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A Statement by the Asian Legal Resource Centre

Equality without justice is a delusion

Caste based discrimination is the South-Asian variant of apartheid. For centuries the people living in the region - in Nepal, Pakistan, Bangladesh, India and Sri Lanka - have been separated and divided according to the caste hierarchy. The sad reality is that it continues today and is unlikely to end in any foreseeable future without radical changes. In spite of several legislations and constitutional guarantees, caste and the discrimination associated with it, play direct and indirect roles in setting a tune to ordinary life in the region.

This is reflected across the societal spectrum where inequalities are practised openly in the society. The Haliyas of Nepal; manual scavengers who live in Gabtoli colony of Dhaka and the Safai Karmacahris and other Dalits in India; the bonded labourers working in the brick kilns of Pakistan and in the plantation sector in Sri Lanka are all living harsh reminders of the practice continuing unabated in the region. Caste is the final denominator with which Dalits living across the region are assessed and devalued.

At the root of caste based discrimination is the concept of inequality. Unfortunately in none of the countries within the region, there exist adequate justice mechanisms that could guarantee equality. This non-functioning of the justice apparatus, explains why despite several laws against caste based discrimination in India, the evil still continues unabated in that country. Unfortunately, in other countries in the region, the state of affairs of the justice apparatus is much worse.

In Pakistan, Bangladesh and Sri Lanka, caste based discrimination is nowhere in the national debates. Nepal, a country that has made some unique progress by transforming itself from a bankrupt monarchy to a democratic republic is hardly a promising candidate since the country lacks essential infrastructure to run even its basic administration.

Of the worst affected from caste based discrimination are women and the children. In a region where women are discriminated due to conservative religious and gender bias, being a lower caste or a Dalit woman is one of the worst situations one could be in. Dalit women political leaders, for instance Ms. Mayawati of Uttar Pradesh, during her time as the Chief Minister of one of the large states of India, Uttar Pradesh, hardly did anything to bring a change to this unacceptable status quo.

Similar is the situation of Dalit human rights defenders. In a region where being a human rights defender itself is a challenging and 'risky' profession, being a campaigner for Dalit rights is further demanding. The states in the region today is perhaps in its height of defending 'fake' national pride at the expense of human rights. The support the Government of Sri Lanka has thus far received from the countries in the region against the resolution mooted against that country, where regional players like India are shying away from taking a pro-human rights position on the issue is one of the most recent example to this phenomena. It must also be said here that it is India that Dalit human rights defenders face the highest amount of threat from the state and private entities. Instances where Dalit human rights activists are falsely implicated in crimes with serious charges are common in states like Madhya Pradesh, Orissa and Chhattisgarh. It is no

different in countries like Pakistan, where blasphemy charges are levelled against Dalit human rights activists.

Dalits constitute a large proportion of the poor living in the region. Due to this their access to justice institutions and other public institutions like schools and hospitals are also remote. It is no surprise thus that out of the children who are malnourished in Pakistan, Nepal, Bangladesh and India more than 60 percent are from the Dalit community. Even alarming is the situation in India where 40 percent of the children below the age of five are malnourished and one in every third child is from the Dalit community.

So are the crimes committed against the Dalits in these countries. While malnutrition and hunger and the situations that lead to such poor living standards is a form of capital punishment collectively executed on the basis of caste, crimes committed against the members of the Dalits, by the state and private individuals are common.

In Pakistan for instance, Dalit women are forced into marriages with Muslims and converted to Islam against their will. However after conversion they are considered Muslims of lower origin and end up often as instruments for sexual pleasure by men. In Bangladesh Dalits are minority who are expected to claim no rights.

Conditions like this are possible because of a fallen criminal justice delivery mechanism in the region. The backbone of the criminal justice system is policing. Policing in the region suffer from the impunity the officers enjoy for their corrupt practices. Custodial torture and extra judicial killing is widely used to terrorise those who challenge the police in the region. Even well known human rights groups are not immune to this terror.

Police's approach to the issue of caste is primitive. It can be also said that police is the most undeveloped of all the public institutions in the region. A combination of factors, including its colonial origin and the overwhelming influence of old prejudices have made the policing system in the region one of the most archaic institutions of the world.

Attempts to modernise justice institutions like the police that are to work in unison with the prosecution and the judiciary should caste based discrimination be prevented is almost absent in the region. This has a direct bearing upon elimination of violence against the Dalits, members of the tribal communities as well as other poorer classes in the society. This is despite political promises by all parties within the region to end caste-based treatment of the people and of ensuring equality.

The police see themselves as oppressors and controllers of the poorer classes. The suppression of all moves by the poor to organise themselves for the purpose of achieving improvement in their lives is obstructed by the police by the use of torture and extraordinary forms of inhuman and degrading treatment. Higher-ranking police officers have acquired enormous 'expertise' in humiliating, intimidating and where they think it necessary, in the use of violence against Dalits and the poor. Creative writers in the region have demonstrated the almost demonic nature of the region's police when it comes to the treatment of Dalits.

However the Dalit movement in the region has not yet directed its efforts to achieve police reforms despite the policing system being the instigator and plays a major role in their oppression. In this failure lies the inability to win over practical results in terms of actual lives of the Dalits. Whatever they achieve by way of legislation and political promises by various governments, none of these are translated into actual affirmative

actions since the police plays the role of the implementer. The Dalit leadership needs to develop their expertise in getting the laws, which could have a positive effect on their lives translated into actual implementation by achieving reforms in the institutions of implementation, such as the police.

More intellectual effort is required by the Dalit movement to confront the oppressive role of the police. The Dalits should become an active agent of police reform. Particularly in the area of investigations of crimes against the Dalits about which at the moment the police show little interest and even less efficiency. The Dalit movement should realise that the region's police are conditioned by a policy within the institution to defeat the calls for justice by way of sabotaging investigations. Once the investigations are sabotaged there is little chance of success in judicial actions. In courts, everything depends on evidence and when the evidence collection is sabotaged the perpetrators of the attacks against Dalits are ensured impunity. One of the architects of impunity in crimes against Dalits is the police.

The policing system relies on oral statements from the witnesses regarding crimes. In crimes against the Dalits persons who belong to privileged classes obstruct investigations and also do not provide the information required to the police. On the other hand witnesses from the Dalit community itself are afraid of the consequences, to them and to their families, and often do not come forward to give evidence. The police then write their reports to the courts stating that there is no evidence to proceed regarding allegations of crime relating to the Dalits.

Modern policing relies heavily on technological advances in dealing with crime. The governments in the region cannot argue that they lack resources to reform its policing system and bring it at par with policing systems of the developed countries. Without achieving this fundamental reform and placing priority on evidence gathering through scientific methods, laws like the Prevention of Atrocities Act (in India) will be of little use.

If the Dalit movement is to develop the expertise in playing the role of a public opinion maker for police reforms, the Dalit leadership should acquire knowledge and skill in dealing with this issue. The meticulous documentation of the manner in which the police sabotage inquiries into crimes against Dalits could be a significant way for influencing public opinion in the region as well as outside. Dalit leaders should request and obtain technical advice required in developing their skills in order to achieve reforms of their policing system.

Every little achievement in making the police accountable in terms of the rule of law will bring about enormous freedoms to the Dalits. With such freedom Dalits will achieve improvements in life, and will acquire skills, which will enable them to break away from the bondage of caste-based employment, and various other humiliating experiences Dalits are exposed to today.

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About the ALRC: *The Asian Legal Resource Centre is an independent regional non-governmental organisation holding general consultative status with the Economic and Social Council of the United Nations.*

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