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Dharmendra Bahadur Dhami

# **Caste Discrimination**

## **A Study on Existing Law and Its Implementation on Inter-Caste Marriage of Dalits in Rukum, Western Nepal**

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APMA, The Master's Programme in Human Rights and  
Democratisation in Asia Pacific

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CASTE DISCRIMINATION  
A STUDY ON EXISTING LAW AND ITS IMPLEMENTATION  
ON INTER-CASTE MARRIAGE OF DALITS IN RUKUM,  
WESTERN NEPAL

## FOREWORD

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This publication includes the thesis *Caste Discrimination: A Study on Existing Law and Its Implementation on Inter-Caste Marriage of Dalits in Rukum, Western Nepal* written by Dharmendra Bahadur Dhami and supervised by Wasantha Seneviratne, University of Colombo.

This research was reviewed and approved by the IRB-IPSR (Institutional Review Board, Institute for Population and Social Research) on the date of 12 May 2021, with certificate number 2021/04-055.

#### BIOGRAPHY

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#### ABSTRACT

The right to marriage of Dalits is violated due to caste-based discrimination in Nepal. Despite the provision of the law, the inter-caste married couples face violence and difficulties in accessing justice. The Caste-Based Discrimination and Untouchability (Offence and Punishment) Act was introduced in 2011 to address the issue. However, since its establishment, nine death cases of Dalits have been reported due to inter-caste marriage. These cases call for the need to examine how the laws and policies are implemented by the concerned government authorities. Thus, this paper intends to: (1) investigate how the state implements the law on the right to the inter-caste marriage of Dalits, (2) identify the barriers in the implementation of the law that could be addressed and (3) find the gaps in the access to justice

procedures under the law. The researcher in this qualitative research collected the data from the inter-caste married couples, police officers, government representatives, lawyers, non-governmental organisations and the National Dalit Commission. It is found from the findings that the challenges that occur in the implementation of the law and policies on the inter-caste marriage are: delaying and denying the registration of complaints of inter-caste married couples at the concerned police units, lack of protection of inter-caste married couples and lack of knowledge on the provisioned law. Moreover, there is also a challenge from the upper-caste people who do not recognise and respect the provisioned law due to their traditional discriminatory mindset. Therefore, along with the implementation of provision laws and policies, advocacy and campaigning are crucial to disseminate the law and change the community's perception of the right to marriage of Dalits.

#### IMPLICATION OF THE THESIS

Firstly, this research helps in understanding the challenges in the implementation of the law and existing gaps that create difficulties in accessing justice to the victims, particularly the inter-caste married couples. Secondly, the suggested recommendations of the study help the policymakers in addressing the identified gaps. Lastly, the findings and recommendations of the research are useful for the NGOs and civil society organisations to pressurise the government through advocacy for making the concerned law implementing agencies serious and accountable.

*Keywords: caste-discrimination, inter-caste marriage, untouchability, socio-cultural exclusion, Dalits*

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TABLE OF ABBREVIATIONS

CBDU	Caste-Based Discrimination and Untouchability
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
COCAP	Collective Campaign for Peace
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on Elimination of All Forms of Racial Discrimination
IDSN	International Dalit Solidarity Network
FIR	First Information Report
NDC	National Dalit Commission
NGOs	Non-governmental organisations
OHCHR	Office of the High Commissioner for Human Rights
UDHR	Universal Declaration of Human Rights



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## 1.

## INTRODUCTION

## 1.1 BACKGROUND AND RATIONALE OF THE STUDY

The formation of a society based on caste is not only practiced in any particular religion or belief system; instead, it is a global phenomenon because it also prevails in Africa, Asia, the Middle East, the Pacific and Diaspora communities.<sup>1</sup> In the context of South Asia, caste-based discrimination is traditionally rooted in the Hindu caste system, which categorises Dalits as ‘outcasts’. This discrimination has violated the civil, political, economic, social and cultural rights of Dalits. The International Dalit Solidarity Network (IDSN) mentioned that ‘caste systems divide people into unequal and hierarchical social groups and those at the bottom are considered “lesser human beings,” “impure,” and “polluting” to other caste groups’.<sup>2</sup> The discrimination of people based on their caste is known as caste discrimination which is a very narrow definition. The phenomenon of caste discrimination is not merely linked to caste and untouchability, rather with social, economic and political aspects. Nepalese society is formed based on a caste system: *Brabman*, *Chbbetri* and high caste *Newars* who are called *Tagadhari* ‘Twice Born’ belong to a pure high caste, *Matwali* ‘liquor-drinking’ belong to non-caste *Janajaati*, Indigenous people *Muslims* who are called *Paani Nachalne* ‘water untouchable’ belong to an impure low caste and Dalits belong to *Achhut* ‘Untouchable’.<sup>3</sup>

<sup>1</sup> Sewa Community College, ‘Caste Based Discrimination’ <<https://sewa.college/index.php/caste-based-discrimination/>> accessed 12 September 2020.

<sup>2</sup> International Dalit Solidarity Network (IDSN), ‘Caste discrimination affects an estimated 260 million people’ <<https://idsn.org/caste-discrimination/>> accessed 12 September 2020.

<sup>3</sup> L Bennett, DR Dahal and P Govindasamy, ‘Caste, Ethnic and Regional Identity in Nepal. Further Analysis of the 2006 Nepal Demographic and Health Survey’ (Macro International 2008) <<https://dhsprogram.com/pubs/pdf/FA58/FA58.pdf>> accessed 18 September 2020.

Minority Dalits are the victims of caste-based discrimination. ‘Dalits are economically exploited, politically voiceless, socially humiliated, and educationally backward.’<sup>4</sup> Dalits are discriminated against in the religious and cultural spheres. They are not allowed to practice Hindu rituals and cultural ceremonies in the same manners as other castes in the public. Dalits are the most discriminated minority group in Nepal, who constitute 13.6% of the total population, according to the official census report from 2011.<sup>5</sup>

The Universal Declaration of Human Rights (UDHR)<sup>6</sup> clearly states in article 2 that ‘no one can be discriminated against based on colour, caste, gender, language, religion, politics, thoughts, nationality, property, social background, birth or any basis’. Similarly, in the Constitution of Nepal,<sup>7</sup> the right against untouchability and discrimination mentions that no citizen shall be subjected to racial discrimination or untouchability; if victimised, such person shall be entitled to the compensation as per the law and no person shall be deprived of the use of public services. Despite these legal provisions, Dalit people are still discriminated against.

The right to marriage is the most violated right of the Dalit people due to this caste discrimination. Though inter-caste marriage was legalised by King Mahendra in 1963, modifying the Civil Code of 1854, and was also legalised by the Constitution of Nepal in 2015, it is not respected. Inter-caste marriage becomes the cause for murder, kidnapping, suicide and social boycott of the Dalit boys and girls. ‘Inter-caste marriage means the marriage of two people from different caste groups, but the general convention of inter-caste marriage usually denotes the marriage between Dalits and non-Dalits in Nepal.’<sup>8</sup> Inter-caste marriage is a concern of family and society in Nepal as the acceptance and rejection of marriage by a particular family are determined by the social perception and behaviour of the family.<sup>9</sup>

<sup>4</sup> BR Kareria, ‘Socio Economic Status of Dalits of Western Terai Village of Nepal’ (December 2010-2011) 8-9 *The Geographical Journal of Nepal* 13 <<http://cdgtu.edu.np/wp-content/uploads/2016/11/Geography-Journal-8-9-Full-with-Cover.pdf>> accessed 28 September 2020.

<sup>5</sup> Samata Foundation, ‘Data of Dalits in Nepal’ <<https://samatafoundation.org/data-of-dalits/>> accessed 28 September 2020.

<sup>6</sup> Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A (III) (UDHR) art 2.

<sup>7</sup> The Constitution of Nepal 2015 (Nepalese Constitution) art 24.

<sup>8</sup> R Bhusal, ‘Intercaste Marriage: Social support and family care in contemporary rural Nepal’ (Research Gate 2014).

<sup>9</sup> TM Poudel, ‘Inter-caste Marriage in Eastern Nepal, context and its consequences’ (2018) 6(2) *International Relation and Diplomacy* 93.

Different factors of the traditional society victimise inter-caste married couples. Due to the influence of various factors, young generations these days are challenging the deep-rooted socio-cultural beliefs and getting married inter-caste, but they are not protected. Though the law has protected inter-caste married couples, in their practical life, their marriage is not respected, and they are not protected. The challenges and violations faced by inter-caste married couples will be discussed in the next section.

The principal purpose of this research is to explore and present how the state implements the law on the right to inter-caste marriage of Dalit. It investigates and explains the challenges in the implementation of law and existing gaps. Similarly, this research discloses the discrimination, challenges and incidents faced by the Dalits regarding their marriage with upper-caste people. This could draw the attention of government and policymakers to analyse and evaluate the situation of implementation of provisioned law and policies under right against discrimination.

## 1.2 STATEMENT OF THE PROBLEM

Caste discrimination in Nepal is very serious phenomenon where Dalits are not only discriminated against, rather they lose lives as well due to the issue of inter-caste marriage. Even after the enactment of the Caste-Based Discrimination and Untouchability (CBDU) (Offence and Punishment) Act of Nepal, 2011, discrimination against Dalits remains prevalent. Since 2011, there have been 17 recorded cases of Dalit deaths, where half of the cases (nine) are in an inter-caste marriage.

Most of the incidents related to this issue occur in the western part of the nation, which is far from the capital city, has minimal access to media and has very poor infrastructures. Here, the marriage of a Dalit with a non-Dalit is not accepted at any cost; if married, either the couple is forcefully separated or they have to leave the family and society. The couple is threatened for their separation, and finally, the issue turns into suicide or murder in most cases. Even if the couple leaves their family and society, the family members of Dalits are tortured and beaten by upper-caste people.

Tragically, when a Dalit boy marries a non-Dalit girl, the boy is beaten, kidnapped and killed whilst the girl is taken back home, treated as normal and married to another person of a similar caste. Similarly,

when an upper-caste boy marries a Dalit girl, she is beaten, tortured physically and mentally, and chased away from home. It clearly shows that caste or being a Dalit is the reason for these incidents.

This research shows that family and society do not accept the marriage of a Dalit with a non-Dalit; rather, it takes the form of different violations against Dalit boys and girls even though the national and international human rights mechanisms have been provisioned which protect the right to marriage and the right against discrimination. So there is a great necessity to eradicate this age-long deep-rooted caste discrimination, decrease the incidents of violence against inter-caste married couples by finding the root causes, level of implementation of provisioned law and policies by the concerned government agencies and its adequacy for protecting the right to marriage of Dalits in practice.

### 1.3 RESEARCH QUESTIONS AND OBJECTIVES

The researcher in this study intends to answer the following questions.

- A. How does the state implement the law on the right to inter-caste marriage of Dalits?
- B. What are the barriers in the implementation of the law for an inter-caste marriage?
- C. Why do inter-caste married couples face challenges in the justice system, particularly while registering their cases?

This research fulfils the objectives mentioned below.

- A. To investigate how the state implements the law on the right to inter-caste marriage of Dalits.
- B. To identify and discuss the barriers in the implementation of the law that could be addressed.
- C. To find the gaps in the access to justice procedures under the law.

#### 1.4 HYPOTHESIS

The implementation of laws and policies to end the discrimination and violence against Dalit people in terms of their right to marriage seems ineffective. Though orthodox religious and deep-rooted cultural practices impede people from fully enjoying this law, the Dalits face more discrimination and violence due to the lack of effective implementation of laws and policies that protect their right to inter-caste marriage. Discrimination by the upper-castes against Dalits reaches the extent of killing them once they engage in inter-caste marriage. The law is formulated to address the issue but the victims face various challenges in the justice procedure, and, also, many people in society are unaware of this law and its provisions. Although pieces of evidence are presented that can clearly identify the members of the upper-caste as the perpetrators, they are rarely subjected to punishment under the law. Similarly, caste-based discrimination is a socially constructed phenomenon where the higher-caste people discriminate against Dalits due to their traditional religious beliefs, social traditions and practices, so to change the beliefs and perceptions of people, awareness of the issue along with its legal aspects is very crucial. People in society should know and feel that discrimination against any person or group on any basis is a violation of human rights, and those who discriminate are subjected to punishment under the law. Thus, the hypothesis of this research is that along with the implementation of provisioned laws, a campaign and advocacy at the local level among the people in the society are needed.

#### 1.5 SIGNIFICANCE AND IMPORTANCE OF THE STUDY

This study reveals the violence faced by inter-caste married couples while exercising their right to marriage and the difficulties they face in accessing the justice. Similarly, the study investigates and presents the challenges in the implementation of the law and existing gaps which will make the concerned authorities serious in addressing the issue. As the main focus of the study is to explore and reveal the condition of implementation of laws and policies provisioned to end discrimination against Dalits, it will advocate for the government to be serious about the effective implementation of provisioned law and policies. This study will also help in raising awareness of citizens, civil society and non-governmental organisations (NGOs) on the condition



of implementation of the law so they would pressure the government for effective implementation of the law and policies. No study has been carried out so far on the issue of inter-caste marriage of Dalits focusing on the legal aspects, so this study will also be helpful for those who want to research this issue.

#### 1.6 UNIT OF ANALYSIS

The unit of analysis in this study is the implementation of law and policies of the government for the promotion and protection of the right to marriage of Dalits. Even though Nepal is a state party to the International Convention on Elimination of All Forms of Racial Discrimination (ICERD)<sup>10</sup> and a few laws and policies have been provisioned to address the issues of Dalits in terms of discrimination and inter-caste marriage, the discrimination against Dalits and incidents of violence against inter-caste married couples are still persist. This also indicates that there is a problem with the implementation of the law.

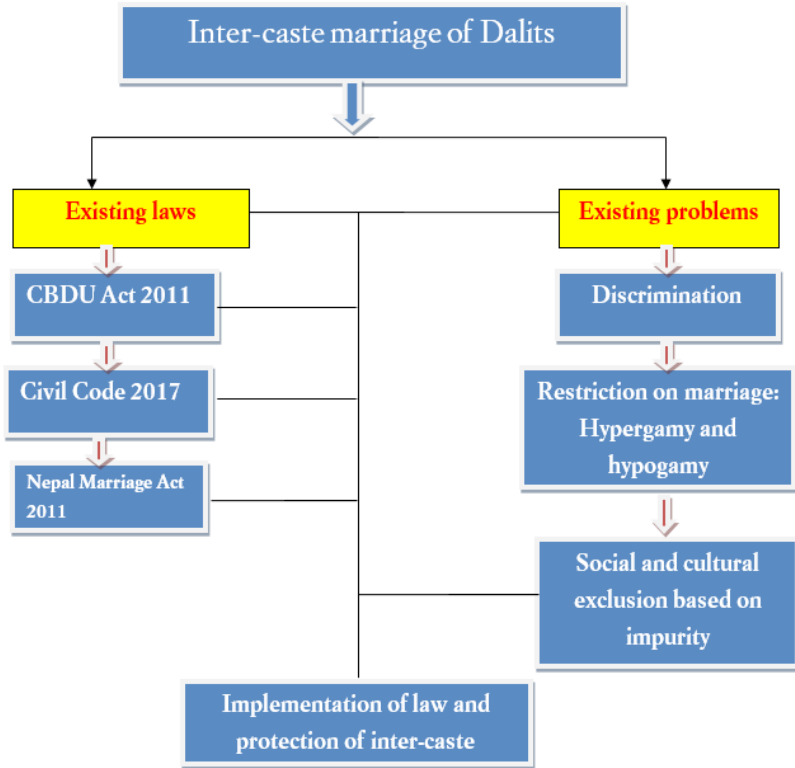
The Ministry of Law, Justice, and Parliamentary Affairs has the responsibility to amend or formulate the law to address this issue. Similarly, it is the mandate of the police units, both at the national and local levels, to help in accessing justice for the victims and control the incidents by fair and speedy investigation procedures. The study focuses on the state obligation and implementation of provisioned laws and policies to end untouchability and discrimination against Dalits to promote their inter-caste marriages. Provision of law, policies and their effective implementation are a must for the protection and promotion of the rights of the people. In most cases, traditional and cultural practices and beliefs are seen as barriers and violate human rights. Thus, it is the government's responsibility to make the policies and laws and make sure that these are strictly implemented to counter the negative effects of these practices on the enjoyment of rights of the people, specifically, the Dalits. When the dominant group violates the rights of the minority in the name of cultural practices, the government cannot just remain reluctant or ignore the phenomenon; rather, it must take the necessary initiatives to protect and secure the rights of a vulnerable group.

<sup>10</sup> International Convention on Elimination of All Forms of Racial Discrimination (adopted 26 December 1966, entered into force 4 January 1969) 660 UNTS 195 (ICERD)

1.7 CONCEPTUAL FRAMEWORK

This study is based on the below-mentioned conceptual framework.

Figure 1: Conceptual framework



Caste-based discrimination has deprived Dalit people of exercising their right to marriage. There is a restriction on them that they can't marry a person belonging to the upper-caste because, in the caste hierarchy, they are regarded as 'untouchable' or 'impure' and are socially and culturally excluded. Some laws and policies are provisioned by the state to address the issue. The CBDU Act provides a legal regime of

preventative and punitive measures to end caste-based discrimination.<sup>11</sup> The National Civil Code 2017 and the Nepal Marriage Act 2011 include some provisions on marriage. The Civil Code mentions marriage to be an inviolable social bond.<sup>12</sup> Similarly, the Act mentions the freedom of marriage. It states every person shall, subject to law, have the freedom to conclude a marriage, establish a family and spend a conjugal life. Every person's family life shall be inviolable.<sup>13</sup>

Even though these laws and policies are provisioned, discrimination against Dalits still exists. Dalits who are involved in inter-caste marriages face threats, killings, displacements and violence. So this study explores and presents how far the existing laws have promoted the rights of Dalits and how they are implemented to end the existed discrimination in terms of inter-caste marriage.

## 1.8 LIMITATIONS

This research project has the following limitations.

- i) The interview was taken only to the inter-caste married couples who faced challenges/difficulties in the justice process.
- ii) The study focused only on the four inter-caste married couples in the Rukum district of western Nepal.
- iii) Due to the COVID-19 pandemic and time constraints, it wasn't possible to conduct an on-site interview with all the research informants, so the researcher conducted some interviews physically and some on an online platform. The interviews were taken with NGOs, the National Dalit Commission (NDC), lawyers<sup>5</sup> and law professors, government representatives, inter-caste married couples and police officers.

<sup>11</sup> The Caste-Based Discrimination and Untouchability (Offence and Punishment) Act (authentication and publication 1 June 2011) ss 3 and 7.

<sup>12</sup> The National Civil (Code) Act (authentication 16 October 2017) art 68.

<sup>13</sup> *ibid* art 69.

## 1.9 ETHICAL CONCERNS

The study employs interviews with three inter-caste married couples, two lawyers/law professors, two government representatives, police officers, NGOs and the chairperson of the NDC. While taking the interview, the researcher followed some precautionary steps like ensuring the researcher was insured to get informed consent from the interviewees. The researcher ensured that the interviewees must know that the interview was a part of the research, and the researcher made the interviewees clear about the purpose of the research before taking the interview.

The researcher is well aware of the sensitivity of the research topic. Researching inter-caste married couples who have already gone through physical and mental torture is very sensitive and risky from both physical and psychological points of view. To mitigate this, the researcher followed some extra measures like not directly asking them about their past stories and taking the help of a person who has been working for a long time on their issue to collect needed information. Similarly, since this research focuses on law, policy and its implementation aspect, the conversation with these research participants mainly focused on their legal knowledge on the issue and challenges they faced while asking for justice instead of their past sad stories. The researcher was guided by the 'do no harm principle' by avoiding judgmental or sensitive language to protect the psychological well-being of the research subjects.

The researcher informed the interview participants that it is their right to withdraw their consent if they feel any risk or discomfort throughout the interview. There was no time limit for interviewees to terminate their participation in the research and they could do so at any time they wanted. Similarly, before taking an interview, informants were given the participant information sheet, which contained the purpose and their role in brief. As the topic of the interview is sensitive and highly personal, the researcher took the interview in a safe and private place where informants were comfortable to respond.

2.

METHODOLOGY

2.1 RESEARCH DESIGN, PARTICIPANTS AND INSTRUMENTATION

This research used a qualitative method:

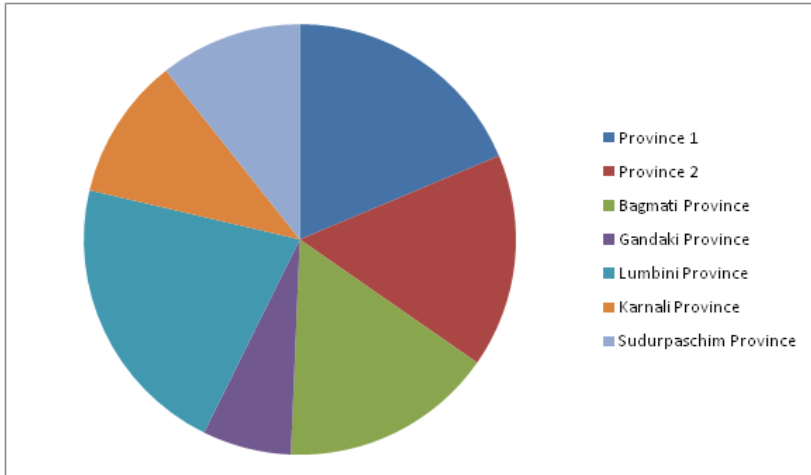
Qualitative research is a broad approach to the study of social phenomena, its genres are naturalistic and interpretive and they draw on multiple methods of inquiry in qualitative method, researchers are intrigued with the complexity of social interactions as expressed in daily life and with the meanings, the participants themselves attribute to those interactions.<sup>14</sup>

The researcher employed a narrative approach that collected the narratives from the individuals in this study that tells their experiences. This study explored discrimination against Dalits regarding their inter-caste marriage in the Rukum district of the western part. The researcher undertook a critical review of the literature (scholarly studies, journal articles, reports of NGOs and the Dalit Commission).

This study selected the Rukum district of the Western part for the study and collection of data. The reason behind selecting this particular area for the study is that the cases of discrimination, including inter-caste marriage, are comparatively higher. Due to poor literacy and lack of access to media and communication, only a few incidents are reported, and many victims do not get justice, whereas the incidents get repeated. The province wise number of cases of discrimination against Dalits from January 2020 to August 2021 is shown in the pie chart below.

<sup>14</sup> C Marshal and GB Rossman, *Designing Qualitative Research* (3rd edn, SAGE 1999) 2.

Figure 2: Cases of discrimination against Dalits (January 2020 – August 2021).



Source: Collective Campaign for Peace (COCAP), Kathmandu Nepal.

According to the data of Collective Campaign for Peace (COCAP) Nepal,<sup>15</sup> among a total of 75 recorded cases of discrimination against Dalits, including the incidents of inter-caste marriage from January 2020 to August 2021 in all the seven provinces of Nepal, Lumbini province where the study area of this research Rukum lies, has the highest number of cases, that is 16, followed by 14 in the province 1. Bagmati province and province 2 have an equal number of cases, ie 12, and also an equal number of cases, eight, are recorded in Karnali and Sudurpashim province. Similarly, Gandaki province has five, the least number of cases among all the seven provinces in the mentioned time period.

Due to the pandemic situation and its restrictions, the researcher couldn't collect all the data physically, so the researcher also used an online platform to collect the data from research informants. So, the data are collected both physically and online. The researcher used a semi-structured interview based on the interview guide framed through the research questions as the main tool for primary sources of data. The narratives were gathered from four inter-caste married couples to get

<sup>15</sup> Collective Campaign for Peace Kathmandu Nepal <[www.cocap.org.np/](http://www.cocap.org.np/)> accessed 7 February 2021. Collective Campaign for Peace Kathmandu Nepal is a national network of 43 peace and human rights based non-governmental organisations.

their experiences and challenges after their marriage. These four inter-caste married couples were contacted through the assistance of the NDC and Samata Foundation (an NGO that conducts research, programmes and activities on issues impacting Dalits and also participates in high-level dialogues and discussions on Dalit-related concerns). Interview with these inter-caste married couples was taken in coordination with an experienced research person from the NGO Samata Foundation. Through these four sets of couples, the researcher wanted to find the similarity and differences in their experiences, their experiences on the challenges they faced while going through legal procedures like registering the complaint to the police, while registering the cases to the government attorney office, and the court for the justice and to identify the gaps in the implementation of the law. So the inter-caste married couples were mainly asked about the experiences and challenges during justice procedures under the law.

Similarly, to collect the information regarding existing law and policy, its implementation aspect, challenges in the existing law that cause the problem in the effective implementation of the law and existing gaps, the researcher conducted a series of interviews with the two police officers who work/worked in the study area and are inter-caste marriage case handlers, two lawyer or law professors who advocate and are well known to the issue, two government representatives from the Ministry of Law or Constituent Assembly and a Minister in the government, who have authority and direct involvement in law and policymaking and its implementing aspects and can talk about the inter-caste marriage provisioned policies, two NGOs working on this issue (Samata Foundation and Feminist Dalit Organization) and the NDC. An informal conversational interview with these research participants helped to generate more questions based on the natural flow of answers from the interviewees, and extracted data were found relevant to the study.

## 2.2 DATA ANALYSIS

‘Qualitative data analysis is simply the process of making sense out of the data where the researcher interprets what was said and makes meaning from themes and these meanings of understanding become the finding of the study.’<sup>16</sup> Butina also mentions the four approaches

<sup>16</sup> M Butina, ‘Conducting Qualitative Research: A Narrative Approach to Qualitative Inquiry’, (2015) 28(3) *Clinical Laboratory Science* 190, 192-193.

under narrative analysis; narrative, thematic analysis, structural analysis, dialogic analysis and visual narrative analysis. Among the four mentioned approaches of data analysis, the researcher used the narrative thematic approach. This involves five strategies: organisation and preparation of the data, obtaining the general sense of the information, coding process, categories of themes, and interpretation of the data. The study presented and analysed the collected data on existing laws and policies to address and protect the inter-caste marriage of Dalits and its implementation aspect.

**Research informants and interview details**

Considering the sensitivity of the information, some research informants requested to keep their identity anonymous so the researcher used coding while stating the information obtained from them.

*Table 1: Research informants and interview details*

SN	Informants	Name	Position	No.	Mode of Interview
1.	PO	Police officer	Police inspector	2	Physical
2.	Government representative	Mr Ramesh Badal	Attorney General		Physical
3.	Leader/ politician	Mr Gopal Bishokarma	Member of Parliament		Online
4.	NDC	Mr Devraj Bishokarma	Chairperson		Physical
5.	NGO	Samata Foundation and Feminist Dalit Organization	Chairperson	2	Online
6.	Law professor	Mrs Geeta Pathak Sangroula	Senior advocate and law professor		Online
7.	ICMC	Inter-caste Married Couple		8	Online
8.	Advocate	Mr Prakash Nepali	Advocate and lecturer		Online



3.

LITERATURE REVIEW

3.1 HISTORICAL BACKGROUND OF CASTE AND CASTE DISCRIMINATION

Caste is analysed not as a set of ritual groups but as a pattern of social stratification. Dalits, who are called untouchable in the caste category, are kept at the lowest level in Nepalese society, which is formed on the caste system.

Dalit word emerged when renowned Dalit leader Dr. Ambedkar used it to address all the caste groups which were primarily oppressed through untouchability practices. The use of the word Dalit emerged in 1927 AD in India. The term is derived from the Hebrew root 'Dal' meaning broken or crushed.<sup>17</sup>

The NDC defines 'Dalits are those who are deprived of human dignity and social justice due to caste-based discrimination and untouchability'. Untouchability is the discrimination towards communities whose touch is believed to pollute and needs to be purified. Dalits among four major caste categories are those from whom water is not acceptable, and contact with them requires purification by scattering water.<sup>18</sup>

The notion of the caste is fundamentally based on the following concepts:<sup>19</sup>

- Segmental division of society
- Restriction on feeding and social intercourse
- Restriction on marriage and lack of unrestricted choice of occupation

<sup>17</sup> M Bishwakarma, 'Democratic Politics in Nepal: Dalit political inequality and representation' (2017) 2(3) Asian Journal of Comparative Politics 1.

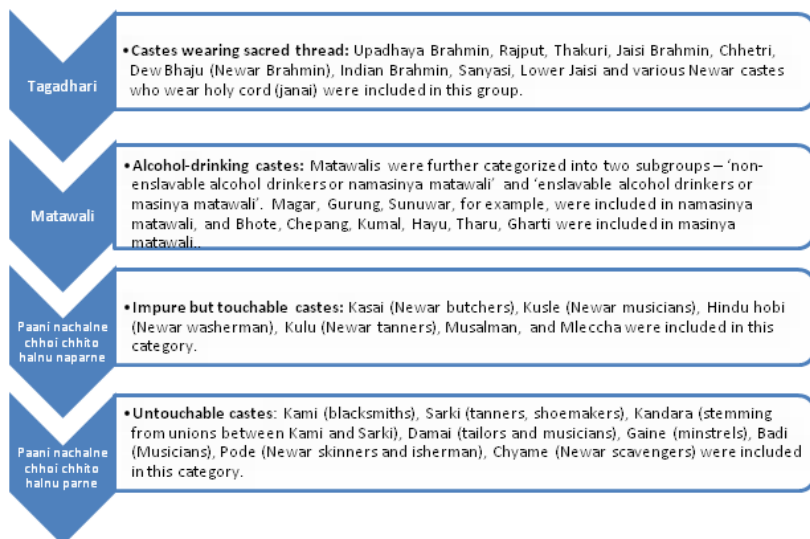
<sup>18</sup> KB Bhattachan, TB Sunar and YK Bhattachan, 'Caste-Based Discrimination in Nepal' (2009) 3(8) Working Paper Series <[www.scribd.com/document/34611333/Caste-based-Discrimination-in-Nepal-pdf](http://www.scribd.com/document/34611333/Caste-based-Discrimination-in-Nepal-pdf)> accessed 15 January 2021.

<sup>19</sup> GS Ghurye, *Caste and Race in India* (5th ed, Popular Prakashan 1969).

The Muluki Ain (Old Legal Code) of 1854 in the context of Nepal mentions the Varna system where King Jayasthiti Malla classified the population of Kathmandu Valley into 64 caste groups, each with different functional and occupational categories. ‘Muluki Ain is a document of great historical, legal and cultural interests for scholars in Nepal, by which all people in Nepal, high and low, were supposed to have been judged.’<sup>20</sup>

Muluki Ain divided Nepali people into the four main hierarchies:<sup>21</sup>

Figure 3: Nepalese caste hierarchies



The social hierarchy, division of Nepalese people into *Tagadhari*, *Matawali*, *paani nachalne chhoi chhito halnu naparne*, and *paani nachalne chhoi chhito halnu parne* shows that Civil Code (Muluki Ain) was the base for creating social hierarchy and it also ordered punishment for committing incest and copulation with lower or higher caste.

<sup>20</sup> PR Sharma, *The Caste Hierarchy and The State In Nepal: A Study of the Muluki Ain of 1854* (2nd edn, Himal Books, 2004).

<sup>21</sup> M Subedi, ‘Caste System: Theories and Practice in Nepal’ (2011) 4 Himalayan Journal of Sociology and Anthropology 134, 152-153.

Discrimination based on caste, which started due to descent and work, is generally regarded as caste discrimination. Under this system, each caste is restricted to a particular work, and the feudal nature of the caste system also prevents Dalits from leaving their prescribed work. In this system, Dalits are forced to continue their traditionally assigned work. Hindu religion is one of the major responsible factors for caste discrimination in the context of South Asia. According to the IDSN, nearly 260 million people are affected due to caste discrimination, among the vast majority are living in South Asia.<sup>22</sup>

Most of the Dalits (38.5%) face discriminatory behaviours during their involvement in food and drink and (28.3%) are prohibited from entering houses, temples and other public places.<sup>23</sup> Dalit children are found to be discriminated against even in the educational institutions where they face discriminatory behaviours from upper-caste children. Dalits are discouraged and deprived of exercising their political rights. They cannot hold key positions in politics and are only mobilised to serve the interest of the party. Discrimination against Dalits is categorised as public, private, religious, cultural and economic.<sup>24</sup> Public place discrimination is shown in public taps where they cannot fetch the water together with upper-caste people. In hotels and restaurants, Dalits have to eat outside and wash their plates. Similarly, in private places, Dalits are restricted from entering the houses of upper-caste people. These studies show that caste discrimination is a global phenomenon. However, such discrimination exists more in South Asia.

Significant forms of discrimination against Dalits include:<sup>25</sup>

a) *Social and cultural discrimination*

Dalit people are discriminated against in social gatherings while celebrating festivals and in religious places like temples. They are not allowed to perform spiritual and cultural rituals with higher caste people.

<sup>22</sup> International Dalit Solidarity Network (IDSN), 'Caste discrimination affects an estimated 260 million people' <<https://idsn.org/caste-discrimination/>> accessed 12 September 2020.

<sup>23</sup> A Shrestha, 'Dalits in Nepal: Story of Discrimination' (2002) 30 FOCUS 1. <[www.hurights.or.jp/archives/focus/section2/2002/12/dalits-in-nepal-story-of-discrimination.html](http://www.hurights.or.jp/archives/focus/section2/2002/12/dalits-in-nepal-story-of-discrimination.html)> accessed 25 February 2021.

<sup>24</sup> M Subedi, 'Caste System: Theories and Practice in Nepal' (2011) 4 Himalayan Journal of Sociology and Anthropology 134.

<sup>25</sup> A Shrestha, 'Dalits in Nepal: Story of Discrimination' (2002) 30 FOCUS 1. <[www.hurights.or.jp/archives/focus/section2/2002/12/dalits-in-nepal-story-of-discrimination.html](http://www.hurights.or.jp/archives/focus/section2/2002/12/dalits-in-nepal-story-of-discrimination.html)> accessed 25 February 2021.

b) *Traditional caste-based occupation and forced labour*

In most situations, Dalits cannot adopt and engage in the occupation they like. They are forced and compelled to continue the traditional disciplines they have been involved in, like shoemaker, goldsmith, tailor and street cleaner, which are regarded as deficient status works. Similarly, they are engaged in forced labour like *Haliya pratha* (bounded labour) with very less or no emolument. Dalits who can get a wage-earning job suffer from an unfair wage system. They get much less than their non-Dalit counterparts.

c) *Discrimination in education*

Discrimination is found in schools, whether they are private, NGO-supported or government. Dalit children are discriminated against inside the school as they cannot sit beside non-Dalit children in the classroom and while eating snacks. Discriminatory behaviours are even found among Dalit and non-Dalit teachers. These situations exist in the rural western parts of the nation.

d) *Denial of entry*

Dalits are not allowed to enter the houses of higher-caste people and other places like hotels/restaurants, dairy farms, tea shops, etc and, generally, they are told to sit outside. The denial of Dalits to enter the temples has prevented them from their right to perform religious rituals. If they enter the temple, they are humiliated by the temple priests as well as by higher-caste people.

e) *Social boycott*

Social boycott is a practice of exclusion of Dalit people from their family, group and society which exists in situations like when Dalits marry non-Dalits. This issue often leads to murder, kidnapping and suicide. Other concerns of social boycott to the Dalits are failure to follow traditional norms and values and refusal of Dalits to undertake their conventional caste-based occupation such as disposal of dead animals.

## 3.2 INTER-CASTE MARRIAGE OF DALITS AND CASES OF VIOLATION

‘Marriage is considered as a social, religious, spiritual, and legal union of individuals. Marriage in Nepal historically has been under the strict control of the family. Generally, an individual’s family decides when and whom they would marry.’<sup>26</sup> Property, religion, casteism, social customs and traditions have fully controlled marriage in Nepal, and when Dalits are involved in inter-caste marriage, they are often taken as social deviants and usually punished for rejecting the prevalent norms of society.<sup>27</sup> Inter-caste marriage means the marriage of two people from different caste groups, but the general convention of inter-caste marriage usually denotes the marriage between Dalits and non-Dalits in Nepal. Hypogamy and hypergamy are in practice under inter-caste marriage. A lower-caste male marrying with a higher-caste female is called hypergamy, whereas a higher-caste male marrying with a lower-caste female is called a hypogamy marriage. The study and the reported cases show that in the inter-caste marriage of Dalits, the numbers of hypergamy are more than the numbers of hypogamy. When a higher-caste woman marries a lower-caste man, the woman is accepted in the lower-caste family and gets respect, whereas when a lower-caste woman marries the higher-caste man, the woman is not accepted in the family nor does she get respect.

There are mainly two responsible factors for inter-caste marriage:<sup>28</sup>

*Internal factors*

Internal factors refer to the self-feeling and mentality of a person who is willing to marry a lower caste without the influence of outsiders. These factors are:

- i) Love and affection:* most of the inter-caste marriages take place due to the strong love affection between lower- and upper-caste boys and girls.
- ii) Age factor:* boys and girls in their teenage years are attracted to the opposite sex, fall in love and get married.

<sup>26</sup> JS Barber, ‘Community social context and individualistic attitude towards marriage’ (2004) 67(3) *Social Psychology Quarterly*.

<sup>27</sup> TM Poudel, ‘Inter-caste Marriage in Eastern Nepal, context and its consequences’ (2018) 6(2) *International Relation and Diplomacy* 93.

<sup>28</sup> TM Poudel, ‘Inter-caste Marriage in Eastern Nepal, context and its consequences’ (2018) 6(2) *International Relation and Diplomacy* 93, 96-98.

*iii) Good moral character:* upper-caste girls are found marrying lower-caste boys having good character, who are honest and sincere.

#### *External factors*

External factors refer to the influences of outsiders rather than one's self-feeling. These factors are:

*i) Modernisation and Westernisation:* with the due course of time, young generations are found adopting the western culture. Their mentality and beliefs regarding marriage have changed, so these days inter-caste marriage is increasing though the society and family do not accept it.

*ii) Migration and new social relations:* these days people are found migrating to the places where there are good facilities and services, ie, from rural areas to urban areas. To establish the new social relationships in a new place without caring about the caste and sometimes being unknown about the caste inter-caste marriage take place.

*iii) Modern education:* modern education is changing the traditional beliefs about caste discrimination and inter-caste marriage. Young generations who are educated do not follow the traditional culture. So they are found marrying the boy or girl they want to marry irrespective of their caste.

Besides these aforementioned external factors, social media is also playing a crucial role for boys and girls to get into a relationship. Facebook is the commonly used social networking site among the young generation where they easily make friendships and change friendships into love relations if they like each other. Once they fall in love, they get married without caring about the caste they belong to. Also, social networking sites help them get the support of the media for their protection after inter-caste marriage when they are threatened and forced for separation.

Due to inter-caste marriage, couples can face different problems. Some of these are mentioned below.

#### *i) Family problem*

Inter-caste married couples are tortured by their family members. Parents or family members of upper caste boys or girls do not allow their son/daughter to marry the lower caste one. If they go against their parents and marry, they are not accepted in the family.

*ii) The social and cultural problem*

Marriage is a social, cultural phenomenon and a matter of prestige in society. As the family is an integral part of society, inter-caste marriage becomes a significant concern in society. The parents of upper-caste boys or girls feel that they lose their prestige in the society when their son or daughter marries the lower-caste one, due to which either they force the couple to separate or leave home. Similarly, inter-caste married couples are excluded from cultural gatherings and ceremonies. They are deprived of performing the cultural rituals in the group.

*iii) Physical and mental torture*

This is the most serious problem faced by the inter-caste married couple. They cannot stay happily in the family and society. They are physically and mentally tortured until they get separated or leave society. Due to this reason, inter-caste married couples are found committing suicide, and they are kidnapped and killed as well.

According to the World Organization Against Torture (OMCT)<sup>29</sup> in January 2004, Manoj Khanga, a Dalit boy married Parbati Rawat, an upper-caste girl, in the Saptari district and was kidnapped soon after the marriage by the relatives of the girl. Due to this incident, the Dalit community was attacked by over 200 upper-caste people and was displaced. The boy was threatened that they would kill him in front of his family. According to the Asian Human Rights Commission,<sup>30</sup> Ajit Mijar, an 18-year-old boy, a Dalit by caste, who was married to his non-Dalit girlfriend Kalpana Parajuli, was found dead on 14 July 2016 in the Dhading district of Nepal. It is mentioned that the girl's relatives and the Aria Police Office forced the couple to abandon their marriage. The relatives of the girl took her forcefully and they threatened to kill the boy within 72 hours. After four days, Ajit was found dead, and his body was buried. The dead body of the boy is still in hospital and his death is not accepted by his parents who are demanding justice. In May 2020, two Dalit boys Nabraj BK and Tikaram Sunar, along with

<sup>29</sup> World Organization Against Torture, 'Nepal: violence against Dalits because of an inter-caste marriage' (OMCT SOS-Torture Network, 16 February 2004) <[www.omct.org/escr/urgent-interventions/nepal/2004/02/d2149/](http://www.omct.org/escr/urgent-interventions/nepal/2004/02/d2149/)> accessed 20 September 2020.

<sup>30</sup> Asian Human Rights Commission, 'NEPAL: Inter-caste Marriage Allegedly Ends in Murder' (Asian Human Rights Commission, 2016) <[www.humanrights.asia/news/urgent-appeals/AHRC-UAC-093-2016/](http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-093-2016/)> accessed 17 September 2020.

their four other friends, were found dead in the Bheri River after being allegedly attacked by an upper-caste group and chased into the river in the Rukum district of the Western part.<sup>31</sup> The case was due to inter-caste marriage. Nabraj BK, the lower-caste boy, went to marry an upper-caste girl Shusma Malla. They had been in a relationship for a long time and loved each other. When the family of the girl and villagers knew that Nabraj BK was coming along with his friends to take the girl, the villagers attacked the boys, beat them severely and threw them into the river.

There are many cases of discrimination and violation against inter-caste married couples.<sup>32</sup> On 26 June 2008, a family of an inter-caste married couple in Udaypur district was excluded from the society and the family got displaced. Sujan BK and Rupa Rai ran away from the family after they got married, due to which the family of the girl (non-Dalit) threatened to kill the Dalit family if they did not call their son and girl back. After the continuous torture and threats, the family was displaced. In 2009, Sagar Nepali and Sangita Thapa of Bhaktapur district got married, and due to the threats from the girl's (non-Dalit) family, the couple was displaced. The couple then appealed for protection from the government but couldn't get them due to lack of required documents and other procedures. There is the provision that the couple needs citizenship, proof of marriage registration and the signature of both parents of the boy and the girl to receive the incentives, which is very challenging, so most of couples are deprived from getting the incentives.

Taulan Kahar and Sarita Chaudhary from Kapilvastu district got married on 2 June 2010, but the couple forcefully got separated under the pressure of the State Minister Dan Bahadur Chaudhary, who was a relative of the girl. The couple, which was of legally marriageable age, got married with their will and consent, but the Minister who was the relative of the girl, continuously put pressure on local administration and police units to separate them. The boy who belonged to the Dalit family was falsely accused and charged on the case of trafficking the girl. Even the girl herself stated that she married the boy by her will and consent, cried and appealed not to separate them, but the administration handed

<sup>31</sup> R Dahal, 'Rukum West massacre: It's not only caste that killed Nabaraj BK, but poverty too' (*Online Khabar*, 15 July 2020) <<https://english.onlinekhabar.com/rukum-west-massacre-its-not-only-caste-that-killed-nabaraj-bk-but-poverty-too.html>> accessed 24 September 2020.

<sup>32</sup> R Budha, *Inter-caste Marriage* (Manu BK 2020) 125-147.



the girl to her family stating a security reason and, finally, the couple were separated. In 2011, Kiran Basnet and Sunita Bishokarma (a Dalit girl) got married in Dailekh. The community banned the boy's family from participating in the social rituals because the boy married a Dalit girl, and the couple was excluded from society. The couple registered a complaint to the police, but there was no hearing on that.

Bipatti Harijan married a non-Dalit girl, Bindeshori Bhar, in July 2013 in Rukum district. After the marriage, the girl's family started to threaten the boy and his family and attacked many times demanding to send their daughter back, due to which the boy's family was displaced. Before they left the village, the Dalit family went to the police office demanding their protection, but they didn't get any support. The family was harassed and were attacked in the presence of the police by the girl's relatives, but the police did not take any action against them. Finally, the family was displaced.

Police administration is the first agency to which the inter-caste married couples, who face violence, go for justice and security, but in some cases, police are found separating the inter-caste married couples. An inter-caste married couple who even registered their marriage in the court and got a marriage relationship certificate were separated following the involvement of police after demand and appeal from the girl's upper-caste family after she had married a Dalit. Suman Magarati and Urmila Khatiwada from Biratnagar got married on 7 March 2014. The couple left home after the marriage, and the police took Keshab Magarati, the father of the boy, in control and ordered him to call his son and the girl to the police station. After the couple got the news of the father's arrest, both of them presented to the police with the marriage documents of the court, but the police separated them and handed them to their parents. The girl was taken by her family, but the boy was kept in custody. When the boy appealed to the police not to separate them and release him from custody, he was beaten. When the police administration was asked for the reason for keeping the boy in custody, the police officer responded that the family of the girl had filed the case of missing their daughter, so they took action against the boy. The boy said that the family of the girl forcefully separated them because he is a Dalit, and the police also supported them.

These mentioned cases clearly state that inter-caste married couples faced violence and discrimination and the police, who is one of the law implementing agencies and has the responsibility for the justice

and protection of the inter-caste married couples and their family, is sometimes found supporting the majority (higher-caste) groups and not the Dalits which is a serious challenge for the inter-caste married couples in the justice process.

### 3.3 RIGHT TO MARRIAGE AND EXISTING LAWS ON INTER-CASTE MARRIAGE

The right to marriage is a civil right that has been provisioned and protected in different national and international human rights instruments. Talking about the international human rights instruments, the UDHR<sup>33</sup> states that ‘Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family and they are entitled to equal rights as to marriage, during marriage and at its dissolution’. Articles 23(1) and (2) of the International Covenant on Civil and Political Rights (ICCPR)<sup>34</sup> mentions that ‘The family is the natural and fundamental group unit of society and is entitled to protection by society and the state, and the right of men and women of marriageable age to marry and to found a family shall be recognized’. Similarly, the ICERD<sup>35</sup> states the right to marriage and choice of spouse. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>36</sup> in article 16 states the equal right to enter into marriage and the same right freely to choose a spouse and to enter into marriage only with their free and full consent.

Nepal, as a state party to the international conventions, has the legal obligation to fulfil and protect the rights of citizens by formulating the needed law and policies with its effective implementation and supervision. The government of Nepal makes its commitment to the international community to guarantee and protect the rights that are violated. In

<sup>33</sup> Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A (III)) (UDHR art 16(1)).

<sup>34</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, came into force 23 March 1976) 999 UNST 171 (ICCPR) art 23(1) and (2).

<sup>35</sup> International Convention on Elimination of All Forms of Racial Discrimination (adopted 26 December 1966, entered into force 4 January 1969) 660 UNTS 195 (ICERD) art 5(d).

<sup>36</sup> Convention on the Elimination of All Forms of Racial Discrimination against Women (adopted 18 December 1979, came into force 3 September 1981) 1249 UNTS 13 (CEDAW) art 16.

the Universal Periodic Review Report (UPR)<sup>37</sup> submitted to the United Nations Human Rights Council it states that ‘The Government of Nepal adheres to the human rights principles of equality, non- discrimination and respect for dignity of individual and endeavors with full commitment to ensure not only de jure equality but also its realization’.

Similarly, regarding the issue of Dalit discrimination, the same government report states that by amending the existing law in 2018 elaborating the rights, it has enhanced the penalties in the event of violation and also added the provision that anyone who has the knowledge of the incidents of offence can make the complaint for the victim.<sup>38</sup> However, in reality the government failed to fulfil its commitment. For instance, discussing about the same statement mentioned in the report regarding the amended provision of the law, the provision of the penalty/punishment is still the same, it is not enhanced and regarding the provision that anyone who has the knowledge about the incidents of offence can make the complaint, no programme has been initiated by the government to disseminate the law among the people and make known the acts of offence and the complaint procedures. So, without having the correct and sufficient knowledge about the introduced law and its specific provisions, how can a person make the complaint? This has not been considered yet by the government.

The government of Nepal is recommended continuously by the Human Rights Council and the CERD committee to address the issue of Dalit discrimination and inter-caste marriage with effective programmes and policies, amending the legal provisions of CBDU Act and its effective implementation. The United Nations Human Rights Council (UNHRC)<sup>39</sup> recommended to step up efforts in the fight against segregation and discrimination of ethnic and caste minorities including Dalits. Similarly, it recommends ‘adopting comprehensive anti- discrimination legislation which includes the direct and indirect discrimination and multiple intersecting forms of discrimination’. The United Nations Human Rights Committee in its concluding observations on the second periodic report of Nepal<sup>40</sup> states that:

<sup>37</sup> Universal Periodic Review Report (3rd Cycle) of Nepal submitted to Human Rights Council 2020, para 2.

<sup>38</sup> *ibid* paras 26 and 27.

<sup>39</sup> United Nations Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review Nepal’ (30 March 2021) A/HRC/47/10.

<sup>40</sup> ICCPR Committee, ‘Concluding observations on the second periodic report of Nepal’ (2014) UN Doc CCPR/C/NPL/CO/2, Recommendation No. 9.

the committee is seriously concerned at the lack of effective implementation of the CBDU Act and the persistence of de facto discrimination against Dalit community and the committee also regrets on the failure of the government to effectively implement its recommendations.

So, the committee again recommended to strengthen the measures to implement the Act, and also to ensure that the NDC can carry out its mandate effectively with sufficient resources.

The Committee on the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) in its concluding observation<sup>41</sup> states that ‘the Committee finds the persisting practices of preventing Dalits from safely marrying the members of the other caste as deep concern’. Similarly, the committee shows concern on the lack of effective implementation of the law and the report that ‘law enforcement officials are reluctant to act *suo motu* upon caste-based discrimination and do not upon receipt of related regulations consistently file the first information reports with a review to initiating criminal investigations’. The Committee, therefore, recommended the state to (a) ‘Monitor, investigate, prosecute and sanction incidents of violence linked to inter-caste marriage and caste-based segregation, and offer protection and remedies to victims’, (b) ‘Conduct country-wide public awareness and education campaigns designed to eliminate the notion of racial or caste-based hierarchies, end social segregation practices and prevent inter-caste violence’ and (c) ‘Ensure that all criminal complaints of race-based discrimination are formally recorded by law enforcement through first information reports and that law enforcement officials who fail to do so are sanctioned.’<sup>42</sup> The IDSN, in its report to the United Nations Universal Periodic Review, mentioned the barriers for Dalits in accessing justice. These are pressure on victims (Dalits) for forceful negotiation in the name of social harmony, security threats to victims, undue political influence and not supportive attitude of Dalits. So, the government of Nepal should fulfil its commitments in addressing the issue of caste-based discrimination and implement the recommendations given by the Human Rights Council, Human Rights Committee, and the CERD

<sup>41</sup> CERD Committee, ‘Concluding observations on the combined seventeenth to twenty-third periodic reports of Nepal’ (2018) UN Doc CERD/C/NPL/CO/17-23, Recommendation No. 11, 12 and 14.

<sup>42</sup> *ibid.* Recommendation No. 12 (b), 14 (a) and (b).

committee to guarantee and protect the rights of Dalit in practice.

The Office of the High Commissioner for Human Rights (OHCHR), since 2005, has been giving special attention to discrimination against the Dalits in Nepal, which mainly focused on developing national mechanisms against discrimination that highlights the remedy or access to justice for the victims of caste discrimination.<sup>43</sup> In order for this to be achieved, a campaign to raise awareness of the existence of the CBDU law and advocacy on its implementation to secure access to justice of the minority group under the said law is needed. The OHCHR also mentions that some challenges include cases in which the complaints are not prompted at the initiative of local lawyers; instead, human rights defenders provide legal aid and counselling. Moreover, victims are not encouraged by families to report the crimes.

Similarly, failure or delayed registration of the First Information Report (FIR) by police and failure to protect victims is another challenge. The OHCHR has also given recommendations for the effective implementation of the new Act, wide dissemination of the Act with guidelines for victims and the general public, and to provide training to police officers at central and district levels on their roles and responsibilities.

Discrimination based on caste is a human rights issue which not only exists in Nepal but also exists in other South Asian countries like Pakistan, Sri Lanka, Bangladesh and most similar situations in India. However, the incidents of discrimination, especially in terms of inter-caste marriage discrimination cases, are relatively much higher in Nepal. The law in India directly addresses the issue, which seems a positive and good policy of the government. For example, there is a law dedicated to addressing this issue through the Special Marriage Act (1954).

Inter-caste marriage in India seems like a taboo where people are expected to marry within their caste. Due to the number of honor killings reported every year, there came a grave need for a law to safeguard the interest of those people who rose above these caste and religious divides, to marry for love so the parliament enacted Special Marriage Act 1954.<sup>44</sup>

<sup>43</sup> B Cobley, 'International Consultation on Caste-Based Discrimination' (International Dalit Solidarity Network 2012) 32-33.

<sup>44</sup> A Bag, '10 things every Indian should know about the Special Marriage Act, 1954' (*Pleaders Intelligent Legal Solutions*, 9 December 2014) <<https://blog.ipleaders.in/10-things-every-indian-should-know-about-the-special-marriage-act1954/>> accessed 12 October 2020.

After the enactment of this law, many inter-caste marriages take place successfully, and the situation and attitude toward inter-caste marriages have positively changed since then. Additionally, the Maharashtra state government in India has proposed a special law, ie, the Inter-caste Marriage Act, to protect inter-caste marriage where the government is in the process of drafting legislation that provides security and financial assistance to couples.<sup>45</sup> With the collaboration of the law and judiciary department, lawyers, academics and other states, the state has formed a committee for this purpose. The state government has come up with a special scheme to give financial assistance of 50,000 rupees, approximately CAD\$1280, to couples marrying inter-caste, as well as some expenses to set up their households. With its effective implementation, the provision of penalties for offences against inter-caste couples is made where they will have research centres to look into the issue of inter-caste marriage. Furthermore, the constitution has also made a provision regarding the right to marriage. These are regarded as really good initiatives of the government, and it is believed that such initiatives would contribute to the promotion and protection of inter-caste marriage.

Talking about existing law and policy in Nepal, the CBDU Act was introduced in 2011, including some provisions on the marriage of Dalits. Section 2(f) of the CBDU Act states 'each person shall have the right to marry and choose the bride or bridegroom'. Similarly, section 4(11) of the Act mentions:

no one shall, on the ground of origin, caste race, descent, community, occupation or business prevent a person of marriageable age under the prevailing law from getting inter-caste marriage or deny to perform the naming ceremony for the person born from such marriage or compel, or cause to compel, one to dissolve the already concluded marriage.

In Nepal, there is no specific law on inter-caste marriage that could address the issue of the Dalit community in terms of their marriage, however an initiative has been taken as the Government of Nepal, on 13 July 2009, announced they would provide a grant of 100,000 rupees, approximately \$1,350, to the newly married inter-caste couple within 30

<sup>45</sup> M Phadke, 'Maharashtra is drafting a special law to protect inter-caste marriages' (*The Print*, 30 March 2018) <<https://theprint.in/india/governance/maharashtra-is-drafting-a-special-law-to-protect-inter-caste-marriages/45850/>> accessed 29 February 2021.

days of marriage registration, but this is not in implementation.<sup>46</sup> The government introduced this financial scheme to promote inter-caste marriage and financial support to married couples who face a financial crisis after marriage since the majority of inter-caste married couples are not financially stable and get displaced.

The Caste Based Discrimination and Untouchability Act 2011 provides a legal regime of preventative and punitive measures to end caste-based discrimination; however, it includes an inadequate punishment in the view of the seriousness of the crime, restrictive statutory limitation and a lack of protective measures for victims and witnesses.

The implementation of provisioned legislation seems weak, due to which the situation of Dalits in Nepal is not improved. Although inter-caste marriage is legally accepted, socially it remains unacceptable, and almost 90% of Nepalese do not engage in inter-caste marriage.<sup>47</sup>

Dalits who are involved in inter-caste marriage face threats, killings, displacements, physical punishments and violence.

Though the CBDU Act criminalises a range of actions amounting to segregation, including inter-caste marriage, caste-based discrimination and untouchability practices, very few incidents of such practices are investigated and perpetrators are not punished. Similarly, the Act has made the provision of punishment for the person who commits any act against this law imprisonment for a term from two months to two years or a fine from 20,000-100,000 Rupees or both but this is not implemented effectively and so incidents like murder, threatening and kidnapping due to inter-caste marriages are still going on.

The National Civil Code 2017 and Nepal Marriage Act 2011 have mentioned some provisions on marriage. Article 68 of the Civil Code mentions marriage to be an inviolable social bond. Marriage shall be a permanent, inviolable and holy social and legal bond that is based on free consent and established to start conjugal and family life between a man and a woman. Similarly, article 69 mentions the freedom of marriage as it states every person shall, subject to law, have the freedom to conclude a marriage, establish a family and spend a conjugal life, and

<sup>46</sup> R Bhusal, 'Intercaste Marriage: Social support and family care in contemporary rural Nepal' (Research Gate 2014).

<sup>47</sup> *ibid.*

every person's family life shall be inviolable. The Nepal Marriage Act 2011 has mentioned the conditions of marriage, divorce, age limit and restriction on child marriage and bigamy. Though both the laws have made provisions on marriage, none of them addresses the issue of Dalits regarding their marriages. Except for Dalit people, all other people have enjoyed their right to marriage as per the law. So, law and policy that could address the issue of Dalits with effective implementation seem necessary.

The studies carried out so far on the issue of discrimination against Dalits show that few laws and policies are provisioned to address the issue, but there is a problem in the implementation from the concerned authorities due to which Dalits are still discriminated against and are not able to fully exercise their rights. Since this issue is understood or taken as a part of culture under the Hindu religion, neither the government nor the public show much concern to fight against this. The truth is cultural practices under any religion that are discriminatory to any particular group, which seize their freedom and violate their rights, should not be protected and continued anymore; rather, it should be abolished by introducing strict laws and effective implementation. The government seems more reluctant to make strict laws and their implementation to address this issue. This may be the reason that very few studies are carried out on the issue of inter-caste marriage of Dalits, but none of them have explored and presented the existing laws, policies and implementation aspect, which is very crucial to promote and protect the right to inter-caste marriage of Dalits. So this research will focus on this gap.



4.

FINDINGS AND ANALYSIS

4.1 DIFFERENT PERSPECTIVES ON THE SITUATION OF INTER-CASTE MARRIAGE  
OF DALITS IN NEPAL

In the context of Nepal, the violence against inter-caste married couple is a callous inhuman act. The couples go through serious social and psychological traumas and hazards. Their right to live with freedom in the nation has been seized due to this issue.

Many couples are compelled to leave the nation and stay in the neighboring country India after the incident. They have left home, their district, and this has violated their right to live with full freedom and dignity and right to education of their children. Until inter-caste marriage is promoted, we cannot end the age-long caste-based discrimination in Nepal. The government has to take the issue seriously to promote inter-caste marriage and protect the inter-caste married couples; otherwise, it destroys the peace, harmony, and stability of the society and the nation.<sup>48</sup>

Marriage of Dalits with non-Dalits in Nepal is unacceptable, which is one of the serious and challenging human rights issues, but the state has not shown serious concern on this issue. There had to be more advocacy on this from the government's side and had to bring the separate law on this particular issue but the government has not done yet. Very serious and inhuman incidents take place due to the marriage of Dalits with non-Dalits. The upper-caste people make different conspiracies and false accusations for separating inter-caste married couples.<sup>49</sup>

<sup>48</sup> Interview with Bishwokarma, Chairperson of National Dalit Commission (in person, 14 June 2021).

<sup>49</sup> Interview with Sob, Chair of Feminist Dalit Organization (Zoom, 13 June 2021).

Both the key respondents in some points shared similar views that the issue of inter-caste marriage of Dalits is a very serious phenomenon in the sector of human rights in Nepal, and the violation against inter-caste married couples is a grave violation of human rights, which the government has not found as much serious as it should have. However, Sob argues for the provision of separate laws addressing the issue of inter-caste marriage. She further shared the views that in the marriage of a Dalit boy and non-Dalit girl, if the girl is underage, the boy is charged with forceful child marriage even though the marriage is done with full consent of both boy and girl. In the cases where both the boy and the girl meet the legal age criteria; then again, the boy is charged in the case of kidnapping, rape and girl trafficking. Similarly, in the marriage of a Dalit girl and a non-Dalit boy, the girl has to go through violent incidents and is also deprived of exercising other rights.

The legal age for marriage in Nepal is 20 years; however, it is also practiced that a boy and girl of 18 years can start the conjugal life with the will and consent of both. But in most situations inter-caste married couples aged 18 years are charged for underage marriage and they are separated. If the marriage is between upper-caste boys and girls, age does not become such a serious issue which means couples are not separated by the family and society even if they are under the age of marriage. In such a situation, even the family does not disclose such marriage due to the fear that legal action will be taken against them. Some of the research informants shared this fact in interviews, and this indicates that the problem is with the caste, not with age, in the cases of inter-caste marriage of Dalits.

Discrimination against Dalit and inter-caste marriage has challenged not only the rights of Dalits but also of all, and it is not only the issue of Dalits; rather, it is also the issue of non-Dalits. Many studies and research have shown that inter-caste marriage is a vital and powerful tool to end caste-based discrimination and to enhance the social interaction among all the members in the society.<sup>50</sup>

He further said, at the same time, inter-caste marriage has brought many challenges as well. So, it is both a means of social transformation and a serious challenge in promoting human rights. ‘After all the studies,

<sup>50</sup> Interview with Pariyar, Chair of Samata Foundation (Zoom, 10 June 2021).

research, interaction with the organizations and experts, I have come to the conclusion that inter-caste marriage can play an important role in the social transformation by ending the existing discrimination.<sup>51</sup> Meanwhile, the challenge is protecting inter-caste married couples and their family members, especially Dalits. After marriage, they undergo various violent incidents and challenges, so for this, certain measures should be taken.

First, those involved in any kind of violence against inter-caste married couples should be strictly punished. Transformation of the society through the spread of knowledge and awareness on the various aspects of the issue is another crucial step that should be taken where there is a need for coordination of every sector.<sup>52</sup>

Protection house where victims of inter-caste marriage are kept until their readjustment in the family and society, employment opportunities, incentives and honour to the inter-caste married couple in public for their courage to fighting against prevailing caste system in the coordination of federal and local government can play an important role in the promotion of inter-caste marriage.

Inter-caste marriage is the matter of individual freedom and the right of choice. International human rights treaty ICERD and ICCPR have provisioned marriage as a matter of right and freedom. Since Nepal is a state party to these treaties, it has legal obligations to adopt these provisions in its domestic law. In the context of Nepal, when it is the matter of marriage of Dalits with non-Dalits (inter-caste marriage), it is not accepted by the so-called upper-caste people in the society and also not performed as per the rituals and consent of the family members. So it has remained a very complicated issue in Nepal. Only the inter-caste marriage takes place due to deep love and affairs between Dalit and non-Dalit boys and girls. After the marriage, they go through various challenges and incidents.<sup>53</sup>

Marriage is the rights of two individuals, but while analysing it from eastern approach or value, it is also the relational right. So, marriage in the Nepalese society, which is guided with such value, is not just the contract between two individuals rather the contract between two families due to which the inter-caste marriage is posing so many serious

<sup>51</sup> Interview with Pariyar, Chair of Samata Foundation (Zoom, 10 June 2021).

<sup>52</sup> *ibid.*

<sup>53</sup> Interview with Nepali, Lecturer and Advocate (Zoom, 15 June 2021).

problems. In the context of Nepal, yet the inter-caste marriage has not been dealt a combined approach which is legal, social and psychological. Together with socio-economic, the psychological part is yet to be properly understood by the law drafters and law implementers, which is very crucial to deal with the issue. Discrimination and untouchability are interpreted as social evil by the court, criminalised by the penal code and the separate Act but the Social and psychological interventions are not in right track. So the issue of inter-caste marriage should be dealt more psychologically because being educated is not sufficient, being sensitive and self-realisation is important.<sup>54</sup>

Through the mentioned different perspectives of the key informants on the situation of inter-caste marriage in Nepal, it can be analysed that the inter-caste marriage of Dalits is a very serious phenomenon in Nepal. Discrimination and violation against inter-caste married couples violate the rights to freedom, self-respect and live with dignity of Dalits and destroys peace, harmony and development of the society and nation.

#### 4.2 CHALLENGES IN THE IMPLEMENTATION OF LAW

Law is a powerful tool to give punishment to the offenders and justice to the victims. It is achieved and realised in practice if the provisioned law and policies have their effective implementation. Various factors are responsible for the effective implementation of the provisioned law. Accountability and commitment of the concerned law implementing agencies towards their duties and responsibilities and dissemination of the law and its provision among the public play a pivotal role. Similarly, management of the needed resources in the implementation of the law and identifying and addressing the challenges and barriers that occur in the implementation of law can bring effective results. Challenges and barriers in the existing law cause problems in its effective implementation. Even the best law and policies may not have good and expected results if it does not have effective implementation due to different challenges. So, it's very crucial to identify and address those challenges and barriers. There have been found some challenges in the implementation of existing laws on inter-caste marriage. The major challenges among the identified are highlighted and discussed in this section.

<sup>54</sup> Interview with Pathak, Senior Advocate and Law Professor (Zoom, 20 July 2021).

Firstly, the old mindset and attitude of the higher-caste people towards Dalits has created a challenge in implementing the law. Higher-caste people are not found respecting and obeying the provisioned law in the cases of inter-caste marriage and caste discrimination. People live in society and are guided by particular ideologies which are framed based on norms, values and culture of that society. These framed ideologies are always guided by the majority groups in the society, and when any individual or group goes against those values, the majority groups react against that. Religious beliefs, social norms and values seem stronger and obeyed more by the people.

People in Nepalese society are deep rooted in the traditional religious and cultural beliefs and practices. They have discriminatory attitudes towards the Dalits, who are at the bottom of the caste hierarchy and are regarded as untouchable. The image of so-called higher-caste people towards Dalits is that they are poor, uncivilized, involved in traditional low-status occupations like goldsmith, tailors, shoemakers, street cleaners, etc. Due to such mentality of the non-Dalits in Nepalese society towards Dalits, they do not accept the marriage of Dalits with non-Dalits since marriage is the matter of blood relation and the process of social interaction. A higher-caste person marrying to Dalits is regarded as defaming the family honour and prestige. When people in the society do not accept the law, it becomes a failure itself.<sup>55</sup>

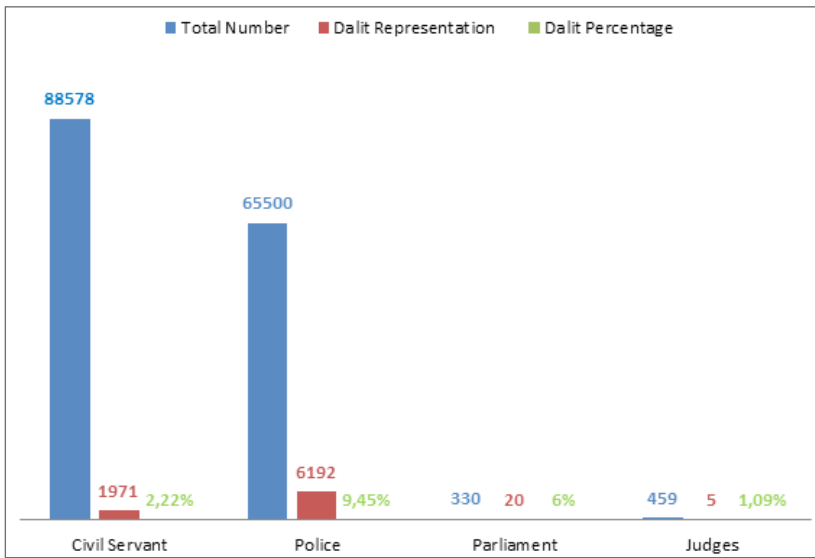
All the key informants (nine) have the same view that religious beliefs, social norms, values and the old discriminatory mindset of the higher-caste people in the society have remained a challenge in the implementation of law related to caste-discrimination and the marriage of Dalits with non-Dalits. However, when we analyse the situation from the human rights perspective, fundamental rights of the people are prioritised more than the social norms, values and religious or cultural beliefs of the people.

Second, in the law implementing agencies, the police administration, the government attorney office and the courts, the highest decision-making power is held and exercised only by the so-called higher caste people. Dalits have a very poor representation in all the law implementing agencies, and those who are represented are not in the power exercising and decision-making positions. According to the data provided by the Samata Foundation, the representation of judges from

<sup>55</sup> Interview with Nepali, Lecturer and Advocate (Zoom, 15 June 2021).

Dalits in the judiciary is 1.09%, in police and the parliament is 9.45% and 6%, respectively. So, when it's the cases of inter-caste marriage or caste-based discrimination, the higher-caste people in these agencies are not found to be strict in the implementation of the law. For instance, the chair of the NDC in the interview said that among 93 registered cases of untouchability and caste-based discrimination in the courts in 2020, only in three cases the offenders got punishment. Lawyers are also not found to be sensitive to the issue, it is found that the cases of victims are filed with poor evidence which makes the case weak. Similarly, political leaders who are in the government and power are the product of this same society, so they go with the social values, norms and traditions of the majority group. Politics is the power, and only higher caste people, mostly the Brahmins (who are on the top of the class hierarchy), are in the power-exercising stages for age.

Figure 4: Dalit representation in law implementing agencies



The third challenge Sob mentioned in the interview is the lack of awareness and knowledge among the people in society about the law related to caste-based discrimination and inter-caste marriage. When the law is introduced to address a particular issue and problem, its dissemination is crucial among the people in society and concerned law enforcement agencies. Similarly, the people also need to know that

discrimination against Dalits in any form and violation against inter-caste married couples is a violation of rights, and the violators of the human rights are subjected to the punishment under the law.

Victims don't have knowledge of the law and legal procedures. The law is also not disseminated in the community police units and public. There is no training for police officers to legally handle this particular case or issue of inter-caste marriage, which is crucial. They should feel the sensitivity of the cases and act accordingly.<sup>56</sup>

This fact has also been realised during the interview process. Among the four interviewed inter-caste married couples, none of them knew about the specific law CBDU Act introduced by the government to address the issue of caste-based discrimination and inter-caste marriage of Dalits. When the people in the community, including police units who are one of the law implementing agencies, are unaware of the existing law, its provisions and justice procedures, it creates a serious challenge in the implementation of the law. If the people in society know about the acts which are regarded discriminatory under the law and what punishment they shall get for committing such acts, they will somehow hesitate to commit those discriminatory acts. Similarly, for the victims of caste-based discrimination, including inter-caste married couples, it is important to know about the law and its provision so that whenever they face violence and discrimination, they can go through the legal process as per the provisions for their justice.

Another challenge is the withdrawal of the registered case by the victims. When the complaint is registered by the victims to the police, with the investigation, the case proceeds for the further legal process but the victim at this stage requests and asks to withdraw the case and go for negotiation. So if the victims themselves request for the withdrawal of the case they registered, then it cannot proceed.

one of the challenges while going through the legal process is HOSTILE, which mean once the complaint is made by the victim and the case is registered, it proceeds to the government attorney office for the court procedure, but during this stage, the victim who registered the case asks to withdraw it mentioning the reason that the complaint was the provocational and want to go with negotiation.<sup>57</sup>

<sup>56</sup> Interview with Sob, Chair of Feminist Dalit Organization (Zoom, 13 June 2021).

<sup>57</sup> Interview with Police Officer (in person, 4 June 2021).

The Attorney General also shared a similar view that changing the statement of the case by the victim in the court creates a problem.

The cases related to caste-based discrimination, including violence against inter-caste married couples, are registered as the state party case, but the sudden change of the statement by the victim in the court makes the case weak, and the defendant wins. There is nothing that can be done once the statement of the victim is changed.<sup>58</sup>

However, advocates and the chair of NGOs working on the issue of Dalits have different arguments on this. They argue that these are very rare cases, and it happens when the victim is under pressure and threatened to do so. Due to security reasons, sometimes victims have such responses. This seems a sound argument because victims are found withdrawing the cases and changing their statements in the court due to the pressure on them from offenders and insecurity they feel for them and their families in the future. So, it is the responsibility of the government and the police administration to consider the point seriously and give protection to the victims and their families after they lodge the complaint.

The political pressure on the case investigating officers while registering the complaint of the victims has also been found to be a challenge in the implementation of the law. Some of the cases mentioned in the previous part also showed that political pressure causes delay and sometimes denying registering the complaint due to which victims do not get justice and offenders are encouraged to commit the same offense again.

Sometimes there is also political pressure if the offender has a political background and is close to the political leaders who are in the government. However, we try our best not to be influenced by those pressures, but it causes a delay in the case process.<sup>59</sup>

The Attorney General responded to the situation of delaying and denying in registering the complaint as the situation of joint applications of couples is very rare in the case of inter-caste marriage. Both the boy and girl should present at the police office to register the complaint about any violence they face due to their marriage, but it does not happen.

<sup>58</sup> Interview with Badal, Attorney General (in person, 10 July 2021).

<sup>59</sup> *ibid.*



In most situations, only one party goes to register the complaint, and another party in the counter, registers the complaint of rape, forced marriage and child marriage. Police have to go for the investigation, and serious cases should [be] and are prioritised first, and this fact has created a misconception among the people.<sup>60</sup>

Nevertheless the statement that the joint applications by the inter-caste married couples are rare is true, the reasons behind this are; first, the couple does not go together to register the complaint due to the fear of a forceful separation which is clear from the mentioned cases in the previous section, and the second is the victim goes to register the complaint after they are forcefully separated from the family. So this situation should be considered from the victim's perspective.

### 4.3 CHALLENGES FACED BY THE INTER-CASTE MARRIED COUPLES IN THE JUSTICE SYSTEM

The number of inter-caste marriages is increasing these days. Nepal Monitor reported seven cases of violation against Dalits on the issue of inter-caste marriage in 2020 and 2021 only, and many incidents of inter-caste marriage in rural parts remain unreported due to lack of media access. The present young generation is challenging the traditional social norms and traditions and marrying the person whom they want. Inter-caste marriage takes place due to love affairs, and it is not performed as per the social rituals because society and the family do not accept it. Since the marriage between Dalits and non-Dalits is not accepted by society, they have to struggle hard for it and go through different challenges. While going through legal procedures for their protection, they are found facing different challenges. The government has a major responsibility for the implementation of the law through its concerned agencies. Since the case of any kind of violation against an inter-caste married couple is registered as the state party case, the police units also have the major responsibility in the implementation of the law as they should initiate the case for a legal process. But it is so sad to say that the cooperation and the seriousness from the police do not seem satisfactory in most of the cases.

<sup>60</sup> Interview with Badal, Attorney General (in person, 10 July 2021).

When couples go to the police station to register the complaint after they get threatened by the upper-caste family, the police call the families of couples and the couples are forcefully separated. Due to such fear of forceful separation, the couples instead of going to the police run away from the family and society. Similarly, when the couple goes to register the complaint after they face any violence and threat, the complaint is not registered right away. The police officers at the police unit generally respond as the complaint can be registered after the investigation of the case and the evidence.

When any couple comes to us with the complaint that they face violence and threat, first we should go for the investigation to find the truth of the complaint and the nature of violence in detail. Without investigation of the case and sufficient evidence, police cannot register the complaint.<sup>61</sup>

So, by the time the complaint is registered, the couple faces more violence and gets separated in most of the situations. When the couple escapes from the family and society, the family of Dalit (boy or girl) is threatened and tortured.

we were in a love relationship for three years. When the family of my partner (girl) knew that she is in love with me, they planned to marry her with another boy of a similar caste. When she shared this to me, we planned to escape with the consent of both, and we stayed for a few days in the deep forest. After we escaped from the village, my family was threatened that if they did not call us back, then they would kill them and me. My father called and told me that the girl's family wanted us to return back because they wanted to know whether the girl loves me and escaped with me with her consent or I forcefully took her. After my father asked me to return and talk with them, we returned back. When we returned home, my partner was beaten and forcefully taken back; they didn't communicate with us, they also harassed and threatened me not to follow their daughter anymore. In support of media and Dalit activists, I went to the police to register the complaint, but the police said that they need both of us (me and my partner) to register the complaint, so my complaint was not registered. Later, I came to know through the activist that the father of my partner filed a case of forceful marriage and kidnapping against me. Now I am in great agony and tension; I don't know where they have kept my partner, my family is also not supporting me, and they do not want me to go to the police for complaints anymore because they are still being threatened. The girl's family has a strong political background, they are so powerful, but we do not have anyone

<sup>61</sup> Interview with Police Officer (in person, 4 June 2021).

to fight for us, so they are threatening my family, and we are helpless now, but I will do everything to get my partner back because we love each other very much and cannot stay apart from each other.<sup>62</sup>

In this case, the boy is Dalit and the girl belongs to the upper-caste. They were both above the age of 18 years. Though the legal age for marriage is 20 years, Nepalese law permits marriage and the right to establish a family to the man and woman who are the age of 18 years with the consent of both. The family of the girl who already wanted to marry their daughter with the person of their caste after they knew of their daughter's relationship with a Dalit boy and later filing the case of forceful child marriage against the boy shows the intention of the upper-caste family that they did not want to marry their daughter with the lower-caste Dalit boy. This is the reflection of the mindset of so-called upper-caste people in Nepalese society.

It is found that inter-caste married couples face less challenges and violence if they get support from the activists, media and political leaders who represent the Dalit community. This also supports registering their complaint to the police and other concerned agencies. One of the inter-caste married couples shared such an experience.

When we got threats after marriage, we informed the media and Dalit activists about our situation. A politician who was the Member of Parliament representing Dalits also supported us in registering the complaint. They advised us to register the complaint to the police in their presence. Our complaint was registered, and we also got married publicly at the police office. We haven't got any threats and torture after that, but we are still not invited to family (upper-caste) and involved in any family rituals; however, we are happy now and would like to thank the activists and political leaders who supported us. We also like to suggest other inter-caste married couples who face the violence that inform and get connected to the activist, leader or organisation that may support you, and then you go for the other legal procedures.<sup>63</sup>

This case reveals the situation that inter-caste married couples who go through the violence and challenges are not confident to go to the police for registering the complaint; rather, they wish to go to the activists, media or organisations for support and their protection. It also indicates that the inter-caste married couples seem to be losing

<sup>62</sup> Interview with Bishwokarma 19 and Rawal 18, inter-caste married couple (phone, 20 May 2021).

<sup>63</sup> Interview with BK 20 and Shrestha 19, inter-caste married couple (phone, 20 May 2021).

faith in the police administration. Similarly, the case also indicates that the complaints of inter-caste married couples who face violence are registered faster and earlier if the pressures are created to register it. So, the police administration, which is one of the law enforcement agencies, should analyse and consider this point to develop the faith of victims in police and make them confident to go for registering the complaint if they face any violence or threat.

The time period to register the complaint is also seen as challenging for the inter-caste married couples who go through violence and discrimination. It is provisioned in the law that the person who faces any violence and discrimination on the basis of caste should register the complaint within three months from the date of commission of the offence for legal help and justice. Generally, after marriage, the inter-caste couples do not stay in the family and village due to security reasons; they escape and go to another district or city. They also do not go to the police for legal support because they are afraid of the forceful separation. Due to this situation, the time period to register the complaint is passed, and they cannot go for the further legal process of justice. Unless the complaint is registered, the case doesn't move for further process, and the victim is deprived of getting justice.

We got married in the temple and went to Kathmandu as we didn't feel safe at home because we were getting different threats. We also planned to escape India and stay there for some time, but later we did not go. We remained contact less for a long time with the family. I (the boy) decided to return back to the home once to meet my parents, leaving my partner here in Kathmandu. When I returned home, I also went to the police office to register the complaint and asking for my security, but I was told that for the complaint, both of us are needed and the time period to register the complaint is already passed, so my complaint was not registered then I returned back, and now we are still staying here away from the family. We do not want to return home.<sup>64</sup>

One of the reasons for refusing to register the complaint by the police is the victim not registering it within the provisioned time period. The police officer in the interview said that sometimes they cannot register the complaint of the victim due to the reason that the time period of registering the complaint is already passed, so they have to obey the law. So the victims also need to be aware and know about these legal conditions or provisions.

<sup>64</sup> Interview with Nepali 22 and Thapa 20, inter-caste married couple (phone, 3 June 2021).

Lack of security and protection to the victims who lodge complaints is another challenge. Dalits who face incidents of discrimination and violence, including inter-caste marriage, hesitate to make the complaint against violators due to security reasons. They face more violations and threats when they register the complaint, and at that time, they do not get the proper security. It is found that the (Dalit) families of inter-caste married couples are threatened and tortured by the upper-caste families and also warn not to register the complaint. It is generally the situation when the couple leaves home and village. There are cases of burning the houses, displacement of the family and murder of the Dalit family members in the issue of inter-caste marriage.

We were in love for two years. My partner belongs to upper-caste, and her family knew about us and warned me not to continue the relationship anymore, but with the decision of both of us, we ran away from the village because we loved each other very much. My partner's family knew the place we were staying, and they caught us. Senior villagers called my family in the mediation meeting and blamed me for luring my partner to marry me, but it was not true because we loved each other and wanted to marry. Then they forcefully separated us and warned us not to see each other in the future. After the incident, my partner went through mental trauma due to our separation, so again we ran away and got married. After two days, my father and brother were called by the parents of my partner at their home and beaten up asking about us. My aunt filed an FIR at the police stating about the incident and requesting the investigation and protection of the family. When police visited my family, the perpetrators threatened the complainants that they would kill all the family members. Threats were given in the presence of the police, but the police returned without investigating the case. After 15 days, a group, including the family of my partner, came to my home at 9:30 pm and attacked my family. They stabbed my father with a curved knife in his chest and beat other family members. My father died on the way to the hospital. Police came only the next morning though they were informed about the incident right after. I registered the case of murder at the District Police Office; among the arrested nine suspects, five were transferred to the jail. Had the police taken the incident of violation against my family seriously at the beginning when FIR was registered demanding legal action against the offenders, my father would not have been killed. It's been more than ten years that we have been staying away from the family and village. We also haven't received the incentives that the government provisioned for inter-caste married couples.<sup>65</sup>

<sup>65</sup> Interview with Nepali 21 and Shahi 21, inter-caste married couple (phone 28 May 2021).

Protection of inter-caste married couples and their (Dalit) families is very crucial. The police administration has greater responsibilities on this part, but there are few complaints on the performance of the police officers who are involved in handling the cases.

Police are found supporting and helping the people from the offender's side, and we should say that it's the reflection of the society revealed on the behaviour of the police. We have been reported of the unsupportive and unexpected role from the police in some cases of inter-caste marriage, so we are appealing to the government to develop the cooperative and positive mindset of the police involved in case investigation.<sup>66</sup>

The chairperson of the Feminist Dalit Organization also shared the similar view that the cases of violence against inter-caste married couples only go through the legal process if the police units and government are pressurised; otherwise, in the rural areas where Dalits have poor access in every sector, the cases are dismissed. When police do not show much concern in the case and are found supporting the majority groups, then the couples who face violence do not believe and trust the police anymore and do not go to register their complaint. Hence, when police receive an FIR on the cases related to violence and discrimination based on caste, immediate action should be taken against the offenders with the proper investigation of the case. If this happens, the offenders will hesitate to repeat the same offence, and the victims are encouraged to speak up and register the complaint when they face violence and discrimination.

Regarding the complaint of inter-caste married couples on not receiving the incentives that the government announced, it is found that the incentive scheme was discontinued after such demand from Dalit leaders and activists. The Attorney General said that the incentive scheme was brought with the positive intention to promote the inter-caste marriage in Nepal, but after the demand from Dalit leaders and activists to discontinue it, the government did so. The Dalit leader and activists responded that though the incentive scheme was introduced with positive intention, it caused some serious social problems like marrying Dalit girls and leaving them after receiving the incentives. It happened among the youths; the higher-caste youths started to marry the Dalit girls just for the sake of money, and some incidents of torture and sexual abuse were also reported, so there was a demand to discontinue the incentive scheme.

<sup>66</sup> Interview with Bishwokarma, Chairperson of National Dalit Commission (in person, 14 June 2021).

## 4.4 GAPS IN THE EXISTING LAW

In Nepal, the Civil Code 2017 and the CBDU Act 2011 have provisions on marriage and the right to marriage. The CBDU Act is the specific law that talks about the issues of discrimination against Dalits and inter-caste marriage. The mentioned provisions of the law are positive and have addressed the issue. However, few gaps have been identified during the study. The key informants have different views on the identified gaps, but it is supposed to have positive results if these gaps are addressed. The views of the government representatives on the gaps differ from the views of other key informants, which have been discussed in this section. First, it is provisioned in the law that the person who is proved to be committing any act which is regarded discriminatory or any violence against Dalits and inter-caste married couples based on the caste is charged for imprisonment from three months to three years. Advocates, NGOs working on the issues of Dalits and the NDC argued that the problem with this provision is offenders are released on a general bail, and they even do not realise that they have committed any crime and involve in the same offence again. This provision is applied according to the national law, which mentions that any person committing a crime that is punishable by up to three years imprisonment shall be released on bail under the law. So they argue that if the existing law against caste-based discrimination makes the provision of punishment for more than three years, up to five years imprisonment, then there are more chances that the offender is punished under the law, and other people also hesitate to commit such offences.

The government representative, on the other hand, presented a different view on this. He said that this is not a valid argument and it is a wrong concept that increasing the time of imprisonment and hard punishment to the offenders controls and decreases the rate of crime. The countries which have the provision of hard punishment in the law, even the death penalty, still have a record of high rates of crimes, so instead of such provision of hard punishment, the existing law should be fully implemented, and more concern should be shown on changing the perception and mindset of the people who involve in such types of offenses. Though the view of the government representative differs from the view of other key informants, considering and prioritising the views of majority informants, it will be good to practice and evaluate the new provision because we generally cannot analyse the consequences of any

legal provision until it is practiced/implemented and evaluated.

Second, in the existing law, there is a provision that the burden of proof is shouldered on the victims, which means the victims of caste-based discrimination, including inter-caste marriage, should collect and present the evidence of violence against them. As stated by the key research informants, the problem with this provision is in the cases related to caste-based discrimination and violation against inter-caste married couples, the violations are emotional and psychological like mental torture, verbal abuse, threats, expression and actions that harm the self-respect and dignity, which have a very serious impact on the self-dignity and mental well-being of the victims but cannot be shown in the visible form. So in such types of incidents, the victim cannot show or present the evidence. To register the complaint against violence, evidence is required, and in the court also the victim should present the evidence, otherwise, the victim cannot go for any legal justice procedures. So due to the legal provision that the burden of proof is imposed on the victim, many victims lose cases and are deprived of getting justice when they cannot collect and present the evidence or the proof of violence against them. However, the senior advocate and law professor in the interview said that there is a gap in the existing law in addressing this particular problem.

The Act has failed to state that the caste-based discrimination and violence against inter-caste marriage is a serious crime against society. Once the law states this, the burden of proof lies on the prosecution that means the state. The burden of collecting the objective evidences lies on prosecutions, not on the victims and accused.<sup>67</sup>

Third, the law has provisioned a three month time period to register the complaint for inter-caste married couples who face violence and discrimination after marriage. It's very challenging for the inter-caste married couples to go with this timeframe because almost all the inter-caste married couples run away from their family and society due to the fear of forceful separation and violence they face. So until the comfortable time they wait for registering the complaint, the time limit is passed, and they cannot get any legal remedies. So if there is the provision of a longer time duration to register the complaint for the inter-caste married

<sup>67</sup> Interview with Pathak, Senior Advocate and Law Professor (Zoom, 20 July 2021).



couples who face violence and discrimination, they would be able to go for the legal justice procedures by registering their complaint.

It's generally hard to expect the perfection of the law at the time it is drafted. But when the drafted law enters into the implementation phase, its strong aspects and gaps can be identified. In the CBDU Act also, after its implementation, some gaps have been identified, so if these gaps could be addressed, it is believed that it would bring positive results.

5.

SUMMARY OF FINDINGS, CONCLUSION AND  
RECOMMENDATIONS

5.1 SUMMARY OF FINDINGS

Marriage is a civic right of an individual and also a matter of choice and freedom of a person. Any individual who meets the legal criteria for the marriage has the right to choose and marry the person whom he/she wants to marry with the consent and will of both. The issue of inter-caste marriage of Dalit is very weighty in Nepal. Dalits who engage in inter-caste marriage are found facing various challenges and violations, which is a violation of human rights, and it has not only affected the minority Dalits and violated their rights but also the peace, stability, development of the society and the nation. Despite the law and policy of the government to address the issue, inter-caste married couples are still found unable to exercise this right in practice, and they are not safe and protected. The majority of the inter-caste married couples after marriage are found displaced. Torture and physical attack on the (Dalit) family members of inter-caste married couples is another serious issue found in the study. Similarly, forceful separations of the couples and alleged cases of rape, kidnapping and forceful underage marriage on the Dalit boys after marriage are identified in the study. It is also found that the inter-caste married couples are not found getting the appropriate and timely support from the law implementing agencies while going through the legal process. Local police administration, the government attorney office and the court are major law implementing agencies in the cases of discrimination and violence against inter-caste married couples. The study showed that the provisioned law is not found fully and effectively implemented because of different challenges in the implementation and few gaps in the existing provisions.

The perception of the higher-caste people as Dalits are untouchable, lesser humans and allowing and practicing marriage with them is to defame their prestige and status has created a barrier in the implementation of the law. Since marriage is a matter of blood relationship and social interaction, the higher-caste people do not want to establish this relationship with Dalits, so they do not respect the provisioned law on inter-caste marriage of Dalits and become involved in discriminatory and violent acts against inter-caste married couples. Similarly, it is found that the representation of Dalits in the law enforcement agencies is extremely low, and Dalits do not have their representation in the decision-making position of these agencies; only higher-caste people have held these positions. So, when the legal provisions on the violation cases of inter-caste marriage have to be implemented, the power exercising authorities of these agencies are found biased towards Dalits that they support and go with the feelings of the majority, the higher-caste people, not with the Dalits. Lack of knowledge on the provisioned law and its provisions among the people in society, including the victims, and lack of training to the case handler and investigating police officers is another challenge in the implementation of the law. Likewise, the withdrawal of the registered cases and the change of statement by the victims at the court is also a challenge in the implementation of the law. Moreover, the political pressures and interruption on the case process, police officers and the government attorneys is another serious challenge in the implementation of the law. It has resulted in the delay in case registration, forceful separation of the couples and releasing the perpetrators with a very minimum punishment which deprives the victims of getting justice.

The provision of the law, the CBDU Act 2011, by the government is taken as a very positive and affirmative action because the law addresses the issue and contains good and strong provisions. However, some gaps have been identified in the existing provisions in the study. The imprisonment time for the offenders is three months to three years which is often less because due to this provision, the offenders are found released on general bail. This is applied as per the provision of the Nepalese law that any person who commits a crime that subjects him or her to punishment up to three years is released on bail. Another provision that the burden of proof is imposed/shouldered on the victim is not found applicable in the case of discrimination and violation against inter-caste married couples. Most of the violations against inter-

caste married couples like psychological threats and acts that hurt their emotions, self-respect and dignity cannot be presented in the form of evidence. So, when the victims of these violations go to the legal process asking for justice, they cannot show the evidence and are deprived of getting justice. A three month time period to register the complaint to seek justice is also found very challenging for inter-caste married couples. It is found to be common with almost all the inter-caste married couples to escape/run away after their marriage due to the fear of forceful separation and security reasons. So, by the time they feel comfortable registering the complaint, it becomes late, and the complaint cannot be registered, which blocks all the doors of justice for them.

## 5.2 CONCLUSION

This research aimed to investigate how the state implements the law on inter-caste marriage of Dalits, where the researcher focused to investigate and discuss the performances and accountability of the principal law executing agencies of the government. So, the objectives of this study were to (a) investigate how the state implements the law on the right to inter-caste marriage of Dalits, (b) identify the barriers in the implementation of the law that could be addressed and (c) find the gaps in the access to justice system under the law.

Based on the analysis of qualitative data obtained from nine key research informants and four inter-caste married couples, it can be concluded that the major law implementing agencies of the government, the police administration, the government attorney office and the court, are not found fully committed and accountable on the parts of their duties and responsibilities, whose roles are found biased to Dalits. Similarly, there are challenges that have caused problems in the full and effective implementation of the law, and also few gaps in the provision of existing law have caused barriers to getting justice for the inter-caste married couples who face the violation after marriage. Lack of security and protection to the inter-caste married couples and their (Dalit) families, lack of knowledge on the provisioned law among the inter-caste married couples who face violence and alleged cases against Dalit boys who marry the upper-caste girls have caused the problem to the inter-caste married couples in registering their complaint and go through the legal justice process.

The results indicate that the authorities who hold the decision making position in the law implementing agencies are only the higher caste-people, so they are found less sensitive and accountable to the issues of discrimination against Dalits including the cases of inter-caste marriage because they are also guided with the same mentality that the majority higher-caste people are, which is biased to the Dalits. Dalits have no representation in the decision-making position of these agencies, so it seems very crucial to have the representation of Dalits in the decision-making position who could feel the sensitivity of the issue, become accountable and act accordingly. The inter-caste married couples, who face violence after the marriage, rarely go to register the complaint due to security reasons and lack of knowledge on the legal provisions related to the case. If the victims do not register the complaint against the violator and appeal for justice, neither the offenders get discouraged or hesitate to repeat the crime, nor do the victims get justice. Legal awareness and dissemination of the law among the people on the existing issue also contribute to the effective implementation of the law and decreasing the rate of crimes.

Safety and protection of the victims and their family is also very important to make them confident to raise their voice against violations they face and ask for legal help, which also assures them to build faith in the law and justice. Due to the legal provision that the burden of proof is imposed on the victim, many victims who cannot present the evidence of the discriminatory acts that are invisible but harm them psychologically, their dignity, and self-respect do not get justice. A three month time period to register the complaint for the victims of caste-based discrimination, especially for the inter-caste married couples, seems very challenging. Finally, the researcher believes that the findings and analysis of this research will help the government and concerned authorities in framing the policies, addressing the challenges and gaps of the existing law to make the implementation of law more effective, which will support in decreasing the violation against inter-caste married couples, and maintaining peace and stability in the society.

### 5.3 RECOMMENDATIONS

It certainly takes time to completely end the caste-based discrimination and violence against inter-caste married couples because the whole society is formed based on caste hierarchy; also, the politics, administration and economy are structured and practiced with the same system, but the initiatives and efforts to address and solve the problem should be continued by the concerned agencies. The research findings have proved the hypothesis of the researcher true that the law on the inter-caste marriage of Dalits is not implemented effectively that should be implemented effectively for the justice and protection of inter-caste married couples, and dissemination of the law and awareness on the issue among the people in the society is very important. The law and its effective implementation seemed one of the crucial and powerful ways to control and decrease the incidents of discrimination and violation against inter-caste married couples, but the findings also showed that the issue also should be addressed through political, social and economic aspects. Therefore, based upon the research problem, results and interaction with different stakeholders during the research time, the researcher suggests the following recommendations to the government and concerned authorities.

#### *5.3.1 Legal*

Law is the important and powerful primary mechanism to guarantee the rights of the people, to guide and control their behaviour and acts. Whenever a particular issue occurs that breaches the rights of people, it should be addressed by formulating the law, which, as a legal duty bearer, is the responsibility of the government. The issue of inter-caste marriage of Dalits is incorporated in the CBDU Act which is found incomplete. Five among nine key research informants suggested the formulation of a separate law to address the issue of inter-caste marriage of Dalits because, among the incidents of caste-based discrimination, it is the most serious one. Nepal, as a state party to the ICERD, ICCPR, CEDAW and UDHR that guarantee and protect the right to marriage, has the legal obligation to take affirmative action to address the issue, so the government should bring the law on marriage focusing and addressing the issue of inter-caste marriage. There have been gaps in the existing law found that should be addressed by the government amending the Act. It is recommended to the government that the time

period for the punishment (imprisonment) to the offenders should be determined and increased on the basis of the nature and seriousness of the crime. It is suggested that, in the serious cases of violation against inter-caste married couples, the time period for the imprisonment should be five years or more so that there will be little chance of the offender getting released on general bail.

The provision of the burden of proof in the existing law should be amended. For this, the law should mention that the caste-based discrimination and violence against inter-caste married couples is the serious crime against society so the burden of proof lies on the prosecution. Additionally, the government should bring the law which could address the acts of discrimination and violence that are invisible like psychological and harming the dignity and self-respect of an individual. According to one of the key research informants:

until the specific provisions on this problem are introduced in the Act, the nexus should be established between the Domestic Violence Act and Untouchability Act for the remedy of victims of such violence. The Domestic Violence Act, which is gender neutral, has the provisions on psychological harms of the victim<sup>68</sup>.

Although this applies, the visible practices have not been seen yet by the law practitioners, which should be done.

Similarly, the principle of zero tolerance should be applied at the police office while registering the complaint by the victims of caste-based discrimination. This means when the victim goes to the police to register the complaint against the violation, it should be registered immediately without asking for the evidence and questions to the victims where the investigation on the case can be done after registering the complaint. The time period to register the complaint should be increased and made around two years for the victims of inter-caste marriage. Considering the views of respondents, the lawyers and the court also should be sensitive to the issue. The state should take full responsibility for the protection of the inter-caste married couples and their family who lodge the complaint against the violator. Moreover, a Dalit Cell should be formed at every local administrative unit that supports in the investigation of the cases of violence against inter-caste married couples and registering their complaints to the concerned police office.

<sup>68</sup> Interview with Pathak, Senior Advocate and Law Professor (Zoom, 20 July 2021).

### 5.3.2 *Political and administrative*

The political leadership of the state is always in the highest and most powerful position in framing the law and policies and acting accordingly to run the nation and its administration. Each of the sectors in the state is guided and controlled by the political leadership. There have only been the higher-caste people in the political leadership for ages. Dalits have no representation at the leadership level. The provision of an inclusive electoral system supported the representation of Dalits in politics and the government, but they have not got the leadership opportunity. The election is always costly so the one who has a strong financial background or condition get tickets and register for the candidacy in the direct electoral system and only higher-caste people get this opportunity since Dalits, due to poor financial status, cannot bear the cost of election for their candidacy in a direct election. Because of this, Dalits are only elected through an inclusive system, and they are elected by the respective political party whose leadership is exercised by the higher-caste people. So, these elected Dalit representatives by the party under the inclusive system cannot represent themselves independently in the government, and they always become accountable to the agenda of the party rather than to their own agenda. They cannot make their own decision on the issues and problems of the community they belong to.

So, now it is recommended for the provision of the candidacy of the Dalit representatives in the direct electoral system; for this, there should be separate election constituencies where there will be candidacy and competition among only the Dalits, so the elected Dalit representatives can stay independent and accountable to their issues and agendas. Similarly, while forming the government, Dalit representatives also should be given the leadership opportunity. In the administrative agencies also there is a political appointment; again, nepotism and favouritism are reflected in those processes. Instead of the political appointment in nepotism and favouritism, there should be the appointment of capable and experienced officials. The ways/policies of increasing Dalit representation in the administrative agencies should be brought and implemented. Having said that, for the participation of Dalit representatives in the decision-making position of different agencies the management of such experienced, qualified and capable human resources is also the most important thing that should be



considered. So, for the management of such resource, the government, NDC and the Dalit organisations should work collectively. Furthermore, there should be training to the police officers at every local level about the legal provisions of the CBDU Act and on investigation and handling the cases of violation against inter-caste married couples.

### *5.3.3 Social and economic*

The issue of caste discrimination and inter-caste marriage is closely linked to society, its culture, norms and values. People have a deep attachment to the social ritual, norms and values, and their mindset is also guided by the same practices. Humans, by nature, always care more about prestige, status and reputation in society. Marriage is a matter of blood relation and social interaction, so allowing and practicing marriage with Dalits is taken by the higher-caste people as something harming their reputation or defaming their prestige. Only law cannot change this mentality or ideology of the people, for this social awareness is needed. Only the awareness activities by certain organisations cannot be sufficient; there should be assistance and coordination from the government on this. Interaction and awareness programs in the coordination of local police administration, local government and human rights activists should be conducted. These programmes should be focused on giving knowledge on how the wrong socio-cultural beliefs, norms and practices have guided the people in the society due to which they discriminate against Dalits which is a violation of human rights.

The dissemination of law and its provision is also equally important during the campaign. Generally, when the awareness campaigns are conducted, there is only the involvement of Dalits and Dalit activists so when such campaigns are conducted, there should be the involvement of higher-caste people and also the political leaders who are in the leadership. Campaigning only once cannot be effective on this issue. There should be a plan for follow-up and continuing the campaign after a certain period of time. Community interaction programmes on the issue with the coordination of police should be done on a regular basis. The organisation of the programmes on the honour of inter-caste married couples in the society in the coordination of community leaders, local administration and police administration would also help to build the positive mindset of people on inter-caste marriage. Occasional feast programmes in the involvement of Dalits and non-Dalits can help to

bridge the distance and enhance social interaction. These activities and campaign programmes may sound a bit ideological, but the reality is, there is no other way to change the belief and mindsets of the people and enhance social interaction between Dalits and non-Dalits except such awareness and knowledge dissemination campaigns.

The government should bring the policies and programmes to improve the financial status of the Dalit community. Poor financial conditions and very low standard of living of Dalits and their involvement in the traditional occupations which are of great need but thought of low status by the higher-caste people are also the causes that Dalits are dominated, humiliated in the society, and the higher-caste people do not want to establish family (marriage) relationship. So, the programmes like technical and vocational training, job opportunities targeting the Dalits should be started by the government. The financial scheme brought for the inter-caste married couples which is discontinued should be continued addressing and solving the problems that occurred in its implementation.

#### 5.4 FUTURE RESEARCH NEEDS

In this study, the researcher focused on the legal aspects of the issue of inter-caste marriage of Dalits in Nepal. The study discussed existing law and policies on inter-caste marriage, challenges for inter-caste married couples in the justice system, challenges in the implementation of the law, and existing gaps. After the interaction with different stakeholders during the research interview, the researcher felt that the issue also should be studied and analysed from socio-economic and political aspects. Similarly, the stories and experiences of inter-caste married couples who successfully established their marriage should be analysed. Though the number of such couples is very few, their experience and suggestions might be very helpful for further strategies in addressing the issue. So, there is a need for research on these two mentioned aspects to understand the phenomenon deeper, wider and to address and act accordingly.

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- Interview with Pariyar, Chair of Samata Foundation (Zoom, 10 June 2021)
- Interview with Pathak, Senior Advocate and Law Professor (Zoom, 20 July 2021)
- Interview with Police Officer (in person, 4 June 2021)
- Interview with Sob, Chair of Feminist Dalit Organization (Zoom, 13 June 2021)

#### OTHER SOURCES

- Cobley B, 'International Consultation on Caste-Based Discrimination' (International Dalit Solidarity Network 2012)
- Bennett L, Dahal DR and Govindasamy P, 'Caste, Ethnic and Regional Identity in Nepal. Further Analysis of the 2006 Nepal Demographic and Health Survey' (Macro International 2008) <<https://dhsprogram.com/pubs/pdf/FA58/FA58.pdf>> accessed 18 September 2020

APPENDIX A  
INTERVIEW GUIDE

RESEARCH INFORMANT 1: POLICE OFFICER

*Opening questions*

- a. How do you view the issue of inter-caste marriage of Dalits?
- b. Are you aware of issues of violence against inter-caste married couples? Why does it happen?
- c. If any inter-caste married couple or their families came to you saying they had experienced violence, what would you say and do?

*Questions that answer the research questions/objectives*

- a. What complaint procedure the inter-caste married couples should follow while registering their case against a violent incident they face?
- b. Is it compulsory for the inter-caste married couples to file their case for investigation when they face the incidents or investigation can be done even without registering the formal complaint?
- c. Why are complaints of inter-caste married couples delayed or denied to register?
- d. Why do some police officers suggest the inter-caste married couples to solve the case themselves by mediation instead of registering their complaints?
- e. Have you identified any barriers in the implementation of law that prevents victims from getting justice? If yes, what barriers?
- f. Do offenders in the setting of government representatives put pressure on you not to register the case and arrest them?
- g. What experiences do the inter-caste married couples share about the incidents they face after their marriage when they come to register their case?

- h. Do you think all inter-caste married couples who face the violation come to register their case or only a few? If so, what do you think are the reasons?
- i. What process do you have to follow in order to do the investigation and arrest the potential offenders?
- j. Are there any strategies that can be applied for the protection of inter-caste married couples, their families after they register their complaint?

*Closing questions*

- a. Are you aware of any programmes in the society to give knowledge on existing law, discriminatory acts, complaint registering procedure, and provisioned punishment particularly on the issue of inter-caste marriage? If yes, how often and who are invited to the programme?
- b. How would inter-caste marriage be promoted and inter-caste married couples protected? Any suggestions/recommendations?

RESEARCH INFORMANT 2: INTER-CASTE MARRIED COUPLES

*Opening questions*

- a. What age were you both when you got married?
- b. Currently, are you staying with your family or apart from your family?
- c. Do you have any idea on the right to marriage and legal provisions on inter-caste marriage? If yes, what provisions?
- d. Did your family (both) accept your marriage or not? If not, from whom you were challenged more? Family or society?

*Questions that answer the research questions/objectives*

- a. Do you think it is likely that an inter-caste married couple would go to the police if they experienced or feared violence because of their marriage? Please explain your answer.
- b. What barriers would you think an inter-caste couple may face in registering a complaint with the police?
- c. Did you ever go to the police office to register a complaint if you faced the incidents after your marriage? If not, why didn't you go?
  - 1. Did you go yourself to register the complaint or someone else assisted and guided you?

2. Were you easily able to register your complaint? If yes, Can you share your experience while registering your case?
3. Would you like to share any difficulties if you faced while registering your complaint and in court procedures?
4. Did you receive the financial incentives that the government introduced for inter-caste married couples?
5. Did you get any compensation from the local or federal government after the incidents you faced? If yes, what compensation?
- d. Do you know about laws or policies in Nepal and about discriminatory acts of inter-caste marriage? Do you think they are helpful? Please explain your answer.

*Closing questions*

- a. What do you think the family, society, police administration, and the government should do from their side so all the couples who marry inter-caste could happily enjoy their married life?
- b. If you see any inter-caste married couple faced incidents after marriage, what suggestions would you give and support them?

RESEARCH INFORMANT 3: GOVERNMENT REPRESENTATIVES

*Opening questions*

- a. How do you view the existing issue of inter-caste marriage of Dalits?
- b. Why are Dalits not able to exercise their right to marriage?
- c. Are there any laws and policies on inter-caste marriage and concerned authorities who implement this? Please explain in brief?

*Questions that answer the research question/objectives*

- a. Have you heard of any violent incidents that inter-caste married couples face? Can you share the sorts of incidents you are known to?
- b. Despite the initiatives and policies of the government and the provision of law, inter-caste married couples are not protected fully and some face violence and discrimination. What do you think are the reasons?
- c. The government introduced the financial incentive scheme for the couples who marry inter-caste but it is not in implementation. What is the reason?



- d. Have you planned for any similar schemes for the promotion of inter-caste marriage? If yes, what?
- e. Are there any barriers or difficulties in implementing the laws and policies provisioned on the issue? If yes, what barriers?
- f. How can these barriers be addressed?
- g. It is identified from the research that inter-caste married couples are delayed to justice and most of the time they do not get justice as their case is delayed or denied to register, offenders are set free without or in a minimum punishment, and no initiatives are taken for their protection when they face violent incidents. Do you agree with this assessment? If so, why does it happen?
- h. How can the concerned law implementing authorities be supported to be more accountable and serious on this issue?

*Closing question*

Are there any special policies and strategies that could be introduced and implemented to promote the inter-caste marriage of Dalits and for the protection of inter-caste married couples? If yes, what?

RESEARCH INFORMANT 4: NATIONAL DALIT COMMISSION AND NGOS

*Opening questions*

- a. How do you view the existing issue of inter-caste marriage of Dalits?
- b. Have you ever got a chance to interact with inter-caste married couples about their experiences on difficulties and challenges they faced after they got married? What kinds of experiences did they share?

*Questions that answer the research questions/objectives*

- a. How do you evaluate the responsibility of government and police units in the implementation of provisioned laws for the protection and justice of inter-caste married couples?
- b. Are there any barriers/challenges in the implementation of the law on the issue of inter-caste marriage of Dalits? If yes, what?
- c. What should be done to overcome these barriers and challenges?
- d. How do you evaluate the existing legal provisions and their implementation on inter-caste marriage of Dalits?

- e. Why do you think that despite these legal provisions, inter-caste married couples can still face violence, stigma and abuse?
- f. What do you see as the role of the National Dalit Commission in addressing violence against inter-caste married Dalits? What successes or challenges have you/they faced?
- g. What do you see as the role of NGOs in addressing violence against inter-caste married Dalits? What successes or challenges have you/they faced?
- h. Are there any policies you recommended to the government for implantation on the issue of inter-caste marriage couples? If yes, what policies, and were those policies taken seriously by the government and put in practice?

*Closing questions*

- a. What would be effective ways or strategies along with the implementation of laws and policies to promote inter-caste marriage, support, and protect inter-caste married couples?
- b. Is there anything further that you think the National Dalit Commission could do to help address this problem?
- c. Is there anything further that you think NGOs could do to help address this problem?

RESEARCH INFORMANT 5: LAW PROFESSOR AND LAWYER

*Opening questions*

- a. How do you analyse the issue of inter-caste marriage in Nepal from the perspective of human rights?
- b. Are you familiar with practices of inter-caste marriage in any one of the neighbouring countries India, Pakistan or Sri Lanka and how does the law work there?
- c. If you compare these countries with Nepal's context, what differences do you see in relation to this issue?

*Questions that answer the research question/objective*

- a. Why do you think in the context of Nepal the laws and policies are not working in the promotion of inter-caste marriage and protection of inter-caste married couples?
- b. As per your professional experiences, have you noticed any gaps in the existing law and its implementation on this issue?

- c. How do you think those gaps could be addressed?
- d. What challenges do lawyers face in providing legal support to inter-caste married couples?
- e. How can the concerned law implementing authorities be supported to be more accountable and serious on this issue?

*Closing question*

Would you like to recommend any special legal provision that needs to be included in existing law for inter-caste marriage in Nepal? If yes, what provisions and how it would bring positive changes?

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