

Namaste

Quarterly Newsletter
Peace Brigades International - Nepal



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Editorial

In this issue of Namaste we wish to bring your attention to the topic of discrimination in Nepal. Despite improvements in the Interim Constitution of 2007, discrimination is still present in many laws. Even where there are legal provisions against discrimination, in practice the realities of living within a hierarchical Hindu-based community see that discrimination remains widespread.

People from the *dalit* caste are particularly targeted in daily life, considered polluted and only able to perform tasks that higher castes would not deign to. Ethnic groups, such as the *Tharus*, are still considered almost at the bottom of the social structure, though they represent 7% of the population. Women across Nepal suffer the effects of a society which is conservative and patriarchal. People of 'third gender' find it hard to be accepted in communities and are often left unprotected by law enforcers, so that physical violence, arbitrary arrest and rape are still common.

The problems become structural when access to justice for discriminated groups is made difficult by State authorities who are more likely to underestimate and disregard claims made by dalit, women, LGTB, ethnic minorities and other discriminated groups, than those of any other people.

PBI-Nepal, through its work with organizations such as DAFUO (*dalit* women working for *dalit* rights), supports Nepal's struggle against discrimination.

On the Cover:
Daughter of dalit
victim of the Bardiya
Park killings. Kimla
from DAFUO in the
background

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Discrimination in Nepal - Legal Developments

The Constitution of Nepal has developed from being highly discriminatory to including progressive provisions to combat discrimination. But there is still some way to go before the law is completely anti-discriminatory. For those Human Rights Defenders (HRDs) working on addressing the current legal issues, it is important to have an overview of their historical context.

The *Muluki Ain* of 1854, the first codified law applicable throughout Nepal, defined and based itself on discrimination by caste and ethnicity, dividing society into a fourfold social hierarchy which saw people ranked as either un-enslavable or enslavable.

It was not until the New Civil Code of 1963 that all citizens were for the first time, at least nominally, enshrined with equal rights. However by 1990, when parliamentary democracy came to Nepal, the constitution still contained many provisions that favoured discrimination against, amongst others, ethnic groups. Indeed, a 1999 workshop organized by the Nepal Federation of Nationalities (NEFEN) with support from Minority Rights Group International (MRG) identified 26 provisions in the Constitution and 49 Acts that discriminated against indigenous people.

Discrimination against women in Nepal is rooted in religious ideologies supported by ancient Hindu scriptures and historically strengthened through provisions in domestic law. The Forum for Women, Law and Development (FWLD) conducted research in 2000 on laws that are discriminatory toward women. The research and follow-up documentation revealed 118 clauses, sections and rules, including within the Constitution of 1990, that were discriminatory against women. Areas in which women are discriminated against include their right to nationality and citizenship, property, trafficking and sexual abuse, education, employment, reproductive health, marriage and in matters related to litigation.

Today, Nepal has ratified all major international human rights conventions that condemn discrimination. Under the current Interim Constitution (2007) it is stated that the State shall not discriminate among citizens on grounds of religion, race, caste, tribe, gender, origin, language or ideological conviction. There are also provisions in the Interim Constitution encouraging the elimination of discrimination.¹

Whilst an improvement on the 1990 Constitution, the Interim Constitution has not yet resulted in the revision of all discriminatory laws, including some levelled against lesbians, gays, bisexuals and transsexuals (LGBT). In 2007, the Supreme Court declared that the government must repeal all discriminatory laws against the LGBT community and a provision be made for the recognition of third gender people in terms of citizenship rights. The Court also set up a committee to look into whether same sex marriage is appropriate.

Sunil Pant, an activist and member of the Constitutional Assembly, says of the development of LGBT rights in Nepal that "The extraordinary thing is that Nepal is in many ways still a very conservative, traditional country. The movement for LGBT rights is just beginning, but the Court and the government have thus far outpaced many western countries with long-established civil rights movements. We still face many problems, but we've made an enormous amount of progress in a short time."

There are many obstacles yet to be overcome in the fight against discrimination, but the pronouncements on LGBT issues demonstrates that the law can be developed in positive directions. With May 2011 as the deadline for a new constitution, lawmakers have 8 months to create a legal document that could move Nepal beyond the constraints of discrimination.

¹ For example, article 138 (1) stipulates a need for the "Progressive restructuring of the State to bring an end to discrimination based on class, caste, language, gender, culture, religion and region by eliminating the centralized and unitary form of the State."

Discrimination - the Reality on the Ground

Despite major improvements in the legal framework that today promises to guarantee equal rights to all citizens, many people in Nepal still face discrimination in their daily lives by virtue of being perceived as inferior, untouchable or simply by being a woman. The laws to protect people from discrimination may be in place, but traditional power and relationship structures stop people from being able to use them.

Women in particular face difficulties within the patriarchal structures typical of Nepal. Women Human Rights Defenders standing up for the rights of women and fighting against discrimination often face threats from their own communities and families. According to a 2008 report on Gender Violence in Nepal by INSEC,¹ a national human rights organization, the Nepali justice system still has many loopholes that allow perpetrators to get away with gender crimes. The report further states that victims of such crimes are unable to get justice because police often encourage out-of-court settlements, usually resulting in the perpetrator being free after payment of a small fine to the victim. This type of legal recourse is said to be particularly common in rape cases. In April 2010, a ten-year old girl from a rural community was raped, with the police refusing to register the case reportedly due to political pressure placed on authorities to protect the perpetrator.²

Though caste-based discrimination was formally abolished in 1963, its influence remains to this day. Women from lower castes are especially vulnerable to discrimination, as in the case of *Badi* women, who are traditionally responsible for entertaining higher castes with singing, dancing and prostitution. Today, for girls born in the *Badi* caste, a future as a prostitute is almost certain. In August 2007,³ protests in which

Badi women demanded that the government to support them in developing alternative employment opportunities, proved unsuccessful. Instead, *Badi* women were beaten and detained by police in response to their peaceful protests.

Badis are only one of the so-called "untouchable", or *dalit*, castes that still face discrimination in their daily lives. Dilli Ram Dahal recounts in an article how *dalits* are denied access to public water taps, entrance to temples and restaurants and are forced to perform what are considered denigrating tasks such as removing dead animals.⁴

Dalits are denied access to public water taps, entrance to temples and restaurants and are forced to perform what are considered denigrating tasks

The stigmatisation of *dalits* and the negative attitude toward them has made them one of the most deprived groups in Nepal. Human development indicators show the group as having the highest percentage of people living below the poverty line, being widely denied access to land and basic education opportunities.⁵

When the caste system was legalized in Nepal in 1854, the government had to deal with many different ethnic groups who did not follow Hindu traditions or the Hindu caste system. Accordingly, the government placed them below the higher castes, but still above the *dalits*. Krishna Bhattachan,⁶ who has researched and published extensively on the subject, finds that ethnic minorities in Nepal remain politically, economically and socially marginalized. They often speak their own language, different to the national Nepali language, and therefore they also belong to linguistic minorities.

In the southern plains of Nepal, the *Terai*, one of these indigenous minority groups is known as the Tharus. Believed to be immune from malaria, for decades they were the only people who dared to live in the tropical forests and farm the fertile lands of the *terai*.⁷ However, with the eradication of malaria, the region became inundated with migration from India to the south and from the hills of Nepal to the north. The latter migratory trend significantly exposed the region to exploitative practices in land ownership and further discriminatory systems. *Kamaiyas*, for example, were bonded laborers and even though the *kamaiya* system was recently abolished, many freed *kamaiyas* still have to continue their *de facto* existence for lack of alternative opportunities. Similarly, *kamlaris* are young *Tharu* girls working as housemaids, often deprived of education and vulnerable to sexual abuse.

Even though Nepal's legal framework is designed to protect minority groups from discrimination, the reality on the ground shows that laws are not enough. Much work is needed to change perceptions and traditions to guarantee that everyone in Nepal enjoys the right to equality, and Human Rights Defenders trying to end discrimination still face many challenges.

1 INSEC, 2008: Gender Violence in Nepal: Report on rape cases, Assessment Report submitted to Special Rapporteur on Violence Against Women.

2 Republica, *Rapists gets political protection*, 5 April 2010

3 Reuters, *Nepali women strip to protest prostitution tradition*, 22 August 2007

4 Dahal, D.R. & Gurung, Y.B & Acharya, B. & Hemchuri, K. & Swarnakar, D. 2002 'National Dalit strategy report situational analysis of Dalits in Nepal'. Kathmandu: national planning commission.

5 Bennet, L. 2005 'Gender, caste and ethnic exclusionism in Nepal. Conference Paper New frontiers of Social policy at Arusha Conference December 12-15 2005

6 Krishna Bhattachan, 2003 'Indigenous nationalities and minorities in Nepal. Unpublished report Kathmandu: minority rights international.

7 Arjun Guneratne, 2002, *Many tongues, One people, The Making of Tharu identity in Nepal*, Cornell University Press.

The Third Gender in Nepal

Nepal's Central Bureau of Statistics (CBS) includes the term "third gender" in its population and household census form, as does the National Human Rights Commission, NHRC. Third gender is an umbrella identification that many members of the lesbian, gay, bisexual and transgender (LGBT) community in Nepal use to identify themselves. Many also belong to the Blue Diamond Society (BDS),¹ the only organization that works with and for the LGBT community in Nepal.

The usage of the term "third gender" is a major sign of the changing times; it was only in 2007 that

and sensitize Nepali policy about a section of society that is often invisible. It is notable that it was only in 2006 that the Nepali government acknowledged men who have sex with men as a vulnerable group, thereafter including them in government data on HIV infection.

But laws do not in themselves diminish discrimination, change attitudes or integrate people into society. They do not change people's minds about lifestyles, manners, behaviour or prejudices. The BDS continues to document violence against the LGBT community, including arbitrary arrests, attempted murder, rape, blackmail and all varieties of physical and verbal abuse as well as discrimination in the workplace, school and in the provision of medical facilities.

The walls in the BDS meeting room are covered with work-related information. Sanpana Chaudary, who works for the local office in the midwest of Nepal, walks in, ties up her hair and begins to speak, "There are no laws protecting us, the third gender," she says, "but we need to be granted equal rights in the constitution with regard to education, health, occupation and partnership. In order to change people's perceptions and conquer injustice, the laws need to change," she says with a smile.

Sanpana is focused on the writing of the new constitution. Nepal has had an Interim Constitution for the past four years, since the 2006 Peace Accord was signed, ending the ten-year conflict between the Maoists and the State. The recently extended deadline to conclude a new constitution is set to expire in May 2011. Sapanan believes it is an opportunity to further advance the rights of the

LGBT community.

She talks about the slow work of changing people's perception on something that might seem alien to them, as well as the need to improve medical resources and visibility. "Maybe 50 percent of this town knows about us now," she says. "We have many members, 300 third gender, 500 gay and five intersexuals that use our services and facilities. Unfortunately, we have no funding to work with lesbians."

She gets serious, "Sometimes I feel a bit shy going out alone." While she says she feels comfortable if invited, she will not go to the market or city center unaccompanied. "Women relate well to us, but in a Hindu society where men socialize to a large extent solely with other men, I do not feel comfortable."

"I feel fine in town though, even if people sometimes call me names, but I was almost gang raped in a nearby town," Sanpana shares of one post-training experience. "But I told them I was HIV positive and that they could have sex with me only if they had a condom. They didn't seem that interested after that," she retells of her near miss.

Did she report it? "No, I tried but the police said 'What are you talking about, a man cannot rape another man!'" And even if she had been raped, like three friends of hers in the BDS, how could she have satisfied authorities in Nepal that she had been sexually abused? She explains that she went to the local hospital to find out about a global medical fund specifically set up for the third gender. The doctor said, "The government is blind. There is no such thing as a third gender. You just want money. You are unnatural and artificial." For Sapanan and others like her throughout Nepal, personal security and discriminatory risks remain daily facts of life.

Sanpana Chaudary at the BDS office



the Supreme Court of Nepal granted equal rights to the LGBT community. Prior to that, homosexuality was illegal, with Nepal's penal code stating under the Unnatural Offences Act that anal intercourse and oral sex were punishable by life imprisonment and male to male sex punishable by up to ten years imprisonment. Since its establishment in 2001, the BDS has swelled to include some 300,000 members and 40 local offices. Its President, Sunil Babu Pant, is an openly gay parliamentarian. BDS works against discrimination within the framework of human rights and sexual health, aiming to inform, educate

¹ <http://www.bds.org.np/>

Nothing is Permanent

The Dalit Feminist Upliftment Organization (DAFUO) started working in the town of Gulariya, Bardiya District, in the Mid-western region of Nepal in 1997, focusing on the human rights of marginalized communities, particularly the rights of *dalit* (untouchable) women. DAFUO originally organized awareness-raising, income generation, peace building and HIV/AIDS programs with the aim of empowering women. The initial focus on *dalits* has since given way to a more general coverage of women's rights. DAFUO now works to increase the socio-economic status of women, to improve women's access to constitutional rights and to reduce discrimination against women in general and against *dalits* and other marginalized groups in particular. Their income generation and capacity building programs are to contribute to the long-term improvement of the situation of women in Nepal.

Dalit women run DAFUO, but for the past 11 months Prem Raisili, a man originally from the far western region of Nepal and a *dalit* himself, has been living and working with DAFUO in Gulariya. PBI sat down with him to get his thoughts on the work of DAFUO, his own experiences and the broader situation in Nepal.

PBI: Why did you decide to start working with DAFUO?

Actually I'm a professional teacher and I have a M.Ed. in Mathematics. The reason I was interested in this job is the society with which DAFUO works. There are lots of old traditional practices and social exclusion in these communities that lead to discrimination against *dalits*. I decided to start working against this discrimination, for *dalit* people and other marginalized communities.

How do other people react to you, as a man, in an organization working for women's rights?

Everything has at least two sides and it is difficult to say that people react in a specific way. Some support me in the work I do with *dalit* women, but others discourage me.

DAFUO staff often talk about problems related to the work they do. Does being a *dalit* make this work more difficult than it otherwise would be?

Of course we face so many problems while working on *dalit* issues, although the situation has improved compared to some years ago. We often work with authorities, especially on cases of rape and domestic violence. Most non-*dalit* authorities don't pay any attention to problems related to *dalits* and some of them underestimate us, for various reasons.

Can you tell us a little bit about how *dalits* are being discriminated against in Nepal?

Everybody knows there is still a lot of discrimination based on caste, and it takes many forms, both visible and invisible. Invisible discrimination is more dangerous than visible because there is no actual proof of discrimination to act upon, making it very difficult to work with. And you can find it everywhere, in party politics, governmental bodies and the education system.

How do you see this discrimination in your daily work?

It starts as soon as *dalits* come out of their homes. Of course it must be said that some non-*dalits* treat *dalits* well, but many still face different forms of discrimination from people of higher castes. Women in particular are severely victimized by caste-based discrimination. One kind of discrimination I would like to mention is 'democratic discrimination', which is not seen directly but is happening everywhere. When *dalits* offer non-*dalits* tea or snacks, they are often met with comments like 'I'm full' or 'I'm fasting' because *dalits* are still seen as an untouchable caste, and higher castes will not take food or drink they have touched.

Have you seen any improvement in the treatment of *dalits* over the last years?

There has been a slight improvement but not much. The difference is that in the past nobody told us that we were to be treated equally and shouldn't be discriminated against, but now this is what we are told. At the same time we see that the situation is more or less the same as before. Now we feel that we are being heard, although mechanisms for including *dalits* and other marginalized people in Nepali society are still not being practiced.

Do you have examples of times when you have felt discriminated against personally?

Yes, many times. As long as I can remember I have been discriminated against by many people and in many forms. I was discriminated against in my school life by my school peers during *Saraswati puja* (a religious festival celebrating the goddess of knowledge, music and the arts) as well as during other events. While studying in intermediate school in Mahendranagar, I could not find a room to rent, because I am *dalit*. There are so many other incidents that I don't want to remember.

Do you think there will be a positive change over the next ten years regarding discrimination against *dalits*?

Of course there will be, everything in this universe is changeable, so no one can stop this social evil from being changed.



The Roots of Tharu Discrimination

The indigenous Tharu people are discriminated against and suffer social and political exclusion due to their status in society, which places them only one step above the bottom of Nepal's social hierarchy ladder. This discrimination occurs in spite of the fact that the Tharu community constitutes around 7 percent of the population, or 1.5 million people,¹ in the mosaic of ethnicities, languages and castes of Nepal. In the district of Bardiya in Midwest Nepal, where the Tharu people form the majority of the populace, literacy rates (17.5 percent) in Tharu communities are half those among non-Tharu communities.² Yet, the problem appears not solely to be pitting the 'Tharu' against the 'other'. Prijma Chaudary, a women's rights activist chairing the NGO Tharu Women Uplift Center (TWUC) in Bardiya, shared with PBI that within Tharu communities, discriminative practices against women are as worrying as discrimination against the ethnic group as a whole. Whereas husbands, as Chaudary points out, may have started sharing household chores, their decision-making powers in both family and community remain largely unchallenged. Due to the work of Human Rights Defenders, however, women who were not empowered to raise their voices against inequalities and who did not previously participate in decisions are now more inclined to do so. "Women in Tharu communities still have to face many restrictions, but nowadays they fortunately share more about their plight and are starting to become involved in decisions," she explained.


Originally from a middle class

caste, Chaudary married a Tharu lawyer and soon realized she wanted to utilize her skills to help empower the Tharu community. When asked about how she felt about Tharu discrimination she replied, "I feel bad if people say the word 'Tharu' in a discriminatory way. Fortunately, nowadays people don't call Tharus 'mouse-eater' or simply 'mouse' on the street anymore." Changes such as this, Chaudary shared, can be seen in the increased awareness that exists among the Tharus themselves in recent years. "They realize that they have the same rights, which also leads to increased self dignity." In her understanding, self-assurance of a group plays an important role in challenging existing stereotypes and discriminatory practices.

Typical stereotypes attributed to the Tharu people include drunkenness, stupidity, exploitation and submission.³ Chaudary gave her opinion that amongst the Tharu people of Bardiya, those who more recently migrated there are "very clever, more educated, active and politically aware," whereas the "original Tharu preferred to stay in their homes, within their traditions and in their old professions." Some Tharus, she concludes, are reluctant to change while others accept the need to transform their traditions, for example with respect to their income generating activities. Chaudary herself on occasion unconsciously echoes the stereotypes prevalent in Nepali society, for example when she expounds: "For ritual purposes the original Tharu used to make their own wine. But some of the ingredients are no longer available so they buy the wine instead. The migrated Tharu on the other hand are clever enough to still produce wine themselves by finding alternative ingredients."

Leaving stereotypes aside, the reasons for Tharu social and political exclusion are mainly structural, owing to their negligible

socio-political participation, loss of symbolic capital, economic and educational exclusion.⁴



Prijma Chaudary,
TWUC

Officially freed from bonded labor (*kamaiya*) in the year 2000, government neglect in terms of provisions of proper rehabilitation and other economic assistance has left the Tharus still suffering from extreme poverty, with discriminatory loan practices related to land issues only worsening an already bad situation.⁵

Chaudary explains, "New techniques for growing rice, hybrids and fertilizing with chemicals are expensive and not affordable for many Tharus. Therefore, they have to ask banks for loans. Now, if the debtor can't pay back the money in a given time frame, he loses his land. The bank made the debtor agree to this when giving out the loan." The only other choice is to sell their few assets. Left with only bad options, the Tharus risk losing their basic means of livelihood. Competition within Tharu families over the distribution of land, Chaudary points out, exacerbates the problem. Since 83 percent of Tharu people work⁶ in the agricultural sector, an absence of land for the Tharus means a continuation of exploitation similar to the *kamaiya* system.

Faced with structural poverty and exclusion as well as entrenched stereotypes, Tharu communities need support in order to overcome such obstacles. Even if there seem to be changes in perceptions of and behaviour towards Tharu people, as well as more positive self-conceptions, the Tharus of Nepal are still very much in need of support.

1 <http://southasia.oneworld.net/todayshadlines/ethnic-identity-crisis-gathers-momentum-in-nepal>

2 Robins, Simon: *Transitional Justice as an elite discourse*, York, 2010: 4

3 Gellner, David N. (Ed.): *Resistance and the State: The Nepalese Experience*, London, 2007:230

4 Dahit, Gopal: *Social Inclusion/Exclusion in relation to Tharu indigenous knowledge and practices*, Kathmandu, 2008: 3-5

5 Backward Society Education (BASE): *Organizing for Rights*, Tulsipur, 2006: 2

6 Robins, Simon: *Transitional Justice as an elite discourse*, York, 2010: 4

The Pleasant Complexities of PBI 's work in Nepal

By Mike Bluett – former In-Country Coordinator, PBI-Nepal

“How will you protect my father against the men with guns when you have no guns?” The eloquence of an 11-year old was pretty overwhelming after an already full day. We had been accompanying a lawyer for Advocacy Forum who, keen to push boundaries to challenge authorities and political parties on the subject of impunity, regularly requested our accompaniment. On this occasion, he had been followed by and received a death threat from two unknown men on a motorbike. For a time we accompanied him around the clock, encountering a very curious family regarding what exactly PBI does. Here was his young daughter questioning our methods and theory in the most intelligent and personal way I had heard via SMS. Given the immediacy of SMS, it seemed a response was necessary. It was clear what I had to do. I woke my accompaniment partner up and panicked about how we were supposed to reply.

Accompaniment was an exception for me in Nepal, as I joined the project as In-Country Coordinator after spending nearly two years in Indonesia as a PBI volunteer. Mostly I was in the office in Kathmandu learning what “coordinating” was, and attempting to do it. The best thing I learned was to take vicarious pleasure through helping my colleagues do the fun bits: like living and working in 45 degree heat, travelling (or being delayed) for days by plane, boat, bus and foot, being out of communication for extended periods of time thanks to the country's fragile infrastructure and sharing beds, platonically, with Human Right Defenders on accompaniments. They managed all this and more, even as I hounded them for financial spreadsheets and other Excel-inspired tortures. Working with an increasing group of volunteers and staff, I was privileged and humbled to learn many new, creative and empowering ways to work in support of Human Rights Defenders.

Nepal has been badly affected by a myriad of foreign interference, and I was relieved to be there with PBI, working toward creating relationships with local people and Human Rights Defenders less likely to lead to dependency or manipulation. Now, I am very happy to be back in Europe after four years with PBI in Asia. I hope I can continue to be involved with the essential work that happens in both Nepal and Indonesia, advocating for the protection and support of Human Rights Defenders.

And the answer to the young daughter's inquiry? Well, we thought for so long to try and come up with the right mix of profound, humble and brainy, but it was so completely inadequate that I dread to even try and remember the final product. I hope the real answer for her came through our presence and solidarity with her family. Their continued support for PBI and friendship make me hopeful that it did.



Mike Bluett with interpreter Nishit in Bardiya, June 2009



Mike Bluett during a visit to Bardiya, 2008



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Peace Brigades International (PBI) is an international grassroots organisation registered with the United Nations that has been working to promote nonviolence and protect human rights since 1981.

Established in 2006, the Nepal Project works according to the philosophy of nonviolence, within the framework of international norms of human rights. It is independent of political and religious agendas, abides by principles of non-interference and works on the request of its partners.



PBI Raphael accompanies DAFUO on the long path against discrimination

If you wish to contribute, you can:

- Support us by donation as an individual or through an organisation
- Join your nearest PBI group and the Nepal Support Network
- Become a PBI volunteer

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