

**POLICY ACTION NEEDED
TO TACKLE DISCRIMINATION ON
WORK AND DESCENT IN
CONTEMPORARY
FORMS OF SLAVERY:
SOUTH ASIA**



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Caste-based discrimination affects over 260 million people globally. It has its roots in the centuries-old caste system of India and is prevalent in India, Nepal, Pakistan, Bangladesh, Sri Lanka and the Indian diaspora, owing to shared histories, borders and people.

The Issue

Modern slavery is the recruitment, movement, harbouring or receiving of people through the use of force, coercion, abuse of vulnerability, deception or other means for the purpose of exploitation. The victim under modern slavery is, therefore, confronted with threats, violence and abuse of power. Modern slavery occurs in different situations in which a victim is severely exploited for the gain of the perpetrator, either personal or commercial. It can take various forms such as bonded labour/debt bondage, forced labour, forced child labour, sex trafficking, child sex trafficking, domestic servitude and unlawful recruitment and use of child soldiers.

‘Discrimination based on work and descent’ (DWD) is the UN terminology for caste discrimination. The term has been used by several UN human rights bodies, including by treaty bodies and Special Rapporteurs, reaffirming that this form of discrimination is prohibited under international human rights law. Caste-based discrimination affects over 260 million people globally. It has its roots in the centuries-old caste system of India

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The Dalits of South Asia

The Dalits in South Asia comprise a host of sub-caste groups. Although subjected to similar forms of discrimination across the region, the situation of Dalits in caste-affected countries differs for historical and political reasons. Over 80 per cent of the 260 million DWD communities worldwide, belong to the five countries – Bangladesh, India, Nepal, Pakistan and Sri Lanka.

Bangladesh has an estimated 5.5 to 6.5 million Dalit persons, comprising about 4 per cent of the country's population. In the absence of official statistics, (since Bangladesh does not capture caste as a social group in its Census), various researchers have estimated the Dalit population based on the economic engagement of the people. Three broad categories of Dalits reside in Bangladesh:

- (i) Bengali Dalits who live in villages all over Bangladesh; (ii) Muslim Dalits who again can

be found across the country; and (iii) Dalits who migrated (or were forced to migrate) from India to then East Bengal.

India is home to 201 million Scheduled Caste (SC) persons, according to census 2011. The Scheduled Castes or Dalits, as they are popularly called, comprise 16.6 per cent of India's population. This Census figure does not include Dalits who, because of their religious conversion, have lost their Constitutional status as Scheduled Castes, per the Constitution (Scheduled Castes) Order, 1950. The Dalit Muslims and Dalit Christians comprise this category, and it is estimated that there are at least 42 million Dalit Muslims and 16 million Dalit Christians in India.

Nepal has a Dalit population of 3.5 million according to census 2011, comprising 13.2 per cent of Nepal's population. The Census of Nepal categorises Dalits as part of Hindu caste groups⁵, as the Hill Dalits (8.1 per cent of the national population) and Madhesi Dalits (4.5 per cent of the national population). The Newar Dalits are not listed in the 2011 Census as Dalits though they are considered as Dalits in treatment and exclusion, as it applies to the other Nepali Dalits. Civil society organisations estimate Nepal's Dalit population at 5 million.

Pakistan has a Dalit population of 0.85 million, comprising 0.41 per cent of the total population, as per the census 2017. Activists estimate a higher representation of Dalit population contrary to official estimates. The Dalits of Pakistan are primarily Hindu Dalits, Christian Dalits, and Dalits categorised separately in the government's 1956 scheduled list. Only the latter are recognised as Dalits by the Census.

Sri Lanka does not recognise caste and the caste system, and as such the census of Sri Lanka does not capture caste disaggregation among Sri Lankan society since 1911. However, communities discriminated on work and descent (DWD) continue to be affected by caste and caste system, despite its denial. The DWD communities are part of all three ethnic groups – The Sinhalese, Sri Lankan Tamils and Tamil

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Indians. Various independent researchers estimate that there are over 4.2 million DWD communities in Sri Lanka, comprising - over-3 million Sinhalese DWD communities, over 0.4 million Sri Lankan Tamils, and over 0.8 million Indian Tamils.

Modern Slavery and Slavery-like practices of the Dalits of South Asia

There are 40 million people living in modern slavery and slavery-like conditions worldwide, according to the latest Global Slavery Index 2018 by Walkfree Foundation. Over 30 per cent or 12 million of them are South Asians living in five countries - Bangladesh, India, Pakistan, Nepal and Sri Lanka. In terms of prevalence, India and Pakistan (countries in this study) are among the ten countries worldwide, which constitute 60 per cent of all persons living in Modern Slavery and Slavery conditions. Pakistan ranks 8th (3.2 million persons), India- 53rd (8 million persons), Nepal-55th (0.17 million persons), Bangladesh-92nd (0.6 million persons) and Sri Lanka-130th (44,000 persons), among the 167 countries worldwide in the Global Slavery Index. This means that in Pakistan, 16 persons out of every 1000 persons are living in Modern Slavery. In India and Nepal, six persons out of every 1000 persons and in Sri Lanka, two persons out of every 1000 persons live in Modern Slavery and Slavery like conditions. Among all the 167 countries worldwide, India has the highest absolute number of people living in modern slavery worldwide, followed by China and Pakistan. For effective policymaking, it is crucial to understand the magnitude of Modern Slavery in South Asian countries in terms of prevalence and absolute

numbers. While 'prevalence' makes it easier to compare the Modern Slavery situation between countries, the 'absolute numbers' shows the true scale of the problem within a country. On the other hand, the indicator of prevalence may tend to hide the problem,

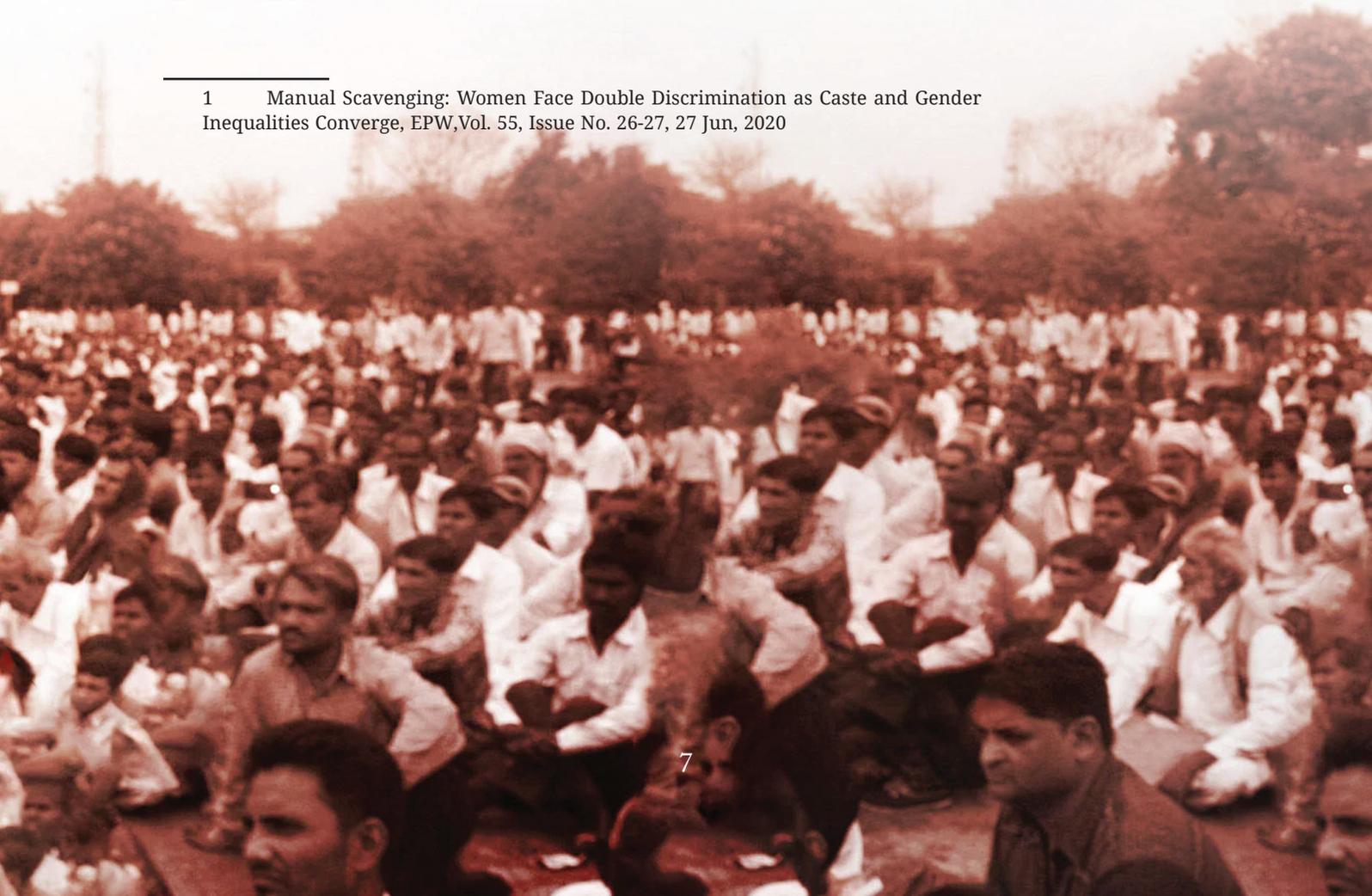


while there is no hiding from absolute numbers. These numbers are people.

Manual Scavenging

The practise of manual scavenging is one such of example of modern slavery seen in modern India and many other parts of South Asian societies. In India as per the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 ‘manual scavenger’ refers to: “a person engaged or employed ... for manually cleaning, carrying, disposing of, or otherwise handling in any manner, human excreta in an insanitary latrine or in an open drain or pit.” Manual Scavenging is caste based and hereditary based occupation, a form of slavery solely reserved for Dalits. As per the research published by Economic and Political Weekly (EPW) in 2020, of the 1.2 million manual scavengers in India, 95-98 percent are women who belong to the following castes: Valmiki, Haila and Halalkhor castes, and from Mister and Dome castes. They are untouchables among untouchables, and are located at the lowest rung of the social order, and are ostracised by Dalits themselves¹. Interestingly, Pakistan, Nepal and Bangladesh have also sizeable number of manual scavengers. Since 2014 an estimated 156 people have died in septic tanks in Bangladesh alone. The entrenched concept of pollution and discrimination connected with manual scavenging makes it difficult for them to find any alternative livelihood opportunities, pushing them into the age-old vicious circle of poverty and exclusion. In India it is sad to note that over the last few years the deaths of sewage workers have increased, with 634 deaths related to manual scavenging recorded in the last twenty-five years. As per the data provided by Safai Karamchari Andolan roughly 45 deaths are reported annually in India while admitting that many of them even go unreported. With lack of minimum wages, lack of protective gears, absence of alternate economic opportunities, social security and health risks the practise of manual scavenging poses serious questions on the human rights situation in these countries.

1 Manual Scavenging: Women Face Double Discrimination as Caste and Gender Inequalities Converge, EPW, Vol. 55, Issue No. 26-27, 27 Jun, 2020



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Importance of the issue

In 2015, 193 countries worldwide, through the achievement of Target 8.7 of the Sustainable Development Goals (SDG), committed to “take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms”. In addition, countries in South Asia have enacted specific legislations to tackle the issue of modern slavery as well as committed themselves to a number of international human rights mechanisms relating to the elimination of modern slavery. However, progress has been slow in this regard.

National response mechanisms to end modern slavery and slavery-

like practices

Untouchability is abolished by the Constitutions of India and Nepal. All countries guarantee the right to equality and non-discrimination on various grounds including caste. However, only India and Nepal have enacted specific legislation to protect Dalit and Tribal communities from caste-based atrocities. Bangladesh's anti-discrimination draft law is awaiting the Law Ministry's approval since 2014. India and Nepal also have special measures or affirmative action policies in education, employment in public services and public office. The Constitutions of Bangladesh, India, Nepal and Pakistan prohibit forced labour. The Constitutions of India, Nepal and Pakistan also prohibit trafficking and employment of children in factories and in hazardous work. Nepal's new Constitution specifically provides for the identification and rehabilitation of freed bonded labour.

The Constitution (Scheduled Caste) Presidential Order 1950 of India, contradicts the constitutional right to profess, practice and propagate religion (Article 25) by making religion a criterion for determining the Scheduled Caste status of Dalit Christians and Dalit Muslims. Despite the recommendations of government-sanctioned commissions to delink Caste status from religion and make it religion-neutral, the Constitution of India does not recognise the caste status of Dalit Christians and Dalit Muslims. The governments of Bangladesh and India interpret 'descent' solely with race or ethnic or national origin and not 'caste', despite continued reaffirmations by the International Convention on Elimination of Racial Discrimination (ICERD). As a consequence, Bangladesh and India fail to submit information to relevant monitoring bodies on the situation of Dalits. While Sri Lanka's Constitution guarantees non-discrimination based on 'caste', it does not acknowledge caste as a social group, that requires special measures for the advancement of persons affected by caste-based discrimination.

- » **Bonded Labour legislations:** India, Pakistan and Nepal, have specific legislation for abolishing Bonded Labour system. Bangladesh and Sri Lanka do not have specific legislations that abolish bonded labour. The Penal Codes however prohibit forced labour and bonded labour. There has been a consistent failure to implement the Act.
- » **Manual Scavenging:** There are no laws in Bangladesh, Nepal, Pakistan and Sri Lanka prohibiting manual scavenging.
- » **Anti-human trafficking legislation:** The anti-human trafficking legislation of Bangladesh covers all forms of forced labour and exploitation, while India's legislation is more centred on sex trafficking. Pakistan's recent legislations on anti-human trafficking and preventing smuggling of migrants, recognises and distinguishes between human trafficking and smuggling, thus addressing the needs of smuggled migrants, respectively. Nepal's anti-human trafficking legislation focuses on sex trafficking and organ trade and is not specific about forced labour, trafficking of children including sex trafficking, and other forms.
- » **Child Labour** continues to exist in all countries (albeit with lesser prevalence in Sri Lanka), despite the national policies and international compliances. This indicates the weak enforcement of child labour legislations, including lack of training and resources, minor penalties in legislations and corruption, etc.

- » **Commercial sex work:** Legislations related to sex trade or sex work or prostitution vary across the five South Asian countries. Prostitution is legal in Bangladesh, in terms of legal buying and selling of sex, but criminalisation of associated activities; India does not abolish prostitution per se and prostitution is criminalised in Nepal, Pakistan and Sri Lanka. The practice of Devadasi is outlawed in India, where girls/ women are dedicated to idol/deity of worship, which ultimately results in their sexual exploitation. There is no central legislation in India, but the states (including Andhra Pradesh, Karnataka, Tamil Nadu and Maharashtra) where the practice is prevalent have their own state laws.



International Human Rights mechanisms to end modern slavery and slavery-like practices

All the five South Asian countries are party to the core international human rights treaty bodies and their supplementary optional protocols that are relevant for eliminating all forms of forced labour constituting modern slavery and slavery like practices among the Dalits of the country. The countries are also party to fundamental ILO conventions on Forced Labour and Child Labour. Together, these instruments and standards provide the basis for national legislations and international observations facilitating the countries' commitment for eliminating all

forms of modern slavery among the Dalits, along with other affected persons. All five countries are yet to ratify relevant convention on the protection of migrant workers and their families, and some relevant optional protocols and standards on eliminating forced and bonded labour. ICERD has constantly reaffirmed to Bangladesh and India, that caste falls within the purview of the Convention. All committees through their concluding observations have constantly recommended the countries to provide all reporting disaggregated by caste, among other intersections. The committees have raised concerns on the prevalence of bonded labour, caste-based discrimination and occupation, harmful practices, on inadequate enforcement of anti-discrimination legislations, existence of hate speech, violence against Dalit women and their barriers in accessing justice, among other concerns.

Key Recommendations

Ending modern slavery will require a multi-faceted and multi-pronged response that addresses the plethora of factors including, social, economic, cultural, political and legal that contribute to the vulnerability and marginalisation of persons. At the core of it all is discrimination based on work and descent that has systematically and for hundreds of years, eroded the right to equality, dignity and freedom, for several communities across the world. While the principles have to be uniform and common, the national, regional and international responses need to be adapted to the diverse environment in which modern slavery and slavery-like conditions exist and prosper. Some suggested key recommendations are:

I: Eliminating Modern Slavery in States

Formal recognition of work and descent-based discrimination, caste and the emanating discrimination and its relevance to modern slavery: To formally recognise caste and caste-based discrimination as the prominent factor that leads to economic, social, cultural and political exclusion and isolation, of DWD communities, making them extremely vulnerable to modern slavery and slavery-like practices.

Need to be a party to all core conventions and standards: To ratify all core conventions and other relevant protocols and conventions related to eliminating Forced Labour.

Disaggregated data and Policymaking: Ensure that all data collected through national surveys and studies, that has a bearing on the identification of people who are most marginalised and affected, should be disaggregated by caste among other relevant factors.

Continuous and concerted mass communication and social messaging for awareness raising

of all-citizens on the consumption of modern slavery at-risk goods and services in daily lives, and the role and responsibility of all citizens in ending all forms of modern slavery.

Inclusion in Legislations and Frameworks: Ensure alignment of legislations with relevant international human rights conventions and standards and between existing legislation so as to avoid contradiction and /or ambiguity. Revise or amend legislation in keeping with the changing trends. Design/ disseminate and implement standard operating procedures for victim identification and referral.

Design of Plans, Policies and Programmes: Design, update and revise national plans for all types of modern slavery backed by sufficient personnel and funds. Increase efforts in effective implementation of policies, schemes and programmes related to poverty alleviation, education, gender empowerment programmes among others and ensure social security and pension benefits for the most vulnerable and poor. To ensure through policy and regulations, that industries would invest and use technology that would reduce drudgery of work but not replace labour. To increase efforts for better rural infrastructure including education, health, locally-relevant and sustainable livelihood generation plans, mobility, easy access to higher education, among others.

Monitoring Mechanisms by Labour Inspectorate: Ensure that there are monitoring mechanisms in place. Where in place, ensure effective enforcement of monitoring mechanisms, adequate trainings of labour inspectorate and monitoring of effectiveness of their inspections, actions taken, and remedies incorporated.

Effective enforcement of legislation: Ensure effective and timely; victim-centric and human rights oriented, enforcement of legislation, including reporting and investigation of complaints related to all forms of modern slavery. Ensure appropriate invoking of provisions across different legislations so that awarded penalty will commensurate with the gravity of the offence. Ensure perspective building and sensitisation through adequate judicial trainings on caste and related human rights issues, including modern slavery.

Prosecution and Convictions: Ensure speedy trials, victim and witness protection and appropriate awarding of penalty that will commensurate the gravity of offence committed. Ensure good quality free legal aid to victims. Ensure perspective building and sensitisation through adequate judicial trainings on caste and related human rights issues, including modern slavery. This must also include the investigation of allegations of official complicity in the different forms of modern slavery and accordingly take appropriate measures.

Prevention and Rehabilitation of survivors: To ensure effective implementation of rehabilitation and reparation services for the survivors of modern slavery and slavery-like practices. To ensure safety in internal and cross border migration in terms of access and ease of information, procedures and complaint-remedies.

Immediate and absolute investment in redesigning sanitation related technologies and infrastructure which would eliminate the use of manual scavenging: To invest and ensure through policy and regulations, re-designing of urban-rural sanitation infrastructure that will absolutely not allow municipalities and extended outsourced services to use any form of manual scavenging. To invest and ensure through policy and regulations that easy and affordable technologies are available and used by housing societies and townships for decentralised waste management. Additionally improve working environment for all sanitation workers by providing proper PPE kits, health insurance, social security benefits, and other work benefits like pension, annual leaves which are currently lacking.

II: Eliminating Modern Slavery in supply chains and industry - a corporate social responsibility and accountability

The businesses are requested to develop Ethical Business Policy in accordance to decent-work international standards so as to ensure that business practices and supply chains do not engage practices, procedures and products resulting from the modern slavery and slavery-like conditions. To invest in labour-friendly and drudgery-reducing technology. To build perspective within companies on existence, scale and forms of caste-based discrimination and its long-lasting effect on communities inclusion, empowerment, bargaining power and occupational mobility.

III: Key recommendations to civil society organisations and international organisations

The civil society organisations are urged to continue building evidence on caste-based



discrimination for each type of forced labour with caste disaggregation, and also through case laws and litigations. To continue to build rightsholder cadre of human rights defenders, with special focus on youth and women.

IV: Key recommendations to international organisations and funding agencies

The international and funding organisations are requested to ensure through their supported partners, that disaggregated data on caste profile of victims is captured to enable evidence building on linkage of caste and modern slavery. The institutions are also urged to support and build capacities of national organisations for building evidence and precedents through case laws and PILs.

V: Key recommendations to international human rights mechanisms

The international human rights mechanisms are requested to internalise the elimination of caste-based discrimination in all its observations that affect marginalised communities. The mechanisms are also requested to develop common platforms for discourse and knowledge sharing of good practices leading to joint advocacy on different forms of modern slavery and slavery-like conditions.

CASTE-BASED DISCRIMINATION AFFECTS OVER 260 MILLION PEOPLE GLOBALLY.

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