashi Bhushan Pandey, Santos Tiwari, Jaya Prakash Singh and Santaraj Yadav. However, only Shashi Bhushan Pandey was arrested by the police.

Case filed in court

Within a very short time, the case was filed and the arrested offender was presented at District Court of Nawalparasi for jail bail argument. The court released him on a deposit of NPR 3,000.00 on 8 January 2014. Likewise the three other offenders who were not arrested presented themselves in court and were released on general attending at the same day.

Court's verdict

After the final hearing, the main accused Mr. Shashi Bhushan Pandey (Head Master) was penalised NPR 1,500.00 and rest of the three were given clean chit.

Case 16 CBD & U due to inter-caste marriage

Description of case

The Gorkha incident occurred because of inter-caste marriage between Jit Bahadur Sunar (a Dalit boy) and Sunita Gurung (a Janajati girl) located on Lapu V.D.C. ward No.8, Gorkha District. During the initial stage of marriage, the relatives of girl trapped the boy and penalised him NPR 100,000, because he had got married with so-called 'higher caste' girl.

First Information Report (FIR)

The FIR registered against three accused person under the CBD & U (O & P) Act and one of them was arrested by the police for the investigation and two disappeared.

Case filed in court

After completion of investigation, the case was filed in the District Court of Gorkha and after jail bail hearing, the offender was released with a deposit of NPR 10,000.00.

Court's verdict

After the final hearing, all three offenders were penalised NPR 10,000.00 each and NPR 25,000.00 was paid to the victim as compensation. His money (NPR 100,000.00) snatched by the offenders was also reimbursed.

Case 17: CBD & U and physical attack

Description of case

The perpetrators Akash Bhujel and nine others attacked Leknath Bishwakarma at Campus Road of Urlabari-1, Morang District on 4 January 2012 using the caste-based derogatory words like 'you are untouchable, lower-caste' and beat him brutally.

First Information Report (FIR)

After the FIR, the police arrested Akadh Bhujel, Sunil Chauchary and Kumar Limbu. Other offenders like Sujana Maden, Pema Tamang, Pashang Lama, Rajan Phago, Jit Bahadur Gahatraj, Rakesh Limbu and Sanjaya Acharya disappeared.

Case filed in court

FIR was registered in the DPO, Morang against 10 offenders on 5 January 2012 demanding fine and punishment under Section 7 (1) (a) for crimes under the Section 4 (2) (b) and compensation under Section 9 of the CBD & U (O & P) Act.

Judicial trial

During the prosecution, the court ordered bail deposit of NPR 1,500.00 each for those already in police custody and released them.

Court's verdict

The final hearing was held on 26 January 2012 at the District Court of Morang. According to the decision, all the perpetrators were found guilty and fined NPR 1000.00 per person. The victim got NPR 25,000.00 as compensation.

Case 18: Not giving tea inside the restaurant and mistreatment by spilling hot tea over the victim

Description of case

The restaurant owner Rambha Devi Sah refused to serve Binod Basfor and Ajaya Marik tea inside her restaurant saying 'you guys are Dom (lower caste), you should get out from here now' and poured hot tea over them on 4 January 2014 at Parbati Hotel of Dharan Municipality-4, Sunsary District. Her husband Nandalal Prasad Sah and son Raj Kishor Sah were also involved in this incident.

First Information Report (FIR)

An FIR was registered at the Area Police Office Daharan on 4 January 2014 demanding investigation and prosecution of the case under the Section 4(1)(2)(3) of CBD & U (O & P) Act. After registering the FIR, police arrested Nandalal Prasad Sah and Raj Kishor Sah immediately and started investigation. However, the victims and their witnesses did not attend the court to give their explanation for supporting the case.

Case filed in court

After the completion of investigation, the DGA filed the case in the District Court of Sunsari on 14 January 2014 demanding fine and punishment as per the CBD & U (O & P) Act.

Judicial trial

The court released the accused persons from police custody by taking NPR 5,000.00 deposit from each person and started the trial.

Court verdict

The court gave the final decision on 22 May 2014. All the accused persons were found innocent and given a clean chit. No party appealed against this verdict.

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