

3.2 Increasing Discrimination against the Dalit Community

Background

Among the seven Provinces in Nepal, Madhes Province has the highest number of Dalits. According to the Madhes Provincial Assembly Election Procedure, 2017 Schedule 15, the population of the Dalits in Madhes Province is 17.29 percent. The Dalit community is lagging because they do not have access to education, employment, and politics. Policies and laws have been formulated to end caste-based discrimination and untouchability at national and international levels. But in the absence of effective implementation of these policies and laws by the concerned state mechanisms, there has been a continuous rise in violence, including caste-based killings, rape, beatings, insults, and abuses.

Madhes Province witnesses higher cases of caste-based discrimination and untouchability than any other province. However, there are hindrances to justice for the victims of caste-based discrimination and untouchability: registration of the cases in public bodies is delayed, the investigation process is ineffective, and justice to victims is vague. Due to these conditions, members of the Dalit communities are forced to live amid caste-based discrimination.

According to the Annual Publication of INSEC, Nepal Human Rights Yearbook, 778 individuals were victims

of the violation of economic, social and cultural rights and were discriminated against castes. The highest number among them, 188, were of the Dalits community. It is 24.16 percent of the total.

Even today, society doesn't accept inter-caste marriages. The killings of Dalit youngsters because of marrying outside of their caste have been publicly reported. Many couples and their families have been leading harsh lives due to social exclusion. The government declared providing NPR 100,000 cash incentive for non-Dalit individuals marrying Dalits in the budget of the fiscal year 2009/10 under poverty alleviation and inclusive program. But this program was shut down within a year though it was welcomed by the majority of Dalits and protested by many non-Dalits¹.

It is the state and concerned authorities' responsibility to protect, promote and fulfil the human rights of its citizens. The state and its mechanisms are liable to guarantee the human rights ensured by the laws of the constitution.

The victim's right to justice should be ensured by bringing the perpetrators of human rights violation within the legal proceeding. But various cases prove that fundamental difference concerning caste-based discrimination and untouchability against the Dalits is yet to be seen even

1. Why was the cash incentive for marriage between Dalit and non-Dalit removed? <https://www.himalkhabar.com/news/124715>

after six years of implementation of the constitution.

National and International Policies and Legal Provisions

Article 2 of the Universal Declaration of Human Rights mentions non-discrimination against race, religion, colour, or any other status. The International Convention on the Elimination of All Forms of Racial Discrimination, has embraced the key concept that all races are equal in front of law. As a party to this Convention since 1971, Nepal has accepted the provisions of the Convention through the Constitution of Nepal, and the Caste Based Discrimination and Untouchability (Offense and Punishment) Act, 2011.

Among 31 fundamental rights ensured by the Constitution of Nepal, 2015, two articles focus on the Dalits. Article 24 relates to Right against Untouchability and Discrimination, and Article 40 enshrines Dalit Rights as fundamental rights.

The Madhes Province government has introduced Dalit Empowerment Act. The Act envisions caste-based discrimination and untouchability monitoring committee at the provincial level to study and monitor cases and implement, oversee, control, and supervise laws against caste-based discrimination and untouchability.

Analysis of the Problems

Discrimination against the Dalits is existent because they do not have access to State mechanisms. The Dalits have minimal access to State mechanisms. Even in the 21st Century, caste-based discrimination and untouchability cases are reported in the Madhes province. Most cases of caste-based discrimination and untouchability are suppressed in the villages. Some of them approach the law enforcement agencies to seek justice but are denied registration. Because of this, members of the Dalit communi-

ties are forced to live in the villages amid caste-based discrimination. A majority of the cases against the Dalits are not investigated. There are problems in collecting evidence in cases related to caste-based discrimination and untouchability. Although some cases are investigated and reach the court, they are made feeble.

The Ministry of Home Affairs has ordered the Nepal Police Headquarters to set up a help desk which provides services, ensuring access and respect to Dalit community. However, that order has not been implemented in the police offices.

Three Dalits have suspiciously died in Police custody in the last two years. One death occurred in Rautahat because of the brutality of the Police, and although the police administration reported that two individuals committed suicide, their family members claim the victims died of the police brutality. The government has provided relief to the family members of individuals that died in custody, but the deaths in custody have not been effectively investigated. The families of the victims are yet to get justice.

Objectives of the Study

- ▶ To study and analyze the state's behaviour towards the Dalit community and increasing discrimination
- ▶ To study and analyze the implementation of existing laws, and national/international policies

Relevance of the Study

The state has been indifferent to the issues of complete proportional representation of the Dalits. There is no effective implementation of laws even when individuals from the Dalit community suffer various forms of violence, torture, and inhumane acts associated with caste-based discrimination and untouchability. It is because the state has not been able to accept the good aspects of the Federal Democratic Government and also because self-centred views still dominate the soci-

ety. Dalits are forced to endure discrimination and untouchability because the police administration does not easily register and facilitate the investigation process in cases against the Dalits.

Even today, the Dalits face untouchability and insult based on caste. They are killed due to inter-caste marriages and are excluded from the society. The Dalit communities are victims of poverty, illiteracy, and unemployment and have to bear additional burdens of caste-based untouchability as the state and concerned bodies deny them justice. This study has made efforts to unravel prevalent discrimination due to social malpractices, traditions, and superstitious beliefs. Additionally, the study will help the state mechanisms in the administration of justice.

Scope of the Study

This study focuses on the Madhes Province. It studies the socially prevalent caste-based discrimination, untouchability, and the behavior of the state mechanism towards the Dalit community and the state of increasing discrimination.

Methods of the Study

- ▶ Study of secondary resource materials
- ▶ Interviews, monitoring, discussion, and group discussion
- ▶ Case study

Suspicious Death of Dalits in Police Custody

According to Article 16 of the Constitution of Nepal, the right to live with dignity is the Fundamental Right however, the state has not been able to fully implement the right to life for the Dalit communities. The state's presence is not sensed even when the rights of the Dalits to live are constrained by the members of the society practising the caste system. All three people who died in custody between 2020 and 2021 are from the Dalit communities.

Bijaya Mahara, 19, of Garuda Municipality-8, Rautahat died on August 27, 2020, while undergoing treatment at National Medical College Birgunj. Mahara's family alleged that the death was due to the police brutality in the custody of the Area Police Office in Garuda. Bijay was initially taken to Anamika Hospital in Garuda when he fell severely ill in police custody. But he was admitted to National Medical College, Birgunj on August 20 when he could not be treated there. Bijay had normal health before he was arrested, but both his kidneys had stopped working when he was taken to Birgunj for treatment. His family alleged that his health had deteriorated due to beatings and torture of the police. Bijaya himself had mentioned during treatment that the police beat him and tortured him while in custody. Bijay's video where he spoke about this had been public on social media. Claiming the brutality of the police to be the cause of Bijay's death, his father Panilal Mahara submitted a First Information Report (FIR) on September 9 against six individuals, including the then SP of the District Police Office Rabi-raj Khadka, Area Police Office Garuda's chief DSP Gyankumar Mahato, Inspector Nabin Singh, Sub-Inspector Birendra Yadav, Constable Hiroj Miya Dhuniya and Mannukumar Singh. But the District Police Office Rautahat did not accept Mahara's FIR. After that, the FIR was registered through the Office of the District Attorney on September 6.

The Ministry of Home Affairs formed a three-member investigation committee on August 27 to look into the case under the coordination of the Under-Secretary Dorendra Niraula, Head of Area Administration Office Chandrapur, Rautahat. The investigation committee submitted a report to the Ministry of Home Affairs on September 17.

Even before the committee completed its investigations, the police suspended Inspector Nabin Singh, Constable Hiroj Miya Dhuniya, and Mannukumar

Singh on August 31 on the ground of their involvement in the case. SP Rabiraj Khadka was sent to Police Headquarters in Kathmandu, DSP Gyankumar Mahato, and Sub-Inspector Birendra Yadav to Province Police Office, Janakpurdham. According to S.P. Binod Ghimire of the District Police Office, all the police personnel against whom charges were registered and were suspended are currently absconding. If the charges against them are proven, they will automatically lose their jobs².

The case was not registered in the court. The deceased's father, Panilal Mahara received the dead body on September 16 and cremated it on the same day. The local government gave a relief amount of NPR 100,000 and the provincial government gave NPR 500,000 to the victim's family but they did not get justice.

Another death occurred in police custody during the investigation at the Area Police Office Sabaila. Shambhu Sada, a resident of Sabaila Municipality-12, Dhanusha was found hanging inside the toilet in a detention cell in Area Police Office Sabaila on June 10, 2020. When the tractor driven by Sada met an accident, it killed Samundradevi Shah of Sabaila Municipality-13. Sada had presented himself at the police station to seek protection for a legal solution to the accident. But he died suspiciously in police custody, i.e., under police protection. Shambhu Sada's mother Siyadevi alleged that the police beat her son, pressurizing him for money, killed him, and hung him in the toilet.

An agreement was made on June 16, 2020, between the victim family and the police administration that a four-member committee would be formed to investigate the case under the coordination of Ganesh Chandra Mishra, section officer at District Administrative Office,

Dhanusha, and District Administrative Office Dhanusha would take steps to provide relief to the victimized family. After this agreement, a team of five doctors carried out the post-mortem at the Provincial Hospital. During the post-mortem, it was found that the body had rotted, and it was sent to Kathmandu for a viscera test.

The victim's family had filed an FIR claiming that Sada was killed under the direction and involvement of Inspector Chandra Bhusan Yadav and they demanded an investigation on the case and action against the perpetrators. But the District Police Office did not register the complaint. The complaint was filed at the District Attorney's Office on June 15, 2020, through the initiatives of human rights activists. District Attorney Sitaram Aryal shared that the case was referred to District Police Office Dhanusha on the same day. He added that the file was sent back to District Attorney's Office, Dhanusha, after investigation, and it was declared on April 9, 2021, that the case would not be trialled. The decision was upheld by the High Court in Janakpur on April 9, 2021, and the same decision was upheld by the Office of Attorney General in Kathmandu on May 2, 2021.

On June 15, 2020, the Madhes Province decided to provide NPR 500,000 to Shambhu Sada's family. According to the decision, a team including the Chief Minister of Madhes Province handed over the cheque to the house of the deceased.

Similarly, Paltu Ravidas, 40, of Laxminya Municipality-2, Dhanusha was in custody for investigation and was found hanging in the toilet of the detention cell of District Police Office, Dhanusha, on the morning of July 30, 2021. On July 26, the District Court of Dhanusha had ordered the release of Ravidas with a bail amount of NPR 200,000 on the case of attempted murder and mutilation. However, he

2. Based on the conversations with S.P. Ghimire of District Police Office, Rautahat on January 13, 2022, (Paush 29, 2078 B.S.)

was kept in custody to arrange the bail amount took a day or two more, District Police Officer Dhanusha's DSP Mahendra Kumar Mishra mentioned. The victimized family denied receiving the dead body and demanded a fair investigation on the case, severe punishment for the perpetrator, and compensation for the victims. The victim's family had received the dead body after an agreement was made to recommend to the Ministry of Home Affairs to form a high-level investigation unit and provide compensation to the victimized family. The post-mortem of the victim was conducted on July 30 at Provincial Hospital in Janakpur. The police informed that Jayaprakash Yadav, 30, who was on duty when the incident happened, was suspended for six months starting August 3. The police mentioned that this was done as per the agreement between the agitating party and local administration on August 3, which recommended suspending police recruit Yadav and providing compensation to the victimized family. But the investigation committee's report is yet to be made public, and the victim has not received justice.

The Police Offices should bear accountability for the deaths of individuals in their custody arrested for investigation. But the police administration is seen as unresponsive and insensitive even in cases like the deaths in custody. No concrete action has been taken towards an effective investigation into the cases and punishment for the perpetrators. In all the three cases of suspicious deaths in custody mentioned above, the concerned police offices have hesitated to file the complaints and move forward with the necessary legal process. Such irresponsible acts from the State bodies responsible for the implementation of laws portray ridicule of democracy and the rule of law.

Death of Raju Sada in the Absence of Treatment

A group of nine individuals returning from employment in India on

May 27, 2020, including Raju Sada, 16, son of Asheshwor Sada of Dhanusha district Hanspur Municipality-7, were held in quarantine operated by Hanspur Municipality in Nauwakhor. Their PCR samples were collected only after ten days on June 5, 2020. Raju suffered diarrhoea for a day or two. No one inquired about it. When his health degraded, even an ambulance was not arranged to take him to the hospital. He was taken to the isolation at Provincial Hospital in Janakpur on the Municipality's tripper. Although his reports were not public, the hospital neglected his treatment, assuming it was a case of COVID. The PCR reports were not out even after ten days in isolation. A negative PCR report came only on June 22. But Raju's condition had worsened. While in isolation, Raju was suffering from a stomach ache on June 19, 2020. He had fallen from the bed onto the floor due to pain but no health workers visited him. Sada died in the isolation room in the COVID Hospital under the Provincial Hospital in Janakpur at 3 am on June 19, 2020. One the same day, the hospital took the dead body to the deceased's home on a hearse. Sada had reached Madras in India 16 months ago for employment. He used to work in a hotel in Madras. Hotels were closed after the Government of India announced a lockdown due to COVID-19. After the hotels were closed, a group of nine individuals, including Raju Sada had returned to Nepal.

A meeting of the Provincial Assembly formed a five-membered investigation committee on June 28 under the coordination of Provincial Assembly member Rabintra Baitha to look into Raju Sada's case. The committee members included Provincial Assembly member Chameli Devi Das, Surita Kumari Shah, Naresh Kumar Yadav, and Sabitri Devi Shah. According to the convener of the committee and Provincial Assembly member, a report was submitted to the Assembly after investigations; the report concluded that delay in the PCR report and the negligence of

the doctors led him to another disease that caused Sada's death.

Similarly, the Ministry of Social Development had formed a committee on June 25 to investigate Raju Sada's death case under the coordination of Health Directorate's Director Harischandra Shah. But the investigation committee has not made the report public.

On June 17, 2020, the Government of Madhes Province decided to provide NPR 500,000 to Raju Sada's family. According to this decision, a team including the Chief Minister of the Madhes Province handed over a cheque of the declared amount to the deceased's residence.

Beatings of the Dalits and Torture in Custody

The beatings and torture on the members of the Dalit community in custody, arrested on different charges, have not ended. In 2021 as well, beatings and torture of two Dalit individuals in custody in Madhes Province's Dhanusha district were publicly reported.

On October 21, 2021 Raj Kumar Sada, 30, of Mujelia in Janakpur Sub-Metropolitan City-14, Dhanusha requested INSEC's Dhanusha representative and National Human Rights Commission Janakpur, to take initiatives for justice; he claimed that five-to-seven individuals, including Sub-Inspector Chandra Singh of Ward Police Office Mujelia, arrested him on the night of October 19, 2021 and had beaten him up. The victim, Sada, presented himself at District Police Office, but his complaint was not filed. A general dispute about a financial transaction had occurred between Raj Kumar Sada and his neighbour Ramhridaya Yadav on the evening of October 19, 2021. The victim alleges that the Ward Police Office Mujelia joined hands with Ramhridaya Yadav, took him to the police station, and beat him up with pipe on the allegations of the dispute. After the police released the victim on the night of October 19, Raj

Kumar Sada was treated at Samar Hospital for the injuries from the beatings.

Similarly, 45-year-old Suruwa Paswan and 35-year-old Ganesh Kumar Paswan of Bideha Municipality-4, Dhanusha district allege that the same Ward's Ward Chairman, 40-year-old Binod Gohiman, beat them in the ward office on February 21, 2021 in front of Tharathi Police Station's Assistant Sub-Inspector Rampramod Yadav and Constable Santosh Pandey. They alleged that the police silently observed the beatings and did not register the FIR at the area police office Khajuri on February 23, 2021. The individuals injured from the ward Chairman's beatings were treated at the local health clinic on February 21. The ward chairperson had beaten them up at the ward office in front of the police because they raised voices against the construction of a public building by narrowing a 20 feet wide road into a 10 feet wide road.

Starved to Death, Held Hostage Due to Lack of Money

The Dalits were tortured by COVID-19 as well. After the government implemented the lockdown, the daily wage labourers of the Dalit community faced problems managing daily meals. Malar Sada of Pathari Rampur, Kanchanrup Municipality Ward No. 5, Saptari district, died of starvation in COVID-19's lockdown on May 19, 2021.

Thirty-year-old Shiva Chandra Sada, and his 28-year-old wife Maliya Sada of Mahuli Tole, Agnisair Krishnasavaran Rural Municipality-6, Saptari district were held hostage at Biratnagar's Golden Hospital as they could not pay the cost of the treatment. During monsoon, Sada's hut was flooded because of the water unguarded by Dina Shah's family residing in the same locality. When the Sada couple requested Dina's family not to remove the soil randomly, they were beaten up on July 20. After the local clinic suggested the couple go to the hospital,

they got admitted to Golden Hospital in Biratnagar on July 21 for further treatment. But the landless Dalit couple who were living in a hut constructed in an unregistered land near a river did not have money for treatment. Shah, alleged for beating them, did not pay for the expenses of the treatment. The Sada couple was held hostage because the hospital did not let them return home without paying for their expenses.

Shiva Chandra's brother Pawan Sada submitted requests for justice and treatment expenses to the Chief Minister of Province No. 2, Human Rights Commission, Ministry of Land Management, Agriculture, and Cooperative, and the Chief District Officer, Saptari.

A meeting of the Caste-based Discrimination and Untouchability Monitoring Committee led by Madhes Province's Chief Minister Lal Babu Raut on September 2, 2020 declared providing financial support of NPR 150,000 per family to the victimized families.

Committee Formed to Investigate the Case Still Remains on Paper

The Madhes Government had formed a five-member investigation committee on September 2, 2020 under the coordination of Gyanendra Kumar Yadav, Minister of International affairs and Law, to investigate the death of 13 Dalit individuals in various incidents in the Madhes province. The investigation committee comprised five members: the Madhes Government's opposition party CPN's whip and Member, Caste-based Discrimination and Untouchability Monitoring Committee Sundar Bishwokarma, Provincial Assembly Member Sunitadevi Mochi and Pramila Devi Das, and Province Police Head as the Member-Secretary³.

The investigation committee was formed under the Dalit Empowerment Act passed by the Provincial Assembly

on the first meeting of the Caste-based Discrimination and Untouchability Monitoring Committee on September 2, 2020, informed Dipak Yadav, personal secretary of Chief Minister. The meeting had provided the committee 15 days' time to investigate the incidents and submit a report.

According to Sundar Bishwokarma, Member of the Monitoring Committee and Provincial Assembly Member, although the committee was formed, it could not operate due to COVID-19. He said "The committee has not functioned."

According to Gyanendra Kumar Yadav, former Minister for International Affairs and Law, there was lockdown because of the COVID-19, and the committee could not monitor and investigate the incident because it was not conducive time to be out of the homes.

He said- "after I had raised voice in the parliament that the committee must work, the Special Committee of the Provincial Assembly has been given the responsibility."

Non-acceptance of Inter-Caste Marriage Leading to Deprivation and Suicide

The caste system prevalent in our society prohibits inter-caste love marriages. Due to conservative traditions and thinking, many youngsters in a Dalit and non-Dalit romantic relationship and marriage have been socially excluded, discouraged, pushed into suicide, and killed. Additionally, the victimized families have been facing various hardships.

Claiming that 20-year-old Jyoti Paswan of Pokhariya, Surunga Municipality-7, Saptari district was forced to commit suicide on August 7, 2021, by 25-year-old Krishna Mishra, (Kanhaiya) of the same locality. Jyoti's father Pramod Paswan, filed a complaint at Area Police Office Kadarbona on August 10 against the suicide abettor.

3. Based on the conversation with Dipendra Jha, Chief Attorney, Province 2 on September 2, 2021 (Bhadra 17, 2078 B.S.)

After a love marriage on February 21, the alleged had abandoned Jyoti on June 15 and had been out of contact because of family pressure citing that the girl was a Dalit. Jyoti was rescued and brought back to her parental home. It is alleged that the victim committed suicide after Krishna abandoned her and went out of contact. Post-mortem was performed on the dead body at Ramkumar Sharada Umaprasad Murarka Hospital in Lahan, Siraha on August 7. Area Police Office Kadarbona had registered a complaint on discouragement leading to suicide. The accused was not arrested until the end of this year.

A 19-year-old woman of Sarlahi district reported that she was raped on May 10, 2021 on the pretext of marrying, and the accused fled after 23 days, telling her that the marriage could not happen because she was from the dalit community. The victim side also alleges that the victimized girl was held hostage by the alleged Yadav's family at a cowshed because of society's pressure.

A team of human rights activists rescued the woman held hostage at a cowshed⁴. These are but a few representative incidents. Many such incidents occur in society but are suppressed within communities and not made public. Such incidents will continue until the caste system, caste hierarchy, and traditional thinking based on these are prevalent in Nepali society.

The Hardships of Landless Dalits

Land ownership is meaningful in an agricultural country like Nepal. People associate land with their dignity, respect, and prestige. However, the land is only owned by a particular caste group in Nepal's context. According to the Nepal Living Standards Survey 2021, 15.32 percent Dalits in the Hills and 44 percent in the Terai are landless.

The majority of landless Dalits reside in and are dependent on unregistered lands or lands provided by landlords. Most of them majority do not own a land.

Article 40, sub-article 5, of the Constitution of Nepal, mentions providing land to the landless Dalits. Similarly, sub-article 6 has a progressive provision of the state making housing arrangements for the homeless Dalits.

The Land Reform Act, 1968 was amended on September 18, 2018, and Article 52(A) was added, mentioning that landless Dalits would be provided land within three years. The government formed the National Land Commission, 2021, on September 14, 2021, to solve the problems of the squatters. However, landless Dalits have not yet received lands and are in dire situation. The landless Dalits are lagging economically because of not having land ownership. The state has frequently forced them to be homeless because of not owning the lands where they reside.

On January 11, 2020, a team, including the court's clerk Rupesh Jha, reached the site along with a bulldozer to implement the District court's order to clear out 22 Dalit squatter settlements of Thadijijha, Bideha Municipality-1, Dhanusha. Ramsagar Thakur Barahi, a resident of Thadijijha, Bideha Municipality-1, had filed a case in 2015 at District Court Dhanusha claiming that the residents had encroached public land by building huts at the banks of a public ponds. The District Court had ordered the clearing out of the settlements on May 22, 2018. Human Rights activists collaborated with District Court's team and the police on the grounds that houses should not be demolished without alternative arrangements amidst excessive cold waves in the Terai. The Court and the Police team who had reached the site to clear out the squatter settlement returned af-

4. Based on the conversations with Mahesh Paswan, leader of the Dalit community on May 30, 2021 (Jestha 16, 2078 B.S.)

ter Bechan Das, Mayor of Bidesha Municipality, committed in writing that he would identify real squatters and shift them elsewhere within a few days.

In another account, Dalit families of Basbitta, Siraha Municipality-6, were forced to spend cold nights under the tent after their residences were demolished. Senior citizens and children have been falling ill because of a severe cold.

Damodhar Pradhananga of Siraha Municipality-1 demolished the houses of Ramji Mahara, Samatoliya Devi Mahara, Rambriksha Mahara, Shivkumar Mahara, Rajkumar Mahar, and Kulcha Devi Mahara, claiming that the residents had encroached the land his grandfather Lal Bahadur had provided to the temple, the victims accused.

The houses were demolished in the presence of the police and without any alternative arrangements based on the order of the District Court on June 4, 2018, that 7.25 *dhur* of land of plot no. 271 in Basbitta-3 (a) be given back for the plaintiff's use.

Ramji Mahara, 70, shared that they were unaware that the land of their forefathers in which they had lived for four generations was now stated as unregistered, and it was burial grounds when they started living in it. Samatoliya Mahara shared that it was difficult to avoid the cold in a bed made of straw under a tarpaulin roof, and the children were beginning to get sick. Organizations, including INSEC, monitored the incident on December 26, 2020⁵.

Indifference Towards the Incidences of Caste-Based Discrimination

Beatings and inhuman acts are being reported in the Madhes Province due to practices of caste and untouchability.

Criminal (Code) Act, 2017 mentions caste-based discrimination and untouchability as a social offence. The government has also introduced a separate Caste-Based Discrimination and Untouchability (Offense and Punishment) Act, 2011 to minimize cases of caste-based discrimination and untouchability. However, a reduction in incidences of discrimination is yet to be seen.

According to INSEC's statistics, 23 individuals, including five women and 18 men, have been victimized in incidences of caste-based untouchability in the five years between 2017 and 2021 A.D. Two individuals were victimized in 2017, 10 in 2018, six in 2019, and five in 2021, as evidenced by INSEC's data. The Dalit communities in the Madhes Province exhibit weak access to police and judiciary.

According to Krishna Mishra, Human Rights Officer at National Human Rights Commission, Madhes Province, seven complaints of caste-based untouchability were received in last six years: one in 2016/17, one in 2017/18 two in 2018/19, one in 2019/20, one in 2020/21 and one in 2021/22. The complaints are being investigated, shares Mishra.

According to Krishna Prasai, Superintendent of Police at Provincial Police Office, Madhes Province, 13 cases have been registered across the country in the last three years regarding caste-based discrimination⁶. According to the records of Provincial Police, four cases of caste-based untouchability were registered in Province 2 in the fiscal year 2017/18, six cases in the fiscal year 2018/19, and two cases in the fiscal year 2019/20.

The police do not easily file the victims' complaints when it comes to caste-based discrimination and untouchability. The District Police Office did not register

5. <https://inseconline.org/np/news/%e0%a4%98%e0%a4%b0-%e0%a4%89%e0%a4%9c%e0%a4%be%e0%a4%a1%e0%a4%8f-%e0%a4%aa%e0%a4%9b%e0%a4%bf-%e0%a4%a6%e0%a4%b2%e0%a4%bf%e0%a4%a4-%e0%a4%aa%e0%a4%b0%e0%a4%bf%e0%a4%b5%e0%a4%be%e0%a4%b0%e0%a4%b9>

a complaint from Aman Kumar Paswan, 20, resident of Janakpurdham Sub-Metropolitan City Ward No. 25, Dhanusha district; Paswan accused 65-year-old Bindeshwor Shah Sudi of discriminating him based on his caste during a feast on August 6, 2021. Paswan accused Sudi of discrimination by discouraging him from going to a feast he was invited to. According to Paswan, Sudi said that Paswan's presence would make the feast unholy and that his flesh and bones would also be touched by Paswan, thus humiliating him. A complaint was filed on July 20, 2021, with the initiative of Rights Workers but the accused was not arrested. On September 27, 2021, the district court ordered the release of the accused on a bail amount of NPR 50,000.

Netra Bahadur Ramtel, 50, of Bardibas Municipality-3, Mahottari district, teacher, and former Principal of Janata Madhyamik Vidhyalaya, Gairidanda filed a complaint at Area Police Office Bardibas on February 26, 2021, claiming that he was physically and verbally abused on February 25, 2021; the victim shared that the perpetrator could not stand that a person from the Dalit community had become the principal and coordinator. On the same day, the police arrested the accused Manish Aryal, 35, of the same locality, and a case was filed at the District Court on March 4. After the order of the District Court on March 9, the accused was released on a bail amount of NPR 40,000. The case is under consideration at Mahottari District Court.

Cases of violence against the Dalit community have been increasing

The incidence of violence against the Dalit community has increased in the Madhes Province in the last few years. According to INSEC's statistics, 62 members of the Dalit community have been killed, and 249 Dalit women and female children have been victims of rape in four

years between 2018 and 2021. According to the records of the Nepal Police, 62 Dalits have been killed, and 168 Dalit women have been raped in eight districts of the Madhes Province between the fiscal year 2017/18 and 2020/21 by October-November.

Incidences of rape attempted rape, and sexual harassments are other terrifying incidences of violence against women and female children. In most of these incidences, Dalit women and female children are victimized by their relatives and people they know. INSEC's data show that female children are largely victimized in rape cases. Among 249 rape cases in four years, 184 were committed against female children and 65 against women, whereas 31 women were victims of attempted rape and 62 female children were victims of sexual harassment. However, the responsibility of the state and its mechanisms to implement laws concerning violence against Dalits has been limited to tradition because of which incidences of violence against the Dalits are taking place each year. The tables below show the district-level statistics of the murder and rape committed against the Dalits in the Madhes province.

Incidents of Killing and Rape

INSEC's statistics show incidences of murder and rape of Dalit in eight districts of the Madhes Province: Saptari, Siraha, Dhanusha, Mahottari, Sarlahi, Rautahat, Bara, and Parsa. The highest number of murders of Dalits, i.e. 20 in the four years was seen in Dhanusha, followed by 12 in Siraha. High incidences of rape are seen in Siraha. 73 Dalit women and female children were raped in Siraha.

Allegation of Witchcraft on Dalit Women

Superstition is still prevalent in society. Poor, Dalit women are victimized due to superstitions. Helpless, single

6. <https://www.himalkhabar.com/news/121460>

Madhes Province

District-level Statistics of the Dalits killed between 2018 and 2021 A.D.

Saptari	Siraha	Dhanusha	Mahottari	Sarlahi	Rautahat	Bara	Parsa	Total
7	12	20	3	8	5	3	4	62

Madhes Province

District-level Statistics of the Rape Cases between 2018 and 2021 A.D.

Saptari	Siraha	Dhanusha	Mahottari	Sarlahi	Rautahat	Bara	Parsa	Total
44	73	39	25	5	25	13	25	249

women, women of poor Dalit families, are accused of witchcraft in our society. According to INSEC's statistics, 14 Dalit women were accused of witchcraft in the four years between 2018 and 2021. They have been fed inedible, beaten up, and treated inhumanely for allegedly practicing witchcraft.

Witchcraft Accusation (Offense and Punishment) Act 2015 was introduced to eliminate acts arising out of social taboos and superstitions, protect victims of such acts, and provide justice. Accusing any individual of witchcraft, cruel, inhuman, and insulting behaviour towards the alleged or any form of brutal treatment is considered punishable by law. There is a provision of six to eight years of imprisonment and a fine of NPR. 5,000 to 50,000 for individuals involved in an offence relating to witchcraft accusations, depending upon the intensity of the offence.

But perpetrators of such heinous acts have been exempted because the police do not register complaints from the victims accused of so-called witchcraft and make the investigation feeble. Every day, females are victimized because the effective investigation of the incidents is not carried out, and the perpetrators are not punished.

Weak Proportional Representation

The Constitution has provisioned the formation of the Federal and Provincial Council of Ministers based on proportional representation. Similarly, there is provision for representation of two and three individuals from the Dalit and minority community, respectively, in the Executive Member at the local governments.

There is a provision of 40 percent of the total seats at the Federal House of Representatives and Provincial Assembly

Statistics of killing and rape in Madhes Province 2018-2021

Murder (total 62)				District	Rape (total 249)			
Year in A.D.					Year in A.D.			
2018	2019	2020	2021		2018	2019	2020	2021
-	5	1	1	Saptari	15	12	13	4
4	1	2	5	Siraha	7	17	24	25
1	7	10	2	Dhanusha	5	8	15	11
2	1	-	-	Mahottari	4	8	12	1
1	3	3	1	Sarlahi	1	-	1	3
1	1	2	1	Rautahat	4	5	8	8
2	-	1	-	Bara	1	5	5	2
-	2	1	1	Parsa	3	7	8	7

being filled based on proportional representation. There is a provision of mandatory representation of seven Dalits in the National Assembly, one from each Province. Similarly, two and three members from the Dalit or minority groups will be elected to Rural and Municipal Assembly, respectively. There is a provision for inclusion based on the principle of inclusive proportional representation in the Nepal Army, Executive Committees of the political parties at various levels, the appointment of Ambassadors and Special Representatives, positions at the Constitutional Bodies, and positions within Public Service but the implementation status is weak despite constitutional provisions. 6567 Dalit women's representation was ensured at local levels due to the mandatory provision of the Local Level Elections Act 2016. However, the constitutional provision has not been effectively implemented in other structures.

Not a single member of the Assembly of the Dalit community has been included in the Council of Ministers in the Madhes Province Government. Until the most recent Dissolution of the Parliament, merely a total of three Dalits got the opportunity to be represented as Cabinet Minister and one as a State Minister at Federal and Provincial Government. Advocate Raj Kumar Mahaseth had filed a Writ Petition at High Court Janakpur on June 24, 2021 towards effective implementation of the principle of inclusive proportional representation and inclusion of the Dalit community in the Madhes province. The Writ is currently under consideration.

There are merely three Male Dalit members Federal House of Representatives elected through first past the post and 16 Dalit Members through Proportional Representation, out of which 14 are females. All seven Provinces have 29 Dalit Provincial Assembly members including five Madhesi Women, and four Dalit men had won through first past the

Caste-based representation in Provincial Assembly of Madhes	
Caste	Percentage
Madhesi	5.2
Madhesi women	22
Muslim men	6
Muslim women	2
Tharu men	3
Tharu women	1
Khas Arya men	2
Khas Arya women	1
Indigenous women	4
Hill Dalit men	1
Madhesi Dalit men	1
Madhesi Dalit women	5

post. All seven Dalit members of the National Assembly are men. This status of representation has ridiculed the idea of proportional representation, per se.

Conclusion

All three individuals that died in custody in Madhes Province in the last two years, were from the Dalit community. They were arrested on various charges and died in custody. Their family members are still alleging that they died because of beatings and torture from the police, demanding investigation of such cases. The security mechanisms of the state have failed to conduct impartial investigations on the case allegations of victimized families and ensure that is not repeated. Even after these incidents, cases of beatings and torture of the members of the Dalit community, arrested on different charges, within Police custody has not stopped.

This Province has the highest population of the Dalit community, i.e., 17.29%. Even at this time of implementation of Federalism, cases of discrimination against the Dalits in the name of caste and untouchability are prevalent. Caste-based discrimination has been

**Political Representation of the Dalit Community in
Federal, Provincial and Local Levels**

S.N.	Position and level of representation	Total number	Number of Dalits	Participation in percentage	Required number of persons
1	Federal Council of Ministers	25	1	4	3
2	The provincial council of Ministers	51	2	4	7
3	Members of House of Representatives	275	19	7	38
4	Members of National Assembly	59	7	12	8
5	Members of Provincial Assembly	550	33	6	76
6	Mayor	293	6	2.04	40
7	Deputy Mayor	293	11	3.75	27
8	DCC President	77	8	10.38	11
9	DCC Vice-President	77	9	11.68	11
10	DCC Member	534	99	18.53	74
11	Rural Municipality Chair	460	1	0.21	63
12	Rural Municipality Deputy Chair	460	16	3.47	63
13	Ward Chairperson	6743	197	2.92	930
14	M EC Member	6287	855	13.59	867
15	RM EC Member	6789	1078	15.98	936
16	Dalit Women Ward Member	6743	6567	97.38	1861
17	Dalit Men Ward Member	13486	797	5.90	1861

Source: Election Commission, 2074a, 2) Election Commission 2074b, 3)

treated as a criminal offense. Concerning cases of caste-based discrimination, a separate law also exists as the Caste-Based Discrimination and Untouchability (Offense and Punishment) Act, 2011. But very few cases are reported to the police. They cannot go to the police because they are economically deprived, socially discriminated against, and have no justice and political power access. They do not believe that the police will help them get justice at places. The police also do not easily register cases of untouchability. The police pressurize for reconciliation of

such cases in the communities themselves as far as possible. The Dalit community is still immersed in the swamp of poverty, illiteracy, and unemployment. Sub-article 5, article 40 of the fundamental rights of the Constitution of Nepal, mentions providing land to the landless Dalits once. But, the majority of Dalits in Terai-Madhesh are landless. They stay in huts built on roads, unregistered and barren areas. But these Dalit settlements have not yet drawn the government's attention. Sub-article 6 of Article 40 mentions that the

Representation of Dalit Community in State Structure and the Status of Dalits

S.N.	Public Services/ Other areas	Total number/ National Average	Number of Dalits/ Status	Percentage
1	Civil service	88578	1971 persons	2.22
2	Nepal Police	65500	6192 persons	9.45
3	Nepal Army	87972	7163 persons	8.14
4	Judiciary	459	5 persons	1
5	Average Poverty	18.7 percentage	42 percentage	
6	Literacy	65.09	52.4 (Terai 34.5) Dalit Women 45.5 percentage	
7	Life Expectancy	68.8 year	58 year	
8	Landlessness		15.32 in the Hills and 44 percent in the Terai	

Source: Nepal Human Rights Commission, 2021 (2077 B.S.)/Dalit Human Rights Book 2021 (2077 B.S.)

state will make housing arrangements for the homeless Dalits. But the majority of the Dalits are forced to live difficult lives in huts made in unregistered lands.

There is a constitutional provision to ensure proportional representation of the Dalits at all levels and in policymaking. However, a look at Dalit representation in State bodies and policymaking shows that the constitutional and legal provision is yet to materialize. Because of this, criticisms for the neglect of the Dalits have been heard everywhere.

Suggestions and Recommendations

- ▶ Effective implementation of Dalit Empowerment Act, 2018, Provincial Police Act, 2018, and Public Administration Act for Recruitment of Employees on Contract, 2018
- ▶ Implementation of concrete policies and allocation of budget towards end-

ing caste-based discrimination and untouchability

- ▶ Declaration of all districts of the Province untouchability free and its effective implementation
- ▶ Make special provisions for upgrading the economic, educational, and social conditions of the Dom and Musahar communities of Madhes Province
- ▶ Effective investigation of the cases of caste-based discrimination
- ▶ Amendment of the prevalent caste-based and other social discrimination and untouchability (crime and punishment) Act, 2011 to shift the burden of proof on the defendant and set jail sentence to at least five years
- ▶ Establishing Dalit desks at Police Offices and conducting specialized investigations of the cases of caste-based discrimination and untouchability

