

Protection of Minority Rights in Asia: Country Cases

October 2022





In 2021, Asia Democracy Research Network (ADRN) selected basic legal and constitutional provisions as the key precondition to protect minority rights in Asia.

Against this background, ADRN published this special report to evaluate the current state of the trends and trajectories of minority rights in the region by studying the phenomenon and its impact within five different countries in Asia, as well as their key reforms in the near future.

The report investigates contemporary questions such as:

What is the history of minorities in each country? What kind of abuse do they suffer?

What are the mechanisms for protection of minorities in each country?

What should be the main objectives of securing minority rights in each country?

What are the challenges in protecting minorities in your country?

What should be done to ensure minority rights?

Drawing on a rich array of resources and data,

This report offers country-specific analyses, highlights areas of improvement, and suggests policy recommendations to strengthen the minority rights in their own countries and the larger Asia region.

“Protection of Minority Rights in Asia: Country Cases”

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Executive Summary

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Across democracies in Asia, minorities particularly the religious groups are facing growing attacks on their religious freedom and basic rights as citizens. Coinciding with global democratic recession since the last decade², there are rising attacks on minorities, open assault on their constitutional and legal rights as citizens in democracies across many regions. Growing polarization and majoritarianism in many countries including some of the most diverse democracies not only deprive minorities of their basic constitutional and human rights, but they also create perpetual divides in the social and political spheres. Nearly every major region of the world is witnessing an alarming erosion in the status of minorities. Given its growing importance to the future and stability of democracy, Asia Democracy Research Network (ADRN) undertook five country case studies (India, Bangladesh, Nepal, Thailand and Mongolia) from Asia to understand the dynamics and key trends with regards to the status of minorities. Key trends and dynamics of country case studies are summed up below.

First, case studies point to certain basic legal and constitutional provisions as preconditions to ensure the rights of minorities. While the coverage and intensity may vary from one country to another, these provisions providing legal basis to such rights are extremely essential. Among all case studies, the Indian constitution provides a long list of provisions in the forms of fundamental rights, institutional commitments both from the executive and judicial branches to enable minorities and disadvantaged populations to enjoy equal rights and opportunities. Similarly, Bangladesh has several provisions in the constitution and in administrative spheres to ensure the protection of minority groups particularly the religious minorities. Whereas Nepal and Mongolia have much weaker provisions to ensure adequate protection for minority groups. Apart from constitutional and legal provisions, the countries focus on having numerous state policies and institutional forms to deal with the rights and privileges of minorities. India for instance has the most elaborate list of welfare provisions, central and state schemes in the forms of scholarships, free coaching, loans, skills program, state subsidies for minority run institutions for the welfare of minorities. Bangladesh and Nepal too have put in place state-led schemes and provisions and administrative and statutory mechanisms at multiple

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² Larry Diamond, 2015. "Facing Up to the Democratic Recession", *Journal of Democracy*, <https://www.journalofdemocracy.org/articles/facing-up-to-the-democratic-recession/>

levels to strengthen the opportunities for minorities and disadvantaged groups. On the other hand, Mongolia has been allocating state resources for the educational progress of minority groups, although it does not have any specialized programs targeting these sections.

Second, while the countries in question have put in place impressive list of constitutional, legal and state-led provisions to safeguard minority rights, the implementation records have been rather patchy and uninspiring. This is clearly evident from the educational, socio-economic and political positions of minority communities in these countries. The most striking examples can be found in the cases of India and Bangladesh. Muslims in India are precariously positioned on most key socio-economic and educational indicators compared to other religious groups such as Hindus, Christians and Sikhs. Much worse is Muslim political representation, which has seen a sharp decline in recent years, particularly with the hegemonic rise of pro-Hindu Bharatiya Janata Party. Bangladesh too has significantly failed to protect the religious and ethnic minorities particularly Hindus who continue to face increasing attacks (religious festivals in particular) and discrimination under a political regime that strongly advocates secular politics. Not only are religious and ethnic minorities ranked lower than the national average in every indicator of human development, but they also face severe social, economic and political discrimination, increasingly losing their ancestral land to Bengali settlers or to land grabbing by vested groups.

In the case of Nepal, the oppressed Dalit community is at the receiving end of upper caste politics and institutionalized discrimination and exclusion. They are grossly underrepresented in civil services, Federal Cabinet, House of representatives and provincial parliaments. In the case of Mongolia, it neither has any positive news regarding ethnic and religious minorities and their participation in key spheres of state. Compared to the majority Khalkas (84.5%), ethnic minorities such as Kazakhs, Tuvas and Tsaatans are placed at the bottom of the human development pyramid. What is more concerning is that minorities are struggling to preserve their language, culture, customs and religion in a society and polity that is overwhelmingly dominated by the majority Khalkas. In summation, a combination of poor allocation of state resources, weak state capacity, lack of political will, democratic politics which thrives in anti-minoritism and majoritarian impulses, and importantly, apathy of independent institutions have all contributed to precarious situation with regards to minority rights in the abovementioned countries.

Third, amidst bleak scenario with regards to minority rights, Thailand offers some positive hope on LGBTQ (lesbian, gay, bisexual, transgender and queer) community. The LGBTQ community and its long struggle to acquire the legal and constitutional rights to marriage offer a lot of hope for other societies in Asia and elsewhere. Despite facing major discrimination at all levels, since 2012 a visible progress has been made in terms of advocacy and constitutional recognition of their rights. After a decade of long struggle and persistent advocacy, on 15 June 2022, both the Civil Partnership Bill proposed by the government, and the Marriage Equality Bill proposed by the opposition party passed the first reading by the parliament along with another draft of the Civil Partnership Bill proposed by the Democrat Party and the cabinet initiated Civil and Commercial Code reform. While this is a big step forward on marriage equality for LGBTQ, there is a long road ahead to its actual realization.

To conclude, country studies clearly point to a mixed bag with regards to the status of minorities. While there are improvements in many key parameters (codification of constitutional and legal rights), many

key parameters of violation of the rights, failures to enforce the codified rights and privileges and majoritarian politics thriving on anti-minoritism and identity politics are common threads that run across all countries. Weak institutional capacity, lack of adequate state resources, and apathy or inefficiency of constitutional independent institutions such as judiciary have made constitutional and legal rights and privileges guaranteed to minorities remain only on paper. While civil society, media, and human rights organizations offer some resistance to this trend, they are no match to the sweeping majoritarianism and politics of polarization which thrive on anti-minoritism and exclusion in most of the countries. In short, minority communities are unfortunate victims of the democratic backslidings experienced across most of the countries.

Country Case 1: India

The Majoritarian Challenge to Minority Rights in India: A Study of Muslim Minorities

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Summary

As the world's largest democracy, India evokes respect and global admiration for its overwhelming diversity and pluralism. While more than 80% of its populations are Hindus, the constitution makers adopted a secular constitution which allowed equal freedom for minorities. Minority groups were accorded equal rights in the constitution and democratic processes apart from special state policies and mechanisms to ensure their rights are realized to the fullest. While the new constitution denied minorities representational power in legislatures and services, it formulated various provisions and laws in 1948 under the name "Special Provisions Relating to Minorities" in part XIV of the Constitution. The fundamental rights of the constitution guaranteed and protected the educational and cultural rights of minorities. While there are elaborate provisions to protect minorities, the status of minorities, particularly religious minorities, remain far from fulfilled as the constitution framers had imagined. Minorities, particularly Muslims, continue to face discrimination and exclusions in multiple ways. While state policies have largely failed to cater to the social, economic and educational needs of India's minorities, they have still enjoyed relative freedom and opportunities in social, cultural and economic spheres. However, a steady transformation of democratic politics based on anti-minority sentiment and majoritarianism in recent years has turned the tide against religious minorities in India, particularly Muslims.

With the unprecedented rise of the pro-Hindu Bharatiya Janata Party (BJP), occupying a central position in Indian politics, minorities, particularly Muslims, have been at the receiving end of majoritarianism. The majoritarian politics which have thrived thanks to the deft use of polarization tactics by the BJP and its sister organizations against minorities (by selectively excluding them from the majority community) have kept the country in a permanent state of tension and chaos. Today, India's civic sphere resembles a war zone in which opposing groups, particularly religious minorities, are seen as enemies. This divide is taking a heavy toll at the societal level, which had weathered communal riots, ethnic tensions and inter-religious conflicts in earlier decades. As a result of majoritarian policies, Muslims, apart from being politically marginalized, face rising attacks on their food habits, dress, worship, vocations, and citizenship rights. Bigotry and hatred are

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openly used against Muslims not only by fringe elements associated with the ruling party, but even by known political figures occupying high constitutional offices, who do nothing to prevent such behaviors.

There are very few options available in terms of checking the majoritarian onslaught and preventing rising attacks on minorities. Given the fact that most independent institutions have been silenced or made to compromise by the ruling party at the center, only the judiciary has shown some mettle to undo the wrongs. In several instances, the top court has brought in some kind of check, including cases related to personal liberty, hate speech and arbitrary state confiscation of properties belonging to minorities. Of course, a major hope against the majoritarian turn is India's strong culture of interfaith dialogue and its plural and tolerant Hindu faith. This apart, the opposition parties, particularly the regional parties, are offering some form of resistance to majoritarian onslaughts. However, the best hope has emerged from the civil society groups which have resisted majoritarian policies. This was best illustrated during the Saheen Bagh anti-CAA protest largely undertaken by elderly Muslim women in 2019. However, a long battle lies ahead for India's minorities, especially its Muslims, who face an uncertain future. What makes the situation worse is that the Hindu nationalist government has initiated a slew of institutional and legislative changes that are steadily altering the secular and plural character of the Indian state.

1. Introduction

On August 15, 2022, some 1.40 billion Indians celebrated the 75th anniversary of India's independence from British colonialism. When the country became independent in 1947, political theorists and democracy scholars doubted that a huge nation with mass poverty, illiteracy and overwhelming religious, linguistic, regional, and ethnic diversity would be able to succeed as a democracy. India's success as a democracy for seven-odd decades continues to puzzle many analysts (Lijphart 1996). The most striking feature of India's democracy building has been its plural and secular principles that the constitution framers agreed to enshrine despite India being a majority Hindu country. Minorities were accorded equal rights in the constitution, and democratic processes apart from special state policies and mechanisms to ensure their rights are realized to the fullest. However, in reality minorities, particularly religious minorities, continue to face discrimination and exclusions in multiple ways. While state policies have largely failed to cater to the social, economic and educational needs of minorities, the democratic politics based on anti-minority sentiment and majoritarianism in recent decades have turned the tide against major minority groups, particularly Muslims. The unprecedented rise of Hindu nationalism, increasing influence of extreme fringe groups, and the growing use of polarized tactics including violence, threats, intimidation, and exclusionary policies targeting minorities pose serious threats to idea of India as a secular and plural nation. In short, India and particularly its minority populations stand at a critical juncture of history as the country gradually moves towards an ethno-democracy.²

² Scholar Christophe Jaffrelot has coined the word. For more see, Jaffrelot 2021.

2. The State of Minorities in India

India is a deeply diverse and plural country. Although more than two-thirds of India's population (80.7%) is from the Hindu community, it still has large minority populations. According to the statistics published by the Ministry of Minority Affairs, Muslims, Christians, Sikhs, Buddhists, Jains, and Zoroastrians or Parsis are considered minority communities.³ As per the last census (2011), the percentage of minorities in the country is about 19.3% of the total population. The population of Muslims is 14.2%, Christians 2.3%, Sikhs 1.7%, Buddhists 0.7%, Jains 0.4%, and Parsis 0.006% of the total population (Ministry of Minority Affairs n.d.). In other words, every fifth person in India belongs to a minority community. With 142 persons in every 1,000, Muslims remain the biggest minority community in India.

Given India's bloody partition experience (the country was split into India and Pakistan based on religion in 1947), the word "minority" and any special privileges granted to minorities have been subject to intense contestations and interpretations. The clearest proof of this is the contentious debates that took place in the Constituent Assembly (1946-49) over who should be considered minorities and what special rights they should enjoy. For example, a major demand among the representatives from minority groups during the making of the constitution was political representation for these communities. Qazi Karimuddin, a prominent Muslim voice in the Constituent Assembly (CA), advocated for proportional representation to escape what he called the "pervading evil of democracy (that) is the tyranny of the majority" (Jha 2003). Another member of a minority group, Z.H. Lari, also supported the idea of proportional representation so that the parliament can become "the mirror of the national mind" and "minorities will not have grievances about their representation" (Jha 2003). Although several members of the CA were sympathetic to the arguments for political representation for minorities, in the end the Assembly decided to scrap all suggestions on political presentation for minorities, particularly Muslims, while it retained the provision of reserved seats for the Scheduled Castes belonging to the Hindu community. The CA offered minorities, including Muslims, a package of "rights" (Ahmad 2014) as part of the bargain.

3. The Constitution and Minority Rights

While the Constituent Assembly denied minorities representational power in legislatures and services, it formulated various provisions and laws in 1948 under the name "Special Provisions Relating to Minorities" in part XIV of the Constitution. No special rights except cultural and educational rights were offered to minorities (Adak 2021). The fundamental rights of the constitution guaranteed and protected the educational and cultural rights of minorities. Article 29 protects the interests of minorities by making a provision that any citizen/section of citizens having a distinct language, script, or culture have the right to conserve the same. Article 29 also mandates that no discrimination may be performed on the ground of religion, race, caste, or language (Business Standard n.d.). Article 30 offers a package of rights to protect the interests of minority groups (Business

³ Although the Constitution does not define what "minority" means, they are conventionally categorized into two types: linguistic minorities and religious minorities. Section 2, clause (c) of the National Commission of Minorities Act declares six communities as minority communities. These are Muslims, Christians, Buddhists, Sikhs, Jains, and Zoroastrians (Parsis).

Standard n.d.). Article 30(2) states that the government should not discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language, while giving aid. There are additional provisions that safeguard and protect the religious freedom of minorities. For example, Article 25(1) ensures freedom of conscience and the right to freely profess, practice, and propagate religion—subject to public order, morality, and other fundamental rights. Significantly, Article 350(A) makes a provision for a special officer for linguistic minorities to be appointed by the president (Ananthakrishnan 2022).

4. Minority Commissions

In order to assure effective protection of the rights and privileges of the minorities, the central government in 1992 enacted the National Commission for Minorities Act. Accordingly, a National Commission for Minorities was established in 1993. As per Section 9(1) of the Act, the Commission is mandated to safeguard the rights enshrined in the Constitution for minorities and laws enacted by Parliament and the state legislatures (Chaturvedi 2017). This apart, it looks after any specific complaints regarding discrimination and denial of rights and entitlements of minority groups. Apart from the center, state governments have set up their own minority commissions, too. However, the experiences in nearly three decades show these specialized and statutory bodies have remained vastly ineffective (Chaturvedi 2017). As per the reports, most often these institutions have remained understaffed, financially disempowered, and with little or no punitive powers to act on cases of reported violations of minority rights.

5. Minorities and State Policies

In addition to constitutional and legal provisions, central, state and local governments run dozens of welfare schemes and initiatives for the betterment of minority communities. Several schemes including scholarships, free coaching, concessional loans, and grant-in-aid for minority educational institutions among others are available. These apart, there are half a dozen schemes addressing the skills and infrastructural challenges facing minority communities. A major central scheme is Pradhan Mantri Jan Vikas Karyakram, a multi-sectoral program which covers minority-concentrated blocks and districts and minority-concentrated towns and villages for infrastructural development.⁴ A notable skill development scheme “Garib Nawaz Skill Development” training for minorities has been created to provide short-term job-oriented training to youths belonging to the six minority communities mentioned above. In short, there are scores of schemes and policy initiatives that have been adopted by governments to address the needs of minorities (Ministry of Minority Affairs 2018).

⁴ Under this scheme, 340 multi-purpose community centers, 67 gurukul-type residential schools, 436 market sheds for farmers and artisans, 11 degree colleges, 163 girls’ hostels, and 925 school buildings have been built by the government of India in minority-concentrated localities. In the financial year 2019-20, INR 14.70 billion was allocated for this scheme. For more, see Ministry of Minority Affairs, op.cit.

However, these initiatives in reality have grossly failed to fulfill the demands/needs of vulnerable minorities, particularly the largest minority (Muslims) who continue to remain at the bottom of India's socio-economic pyramid. While the Minority Affairs ministry's budget has seen an exponential rise in the past decade (from INR 3,130 crore in 2013-14 to INR 5,020 crore in 2022-23, an increase of 60%) (NITI Aayog 2021), these allocations largely remain under-utilized for various reasons. Oftentimes, the Ministry is left with a substantial amount of unutilized funds. For example, in the financial year 2019-20, out of the INR 4,700 crore budgetary allocation, the Ministry had utilized only 24.47% by October 2019 (NITI Aayog 2021). The following year, "only 40% earmarked for eight schemes for the educational empowerment of minorities could be spent" (Deka 2022). In short, a combination of weak enforcement, poor state capacity, and structural barriers have gone on to erode the potentials of these well intentioned schemes, which will be discussed in further detail in the next section. What is more concerning is the fact that minorities routinely face a growing majoritarian onslaught (Mahmudabad 2020) in every aspect of their lives including food, dress, occupation, and place of worship.

6. Muslims: A Case Study

With a population of more than 210 million, Muslims in India are only slightly lower in number than the seventh-most populous country in the world (Nigeria) (Dutta 2022). According to a recent Pew report on population growth and religious composition, India has the world's second largest Muslim population, surpassed only by Indonesia. Pakistan's Muslim population is roughly the same size as India's (Kramer 2021). Yet, they are a minority in a predominantly Hindu country. Muslims, however, are not a monolithic community. They are deeply diverse, with differences in ethnicity and language, and surprisingly with caste identities similar to Hindus as well as differences in access to political and economic power (Maizland 2020).

Once part of the ruling clans for several centuries including the Sultanates and Mughals, Muslims today are the most marginalized among all minority communities. This was attested by one of the most authoritative studies on the socio-economic conditions of Muslims in recent years was the report prepared by the Sachar Committee in 2006 (Sachar et al. 2006). The government-tasked committee placed Muslims lower than historically oppressed Scheduled Castes and Scheduled Tribes in backwardness. In terms of socio-economic parameters such as education, employment, and literacy, Muslims were nowhere near other designated minorities. Among some of the more startling findings, the report revealed that as many as 31% of Muslims were living below the poverty line, that their representation in the elite civil services, particularly the Indian Administrative Service (IAS) and Indian Police Service (IPS), was a mere 3% and 4%, respectively. Further, the literacy rate for Muslims was far below the national average, and as many as 25% of Muslim children were found to not have access to school education. Acting on the findings and recommendations of the Sachar Committee, the Congress-led United Progressive Alliance (UPA) government in 2007 launched a number of policies and programs to address the social, economic, and educational backwardness of Muslims (The Economic Times 2013). The UPA government set up an Expert Group to propose a diversity index and modalities to address issues of discrimination and backwardness among minority social and religious groups, particularly Muslims.

However, the conditions of Muslims with regard to key indicators have barely improved even 16 years after the Sachar report. On the contrary, some key indicators have deteriorated. For instance, while the share of Muslims in India's police forces was 7.63%, it fell to 6.27% in 2013. After this became a media issue, the government decided to forgo the releasing of data on police personnel by religion (Shaikh 2016). The most striking figures are with regards to the IAS and IPS. While the Sachar Committee had noted 3% and 4% of Muslims in the IAS and IPS respectively in 2005, these numbers were 3.32% and 3.19% respectively on January 1, 2016 (Shaikh 2016).

In short, Muslims are precariously positioned on most key socio-economic and educational indicators compared to other religious groups. Even the historically oppressed Scheduled Castes (belonging to the Hindu religion) have moved up on several crucial indicators compared to India's Muslims. Much worse is Muslim political representation, which has seen a sharp decline in recent years, particularly with the rise of the pro-Hindu Bharatiya Janata Party. While poor socio-economic indicators and under-representation remain issues of serious concern for India's largest minority community, the acceleration of majoritarian politics and resultant "othering" (Lobo and Salil n.d.) of Muslims poses the gravest threat to their identity.

7. Growing Majoritarianism and Muslim Marginalization

Notwithstanding the long neglect and continued discrimination on various counts as vividly documented by the Sachar Report, Muslims still enjoyed a certain degree of autonomy and state protection until the Hindu right came to the national prominence in the late 1990s. Of course, the rise of the Hindu right and the majoritarian project did not emerge all of a sudden in early 1990s from the Ram Janmabhoomi movement (birthplace of Lord Rama) in Ayodhya, Uttar Pradesh (Rashid and Venkataramanan 2019). The roots of Hindu majoritarian project go back to the pre-partition years. The two clashing visions of the "idea of India" that visibly emerged in the pre-partition period continues to play out this day (Jaffreot 1996). One strand of thinking viewed India as a secular and pluralist nation, while the other camp defined India as a Hindu *Rashtra* (Hindu nation).

As Mahatma Gandhi began leading the struggle for Indian independence by creating the Indian National Congress (INC), a mass organization to resist British rule, he kept pushing the idea of India as a plural and secular nation. However, Hindu nationalists began pushing their political alternative that challenged Gandhi's conception of Indian nationhood. One prominent INC leader was Jawaharlal Nehru, who would later serve as India's first prime minister (1947–64), and who criticized Hindu nationalism as a "communal" ideology that resembled those of Muslim and Sikh separatists (Jaffreot 1999). However, offering a strong challenge to Gandhi and Nehru's vision of India, Hindu nationalists in the 1920s argued that Hindu culture defined Indian identity and that minorities needed to assimilate by showing allegiance to the symbols of this majority culture. Scores of Hindu nationalists coalesced behind the Akhil Bharatiya Hindu Mahasabha (All-India Hindu Grand Assembly), a conservative, Hindu nationalist party founded in 1915. V. D. Savarkar, a revolutionary who was leading the then-Hindu Mahasabha, framed the term *Hindutva* (Hindu nationalism) to challenge Gandhi-Nehru's territorial and secular concept of Indian nationhood.⁵ In his important work

⁵ Savarkar's writings on *Hindutva* were in large part a reaction to the Pan-Islamic mobilization of the Khilafat Movement (1919–

Hindutva: Who is a Hindu? published in 1923, Savarkar strongly argued for the idea of the Hindu Rashtra. Savarkar defined the concept in terms of three essential elements: a common nation, a common race, and a common culture or civilization (Pandey 1989). In 1925, the Hindu nationalist K. B. Hedgewar turned Savarkar's imaginary concept of Hindutva into a mass movement when he founded the Rashtriya Swayamsevak Sangh (RSS), a paramilitary volunteer organization dedicated to promoting Hindu nationalism. The main thrust in founding the RSS was a more centralized and assertive promotion of Hindu Rashtra (Anderson and Damle 1987). The RSS soon emerged as the fountainhead of promoting Hindu Rashtra. The RSS was able to mobilize critical support behind its idea of Hindu Rashtra from sister organizations commonly known as the Sangh Parivar, or "Family of Organizations" (Mehta 2017).

Although the very bitter and bloody partition of India and Pakistan in 1947 heightened sectarian tensions, until the late 1970s the hegemony of the Congress Party kept Hindu nationalism from occupying center stage in national politics. The leadership of Jawaharlal Nehru, who served as India's first prime minister between 1947 and 1964, tempered polarization and kept the Hindu right out of the mainstream. Of course, the RSS and its political wing Bharatiya Jana Sangh (BJS) were able to push a series of agitations against cow slaughter and the constitution allowing for separate Muslims personal laws to stay in the national limelight.

After years of rule by the Congress, however, the polarizing maneuvers of Prime Minister Indira Gandhi (1966–77, 1980–84) handed the BJS and RSS a crucial opening. Indira Gandhi was an extremely divisive figure, and her tenure was marked by extreme centralization of power, intolerance of the opposition and the press, and finally the imposition of a state of emergency between 1975–77 (Nayar 1977). The national emergency which led to the arrests of hundreds of opposition leaders and included various other draconian measures united the entire political opposition, including the Hindu nationalist BJS, to tighten up and form the Janata coalition, which defeated Indira Gandhi in the general elections in 1977. Although the Janata coalition government collapsed soon in 1979 after internal squabbles, it hugely benefited the BJS and brought many of its leaders to national prominence.

7.1. The Rise of the BJP and Hindu Majoritarianism

The divisions over India's national identity turned sharper with the formation of the Hindu nationalist party—Bharatiya Janata Party (BJP)—in 1980. After repeated failures to unseat the hegemonic Congress Party, Hindu nationalists from the BJS and the Janata coalition (with which it had merged in 1977) formed a new political party in 1980. Under the leadership of two leaders Atal Bihari Vajpayee and Lal Krishna Advani, the BJP began taking on the Congress with the help of Sangh Parivar. In the mid-1980s, L.K. Advani pandered to Hindu sentiment and sought to mobilize the majority community on the basis of religious identity in the Hindi heartlands, and Vajpayee employed a moderate approach to expand the new party's footprint beyond the northern belt. The RSS and Sangh Parivar provoked communal tensions by launching the Ram Janmabhoomi

24). Most of his thoughts were derived from his deep distrust of Islam and its followers. Savarkar Muslims, who constituted one-fifth of the population, were loyal to Mecca and Istanbul rather than India. Through Hindutva, he strove to unify Hindus, who historically had been subject first to Muslim and then to British rulers. See Richard Gordon. 1975. "The Hindu Mahasabha and the Indian National Congress, 1915 to 1926." *Modern Asian Studies* 9, 2: 145–203; and Ashutosh Varshney. 1993. "Contested Meaning: India's National Identity, Hindu Nationalism, and the Politics of Anxiety." *Daedalus* 122, 3.

movement, which aimed to build a temple to the Hindu deity Rama on the site of the controversial Babri Masjid, a mosque in the city of Ayodhya. Through this movement, the RSS entered into a tacit understanding with its sister organization, the Vishwa Hindu Parishad (VHP), to re-launch an ethno-religious project that would revive the idea of Hindu Rashtra. The two organizations started the Ram Janmabhoomi movement to reclaim for Hindus the land upon which the Babri Masjid was built, which some Hindus believe to be the birthplace of Lord Rama. In the sixteenth century, the Mughal emperor who conquered a large part of northern India, including the city of Ayodhya, had demolished a Hindu temple there and built the Babri Masjid. Given its controversial history, this religious site had remained a major point of conflict between Muslims and Hindus and been the center of numerous riots (Pandey 1989). With the active support of the BJP, the RSS and VHP launched a nationwide stir demanding the restoration of the original Hindu temple in 1989. This mobilization greatly contributed to the BJP's success in the 1989 general elections, in which the right-wing party won as many as eighty-five seats and in some ways deprived the Congress of a legislative majority.

However, it may be noted that the Congress Party's duplicity and its own opportunistic "soft Hindutva" move also contributed significantly to the success of the Hindu right. Prime Minister Indira Gandhi openly stoked the anxieties of India's Hindu majority in election campaigns in the 1980s. However, her son, Prime Minister Rajiv Gandhi, also deployed similar tactics to woo the majority community (Chandra 2018). In 1985, the Congress Party faced a backlash over its reaction to the Indian Supreme Court's decision in the *Shah Bano* case, as its critics claimed that the party was allowing Muslims to live under a very different civil code.⁶ The Rajiv Gandhi government tried to woo Hindu hardliners who were upset with his administration by opening the gate of a Hindu temple in Ayodhya in 1988. Such actions/appeasement emboldened leaders like Sangh Parivar to further politicize mobilization against the Babri Masjid in Ayodhya (Hansen 1999). The BJP leader Advani made the most of the political opportunity by launching a famous 10,000-kilometer *Rath Yatra* (chariot journey) to mobilize support for the construction of a temple for Lord Rama on the disputed site. Tensions ultimately culminated in the destruction of the Babri Masjid by Hindu activists on December 6, 1992, leading to a series of violent communal riots and deaths between Hindus and Muslims in many parts of the country.

While the Babri episode isolated the BJP and made it a pariah for some time, by the late 1990s, the Hindu right party carefully shifted its strategy to capture political power. Realizing that it could not win power on its own and that it needed to form alliances with other regional parties, it toned down its inflammatory Hindu nationalist rhetoric (Anderson and Dalme 1987). The Vajpayee-Advani duo's well-crafted strategy of moderating Hindutva and mixing it with promises of economic development allowed the party to gain support from fifteen coalition partners in 1998 and run the first successful non-Congress coalition to complete a full term between 1999 and 2004. The BJP's dependence on its coalition partners meant that the party was forced to set aside contentious proposals such as building a Hindu temple at Ayodhya and adopting a Uniform Civil Code.

⁶ Dealing with Muslim personal law, in 1985 the Indian Supreme Court in the *Shah Bano* case upheld the lower court's ruling directing Shah Bano's husband to pay maintenance under the alimony provision of Indian law applicable to all communities. This bold judgment created a huge uproar within the Muslim community, especially among Muslim males, which prompted the Rajiv Gandhi government to quickly enact the Muslim Women (Protection of Rights on Divorce) Act in 1986 to roll back the progressive judgment and appease members of the minority community. For more, see *The Indian Express*, "What Is Shah Bano Case," August 23, 2017. <https://indianexpress.com/article/what-is/what-is-shah-bano-case-4809632/>.

7.2. The Rise of Hindu Nationalism and Ascendancy of Majoritarianism (2014-Present)

However, the BJP's majoritarian push was briefly halted by a Congress-led government in power between 2004 and 2014. Despite propelling high economic growth, a series of scams and scandals, and most importantly the party's cynical use of identity politics against the purported threat of right-wing terror, created critical openings for the Hindu right in the decisive 2014 elections.⁷ The BJP's surprising victory in 2014 (the party secured a majority of seats in the lower house on its own), breaking the trends of three decades' of coalition politics (Vaishnav 2019b), gave a new lease on life to the Hindutva project and its majoritarianism vision. The BJP under Prime Minister Narendra Modi emerged as an unapologetic advocate of Hindutva. Once in power, the BJP began rewriting Indian history to emphasize the country's Hindu heritage and its glorious past, aggressively promoted Sanskrit, and packed important historical and cultural institutions with party ideologues or supporters. Not only has the BJP government reversed the gradual slide of the Hindu right from its back-to-back electoral defeats in 2004 and 2009, but the saffron party under Modi has witnessed an unprecedented surge across many regions of the country.⁸

In the 2019 general elections, the Hindu right under Modi won another spectacular mandate, much bigger than in 2014. This was largely achieved through Hindu nationalism and national security planks. The 2019 general elections saw an extreme level of polarization and majoritarian consolidation based on Hindu nationalism and Islamophobic campaigns heavily benefiting the right-wing party. In short, within the span of eight years, the BJP under Modi has become the central pole of Indian politics with a hegemonic presence in every aspect of the republic, particularly the religious and cultural spheres. In short, the BJP's back-to-back electoral landslides (2014 and 2019) have revived its Hindu majoritarianism agenda which thrives on anti-minority actions.

8. Implications of Rising Majoritarianism

8.1. Spike in Hate Crimes against Muslims

While the increasing deployment of polarization tactics by the Hindu nationalist government has created a sharp division among the Hindus and the Muslim minority, the most troubling outcome has been rising incidences of religious violence and gradual marginalization of Muslims. For instance, as the portal *IndiaSpend* indicates, as much as 97% of the cow-related violence reported between 2010 and 2017 has occurred since the BJP government assumed power in May 2014. In 2017 alone, 11 Muslims were killed in incidents of cow vigilantism across the country, the highest toll on record in recent years.⁹ While the number of cow-related lynchings has declined in recent years, violence in other spheres (hate crimes) has gone up since 2019 (Scroll 2022).

⁷ For example, it invented terms such as "Hindu terror" and "Saffron terror" to stir up fears about the BJP. For a detailed account, see "How 'Saffron Terror' Was Coined: A Rundown of 2008 Malegaon Blasts," June 5, 2018, *The Quint*. www.thequint.com/videos/news-videos/how-saffron-terror-was-coined-a-rundown-of-2008-malegaon-blasts

⁸ However, the Hindu Nationalist party received a major jolt in 2018 when it lost three key Hindi heartland states to the Congress. The BJP's tally now comes down to sixteen states. See Suhas Palshikar. 2018. "Towards Hegemony: BJP beyond Electoral Dominance." *Economic & Political Weekly* 53, 33. August 18, 2018. <https://www.epw.in/journal/2018/33/indias-democracy-today/towards-hegemony.html>.

⁹ Data collected since 2010. See Saldanha 2017.

However, intolerance is not restricted to mere discord over the status of cows. Even personal lives and individual liberty are under attack. This is most vividly seen in the spate of legislation brought by the BJP that ruled states must regulate inter-religious marriages in the name of *love jihad* (Chowdhury 2020). Love jihad is used to discourage inter-faith relationships and marriages by claiming that Muslim men are deliberately wooing Hindu women in order to force them to convert to Islam upon marriage. Similarly, the extreme Hindu groups in recent months have raked up the hijab issue by demanding a uniform dress code for Muslim girls in state-run educational institutions (The Times of India 2022). In an effort to appease these extremist Hindu groups, Karnataka state recently banned the hijab in educational institutions, thereby depriving thousands of Muslim students of the ability to access education. Ironically, the state High Court ruled in favor of the ban, creating anxiety among minority communities and people fighting to restore their constitutional rights.

8.2. Threats of Economic Boycotts

The exclusionary tactics adopted by the extremist Hindu groups have also recently been deployed in the economic sphere in recent times. The economic boycotts against the Muslim traders/small shop owners which were earlier given in Madhya Pradesh (Tiwari 2022) (one of the BJP-ruled states) has spread to other BJP-ruled states. For instance, in response to protests by Karnataka Muslim traders against the hijab ban, many Hindu extremist groups from the state called for a boycott of Muslim vendors near temple areas (The News Minute 2022). This has been echoed by Hindu groups in multiple states ruled by the BJP (Lalwani 2022). Given the fact that Muslims overwhelmingly work in informal sectors in small businesses, street vending, and random low-paid jobs, the economic boycott can become a death blow to their livelihoods. While the vast majority of the Hindu community has not signed on to the boycott, the fringe groups in the community continue to weaponize these tools against the Muslim minority.

8.3. Re-opening Historical Disputes

The latest act targeting Muslims is over disputed religious sites. The Indian Parliament created a law called the Places of Worship Act in 1991 disallowing conversion of a place of worship and mandating that its religious character as it existed on August 15, 1947 be maintained. However, groups of Hindu activists have filed petitions in the courts demanding the restoration of religious places (currently Gyanvapi mosque¹⁰ in Benaras, Uttar Pradesh) in their favor. While these cases are being heard by the Supreme Court and lower courts, these acts have revived the memory of Babri mosque and its demolition by a Hindu mob in 1992 (The Wire 2021). In short, while India's Muslims were socially and economically marginalized in the past, the recent rise of majoritarianism has translated to exclusion and violence over their right to eat, worship, dress, and engage in business, to name a few.

¹⁰ The Gyanvapi mosque was built on the ruins of the Vishwanath temple, a grand 16th century Hindu temple. The shrine was partially destroyed in 1669 by the sixth Mughal emperor Aurangzeb. Now Hindu groups want to restore the temple, similar to what they did in the Babri Masjid row in the 1990s. See Soutik Biswas, 2022. "Gyanvapi masjid: India dispute could become a religious flashpoint," *BBC*.

8.4. Increasing Political Marginalization of Muslims

The most damaging consequence of Hindu majoritarian politics is the dramatic decline of Muslim political representation. For instance, the ruling Bharatiya Janata Party at the center currently has no Muslim members in the Lok Sabha or the Rajya Sabha or in any of the state legislative assemblies (Kuchay 2022). This is while the ruling party occupies 92 seats in the Rajya Sabha, the highest majority in Lok Sabha since 1989 with 303 seats, and has formed a government in 17 states covering 44% of the territory and more than 49.5% of the population (Rampal 2022).

Further, while Muslims make up more than 14% of India's total population, they comprise only 4.9% of the 17th Lok Sabha. Only 27 MPs are present in the current Lok Sabha, and the ruling party does not have a single member from the largest minority community (Scroll 2019). While the BJP fielded just six Muslim candidates from different states, none of them were victorious in the election (Khan 2019). The invisibility of Muslim representation has spread to the states as well. They only constituted 8% (Farooqui 2020) of total legislative members in the state assemblies prior to the 2014 Lok Sabha election, and following the last round of state elections in 2018, this came down to 7%. With regard to the Hindu nationalist BJP, there are only three Muslim legislators from the party among the 1,282 party legislators in the 28 state assemblies (Farooqui 2020). They have historically platformed fewer Muslim candidates in their state assembly tickets to appeal to the majority Hindu population. In fact, the Indian Muslims are “underrepresented in almost all the significant institutions of the state,” which includes the Cabinet, key political offices and as office-bearers in political parties (Farooqui 2020). In short, India is witnessing dramatic erasure of Muslims, the nation's largest minority in the political sphere, largely against the backdrop of rising majoritarianism. Even parties that used to allot a greater number of Muslims for MP/MLA candidates are now reluctant to do so (Poojari 2021).

Table 1. Muslim Representation in Lok Sabhas

Election Year	% of Muslim MPs in Lok Sabha	% of Muslims in India's population
1952	4%	10%
1957	5%	10%
1962	5%	11%
1967	6%	11%
1971	6%	11%
1977	6%	11%
1980	9%	11%
1984	8%	11%
1989	6%	11%
1991	5%	12%
1996	5%	12%
1998	5%	12%
1999	6%	12%
2004	7%	13%
2009	5%	13%
2014	4%	14%
2019	4.9%	15%

Source: Election Commission of India

8.5. Majoritarian State through the Constitutional Route

Beyond exclusionary policies and actions, the Hindu right has been systematically altering the nature and character (secularism) of the state in India. Since the party won a second mandate in 2019, it has taken a slew of legislative measures that attack the diversity and pluralism of the country. The first major legislative move was the passage of the Triple Talaq Bill (The Muslim Women Protection of Rights on Marriage Bill) in 2019. The bill, which criminalized instant divorce by Muslim men, was one of the core agenda items of the BJP and its sister organizations, Sangh Parivar, for many decades (Dutta 2019).

However, the most radical step towards a true majoritarian state came in August when the Hindu right government repealed Article 370 of the constitution, which had granted the only Muslim majority state Jammu and Kashmir semi-autonomy and certain specific constitutional guarantees (Vaishnav 2019a). The state was dismantled into three Union Territories, and the key leaders of the state were put under detention for more than a year. In the same month (August), the BJP-led central government implemented a National Register of Citizens (NRC) in Assam, which required all the residents of the state to furnish physical proof of citizenship. Many analysts suspect the NRC is a tool to deprive Muslim migrants from Bangladesh of citizenship and render them stateless (Changoiwala 2020). However, the much bigger constitutional changes towards the majoritarian project came in December 2019, when the central government passed the Citizenship Amendment Act (CAA) which allowed the fast-tracking of citizenship to all Hindus, Buddhists, Sikhs, Parsis, Jains, and Christians facing religious persecution in neighboring countries. Analysts claim that by dividing alleged migrants into Muslims and non-Muslims, the new law openly discriminates against citizens based on their religion (BBC 2019). In short, the CAA and NRC combination has the potential to turn India into a majoritarian state.

9. The Way Forward

India's democracy, which once evoked praise and global admiration for its celebration of diversity and pluralism, is on the cusp of becoming a majoritarian state. The BJP has become the central pole of Indian politics with a hegemonic presence in every aspect of the republic, particularly the religious and cultural spheres. The politics of religious polarization successfully deployed by the BJP and its affiliates against minorities is keeping India in a permanent state of tension and chaos. India's civic sphere resembles a war zone in which opposing groups, particularly religious minorities, are seen as enemies. This divide is taking a heavy toll on the fragile social relations in the country, which had weathered riots, ethnic skirmishes, and inter-religious conflicts in previous decades. The worst sufferer of this polarization is vulnerable and poorer Muslims. Even at the height of the polarization resulting from the Ram Janmabhoomi movement, which caused many deaths and rioting, the divide was never as deep as it is now.

A major hope against majoritarian turn is India's strong culture of interfaith dialogue and the plural and tolerant Hindu faith. This apart, the opposition parties, particularly the regional parties, are offering some form of resistance to the majoritarian onslaughts. In several instances, the top court has brought in some kinds of checks, be it in the form of preserving personal liberty, fighting against hate speech, and preventing invasions of privacy. The best hope has, however, come from the civil society groups which have resisted majoritarian

policies. This was best illustrated during the Saheen Bagh anti-CAA protest largely undertaken by elderly Muslim women in 2019 (The Indian Express 2020). This powerful agitation, which attracted global attention, did play a role in pressuring the government to keep the implementation of controversial law in abeyance.

However, a long battle lies ahead for India's minorities, particularly the Muslims who face an uncertain future. Given that major democratic institutions are coming under increasing pressure and influence from right-wing forces, opposition parties remain divided, and media and civil society have failed to offer any checks against majoritarian tendencies, minorities have a tough road ahead. What complicates the matter is that the Hindu nationalist government has initiated a slew of institutional and legislative changes that are steadily altering the secular and plural character of the Indian state. What is aiding the Hindu right's majoritarian project is the divided opposition. Rather than putting up a united front against divisive politics and the daily targeting of minorities by right-wing forces, the opposition parties are now aping the "soft Hindutva" tactics of the BJP.

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Country Case 2: Nepal

Inadequacy of Nepal's Democracy for Dalits and Other Marginalized Peoples

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Abstract

Dalits are traditionally defined as troubled, downtrodden, subjugated, and oppressed by others, deprived of social prestige or honor, in a society where notions of superiority, inferiority, purity, and pollution are ingrained in the stratification of caste. Today, the term Dalit today represents the struggle for equity and equality as well. It is widely agreed that this term must continue to be used for as long as caste-based discrimination, including the status of untouchability, continues to exist in Nepal. However, despite constitutional and legislative safeguards, massive human rights violations of Dalits are still seen in Nepal, and this group still suffers from institutional discrimination and the structural violence inherent in the caste system. This situation is a challenge to all values of human dignity, democracy, rule of law, equality, and social justice. This paper examines the historical origins of the caste system in the Hindu religion and then proposes an analysis of the status of Dalits in Nepal. It also examines the major challenges to the implementation of Dalit rights. It argues that Nepal's democracy does not provide adequate results for Dalits or other marginalized communities in the present context and derives conclusions from this.

Background

From the emergence of Nepal as a state, members from a particular caste and community took charge of the polity as rulers. Over time, the hegemony and dominance of this particular caste and culture gave leeway to the tyranny of caste supremacy. Even after the re-establishment of democracy in 1990, marginalized communities continued the struggle for inclusion and reservation. Maoists led the armed insurgency demanding social justice, socio-economic equality, and inclusion, attracting support from millions of Nepalis, including Dalits, women, members of indigenous nationalities, Madheshi, and other left behind communities.

The Comprehensive Peace Accord (CPA) 2006 between the Government of Nepal (GoN), an alliance of seven political parties, and the Unified Communist Party of Nepal (Maoist), which was then in revolt ended

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the decade-long armed conflict in Nepal. An interim constitution was promulgated with “the purpose of progressively restructuring the state and overcoming existing problems relating to class, ethnicity, regional disparities, and gender.” It was the first Nepalese constitution to incorporate specific provisions for the most excluded and marginalized communities, including women, Dalits, and children, in the section on fundamental rights. The fundamental rights specified in this chapter also included the right not to be exploited, the right to education and cultural rights, the right to social justice, the right against untouchability and racial discrimination, and the right to equality.

The 2007 amendment of the Civil Service Act 2049 (originally promulgated in 1993) was a historic turn of events for Nepal. The amended Civil Service Act, the first provision of its kind for the country, ensured reservation in the civil service sector for women, indigenous nationalities, Madheshi, Dalit, people with disabilities, and communities left behind. The early 2000s saw the implementation of inclusion. The discourse on social justice, gender equality, and social inclusion reached new heights in the decade. The first Constituent Assembly (CA) in 2008 was a 601-member unicameral body representing women, Dalit, and Madheshi. The second CA promulgated the constitution in 2015 and paved the way for the historic three-tier elections.

Nepal has been witness to important social movements, as well as armed conflicts like the Maoist insurgency, the People’s Movement, the Madhesh Revolution, and the Dalit, women, and indigenous nationalities movements have brought radical and crucial changes to the Nepali polity. Every movement was fueled by the inequality, indignity, and exclusion stemming from the dominance of caste, class, and cultural hegemony and has ignited hope for inclusive participation and social justice. However, the country has yet to witness meaningful, sustainable results of these.

1. Introduction

Worldwide, the total population of Dalits is estimated to be 26 million; in Nepal, Dalits comprise 13.6% of the total population, grouped into 7 Hill Dalit castes and 19 Madhesi Dalit castes. Of these, 51% are women (CBS 2011). The term Dalit is defined by the National Dalit Commission (NDC) as those communities or caste groups that are considered untouchable according to the Hindu caste system and the Muluki Ain (Civil Code) of 1854 and who are marginalized from the mainstream of the state as well as socially, economically, politically, educationally, religiously and who are deprived of human dignity and social justice.

The Muluki Ain of 1854 put forward a four-fold caste hierarchy: (1) *Tagaddhari* (Sacred thread wearing or the Twice-born), including the *Bahun-Chhetris*; (2) *Matawali* (Liquor drinking, i.e., indigenous peoples); (3) *Pani nachalne choi chhito halnu naparne* (castes from whom water is not acceptable and contact with whom does not require purification by sprinkling of water); and (4) *Pani nachalne choi chito halnu parne* (castes from whom water is not acceptable and contact with whom requires purification by the sprinkling of water). According to the NDC, caste-based untouchability refers to discrimination practiced toward communities whose touch is believed to pollute and cause the need for purification from sprinkling water or to any form of discrimination against any community identified as untouchable before the promulgation of the New Civil Code, 1963.

The Hindu religion entails a stratified caste system in which the lowest rung are the Dalits, also known as the untouchables, who are considered to fall outside the religious pyramid (Ambedkar, 1916). The origin of the Hindu caste system can be traced to the Rig Veda, which contains the narrative that Brahmins emanated from the visage of the Creator; Kshatriyas arose from his arms, Vaisyas came from his thighs, and the Shudras emerged from his feet (Bhaktivedanta, 2006). The division hardened into strata, and the caste system evolved to become a complex social structure, in which social roles, such as one's profession, became "hereditary," resulting in a restricted social mobility and a fixed status hierarchy.

The caste system has traditionally defined the social order of Nepal. Historically, this meant that Dalits were considered untouchable and were denied access to education, healthcare, public amenities, economic opportunities, and participation in a range of social and religious functions that form the basis of communal life in Hindu communities. The Dalits are considered to be polluting by Hindus and are not allowed to touch water or food consumed by high caste people (Bhattachan et al., 2009; Cameron, 2007; Lamsal, 2012).

Caste-based discrimination and untouchability (CBDU) continues to be deeply entrenched in Nepalese society. Dalits are subjected to the worst forms of discrimination, humiliation, and injustice in their social, cultural, economic, administrative, and political lives; they are assaulted, raped, and murdered; and they are denied access to places of worship, common water sources, education, social security, and dignified work. In 2019 alone, 62 cases of Dalit-related human rights violations occurred in Nepal (INSEC, 2020). The caste-based hierarchy excludes the lower caste categories from equal and inclusive representation and access to decision making and justice, and it even jeopardizes their lives by exploiting their labor and skills while disregarding their human rights. This longstanding discrimination and deprivation enacted by the state and society has locked Dalits into a cycle of exclusion, poverty, and violence that has lasted for centuries. Nepali society thus interacts through a caste-based ideology, system, and structure, pushing Dalits at the lowest rung of the society at all the socio-economic cultural fronts and developmental indicators including education, health, employment, and political representation.

These caste inequalities, indignities, and discrimination have infiltrated all aspects of civic life and have further marginalized those who were already excluded, particularly women, Dalits, members of indigenous communities, and those with different gender identities, who have yet to find meaningful representation and participation in democracy and nation-building. Caste inequalities have negatively impinged on each caste in one way or another. Barriers associated with ethnicity, culture, religion, language, and geographical diversity have added an additional layer to already existing discrimination.

Nepal's marginalized and excluded communities have long resisted the supremacy of Brahmanical patriarchy² and demanded equal access to resources, allocations, and mobilization. Dalit resistance continues

² According to a 1993 essay by Uma Chakravarti, the term Brahmanical patriarchy refers to "the need for effective sexual control over women to maintain not only patrilineal succession but also caste purity." Caste hierarchy and gender hierarchy have together helped build a Brahmanical social order, which forms a social structure called Brahmanical Patriarchy. She has examined how, in ancient India, the control of land (an economic asset) was maintained by certain caste groups through similar regulations over women's sexuality that were sanctioned by the state. Here, Brahmanical Patriarchy does not mean patriarchy in the Brahman castes. Rather, it refers to the particular form of patriarchy that occurs in societies organized on the basis of caste. The foundation of Brahmanical Patriarchy lies in the collective subordination of women and the lower castes to allow upper caste men to control both wealth and labor.

to stand at the forefront against the unforgiving and unrelenting caste-based discrimination. However, their voices and resistance have been long neglected and suppressed by the state and the dominant caste groups, excluding them forcibly to the margins of society.

2. Inadequacy of Nepal's Democracy for Dalits and Marginalized Peoples

2.1. Underrepresentation of Dalits

Nepal has undergone radical political change, particularly following its decade-long Maoist insurgency. Nepal was declared to be free from CBDU in 2006. To implement the principle of inclusion, a reservations policy was put in place in 2007 by the Public Service Commission for Dalits and marginalized communities, which provided that 45% of positions in the federal civil service should go to specific disadvantaged groups as now identified in the constitution. While this policy was not in compliance with the proportional system, it was effective to a certain extent. Women's representation in civil service, for instance, increased from 11% in 2007 to more than 20% a decade later, a remarkable achievement over such a short period of time. However, progress has been slower for other groups.

Dalit representation in the civil service was below 1% prior to the introduction of the reservations policy, but it was still only around 2% by 2018, which is significantly below the aims set by the policy. By contrast, KhasArya representation is approximately 62%. Similarly, not every mechanism of the state features proportional representation. For example, the Federal Cabinet of Nepal does not have proportional representation of women and Dalits. The House of Representatives of Nepal only includes a 6.91% representation of Dalits. Not a single provincial parliament has proportional representation of Dalits.

The coalition government introduced reservation policies and quotas for the Dalits and other marginalized communities in 2008. The Caste-Based Discrimination and Untouchability (Offence and Punishment) (First Amendment) Act, 2075 (2018) became Nepalese law in 2011. The Nepalese government introduced strategic policies to emancipate Dalits from the social, economic, and political constructs that exclude them from fundamental human rights and marginalize them. However, the obstructions to the achievement of social justice and the elimination of caste-based discrimination against Dalits have not been reduced as expected. Reports of Dalit students being denied rental accommodations in big cities make it to the news every other day. Dalits employed through affirmative action programs have reported daily humiliation in the workplace. Inter-caste marriages are failing. Discrimination is not as explicit as in the past, but atrocities against Dalits tacitly persist.

2.2. Underrepresentation in the Local Election, 2022

The 2017 constitution mandated that if a man is elected as mayor, the deputy mayor must be a woman, and elected ward councils must include women, including Dalit women. However, representation of the Dalit community was very poor in the most recent local elections in Nepal, which took place on May 13, 2022. Of the 753 local contests, the Dalit candidates received the lowest support in 124 wards. Only three Dalit

community members are elected to the position of mayor, accounting for just 1% of the 293 total local levels (metropolitan, sub-metropolitan, and municipal). This figure is half of that for the previous election.

Similarly, the number of Dalits who were elected to deputy positions was also lower than in 2074 BS (2017). In 2022, there are only eight Dalit deputy mayors, as compared with eleven in 2074 BS, accounting for only 2.73% of the total deputy chiefs elected. Dalit representation in rural municipality chairperson positions increased from one in the past election to seven this year. However, this amounts to only 1.52% of the 460 total available seats. Furthermore, the number of vice chairpersons elected from the Dalit community is less than in the 2074 BS elections. This year, the number decreased from 16 to 7, or 1.52% of the total appointments. In addition, out of 6,743 wards across the country, a total of 148 elected ward chairpersons have been from the Dalit community.

Dalit women were elected to ward member positions in 98.01% of wards. The Local Election Act (2073 BS) made representation of Dalit women mandatory in every ward, but they remain underrepresented in political parties, and the constitutional mandate for Dalit women's representation has not been 100% fulfilled. For example, out of 13,486 ward member allocations, only 878 elected ward members (6.51%) were from the Dalit community.

Table 1. Number of Elected Dalit Representatives in the Local Election 2022

S.N.	Positions	Status of Representation of Dalits in the Local Election, 2022							Total
		Province 1	Madhes	Bagmati	Gandaki	Lumbini	Karnali	Sudurpaschim	
1	Mayor	0	1	0	1	0	1	0	3
2	Deputy Mayor	0	1	1	2	1	2	1	8
3	Chair person	1	0	0	2	2	1	1	7
4	Vice-Chair person	0	1	1	2	2	0	1	7
5	Ward Chair person	5	23	7	18	26	42	27	148
6	Member	50	232	34	99	134	191	138	878
7	Dalit women member	1151	1265	1084	732	982	681	714	6609
8	Un-represented	7	6	37	27	0	37	10	124
	Total	1214	1529	1164	883	1147	955	892	7784

Source: Samata Foundation 2022

These results of the most recent local elections indicate that the Dalit community, which is almost a quarter of the country's population, has not been able to enjoy the rights that its members are entitled to. Nepali political parties have not been able to break free from old feudalistic practices. The Dalit community has made significant contributions and sacrifices to every political and social transformation movement in Nepal, but they have been excluded in the institutionalization of all of them.

This indifference on the part of political parties has called into question the validity of the democratic process and its practices. Rejection of the mandatory constitutional provision of meaningful participation of the historically excluded community and even further diluting the presence of the Dalit community is a mockery of the essence of the constitution.

2.3. Atrocities Against Dalits

Although untouchability was declared illegal more than a decade ago in the Caste-based and Other Social Untouchability and Discrimination (Offense and Punishment) Act of 2011, cases of atrocities against the Dalits are rampant across the country. Overall, 117 cases of human rights violations against Dalits were recorded in 2019–20. (Nepali et al. 2021). These included 13 murders, 24 physical attacks, 17 rapes, 4 attempted rapes, 1 suspicious death, 1 enforced abortion, 31 cases of CBDU, 3 custodial deaths, 1 enforced disappearance, 11 cases of discrimination based on inter-caste marriage and relationship, 2 accusation of witchcraft, and 9 cases of incitement to suicide. This exemplifies the state of caste-based discrimination and atrocities against Dalits in Nepal. However, government authorities and police who are among the so-called higher castes tend to under-report and rarely investigate cases of CBDU, largely due to personal and institutional bias against Dalits. Most CBDU cases are diverted or are taken to be resolved within the affected communities.

Inter-caste marriages are often the causes for conflicts between the Dalits and high caste people that can result in the killing of the couple or their relatives or in eviction, beatings, and financial punishment (Paramjit et al., 2008). In 2011, Sete Damai from Dailekh district was brutally murdered because his son had dared to marry a girl belonging to the Thakuri caste. In the same year, Jayabir Tamata from Kalikot and Shivshankar Das from Saptari lost their lives due to punishment for inter-caste marriages. In 2016, Ajit Mijar was murdered in Kavre for marrying a girl from a so-called upper-caste. His body still lies cold at TU Teaching Hospital, waiting for justice. On May 23, 2020, Nabaraj BK and five of his friends were killed or rest grievously injured in Rukum West. On the very same day, body of a 13-year-old child, Angira Pasi, was found hanging from a tree in Rupandehi after she was reportedly raped and murdered. These tragic outbursts of violence resulting from inter-caste marriages and relationships counter the mainstream narrative that highlights social cohesion and harmony. Violence and bloodshed by dominant groups emerges when historical hierarchies are questioned.

In addition to suffering for inter-caste marriage and relationships, Dalits have also been murdered ruthlessly for no reason at all. In 2011, Munbire Sunar from Kalikot was murdered for having entered the kitchen of someone of the Shahi caste. Rambahadur Sarki lost his life for touching a glass. A social science teacher beat Laxmi Pariyar to death, accusing her of witchcraft. Not even elected representatives are safe. Mana Sarki, a ward representative, was beaten to death in her home in 2018. The custodial deaths of Roshan Bishwakarma, Shambhu Sada, and Bijay Ram Chamar reflected their statelessness and the oppression of the vulnerable by the dominant so-called upper castes and elites. Over and over again, history continues to repeat itself.

Sundar Harijan, a Dalit youth aged 20, was found dead, hanging in a restroom at Rolpa district prison on May 18, 2022. Sundar Harijan, at 20 years old, was found hanging a few days ago. He was 17 years and 3 months old when he was arrested for theft. He was sent to prison instead of a juvenile correction center. A

month before release, he was sent to another prison in another district, where he was received with an upper-caste prisoner, who was serving jail time for extortion and illegal arms possession. A few days before his death, Sundar Harijan expressed excitement. He called his brother and asked for some money, telling him he would be released soon. His dreams have been slain by caste supremacy and the flaws in our judicial system. His story is an example of how the state deliberately mistreats Dalits who are already suffering from systemic exclusion. This is an example of the impunity deeply rooted in the Nepali justice system, and it raises serious questions about the human rights violations of Dalits in Nepal.

These are just a few representative stories of the systemic marginalization and persecution of Dalits that occurs every day through the contemporary caste hierarchy, the tragic outcome of a centuries-old system of oppression. Many more stories remain unreported and are untold. It is apparent that the discrimination and violent crimes against the Dalits has all too often meant that their victimhood is ignored, and their abusers enjoy impunity. At the same time, similar to members of other marginalized communities, Dalits are disproportionately subject to arrest, conviction, and mistreatment in the criminal justice system. They are the first punished and the last protected.

3. Rights for the Dalit and Marginalized Women and Girls

Women in Nepal have high regard for the family values of the traditional patriarchal cultural values and norms of Nepalese society. The society is also subject to the stratification of a deep-rooted caste system, which was introduced 300 years ago. The economic, cultural, social, and political conditions of women in Nepal are also influenced by this caste system.

The 2011 Census counted 1.8 million Dalit women in Nepal, making up 13% of the total female population of the country. Although women are half of the Dalit population, they face intersectional multifold discrimination. Dalit women in Nepal endure discrimination not only from the dominant castes but also within their own communities, where men are dominant. Traditional harmful practices against Dalit women include extreme verbal abuse and sexual insults, accusation of witchcraft, physical assault, and rape. Impunity for perpetrators is rampant due to the weakness of the relevant legal mechanisms. Child marriage, early pregnancy, and uterus prolapse are only a few of the conditions that have worsened the health conditions of Dalit women, mostly Madhesi Dalit women.

Dalit women's lives are uniquely characterized by exclusion through the customary provisions of caste institutions based on notions of purity and pollution, as well as patriarchy and gender discrimination. As a result of this exclusion and discrimination, they endure extreme forms of poverty, humiliation, and denial of social and economic rights and recognition as human beings. Dalit women, like women from other minority communities or indigenous peoples, Madhesi, and Muslims, tend to remain invisible.

Nepal has one of the highest rates of child marriage in Asia. About 33% of girls are married before they turn 18, and 8% marry by age 15. By contrast, 9% of boys marry before the age of 18 (CBS, 2020). The reported cases of rape have also increased sharply. The Nepalese police dealt with 2,534 cases of rape in 2020-21 versus 2,144 in the previous year, an increase of 18.19%. Similarly, as many as 735 incidents of attempted

rape were reported in 2020-21, compared to 687 in 2019-20. This amounts to an increase of 6.99% (The Himalayan News Service, 2021).

The issues that Dalit women face can be compared to the issues faced by black women in Europe and America and their stories of discrimination. However, when the unique component of caste, is added, the plight of Dalit women is even more severe. Dalit women have face unique human rights issues that other Nepalese women do not. They endure multi-pronged discrimination, based on caste, gender, race, and poverty. While women's issues in Nepal can in general be understood through the lens of feminism, a special lens is necessary to understand the plight of Dalit women.

4. Issues in Education

Only 43% of Dalits in Nepal are literate, whereas the national literacy rate stands at 66%, for a deficit of nearly 23%. The literacy rate for Tarai/Madhesi Dalits is just 34.5%. Women from all Dalit groups have lower rates of literacy than the national average and their male counterparts. The literacy rates of Dalit women are 45.5% overall, with women from the Musahar and Dom community at the bottom, with literacy rates of 17.4% and 17.9%, respectively (CBS 2011).

Children from Dalit communities face discrimination even at school. Their isolation and segregation are apparent. The teachers at Nepalese schools are largely upper-caste males who have not internalized the values of caste and gender equality. As a result, at their schools, Dalit children are not permitted to drink water from the same taps, are addressed in a rude manner, and are placed in separate lines, seats, and so on. Additionally, the school curriculum and textbooks are insensitive and discriminatory concerning Dalits. Dalits are discouraged from becoming teachers or seeking to occupy higher executive positions in schools because the non-Dalit community does not want to treat a Dalit with respect.

Due to this prejudiced mindset, teachers generally do not pay equal respect to students from all castes, classes, religions, sexes, or communities. The students ultimately tend to fall behind in their learning achievements, often dropping out. According to the high-level national education commission report from 2015, of every 20 Dalit students who get admitted to the first grade, only 3 graduate from tenth grade. This shows the direct and indirect obstacles to Dalit students, even within the school. In turn, low educational attainment has a multifaceted impact on the socio-economic and political life of Dalits and is a barrier to human development.

5. Status of Life Expectancy

Dalits have worse outcomes for all major health indicators. For example, the under-5 mortality rate among Dalits is 90 deaths per 1,000 live births, compared with an average level of 68 for the country as a whole. Nepal has an immunization coverage of 83%, and immunization rates for Dalits are 13 percentage points below the average. In 2011, around 31% of children under five had a low weight-for-age ratio. Disaggregated results across ethnic and caste groups show that the proportion of underweight children is highest among the Madhesi

Dalits (36.3%) and Hill Dalits (33.9%), behind only the Madhesi caste groups (41.2%). This clearly indicates that Dalits face problems with access to nutritious food. Many Dalit women in rural areas also suffer from uterus prolapse, and they have high morbidity rates. Child marriage, early pregnancy, and reproductive health issues are among the other problems faced by Dalit women.

6. Extreme Poverty

Dalits are the poorest community in Nepal on all measures, including income, consumption, and human development. Social discrimination is the overarching factor that explains why the *Dalit* are so disproportionately affected by poverty. More than 42% of Dalits live below the poverty line (43.6% of Hill *Dalits* and 38.2% of Terai *Dalits*), which is 17% higher than the national average of 25% (CBS 2011). While the immediate cause of this gap is the limited employment opportunities that stem from occupation specialization, which prevents *Dalits* from accessing well-paid jobs, the lack of access to education and land perpetuates poverty from one generation of *Dalits* to the next.

Land is the main asset that determines an individual's social status and standard of living in Nepali society. The Dalit community's land holdings are generally small, and landlessness reaches extreme rates among them, with 36.7% of Hill and 41.4% of Madhesi Dalits being landless. This makes Dalits economically vulnerable and dependent on landlords, as well as being socially vulnerable to violence and discrimination. The constitution guarantees the provision of land and housing for landless Dalits. However, this promise has yet to materialize.

7. Social and Economic Impacts of COVID-19 on Dalits

The COVID-19 pandemic deepened the layers of discrimination and hardships for Dalits. Under mandated lockdown, their main means of earning wages was frozen, resulting in no income and no access to remedial services. To support citizens from low-income groups, the government introduced a relief package. However, Dalits could not benefit from this relief. The Samata Foundation conducted research across every province in Nepal, resulting in the 2020 publication of *The Impact of COVID-19 on the Dalit*. This book focused on the effects of the pandemic and lockdown on the livelihoods of the Dalit community and the measures taken by the government in response, along with the hardships faced by elected representatives. During this study, it was found that the relief distributed by local governments was inadequate to serve a large portion of the Dalit community. Only 1.6% of Dalits reported that the relief packages were readily available, and 52.2% claimed to not have received any relief. Similarly, 14.5% of Dalits indicated that the packages that were available were not sufficient to meet their needs.

That study investigated 1500 respondents across 753 palikas (municipalities and rural municipalities) from all 77 districts of Nepal. On average, 82% of the respondents reported a financial crisis. The Dalits of Karnali province reported the highest job loss rate, amounting to 54%. Overall, 52% of the respondents said that there was a crisis in daily necessities, and 29.3% respondents reported that the neediest did not receive a

relief package. This figure shows that local governments did not distribute relief as per the regulations issued by the federal government.

The Dalit community is most vulnerable and needy group in Nepal, and it is disproportionately affected during crisis. However, even humanitarian responses, relief distribution, and other support programs reached them last. During the pandemic, most Dalits encountered difficulty in meeting their basic needs due to unequal schemes of social protection. This lack of social protection perpetuates the vicious cycle of poverty, exclusion, and marginalization. Amid the lockdowns, the many violations perpetrated against Dalits remained invisible, including the massacre of 23 Dalit youths in a brutal display of the deeply entrenched caste-based discrimination of Nepali society.

8. Major Challenges in the Effective Implementation and Enforcement of Dalit Rights

8.1. Inconsistency in the Use of the Term Proportional Inclusion

In the Constitution of Nepal, there is a discrepancy in the use of the term “proportional inclusion.” While it is explicitly mentioned in some provisions, such Articles 38, 40, and 42, others articles only use the word “inclusion.” This anomaly creates confusion in policy making and dilemmas in the determination of plans and programs. Therefore, the constitution should be amended to ensure consistency with regard to the principle of proportional inclusion.

8.2. Political Instability

Instability poses a serious obstacle to the effective implementation of Dalit rights. Due to changes in government and the current political situation, there is a tendency to cancel the policies, programs, and plans put in place by the previous government. This has led to confusion with respect to the process of making policies and laws. Public will and opinion can truly be respected and protected only in the context of political stability, which can enable political parties to play a role based on a public mandate.

8.3. Lack of Resources

The federal and provincial governments are unable to bear the financial burden of the social, economic, and cultural rights that are guaranteed as fundamental rights by the Constitution of Nepal. This lack of sufficient resources appears to pose serious challenges to the enforcement of fundamental rights.

8.4. Lack of Effective Coordination among the Federal, State, and Local Levels

The constitution provides for an inter-relationship among the federal, state, and local levels based on the principle of cooperation, coexistence, and coordination. However, due to the practical confusion that results from the single and concurrent list of powers belonging to the federal, state, and local levels, a lack of coordination has been seen in policy and program formulation.

8.5. Tendency to Delay in the Law-making Process

2018 has been declared the year of drafting laws in Nepal. To comply with the constitutional obligation to draft laws concerning fundamental rights within three years, many laws were passed hurriedly. However, despite the constitutional obligations, no specific law concerning the Article 40, which relates to Dalit rights, was drafted. Given this, provincial governments are waiting for the federal government to make laws that they too can work from.

8.6. Indifference of the State on the Issue of Dalits

The federal and provincial governments are reluctant to seek effective implementation of the rights guaranteed in the constitution. Government officials tend to proclaim Dalit rights in speeches and on paper but do not exhibit readiness to follow through with implementation. The leaders appear to have the mentality that change should happen gradually, which is why the issue of Dalits is not prioritized. Because the state demonstrates indifference to the implementation aspect, the implementation definitely gets weak.

8.7. Small Presence of Dalit People's Representatives and Parliamentarians

There are 7 Dalit people's representatives in the National Assembly, 19 in the House of Representatives, and 33 in the Provincial Assembly. This is a very low level of representation and is in violation of the principle of proportional inclusion. Further, this representation comes from a range of parties, and the Dalit elected representatives are scattered across many different political affiliations. Therefore, the need to be loyal to the party structure has overshadowed the concerns of the community. In recent times, due to the increasing pressure of having to represent the vested interest of separate parties, the formulation of pro-Dalit laws formulation has not been at the top of the agendas of the Dalit representatives.

9. Pre-registration Challenges for CBDU Cases

Acts of CBDU have been endured by Dalits for many generations, especially in rural areas. Living in a discriminatory society is become part of their existence, and they tend to accept it as their fate. Because the level of education among the Dalits is generally very low, they are not always aware of the existence of laws and rules related to caste-based discrimination that could benefit them. Thus, the first challenge is to create the spark of awareness.

Second, if legal measures are adopted against the perpetrators, intimidation, bloodshed, and threatening may result. Dalits, who are already vulnerable may be made to fear for their lives. Third, the victims of CBDU fear exclusion and isolation. Most of the community, and sometimes even other Dalits themselves, may side with the offenders due to their power and influence and the economic dependence of the Dalits on them. Fourth, because resources are usually controlled by non-Dalits, animosity gives rise to restrictions of access to water, commerce, fodder, and so on. Fifth, there is often massive politicization in cases of CBDU. In a nutshell, Dalits are discouraged to seek legal remedy for cases of caste-based discriminations from the very first step.

10. Challenges During Case Registration

In cases of CBDU, the police are often witnessed to remain unhelpful and to be the main barrier against victims in their pursuit of justice through legal mechanisms. The police are the designated first point of contact in cases of caste-based discrimination. The police force is the agency that must register a victim's complaint and conduct an impartial investigation into the matter. However, despite the importance of this role, the police often fail to act responsibly and to fulfill their professional duty. First, police officers are often hesitant to register complaints. Second, even if the police do open a case, they do not always investigate them immediately, seriously, impartially, and objectively. Third, although CBDU is a criminal offense, pressure is brought to bear to induce reconciliation between the victim and the perpetrator. Rather than bringing the perpetrators into the formal justice process, police officers tend to be seen justifying their approach in the name of maintaining social harmony, as they see acts of CBDU as a social problem rather than a crime as such. Fourth, a significant proportion (more than 93%) of police officers are non-Dalits (Nepal Police, 2018), and they are loyal to powerful groups in society, usually the rich and people of higher castes, and thus police tend to serve their interests at the cost of the welfare and human rights of victims. These factors mean that only a few cases reach the courts.

11. Challenges in Prosecution

The first challenge in proper prosecution is that, due to the questionable investigation practices on the part of the police, many cases are not prosecuted. The grounds for prosecution are not considered to be met, and the cases are discarded. The second issue seen preventing prosecution is that cases of CBDU tend to be converted from those with serious criminal charges to petty social misbehaviors, weakening the case. The third issue hindering prosecution is that the government attorney may not cite the CBDU Act but instead the criminal code of 2074 (2017) as the grounds for prosecution, which shows utter disregard of the law. The substitution of general law in CBDU cases tends to reduce punishment or even encourage acquittal for the perpetrator. Fourth, witnesses often become hostile due to the power structures at play in Nepal, especially given that there are no proper witness protection mechanisms in Nepal. The fifth issue is that placing the burden of proof upon the victim adds additional challenges. It is difficult to gather evidence on CBDU incidents, as injuries to dignity and self-esteem may not produce visible evidence. As a result, victims are sometimes prevented from obtaining justice due to problems of evidence, and most incidents do not even reach the stage of legal proceedings due to lack of evidence.

12. Challenges During Trial

Representation of the Dalit community in the courts is also nonsignificant; for instance, there have never been any Dalit judges in the Supreme Court. There have been only three Dalit judges across all seven high courts and one Dalit district judge in the 77 district courts. Thus the first challenge to achieving justice is the caste blind nature of the courts and judges, which has led to uncertainty regarding justice. Like police officers, the majority of government attorneys and judges do not take cases of CBDU seriously (see also Narula, 2008; Keane, 2016). The second challenge is that, in spite of the gravity of the offense, CBDU cases are often converted into libel and defamation cases even at courts. Third, the long and complicated legal process is cumbersome for the victims. As a result, cases might be dropped, as long waits create despondency in victims and cause them to lose faith in the judicial system.

13. Economic Challenges

Among the Dalits, poverty walks hand-in-hand with the practice of untouchability, affecting access to employment and the possibility of earning a fair income. First, Dalits are hesitant to complain against upper-caste offenders because most Dalits depend on them for their livelihoods. In the face of chronic poverty, it is not always easy for Dalit victims to challenge the rich and powerful who discriminate against them. Second, poor Dalits cannot bear the expense of pursuing the arduous fight through the justice system. In rural parts of Nepal, victims must spend days gaining access to police stations or courts to fight their case. High legal fees coupled with the cost of accommodation and transport means that Dalits are less likely to seek justice through legal channels. It may be necessary to visit police stations and courts multiple times, which further adds to the cost of legal proceedings for poverty-stricken Dalits.

14. Legal Challenges

The first legal challenge that meets the attempt to pursue a CBDU case is that the burden of proof is on the victim. It is very difficult from a practical point of view to gather evidence to support and prove that one's dignity is injured. Were the burden of proof shifted to the defendant, this would change the whole dynamic of CBDU cases. The second issue is that the laws provide sufficient room for judges to use their discretionary powers to determine the punishment of the perpetrator, as clause 7 of the relevant law states: "whosoever commits an offense... shall be liable to the punishment of imprisonment for a term from three months to three years or the fine from One Thousand Rupees to Twenty-Five Thousand or both." In most cases, the judges have assigned the least punishment to the guilty. Third, the CBDU Act has no provisions to protect victims or witnesses. Most victims report receiving threats from the perpetrator as a form of revenge. In many cases, victims are displaced from their communities out of fear of retaliation. Witnesses also fear speaking out due to intimidation and threats.

15. Conclusions

The Dalit community had hoped that with the country's new constitution, Dalit and other marginalized communities could begin to feel ownership, not only of the country but of the state as well. Unfortunately, this did not come to pass. Over the years, I have met many mothers of children who have been killed after being raped, murdered while in police custody, and lynched by mobs. Thousands of mothers forced to suffer due to their children's fate have one question: are Dalits born only to die? Are they not allowed to live with dignity? They are killed at the drop of a hat. Killed with the smallest excuse. Sometimes I wonder—how low is the price of a Dalit life?

The Constitution of Nepal 2015 was historic for Dalit communities, as Dalit rights were institutionalized in the constitution for the first time in history. However, the implementation of these rights is still far from a reality for Dalits in Nepal. To implement the fundamental rights enshrined into the constitution, the state has issued 16 new laws and amended some existing ones. Even though the constitution does provide for legal protections for Dalit rights no separate law has been drafted for the implementation of the fundamental rights. The present constitution must be amended. There needs to be proportional representation of Dalits and minorities in state bodies, especially the bureaucracy and law enforcement agencies.

The Election Act and the laws and guidelines in force at all federal, provincial, and local levels governing the mixed election system provided in the constitution should be amended to ensure the representation and meaningful participation of the Dalit community as per the principle of proportional inclusion. Similarly, all of the laws and regulations related to entry into the civil service, instead of being limited to providing a simple reservation or quota system, existing laws and regulations should be amended to allow the Dalit community to be represented on the basis of the principle of proportional inclusion. Although the constitution features the principle of proportional inclusion, those at the policy making and implementation level are still guided by the model of a reservation system, encroaching upon the constitutional spirit of proportional and inclusive representation.

While the fundamental right to free education, including scholarships from primary level through higher education, is provided in the constitution, members of Dalit communities have not been able to enjoy this right. With a Dalit scholarship, no progressive arrangement has been made, except for the provision an annual amount of Rs. 400 per person for basic education (classes 1 to 8) and Rs. 500 per person annually for secondary education (classes 9 and 10). It is a violation of the spirit of the constitution to ignore the need to create opportunities and provide an enabling environment for the Dalit community to acquire an education. To ensure access to the right to free education and scholarships for the Dalit community from at college and university levels, there is a need to amend prevailing laws and regulations related to education and scholarships.

Although there is a provision in Article 40(3) of the constitution that health care and social security will be provided for the Dalit community, the government has not created Dalit-friendly laws. Currently, although the Public Health Service Act, 2075, Safe Maternal and Reproductive Health Rights Act, 2075, and the Social Security Act, 2075 are in effect and being implemented, there have been no special arrangements made for the Dalit community in these laws, apart from the provision that senior citizens of the Dalit community are to receive a social security allowance of Rs. 4000 after reaching the age of 60 years, a lower age than that which applies to those belonging to privileged communities.

In the Seventh Amendment to the Land Act of 2021, the Government of Nepal established a commission to oversee the establishment of a just land system by providing for housing and land ownership to landless Dalits, landless squatters, and unorganized residents. The commission was set to work for 3 years, but its termination has left the crisis intact. In addition, from this, the Government of Nepal has promulgated the Right to Housing Act, 2075, and the Safe Citizen Housing Implementation Procedure, 2075. These provide for the identification of the targeted community and a basis for selection. However, the selection procedure does not appear to be accessible to homeless Dalits. Therefore, the fundamental right of homeless and landless Dalits to receive housing and land from the state has been reduced to a right in name only. Thus, it is necessary to create a unified umbrella law that addresses all aspects of Dalit rights.

Provincial governments have also not made much progress toward the legal implementation of the fundamental rights mentioned in Articles 24 and 40 of the constitution. However, some laws related to Dalit representation have been passed in almost all provinces. Madhes Province and Sudurpaschhim Province have passed the Dalit Empowerment Act.

Nevertheless, all provinces are lagging behind in the formulation of the right to education, the right to health and social security, the protection, promotion, and modernization of traditional occupations, and the right to housing and land. Some provinces are trying to address the concerns of housing and traditional occupations through the Janata Awas Program and Bhagat Sarvajit Skill Development Program, respectively, but there is a lack of concrete policies and laws.

Due to the inadequate implementation of the Caste-based and Other Social Untouchability and Discrimination (Offense and Punishment) Act of 2011, CBDU incidents have not yet ceased to exist. Dalits suffering from discriminatory practices are still not able to experience justice. In addition to the challenges of gathering evidence in the cases of CBDU, law enforcement agencies do not play an active role. There is a need to amend the act and shift the burden of proof to the defendant, combined with much stronger punishment and less discretionary power allowed to judges.

Nepal is a diverse country with more than 125 ethnic groups and 123 vernacular languages, and its social foundation stands in the caste system propounded and protected by the Hindu varna system. As Ambedkar reported, “Caste is no doubt primarily the breath of the Hindus. But the Hindus have fouled the air all over and everybody is infected, Sikh, Muslim and Christian.” Caste is indeed in our every breath and hence should be on everybody’s agenda because, as Lilla Watson asserted, our liberty is bound together.

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Country Case 3: Mongolia

Protection of Minority Rights: Mongolia

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1. Introduction

Today, the population of Mongolia comprises about 3.5 million registered citizens, with more than 900,000 households. In the last hundred years, the population has grown fivefold, and in recent years it has been growing by an average of 2.2% per year.

Khalkhs make up 83.8% of the population living in Mongolia, while Kazakhs make up 3.8% of the population. In terms of religion, 51.8% of the people believe in Buddhism, 3.2% adhere to Islamism, 2.5% practice Shamanism, and 1.3% believe in Christianity.

Judging from these facts, it can be concluded that compared to other Asian countries which have various groups that differ in language, culture, customs, religion, and lifestyle, Mongolia is a homogenous society.

Under communism, which lasted for almost 70 years in twentieth century, Mongolians were subjected to a social experiment in which differences in language, culture, and customs were seen as remnants of the past, and religion as “the opiate of the people,” and homogenized on the basis of proletarian class.

With the democratic changes in 1990, the ethnic groups that make up Mongolian society have obtained the freedom to restore their traditional customs, language, culture, and religion. In order to ensure these rights for ethnic groups, it is very important for the democratic society of Mongolia to incorporate international law as part of domestic law.

In Mongolia, ethnic minorities include Kazakhs, Tsaatans, and Tuvas, collectively making up about 5% of the population today. Although ethnic minorities do not make up a large portion of the population, the country needs to pay attention to how the rights and freedoms protected by the Constitution are ensured for ethnic minorities. For example, the National Human Rights Commission of Mongolia makes regular assessments on the implementation of government policies and offers recommendations. At the same time, non-governmental organizations are also paying attention to this issue by presenting their research and conclusions, and actively drawing public attention to it. In Mongolia, along with the freedom of the media, people effectively use social media platforms, so the people themselves directly raise issues related to ethnic minorities.

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In this paper, the authors seek to shed light on specific policies on ethnic minorities in Mongolia, examine how their rights are protected by the Constitution and other laws, and see what problems they face and how these problems are addressed.

2. Historical Background

Mongolia is located in the eastern part of Asia, bordered by Russia to the north and China to the south. It covers an area of 1.6 million square km, with a population of 3.5 million, making it the world's most sparsely populated nation. Mongolia is the world's largest landlocked country that does not border a closed sea, and much of its area is covered by grassy steppe, with mountains to the north and west and the Gobi desert to the south. Ulaanbaatar, the largest city and the capital, is home to roughly half of the country's population.

The collapse of the Soviet bloc sparked the 1990 democratic revolution, which led to the adoption of the first-ever democratic constitution in 1992. Mongolia's new constitution guarantees basic democratic freedoms such as ethnic minority group rights, and unlike previous constitutions, these guarantees are observed in practice.

The Mongols constitute one of the principal ethnographic divisions of Asian people. Their traditional homeland is centered in Mongolia. Physical anthropologists in the 19th century introduced the terms "Mongol" and "Mongolian" as descriptive of "racial type," even though the Mongols exhibited a wide range of physical characteristics (www.britannica.com/place/Mongolia). Today, the Mongols are recognized as a group of peoples bound together by a common language and a common nomadic tradition. As a noun, Mongolians refers to citizens of independent Mongolia ("Outer Mongolia"), regardless of ethnicity, while Mongols refers to ethnic Mongols, regardless of citizenship (Atwood 1964).

3. Composition of Ethnic Groups

3.1. Khalkha

The Mongols are ethnically quite homogeneous. There are 24 ethnic groups mentioned in the 2020 National Census (Aimag and Soum Centers 2020). The dominant ethnic group of Mongolia is **Khalkha**, which makes up the majority and comprises over 84.5% of the population (Population and Housing Census 2020). The origins of the modern Khalkha can be traced to the second half of the 15th century (Atwood 1964). With the 1911 restoration of Mongolian independence and the suppression of Inner Mongolia's independence movement, the Khalkha became the center of the only independent Mongolian state. While the Jibzundamba Khutugtu and the Khalkha aristocracy ruled the new theocratic regime, influence was also shared with Inner Mongolian and Buriat advisers and the mostly Khalkha class of urbanized officials and employees.

In the postwar period, the percentage of Khalkha in Mongolia's population increased 77.5% in 1979 due to the overwhelming tendency of those with mixed origin to identify as Khalkha. Thus, the Khalkhas remain very much the sociological norm in Mongolian society, to which other ethnic groups conform. Developments in modern times indicate that the Khalkhas' demographic and sociological dominance in

Mongolia will only grow in the future (Atwood 1964).

As the majority group, the Khalkha uphold their own traditions and beliefs as the official Mongol traditions, and Khalkha Mongol is the official language of the nation since all other Mongol languages are dialects of this common tongue. For a long time, this led the Khalkha, who dominate Mongolian politics, to shut off Mongolia from outside influence. Today, however, Mongolia is much more open and has even permitted limited entry of Christianity into a nation that traditionally practices Buddhism. Other Mongolian groups, including the **Dörvöd**, **Buryat**, **Bayad**, and **Dariganga** account for nearly half of the rest of the population. Much of the remaining population consists of Turkic-speaking people, mainly **Kazakhs**, some **Tuvas**, and a few **Tsaatans (Dhukha)**, who live mostly in the western and northern parts of the country. There are very small numbers of **Russians** and **Chinese**, who are found mainly in the towns.

3.2. Kazakhs

The name Kazakh or Khasag has been recorded in historical books since the tenth century (Undestnii 2018). While Muslim and Turkic speaking, the Kazakhs emerged as a people from the breakup of the Mongol Empire and have been in constant contact, both warlike and peaceful, with Oirats and Khalkha Mongols. Today, they form Mongolia's largest non-Mongol minority. In July 1912, Kazakhs were allowed to stay in newly independent Mongolia, and in 1940, Mongolia's leadership created a new province, Bayan-Ulgii, in predominantly Kazakh areas. The new Kazakh province was established with 7,063 households, 33,000 people and 8,479,000 heads of livestock. Now there are 13 soums, 84 baghs, and one village, and the center of the province is Ulgii city, located 1,760 km from Ulaanbaatar city. The territory of the province stretches from north to south along the Mongol Altai Mountains. It is 380 km from the northernmost point of the border to the southernmost point, and 270 km from the easternmost point of the border to the westernmost point. In the west, it shares a 450 km border with the Xinjiang Uyghur Autonomous Region of China along the Mongol Altai Mountains and a 225 km border with the Altai region of the Russian Federation along with the Siilhem Mountains (Undestnii 2018).

It has a unique climate characterized by an extreme continental climate, and a fragile ecosystem. Compared to the overall population, Kazakhs are slightly overrepresented in both white-collar and working-class positions; collective herders were only 26.4% of the nationality's population. Mongolia's Kazakh nomads are famous, however, for their custom of falconry with golden eagles. Today, Kazakhs comprise 3.8% of the population as the second-largest ethnic group in Mongolia (Population and Housing Census 2020).

3.3. Tuvas

The name Tuva, which is also found in dialect forms as Tuba, Toba, Tyva, Dyva, and Tofalar, first appears in Chinese records as "Dubo" (then pronounced Duba/Tuba) (Atwood 1964). They are described as isolated bands living in grass tents, eating lily roots, fish, birds, and animals and dressing in sable and deerskin. Under this Manchu-Mongolian joint possession, the Tuvas became Buddhist. In the 1920s, some still spoke Tuva and lived in skin or birchbark tepees like the eastern Tuvas, although most had been Mongolized in speech and lifestyle. The Tuva speakers among Mongolia's Altai Uriyangkhai live in Khovd and Bayan-Ulgii provinces,

Mongolia. Since 1989, schooling in some soums of the provinces has been conducted in Tuva. Today, Tuva speakers call themselves Dukha, thus allying them with the reindeer-herding Dukha or Tsaatan, a separate group of Tuva in western Khuvsgul province.

The Tuvas of Mongolia have a centuries-old tradition of practicing shamanism which centers on the worship of sky and earth. In addition to the sky and earth, the sun, moon, and stars, the natural phenomena of the sky, lightning, wind, and fire are worshiped, and there is a very ancient tradition of fire worship.

3.4. Tsaatans (Dhukha)

Tsaatans were part of the Tuva tribes of the Tuva Autonomous Region of the former Soviet Union, and the Dukha people of Uyghur-speaking Uyghur descent. After the People's Revolution of 1921, a group of people living in the forests and taigas of the northern part of Mongolia were called Tsaatans in Mongolian written and verbal language. The name Tsaatan emphasizes that group of people and their way of living. In the Mongolian language, the word "Tsaatan" means a person with a reindeer. Before, they were commonly known as Tagna Uriankhai.

In 1955, Mongolia granted citizenship to 53 families who freely migrated and lived in the great desert taiga bordering Tuva and Mongolia, herding and hunting, in consideration of their request. Since then, the Tsaatan people have lived by herding reindeers and hunting, as citizens of Mongolia, and became socialized during the communist collectivization (S. Badamkhatan 1960). Some of the local people have mentioned that there are almost no people who know their old traditions, customs, and culture among the Tsaatan people living in the western and eastern taigas, or their religion, traditions, and unique customs. In terms of religious tradition, the Tsaatans have passed down hundreds of years of shamanic rituals and religion to the younger generations. Even today, people of all ages continue to practice shamanistic rituals on a regular basis. Today, more than 1,000 Tsaatans live in the high mountains of Mongolia on mossy pastures.

In practice, opportunities to preserve the language, culture, customs, and religion of the ethnic minority of Tsaatans are very limited, and these opportunities are starting to be lost. In Khuvsgul province, Tsagaanuur soum is the smallest soum with a small population and two baghs. However, certain policies have been adopted that take into account the characteristics of ethnic minorities. Khuvsgul Province's Regional Development Policy (2002-2020) was approved by the Citizens' Representative Khural of Khuvsgul Province. As the rights of ethnic minorities were included in the program, Tsagaanuur Soum has been included in the tourist areas (NHRCM 2009). In 2002, the Citizens' Representative Khural of Tsagaanuur Soum approved goals and plans for the sustainable development of the soum from 2002 to 2020. In the plan, special attention was paid to the issue of breeding and selection of reindeers, and the promotion of healthy traditional farming, intensive implementation of the policy on ethnic minorities, and emphasis on the demographic policy of the state and province were included.

The great heritage that has preserved the civilization of the Tsaatans until now is undoubtedly their home, the Urts or teepee (ouke). How or where to build a teepee has its own established order and tradition. The Tsaatan people still live in their three to four meter long traditional teepees which are covered with tarpaulin (consisting of 28–32 wooden columns if it is a large teepee, or 17–23 wooden columns if it is a small teepee) and resistant to extreme climates ranging from +31 degrees to -53 degrees Celsius.

The Tsaatan people's culture is inextricably linked with the reindeer. During communism, attempts

to settle the Tsaatans by concentrating them in one place contradicted their lifestyles and traditions, causing the taiga to become underpopulated. Today, there is no specific policy or program aimed at them, putting this unique way of living in danger of becoming extinct.

The people of Tsaatan practice shamanism. Under socialism, the rituals to select male (Bou) and female (Udgan) shamans were prohibited to a certain extent, but the Tsaatans have preserved their religion and culture to this day. As concluded by S. Badamkhatan, “Tsaatan shamanism is almost the same as the shamanism practiced by the Darkhad. But it has not absorbed much of the influence of Buddhism” (S. Badamkhatan 1960). Research finds that every Tsaatan family places sacrificial altars dedicated to the spirits of their ancestors in their homes in accordance with tradition. However, members of the same clan have their own private shrines to worship their ancestors’ spirits, and it is customary for Tsaatans to visit these shrines 1–2 times a year.

Tsaatans speak Tuva and Mongolian languages. In soum secondary school, Tuva-speaking personnel were trained in a deliberate manner. Currently, a total of 135 children are studying in the soum’s nine-year secondary school. In addition, experts from Tuva were invited to the school to teach the Tuva language in the soum secondary school (NHRCM 2009). This long-standing tradition of teaching the Tuva language to children at that time has now been lost. At present, the Tuva people have mastered the Tuva language only in use for interpersonal communication, especially children who do not know more than a few simple words in Tuva. Elderly people feel very sad that the Tuva language is not studied in middle school, which makes younger generations forget their mother tongue. A group of Tsaatans sent a request to the government officials to teach their mother tongue to secondary school students.

4. Languages and Religion

All Mongols recognize their kinship to each other in varying degrees through legend written history, and especially language. Dialects vary from east to west more than from north to south, but few are unintelligible to other Mongols.

Mongolian language, spoken by perhaps 4.5 million people, is the national language of Mongolia and a regional language of Inner Mongolia in China. It is by far the largest and most important language in the Mongolic family, and has a written history dating back to the thirteenth century. Mongolian has numerous dialects, some of which shade into the Kalmyk-Oirat and Buriat languages to the west and north. Mongolian, together with Kalmyk-Oirat and Buriat, form the New Mongolian subfamily within the larger Mongolic language family (Atwood 1964). Modern Mongolian evolved in the seventeenth to eighteenth centuries from Middle Mongolian, the medieval form of the language. In Mongolia central, Khalkha, written in the Cyrillic script, is the official national language. As the national language, it is spoken by non-Mongol immigrants, by urban populations all over the country, and to an increasing degree even by non-Khalkha rural populations.

Ethnicity is defined by common origins (ethnic groups are descendants of tribes or clans), dialects, and cultural differences. However, except for the Kazakh and Tuva minority groups residing in Western Mongolia, all ethnic groups speak Mongolian dialects that are intelligible to speakers of Khalkh and to each other. Khalkh Mongolian is the official national language and is used at all levels of administration, is the language of instruction in most schools, and is used in all national exams.

Besides the Tsaatan, the Kazakh, the Tuva, and to some extent the Khoton, cultural differences among ethnic groups are minor. Mobile pastoralism has traditionally been practiced within Mongolia, and this common nomadic way of life has fostered a relatively uniform Mongol culture, with people sharing similar livelihoods, having frequent contact with speakers of other dialects, and developing close social and cultural practices. The majority of Mongolia's ethnic groups share similar customs, traditions, and systems of production as the Khalkha. Ethnicity is mainly revealed in distinct clothing styles and ways of preparing food, as well as in musical and oral traditions.

Ethnic distinctions can thus be qualified as relatively minor, although some groups may have a stronger sense of their own identity than others. This is the case for the traditionally nomadic reindeer-herding Tsaatan people in Khuvsgul aimag (province); the Kazakhs, who have stronger cultural differences added to language and religious distinctions (Kazakh language and Islam); and the Tuvas (Tuva language). However, Kazakh and Tuva livelihoods are not significantly different from those of the Mongol subgroups; only the Tsaatan are characterized by a specific system of production. Most of the Mongol minority groups, and even many Khalkha people, still live in semi-nomadic pastoral bands that move continuously across the Steppe, the high-altitude plains where their ancestral culture originated. However, many worry that nomadic herding is no longer sustainable, as climate change is drying up the land and major cities are developing throughout the nation in places where more economic opportunities are available.

Although Mongolia has a fair amount of ethnic diversity, this has not led to major problems. The Khalkh people are generally not challenged in their claims of representing true Mongol culture, or in their widespread control that simply comes from having much greater numbers. This does not mean, however, that things are always perfect. Every now and then one of the ethnic minority groups will bring their lack of political representation into national politics or will question decisions made by the government for Mongolia's future. However, while racial tension does exist in these cases, the disputes are almost always resolved peacefully and diplomatically.

The government has given increased attention to respecting and protecting the languages and cultural rights of Kazakhs, Tuvas, and other minorities. A variety of Oirat and Buryat dialects are spoken across the country. In the western part of the country, Kazakh and Tuva, both Turkic languages are also spoken. Mongolian Sign Language is the principal language of the deaf community. Today, Mongolian is written using the Cyrillic alphabet in Mongolia, although in the past it was written using Mongolian script. An official reintroduction of the old script was planned for 1994, but has yet to take place as older generations encountered practical difficulties. Schools are reintroducing the traditional alphabet. In March 2020, the Mongolian government announced plans to use both Cyrillic and the traditional Mongolian script in official documents by 2025 (The Law on Mongolian Language).

The Mongols originally followed shamanistic practices, but over time they broadly adopted Tibetan Buddhism (Lamaism), with an admixture of shamanistic elements. After the fall of the Qing in the early 20th century, control of Mongolia lay in the hands of the Javzandamba (spiritual leader) and of the higher clergy, together with various local khans, princes, and noblemen. The new regime installed in 1921 sought to replace feudal and religious structures with socialist and secular forms. During the 1930s, the ruling Communist party, which espoused atheism, destroyed or closed monasteries, confiscated their livestock and landholdings, induced large numbers of monks (lamas) to renounce religious life, and killed those who resisted (Lattimore 2022).

In the mid-1940s, the Gandan monastery in Ulaanbaatar was reopened, and the communist government began encouraging small numbers of lamas to attend international Buddhist conferences, especially in Southeast Asia, as political promotion for Mongolia. The end of one-party rule in 1990 allowed for the popular resurgence of Buddhism, the rebuilding of ruined monasteries and temples, and the rebirth of the religious vocation. Buddhists, predominantly of the school headed by the Dalai Lama, constitute nearly one-third of the Mongolians who actively profess religious beliefs. A relatively small number of Muslims, who are found mostly in the western part of the country, are nearly all Kazakhs (81.9%), and a much smaller community of Christians live mainly in the capital. Also 27% of Tuvas and 60.5% of Tsaatan people practice shamanism. A significant proportion of the people are atheistic or non-religious (Population and Housing Census 2020).

5. Minority-related Legislation

The rights of ethnic minorities are guaranteed by the Constitution of Mongolia (1992) which states: “no person may be discriminated on the basis of ethnic origin, language, race, age, sex, social origin or status, poverty, occupation or post, religion, opinion, or education” (The Constitution of Mongolia 1992, Article 14(2)). The Constitution also ensures the right of ethnic minorities to practice their own culture and use their own language, guaranteeing “the right of national minorities of other tongues to use their native languages in education and communication and in the pursuit of cultural, artistic, and scientific activities” (The Constitution of Mongolia 1992, Article 8(2)).

The government of Mongolia has no specific law or regulation related to indigenous peoples or ethnic minority concerns and issues. A few of Mongolia’s laws, such as the labor law (Article 7(1)) and the criminal code (Article 5(1)), for example, guarantee equality among ethnic groups. As such, there is no specific branch of government designated as responsible for addressing the concerns of ethnic and indigenous peoples. However, in Article 20(3) of the 2006 parliamentary law, a standing committee is designated to formulate state policies on ethnic minority languages, cultures, and traditions.

The National Human Rights Commission of Mongolia has conducted two large-scale research projects on the issue of ethnic minorities. It annually submits a report to the Parliament on situations of human rights and freedom in Mongolia. In the ninth report, “Implementation of the rights of the ethnic minorities of Tsaatans (Dhukas)” is included. Within the framework of the Tsaatan project, the National Human Rights Commission conducted research on the issue of the Tsaatan ethnic minority in Mongolia in 2003 and 2004, and accordingly sent conclusions and recommendations to the government and related organizations.

In 2003, within the framework of the project funded by the Office of the United Nations High Commissioner for Human Rights, research was conducted on the issue of “National Minority Rights.” Additionally, in 2005, with the funding of the International Labor Organization’s IPEC project, the work “Research on the right to education and child labor of ethnic minorities (Tsaatan) children” was published.

In order to implement the Mongolian President’s Decree No. 42 of 2013 on intensifying the “Program to Restore Reindeer Husbandry and Improve the Living Standards of Reindeer Herders,” and Government Resolution No. 168 of 2013 “On Measures to be Taken to Implement the Presidential Decree on the

Composition and Working Procedures of the National Council of the ‘Program to Restore Reindeer Husbandry and Improve the Living Standards of Reindeer Herders,’” joint orders No. A/100 and A/89 of the Ministry of Industry and Agriculture and Ministry of Population Development and Welfare were drafted. The implementation is being organized by approving the plan of measures that were implemented in 2013-2014.

6. State Policies regarding Minorities

Article 4 of the government’s policy on education (2014-2024) states that “all levels of education will be given in the official language and script of the state, and the training and use of the traditional Mongolian script will be gradually increased. If the majority of the students are ethnic minorities with a different language, they will provide conditions and opportunities for primary education in their mother tongue, and implement a bilingual education policy and program.”

In 2009, the National Human Rights Commission included this in its report on the human rights situation and freedom in Mongolia and took appropriate measures (NHRCM 2009). In the report, it was mentioned that the right of language of minority children living in Bayan-Ulgii province to be educated in the official language of the state of Mongolia was of concern. According to the recommendations of the National Human Rights Commission, Resolution No. 2 of the Parliamentary Standing Committee on Legal Affairs was issued on January 31, 2018. In this resolution, the government was directed to create conditions for language minority children in Bayan-Ulgii Province to provide pre-school and general education in the official language of the state, allocate the necessary funding, and increase access to kindergartens. According to Resolution No. 51 of 2014 of the Citizen’s Representatives Khural of Bayan-Ulgii Province, “provincial policies and guidelines for bilingual schools” were approved.

In the National Human Rights Protection Program of Mongolia, it is stated that “...the right of ethnic minorities to be educated in their mother tongue will be ensured, and the opportunity of their children to inherit and develop their mother tongue, customs, history, culture, and traditions will be improved...” (Strategic Plan 2015-2020). The UN Committee on Racial Discrimination, in its recommendations after discussing the 18th report of the Government of Mongolia, advised that attention should be paid to increasing the participation of ethnic minorities in cultural policy programs and asked for detailed information on this matter in the next report (Resolution No. 41 2003).

In accordance with the International Covenant on Economic, Social and Cultural Rights, the third report sent by the government did not include specific provisions on the cultural issues of ethnic minorities. In the fourth report on the implementation of Article 27 of the International Covenant on Civil and Political Rights sent by the government to the UN Human Rights Committee, it was stated that “the principle of non-discrimination of the Constitution and the provision on the official language of the state stipulated in Article 8 of the Constitution should not affect the use of the mother tongue of ethnic minorities,” and “Bayan-Ulgii province is home to ethnic minorities and there is a theater, song and dance ensemble.” (NHRCM 2004) The UN Human Rights Committee, after discussing the report, issued recommendations to regard Kazakhs as an ethnic minority and raised the issues of other ethnic minorities. When research is conducted on ethnic minorities in Mongolia, in the UN report it is stated that half of the participants in the research experience

some form of discrimination on the basis of their traditional customs, language, culture, and behavior on a regular or occasional basis. During group interviews with Kazakhs on this issue, the government has been implementing policies on the preservation, development and passing on of the cultural heritage of the Mongolian nation at the policy level, but there is no clear policy directed to Kazakh culture and customs (Concluding Observation 2006).

As of today, the Law on Public Radio and Television includes a provision to have programs that reflect the issues of ethnic minorities, and in recent years, Nauryz, the national holiday of the Kazakh people, has been widely promoted in the media at the national level, which can be considered a big step in spreading the heritage and culture of many nations and ethnic groups to the public and treating each other with respect. At the same time, the “Falcon Festival,” which is the pride of the Kazakh people, is celebrated every year in urban areas.

In this way, it is clear that presenting the culture and customs of the Kazakh people to others in a way that is combined with cultural measures is an important impetus for the implementation, promotion, and dissemination of the rights of ethnic minorities. In recent years, cultural festivals have been organized by other ethnic groups living in Bayan-Ulgii Province.

Freedom of religion is guaranteed in Chapter 2, Article 16, Section 16.15 of the Constitution of Mongolia, and it is also clearly reflected in the international agreements that Mongolia has ratified. In addition to the detailed regulation in the “Law on State-Religion Relations,” the National Human Rights Protection Program includes specific provisions on the rights of ethnic minorities. Currently, there are no other specific government policy documents regarding the right of Kazakhs to practice a religion. Kazakhs in Bayan-Ulgii province follow Islam and practice their religion according to its religious rituals.

In 2003, within the framework of the project implemented by the National Human Rights Commission of Mongolia, the “Tuva language program” was approved by the order of the Minister of the Ministry of Education and Culture No. 387 dated December 8, 2005.

The intellectual ability, learning style, and standard mastery-learning quality of Tsaatan children are similar to their peers. However, for children who have lived in the taiga until entering school, their language development is poor, and their ability to understand and express themselves in Mongolian is weak, which affects their learning ability, academic interest, and performance. Tsaatan children cannot attend pre-school and live in an environment where they speak both Tuva and Mongolian until they enter school. They enter school with a speaking level of knowledge in both of these languages.

The government of Mongolia approved the “Program to Restore Reindeer Husbandry and Improve the Living Standards of Reindeer Herders” by Resolution No. 255 dated October 3, 2007. It was necessary to develop this program due to the legitimate need for the government to pay attention to the ethnic minorities, especially the social problems of the people living in the taiga.

7. Some Concerning Issues

In the early 2010s, international organizations and UN Special Rapporteur reports included the following comments and concerns (Sepúlveda 2012).

- a) The Special Rapporteur commended Mongolia's efforts to protect the rights of ethnic minorities, including the right to mother tongue education, under the National Human Rights Program, and significant progress has been made in protecting the rights of ethnic minorities.
- b) In the framework of Mongolia's regular reports on the implementation of international human rights instruments, the UN Treaty Organization expressed its concern regarding the following issues related to Mongolia's ethnic minorities (Combined Reports 2018).
- c) Lack of appropriate policies to address challenges for ethnic minorities to ensure their interests, including poverty, unemployment, and lack of access to education in their mother tongue;
- d) Compared to the national average, fewer people from Kazakh, Tuva and Tsaatan minorities have access to primary, general and higher education;
- e) In terms of quality, education provided to minorities is not good, as evidenced by the fact that students from ethnic minority and indigenous communities do not perform well in university entrance exams; and
- f) In Bayan-Ulgii aimag, discrimination still exists for minorities who seek to enter public service.

Mongolia has enshrined the Law on Education, the Law on Primary and Secondary Education, and the Law on the Mongolian Language in the Constitution to ensure and protect the rights of ethnic minorities, including the right to education and the right to mother tongue education. For example:

- a) Article 8(1) of the Constitution of Mongolia states that the Mongolian language is the official language of the state, and stipulates that Section 1 of this article shall not affect the right of national minorities of population to use their native languages in education and communication, and in their pursuit of cultural, artistic, and scientific activities.
- b) Article 5(1)(4) of the Law on Education specifies that "conditions to learn in one's mother language shall be provided," while Article 30(1)(12) provides that "activities shall be organized to create conditions for ethnic minorities to receive education, inherit their culture and customs, and communicate in their native languages in the school environment."
- c) Article 4(1)(1) of the Law on Primary and Secondary Education states that the content of education shall be aimed at teaching students to speak their mother tongue correctly, to express their thoughts clearly, and to read and write in their mother tongue.
- d) Article 13(1)(4) of the Law on Mongolian Language states that "if the majority of students are ethnic minorities with a different language, learning shall be conducted in a bilingual program and the content of the bilingual program shall be approved," while Article 13(1)(5) of the law states, "activities shall be organized to create conditions for ethnic minorities to receive education in Mongolian and their mother tongue, to inherit their culture and customs, and pursue scientific activities."

It can be concluded that Mongolia's inclusive education policy has shifted from a special education policy to a more inclusive education concept and policy. In other words, we as a country seek to promote inclusive

education, regardless of disability status, language, or cultural differences. In this context, the government has actively been implementing reforms to meet the specific educational needs of the Kazakh and Tuva ethnic minorities and to improve access to and the quality of education since the mid-2000s.

Policies and guidelines for ensuring education for children from the Tuva and Tsaatan (Dhukha) minorities were reflected in the “Program for Supporting Reindeer Husbandry and Improving Tsaatan People’s Livelihood” approved by the government in 2007, and the 2013 Presidential Decree titled “Guiding the Government.” For example, the program provides for equal access to education for Tsaatan children and includes the following measures to prevent students from dropping out:

- a) To make preschool education accessible to Tsaatan people
- b) To ensure that Tuva language courses are included in the elementary school curriculum by adding the course into the study hours managed by schools
- c) To provide support for translating some textbooks and teaching materials into Tuva
- d) To improve educational materials and facilities
- e) To make sure that university tuition and dormitory fees for Tsaatan children living in the forest and taiga will be covered by the government.

In the resolution “On some measures to be taken to improve the quality of educational services for Kazakh children” approved by the government in 2010, the following actions were included:

- a) To establish a research unit within the Institute of Education to conduct research on preschool, primary, and secondary education for Kazakh children;
- b) To review the curricula and syllabi of Kazakh-language secondary schools and improve the quality of education by setting study hours for Mongolian and Kazakh language based on scientific research; and
- c) To take specific measures to strengthen the management and human resource capacity of educational institutions in Bayan-Ulgii aimag and to improve the Mongolian language skills of Kazakhs.

As part of the implementation of the aforementioned government policies and decisions, some progress has been made by establishing a specific unit within the Institute of Education which is tasked with performing research on education for ethnic minorities and Mongolian children abroad, and translating textbooks for primary school students into Kazakh and Tuva. For example, in most secondary schools in Bayan-Ulgii aimag, students study all subjects in their mother tongue at the primary school level, and start learning the official state language in 2nd grade or after becoming literate in their mother tongue. Primary school textbooks have been translated into Kazakh and Tuva and distributed to primary school children who are being taught in their mother tongue.

In implementing the decree issued by the President of Mongolia in 2013, a university quota was set for Tsaatan people living in Khuvsgul aimag. As a result, five children who graduated from the school in Tsagaannuur soum (county) enrolled in university in 2017. Eleven Tsaatan children studying at universities received grants from the State Education Fund.

Looking at the 2020 Population and Housing Census of Mongolia, it can be concluded that some progress has been made in education as a result of measures taken for ethnic minorities. The 2020 Population and Housing Census of Bayan-Ulgii aimag found that: (Population and Housing Census 2020)

- a) The proportion of the aimag's population aged 10 and over that is educated is 93%, which is an increase of 7.2 percentage points from the previous census.
- b) The percentage of illiterate people between ages 15 and 19 in the aimag declined by 0.7 percentage points compared to the previous census.
- c) 70.4% of children aged 10 to 14 have a primary education, which is an increase of 17.7 percentage points from 2010.

However, attention should be paid to the fact that the literacy and school enrollment rates of the population in Bayan-Ulgii aimag are lower than the national average, and the majority of children who drop out of school live in this province. According to data collected from 2013 to 2017 by the Research Unit of Education for Children from Ethnic Minorities and Mongolian Children Abroad of the Institute of Education under the Ministry of Education, Culture, and Science, there has been no significant change in the quality of education for ethnic groups. For example, according to the data collected by the Research Unit, in the academic year 2016-2017, on average, minority students scored 59% on the Kazakh language test, 58.2% on the Tuva language test, and 38.7% on the Mongolian language test (The Research Unit 2013–2017).

According to a UNICEF study, the basic reading skills of Kazakh students are 14 to 17 points lower than that of Khalkh children (Mongolia Education Fact 2020). A qualitative research study conducted by the “All for Education!” National Civil Society Coalition NGO highlighted the following concerns: (National Civil Society Coalition NGO 2020)

- a) In Mongolia, there are currently no didactic or optimal curricula that support children of ethnic minorities with different cultures and languages in learning multiple languages
- b) No data specific to children from ethnic minorities and other language and cultural groups was collected to evaluate their school enrollment and academic achievements.
- c) There is a lack of effort to educate bilingual and multilingual teachers and improve their teaching skills to make education accessible for ethnic minorities.

8. Conclusion

Mongolia, as a member of the United Nations and a country with ethnic minorities, is responsible for upholding the internationally accepted norms on the protection of minority rights. However, it is still important to include facts on the rights of minorities, the rights of Kazakhs, Tsaatans, and Tuvas in the reports that the government of Mongolia submits to the relevant UN Committees. It is necessary to clarify the unified policy of the government on the realization, protection, and promotion of the rights of ethnic minorities in matters such as education.

According to the National Human Rights Commission of Mongolia, it can be concluded that the provinces and regions where Kazakhs, Tsatsans, and Tuvas live are too far from the center, the infrastructure is not well developed, there are no large industrial plants, and there is high unemployment and poverty, which adversely affects the protection of health, education, and the enjoyment of rights. This conclusion is still relevant. It is important to further ensure that the government starts taking certain integrated measures in order to realize the rights of ethnic minorities to speak their mother tongue, get information, learn, preserve their customs and traditions, and preserve their cultural heritage. Providing mother language-based education continues to attract public attention. It is important to intensify the implementation of the educational program for Kazakh, Tsatsan, and Tuva children, and to pay attention to the publication, translation and improvement of textbooks in these languages.

It is imperative to support the self-governing bodies of the provinces in which ethnic minorities live, and to conduct external monitoring of the implementation of the programs implemented by the government in the provinces with the participation of minority representatives. In order to ensure ethnic minorities to have a source of income, it is necessary for the government to pay attention to support their ideas and implement policy measures aimed at addressing social problems in cooperation with local authorities. It is also necessary to support the initiatives of local people to provide a source of livelihood. In poverty alleviation projects, for example, it is important to pay attention to providing jobs to the unemployed, and providing medical supplies to the soum hospitals in order to protect the health of locals. It is still important to continue to provide assistance in this area by encouraging the sincere desire in these communities to preserve their culture, customs, traditions, and unique way of life.

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Country Case 4: Bangladesh

Protection of Minority Rights in Bangladesh Requires Stronger Commitment

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1. Introduction

Bangladesh is a densely populated country. As per the latest census in 2022, the population now stands at 160.5 million people (Molla 2022). The most recent data reveals that Muslims constitute 91.4% and minorities 8.98% of the population (Molla 2022). Among them, religious minorities form the major portion with Hindus comprising 7.95% followed by Buddhists and Christians (Molla 2022). As per the latest data, the population of minorities has declined since the last census of 2011, particularly the Hindu population, which previously stood at 8.54%.

The rights of minorities are protected under the Constitution, which guarantees equality in the eyes of the law for all citizens. However, due to a number of factors, minority rights are often violated. These range from a) negative social attitudes towards them, b) religious fanaticism, c) lack of sensitivity and sympathy among the majority community, d) vested interest groups ready to take advantage of their vulnerable situation, and e) the weak response from the state to violence, intimidation etc. It can be said that although not all minorities are facing discrimination and violence, a majority are economically, socially, and politically vulnerable. There are several categories of minorities in Bangladesh. However, the dominant minority communities are religious, ethnic, and others (linguistic, refugees, etc.).

The key objective of this paper is to provide to readers an objective overview of the situation of minorities in Bangladesh and to highlight the roles different stakeholders can play in addressing discrimination and rights violations against members of these communities.

2. Historical Background

Hinduism has been the dominant religion in South Asia for centuries. Buddhism is also a homegrown religion of the sub-continent, and is now the majority in Sri Lanka and Myanmar. Muslims came to the sub-continent about 600 years ago from Afghanistan, Iraq, Turkey, and other neighboring countries either to spread the word of Islam or invade. A massive conversion from Hinduism to Islam took place from the 15th to 17th centuries,

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during which time the Turks and then the Mughals ruled over the sub-continent. Afterwards, the British colonized the sub-continent for 200 years.

Towards the end of the British rule, the Indian subcontinent was divided into Pakistan and India in 1947.² Pakistan became a Muslim majority country and India a Hindu majority country, though millions from both religions opted to remain in their place of birth. Pakistan was geographically divided into East and West Pakistan, with India in between. East Pakistan was characterized by the Bengali speaking people, who were majority Muslim by religion but with a distinct cultural identity which was different from West Pakistan. The cultural difference and economic exploitation by the West Pakistan rulers resulted in the breakup of Pakistan through a brutal war in 1971. East Pakistan emerged as an independent country, becoming what is now Bangladesh. 30 million unarmed civilians lost their lives in the War of Liberation, nearly 200,000 women were raped, and the country's infrastructure was completely destroyed.³

One of the reasons for the breakup of Pakistan was the use of religion in politics. The Pakistani ruling elite and people of West Pakistan were not convinced of the Muslim credentials of the people of East Pakistan, and thought of them as “not Muslim enough.” They did not accept the distinct language and culture of the people. The Muslim League political party, along with Jamaat-e-Islamii, proclaimed that the Muslim identity should be the only identity of Pakistan, and that all other religions should play a subservient role. In 1952, Prime Minister of Pakistan Muhammad Ali Jinnah declared Urdu to be the only language of Pakistan. This was not acceptable to the Bangla speaking people. Violent protests led by students broke out in East Pakistan. On February 21, 1952, students formed a procession to demand that Bangla be made the state language of East Pakistan. The police retaliated with bullets, and several students were killed. February 21st is now celebrated as the International Mother Language Day. This event had a huge impact on the people of East Pakistan and sowed the seeds for the country's eventual secession from Pakistan.⁴

Due to the religion-based politics at that time, Hindus were specifically targeted. Moreover, India was blamed for creating dissent and actively participating in the breakup of Pakistan. During the War of Liberation in the late 1960s, proportionately more Hindus were killed by the Pakistani army, and a majority of them crossed the border to India (Sarker 2021).

Given the experience of Pakistan and the negative impact of religion-based politics and use of religion for political gain, Bangladesh, right after independence, emerged as a secular polity with a constitutional embargo on religion in politics. The first Constitution, passed on November 4, 1972, abolished (a) all kinds of communalism; (b) political recognition of religion by the state; (c) the exploitation of religion for political purposes; and (d) discrimination on religious grounds (People's Republic of Bangladesh 1972). The preamble of the Constitution emphasized secularism as one of the fundamental principles of state policy. Article 9 of the Bangladesh Constitution (1972) defined Bengali nationalism as: “The unity and solidarity of the Bengali nation, which deriving its identity from its language and culture, attained sovereign and independent Bangladesh through a united and determined struggle in the war of independence, shall be the basis of Bengali nationalism” (People's Republic of Bangladesh 1972).

² https://en.wikipedia.org/wiki/Partition_of_India

³ https://en.wikipedia.org/wiki/Bangladesh_Liberation_War

⁴ https://en.wikipedia.org/wiki/Bengali_language_movement

The insertion of the above clauses ensured the political and cultural dominance of Bengalis within the state. However, ethnic minorities claimed this was a denial of their cultural identity and distinctiveness. The rights of religious minorities under Article 41 of the Constitution are ensured, and citizens given the right to practice and promote religious beliefs. Further provisions of Article 41 guarantee each individual's right to refuse to practice a religion, or to be compelled to be educated in a religion other than their own (The Lawyers and Jurists n.d.). Sections 295, 296, 297, and 298 of the Penal Code deal with offenses against religious places or practices (People's Republic of Bangladesh 1972). The only protective provision for ethnic minorities is Article 28(4), which states that "Nothing in this article shall prevent the state from making special provision in favor of women and children or for the advancement of any backward section of the citizens" (Ahmed 2016).

Though Bangladesh broke away from Pakistan and emerged as an independent nation state in 1971 with secularism as one of its pillars, it still bears signs of majoritarian politics. This became particularly noticeable after the assassination of the country's first president Sheikh Mujibur Rahman in 1975, popularly called Bangabandhu, meaning "friend of Bengal." Post-1975, Bangladesh witnessed the insertion of Islam as the state religion into the Constitution. After this, Bangladesh was under military rule until 1990, when religion-based politics took root again. With the restoration of democracy in 1991 and national election, the Bangladesh Nationalist Party (BNP) came to power and minorities remained vulnerable. The rights situation improved for minorities when, in 1996, the Awami League government was elected to power and secularism was restored in the Constitution of 2011, but Islam remained the state religion in the Constitution (Mostofa 2020a). This ambiguity shows the divided nature of the country's population, which impacts the principles of secularism and rights of minorities as equal citizens.

Over the past 20 years, there has been a rise in religious extremism in Bangladesh. The reasons are diverse, and include internal proliferation of religious extremism as well as the situation of global Islam. The roots of religious extremism in Bangladesh extend back to before the country became independent from West Pakistan in 1971. A religion-based political party by the name of Jamaat-e-Islami with a reasonably large following has been advocating for running the state under Shariah Law (laws based on Quran and Hadith). Jamaat-e-Islami party did not believe in the creation of Bangladesh, and gave all out support to the Pakistani army's brutal attack on the population of East Pakistan. After independence, the party was banned and many of its leaders faced allegations of war crimes for their support and active participation in the genocide against the unarmed civilian population of Bangladesh (Bangladesh Genocide Archive n.d.).

This political party and their cohorts regained their previous status after 1975 and formed an alliance with a new political party — the Bangladesh Nationalist party (BNP) — which came to power at that time. From 1975 until 1990, Bangladesh went through a military and quasi-military rule when religion-based politics were reinstated. A number of extremist groups emerged and carried out massive campaigns to Islamize Bangladesh. Bomb attacks and suicide bombings occurred, and there was fear that Bangladesh would turn into Afghanistan. With the restoration of democracy in 1991, the BNP came to power through free and fair elections with the help of Jamaat-e-Islami. During this time, religious extremism grew in Bangladesh and religious minorities faced various atrocities and forms of discrimination. Violence against the Hindus reached its peak in the aftermath of the 2001 national elections when the BNP-Jamaat axis was again elected to power. Hindus, especially those who voted for the Awami League, faced massive attacks such as murders, rape, looting, and

destruction of property.⁵

In 2009, the Awami League (AL) once again won the people's mandate and took over the government. It took steps to restore secularism and push back the fundamentalist forces and put on trial those accused of war crimes during 1971. Most of them were members of the banned Jamaat-e-Islami party. However, by then the fundamentalist forces had become entrenched and continued to carry out subversive activities against the state and minorities. The AL, which is the party in power at present, dealt firmly with these forces, but has not been able to root them out.

Other reasons for the rise in religious fanaticism in Bangladesh include the influence of the issues in Middle Eastern countries, Israel's persecution of Palestine, the rise of ISIS, and, most importantly, feelings of victimization. Neighboring India and Myanmar are reportedly persecuting Muslims (in 2017, 800,000 Muslim Rohingyas fled persecution and took shelter in Bangladesh). Videos of such persecution are rampant on social media, and generate feelings of proxy-victimization.⁶

The recent spasm of violence against religious minorities, especially Hindus and Buddhists, in response to fake blasphemy allegations are the result of a negative social attitude towards them. Many religious attacks on minorities are actually done to steal land and assets belonging to Hindus (Hasan 2021). The dynamics of local politics are also at play in furthering the antagonism against religious minorities. As the ruling Awami League has consolidated power and is now effectively without a viable opposition, there are indications that rivalry over resources (land, property such as shops, temple land, etc.) within the ruling party is becoming entrenched.

3. The Status of Ethnic Minorities in Bangladesh

Bangladesh is a country of cultural and ethnic diversity, with over 54 indigenous people speaking at least 35 languages, along with the majority Bengali population. According to the 2011 census, the country's indigenous population numbers approximately 1,586,141, which represents 1.8% of the total population of the country (IWGIA 2022).

The present government under Sheikh Hasina maintains there are no "Adivasis or indigenous" people in Bangladesh. The ethnic minorities are referred to in all government documents as "small tribal groups." Identifying them as Adivasi or indigenous is highly discouraged. The reason being, identifying a community as indigenous gives them certain rights under the UN Declaration on the Rights of Indigenous People. Bangladesh is not willing to accept this, and the debate continues whether the ethnic minorities are Adivasis or migrants. As it transpires, Bengalis and Bengali Muslims are the culturally homogenous majority population, while the minority/weaker communities are expected to assimilate themselves with the "mainstream," i.e., the dominant majority community.

The majority of the indigenous population live in the plains districts of the country, and the rest in the Chittagong Hill Tracts who are also known as Jumma people. The major challenge that indigenous people

⁵ https://en.wikipedia.org/wiki/2001_Bangladesh_post-election_violence

⁶ https://en.wikipedia.org/wiki/Rohingya_genocide

face is the lack of representation and inclusion in mainstream development process. Their economic and political rights are violated and they feel ignored and alienated. Most of the time, their rights to their ancestral land remain ignored (IWGIA 2022).

The CHT region was in conflict until the signing of the Peace Accord in 1997⁷ by the government. This was a milestone initiative which put an end to the ten-year conflict. The Agreement signed between the government and the Parbatya Chattagram Jana Samhati Samiti (English: United People's Party of the Chittagong Hill Tracts), or PCJSS, highlighted the importance of giving autonomy to the Jumma people. The agreement stipulated the devolution of power to the regional council and clarified that they would be authorized to take decisions on all development aspects in the CHT. One of the most important parts of the agreement was closing down or removing all army camps from the CHT. Although 17 out of 33 clauses have been complied with, the most important ones remain unfulfilled (New Age Youth 2019). In the years prior to the signing of the Peace Accord, there was a deliberate attempt to settle Bengalis in the CHT by previous governments. Such settlement has changed the demography of the CHT, where now Bengali settlers form half of the population.

The ethnic minorities are considered a marginalized population and rank lower than the national average in every indicator of human development such as life expectancy, nutritional status, poverty level health and education. They face social, economic and political discrimination. and are slowly losing their ancestral land to Bengali settlers or to private companies either through land grabbing by vested quarters or government policies of land acquisition for development purposes (Rasul 2015).

Indigenous women and girls have been targets of violence, intimidation, harassment, and discrimination for years. Indigenous women and girls routinely face sexual, physical, and mental violence, mostly from Bengali settlers, influential land grabbers, and sometimes even men from within their own communities. The Kapaeeng Foundation documented that at least 53 indigenous women and girls, in 47 incidents, were reportedly killed, raped, assaulted, or violated in 2018. More often than not, the violence that indigenous women and girls face is political, connected to power relations and with the intention of driving them away to take over their land (IWGIA 2022).

4. Dominant Religious Minorities in Bangladesh

Religious minorities are the largest group of minorities in Bangladesh and number about 10% of the population. They consist of Hindus, Buddhists, and Christians, with Hindus being the largest group with a population of 9%. They are well integrated into mainstream social, cultural, and political life in Bangladesh. As per the law of the land, they have every right to practice their religion, obtain employment, and enjoy the same benefits as all other citizens. However, they suffer more discreet and insidious forms of discrimination and rights violations. These include being prevented from getting white collar jobs, being forced to sell their property at lower than market price, negative and humiliating comments about their religion, and being treated as outsiders.

⁷ https://en.wikipedia.org/wiki/Chittagong_Hill_Tracts_Peace_Accord

During the last 20 years, attacks on religious minorities have occurred on a regular basis, mostly during religious festivals, when the Hindu population becomes much more visible. Attacks happen in the form of vandalizing property, temples, shops and homes or physical attacks. Since 2012, religious minorities have been attacked in Bangladesh almost every year. The attacks are pre-planned but are mostly done under the pretext of online posts which allegedly offend the religious sentiment of the majority population. The pattern runs like this. Rumors begin within a local community that someone from a minority background has defamed Islam. Whether the news is true or false is not verified. This news goes viral through social media deliberately to incite violence against minorities. In no time, marauding goons who are instigated to such acts by vested interest groups, such as religious fanatics or those planning to take over their land and property, emerge and start attacking the homes and temples of the Hindu community (Bose 2021).

While Facebook remains a major platform for inciting hate and violence towards minorities in Bangladesh, other factors are important to understand why these deadly rumors attract mobs who then attack minorities for alleged blasphemy. Studies in recent years have identified shifting trends in Islamic majoritarianism in Bangladesh where blasphemy and atheism are deemed to have deadly implications. Atheist bloggers have been murdered by violent Islamists, for example, and several “blasphemous” writers, cartoonists, publishers, and bloggers now live in permanent exile (Hasan 2021). Even progressive Muslim members of civil society come under verbal attack for their secular beliefs and ideas and are openly referred to as “atheist.”

5. Reasons behind the Violations of Minority Rights

5.1. Weak Response of the State

Although the Constitution guarantees equal rights of all citizens, the state has not been very proactive in preventing violence and atrocities against minorities and protecting their fundamental rights as equal citizens of the country. It is true that there is no state-sponsored discrimination or violence, but it is also true that the state has not taken any concrete steps to ensure that such attacks do not occur. Often, authorities do not initiate a strong enough response to prevent attacks on minorities. The biggest attack occurred during Durga Puja in 2021 (the most important Hindu religious festival in Bangladesh) when hundreds of houses were attacked, looted, and burnt. Five people were killed, and temples were vandalized.⁸ The residents had to flee to the next village to take shelter. Although the government condemned these incidents and declared zero tolerance against such attacks, the actions taken were not prompt enough. There were reports of police inaction and a laid-back attitude from local authorities. Cases were filed against hundreds of unnamed people, but little evidence of actual punishment of perpetrators can be found. Compensation to the victims was also inadequate. If the government was serious about protecting minority rights, then it should have implemented the recommendations given by human rights organizations and the regular situation monitoring reports issued by international bodies.⁹

⁸ https://en.wikipedia.org/wiki/2021_Bangladesh_communal_violence

⁹ <https://www.askbd.org/ask/rights-religious-minorities/>

5.2. Political Indemnity

After every such incident, the two main political parties, the Awami League and BNP, start to blame each other and ultimately try to shelter their activists who were involved in the violence. This sort of political indemnity is a big reason why communal attacks keep recurring in Bangladesh. Sections of the Bangladesh Penal Code fail to protect the rights of minorities, and perpetrators are most often not punished. In a discussion to make the media aware of the most recent communal attack on Hindus in Narail District organized by the citizen platform for the implementation of the SDG's, the issue of political immunity was emphasized. Eminent citizens pointed to the fact that political parties want to keep even the extreme Islamic vote bank intact, and they therefore do not take action against the perpetrators of minority violence. Such immunity has emboldened the vested interest groups who are waiting for opportunities to create a rift between the minority and majority religious population (The Daily Star 2022).

5.3. Economic Gain

Making a profit from taking the land and property of minorities, particularly those belonging to Hindus and ethnic minorities, is one of the reasons such attacks keep occurring. No doubt there exists a religious fundamentalist group working behind the scenes who wants to turn Bangladesh into an Islamic state, but hundreds join in, not to gain religious or political power, but to derive some economic advantage from the situation. Minorities are considered soft targets whose properties are easy to steal with impunity. In one recent attack, residents claimed that armed groups knocked on their door and demanded money. Those who could pay were spared, while those who could not suffered the looting and burning of their homes. Minorities are also often forced to sell their land at below market price. The Enemy Property Act, which came into force after the 1965 War between Pakistan and India, was later renamed the Vested Property Act in 1971. This Act has been misused even after the birth of Bangladesh to take property from minorities, especially Hindus (BLAST n.d.). These land grabbers are often influential people who enjoy immunity from consequences, and their actions are not questioned. Using political patronage, these people have taken over land, property, and businesses from minorities. In the face of civil society movements, this Act was amended in 2013, making it illegal to take land from minorities.

In the CHT, settlements by Bengalis have changed the demography of the region, and indigenous people are no longer in the majority. The same is true of plain land Adivasis (indigenous) as their land continues to be grabbed for the construction of resorts and parks condoned by the government. The Hindu population has lost most of their land to influential members of the ethnic majority either through intimidation, forced sales at prices far below market value, or through illegal land grabbing.

5.4. Propaganda and Rumors: Violence due to Rumors Spread by Vested Quarters

In Bangladesh today, especially in rural areas, rumors are spread deliberately by vested interest groups to create negative impressions of minorities. Many incidents of atrocities against religious minorities have roots in these false rumors spread on purpose to unleash violence. As mentioned above, the intention is mostly to take over their properties and businesses. Other more sinister reasons are to force them to migrate to India. When Hindus

migrate to India, it becomes easy for local people to take their property.

Social media is increasingly being used by vested interest groups to deliberately create distrust and disharmony between minority and majority populations, and new technologies are used to disrupt social harmony. Some of the most heinous attacks in recent times have roots in the spread of false rumors. The result has been attacks against not only Hindus but also Buddhist communities.

5.5. Slow Justice System and Indifference of Law Enforcement

The prolonged delay in ensuring justice for victims is one of the reasons why perpetrators are emboldened to carry on their activities with impunity. They are not usually held accountable for their actions. The entire justice system is stacked against the weak and the powerless. The saying “justice delayed is justice denied” is true in this present context. Those belonging to low-income groups are even more marginalized in terms of getting justice, no matter which religion or ethnicity they belong to. The entire process of getting justice is long and financially crippling for them. Even if they file a case for violence, it is hard to find witnesses and take the case to its conclusion. Typically, when acts of violence against minorities occur, the police file cases against unnamed people. Some perpetrators are even rounded up for questioning and sent to jail. However, nine times out of ten, these perpetrators are released on bail either through the use of influence or for lack of evidence. Often, it has been observed that when a Facebook user who allegedly posted an objectionable post is arrested and sent to jail or even to remand, there are never any attempts to verify the truth of the allegations against this person. The perpetrators, on the other hand, are apprehended after several days even when there are eyewitnesses to the looting and arson and mayhem they have created. Another anomaly is the system of filing cases against unidentified people. In the attack on minorities during Durga Puja 2021, cases were filed against 490 identified and 5,700 unidentified people. Interestingly, a charge sheet was filed in only three cases (Dutta 2022)!

5.6. Misuse of Laws

A certain cause in the penal code is highly misused against minorities. The Penal Code 1860 covers “Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs [295A],” stating, “Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of the citizens of Bangladesh, by words, either spoken or written, or by visible representation insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with a fine, or with both” (People’s Republic of Bangladesh 1860).

Time and again this law is used to harass, intimidate or imprison members of minority communities. Even though the clause was meant to prevent insults against members of every religion, including Hindus, Christians and Buddhists, the reality is hardly anyone from minority communities uses this clause to file a case against members of the majority, claiming that their “religious sentiments” have been hurt. Therefore, in essence, this clause acts as a mechanism to harass minorities.

The other law is the Digital Security Act of 2018. This was enacted to curb all manner of digital crimes, such as intimidation and threats using digital platforms. However, it has ended up being used mostly against journalists to control the media and curb free speech. This law is also being used to file cases against minorities for posting alleged “objectionable” or blasphemous items on social media, which are seldom verified. The DSA is considered a black law by civil society organizations and the media, as cases filed under this Act are ineligible for bail (Riaz 2021).

5.7. Prejudice towards Minorities

Often, members of the majority population have a preconceived negative attitude towards minorities and believe them to be inferior in terms of their social status, culture, and way of life. This also impacts the ability of minorities to enjoy their fundamental rights. These negative attitudes manifest in different ways, such as humiliating remarks about their religious beliefs and way of life, personal habits; Facebook posts depicting them as idol worshipers and unpatriotic with the ultimate aim of migrating to India; falsely accusing them of getting undue advantages from Government services; and spreading false rumor about them to create distrust among other members of the majority population. At times, these negative attitudes have resulted in minorities rejecting their own culture and adopting that of the majority population. Hindu women have been known to stop wearing Shidur and Shankha (symbols of married Hindu women) in public for fear of being humiliated, and many take up the Muslim way of salutation (Salam Alaikum).

6. Recent Incidents of Minority Right Violations

Since 2013, the number of human rights violations against indigenous peoples has increased. There have been incidents of rape, murder, land grabbing and looting of property. The Kapaeeng Foundation’s “Human Rights Report 2013 on Indigenous Peoples in Bangladesh” reports that at least 47 houses were burnt to ashes, while around 2,000 people from 400 families in CHT fled to the “no man’s land” adjacent to the neighboring Indian state due to communal attacks conducted by Bengali settlers. In some cases, while these violations were committed by influential Bengali miscreants as non-state actors, state actors, such as members of security forces and law enforcement agencies, played either supportive or passive roles. The situation in the CHT throughout the year 2018 was characterized by very limited freedom of speech, expression, assembly, and association (Barman and Neo 2014).

Religious minorities have faced threats, intimidation, and violent attacks. The most heinous crime was committed against the Buddhist community in Ramu, Upazila in Cox’s Bazaar in 2012, when mobs incited by some Facebook post that allegedly demeaned Islam destroyed 50 pagodas and burned, vandalized, and looted houses.¹⁰ Moreover, attacks against Hindus occur annually during religious festivals, with the most serious taking place during Durga Puja in 2021 (Hasan 2021). Most of these attacks take place in rural areas where it is easy for vested quarters to mobilize people against minorities through various sermons and

¹⁰ https://en.wikipedia.org/wiki/2021_Bangladesh_communal_violence#Bandarban

discussions. People in the villages are more prone to take advice from religious leaders, many of who often present a flawed interpretation of Islam. Calls to take up arms against anyone demeaning Islam are made directly or through social media. Passionate speeches are given, asking “how will you answer Allah when he asks how you protested for Islam?” Such calls resonate with locals, who are instigated by those wanting to benefit from mayhem. The most recent attack in Narail had the same pattern (Dutta 2022). The malaise is far deeper than just wanting to gain economic benefits. There is a deliberate attempt to create disharmony and disunity by a vested interest group.

6.1. International Commitments

Bangladesh is a signatory to all UN Conventions, including the ICCPR CEDAW, ECOSOC, and UNCAT and is a member of OCHR. These are aimed at the protection of cultural, political, and social rights for all citizens. May 2018 was the third time the human rights situation in Bangladesh was reviewed by the Working Group on the Universal Periodic Review (UPR). A 29-member delegation led by the Minister of Law, Justice, and Parliamentary Affairs attended the thirtieth session of the UPR Working Group. The Bangladesh delegation condemned the violence against religious and ethnic minorities and claimed that allegations of such incidents had been addressed as promptly as possible during the period under review. In a similar vein, the delegation emphasized a “zero tolerance” policy towards crimes perpetrated by members of law enforcement agencies (OHCHR n.d.).

This same government policy statement appeared in the second UPR review of Bangladesh in 2013. Moreover, the delegation reiterated previously made commitments concerning the implementation of the 1997 CHT Accord and existing constitutional provisions on protecting the local culture and traditions of indigenous peoples. Bangladesh also emphasized its commitment to human rights, highlighting its decision to shelter 1 million Rohingya refugees who faced persecution in Myanmar and fled to save their lives.

7. Current Practices to Protect the Rights of Minorities

7.1. Government Initiatives to Address Violations of Minority Rights

As mentioned above, the Constitution of Bangladesh guarantees equal rights for every citizen of the country without prejudice towards anyone. The government’s stated position is “zero tolerance” for atrocities against minorities. The government also takes action to set up investigation commissions after every attack and vows that the perpetrators will not be spared. When an attack occurs, the police take action and arrests are made. The National Human Rights Commission (NHRC) was set up to monitor rights violations against all citizens with a special focus on minorities. The NHRC conducts periodic investigations and submits reports to the government. The government tries to provide security during minority religious festivals, and the prime minister visits some of the most important worship places (OHCHR 2010). The present government has also made an effort to recruit members from minority communities into government jobs.

The present government signed the CHT Peace Accord, which stopped armed conflict in the area. Although not all terms of the Accord have been implemented, some development has reached the people,

improving their livelihood status.¹¹ The Ministry of Religion has recently taken up an initiative to start a massive campaign all over Bangladesh to make the general population aware of religious tolerance and encourage them to shun the path of violence and destruction.

7.2. Non-Government Initiatives

Bangladesh boasts of a vibrant civil society which has been active in the protection of human rights, including those of minorities. There are human rights defenders who have spent decades working for the protection of marginalized groups, especially minorities. Several NGOs and research organizations have initiated specific programs and projects to gather evidence and monitor rights violations. A number of civil society platforms and movements exist to monitor the situation of minorities and launch protests when rights violations occur. Notable among those is the Adivasi forum, the Human Rights Forum Bangladesh, and the Kapeeng Foundation (Delegation of the European Union to Bangladesh 2020). Ain O Salish Kendor (ASK) is one of the foremost organizations defending minority human rights, as is BLAST. Many organizations hold rallies and protests whenever rights violations occur, and make site visits. Legal, medical, and financial services are also provided by these organizations. In order to portray an objective picture of the situation of minorities, parallel reports are submitted by CSOs to international bodies that handle the rights of minorities.

The Human Rights Forum Bangladesh (HRFB) is a platform of 46 members known as human rights defenders. The HRFB makes press statements and holds press conferences to highlight incidents of violence against minorities. It also conducts dialogues with the government and shares parallel reports on the human rights situation. Civil society organizations are also active in drafting progressive laws to protect the human rights of marginalized groups including minorities. Parliament is in the process of enacting the Anti-discrimination Act of 2022, which was drafted by a number of civil society organizations and human rights defenders. However, often CSOs and civic groups face challenges working on human rights issues and are seen as too critical or accused of tarnishing the image of the country when damaging reports are circulated about government inaction on rights violations of minorities.

8. Conclusion and Recommendations

Bangladesh is still known as a multicultural, multi-racial, and multi-religious country with a tradition of social harmony and religious tolerance. The government is committed to upholding the principles of secularism as enshrined in the Constitution of Bangladesh. Acts of religious terrorism and violence against the state have been addressed strongly, with positive outcomes. Many known terrorist outfits have been destroyed, and in the last few years such attacks have gone down drastically. In 2016, a most heinous attack known as the Holey Artisan Bakery attack took place when six youths stormed an upscale restaurant and killed 20 people, most of whom were foreigners (BBC 2016). They claimed to be representing ISIS. However, the government dealt with them very swiftly and effectively neutralized this force.

¹¹ https://en.banglapedia.org/index.php/Chittagong_Hill_Tracts_Peace_Accord,_1997

But when local attacks occur, the government often fails to act decisively against the perpetrators. These attacks on minorities occur year round. Though people are not killed during these attacks, reports of vandalizing idols and destroying property and businesses are common. Land grabbing, looting, and burning of property or violence against women and girls from minority ethnic communities continue unabated.

It must be noted that religious and ethnic minorities do enjoy a certain amount of religious freedom. Most groups are able to celebrate their religious festivals in a grand manner. Other secular festivals, such as the Bangla New Year on April 14, are also celebrated universally irrespective of religion or ethnicity. It is believed that the general population wants to live in social harmony and peace and wants Bangladesh to be perceived as a diverse multicultural society.

The progressive elements and those who were involved with the War of Liberation are particularly disappointed at the present state of affairs, as their aspiration was to build a secular democracy where the rights of every citizen will be protected. The most important point is that the state has to be more proactive in protecting individual and collective freedoms of the minority population. In order to do so, the state must take up massive awareness programs and convey a clear message that violence and atrocities against minorities are a crime and will not be tolerated. Laws that further jeopardize their freedom and rights should be amended or done away with. The Penal Code of 1860 includes a clause that translates into punishment for “offending religious sentiments.” This clause is used regularly by vested interest groups to file cases and mobilize local people to attack and harm minorities. This law, along with the Digital Security Act, should be reviewed, and any clauses that have the potential to be used against minorities should be removed.

Attacks on minorities and rights violations create a negative impression of Bangladesh globally. This is not the impression that the government wants to give to the rest of the world. Bangladesh wants to be known as a culturally and religiously diverse society. However, in order for that to happen, the government must join hands with civil society organizations to form broad-based multi-stakeholder platforms to initiate dialogues on diversity, cultural, social, political, and religious rights, and acceptance of different opinions and differences. The education system needs to be revised to include the above issues in the curriculum, and children should be taught at a young age to celebrate diversity rather than reject it. Religious leaders from all faiths should be given training on subjects of social harmony and cultural and religious diversity. Social media should be monitored carefully for hate posts against all religions. The truth of posts that go viral should be verified before arrests are made on grounds of “offending religious sentiments.”

A long-term approach to prevent discrimination and attacks on minorities should be undertaken. The different tiers of government, including local authorities, have to be alerted to not only respond to violent incidents, but to be prepared so that this type of incident does not occur time and again. At present there is no preemptive plan by local authorities. This is why when violence is reported, it takes so long for action to be taken. There should be a system of accountability at every tier of the administrative system to make sure that those responsible for maintaining law and order perform their job with sincerity and efficiency. Most importantly, the justice system should work more efficiently. Cases filed against perpetrators almost never result in convictions. Most of those arrested seek bail and are out in a few days or weeks. Political patronage is also one of the reasons why perpetrators do not face punishment. This should be stopped at any cost, and directives against political patronage should be issued from the highest level of authority.

It is through social, religious, and cultural harmony that Bangladesh will attain the dream with which it was created. The dream was to build a secular democracy, a discrimination-free society with the political, social, religious, and cultural rights of every citizen ensured. At the present state of affairs, that seems to be a distant dream. However, there are people who are actively working for religious harmony and who strive to ensure the rights of minorities. Civil society and the media by and large believe in a secular Bangladesh. The youth in the country are also becoming more aware and active in protecting the rights of minorities. It is hoped that with education, awareness, and focused work on building harmony at all levels Bangladesh will eventually be able to ensure the rights of all minorities.

Finally, it is the responsibility of the majority population to embrace and protect the rights of the minority population. Unless more and more people speak up for the rights of minorities and stand beside them, it will be difficult to protect their rights only with laws, policies, and the use of law enforcement. We have to learn to celebrate diversity in all its forms, be it in the form of religion, ethnicity, or gender. The acceptance of differences has to become a way of life. Otherwise, the protection of the rights of minorities will not be possible.

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Country Case 5: Thailand

Fighting for Love: A Battle for Equal Marriage Rights in Thailand

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Homosexuality and transgenderism have had a long presence in Thai history. With a high level of visibility and societal tolerance, Thai lesbian, gay, bisexual transgender, and queer (LGBTQ) individuals appear to enjoy relatively greater freedom to express their identities and to lead their way of life than their compatriots in other countries (UNDP 2014). Such an outward appearance of individual freedom and acceptance, however, has concealed the prevalent institutionalized discrimination that poses a challenge for the Thai LGBTQ community to access rights equal to those that their heterosexual counterparts have enjoyed. Since 2012, the Thai LGBTQ community has fought for the right to marry, which would allow them the same rights as heterosexual couples. In this article, we look back at LGBTQ rights advocacy in Thailand and how the fight for legalized same-sex marriage has resulted in a public debate on minority rights.

1. A Brief History of LGBTQ Rights and LGBTQ Advocacy in Thailand

The history of homosexuality and LGBTQ rights in Thailand is often complex and contradictory. Pre-colonial Thai society was relatively androgynous and quite accepting of non-heteronormative behaviors. Sexual activities, including homosexuality, were considered a private matter and did not concern the state.

However, this attitude toward sexuality began to change with the arrival of Western colonial norms during the 19th century. According to Peter Jackson, an eminent scholar on the history of Thai gender and homosexuality, around this time, a more rigid Western understanding of sexual orientation and gender identity began to replace the less formalized Thai moral concepts of gender (Jackson 2003). During the mid-19th century, Thai society began to adopt this Westernized concept of virtues and sexualities as a path toward modernity to become a more “civilized nation.” In the process of the Westernization of Thailand, individual sexuality and sexual behavior became part of a person’s identity, and social norms changed such that the criminalization of homosexuality and sexuality were also considered.

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In 1917, a royal decree on gender assignment was issued. It was the first time that a person's identity was officially recognized by one's gender at birth. When Thailand shifted from an absolute monarchy to a constitutional monarchy in 1932, such a "modern" concept of sexual orientation and gender identity was systematically imposed and employed by the state as a means to establish a new social order (Winichaikul 1994) (Barme 1993). Clear definitions of gender identity and how Thai men and women should express their sexuality began to emerge. Gender norms were institutionalized through newly established state apparatuses such as schools, the legal system, the military, and the police force. These institutionalized gender norms and definitions remain key challenges to Thai LGBTQ rights advocacy to this day.

There has been no evidence of any laws against cross-dressing, cross-gender behavior, or sexual orientation in Thailand. Early Thai laws tended to criminalize sexual acts rather than sexual identity. Private and non-commercial sodomy between consensual adults was decriminalized in 1953 (UNDP 2014). Since then, there has been little development in terms of legislative policies to protect and to promote the rights of the Thai LGBTQ community. No evidence emerges of any LGBTQ advocacy in Thailand in the 1960s and 1970s. One reason might have been that the Thai LGBTQ community enjoyed a comfortable level of social space and freedom, which led to the absence of an LGBTQ advocacy group or political union. Accordingly, historiographers of Thai social movements often point to the outbreak of the HIV/AIDS epidemic during the 1980s as the birth of Thai LGBTQ advocacy.

When HIV/AIDS first arrived in Thailand, it was labeled a homosexual or a "sinner's" disease. HIV/AIDS patients were stigmatized along with the LGBTQ community. Those who were infected were considered shameful to society, and the disease was rarely discussed in public, which resulted in a greater number of infections. Thai LGBTQ advocacy was hence born out of a mission to change public perception of the LGBTQ community, and to educate its members about the prevention and treatment of the disease (Ungpakorn 2017). The Rainbow Sky Association of Thailand, which is one the oldest LGBTQ advocacy groups in the country, began itself as a self-help group that offered information exchange among HIV/AIDS patients. Since the 1990s, it has, along with many other LGBTQ advocacy groups, started to campaign for more equal social protection and legal rights for the LGBTQ community. This includes the right to civil partnership and the right to receive equal fundamental benefits like other Thai citizens, including the rights to make health care decisions for a partner or the right for same-sex couples to be eligible for employee benefits or health insurance policies, joint financial loans, inheritance, and adoption, or other parental rights.

In the next section, we will discuss the movement to campaign for same-sex marriage rights and the public discourses on the issue.

2. Development of Thai Civil Partnership and Equal Marriage Rights Movement

The issue of same-sex marriage rights was introduced into the Thai public discourse around 2012, when a same-sex couple in Chiang Mai applied for a marriage registration. The application of the couple, who happened to be leading LGBTQ rights advocates, was refused by the registrar on the grounds that Thai civil laws did not recognize a same-sex marriage. Their petitions to several government agencies led to legal reform efforts to allow equal marriage rights to same-sex couples.

Since 2013, there have been several drafts of same-sex marriage legislation. The first draft was proposed by the Ministry of Justice to the parliament in 2013. Its life was cut short by the 2014 military coup and political climate that followed. The second draft was again proposed by the Ministry of Justice in 2018. However, it was heavily criticized by the LGBTQ community and legal experts because its content was primarily about co-ownership of assets and inheritance rather than marriage rights. This is due to the inability of legislators to think beyond traditional definitions of family and gender norms (Wallayangoon 2018). The third draft was revised in 2019 from the second draft, by the Rights and Freedom Protection Department together with an LGBTQ advocacy group and relevant government agencies. This draft came to be known as the Civil Partnership Bill.

The Civil Partnership Bill allows same-sex couples who are at least 20 years of age to register in a civil partnership which includes the right to start a family, the right to co-manage assets, the right to serve as each other's legal representative, the right to inheritance, and the right to adopt. It defines "civil partners" as "two persons of the same sex who register their relationship under the civil partnership law." According to some legal experts, such a definition may contradict the existing Civil and Commercial Code which predicates that "A marriage can take place only when the man and woman have completed their seventeenth year of age. But the Court may, in case of having appropriate reason, allow them to marry before attaining such age."

Seeing that the Civil Partnership Bill would have allowed only limited rights to the LGBTQ community, a working group in the parliament led by the oppositional Future Forward Party, proposed in 2020 for a reform of the country's existing Civil and Commercial Code. In contrast with the Civil Partnership Bill, which is predominantly about the same-sex civil partnership, the Civil and Commercial Code encompasses a broader civil and legal rights of all citizens regardless of their ethnicity or gender. Accordingly, it was deliberated that the Civil Partnership Bill could not grant rights equal to those that heterosexual couples have received, which includes an access to civil servant welfare or legal protection over dowry disputes. Some legal experts also argue that the Civil Partnership Bill does not take into account the case where transgender couples want to start a family, which, in effect has excluded them from the same marriage rights.

Accordingly, opponents of the bill have urged parliament to review the Civil and Commercial Code to make it more gender-neutral, revising the terminology used in the law to be changed to use "spouse" instead of "husband" and "wife" and "person" instead of "man" and "woman." This is to allow individuals to be legally married regardless of gender and ensure they receive equal rights, duties, and protection under the law (Lawattanatrakul 2021). The campaign for the Civil and Commercial Code reform, which became known as the Marriage Equality movement, quickly gathered a momentum on the internet and led to a campaign within the LGBTQ community to reject the Civil Partnership Bill on the grounds that it was deemed less equal or even an obstacle to a true marriage equality (An Open Letter to Minister of Justice 2019).

The disagreement between the Civil Partnership Bill and the Marriage Equality camps has not only caused much confusion among the Thai public, but it has also escalated into a political conflict between supporters of the government (the Civil Partnership Bill camp) and those who stand opposed to it (the Marriage Equality Bill camp). The contest between two polarized political leanings almost derailed the whole legislation process when both camps threatened to boycott each other's proposals.

After ten years of working on it, the Civil Partnership Bill was approved by the cabinet meeting on July 8, 2020, to be forwarded to the House of Representatives Coordination Committee for consideration before it goes before the Parliament. It was around this time that the online campaign to boycott the Civil Partnership Bill began its life as a hashtag “#ไม่เอาสมรสเท่าเทียม” on Twitter. Within a few days, it gained a considerable amount of support to transform itself into a real-world movement. On July 25, 2020, a group of LGBTQ activists held a demonstration in the name of gender equality, LGBTQ rights, democracy, and the government’s failure in handling the COVID-19 pandemic. In addition to their demand for the dissolution of parliament, the demonstrators also urged the government to push for amendments to the sections on marriage and family in the Thai Civil and Commercial Code, as proposed by the member of the parliament from the Future Forward Party (then, Move Forward Party).

Despite a ban on public gatherings during the height of COVID-19 pandemic, the demonstrators gathered again on November 28, 2021, to press for the Civil and Commercial Code reform. On December 8 of that year, the president of the Rainbow Sky Association, which is a leading LGBTQ rights group that endorses the Civil partnership Bill, was invited to speak at an event organized by a pro-government political party where he publicly criticized the December 8th demonstration. As a result, he and the Rainbow Sky Association were accused of being pro-authoritarian and antidemocratic. Several LGBTQ groups and activists associated with the Future Forward party and the pro-democracy movement began to disassociate themselves from the Rainbow Sky Association and expressed their intention to oppose the Civil Partnership Bill. This led to the president of the Rainbow Sky Association to press for a defamation lawsuit against his accusers and to denounce the Marriage Equality movement as a political game led by the Future Forward Party.

3. Public Discourses on Civil Partnership and Marriage Equality

Amidst the discord among the LGBTQ community, other political and religious groups also performed their maneuver to influence the public opinion. In this section, we will look at some of the public discourses on civil partnership and marriage equality.

Outside parliament, religious groups have been campaigning hard against same-sex marriage. The Church of Christ in Thailand together with the Evangelical Fellowship of Thailand, Thailand Baptist Convention, Thailand Adventist Mission, and The Catholic Bishops’ Conference of Thailand issued a joint public statement on January 16, 2019, urging Christian congregations around the country to file a petition against the Civil Partnership Bill. Their argument was that a marriage is a holy matrimony between a man and a woman sanctified by God. If a law allowing same-sex marriage was to be passed, it will also unrightfully enforce the church to perform a holy matrimony for any same-sex couple against the foundation of their Christian faith.

This is perhaps not the argument that the activist groups and legislators did not expect. Through a Buddhist majoritarianism or a secular perspective, marriage is commonly seen as a worldly or civil pursuit outside the periphery of faith or religion.

Figure 1. A Joint Public Statement of Christian Groups

แถลงการณ์
เรื่อง ร่างพระราชบัญญัติ คู่ชีวิต พ.ศ.

ด้วย สภาคริสตจักรในประเทศไทย
สหกิจคริสเตียนแห่งประเทศไทย
สหคริสตจักรแบปติสต์ในประเทศไทย (มูลนิธิคริสตจักรคณะแบปติสต์)
และ มูลนิธิคริสตจักรเซเวนธ์เดย์แอ๊ดเวนตีสแห่งประเทศไทย
ได้ร่วมประชุมกับ สภาประมุขแห่งบาทหลวงโรมันคาทอลิกแห่งประเทศไทย
ภายใต้การประสานงานของ คณะกรรมการประสานงานคริสตจักรโปรเตสแตนต์แห่งประเทศไทย
(กปท.)

และมิตติดังต่อไปนี้

1. ขอให้ทุกคริสตจักรนรงค์ให้สมาชิกแสดงมติ เพื่อคัดค้าน (หรือเห็นด้วย)
กับร่างพระราชบัญญัติการจดทะเบียนคู่ชีวิตของเพศเดียวกัน พ.ศ.
โดยให้ถ่ายทอดสำเนาเอกสารและเขียนข้อความดังตัวอย่างที่ส่งมาด้วย
2. ขอให้รวบรวมและส่งไปที่ "คณะกรรมการ รวบรวมความเห็นเกี่ยวกับร่าง พรบ. คู่ชีวิต"
473 สี่แยกพญาไท ถ.ศรีอยุธยา ราชเทวี กทม. 10400 ภายในสิ้นเดือนมกราคมนี้

อนึ่ง องค์การคริสตจักรทั้งห้าที่รัฐบาลรับรอง จะร่วมกันยื่นจดหมายถึงประธานสภานิติบัญญัติ
แห่งชาติ และหน่วยงานที่สำคัญอื่นๆ พร้อมแนบรายชื่อตามบัตรประจำตัวประชาชนผู้คัดค้าน
ไปด้วย เพื่อขอให้พิจารณา ทบทวน หรือระงับยับยั้งร่างพระราชบัญญัติคู่ชีวิต พ.ศ. ดังกล่าว
จึงเรียนแจ้งขอความร่วมมือมายังทุกคริสตจักร ทุกองค์กร สถาบัน และศาสนิกชนทุกท่าน

สภาคริสตจักรในประเทศไทย
สภาประมุขแห่งบาทหลวงโรมันคาทอลิกแห่งประเทศไทย
สหกิจคริสเตียนแห่งประเทศไทย
สหคริสตจักรแบปติสต์ในประเทศไทย
มูลนิธิคริสตจักรเซเวนธ์เดย์แอ๊ดเวนตีสแห่งประเทศไทย

ประกาศ ณ วันที่ 16 มกราคม 2019

Source: <https://www.facebook.com/photo.php?fbid=408665876537337>

At the same time, various Muslim groups have also campaigned against the parliamentary mandate on same-sex marriage in a similar manner. They have argued that such an act is a blasphemy to Islam. Since its introduction in 1946, the Thai Islamic Law Bill has allowed Thai Muslims residing in the four Muslim majority provinces of Pattani, Narathiwat, Yala, and Satun to the south of the country to be able to observe Shariah law in place of the Civil and Commercial Code when it concerns undisputed issues on family, marriage, and inheritance. It also gives the right to Muslims in these provinces to request the presence of an Islamic judge alongside a civil judge in a court hearing. In effect, it has put Shariah law on the same level as the Civil and Commercial Code. Citing this matter, MP Sukarno Matha from Yala province debated against the Marriage Equality Bill in the parliament on behalf of its Muslim members on the ground that same-sex marriage fundamentally violates the belief, faith, and practice of Islam. Any law that contradicts the Quran cannot be endorsed by Muslims. He also proposed a suspending clause to be added to the Marriage Equality Bill to exempt Thai Muslim citizens from law enforcement.

A few important issues have arisen. If such a suspending clause is added to the Marriage Equality Bill, how can it claim to provide equality to all along the principle that everybody is equal before the law? On the contrary, how can the state ensure that the rights of religious and ethnic minorities to observe their faiths is also protected?

To solve the issue of holy matrimony, Mr. Issara Seriwatthanawut, MP from the Democrat Party, debated during the parliamentary reading of the bills that a distinction between “a spouse” and “civil partners” should be clearly defined. He proposed that “civil partners” in the Civil Partnership Bill should be phrased as “two individuals of all sexual orientations” instead of being limited to just two same-sex individuals. He argued that there are many levels of relationship and that not all couples may want to be registered as a spouse. A civil partnership must be available to all, not just to same-sex individuals. Mr. Seriwatthanawut also made a reference to a public hearing with religious leaders where they expressed their concerns that they might be forced by law to perform a holy matrimony against their wills. Accordingly, the Civil Partnership Bill proposed by the Democrat Party can offer an alternative for individuals who do not want to register as married couples, or who cannot marry because it is against their religions (The Momentum Team 2022).

Reading from Mr. Seriwatthanawut’s debate, the Democrats’ draft of the Civil Partnership seems to focus more on finding a way to soften the conflict with religious congregations than offering an alternative form of union. Despite its good intention, it will result intrinsically in two parallel legal systems for heterosexual and LGBTQ communities. As we will see later from a European experience, it is not always a bad thing to have both the Civil Partnership Bill and the Marriage Equality Bill in place when different levels of legal binding and responsibilities are concerned.

4. Existing Mechanisms and Key Challenges for LGBT Rights Protection

“Human dignity, rights, liberties, and equality of the people shall be protected.

The Thai people shall enjoy equal protection under the Constitution.”

Chapter 1, Section 4, Constitution of the Kingdom of Thailand B.E. 2560

On paper, the constitution of the Kingdom of Thailand provides a basic mechanism for minority rights protection. Both the Thai Constitution and numerous ratified human rights resolutions and conventions provide LGBTQ citizens with the same rights as other Thai citizens. All citizens are entitled to receive protection from the state and must not be discriminated against for any reason, especially by the state itself. For example, citizens must not be discriminated against based on gender, age, disability status, race, birthplace, or religion. In practice, Thai law, which has rarely been revised to keep up with the changing times, often excludes LGBTQ citizens from obtaining basic equal rights and protections.

One major challenge for legal reform to protect LGBTQ rights is the conservative and heterosexual majoritarianism among Thai legislators and legal practitioners (UNDP 2014) that prevents the legislative body from comprehending the world beyond the traditional heterosexual family structure and gender roles.

Another major challenge seems to stem from the Thai attitude toward laws and law reform. The constitution and laws are often seen as sacred, unchangeable, and unintelligible to the public. For law reform advocacy to gain enough momentum, members of the Thai LGBTQ community need to become better informed regarding legislative policies and the legal reform processes.

The third major challenge for the Thai LGBTQ community is the absence of a unified core movement or a state-recognized LGBTQ union. This absence became obvious during the Civil Partnership and Marriage

Equality campaigns, where different advocacy groups appeared to have their own discourses and agendas that often clashed with one another and nearly derailed the true aim of the movement.

The last challenge for Thai LGBTQ rights advocacy that we want to present here is the failure of policy makers to separate their personal religious and moral worldview from their obligation to protect civil rights. The challenge becomes even greater when such a religious and moral worldview is intertwined with their own minority identity and rights. Legislation passed in 1946 officially recognizes a limited use of Sharia law for Thailand's Muslim minority in the four border provinces of Pattani, Yala, Narathiwat, and Songkhla. Traditional Islamic law holds that homosexual activities are forbidden and considered punishable offences. Accordingly, Muslim legislators chose to vote against marriage equality during the February 2022 parliament session. Even though the bill passed by an overwhelming majority, Muslim legislators still sought to be exempted from the bill and to maintain their minority right to observe Islamic law.

On June 15, 2022, both the government-proposed Civil Partnership Bill and the Marriage Equality Bill proposed by the opposition passed the first reading by the parliament along with another draft of the Civil Partnership Bill proposed by the Democrat Party and the cabinet initiated Civil and Commercial Code reform. Similarities and differences on key issues between each proposal can be summarized as in the following table.

Table 1. Comparison on Key Issues between Bill Proposals

	Civil and Commercial Code (Current)	Marriage Equality Bill (Future Forward)	Civil Partnership Bill (Government)	Civil Partnership Bill (Democrat)
Engagement	Yes	Yes	-	-
Gender	Male & Female	Person & Person	Same Sex Persons	Person & Person
Legal Status	Spouse	Spouse	Civil Partner	Civil Partner
Minimum Age	17	18	17	17
Foreign Partner	Yes	Yes	Yes	Yes
Co-management of Marriage Property	Yes	Yes	Yes	Yes
Adoption	Yes	Yes	Yes	Yes
Rights to Inheritance	Yes	Yes	Yes	Yes
Legal Representation	Yes	Yes	Yes	Yes
Surrogacy	By Case	?	?	?
Inheritance Tax Exemption	Yes	Yes	?	?
Adopting Thai Nationality	Yes	?	?	?
Civil Servant Pension and Welfare	Yes	Yes	?	?

In general, there is very little difference between both drafts of the Civil Partnership Bill and the Marriage Equality Bill in terms of the rights and responsibilities of a couple. Whether one is in a civil partnership or in a marriage, one will be granted the same right as a heterosexual couple to co-manage marriage property, adopt a child, act as a legal representative for each other, and inherit each other's assets. However, through the Civil

and Commercial Code reform, the Marriage Equality Bill automatically allows a same-sex couple the same rights as a heterosexual couple to be exempted from inheritance tax and an access to civil servant pension and welfare if one of the partners works as a civil servant. If the civil partnership is going to be allowed the same right, relevant sets of law must also be revised accordingly.

Nonetheless, there are still some areas that are inaccessible for a same-sex couple either in a marriage or in a civil partnership. The Surrogacy Bill and the Thai nationality Act, for example, are two separate sets of law outside the jurisdiction of the Civil and Commercial Code. If the goal is to grant equal rights to the same-sex partner, these laws will have to be revised separately. In light of this, there remain numerous details to be worked out by legislators on whether the parliament will choose to adopt the Civil Partnership Bill or the Marriage Equality Bill.

5. Thai Civil Partnership and Marriage Equality in the Global Context

The quest for same-sex marriage rights in Thailand follows the footsteps of the movement that began in the United States and Europe in the 1970s. It has also learned and copied from previous examples in Asia and Latin America. To fully understand how the movement in Thailand has unfolded, one needs to put it in the global context.

The application of marriage law equally to same-sex and opposite-sex couples has varied by jurisdiction, namely:

- 1) Through a legislative change to marriage law
- 2) Through court rulings based on constitutional guarantees of equality
- 3) Through a recognition that marriage of same-sex couples is allowed by existing marriage law
- 4) Through direct popular vote (via referendum and initiatives)

The movement in the United States, for example, has relied solely on court rulings based on constitutional guarantees of equality. It began with the *Barker v. Nelson* case in 1971 in which a same-sex couple file a series of lawsuits against a Minnesota District Court for denying their marriage registration. The Minnesota Supreme court unanimously affirmed a Minnesota law defining marriage as the union of a man and a woman. The case eventually went to the United States Supreme Court to judge whether it was unconstitutional to deny the right to marry to the same-sex couples. Although the Supreme Court refused to hear the case, it set out a momentum for a series of lawsuits between same-sex couple and the state during the following five decades. In 2015, the *Barker v. Nelson* ruling was overruled by the United States Supreme Court in the *Obergefell v. Hodges* case in which it ruled that the fundamental right to marry is guaranteed to same-sex couples by the United States Constitution (Supreme Court of the United States 2015). The *Obergefell v. Hodges* ruling has been used as a precedent rule of law in the United States. It was reaffirmed in the *Pavan v. Smith* ruling in 2017 that “the Constitution entitles same-sex couples to civil marriage ‘on the same terms and conditions as opposite-sex couples’” (Supreme Court of the United States 2017).

The court ruling was also a means whereby gay rights activists in Taiwan achieved their goal. A case was brought to Taiwan Constitution Court in 2017 by a gay rights activist who was refused a marriage

registration and by the Taipei City Government to request a constitutional interpretation of whether the country's Civil Code allows same-sex marriage and, if not, whether it violates the Constitution of the Republic of China. The full panel of the Constitution Court issued its ruling on May 24, 2017, that the ban on same-sex marriage in the Civil Code was in violation of both the people's freedom and right to equality.

In February 2018, the Alliance for Next Generation's Happiness, a Taiwanese conservative Christian group, proposed holding a referendum on the issue, aiming to overturn a May 2017 ruling by the Constitution Court that mandated the legalization of same-sex marriage in Taiwan. Through the referendum, Taiwanese voters rejected the Constitution Court ruling and the pro-LGBTQ initiative to amend the Civil Code by wide margins, resulting in a special law for same-sex marriage to be drafted.

Following the United States and Taiwan models, a Thai LGBTQ rights group along with two LGBTQ couples went to the Thai Constitution Court in November 2019 to file a petition requesting the Court to rule whether the current Civil and Commercial Code violates the Constitution of the Kingdom of Thailand. The ruling was postponed several times until the Constitution Court issued its ruling in December 2021 that the current Civil and Commercial Code is constitutional and that *"Marriage is when a man and a woman are willing to live together, to build a husband-and-wife relationship to reproduce their offspring, under the morals, traditions, religion, and the laws of each society. Marriage is, therefore, reserved for only a man and a woman"* (Thai PBS World 2021). Nonetheless, it provided a recommendation at the end of the ruling that the parliament, the cabinet, and relevant government agencies should work on new legislation to ensure the rights and equality of LGBTQ citizens.

As we may have seen from the Thai example, a court ruling is not always reliable. It heavily relies on the judgment of the court panel, who might not produce an outcome that one expected. Moreover, a court ruling does not always guarantee that the right will forever be upheld. We have already seen in the overturn of the 1973 *Roe v. Wade* ruling by the United States Supreme Court in 2022 that ended the constitutional right to abortion in the United States. This new ruling by the Supreme Court proved that the *Obergefell v. Hodges* ruling could also be overturned.

Although a legislative reform usually takes much longer, it probably has a longer life. In 1989, Denmark became the first country to legally recognize a relationship for same-sex couples, establishing registered partnership to allow those in same-sex relationships *"most rights of married heterosexuals, but not the right to adopt or obtain joint custody of a child"* (Rule 1989). The Netherlands became the first country in the world to broaden marriage law to include same-sex couples in 2001. The United States House of Representatives also approved the Same-sex Marriage Bill in July 2022 in response to the *Roe v. Wade* overturn in order to protect same-sex and interracial marriages.

France is one of a few countries that recognizes both civil partnership and same-sex marriage. *Pacte Civil de Solidarité* was introduced in 1999 to allow two individual adults to organize their joint life regardless of their gender and to guarantee limited personal and civil rights as a couple. A key difference between *Pacte Civil de Solidarité* and marriage registration is the issue of personal property and matrimonial property. When individuals register as civil partners, an individual's property and income remains personal property. It is not automatically considered a matrimonial property as in a marriage registration. Also, the couple are not allowed to file a joint income tax, which can reduce the amount of tax they will have to pay as an individual. When the

couple wish to end their union, separated individuals will have no legal obligation toward each other unless formally agreed. Sometime later in 2013, the French Civil Code was revised by the French parliament, omitting gender-specific terminology to allow same-sex marriage, granting a same-sex couple equal rights and responsibilities to that of a heterosexual couple. Nonetheless, *Pacte Civil de Solidarité* remains popular as it offers a different contractual form of civil union where a legal binding between partners is less formal and where each partner has less responsibility towards each other.

Learning from the French experience, Thailand does not have to choose between the Civil Partnership Bill and the Marriage Equality Bill. It can have both, with each bill designed to suit the needs of individuals and the level of legal bindings and responsibilities that they wish to take on as a couple.

Same-sex marriage, as we have seen, is a delicate and controversial issue. Although the two drafts of the Civil Partnership Bill, the Marriage Equality Bill, the Civil and Commercial Code Reform, have passed the first reading at the parliamentary meeting, there are still many issues and details to be deliberated. During the next step, a legislative committee will be appointed by the parliament to work out all details for each proposal before returning them to the parliament assembly. Next, they will be sent to the senate assembly for deliberation. If they are approved by the senate, they will then be forwarded to the constitution court to examine whether any of their details violate the constitution before they can be announced as law. In this regard, the battle for equal rights for the Thai LGBTQ community continues.

6. Conclusion and Recommendations

Although the Thai parliament is on its path to legalize same-sex marriage, one should not overlook that the process is still caught in a political game dominated by conservative heterosexual majoritarianism and rivalries between political parties. A maneuver to discredit one another's proposal has resulted in a spread of misinformation and disinformation on the issue. Furthermore, oppositional social campaigns by religious groups have also created more flames of controversy that could have burned the legislation process to dust.

Undoubtedly, there is a global consensus that LGBTQ rights to organize a life together must be protected and provided for. However, it is still a complex and delicate issue in many parts of the world. Even in countries where same-sex marriage has been legalized, it still faces some opposition and a threat that it could be overturned. LGBTQ rights campaigners, lawmakers, and relevant government agencies must therefore tread a delicate path between pushing their own agendas to pass legislation in the parliament and working together among themselves and with civil societies to create a more open Thai society where protections of LGBTQ rights along with that of a greater community of minorities is a national consensus and a cultural norm.

The following recommendations are drawn from the authors' own interpretation in consultation with recommendations from LGBTQ working groups, led in a report by the United Nations Development Programme in 2014.

6.1. Law and Policy

Law and policy makers need to put their ideological differences and political agendas aside to focus on the common goods of the LGBTQ community and the society.

First, instead of having to choose either the Civil Partnership Bill or the Marriage Equality Bill, they can work on the content of each legislation to accommodate different levels of responsibility and legal binding that the couples wish to take on.

Second, it should work on a more inclusive definition of “civil partners” and “a spouse.” As it is standing, these terms only refer to two same-sex individuals whose sexual orientations are different from their genders at birth. Should it be revised to protect a more complex forms of sexual orientations and unions, for example, a union between a trans man and a trans woman?

Third, the society should also be made aware of the legislation process, possibly through a constant update on the process and a dissemination of trustworthy information. It is also advisable for relevant agencies to initiate a law and policy literacy program to make the public understand the legislation process and protocols, in order to promote informed citizens and to engage them in the legislation process.

Lastly, LGBTQ community organizations and allies should also explore other useful areas of advocacy, for example, laws and policies to protect LGBT individuals from hate crimes, civil rights violations, or discriminatory practices, as well as the range of laws and policies that are required to officially recognize changes in sex/gender.

6.2. Religion and Secularism

One of key debates on the legalization of same-sex marriage lies in different perspectives on marriage itself. On the one hand, marriage is seen as a sacrament of holy matrimony. On the other hand, it is a secular civil union where two individuals agree to jointly organize their lives together.

First, rather than condemning each other, both LGBTQ supporters and religious groups must recognize that their arguments have been based on different standings and values. On the one hand, marriage is viewed through a religious lens as a holy matrimony. On the other hand, the argument for same-sex marriage is based on secular values, equal rights, and legal benefits.

Second, while religious communities in Thailand are offered immense religious freedoms, they must be made aware that Thailand is primarily a secular state where marriage is recognized as an act of civil union. Different congregations may choose to observe their religious tradition in private. They should also learn to accept and support secular ideals that promote public benefit.

Third, it is important for lawmakers and politicians, whose duty is to protect civil rights in a secular state, to withhold from imposing their personal faiths on to the process of policy and lawmaking. They must make sure that the law is meant to protect every citizen, and all is equal before the law.

Furthermore, the Thai state should also recognize its Buddhist majoritarianism tendency. It must make sure that its laws and policies are firmly rooted in secularism. It is recommended that LGBTQ community organizations and allies host forums for discussing religion, spirituality, sexual orientation, and gender identity and, from those discussions, implement advocacy strategies to counter the stigma attached to sexual orientation and gender identity as it pertains to religion.

6.3. Education and Young People

In order to make protections of LGBTQ rights and that of a greater community of minorities a national consensus and a cultural norm, education and sensitization of curriculum is needed.

It is recommended that the Ministry of Education be sensitized on the issues of sexual orientation, gender, ethnicity, and cultural identity to promote educational policies that are inclusive and consistent with human dignity and equality. Most importantly, it should work with the LGBTQ community and parent groups to revise school textbooks to include the issue of sexual and cultural diversity, particularly in regard to different forms of family life. It should also work to protect students and school staff from exposure to any forms of discrimination based on their sexual orientation, gender, race, or cultural identity. It is necessary to work with the media to advocate on these issues along with secularism and pluralism.

At the policy level, it is recommended that sexual orientation and gender identity as well as other important issues regarding the respect, dignity, and equality of all human beings be included in the official school curriculum.

At the level of individual schools, it is recommended that teachers, school administrators, and other individuals involved in education institutions be sensitized on the issue of diversity, whether it concerns students and staff's sexual orientation, gender, ethnicity, or cultural identity. School activities, for example, mother's and father's days, should be made gender-neutral or to include diverse forms of family. Secularism, pluralism, and gender-neutral policy should also be promoted and observed as a norm within and outside school.

6.4. Media

Media can play an important role in the advocacy of minority rights protection. During the campaign for Civil Partnership and Marriage Equality legislation, it has proven to be a very useful source of information on the issue. It should continue to do so with a possibility to establish a permanent LGBTQ-specific section, or to expand to cover a greater issue of minorities rights and equality.

Nonetheless, it must be noted that Thai media industry is still dominated by conservative heterosexual ideology. To some extent, it unwittingly continues to reproduce stereotypical representations of LGBTQ community. Thus, it is strongly recommended that it should work to eliminate such a practice and to consciously introduce diverse representations of LGBTQ community and its ways of life.

A "diversity committee" can also be established in collaboration with the National Broadcasting and Telecommunication Commission to advocate for policies to promote diversity and sensitivity of sexual orientation and gender identity issues.

The media industry should collaborate with higher education institutions and journalism and media studies courses to train future media practitioners on human rights and awareness of LGBTQ issues. They should also work to empower LGBTQ community to produce their own media content or to start their own media enterprises. It is also recommended for LGBTQ community organizations to support the development of appropriate materials for the media to better understand LGBT issues and for media to cover these issues.

6.5. Organizational and Transnational Capacity Building

It is strongly recommended that Thai LGBTQ organizations should put their political and ideological differences aside to work together more collaboratively and closely to push forward national or regional agendas. They need to establish a strong and functioning network among diverse groups to advance the LGBTQ and human rights protection in Thailand.

The Thai LGBTQ community should also develop awareness of further marginalized sectors of the LGBTQ community, including transgender people, lesbians, ethnic groups (Thai and non-Thai), the elderly, the underprivileged, and the rural community.

It is also recommended that the Thai LGBTQ community should look beyond itself to foster transnational networks of rights campaigners. In this manner, the global LGBTQ communities can learn from one another and jointly work toward a more equal and just world for all.

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