

**Assessment on Implementation of
Core Human Rights Treaties
With Special Focus on
INTERNATIONAL CONVENTION ON ELIMINATION
OF ALL FORMS OF RACIAL DISCRIMINATION
(ICERD)**



Dalit NGO Federation

Sub-committee on ICERD

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Published Copies : 1,000
Published Date : December 2008
Publisher : Human Rights Treaty Monitoring
Coordination Committee
Copyrights : Human Rights Treaty Monitoring
Coordination Committee
Cover/Layout : Gita Mali
Printed at : Indreni Offset Press, Tel. 4770533, 4771448

Foreword

Dalits are most disadvantaged group of Nepal that constitutes a large proportion of the national population. As per the government statistics, Dalits constitute 13% of total population, while the activists of Dalit movement claim it to be 20%. Dalits are the most victimized and excluded people in Nepal. Untouchability, though outlawed by law, still prevails strongly in the Nepalese society. Dalits are socially excluded, politically neglected, economically exploited, educationally deprived and religiously oppressed. Their rights are being violated every day. Nepalese society is discriminatory and exclusion based on caste, sex, ethnicity, class, location, language and culture is common in Nepal.

So called Untouchables have been restricted for centuries from the different aspect of human rights. The state have made various laws and provision against untouchability and also ratified core international human rights instruments including ICERD convention. As a member of UN, state should properly implement and ratify related laws. ICERD convention clearly mention about elimination of all kinds of racial discrimination. The law has eradicated untouchability some 45 years ago but human rights of Dalits have been violated day by day. Dalits are not getting any remedy and compensation in the case of cruel and degrading treatment as well.

Human rights are inalienable part of the humanity. Life, Liberty and Equality are the main tenets of human rights. Life with physical existence is not sufficient for the human being, so, there is a need of dignified life. Dignified life includes the liberty and dignity for betterment of human being. Equality is the backbone of Democracy and ensuring equality before the law enhances the democratic society. The legitima-

cy of constitution depends upon the human rights of Nepal. On 4 June 2006, the government of Nepal, through the reinstated parliament has declared Nepal as an touchable-free country however, state agencies have not been taking any legal action to the perpetrator, so, only making law is not sufficient, proper mechanism should be made for implementation of it otherwise it will be meaningless.

Caste-based discrimination is illegal under the Constitution of Nepal, however Dalits are being discriminated regularly. Government, police administration and concerned authorities are not accountable and sincere on this particular issue. The rights concerning socio-economic matters have not been taken seriously by the concerned agencies, so far. The study shows that a root cause of the conflict is inequality in the economic and social sphere of life, but no particular strong steps have been taken so far for the upliftment of Dalits.

Finally, we would like to express our gratitude to entire DNF Family and all sub committee members of HRTMCC. I would also like to thank HRTMCC Secretariat INSEC, who extended a lot of cooperation while completing this task. I cannot remain without thanking Advocate Arjun Bagale and others who had contributed to produce this important report.

Bom Bahadur Bishwokarma

Secretary General

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Sub-Committee on ICERD

Human Rights Treaty Monitoring Coordination Committee

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1. Background

Nepal contains heterogeneous society where different kinds of people having their own culture, religion, language live together. Therefore, Nepal possesses the unity in diversity. It is complex part of Nepal that in one hand it contains multiple characteristics whereas in another hand societal structure is based on a hierarchy of position: a government of employee is always considered superior to other citizens, a wealthy man is always superior to poor man, a Brahmin is always superior to non Brahmin and a Non Dalit is always considered superior to Dalit. Therefore the structure of patriarchy and the hierarchy of the feudal system have shaped the structure of Nepalese society today¹. There are several ethnic groups in Nepal but certain groups such as Brahmin and Chettri are predominant in governance. The social structure is favourable for their rule as it has been founded on their cultural and religious perception i.e. orthodox Hinduism. Certain professional groups like blacksmiths, shoemakers, sweepers and tailors are made outcaste and converted into untouchables.²

There is no doubt that certain groups in Nepal are considered untouchables, which has resulted in social, economical and political deprivation. Initially the categorization had a motive to balance system within the society. However, the society began to interpret the philosophy of the separation in such a way that it evolved into something rigid rendering lesser human status to some sections. The segregation among the human beings in eastern countries is quite similar as that of the segregation held in western countries between white and black. The segregation is based on race in western countries whereas in east or especially in South Asia it is based on caste. However the objective behind both segregations is to set up the prevalence of certain groups in the society and aims at establishing hierarchy of the society.

The segregation based on race or caste, is against the humanity.

1. Gender & Laws Nepalese Perspective, Yubaraj Sangroula and Geeta Pathak, Pairavi Prakashan 2002, p.27
2. ibid.

Humanity always considers the principle of equality in topmost priority and advocates equality for all irrespective of their race, sex, caste religion and so on. Equality is always concerned with dignity that is why everybody has a right to have a dignified life without any kind of restriction and barrier and with full freedom and all the rights incorporated in both national and international instruments. It is not only Nepal which has been affected by the problem of discrimination on the basis of race and sex, almost all countries whether developed, developing or underdeveloped are facing of discrimination on the basis of race, sex or caste. Unfortunately this discrimination has pushed up certain groups into the dark side of life and made them victims of d great inequality, subordination and domination. casteAll human being should have a chance to live in dignity.

Considering this sad reality about the situation of human being, international community decided to take steps towards eliminating this kind of problem or discrimination from the world.UN General Assembly in 1965 adopted a Convention with specific regard to race discrimination i.e. Convention on the Elimination of Racial Discrimination (CERD) 1965. The Convention aims to maintain equality and eliminate the discrimination and further disregards all the activities that continue to enforce the discrimination. So in this respect The Convention holds a significant value as it is specifically directed towards ending discrimination and upholding the notion of equality.

2. Conceptual Part of CERD Convention

Equality is the foundation of the justice. Therefore the major barriers and obstacle of equality is discrimination which might be caused by several reasons such as racial discrimination, sex discrimination, caste discrimination and color discrimination. Racial discrimination has remained a major problem in the world continuously creating serious problems and inflicting suffering upon many people. CERD Convention came into existence with the purpose of eliminating and eradicating discrimination from the world.

CERD Convention was adopted by the UN General Assembly in 1965. The Convention has its own characteristic that makes it sui generis

instrument among those dealing with the issue of race.

Articles 1 to 7 of the Convention cover the general principles and commitments. Here, the Convention specifically defines racial discrimination as any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.³ The role played by the CERD Convention is indeed very significant to uphold the notion of equality as such as for the first time this instrument took the different approach and enshrined the concept of substantive equality as it rightly said that special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.⁴ Similarly, the Convention specially obliged the state party to condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation.⁵ All the Articles incorporate in the Convention especially work to end the racial discrimination. For this purpose the Convention has explicitly mentioned about the obligation of the state. It does not only talk about the *de jure* equality (equality in law) but it aims to establish the *de facto* equality (equality

3. Art. 1 of the CERD Convention

4. Art.1(4) of CERD Convention

5. Art. 2 of CERD Convention

in fact) among the people and for this purpose the state has to be very sincere towards its pledges expressed before the international community. Thus, the state in this regard, particularly should condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.⁶

It very specifically refers to guarantee of civil and political rights of everyone, without distinction as to race, colour, or national or ethnic origin.⁷ It specially refers equal treatment before the tribunals and all other organs administering justice; the right to security of person and protection by the state against violence or bodily harm, whether inflicted by government officials or by any individual group or institution and further says that all shall have equal rights to participate in the politics such as right to vote and right to stand for election which are the fundamental rights of human being. In view of the fact that politics is always associated with the issue of decision making, this right has confirmed the right to self determination of every human being without any kind of discrimination and distinction. The Convention further has guaranteed the civil and political rights as well as the economical, social and cultural rights. It also assures 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 discrimination⁸ and further obliged state to adopt the immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination.⁹

Significance laid by the CERD Convention to end discrimination is remarkable to provide equal opportunity for all without any prejudices.

6. Art 3 of CERD Convention

7. Art 5 of CERD Convention

8. Art. 6 of CERD Convention

9. Art 7 of CERD Convention

In this respect the Convention has maintained fundamental principle of universality, indivisibility, interdependence and interrelation of human rights for all human beings. The provisions of Convention also see the end of long term distinction based on race, colour, national and ethnic origin.

3. Implementation Status of CERD Convention in Nepal with Major Focus on Legislative and Executive Effort

Despite many international human rights instruments ratified by Nepal, human right violations are occurring in the society. Caste discrimination is one of the deep rooted problems of Nepalese society which explicitly undermines the dignity of the members of some particular sections and breaches their human rights. As we are aware that human rights always aim to protect and promote the dignity of human being, caste discrimination and the labeling of untouchability directly and indirectly crushes the dignity of the people.

Though the CERD Convention does not directly mention about the caste discrimination, it can also be considered one kind of discrimination based on race because it creates segregation among the people and maintains hierarchy in the society. Thus, caste discrimination is exceptionally close to racial discrimination making the CERD Convention very significant as it aims to eliminate and eradicate discrimination that leads to the violation of human rights.

Though the Country Code 2020 (1963) abolished the caste system in Nepal, it is very much alive in the society. The philosophy of the caste system renders some groups of society as belonging to second class. Similarly, the notion of untouchability is also a truth in this system. Nepalese society is guided by the Hindu philosophy of classification which divides human beings into four categories- Brahamin, Chettri, Vaishya and Sudhra. Among the categories, the Sudhras are regarded as lowest and untouchable section of the society. In today's world, the members of this section of the society prefer themselves to be identified as Dalits. In fact, Dalits of Nepal are face discrimination in several aspects of their lives due to the caste system. Castes are endogamous and they place restriction on communalism among the members of dif-

ferent castes thus there exists a hierarchical grading of castes based on the notion of ritual purity. The 'low caste individuals' are deemed as being more polluted. Social interaction among various castes is restricted. They are permitted only during the occupational transactions. Deep rooted Hindu values provoke the caste division in practice and hinders the harmonious relation among different groups of the society.

Nepal ratified the CERD Convention in 1971. After the ratification of any international convention, state party is obliged to act in conformity with the objectives set by each convention. Each government is required to furnish information about the status of country and about effective execution of the concerned treaty to concerned UN committee. Article 2 of the CERD Convention specially mentions about obligation the state party has to pursue with all appropriate means and without delay a policy of eliminating racial discrimination and it shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.

Being a party of CERD Convention, Nepal is obliged to eliminate caste discrimination because it is one form of racial discrimination. After the ratification, the state has made some attempts to act in conformity with CERD convention. For this purpose, it has enacted various new laws dealing with caste discrimination, and amended and abolished many laws with regard to caste discrimination.

Before 1963, a person's caste determined the severity of the punishment for him. Thus, caste discrimination was sanctioned even legally in Nepal. The Country Code of 1963 outlawed the caste system in Nepal and termed the society as caste less. However, the practice persisted despite formulation of laws. The state attempted reform and enact many laws to discourage the division. The CERD Convention is very specific convention in dealing with racial discrimination that is why it is very relevant to overview systematically the implementation of these Articles such as,

Every country has both general laws and specific laws. Specific law is

always guided by the general law. Thus the Constitution of every country is regarded as general law which overrules every specific law. While talking about the implementation status of CERD Convention in Nepal, it is very relevant to take reference of the Constitution at first because it guarantees the fundamental freedom for the individual. Nepal has very long history of the drafting of the Constitution. Many constitutions were drafted, amended and repealed in discourse of time. They have attempted to guarantee many basic rights for the people of Nepal. However, with regard to caste discrimination in Nepal, the Constitution of the Kingdom of Nepal 1990 and Interim Constitution of 2007 are more noteworthy to deal with.

The Constitution of the Kingdom of Nepal 1990 was an outcome of the movement for restoration of multiparty democracy. The fundamental rights were enumerated in part 3 of the Constitution. The Constitution guaranteed the right to equality as one of the fundamental rights.¹⁰ It can be considered as the backbone of the Constitution as it enumerated the whole concept of the right to equality and the principle of non-discrimination that it stated that all citizens shall be equal before the law, no person shall be denied the equal protection of the laws. In addition the 1990 Constitution also provided special protection for those who belonged to social, economically and educationally backward sections. It explicitly mentioned that *provided that special provisions may be made by law for the protection and advancement of the interests of women, children the aged of those who are physically or mentally incapacitated or those who belong to a class which is economically, socially or educationally backward.*¹¹

This way Article 11(3) of the Constitution of 1990 was largely successful maintaining the principle laid down by the CERD Convention as it specifically talked about the positive discrimination that obliges a state to take special measures to create a favourable circumstances for the exercise of human rights irrespective of race sex, and caste. Thus this provision was the base for the enforcement of CERD Convention and

10. Art, 11 of the Constitution of 1990

11. Art.11(3) of Constitution of 1990

many other international instruments. However, the 1990 Constitution is defunct now and has been replaced by the Interim Constitution 2007.

The Interim Constitution 2007 can be considered as most remarkable document against the untouchability in Nepal because it for the first time recognizes the right against untouchability as a fundamental right¹² and states that no person shall be treated as untouchable and be discriminated on the basis of caste, origin, community or profession and that such discriminatory practices will be punishable by law. Thus, the state has shown its slight substance towards the issue of untouchability by recognising it as a fundamental right and making effort to meet the goal set by the CERD Convention. Interim Constitution has further guaranteed that no person on the basis of caste be discriminated against as be denied of any public places or be deprived of using public utilities or be denied entry into public religious places or be denied of performing religious ceremony in public places.¹³ It further states that regarding any service or benefit produced or distributed, anyone shall not be denied from purchasing such benefits, services or things nor shall those things.¹⁴ Constitution further mention that any caste race or people of origin or exhibiting status of people's community, who thinks social discrimination on the basis of caste, race is righteous or advocates for caste supremacy and principle based on hatred or encourages any sort of racial discrimination shall be prohibited.¹⁵

Article 1 of the Convention defines "racial discrimination" as an distinction, exclusion, restriction or preferences based on race, colour, descent, or national or ethnic origin, which has the purpose of or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedom. However, while talking about the Nepalese context, the law is not very specific. Nepalese laws fail to define caste discrimination. The Constitution specifically mentions that any contravention of these provisions shall

12. Art 14 of Interim constitution 2007

13. Art 14 (2) Interim constitution 2007

14. Art b14 (3) Interim Constitution 2007

15. Art.14 (4) Interim constitution of 2063

be punishable by law.¹⁶ Caste discrimination is the direct concern of Article 14 of the Constitution but other Articles such as right to equality¹⁷ also contribute to discourage this issue. It states that no discrimination shall be made against any citizen in the application of general laws on the grounds of religion, race, sex, caste, tribe or ideological conviction or any of these.¹⁸ The Constitution further obliges state that it shall not discriminate among citizens on grounds of religion, race, sex, caste, tribe or ideological conviction or any of these.¹⁹ It further talks about the affirmative action that it states special provision may be made by law for the protection and advancement of the interest of women, Dalits, ethnic tribes, Madhesi or farmers, labours or socially or culturally backward classes or children, the elderly, or those who are physically or mentally incapable or those who belong to a class which is economically, socially or educationally backward.

Similarly, right to social justice²⁰ guaranteed by Interim Constitution also contributes to uphold the notion of equality and to end discrimination in the society as it rightly states that economically, socially or educationally backward women, Dalits, ethnic tribes, Madhesi Community, oppressed class, poor farmers and labours shall have the right to participate in the state restructuring on the basis of proportional inclusive principle. In this regard we find that Interim Constitution 2007 has made significant attempt to act in conformity with the CERD Convention in comparison to previous Constitutions to eliminate end caste discrimination from the society as most of the provisions mentioned in the Interim Constitution are relatively parallel to the provision of CERD Convention. These are the direct laws which deal with the caste discrimination problem in Nepal. there are no specific laws against caste discrimination, but some laws indirectly deal with the issue of Dalits in Nepal such as;

16. Art.14 (5) Interim Constitution of 2063

17. Art 13 of Interim Constitution of 2063

18. Art 13 (2) of Interim constitution 2063

19. Art 13 (3) of Interim Constitution 2007

20. Art 21 of Interim Constitution 2007

Country Code (Muluki Ain) 1963

Muluki Ain is the common Code of Civil as well as Criminal law in Nepal. This law has very positive aspect since it for the first time abolished the untouchability from the society. The Country Code explicitly prohibits any form of discrimination based on caste, denial of access to public places and public utilities and stipulates or prescribes punishment for those who violates these provisions. Furthermore, public authorities or institutions are not permitted to disseminate ideas based on caste superiority to incite discrimination or to commit any act of violence.

Human Rights Commission Act, 1996

Human Rights are an inalienable part of humanity, life, liberty and equality. Life with physical existence is not sufficient for the human beings. There is a need to have a dignified life. Dignified life includes liberty and dignity for the betterment of human being. So, every state needs to introduce a separate institution to protect and promote the basic human rights of people.

Preamble of this Act desires to establish an independent and autonomous National Human Rights Commission, for effective implementation, protection and promotion of human rights conferred by the Constitution and other existing laws.

Defining human rights, the Act mentions that human rights shall denote the rights concerning life, liberty, equality and dignity of the individuals conferred by the Constitution and other existing laws and rights enshrined in the international treaties, agreements concerning human rights which the state is party to.²¹

Civil Liberties Act, 1945

Before the promulgation of democratic Constitution, Civil Liberties Act, 1945 was one of the landmark legal statutes, which included civil, political and social rights. It guarantees the right to equality and equal protection of laws in recruitment of the civil services and prohibits any restrictions against any citizens on the basis of religion, race, sex, and

21. Section 2 of Human Rights Commission Act 1996

caste. It further mentioned that states for the special measures for the disadvantaged and backwards as positive discrimination and indicates that the government has right to introduce special programs for specific classes i.e. women, children and the backwards.²²

Legal Aid Act, 1997

Legal aid concept is supported by two theories- strategic legal aid and remedial legal aid. The Act has tried to include the gist of these two theories. The basic features of the Act are mentioned here;

Preamble has an objective to provide legal aid to those who are economically poor and socially unable to protect their rights. The Act has been promulgated with a desire to provide free legal aid to the incapacitated and the oppressed. Act further mentions the establishment of central committee in the leadership of Ministry for Law and Justice. The main function of this committee is to determine the policies and programs and provide budget to the District Level Legal Aid Committee. Similarly, it has a duty to publish the briefing notes, awareness-raising books and bulletins to sensitize and aware the people about their legal rights and duties.²³

Defamation Libel Act, 1959

Humiliation and degrading treatments are the forms of contempt. Contemptuous activities of the defamation are those contents that harm to the dignified life of human beings. In the West, activities are considered as torture and they attract determine punishments. Discrimination is worst form of defamation of human being. For the purpose of preventing defamation and libel Act against Defamation and Libel Act has enacted. The aim of the Preamble of this Act is to prohibit the verbal statements and abuses that directly humiliate to the people on the basis of caste. Such statements shall be treated as inhumane, be punishable under the Act. The basic objective of this Act is to maintain human dignity and ensure the protection of human rights.

22. Section 5 of Civil Liberties Act 1945

23. Section 6 of Legal Aid Act 1997

The Act has defined the contemptuous activities. One of them is to defame others deliberately by the written document, indication or oral presentation.²⁴ In this regard the Act plays a vital role to eliminate caste discrimination from the society since untouchability is a form of defamation against human dignity. Dignified life defines reputed life with liberty and equality. So this act could be taken positive legal attempt against discrimination.

Local Self-Governance Act, 1999

Decentralization is a basic tenet of democracy. This enhances popular participation and basic structure of the existing constitution. Ensuring participation in the development process is a major challenge that faced by Nepal. The government has enacted the Local Self-Government Act 1999 so that it can institutionalize the process of development through wider participation including all communities. The Act attempts to uplift the socio-economic backgrounds of underprivileged people in order to ensure their political participation. For this purpose, the Act has provision for the reservation seat for members from backward community and women in village council. This provision calls for the nomination of women from socially and economically backwards tribes, ethnic communities, suppressed and indigenous groups to the council. This provision has helped to increase the participation of these communities including women in the local level governance.²⁵ Similarly, the Act further mentions for providing the scholarship to the student for backwards and marginalized community.²⁶ In fact Local Self Governance Act can be considered as most progressive Law with regard to eliminate caste discrimination in Nepal because this law has guided by the affirmative approach which obliges the local bodies i.e. VDC to include the skill and profit oriented development programmes for women and children by formulating the plans. While formulating their plans, it is required to give priority to the projects providing direct benefits to backwards and women.²⁷ Similarly, it introduces the reser-

24. Section 3 of Defamation and Libel Act 1959

25. Section 8 of Local Self Governance Act 1999

26. Section 28(1) of Local Self Governance Act 1999

27. Section 43 (5) of Local Self Governance Act 1999

vation for the nomination by the member from women and from ethnic groups, Dalits and indigenous peoples in the composition of Municipal Council.²⁸ Act further obligates the ward committees of a municipality to frame urges the municipalities for the inclusion of the programs and plans for the upliftment and promotion of the downtrodden people.²⁹ The main theme of this Act is to highlight the political participation of people specially a downtrodden people in local self governance thus implementing the theory of decentralization. Therefore, this law has been largely successful to act in conformity with CERD Convention.

Social welfare Act 1992

The Act has been mainly promulgated to uplift the backward and disadvantage section of of population. The Social Welfare Act 1992 was enacted by the Social Council under the Ministry of Women, Children and Welfare. The main objective laid down by this Act is to make capable the poor, weakdisabled and orphans providing them with state facilities. In various sections of Act, the social and economic rights of the poor and disadvantage groups of society This Act also is directly related to Dalit community because the most dalits are economically and socially marginalized section for a long time.

Education (7th Amendment) Act 1951

Education is the powerful engine of development. Undoubtedly, the Constitution guarantees the right to education for all without any distinction based on race, sex, caste, and colour but still it remains inaccessible to the mass of people of Nepal. Realizing this fact, Education Act was promulgated in 1951 obliging the state to develop necessary infrastructure for the easy access of the people to education system. Its proviso of subsection 2 of the Act, it has mentioned the free education to the underprivileged communities like Dalit. However, the Dalit students are being compelled to pay fee every month even in communityschool.

28. Section 76(2) of Local Self Governance Act 1999

29. Ibid sec 111

Rule Regarding scholarship, 2003

With the intention to encourage the backward community, the government has started providing various scholarship programmes. The basic objective of the scholarship is to strengthen the participation of girls and Dalits in school. There is a provision of open contest for the selection of appropriate candidates.³⁰ But, there is also a provision for the reservation seats for the Dalits, women and indigenous groups. As specified in the rule, 20%, 10%, 10% quotas respectively for women, Dalits and to ethnics shall be provided.³¹ The general rule for obtaining a scholarship proclaims that one should have secured 60% marks but for dalits, 50% is enough.

National Broadcasting Act, 1992

The National Broadcasting Act has been promulgated with the main objective of maintaining equality, tranquility and goodwill among the different caste based communities. It prohibits the broadcasting of any such activities which humiliate or undermine any caste, community or the culture of any group.³² It has also imposed a liability to the state party to broadcast awareness programmes against the caste discrimination as well as to avoid all kinds of activities that can instigate feelings of hate against any caste, race and others and which are also in conformity with the CERD Convention.

Press and Publication Act, 1991

Nepal encompasses diverse cultures therefore media always should play an influential role for maintaining peace and harmony in the society. The Press and Publication Act 1991 was promulgated to make the press and publication accountable. It explicitly prohibits the publishing of the materials which spreads the discrimination among the people.³³ Similarly, it also puts the restrictions on the publications of those materials which might harm the social relationship of different groups.

30. Rule 10, Rule regarding scholarship 2003

31. Ibid sub rule 3

32. Sec. 15 National Broadcaste Act 1992

33. Sec 14 Press Publication Act 1991

Nepal has directly or indirectly enacted such laws which are in conformity with the CERD Convention which indeed tries to uphold equality and further tries to end the shortcomings in the laws. However, whatever the laws enacted, still the Caste discrimination is rampant in Nepal and there is no specific laws to deal with this social evil. All the provisions incorporated in different laws with regard to the caste discrimination are enacted with the basic notion that they are included in the CERD convention. Though the CERD Convention can be considered as one of the landmark human rights instruments in dealing with racial discrimination, even the CERD Convention lacks in many aspects. It only deals the discrimination existing in public places whereas it fails to address the discrimination prevailing in private spheres. That is why discrimination occurred in private place is not the concern of Nepalese law. So-called upper caste people are free to discriminate against the so-called lower caste people within the private spheres as it is argued that it is a matter of individual freedom. Thus, caste discrimination occurs in private spheres is very controversial and this kind of discrimination is creating a problem for Dalit Community of Nepal.

However, Nepal Government has made reservation on Article 4 of the CERD Convention and does not consider itself bound by the provision of article 22 of the Convention under which any dispute between two or more States Parties with respect to the interpretation or application of the Convention is, at the request of any of the parties to the dispute, to be referred to the International Court of Justice for decision. In fact, Reservation on Article 4 of the Convention shows that government of Nepal is not sincere towards the issue of Dalits and is not willing to remove deep-rooted prejudices from the society. It is very essential to condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or colour or of ethnic origin, or which attempt to justify or promote racial hatred and discrimination. The Government of Nepal by reserving this Article has deceived the Dalit community and involuntarily promoted racial superiority within the territory.

4. Assessment of Implementation of CERD Convention in Nepal

Small, landlocked, and impoverished, Nepal is home to a mosaic of ethnicities and languages. A democratic constitutional monarchy was established in 1990 after the overthrow of the three-decade old *Panchayat* system, which prohibited political parties and was completely controlled by the king. Nepal is presently party to 16 international instruments on human rights, but a vast gap exists between these commitments and their implementation. Political instability – including corruption, turmoil in royal family and the Maoist insurgency – contributed significantly to the difficulty in implementing lasting human rights reform. Racial discrimination has a different face in Nepal than it does in many other parts of the world; many groups suffer from marginalisation because of caste, ethnicity, gender, age, religion and political opinion.

The people of various caste and creed reside over here from the time immemorial. From the very early period, many people have been subjected to various forms of discrimination and exploitation merely because they have been segregated as so-called untouchables or lower caste people. Today is the era of globalization and human right. Everywhere there is a huge voice that whoever you are and whatever be the circumstance, your dignified life should be protected and should possess all those rights that have been guaranteed by various national and international Conventions. However, it is also very true that because of various reasons such as unequal distribution of resource and lack of opportunity a mass of people has remained a far behind on the path of development. In that particular situation, there is a need of some specific laws along with some measures of positive discrimination for the purpose of upliftment of the lower caste people.

Caste discrimination is very rampant in Nepal and still many people are suffering from these kind of mal-practice. The situation of caste discrimination and its impact in Nepal could be visualized from four dimensions which are

1. Social & cultural dimension
2. Economical dimension

-
3. Legal dimension &
 4. Judicial encroachment dimension

1. Social & Cultural dimension: If seen socially, the society is still very much biased towards this particular issue. The caste discrimination is still in existence in various part of Nepal. People are still suppressed and are subject to various forms of exploitation and degrading treatment merely because they do fall in the lower caste groups. Their work has been limited only up to the traditional work such as sewing and shoemaking etc. and if occasionally they try to come out of their traditional work and try to engage themselves in some other business, then they are dominated by the so-called higher caste people and their work rejected. Therefore, caste discrimination is referred to as discrimination on the basis of descent and work because people of each caste are restricted to one kind of occupation.

The feudal nature of the caste system also prevents Dalits from leaving their prescribed work. Further, it has been a socially adopted culture that a person belonging to the backward group should not enter in the other's house and must not touch their belongings. They are even prohibited to drink water from the same well as other villagers do. They are regularly segregated away from public facilities. In the Baniyar section of Bardiya district in the Mid Western Region of the country, Dalits were denied access to a public water tap, despite the fact that the majority of families in that neighbourhood were Dalits. Dalits were placed at the mercy of upper-caste people who owned private taps in order to gain access to clean drinking water. Upper caste tap owners cursed and insulted Dalits before giving them access to their taps.³⁴

They are restricted from entering the temples and other publicly important places as happened in the Doti Shivalaya Temple incident. In 2006, the so-called upper caste Hindu community did not allow some dalits from going inside the the Shivalaya Temple in. When the Dalit community protested, the high class Brahmin opted for violence against them. No action was taken against the perpetrators for the violation of the

34. Dipendra Baduwal, "Dalit families forbidden to use public water-tap," Kathmandu Post, December 20, 2002

provision of the law. This forces us to bring to a conclusion that the Government tolerates segregation as against the provision of CERD.³⁵

Beside there are several practices found in Nepal that are creating difficulties for the Dalits. They are often victim of systematic attack. Racial and caste discrimination and prejudices are very rampant in Nepal. Ramechhap is one of the districts in Nepal where one man belonging to Dalit community was severely beaten by the members of so-called higher caste when he attempted to take water from a spring in September 2003.³⁶ Similarly, on October 21, 2003, a Member of Parliament from Saptari District in the Eastern Development Region, allegedly beat an 11-year-old Dalit boy and his mother claiming that their animals were eating his crops. Four other upper-caste individuals also took part in the attack.³⁷

Therefore, Dalits are discriminated in the religious and cultural spheres. They are not allowed to practice Hindu rituals, norms and values in the same manner as other castes. To escape from this discrimination, some of them converted into Christianity. And yet, even within their Christian communities only those belonging to higher castes can become religious leaders or occupy key positions in the church.

Cultural attitudes that perpetuate the caste system are inculcated at a young age in Nepal, and are often reinforced within the education system. Adults teach children to maintain the stratified society and continued reinforcement of the system cements it into an unquestionable reality.

2. Economic Dimension: Wealth and power are disproportionately distributed to favour higher castes, restricting social mobility and the possibility of intergenerational change. Caste discrimination is commonly present in government-initiated development programmes, with many of the projects failing to benefit the lower castes. Therefore, from the very beginning the people who belong to the Dalit or so-called

35. Fact Finding Report, Human Right Treaties Monitoring Committee, 24 Sept 2006.

36. Tika Bhatta, "Dalits beat up family," Kathmandu Post, September 13, 2003.

37. Human Rights Watch communication with expert on Dalits in Nepal, January 2003

untouchable community are forced to live below poverty line. The very example of the economic exploitation can be assess from the unfortunate scandal that occurred in the Nawalparasi district of Nepal. Some Dalit farmers tried to sell milk to a cooperative institution of the so-called upper caste people, but were refused. The incident triggered agitation by a large number of Dalit people 12 June 2000 and were supported by various civil societies and NGOs. This makes evident that the level of economic exploitation of Dalits even at present.

Caste system is undoubtedly an obstacle for the economic prosperity of Dalits. Even though the practice of untouchability is fading in the urban milieu and among the educated, the principle of heredity in occupation continues to segregates them from the socio-economic mainstream of the country. The Dalits do not have any option for any profession other than the hereditary occupation. This sort of psychological restriction is not conducive for the upliftment of the backward people. Hence, there is a need to provide them free mobility in every walk of life and allow them to improve their standard of living just like others.

However, the Dalits' rights to work and free choice of occupation though provided in the domestic laws, is constrained by socio-cultural conventions. They cannot start a dairy business because non-Dalits won't buy milk from them. The principle of equal pay for equal work is not applied in the case of Dalits. As Dalit people are still forced to continue conventional jobs, different forms of forced labour like *haliya* (tiller) and *bali ghare* (payment for grain for work) are difficult to be rooted out.. Dalits are also casually made to work without wages, like disposal of carcass, low-level jobs like washing dishes in hotels, cleaning streets and toilets, etc.

Caste based traditional works (blacksmith, leatherwork, tailoring) are the main economic activity for Dalits in order to support themselves. Though their occupations are gradually declining; they still support Dalits to a large extent. Because of their physical labour, the Dalits are taken impure and are not welcomed in areas settled by so-called "upper" caste people. Thus, Dalits settlements are economically segregated from non-Dalits settlements throughout the country.

Article 13(4) of Interim Constitution of Nepal has guaranteed the right for equal remuneration for all without distinction on the basis of race, sex and language among others. But, whatever written in the Constitution, it has become a *Paper Tiger* only because the situation still shows that whenever the people belonging to lower caste are made indulge in those activities, the rate of payment will be less with that of others who belong to higher caste. Further, the economical standard always deteriorates because they are not allowed to be engaged in the work associated with modern skill and technology. For example when ever a person of blacksmith community joins Nepal Army, , then whatever be his area of interest and qualification, he is assigned to make the arms and ammunition for the force and are paid very less for that in comparison with other field of work. Even in the private sector, the so called untouchables always have to hide their caste to get good job opportunity.

3. Legal Dimension: Despite the anti-discrimination provisions enshrined in the 1990 Constitution, caste discrimination remained ingrained in Hindu-dominated Nepalese society. Caste discrimination constitutes a form of racism in which people are categorically relegated to subordinate social positions and are denied equal access to social, economic, political and legal resources. Certainly there are many direct and indirect laws to deal with situation of the Dalits community such as Interim Constitution 2007, Social Welfare Act, 1992, Local Self Governance Act, 1997, Civil Liberties Act, 1951, Country Code 1963 and among others.

A notice was published in the national Gazette 28 July 2003 declaring cases related to untouchability crime as a state party case and to be annexed in Annex 1 of the State Party Cases Act 1992. After inclusion in this annex any case related to untouchability requires a procedure of First Information Report (FIR). However, no such report has yet been filed against the perpetrators.

Despite the provision incorporated there in, the practice of untouchability is persistently going on which is in fact the outcome of caste system of Nepal. Dalit people are being discriminated and harassed in

public places. Even the government authorities are involved in segregating this community against the spirit of the provisions mentioned in the constitution and other laws. Dalits are victims of targeted attacks. Police officials often fail to investigate reports of violence against Dalits, and perpetrators of attacks on Dalits often go unpunished.³⁸ Under Article 6 of the ICERD, parties to the Convention are obligated to provide effective remedies for acts of racial discrimination, including violent attacks. Slight infractions of caste boundaries can lead to violence.

However, it does not mean that it is an adequate and strong mechanism complying obligation of the States against untouchability endemic in society. Further Art 13 (4) of Interim Constitution of Nepal guarantees the right for equal remuneration for all with out distinction as to race, sex, language and further incorporates right against untouchability in Article 14 which is indeed a landmark achievement of Interim Constitution of 2006.

Though there are various laws in Caste issues yet the laws are not sufficient enough to address the problem. Dalits Commission, has since been created, the legislation is yet to be passed. The legislation, the Bill to Uplift and Protect Dalits, was introduced in 2001 but is yet to be enacted. In a comment on the Prime Minister's speech that proved to be prescient, Dalit activist Kamala Hemchuri, of the Nepalese Dalit Service Association, remarked, "We have received many promises and assurances from politicians in the past, but there were never any deliveries. It takes more than promises to change the thinking and attitude of society."³⁹ The punishment prescribed by the law is minimal in comparison to other offenses. The provision leaves discretion to the authorities in determining the punishment. Therefore, the enforcement of law regarding untouchability is not so effective.

38. Asian Legal Resource Centre, "Alternative report to the 16th periodic report of State Party Nepal to the Committee on the Elimination of Racial Discrimination

39. Associated Press, "Nepal Untouchables Doubt Govt's Vow To Ban Discrimination," 25 August 2001.

On paper, Nepal's legal protections against anti-Dalit discrimination are strong. The Constitution specifically forbids discrimination against Dalits: No person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities. Any contravention of this provision shall be punishable by law. In addition to the Constitutional prohibition on caste-based discrimination, the government has also taken some legislative actions to prohibit discrimination against Dalits. However, expected result has not been achieved towards ending the caste discrimination. The strong effort is required from all state actors.

4. Role of Judiciary: The judiciary is considered to be impartial. Recent progress in public interest litigation includes procedural reforms that allow local communities and activists to petition domestic courts regarding Nepalese laws and their. Most of the complaints about the judiciary relate to resource limitations and efficiency. Another complaint sometimes voiced is that the courts are inaccessible to members of ethnic groups and lower castes. Although the Act establishing a National Human Rights Commission was passed in 1997, its implementation was unjustifiably delayed. The Supreme Court finally demanded its establishment in 2000. The Commission has made some statements and investigated some complaints, but is still in many ways finding its feet. It will be crucial for the Commission to guard its independence, even if that means being openly critical of the government. As the issues described above indicate, the problems the Commission faces in the area of racial discrimination alone are extensive. Yet the Commission represents one of the best hopes for members of marginalised, ethnic, caste, indigenous and other minority groups. It will take genuine political and material commitments of the Commission and bold leadership on the part of its members to ensure that these people are not forsaken.

However, the role of Judiciary can be seen as positive and optimistic to some extent. In the case of *Maan Bahadur BK V HMG*⁴⁰ the Supreme Court of Nepal has very progressively recognized that the prevalent provision of *Adal ko 10(ka)* of the country code has made a discrimi-

natory provision against Dalits by saying that continuation of long followed culture can be continued as per it was before and that practice could not be regarded as discrimination towards anyone at all. However, that type of provision was, in fact, very discriminatory because it enforces the caste discrimination that was prevalent in the society since centuries. So when a writ petition was filed against it, the court recognized the discrimination made on the ground of race and declared such laws as inconsistent with that of equality provision of the Constitution of Nepal 1990 and finally asked to rescind such laws. However, it cannot be said that court is completely in favour of Dalit community. Though, the Judiciary of Nepal has done fine job to enhance the judicial activism, the result is not satisfactory. The representation of the Dalit Community in judiciary is embarrassing. The 77% are Brahmin, 1.7 % aJanjati, 13.6% Newar and 7.6 % remain Madheshi. There is no representation of Dalit at any level of Judiciary. The given fact does not meet the standard of General Recommendation XXXI of the CERD Committee. The factual indicator suggests that there is no representation of the persons belonging to those groups in the system of justice, including judges and jurors and in other law enforcement departments.⁴¹ Similarly, in case of *LANCAU vs. HMG 2061 (2004)*, The writ petitioner has demanded the government to publicize its measures, programmes, and actions and strategies regarding the implementation of international human rights instruments concerning the victims of untouchability, such as ICERD, WCAR (Durban Declaration and Programme of Action), General recommendation XXIX, General Recommendations of March 2004 of the CERD, Concluding Observations made by the CERD and national legislations and declarations made for the justice of victims of untouchability. The Supreme Court has issued a show cause order against the government with a preferential hearing. Though, it seems that in this case the Supreme Court has made positive decision in favour of Dalit community, it is not complete justice because in this case, it was the responsibility of the Supreme Court to issue effective order against the govern-

40. Man Bahadur Biswoskarma V. HMG, NKP 2049 (1993)

41. Human Rights and Good Governance Voice/ Feb 2007, p, 8 see also Unequal Citizens, Publish by the World Bank and DEFID, 2006, p, 60

ment but it only issued the show cause order which might not work appropriately in favour of Dalit.

The concluding remarks of the CERD Committee in 2004 has stated that it “recommends the state party to continue to enforce special measures to guarantee to members of disadvantaged groups the rights to participants to have due representation on government, legislative bodies and judiciary”.⁴² Nepal has survived a decade of internal armed conflict, which had seriously undermined the human rights principles. The root cause of the conflict is social in origin and centuries of suppression and exclusion have only fanned the insurgency of the so-called "untouchables" (Dalits). Though, the Government of Nepal has repeatedly expressed a commitment to eliminate caste based discrimination from the country by its 15th and 16th periodic reports submitted under the International Convention on the Elimination of all forms of Racial Discrimination, the practice of untouchability, rooted in the caste system, continues to stigmatize and dehumanize almost 4.5 million Dalits in Nepal as they are still regarded as ‘polluted’ or ‘impure’. The Article 14 of the Constitution of the interim Constitution guarantees the right against untouchability but it remains rampant and the perpetrators of Dalits’ human rights violations are, in most cases, not prosecuted. Undermining the basic obligations of the ratified International Convention against racial discrimination, there are still many discriminatory legal provisions prevailing in various laws. Though time and again, the Government of Nepal has tried to end the impunity regarding Dalits thereby uplifting them socially, economically and politically, the steps taken so far are not enough for this particular purpose because the condition of Dalits has not improved significantly for years.

5. Conclusion & Recommendation

Although caste-based discrimination is illegal under the Interim Constitution of Nepal, the chances of Dalits getting restitution for injustices committed against them are remote. Despite the governmen-

42. Article (G) General Recommendation XXXI on the Prevention of Racial Discrimination in the Administration and Function of Criminal Justice System

tal recognition of 'untouchability' related castes, atrocities based on caste are not decreasing. The police administration and concerned authorities are not accountable and sincere on this particular issue. The government often fails to prosecute those who engage in discrimination against Dalits. Very often the victims do not even lodge complaints. Dalits have no faith towards the administrative and justice system. Impunity seems to prevail with regard to violations against Dalits. Further, the general recommendation of CERD has clearly obliged the State to strengthen the national human rights institutions particularly National Dalits' Commission (NDC), National Women's Commission (NWC) and the National Human Rights Commission (NHRC). Despite these recommendations, the Nepalese Government has not yet initiated any measures for their strengthening. Thus, due to legal deficiencies and the absence of a clear mandate, the NDC is not being able to fully utilize its investigative and lobbying powers. At the same time, the rights concerning socio-economic matters have not been taken seriously by this concerned agency. Many studies indicate that a root cause of the conflict is inequality in the economic and social sphere of life, but still no particular strong steps has been taken so far for the upliftment of those groups of people.

The Dalit problem cannot be resolved overnight. Its solution requires a combination of action on the part of the Dalit communities, the government, and the political parties. The Dalit issues should now be treated as political issues that deserve the attention of government bureaucrats and politicians. Laws against the discrimination of the Dalits should be properly enforced, and government programs for uplifting the economic and social status of the Dalits should be fully implemented.

Recommendations

It has been highly noticed that the major cause of the continuation of the caste-based discrimination is because of the lack of adequate laws to execute the perpetrators. Therefore, there is an urgent need of specific laws to hold the perpetrators of abuses responsible for their actions and to ensure adequate compensation for the victims.

The state must ensure a space for dalit in all sectors of work i.e. either

public or private. Therefore, the state must establish a system for reservation and affirmative action temporarily.

Measures should be implemented to ensure that the democratization processes are not only be bringing about representative democracy but also supporting local and participatory democratization with empowerment and participation of the Dalits.

It is highly recommended that the CERD Committee shall undertake determined follow-up to ensure that Nepal complies with its obligations and implements the general recommendations under ICERD and CERD recommendations to end discrimination against Dalits. Further, it is also urged that all the UN agencies shall also take effective action for the upliftment of the so-called untouchable group of people.

To root out the deeply rooted caste discrimination and feeling of superiority existing in the mind of the so-called high caste or dominant community in Nepal, it is imperative to ensure the representation of Dalits in all governance mechanisms.

Economic deprivation is a crippling disability of the people of the low castes. They live in abject poverty subject to malnutrition, high infant mortality rate, low life expectancy, indebtedness, and low literacy rates. Their economy is below the subsistence level and lags far behind the marginal economy. The rehabilitation and empowerment measures should be adopted through formal, informal, legal/official and other channels. In order to acquire strength against discrimination, the affected people need to revive their group life by organizing themselves.

A radical change in the economic status of the disadvantaged people should be brought about ensuring them equitable distribution of national wealth through subsidies in business, industry, higher salaries for employees of those communities etc. Sincere implementation of land reform laws, allocation of more funds for the development of their geographical regions, provision for more employment opportunities in skilled and higher jobs, provision of adequate housing and more effective implementation of poverty alleviation programs.

In evolving a strategy, the constant interplay between the economic, political, familial and educational processes as well as the attitudes of the individuals and of the entire society must be kept continually in mind. The potential measures that can be adopted for the emancipation of this disadvantaged strata of population can be done through three ways;

- Community level Measures,
- Government Measures and
- Civil Society Measures