

Challenges for Dalits in South Asia's Legal Community

Chapter III: Dalit Justice Defenders in India

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FOREWORD

This is the third of a three-part report that examines the challenges and opportunities available for the Dalit justice defenders' community across South Asia. The first part discussed the justice sector for Dalits in Nepal; the second examined the same issue in Bangladesh; and this one focuses on India. It concludes with regional lessons learned and recommendations for policymakers, judges, bar councils, and other governmental agencies.

Each part of the report utilizes desk research and structured interviews with the Dalit justice defenders' community. Further, the report's authors are either members of the Dalit community or have worked directly with the community to assist in issues related to the justice sector.

Contents

I. INTRODUCTION: STRUCTURAL CHALLENGES AFFECTING DALIT LAWYERS AND JUDGES IN INDIA	4
II. METHODOLOGY	5
III. JUDICIARY	6
A. Why Representation Matters	6
B. Lack of Data	7
C. A History of Minimal Representation	8
D. Interview Findings	12
IV. LEGAL PROFESSION	15
A. Lack of Representation and Data	15
B. Structural Disadvantages	16
C. Absence from Influential Positions — Senior Advocates	17
D. Lack of Support from Bar Councils and Bar Associations	19
E. Indirect Discrimination	20
F. Forced Ghettoization	20
G. Experiences in Human Rights Litigation	21
H. Biases from the Bench	23
I. Law Clerks	25
J. Corporate Law Firms	25
V. LEGAL EDUCATION	26
VI. CONCLUSION AND RECOMMENDATIONS	32

EXECUTIVE SUMMARY

The largest population of Dalits in South Asia resides in India, with nearly 200 million people in the community. Several legal safeguards have been created to protect the Dalit community from historically prevalent social, economic, and political discrimination. Yet, in practice, these forms of discrimination still persist, often in the justice sector and legal community. While there has been a great deal of research on the general forms of discrimination faced by the community, few reports have exclusively studied the Dalit experience in the Indian justice sector. To address this knowledge gap, the American Bar Association (ABA) Center for Human Rights undertook this study to analyze the representation of the Dalit community in the justice sector and examine the challenges it faces. The analysis is based on desk research and interviews of 74 respondents, including Dalit and non-Dalit lawyers, sitting and retired judges, academics, activists, journalists, bureaucrats, politicians, law graduates, and current students.

This analysis finds that the Dalit community is facing several structural challenges that impede their equal representation in the justice sector. First, at every level of India's judicial system, there is a lack of representation of Dalits on the bench. Implicit and explicit biases expressed by members of the judiciary, who have the power to appoint fellow judges, have hindered efforts to ensure equal representation in the judiciary. Further, the chapter found that both aspiring and practicing lawyers from Dalit backgrounds are often denied mentorship, professional opportunities, and access to networks due to their caste.

The analysis also finds a paucity of data available to evaluate the participation of Dalits in the justice sector. This lack of data has hampered efforts to effectively and meaningfully respond to the discrimination felt by Dalits in the legal community. This chapter therefore advances a set of recommendations to all relevant stakeholders to address the implicit and explicit discriminatory practices discussed and ensure that caste-based discrimination in the legal community is eliminated in both law and practice. The chapter also concludes with regional lessons learned and recommendations for policymakers, judges, bar councils, and other governmental agencies in the three countries.

I. INTRODUCTION: STRUCTURAL CHALLENGES AFFECTING DALIT LAWYERS AND JUDGES IN INDIA

There are more than 200 million Scheduled Castes¹/Dalits in India—one-sixth of the total population.² As a measure to uplift them from structural disadvantages caused due to historical injustices and exclusion, the Dalits have been provided with reservations (or quotas) for government jobs and educational institutions.³ The issue of representation has been central to their demands as equal citizens.⁴ However, as a matter of policy, reservations do not apply to private-sector jobs. While there is data regarding the number of posts occupied by Dalits in government services, data is not available for professions, such as law, that are not run by the government.⁵ At the same time, the focus of organizations and political parties supporting the cause of Dalits has been on public services, as these provide a share in administration.⁶ While there have been demands to implement reservations for Dalits in private-sector jobs as well, the legal profession has not been prioritized in the discourse on due representation.⁷

Due to these affirmative action programs, students from the Dalit community have been able to enter law schools run by the government. However, structural challenges faced by these students in law schools are not documented.⁸ Similarly, there is no data available on career choices Dalit law students make after their graduation.

Analyzing the challenges faced by Dalit students and lawyers is necessary, given the daily abuses and violations committed by so-called upper castes against the Dalit community's human rights. In 2018, a judge of the Supreme Court of India noted: "The list of the daily atrocities committed against Dalits is endless. Dalits are being killed for growing a moustache, daring to watch upper-caste folk dances, allegedly for owning and riding a horse, and for all kinds of defiance of a social

¹ "Scheduled Caste" is the official legal term for Dalits among Hindu, Sikh and Buddhist religions. Dalit converts to Islam and Christianity are not counted as Scheduled Castes. See *India: Official Dalit Population Exceeds 200 Million*, INT'L DALIT SOLIDARITY NETWORK (May 29, 2013), <https://idsn.org/india-official-dalit-population-exceeds-200-million/>.

² *State/UT-wise SCs Population, 2011*, MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT, GOV'T OF INDIA, <http://socialjustice.nic.in/UserView/index?mid=76663>.

³ Each government department and educational institution has to maintain a reservation of 15% generally. For more information, see https://dopt.gov.in/sites/default/files/FAQ_SCST.pdf.

⁴ The demand for due representation has been a century old for India's Dalits. It was in 1919 when iconic leader Dr B.R. Ambedkar, a Dalit himself and later chairman (1947-1950) of the Drafting Committee for framing India's Constitution, had called the issue of representation as the core of citizenship. See BABASAHEB AMBEDKAR: WRITINGS AND SPEECHES 243-278 (Dr. Ambedkar Foundation Vol.1 2019), http://drambekarwritings.gov.in/upload/uploadfiles/files/Volume_01.pdf.

⁵ Mahim Pratap Singh, *Census counts just 4% SC, ST families with a member in a govt job*, INDIAN EXPRESS (Jul. 14, 2015, 4:34 AM), <https://indianexpress.com/article/india/india-others/census-counts-just-4-sc-st-families-with-a-member-in-a-govt-job/>.

⁶ Written responses from an academic (Jul. 14, 2020).

⁷ Pankaj Mishra, *After Nitish, BSP chief Mayawati demands reservation in the private sector*, THE TIMES OF INDIA (Nov. 7, 2017, 8:08 AM), <http://timesofindia.indiatimes.com/articleshow/61547995.cms>.

⁸ INCREASING DIVERSITY BY INCREASING ACCESS TO LEGAL EDUCATION (IDIA) DIVERSITY SURVEY REPORT 2018 – 2019, (2019), <https://www.idialaw.org/wp-content/uploads/2020/04/diversity-survey-2018-19.pdf>.

order that deprives them of essential humanity.”⁹ Crimes including murders and assaults have also been committed against lawyers from the Dalit community in the course of their activism.¹⁰ Yet the Dalits have started to become conscious of their presence in the justice system. Many have taken to the streets to protest court decisions they find to be diluting or restricting their rights.¹¹ Addressing the systemic challenges in the legal profession and the judiciary has been a part of their larger agenda for justice.¹²

II. METHODOLOGY

This chapter attempts to fill the gap on the lack of research on the issues concerning Dalits in the Indian legal profession and the judiciary. For the purposes of research, 74 interviews were conducted, out of which 32 respondents were from the Dalit community, three from Adivasi backgrounds, four from “Other Backward Classes,” three Muslims, and 32 other non-Dalits.¹³ Respondents from the Dalit community were asked a number of qualitative questions about their experiences and how they perceive the issues and concerns involved. Non-Dalit respondents were approached to comprehend how they perceive the issue of representation and other concerns of Dalits, and what changes they think ought to be made to make the profession representative. The interviewers adopted a snowball sampling technique to reach out to the respondents.

A number of other notable individuals in the Indian legal profession who were contacted separately from the 74 interviewees either did not respond to emails or refused to engage further after the list of questions on caste and representation were sent to them. For instance, one senior advocate known for human rights work refused to give her view on the issue of representation of Dalits in the profession after questions were sent to her. One judge refused to participate in the study as he believed that such problems did not exist in his state. This tendency of avoiding discussions on

⁹ Concurring Opinion of Justice DY Chandrachud, *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1.

¹⁰ Scroll Staff, *Dalit lawyer killed in Gujarat, allegedly for his social media posts criticising Brahminism*, SCROLL.IN (Sept. 27, 2020, 10:03 AM), <https://scroll.in/latest/974211/dalit-lawyer-killed-in-gujarat-allegedly-for-his-social-media-posts-criticising-brahminism>.

¹¹ *Dalits in India hold protests against ‘dilution’ of SC/ST Act*, ALJAZEERA (Apr. 2, 2018), <https://www.aljazeera.com/news/2018/4/2/dalits-in-india-hold-protests-against-dilution-of-sc-st>.

¹² *Dalit organisations to demand reservation in higher judiciary*, DECCAN HERALD (Apr. 19, 2018), <https://www.deccanherald.com/national/dalit-organisations-gear-protest-demand-reservation-higher-judiciary-665439.html>.

¹³ Denotified Tribes (DNTs), also known as Vimukta Jati, are the tribes that were listed originally under the Criminal Tribes Act of 1871 (British colonial legislation) as “Criminal Tribes.” After Indian independence in 1947, the act was repealed in 1949, and the affected communities were denotified in 1952. Members of the community have shared how the Criminal Tribes Act was enacted to suppress the tribes and their resistance against the colonial administration, and how they still face discrimination within society. See Imaad ul Hasan, *Denotified 68 Years Ago, ‘Criminal’ Tribes Still Fight Stigma, Poverty*, OUTLOOK MAGAZINE (Aug. 30, 2020), <https://www.outlookindia.com/website/story/india-news-denotification-68-years-ago-on-this-day-ex-criminal-tribes-still-fight-stigma-poverty/359558#:~:text=After%20decades%20of%20facing%20horrors,by%20DNTs%20across%20the%20country>; Disha Wadekar and Arati Kade, *VIMUKTA MONTH – WHERE GOES OUR FREEDOM?*, VELIVADA, <https://velivada.com/2020/08/07/vimukta-month/>.

underrepresentation of marginalized communities was aptly summed up by a sitting High Court judge: “Caste is the elephant in the room.”¹⁴ Some judges in the lower judiciary¹⁵ who are Dalits also did not engage with the interviewers or strictly requested their identities be kept anonymous.¹⁶

Despite these exceptions, a diverse range of respondents from both Dalit and non-Dalit communities was assembled to reach a comprehensive analysis. The respondents include lawyers, sitting and retired judges, academics, activists, journalists, bureaucrats, politicians, law graduates, and current students.¹⁷ The interviews were conducted between June and mid-August 2020. The scope of the chapter is limited to the experiences of Dalits and their perception in the legal profession and the judiciary, and the discourse in law schools. Anecdotes and experiences of respondents have been used to highlight broader points.

This chapter depicts the challenges faced by the Dalits and offers a platform for further research on the subject. Additionally, because the data regarding representation in the judiciary is not available publicly, the discussion is generally limited to the Supreme Court and the High Courts. The chapter is structured in three main parts: Higher Judiciary, Legal Profession, and Legal Education. All three overlap and are interconnected. The chapter closes with recommendations to address these challenges.

For the purposes of this chapter, the terms “Dalits” and “Scheduled Castes” (SC) have been used interchangeably, as are “Adivasis,” “Tribals” and “Scheduled Tribes” (ST). The term “Bahujan” (a majority of people) is a common cultural/political term used to refer to a combination of marginalized social groups, including Dalits and Adivasis. “Other Backward Classes” refers to social groups/classes other than Dalits and Adivasis that are considered backward. “Affirmative action” and “reservation” also have the same meaning. The term “upper caste” is used to refer to castes that consider themselves on the top end of the caste pyramid. These castes have historically and structurally maintained the oppressive caste hierarchy for their own benefit.

III. JUDICIARY

A. Why Representation Matters

There was unanimity among interviewees that the lack of representation of Dalits is one of the foremost challenges facing the community as well as the legal profession and the judiciary. Several

¹⁴ Video call interview with a sitting High Court judge (Jul. 18, 2020).

¹⁵ The judiciary in India is divided in three parts in the following ascending hierarchical order: lower level judiciary (districts and below), High Court, Supreme Court of India.

¹⁶ Telephone interview with a judicial officer (Jul. 6, 2020).

¹⁷ The interviewed judges include those in the Supreme Court, High Courts, and lower judiciary, respectively.

respondents emphasized the moral relevance of representation,¹⁸ with a former solicitor general of India explaining that representation matters because

it gives a boost to the public confidence in the institution and lends it democratic legitimacy ... It is logical that greater diversity of views on the bench will contribute to quality adjudication that draws from various life experiences and understands the different realities of litigants from varied backgrounds.¹⁹

Echoing that view, a student at the National Law University of Delhi stated: “It is tremendously important to have representation in the legal profession when historically it has been one of the least diverse professions.”²⁰ He further added that “it is rather disheartening to see the lack of self-consciousness of [historical] privileges” by upper-caste lawyers and judges.²¹ Others explain that “representation acts as a ladder” to progress for marginalized communities.²² Regarding representation on the Supreme Court, it was noted: “[t]he credibility of an institution such as the Supreme Court cannot flourish in a constitutional democracy if its marginali[z]ed communities do not explicitly express their trust in the institution.”²³ Representation is thus linked with legitimacy, public confidence, and empowerment.

B. Lack of Data

A hurdle for progress in representation is the lack of data collected to examine the representation of Dalits at the bar and on the bench.²⁴ One academic noted that, due to the lack of data, no framework has been developed to discuss the question of exclusion from the bar and the bench.²⁵ Without specific data relating to representation, the current framework for affirmative action can become an ineffective policy of tokenism. Further, there needs to be a “deeper frame” to understand the issue of representation of Dalits in the legal community, rather than mere “politics of presence”—in which only a handful of candidates are appointed as a symbol or token of representation.²⁶ A number of respondents strongly asserted the need to move beyond this

¹⁸ Video call interview with a sitting High Court judge (Jul. 18, 2020); telephone interview with an academic (Jul. 22, 2020); written response interview with a senior advocate at the Supreme Court of India (Jul. 30, 2020).

¹⁹ Written response interview with a senior advocate at the Supreme Court of India (Jul. 30, 2020).

²⁰ Written response interview with a recent law school graduate (Jul. 7, 2020).

²¹ *Id.*

²² Video call interview with a lawyer in the state of Uttar Pradesh (May 27, 2020); video call interview with a lawyer in the state of Bihar (May 27, 2020); telephone interview with a bureaucrat (Jun. 20, 2020); telephone interview with an academic (Jun. 30, 2020); telephone Interview with a researcher/commentator (Jul. 4, 2020); video call Interview with a sitting High Court judge (Jul. 18, 2020).

²³ Anurag Bhaskar, *How three key Supreme Court judgments shook the faith of SCs, STs and OBCs in one year*, THE PRINT (Jan. 28, 2019, 12:48 PM), <https://theprint.in/opinion/how-three-key-supreme-court-judgments-shook-the-faith-of-scs-sts-and-obcs-in-one-year/184178/>.

²⁴ Telephone interview with a journalist (Jun. 26, 2020); telephone interview with a researcher/commentator (Jul. 4, 2020); video call interview with a former High Court Chief Justice (Jul. 13, 2020); video call interview with a sitting High Court Judge (Jul. 18, 2020); telephone interview with an academic (Jul. 22, 2020).

²⁵ Telephone interview with an academic (Jul. 22, 2020).

²⁶ *Id.*

“tokenism” in appointments.²⁷ This would require more data to be collected and analyzed regarding the Dalit community’s underrepresentation in the field of law.

C. A History of Minimal Representation²⁸

In the 70-year history of the Indian Republic, only six Dalit judges²⁹ have been appointed to the Supreme Court.³⁰ Author George Gadbois profiled judges of the Supreme Court from 1950 to 1989 and noted the miniscule representation of Dalits and Adivasis in the higher judiciary. He interviewed 66 judges, 19 of whom were Chief Justices. Brahmins held 42.9% of the seats while non-Brahmin upper castes held 49.4%.³¹ Dalits made up a paltry 2.6% of the judges, and Adivasis had zero representation.³² In Gadbois’ view, because Brahmins were traditionally privileged groups when the British arrived, they adopted the modern English education introduced by the British. As a result, they dominated and thrived in the post-colonial legal profession and the judiciary, where English was the language of instruction.³³ He believed that the primary reason for poor representation at the time was that a very small number of lawyers from the marginalized communities were able to make it to the High Courts which, in turn, affected their representation on the bench.³⁴ In 1977, there were only four members of the Scheduled Castes and not a single member from the Scheduled Tribes among the 352 High Court judges.³⁵ It was not until 1980 that the first Scheduled Caste judge was appointed to the Supreme Court.³⁶ Gadbois added that the law minister testified before Parliament in 1983 that, of nearly 400 High Court judges, only six were from the Scheduled Castes, while the Scheduled Tribes had no representation whatsoever.³⁷

²⁷ Telephone interview with an academic (Jun. 17, 2020); video call Interview with a researcher (Jun. 20, 2020); telephone interview with a journalist (Jun. 26, 2020); telephone interview with a researcher/commentator (Jul. 4, 2020); video call interview with a former High Court Chief Justice (Jul. 13, 2020); video call interview with a sitting High Court judge (Jul. 18, 2020); telephone interview with an academic (Jul. 22, 2020).

²⁸ For the insights of this section, the contributions of senior advocates at the Supreme Court of India, Gopal Subramaniam and Pinky Anand, and lawyer Avinash Mathews are specifically acknowledged. The written notes they sent were extremely helpful.

²⁹ A. Vardarajan, B.C. Ray, K. Ramaswamy, KG Balakrishnan, BR Gavai (currently on the bench).

³⁰ Article 124 of the Constitution of India provided that a judge of the Supreme Court shall be appointed by the President of India in consultation with the Chief Justice of India, and such other judges of the Supreme Court and of the High Courts in the states as the President may deem necessary. The process of judicial appointments changed after the decisions in the *Second Judges* (1993) and *Third Judges Cases* (1998), as a result of which a collegium, consisting of the Chief Justice of India and the four most senior Supreme Court judges, would have a final say in the appointment of candidates as Supreme Court judges.

³¹ GEORGE H GADBOIS JR., *JUDGES OF SUPREME COURT OF INDIA 1950-1989* 345 (Oxford University Press ed. 2011).

³² *Id.*

³³ *Id.* at 346.

³⁴ GEORGE H GADBOIS JR., *AFFIRMATIVE ACTION IN INDIA: THE JUDICIARY AND SOCIAL CHANGE* 354 (L. & Policy 1986).

³⁵ *Id.*

³⁶ *Id.* at 345.

³⁷ *Id.* at 346.

Lawyer and author Abhinav Chandrachud, in his book “*Supreme Whispers*,” based on interviews conducted with the judges of the Supreme Court from 1980 to 1989, noted:

... Caste considerations have had a role to play in judicial appointments... while Supreme Court judges are proud of their seniority, they are less willing to acknowledge that their appointment might have had something to do with their caste, religion, or gender.³⁸

This point was also accepted by a well-respected judge of the Supreme Court, Justice VR Krishna Iyer, who wrote in his book “*Law versus Justice: Problems and Solutions*” that a Brahmin Chief Justice had told him that he owed his own position to his caste, and thereby would gladly help his own caste.³⁹

However, a discourse on making the judiciary accountable for ensuring broad representation started only after the direct intervention of the then-President of India, K.R. Narayanan, in 1998.⁴⁰ Before that, there was a general perception that there were not enough suitable candidates from the Dalit community who could be appointed as judges in the higher judiciary.⁴¹ The President confronted the Chief Justice of India, AS Anand, over the issue of non-appointment of judges coming from the Dalit and Adivasi communities to the Supreme Court. It was “the first time in the history of the Republic that a President has chosen to put his suggestion on record” about underrepresentation of the certain castes and groups in the higher echelons of the judiciary. On November 28, 1998, President Narayanan wrote a note to Chief Justice Anand:

I would like to record my views that while recommending the appointment of Supreme Court judges, it would be consonant with constitutional principles and the nation's social objectives if persons belonging to weaker sections of society like SCs and STs [scheduled castes and scheduled tribes], who comprise 25 percent of the population, and women are given due consideration.⁴²

The President went on to emphasize that eligible candidates from the Dalit community were being ignored by the Supreme Court:

Eligible persons from these categories are available and their underrepresentation or non-representation would not be justifiable. Keeping vacancies unfilled is also not desirable given the need for representation of different sections of society and the volume

³⁸ ABHINAV CHANDRACHUD, *SUPREME WHISPERS: CONVERSATIONS WITH JUDGES OF THE SUPREME COURT OF INDIA: 1980-1989* 182–188 (Penguin Books ed. 2018).

³⁹ VR KRISHNA IYER, *LAW VERSUS JUSTICE: PROBLEMS AND SOLUTIONS* 210 (Deep & Deep ed.1981).

⁴⁰ Prabhu Chawla, *Scheduled Caste representation in Supreme Court sours Rashtrapati Bhavan-judiciary relations, delays appointment of judges*, INDIA TODAY (Jan. 25, 1999) (last updated Feb. 28, 2013), <https://www.indiatoday.in/magazine/cover-story/story/19990125-scheduled-caste-representation-in-supreme-court-sours-rashtrapati-bhavan-judiciary-relations-delays-appointment-of-judges-779965-1999-01-25>.

⁴¹ GADBOIS, *supra* note 34, at 354.

⁴² Chawla, *supra* at note 40.

of work which the Supreme Court is required to handle.⁴³

Due to the President's active pressure, Justice KG Balakrishnan, a Dalit judge, was appointed as a judge of the Supreme Court in 2000, and he went on to become the first Dalit Chief Justice of India in 2007.⁴⁴

At the same time, a number of reports by parliamentary committees and commissions also highlighted the poor representation of Scheduled Castes and Scheduled Tribes (otherwise referred to as SCs and STs) in the higher judiciary, emphasizing the urgent need for ensuring representation. One of the first committees to be constituted on this issue was the Kariya Munda Committee—a parliamentary committee on the welfare of Scheduled Castes and Scheduled Tribes. The committee presented a report to Parliament on March 15, 2000, which noted that as of January 1, 1993, 12 out of 18 High Courts did not have a single Dalit judge. Fourteen High Courts were without any judge from the Adivasi community. It was also noted that as of May 1, 1998, only 15 judges belonged to SCs and five to STs, out of a total of 481 High Court judges. The committee also noted that despite “the fact that some suitable, eligible, and well-qualified SC/ST candidates were available in the consideration zone,” there were no Dalit or Adivasi judges on the Supreme Court.⁴⁵ The committee concluded, in no uncertain terms, that only a firm policy on reservation in the judiciary can remedy the problem of underrepresentation. The report poignantly recognized that “the administration of law and justice is intimately linked with the social philosophy of the judiciary, and the social philosophy cannot be entirely separated from the social origins of those who dispense justice.”⁴⁶

This was followed by recommendations in the 2002 report of the National Commission to Review the Working of the Constitution, chaired by Justice M.N Venkatachaliah. The report acknowledged the presence of an “adequate number of persons of the SC, ST, and OBC in every State who possess the required qualifications,” and thus recommended that “a way could and should, therefore, be found to bring a reasonable number of SCs, STs and BCs on to the Benches of the Supreme Court

⁴³ *Id.*; Sumit Mitra, *Rashtrapati Bhavan's interference puts on hold appointment of three Supreme Court judges* *Rashtrapati Bhavan*, INDIA TODAY (Jan. 24, 2000), <https://www.indiatoday.in/magazine/nation/story/20000124-rashtrapati-bhavans-interference-puts-on-hold-appointment-of-three-supreme-court-judges-776958-2000-01-24>.

⁴⁴ Justice K.G. Balakrishnan retired as the Chief Justice of the Supreme Court of India in 2010.

⁴⁵ COMMITTEE ON THE WELFARE OF SCHEDULED CASTES AND SCHEDULED TRIBES, SECOND REPORT ON REPRESENTATION OF SCHEDULED CASTES AND SCHEDULED TRIBES IN JUDICIARY WITH SPECIAL REFERENCE TO THE APPOINTMENTS IN SUPREME COURT AND HIGH COURTS (2000) [hereinafter COMMITTEE ON THE WELFARE OF SCHEDULED CASTES AND SCHEDULED TRIBES, SECOND REPORT]; COMMITTEE ON THE WELFARE OF SCHEDULED CASTES AND SCHEDULED TRIBES, THIRTEENTH REPORT ON MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS 5 (2001), https://eparlib.nic.in/bitstream/123456789/66474/1/13_Welfare_of_Scheduled_Castes_and_Scheduled_Tribes_13.pdf.

⁴⁶ COMMITTEE ON THE WELFARE OF SCHEDULED CASTES AND SCHEDULED TRIBES, SECOND REPORT, *supra* note 45.

and High Courts.”⁴⁷ The commission believed that doing so would eliminate “the feeling of alienation of the vast majority of Indians comprising SCs, STs and BCs that, in spite of having persons of requisite caliber and character among them, they are being ignored in the appointment of Judges, is resolved.”⁴⁸

In 2006, a Parliamentary Standing Committee under the chairmanship of Dr. E.M. Sudarsana Natchiappan (the Natchiappan Committee) reiterated the need for reservation in the higher judiciary by highlighting the fact that only 20 out of a total of 610 judges in the High Courts belonged to the SC/ST communities.⁴⁹ Almost a decade later, the National Commission for Scheduled Castes presented a special report before the Parliament on “*Reservation in Judiciary*.”⁵⁰ The special report compared the statistics with the Kariya Munda Committee Report, and noted:

Even today in 2011, there are only 24 judges belonging to SC/ST against a total of 850 judges in all the 21 High Courts. But 14 out of 21 High Courts do not have a single SC/ST judge. Similarly, there is not a single judge belonging to SC/ST in the Supreme Court where the strength of judges is 31.⁵¹

Currently, there are only two judges from the Dalit community in the Supreme Court. Public data for High Courts and lower district judiciary could not be found.⁵²

The incumbent President, Ram Nath Kovind, has also raised concerns over the low representation of scheduled castes, scheduled tribes, and OBCs in the judiciary.⁵³ The Union Government has also emphasized that due consideration be given to suitable candidates belonging to the Scheduled Castes, Scheduled Tribes, “Other Backward Classes,” minorities, and women while making

⁴⁷ Summary Of Recommendations: Report of the National Commission to review the working of the Constitution, OUTLOOK INDIA, (APR. 2, 2002), <https://www.outlookindia.com/website/story/summary-of-recommendations/215076>.

⁴⁸ *Id.*

⁴⁹ See DEPARTMENT RELATED PARLIAMENTARY STANDING COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE TWENTY-FIRST REPORT ON THE JUDGES (INQUIRY) BILL, 2006 (Aug. 17, 2007) (“To conclude, it offends one's common sense as to why there should not be any reservation in a Constitutional body of law interpreters, while such reservation is available in the law-makers’ (Parliament and State Legislatures) and law-implementers’ body (Executive), where all the three wings of our democracy are equal and important in the Constitutional architecture and flowing from it the national policy of the country.”).

⁵⁰ NATIONAL COMMISSION FOR SCHEDULED CASTES, A REPORT ON RESERVATION IN JUDICIARY, <http://ncsc.nic.in/files/Reservation%20in%20Judiciary.pdf>.

⁵¹ *Id.*

⁵² Tarika Jain & Shreya Tripathy, *70 Years Of Indian Judiciary | Opinion: Composition Terribly Skewed, Higher Levels Bastion Of Upper Caste Males*, OUTLOOK INDIA MAGAZINE (Feb. 3, 2020), <https://www.outlookindia.com/magazine/story/india-news-70-years-of-indian-judiciary-opinion-composition-terribly-skewed-higher-levels-bastion-of-upper-caste-males/302658>.

⁵³ Kumar Anshuman, *Need to have more OBC, SC, ST judges: President Kovind*, THE PRINT (Nov. 25, 2017), <https://theprint.in/india/governance/kovind-need-more-obc-sc-judges/18339/>.

appointments to the High Courts.⁵⁴ While there have been public statements by a number of Supreme Court judges in recent times on the need to increase diversity on the bench, such statements have been limited to aspects of gender diversity.⁵⁵ Not only does this ignore the issue of caste discrimination, it also fails to look at the issue of discriminatory representation from an intersectionality lens to allow diversity and inclusion for all marginalized groups.

D. Interview Findings

The interviews conducted for this report corroborate a lack of commitment on the part of the higher judiciary to ensure representation. A sitting High Court judge, who is an upper-caste member cited the urgent need for a discourse on representation, which could put pressure on the Supreme Court to ensure due representation of Dalits, and also mentioned the persistence of implicit biases of upper-caste judges toward their colleagues from the Dalit community.⁵⁶ Such bias can be seen in the remarks made by Justice V. Chitambaresh in 2019, when he was serving as a sitting judge in the Kerala High Court.⁵⁷ He had spoken about the virtues of being a Brahmin, who are “twice born” and possessed certain “distinct characteristics,” and asserted that a Brahmin should “always be at the helm of affairs.”⁵⁸ Justice Chitambaresh’s words were a “reiteration of the entrenched belief in caste hierarchy,”⁵⁹ yet no action or public condemnation was brought against him by the Chief Justice of India and his senior colleagues at the Supreme Court.⁶⁰

Another retired High Court Chief Justice pointed to the isolation of Dalit judges within the High Court in which he served.⁶¹ He added that the narrative regarding the challenges facing the Supreme Court is dominated by the pendency of cases yet the issue of representation, which is equally important, remains ignored.⁶² A retired, upper-caste Supreme Court judge also noted that representation of Dalits in the judiciary is much lower than expected in relation to their population, and indicated that biases toward Dalit judges and lawyers can vary from state to state.⁶³ He shared one incident from his tenure as the Chief Justice in a state’s High Court. He emphasized how he

⁵⁴ G Babu Jayakumar, *Centre wants more SCs, STs, OBCs as HC judges*, DECCAN CHRONICLE (Oct. 20, 2020), <https://www.deccanchronicle.com/nation/in-other-news/201020/centre-wants-more-scs-sts-obcs-as-hc-judges.html>.

⁵⁵ The Print, *Indian judiciary needs greater diversity, more women: Justice Chandrachud*, YOUTUBE (Feb. 1, 2020), <https://www.youtube.com/watch?v=L9g5RtAXib0>; Radhika Roy, *Justice Deepak Gupta Calls For Representation Of All Sections Of People Including Transgenders In Higher Judiciary*, LIVE LAW (Feb. 23, 2020), <https://www.livelaw.in/top-stories/justice-deepak-gupta-call-for-representation-of-all-sections-of-people-including-transgenders-in-higher-judiciary>.

⁵⁶ Video Call Interview with a sitting High Court Judge (Jul. 18, 2020).

⁵⁷ *A Brahmin is twice born, should be at the helm of affairs: Kerala HC judge Justice V Chitambaresh*, BAR AND BENCH, (JULY 23, 2019) <https://www.barandbench.com/news/brahmin-justice-v-chitambaresh-kerala-high-court>.

⁵⁸ *Id.*

⁵⁹ Anurag Bhaskar, *Casteist judges? Justice V. Chitambaresh wasn't the first, he won't be the last*, THE PRINT (Jul. 25, 2019), <https://theprint.in/opinion/casteist-judges-justice-v-chitambaresh-wasnt-the-first-he-wont-be-the-last/267852/>.

⁶⁰ Justice Chitambaresh retired in November 2019, without any condemnation by the Chief Justice on his statements.

⁶¹ Video Call Interview with a former High Court Chief Justice (Jul. 13, 2020).

⁶² *Id.*

⁶³ Video Call Interview with a former Judge at the Supreme Court of India (Aug. 8, 2020).

faced resistance from his upper-caste colleagues whenever he considered a Dalit lawyer for appointment as a judge in that High Court, explaining that “they would find some excuse or another.”⁶⁴ He added that, while Dalits have been able to enter the lower judiciary (initial posts) through reservation in direct recruitments, there appears to be a reluctance whenever demands are made to promote or appoint them to the High Courts or the Supreme Court.⁶⁵ Significantly, Dalit lawyers are generally not able to qualify through written test in most States for direct recruitment for the post of district judge due to a number of factors requiring further study.⁶⁶ Quite often, Dalit judges from the district judiciary are elevated to the High Court when they have only one or two years left before retirement.⁶⁷ With such a short tenure, they are not able to contribute much to jurisprudence.

Another retired Supreme Court judge believed that since Dalit judges in the lower judiciary get appointed through reservations/quotas, there is a bias against them in the higher judiciary that they are less meritorious, and thus do not get promoted easily.⁶⁸ This judge believed that reservations impact Dalit candidates negatively.⁶⁹ However, a leading scholar and professor of constitutional law, Mahendra Pal Singh, disagrees with the judge: “[The goal of the Constitution] is not only the protection of the weaker sections of the society, particularly of the Scheduled Castes, Scheduled Tribes and women, but also their representation and participation in the law-making process.”⁷⁰ This applies to the judiciary, too.⁷¹ Yet another retired Supreme Court judge, who was part of the Supreme Court collegium for about two years in the past decade, said that the main parameters for considering elevation were maintaining state-wide representation of High Court judges and their seniority at all levels. He added, as there were no Dalit judges with seniority in High Courts during his time on the bench, the issue of ensuring representation of Dalits in the Supreme Court was not discussed as part of the collegium.⁷² However, there have been instances when lawyers have been elevated directly to the Supreme Court. One retired Chief Justice of India stated that he ensured the appointment of a few Dalit judges in different High Courts, but he could make no more than a handful of appointments and felt alone in the system.⁷³

Sociologists, researchers, and senior advocates interviewed also highlighted the lack of institutional commitment to addressing the question of representation.⁷⁴ Kalpana Kannabiran, a leading sociologist and a lawyer, stated:

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ For recruitment as district level judges, a written exam is conducted by the administration of High Courts in their respective jurisdictions

⁶⁷ Video call interview with a former judge on the Supreme Court of India (Aug. 8, 2020).

⁶⁸ Video call interview with a former judge on the Supreme Court of India (Jul. 14, 2020).

⁶⁹ *Id.*

⁷⁰ M.P. Singh, “‘Merit’ in the appointment of judges”, (1999) 8 SCC (Jour) 1.

⁷¹ Written response interview with an academic (Aug. 8, 2020).

⁷² Video call interview with a former judge on the Supreme Court of India (Jul. 25, 2020).

⁷³ Video call interview with a former judge on the Supreme Court of India (Aug. 7, 2020).

⁷⁴ Video call interview with a researcher (Jun. 20, 2020); telephone interview with a researcher/commentator (Jul. 4, 2020); written responses interview with a senior advocate at the Supreme Court of India (Jul. 8, 2020); video call

Representation in the judiciary has been abysmal. Both in terms of caste/tribe/religion—and in terms of gender both by itself and in its intersection. There has been a refusal to engage by the best of judges through the impenetrable veil of silence. There was a brief period when this was raised in the late 1970s and early 1980s—and we saw entry of people like Justices MN Rao, KG Balakrishnan—but these were individual instances that did not signal or inaugurate systemic changes in the structure of the judiciary. The judiciary in the matter of representation has stood outside of the principles it enforces.⁷⁵

A former additional Solicitor General for India shared the same sentiment:

The fact that in the 70 years of its existence, the Supreme Court of India has seen only eight women judges and one Dalit Chief Justice is testament to the reality that the composition of our judiciary is not represented by the Dalit population.⁷⁶

Another senior advocate and former Solicitor General for India stated that the situation has drastically changed since the 1980s, and today “we see a substantial increase in the number of lawyers hailing from the Dalit community.” The members of the Dalit and Adivasi communities have not received adequate representation “since no systemic inclusionary arrangements were institutionalized.” The former Solicitor General suggested setting up a system similar to the Judicial Diversity Taskforce in the United Kingdom “to make the judiciary more inclusive.”⁷⁷ He further suggested that

[t]here should be complete disclosure of data regarding social diversity in the Indian judiciary. This will not only inspire public confidence in the justice delivery system but also prevent any kind of institutional bias to creep into the system.⁷⁸

Others have also called for publishing representation data annually.⁷⁹

interview with a senior advocate at the Supreme Court of India (Jul. 12, 2020); written responses interview with a senior advocate at the Supreme Court of India (Jul. 13, 2020); written responses with an academic (Jul. 14, 2020); video call interview with a senior advocate at the Supreme Court of India (Jul. 19, 2020); telephone interview with an academic (Jul. 22, 2020); written response interview with a senior advocate at the Supreme Court of India (Jul. 30, 2020); written responses interview with an academic (Aug. 20, 2020).

⁷⁵ Written responses interview with an academic (Aug. 20, 2020).

⁷⁶ Written responses interview with a senior advocate at the Supreme Court of India (Jul. 30, 2020).

⁷⁷ The Judicial Diversity Taskforce in the UK collects and maintains data of representation in judicial offices. It also maintains an eligibility pool through which a potential number of candidates from underrepresented groups can be taken. For a copy of Annual Report produced by the Judicial Diversity Taskforce, see JUDICIAL DIVERSITY TASKFORCE, REPORT OF THE ADVISORY PANEL ON JUDICIAL DIVERSITY 2010 (2013), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/244013/judicial-diversity-taskforce-annual-report-2013.pdf.

⁷⁸ Written responses interview with a senior advocate at the Supreme Court of India (Jul. 13, 2020).

⁷⁹ Written responses interview with a corporate lawyer (Jun. 30, 2020); video call interview with a former High Court Chief Justice (Jul. 13, 2020).

In this regard, a journalist, who often writes on issues of social justice, expressed that the focus of the discourse should be on the term “due representation” instead of “diversity”—which often gets reduced to tokenism.⁸⁰ At present, there are only two judges from the Dalit community in the Supreme Court. The Supreme Court collegium must find the best Dalit candidates for appointment.⁸¹ At one point, there were two sitting High Court Chief Justices from the Dalit community who are eligible for appointment to the Supreme Court,⁸² but a final decision has not been reached in that process.

IV. LEGAL PROFESSION

A. Lack of Representation and Data

The lack of representation of Dalits in the legal profession remains a concern for many in the Dalit community.⁸³ While there is a lack of data collected on the issue of representation, anecdotally, there seems to be a lack of representation in the legal system.⁸⁴ The current composition on the bench, which is dominated by upper-caste males, is reflective of lawyers’ representation of the past 15 to 20 years.⁸⁵ It was further noted that there was no data on the rate of lawyers dropping out of the profession due to lack of access to opportunities based on caste discrimination.⁸⁶

However, there seemed to be a consensus on the point that the bar is dominated by lawyers from upper castes and well-to-do families with a network of connections.⁸⁷ Three sitting High Court judges from upper castes admitted that in lower courts caste can play a role in getting clients.⁸⁸ As

⁸⁰ Telephone interview with a journalist (Jun. 26, 2020).

⁸¹ Written responses interview with an academic (Jul. 17, 2020); video call interview with a sitting High Court judge (Jul. 18, 2020).

⁸² Pallavi Saluja, *The next judges of the Supreme Court: Which High Court Chief Justices are most likely to be elevated? Will we see a woman CJI this decade?*, BAR & BENCH (Jul. 18, 2020), <https://www.barandbench.com/columns/the-next-judges-of-the-supreme-court-which-high-court-chief-justices-are-most-likely-to-be-elevated-will-we-see-a-woman-cji-this-decade>.

⁸³ Written responses interview with a sitting High Court judge (Jun. 16, 2020); telephone interview with a researcher/commentator (Jul. 4, 2020); video call interview with former judge at the Supreme Court of India (Jul. 14, 2020); video call interview with a sitting High Court judge (Jul. 18, 2020); telephone interview with an academic (Jul. 22, 2020).

⁸⁴ Telephone interview with an academic (Jul. 22, 2020).

⁸⁵ Telephone interview with a researcher/commentator (Jul. 4, 2020).

⁸⁶ *Id.*

⁸⁷ Video call interview with a lawyer in Uttar Pradesh, India (May 27, 2020); video call interview with a lawyer in the state of Bihar (May 27, 2020); video call interview with a lawyer (May 29, 2020); video call interview with a researcher (May 29, 2020); written responses interview with a sitting High Court judge (Jun. 16, 2020); telephone interview with an academic (Jun. 17, 2020); telephone interview with a journalist (Jun. 26, 2020); telephone interview with a researcher/commentator (Jul. 4, 2020); telephone interview with a practicing lawyer in Delhi, India (Jul. 12, 2020); video call interview with former judge at the Supreme Court of India (Jul. 14, 2020); video call interview with a sitting High Court judge (Jul. 18, 2020); written responses interview with a sitting High Court judge (Jul. 20, 2020).

⁸⁸ Video call interview with a lawyer in Bihar, India (May 27, 2020); written responses interview with a sitting High Court judge (Jun. 16, 2020); video call interview with a sitting High Court judge (Jul. 18, 2020); written responses interview with a sitting High Court judge (Jul. 20, 2020).

one of them noted, “in practice litigants feel more comfortable to assign lawyers by recommendations based mostly from their own caste.”⁸⁹ Often, some lawyers from the Dalit community hide their identity to get cases.⁹⁰ This was also corroborated by another respondent from the Dalit community who shared that one of his relatives had changed his surname to a Brahmin surname in order to get clients.⁹¹ Even in metropolitan area like Mumbai, where commercial litigation flourished, a client on one occasion told a lawyer from the Brahmin caste that “the only thing I like about you is your caste.”⁹²

B. Structural Disadvantages

Four retired Supreme Court judges interviewed for this report shared the view that Dalits face structural disadvantages in the legal profession.⁹³ One asserted that the “legal profession is mostly dominated by the elitists.”⁹⁴ Since Dalits are one of the most disadvantaged social groups, they face barriers in access to quality legal education.⁹⁵ A former Chief Justice of India remarked that most Dalit lawyers during his time did not study in English-medium schools; as a result, they were restricted to practicing in the lower courts as the higher courts require advanced proficiency in English.⁹⁶ Many have agreed that Dalit lawyers often face repercussions for language barriers in the court.⁹⁷ Because the medium of instruction in High Courts and the Supreme Court is English, many lawyers from the Dalit community did not have the option to start their practice before these constitutional courts. “A young law graduate from such an oppressed section ordinarily lacks such (language) competence, scope and opportunity that his/her colleague from a higher strata would have.”⁹⁸ One lawyer from a marginalized social group shared that he used to struggle in his initial years with writing his thoughts in English.⁹⁹

⁸⁹ Written responses interview with a sitting High Court judge (Jun. 16, 2020).

⁹⁰ Telephone interview with an academic (Jun. 17, 2020); video call interview with a sitting High Court judge (Jul. 18, 2020).

⁹¹ Interview with an academic in Sonipat, Haryana, India (Jul. 11, 2020).

⁹² Video call interview with a practicing lawyer in Maharashtra, India (Sept. 6, 2020).

⁹³ Written responses interview with a sitting High Court judge (Jun. 16, 2020); video call interview with former judge at the Supreme Court of India (Jul. 14, 2020); video call interview with a sitting High Court judge (Jul. 18, 2020); video call interview with a former judge at the Supreme Court of India (Jul. 25, 2020); video call interview with a former judge on the Supreme Court of India (Aug. 7, 2020).

⁹⁴ Written responses interview with a sitting High Court judge (Jun. 16, 2020).

⁹⁵ *Id.*; video call interview with former judge at the Supreme Court of India (Jul. 14, 2020).

⁹⁶ Video call interview with a former judge on the Supreme Court of India (Aug. 7, 2020).

⁹⁷ Written responses interview with a sitting High Court judge (Jun. 16, 2020); video call interview with a researcher (Jun. 20, 2020); telephone interview with a journalist (Jun. 26, 2020); telephone Interview with a senior advocate in Maharashtra, India (Jul. 4, 2020); telephone Interview with a practicing lawyer in Maharashtra, India (Jul. 8, 2020); written responses interview with a senior advocate at the Supreme Court of India (Jul. 8, 2020); video call interview with a senior advocate at the Supreme Court of India (Jul. 12, 2020); telephone interview with a practicing lawyer in Delhi, India (Jul. 12, 2020); telephone interview with a practicing lawyer in Delhi, India (Jul. 23, 2020); video call interview with a former judge on the Supreme Court of India (Aug. 7, 2020); video call interview with a practicing lawyer in Maharashtra, India (Sept. 6, 2020).

⁹⁸ Written responses interview with a sitting High Court judge (Jun. 16, 2020).

⁹⁹ Telephone interview with a practicing lawyer in Maharashtra, India (Jul. 8, 2020).

Further, due to lack of network and social capital, it is difficult for Dalit lawyers to get clients.¹⁰⁰ Difficulties faced by the Dalit community in the legal profession were similar to those they faced in other professions, with one significant difference: The structure of the legal profession is based on the ability of an individual to secure references, resources, and have a network, all of which are difficult in an environment with caste discrimination.¹⁰¹ Another senior advocate stated that these factors, ranging from a lack of quality legal education, a dearth of resources—monetary and otherwise—coupled with social stigma and socioeconomic factors, ensure that it is very intimidating for a first-generation Dalit law graduate to join litigation.¹⁰² Both these senior advocates strongly believe that first-generation Dalit lawyers in the bar need to be provided with professional support until they can stand on their own feet and achieve their potential.¹⁰³

C. Absence from Influential Positions — Senior Advocates

One retired Supreme Court judge was of the view that despite structural disadvantages, there are now a number of lawyers from the Dalit community; however, they are not being given an opportunity to grow.¹⁰⁴ This observation stems from an almost complete absence of any representation in the designation of senior advocates in the Supreme Court and High Courts.¹⁰⁵ In their article, “India’s Grand Advocates,” Marc Galanter and Nick Robinson discussed the influence of senior advocates in the Indian legal profession.¹⁰⁶ Another recent article, authored by noted scholar Tarunabh Khaitan, also highlighted the influence of senior advocates in the admission of cases before the Supreme Court.¹⁰⁷ Lawyers from the Dalit and Adivasi communities have largely remained outside this elite and influential club of lawyers. Galanter and Robinson

¹⁰⁰ Written responses interview with a sitting High Court judge (Jun. 16, 2020); video call interview with a researcher (Jun. 20, 2020); telephone interview with a journalist (Jun. 26, 2020); telephone interview with a senior advocate in Maharashtra, India (Jul. 4, 2020); telephone interview with a practicing lawyer in Maharashtra, India (Jul. 8, 2020); written responses interview with a senior advocate at the Supreme Court of India (Jul. 8, 2020); video call interview with a senior advocate at the Supreme Court of India (Jul. 12, 2020); telephone interview with a practicing lawyer in Delhi, India (Jul. 12, 2020); video call interview with former a judge at the Supreme Court of India (Jul. 14, 2020), video call interview with a sitting High Court judge (Jul. 18, 2020); telephone interview with a practicing lawyer in Delhi, India (Jul. 23, 2020); video call interview with a former judge on the Supreme Court of India (Aug. 7, 2020); video call interview with a practicing lawyer in Maharashtra, India (Sept. 6, 2020).

¹⁰¹ Written responses interview with a senior advocate at the Supreme Court of India (Jul. 8, 2020).

¹⁰² Video call interview with a senior advocate at the Supreme Court of India (Jul. 12, 2020).

¹⁰³ Telephone interview with a senior advocate in Maharashtra, India (Jul. 4, 2020); telephone interview with a practicing lawyer in Maharashtra, India (Jul. 8, 2020); written responses interview with a senior advocate at the Supreme Court of India (Jul. 8, 2020); video call interview with a senior advocate at the Supreme Court of India (Jul. 12, 2020); telephone interview with a practicing lawyer in Delhi, India (Jul. 23, 2020); video call interview with a practicing lawyer in Maharashtra, India (Sept. 6, 2020).

¹⁰⁴ Video call interview with a former judge at the Supreme Court of India (Aug. 8, 2020).

¹⁰⁵ A couple of retired High Court judges from Dalit community have been designated as senior advocates before the Supreme Court. As a matter of practice, retired High Court judges can be designated as senior advocates in the Supreme Court.

¹⁰⁶ MARC GALANTER & NICK ROBINSON, GRAND ADVOCATES: THE TRADITIONAL ELITE LAWYERS: THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION 455–485 (David B. Wilkins et al. eds. 2017).

¹⁰⁷ Tarunabh Khaitan, *The Indian Supreme Court’s identity crisis: a constitutional court or a court of appeals?*, INDIAN L. R., (Jan. 10, 2020), at 1.

noted, “Despite repeated inquiries we could not identify any Scheduled Caste, Scheduled Tribe, or ‘Other Backward Class’ advocates who were regarded as part of the elite stratum of lawyers.”¹⁰⁸

Senior Advocate Indira Jaising filed a petition before the Supreme Court challenging this system of senior advocates by pointing out the inconsistencies and arbitrariness in selecting candidates for this designation.¹⁰⁹ The petition highlighted the lack of representation of Dalits and other marginalized social groups among the rank of Senior Advocates: “In the last 15 years, i.e., from 2000 onwards, only one Dalit has been designated by the Supreme Court, and only two from the Muslim Community.”¹¹⁰ In its judgment, dated October 12, 2017, the Supreme Court laid down certain parameters (such as number of years of practice, publications, domain expertise, interview for suitability) for a lawyer to be considered for the designation of senior advocate.¹¹¹ The judgment did not make any comment on the issue of ensuring representation from marginalized communities.¹¹² At the same time, one lawyer from the Dalit community, who has practiced before the Supreme Court for more than a decade, believes that the criteria laid down by the Supreme Court is exclusionary in practice.¹¹³

Another issue linked with the absence of Dalit lawyers as senior advocates is the lack of mentorship opportunities for first-generation law graduates from the Dalit community. One young lawyer noted that not having senior advocates from the Dalit and Adivasi communities makes her feel that there is a lack of choice in seeking a professional mentor or relatable role model.¹¹⁴ In this regard, a High Court judge, who is an upper-caste member, suggested: “[M]ore lawyers from the Dalit and other backward classes need to be recognized as seniors, which could pave ways for them to further flourish in the field.”¹¹⁵ Senior advocates from Dalit community would be able to provide a much-needed platform for young lawyers from that community—a professional space that other senior advocates have not been able to provide.¹¹⁶

¹⁰⁸ GALANTER & ROBINSON, *supra* note 106, at 473.

¹⁰⁹ Apoorva Mandhani, *Indira Jaising challenges method of designating Senior Counsels by SC; calls it non-transparent and arbitrary*, LIVE LAW.IN (Jul. 7, 2015), <https://www.livelaw.in/indira-jaising-challenges-method-of-designating-senior-counsels-by-sc-calls-it-non-transparent-and-arbitrary/>.

¹¹⁰ Kian Ganz, *Only 1 Dalit, 2 Muslims in 15 years: Jaising files PIL against opaque & nepotistic senior counsel appointment process*, LEGALLY INDIA, (Jul. 7, 2015), <https://www.legallyindia.com/Bar-Bench-Litigation/jaising-vs-beauty-parade-senior-process>.

¹¹¹ Indira Jaising v. Supreme Court of India, 9 SCC 766 (2017) (India).

¹¹² Apoorva Mandhani, *SC Finally Notifies Guidelines To Regulate Designation Of Senior Advocates [Read The Guidelines]*, LIVE LAW.IN (Aug. 6, 2018), <https://www.livelaw.in/sc-finally-notifies-guidelines-to-regulate-designation-of-senior-advocates-read-the-guidelines/>.

¹¹³ Telephone interview with a practicing lawyer in New Delhi, India (Aug. 2, 2020).

¹¹⁴ Telephone interview with a practicing lawyer in Delhi, India (Jul. 12, 2020).

¹¹⁵ Written responses interview with a sitting High Court judge (Jun. 16, 2020).

¹¹⁶ Telephone interview with a practicing lawyer in Delhi, India (Jul. 12, 2020).

Respondents¹¹⁷ from the Dalit community also called out senior advocates, especially those known for their human rights work or liberal perspectives: “even if just ten senior advocates had nurtured at least one Dalit-Bahujan lawyer in past 20 years, we would have got 10 senior lawyers from Dalit-Bahujan community by now.”¹¹⁸ It was noted that some senior advocates talk about representation and argue cases in favor of affirmative action, but they have not made extra efforts to find candidates in their own chambers.¹¹⁹

The interviews with a few senior advocates also revealed that they failed to make attempts to provide opportunities to lawyers from the Dalit community to join their chambers.¹²⁰ One senior advocate admitted that, while conversations on very low representation of Dalits took place among his peers in the corridors of the Supreme Court, neither he nor any of his peers had actively endeavored to provide opportunities to Dalits at the bar.¹²¹ Another senior advocate readily admitted that “he was unaware if there was ever a Dalit lawyer who had worked in his chambers in the past” because he did not “consider or look out for caste.”¹²² A respondent believed that even individual efforts by senior advocates can contribute to improving the situation of Dalits in the legal profession.¹²³ One suggestion raised was that each senior advocate should mentor at least one candidate from marginalized communities.¹²⁴

D. Lack of Support from Bar Councils and Bar Associations

Bar associations in India have historically been dominated by upper-caste males.¹²⁵ While there are no studies to corroborate this observation, a review of the profiles of current office holders and other officers of the Bar Council of India (BCI) suggests that it is comprised mainly of individuals

¹¹⁷ Video call interview with a lawyer in the state of Uttar Pradesh (May 27, 2020); video call interview with a lawyer (May 29, 2020); telephone interview with a practicing lawyer in Delhi, India (Jul. 12, 2020); video call Interview with a former judge at the Supreme Court of India (Aug. 8, 2020).

¹¹⁸ Written responses interview with a senior advocate at the Supreme Court of India (Jul. 8, 2020).

¹¹⁹ Video call interview with a researcher (Jun. 20, 2020); written responses interview with a senior advocate at the Supreme Court of India (Jul. 8, 2020).

¹²⁰ Written responses interview with a senior advocate at the Supreme Court of India (Jul. 8, 2020); video call interview with a senior advocate at the Supreme Court of India (Jul. 12, 2020); video call interview with a senior advocate at the Supreme Court of India (Jul. 19, 2020).

¹²¹ Video call Interview with a practicing lawyer in Maharashtra, India (Jul. 8, 2020).

¹²² Video call Interview with a senior advocate at the Supreme Court of India (Jul. 19, 2020).

¹²³ Telephone interview with a practicing lawyer in Delhi, India (Jul. 12, 2020).

¹²⁴ Telephone interview with a law officer (Jun. 26, 2020).

¹²⁵ Video call interview with a lawyer in Uttar Pradesh, India (May 27, 2020); video call interview with a lawyer in Bihar, India (May 27, 2020); video call interview with a lawyer (May 29, 2020); telephone interview with a lawyer in Delhi, India (Jun. 2, 2020); telephone interview with a practicing lawyer in Delhi, India (Jul. 12, 2020). *See* written responses interview with Dr. Prem Kumar Gautam, assistant professor at RMLNLU, Lucknow (Jul. 17, 2020) (“During one and a half years of my regular practice, I realized [about] nepotism and caste biases in the bars. Bar elections were based on caste and not on the suitability of the candidates. I can say this with confidence because I was a member of some bar associations before joining the teaching profession. Other factors for not choosing the practice were the insensitive working environment of the bar associations, lack of social security, irregular income, and exploitation. On the other hand, academia provided me with respect, freedom, and regular income.”).

from upper-caste backgrounds.¹²⁶ Any scheme of the BCI or any bar association supporting Dalit lawyers in initial years could not be found. “It is therefore imperative,” observed one High Court judge, “for the state bar councils to provide safeguards for such deprived sections in regard to their opportunities and financial stability.”¹²⁷ Many have suggested that there was a need for scholarships and mentoring opportunities for these upcoming lawyers, and a steady income to support them in their formative years.¹²⁸

E. Indirect Discrimination

The indirect forms of discrimination that may be inflicted upon lawyers and graduates from Dalit and other marginalized communities include the lack of access to good chambers/offices, poor salaries paid by senior counsel, bullying in office, or being made to do comparatively menial jobs. A lawyer from a marginalized social group who has been practicing for several years now in Maharashtra told of how he was made to do unskilled tasks as an intern: “I was made to sit next to the office receptionist and made me to feel less as compared to other interns in the office.”¹²⁹ Another respondent counseled that any subtle, caste-based derogatory remarks in legal offices should be prohibited, as they create obstacles to a harassment-free workplace.¹³⁰ Others agreed that practicing lawyers should be sensitive to and conscious of their own implicit and explicit biases.¹³¹

F. Forced Ghettoization

Often, lawyers from Dalit and other marginalized social groups who are open about their identity are seen as being interested only in cases involving Dalits.¹³² Additionally, they would be invited to discussions related only to caste or affirmative action.¹³³ Sharing her experiences, one lawyer pointed out the forced “ghettoization” of lawyers from Dalit, Adivasi, and other Bahujan

¹²⁶ *Office Bearers of Bar Council of India*, THE BAR COUNCIL OF INDIA, <http://www.barcouncilofindia.org/about/about-the-bar-council-of-india/members/>.

¹²⁷ Written responses interview with a sitting High Court judge (Jun. 16, 2020).

¹²⁸ Written responses interview with a senior advocate at the Supreme Court of India (Jul. 8, 2020); video call interview with a senior advocate at the Supreme Court of India (Jul. 12, 2020).

¹²⁹ Telephone interview with a practicing lawyer in Maharashtra, India (Jul. 8, 2020).

¹³⁰ Telephone interview with a practicing lawyer in Delhi, India (Jul. 12, 2020).

¹³¹ Video call interview with a lawyer in the state of Bihar (May 27, 2020); video call Interview with a judicial officer (May 27, 2020); video call interview with a lawyer (May 29, 2020); video call with a researcher (May 29, 2020); telephone interview with a lawyer in Delhi, India (Jun. 2, 2020); telephone interview with a bureaucrat (Jun. 20, 2020); telephone Interview with an academic (Jun. 30, 2020).

¹³² Video call interview with a lawyer in the state of Uttar Pradesh (May 27, 2020); video call interview with a lawyer in Bihar, India (May 27, 2020); video call interview with a lawyer (May 29, 2020); video call interview with a researcher (May 29, 2020); telephone interview with a practicing lawyer in Delhi, India (Jul. 12, 2020).

¹³³ Video call interview with a lawyer in the state of Uttar Pradesh (May 27, 2020); telephone interview with a practicing lawyer in Delhi, India (Jul. 12, 2020).

communities in practice settings.¹³⁴ They are perceived by upper-caste lawyers and seniors mainly as “social justice” lawyers who cannot handle other cases.¹³⁵

The lawyer explained that “it has been a lonely experience,” as she had to find her way “as a first-generation Bahujan lawyer without any caste networks” or financial support and “every step is a first, and risky.”¹³⁶ She explained that the attitude of senior counsels is “patronizing” and “loaded with notions of charity,” and that she was “was treated as a token or a diversity candidate at all the offices I worked in. The dignity of being a colleague was missing.” She described the Indian legal profession as “patriarchal and sexist.”¹³⁷

A retired Supreme Court judge also highlighted the gender biases in the legal profession,¹³⁸ though it seems to be more difficult for women lawyers from Bahujan communities.¹³⁹

G. Experiences in Human Rights Litigation

This report also focused on collecting interviews with lawyers working at the grassroots-level on human rights issues. One journalist said, “Dalit lawyers at grassroots become activists,” engaging in community-organizing in addition to their limited legal work.¹⁴⁰ In some instances, as young Dalit lawyers lack access to equal opportunities in the legal sector, they are left with only limited options, leading them to create their own grassroots organizations advocating the Dalit community’s rights. In some instances, urban-based human rights organizations led by upper-caste individuals have their own biases against Dalits who work in their organization.¹⁴¹ A lawyer shared his experience in one such organization, where he faced subtle derogatory remarks based on caste from his colleagues. Also, lawyers from the Dalit/Adivasi community working on human rights cases at the grassroots level are being branded as “Maoists” or “Naxalite” lawyers in order to make them fall in line with the state administration.¹⁴²

A number of organizations led by activists from the Dalit community are working in different states to tackle the pervasive human rights and social challenges that Dalits face more broadly.¹⁴³

¹³⁴ Telephone interview with a practicing lawyer in Delhi, India (Jul. 12, 2020); also a similar narration by a journalist in a telephonic interview (Jun. 26, 2020), and another lawyer in a telephonic interview (May 29, 2020).

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Video call interview with a former judge at the Supreme Court of India (Aug. 8, 2020).

¹³⁹ Telephone interview with a practicing lawyer in Delhi, India (Jul. 12, 2020); Kiruba Munuswamy, *Sexism in Indian judiciary runs so deep it’s unlikely we will get our first woman CJI*, THE PRINT (Jun. 19, 2019), <https://theprint.in/opinion/sexism-in-indian-judiciary-runs-so-deep-its-unlikely-we-will-get-our-first-woman-cji/251727/>.

¹⁴⁰ Telephone interview with a journalist (Jun. 26, 2020).

¹⁴¹ Video call interview with a lawyer (May 29, 2020).

¹⁴² Sukanya Shantha, *The People’s Fighters: Meet the Five Arrested in the Bhima Koregaon Case*, THE WIRE (Aug. 28, 2018), <https://thewire.in/caste/meet-the-five-arrested-in-the-bhima-koregaon-case>.

¹⁴³ Navsarjan Trust, Safai Karamchari Andolan, National Confederation of Dalit and Adivasi Organisations, National Campaign for Dalit Human Rights, Wada Na Todo Abhiyan, etc.

Some of these organizations have been promoting capacity building and skill development among Dalits, as well as educating them about their rights. One of these organizations is the National Campaign for Dalit Human Rights (NCDHR), which was constituted in 1998. Over time, the NCDHR has established four divisions, with distinct objectives, from promoting mobilization to working for the rights of Dalit women and mitigating caste-based violence.¹⁴⁴ Members of the NCDHR observed that caste-based violence, particularly in rural areas, continues to increase with alarming frequency.¹⁴⁵ At the same time, due to factors relating to explicit and implicit bias that disadvantage the Dalit community, a vast number of cases of caste-based violence are either compromised or settled.¹⁴⁶ A former Chief Justice of India corroborated this point.¹⁴⁷

In response to these challenges, the National Dalit Movement for Justice (NDMJ), an arm of the NCDHR, has been working “with the criminal justice administration systems to address the issues of access to justice for those affected by atrocities and violence.”¹⁴⁸ NDMJ has brought “committed Dalits and Adivasis advocates together and [formed] state-level advocates forums” with the aim of creating an effective platform for intervening in Dalit atrocities cases in courtrooms. To date, they have trained more than 2,000 lawyers across the country.¹⁴⁹

Most Dalit lawyers, however, have never achieved the economic security necessary to either establish their own practices or have any realistic choice in the type of work they undertake.¹⁵⁰ This situation is particularly acute in rural areas, especially in the states of Haryana, Rajasthan, and Uttar Pradesh. Further, government-appointed public prosecutors typically are ill-equipped to handle cases of caste atrocities against Dalits.¹⁵¹ “Most of the public prosecutors at district levels neither have knowledge of atrocities law nor are they sensitive” towards the background of victims.¹⁵²

¹⁴⁴ All India Dalit Mahila Adhikar Manch, NAT'L CAMPAIGN ON DALIT HUMAN RIGHTS, <http://www.ncdhr.org.in/all-india-dalit-mahila-adhikar-manch/>.

¹⁴⁵ Video call interview with an activist (Jul. 21, 2020); video call interview with an activist (Jul. 21, 2020); video call interview with an activist (Jul. 25, 2020); video call interview with an activist (Jul. 25, 2020).

¹⁴⁶ *Conviction under SC/ST Act just 27% in 2014-16*, THE HINDU (Jul. 29, 2018), <https://www.thehindu.com/news/national/conviction-under-scst-act-just-27-in-2014-16/article24545267.ece>; video call interview with a former Chief Justice of India (Aug. 7, 2002) (pointing out the lower conviction rate in cases of atrocities against Dalits).

¹⁴⁷ Video call interview with a former judge on the Supreme Court of India (Aug. 7, 2020).

¹⁴⁸ *Area of Work*, NAT'L CAMPAIGN FOR DALIT HUMAN RIGHTS, <http://www.ncdhr.org.in/ndmj-areas-of-work/>.

¹⁴⁹ Video call interview with an activist (Jul. 21, 2020); video call interview with an activist (Jul. 21, 2020); video call interview with an activist (Jul. 25, 2020); video call interview with an activist (Jul. 25, 2020).

¹⁵⁰ Video interviews with members of NCDHR (Jul. 21, 2020 and Jul. 25, 2020).

¹⁵¹ Video call interview with a lawyer/activist (May 29, 2020); video call with a researcher (May 29, 2020); telephone interview with a lawyer in Delhi, India (Jun. 2, 2020); video call interview with an activist (Jul. 21, 2020).

¹⁵² Video call interview with an activist (Jul. 21, 2020).

H. Biases from the Bench

Dalits also have found instances of subtle implicit biases and prejudices among judges. Some of them complained about judges giving them less time to make submissions.¹⁵³ Kiruba Munusamy, one of the few Dalit lawyers who has practiced in the Supreme Court and Madras High Court, described her experiences:

I, myself, in my 10 years of practi[c]ing law, have faced discrimination as a first-generation Dalit woman lawyer who did not get to join a senior advocate's office. Most of the time, as a young independent lawyer presenting my case, or when a senior advocate appears as the opponent, I have been literally asked to shut up. Many of my women colleagues have the same complaint. On the other hand, [upper caste] sons, daughters, and juniors of the judges and advocates are treated specially, with comfortable jokes and witticisms, inside courtrooms. I have also witnessed judges greatly encouraging those clans by granting stays and positive orders even on occasions where they request adjournments.¹⁵⁴

Munuswamy further highlighted that when amicus curiae and arbitrators are appointed, lawyers from oppressed communities who could bring a different perspective to cases are not considered.¹⁵⁵ This point appears to be corroborated by two important cases. When a two-judge panel of the Supreme Court decided to bring procedural safeguards against a stringent anti-discrimination law,¹⁵⁶ the amicus party appointed by the court was an upper-caste member who made statements against the law.¹⁵⁷ This ultimately led the court to “effectively gut the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Atrocities Act).”¹⁵⁸ Similarly, in the recent case of a Dalit girl who was gang-raped and murdered in Hathras district of Uttar Pradesh state and the local administration forcefully cremated her body, the Allahabad High Court

¹⁵³ Telephone interview with a practicing lawyer in Maharashtra, India (Jul. 8, 2020); telephone interview with a practicing lawyer in Delhi, India (Jul. 12, 2020); video call interview with an activist (Jul. 21, 2020); video call interview with an activist (Jul. 21, 2020); telephone interview with a practicing lawyer in New Delhi, India (Aug. 2, 2020).

¹⁵⁴ Kiruba Munuswamy, *The nauseating nepotism and caste-based discrimination that exists in Indian judiciary*, THE PRINT, (Apr. 11, 2018), <https://theprint.in/opinion/the-nepotism-and-caste-based-discrimination-that-exists-in-indian-judiciary/48542/>.

¹⁵⁵ *Id.*

¹⁵⁶ Schedules Caste and Scheduled Tribe (Prevention of Atrocities) Act and Rules, 1989.

¹⁵⁷ *Restricting Anticipatory Bail For Offences Under SC/ST Act Unconstitutional, Submits Amicus, SC Reserves Judgment*, LIVE LAW.IN (Feb. 18, 2018), <https://www.livelaw.in/restricting-anticipatory-bail-offences-sc-st-act-unconstitutional-submits-amicus-sc-reserves-judgment-read-written-submissions/>.

¹⁵⁸ *Supreme Court Judgement on SC ST Atrocity Act Represents Overreach and Betrays Constitution itself*, FIRST POST, (April 3, 2018), <https://www.firstpost.com/india/supreme-court-judgment-on-scst-atrocities-act-represents-overreach-betrays-constitution-itself-4416087.html>.

took *suo motu* cognizance of the blatant violation of the rights of the victim's family.¹⁵⁹ Neither of the two *amicus* parties appointed by the court were from the Dalit community.

One Dalit lawyer practicing in the Supreme Court for more than a decade shared that he had to face several challenges in starting his own practice.¹⁶⁰ Quite often, he would experience differences in the approaches adopted by senior advocates in handling cases related to Dalits.¹⁶¹ He shared a few anecdotes from when three Supreme Court judges, who were considered liberal in their outlook, stopped him from making his submissions in cases of atrocities and affirmative action. In one instance, "I was stopped by the judge to read the facts in an atrocities case."¹⁶² In another case, when he was arguing in a sensitive case where a Dalit elected representative was paraded naked after winning the election, the presiding judge in the Supreme Court made fun of him. He asked if the attorney would commit an atrocity if he did not give the relief demanded, and the audience laughed.¹⁶³ The lawyer said, "I was surprised to see a joke from a Supreme Court judge in a sensitive case where a Dalit woman was paraded naked."¹⁶⁴ Another lawyer, belonging to the Bahujan community and working before Bombay High Court and district courts, shared experiences where the presiding judges would ask him to make his submissions "dispassionately."¹⁶⁵

In their judgments, some Supreme Court judges have used problematic terms for Dalits and Adivasis.¹⁶⁶ Judges in affirmative action often referred to reservation/quotas as "crutches."¹⁶⁷ It seems evident from these findings that members of the judiciary need to be provided implicit and explicit bias training at every level regularly.¹⁶⁸

¹⁵⁹ Akshita Saxena, *Allahabad HC Takes Suo Moto Cognizance of Hathras Case; Says 'Incidents Have Shocked Our Conscience*, Livelaw.in, (Oct. 1, 2020), <https://www.livelaw.in/top-stories/allahabad-hc-takes-suo-moto-cognizance-of-hathras-case-says-incidents-have-shocked-our-conscience-163851>.

¹⁶⁰ Telephone interview with a practicing lawyer in New Delhi, India (Aug. 2, 2020).

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Telephone interview with a practicing lawyer in Maharashtra, India (Jul. 8, 2020).

¹⁶⁶ Anurag Bhaskar, *When It Comes to Dalit and Tribal Rights, the Judiciary in India Just Does Not Get It*, THE WIRE, (May 3, 2020), <https://thewire.in/law/when-it-comes-to-dalit-and-tribal-rights-the-judiciary-in-india-just-does-not-get-it>.

¹⁶⁷ *Indra Sawhney v. Union of India*, AIR 1993 SC 477 (1992) (India).

¹⁶⁸ Video call interview with a lawyer in Bihar, India (May 27, 2020); telephone interview with a bureaucrat (Jun. 20, 2020).

I. Law Clerks

There is a dearth of research on the role and social profiles of law clerks in India.¹⁶⁹ Yet the process of recruitment of law clerks appears to be inaccessible and opaque to a majority of law students.¹⁷⁰ Further, there are no affirmative action policies applied by the Supreme Court or any of the High Courts in recruiting law clerks for judges.¹⁷¹ One sitting High Court judge emphasized that there should be a study on the social profiles of law clerks, and that law graduates from Dalit and other marginalized communities should be given opportunities in this entire process.¹⁷²

J. Corporate Law Firms

As part of the study, three respondents from Dalit community working in corporate law firms at various positions (two partners and one associate) were also interviewed.¹⁷³ All of these respondents graduated from national law universities. Given the small sample size, the experiences of these respondents are indicative only of the challenges that Dalit lawyers in corporate law firms *may* face. However, it is hoped that this limited sample will serve as a basis for a comprehensive examination in the future.

All three respondents shared that they do not face caste-based discrimination in the workplace, as they have never disclosed their caste-identity to anyone. One senior professional working outside of India explained that “I never disclosed my caste identity officially at any of my jobs as I was scared of caste-based discrimination. Hence, I never experienced any caste issue.”¹⁷⁴ Another stated that having a caste-neutral surname benefited him, as it prevented disclosure of his identity as a Dalit.¹⁷⁵ All of them pointed out that caste diversity was not even a secondary factor in the hiring processes of the firms they worked in. However, two of them who work in India said that gender diversity is a consideration in their law firms’ recruitment processes.¹⁷⁶ Yet, without properly accounting for caste issues and how they overlap with gender diversity, recruitment processes require further refinement.

Additionally, all the respondents shared that while some mechanisms do exist to combat workplace issues, including sexual harassment, the same kinds of mechanisms are not available in cases of caste-based discrimination. The respondents were also unanimous in stating that they took corporate jobs based on concerns that, due to their caste, they lacked connections to consider

¹⁶⁹ Abhinav Chandrachud, *From Hyderabad to Harvard: how US law schools make it worthwhile to clerk on India’s Supreme Court*, 21 INT’L J. OF THE LEGAL PRO. 73 (2014).

¹⁷⁰ ANURAG BHASKAR, LAW CLERKS AND ACCESS TO JUDGES: A COMPARATIVE REFLECTION ON THE RECRUITMENT PROCESS OF LAW CLERKS IN INDIA, (August 10, 2020), <https://ssrn.com/abstract=3732931>.

¹⁷¹ *Id.*

¹⁷² Video call interview with a sitting High Court judge (Jul. 18, 2020).

¹⁷³ Telephone interview with a corporate lawyer (Jul. 3, 2020); telephone interview with a corporate lawyer (Jul. 3, 2020); written responses interview with a corporate lawyer (Jul. 20, 2020).

¹⁷⁴ Written responses Interview with a corporate lawyer (Jul. 20, 2020).

¹⁷⁵ Telephone interview with a corporate lawyer (Jul. 3, 2020)

¹⁷⁶ *Id.*; telephone interview with a corporate lawyer (Jul. 3, 2020).

litigation as a realistic career choice. Accordingly, in order to ensure their own financial security and independence, they chose careers in the corporate sector while sometimes refusing to disclose their caste.

V. LEGAL EDUCATION

Addressing structural challenges in the legal profession against Dalits should start at the beginning, i.e., making legal education accessible, affordable, and supportive.¹⁷⁷ The former Solicitor General for India stated:

The task of ensuring fair representation of historically oppressed and presently underrepresented groups in the Indian judiciary must begin with ensuring their representation and protection in the law schools themselves. The better the education opportunities for them, the better they will flourish later in the profession.¹⁷⁸

An academic shared their view that legal education is very empowering and can be used to build a network of diverse civil rights lawyers who can bring justice to underserved communities, including the Dalits.¹⁷⁹ He believed that the curriculum and support system at law schools should further be redesigned to upgrade the skills (such as language and communication) of students from marginalized social groups. This suggestion also finds its basis in a socioeconomic census conducted at the National Law School of India University, Bengaluru. The survey, covering 97.9% of the student body, presented the “details about inclusivity and accessibility at the country’s premier law institute by analyzing the correlations between background factors and performance.” It was noted in the survey, “the findings ... strongly indicate that one’s background remains a determining factor in one’s performance in academics and extracurricular activities, participation in student bodies and future plans and options.”¹⁸⁰

The observation about barriers to quality legal education remain important to many,¹⁸¹ as a High Court judge aptly summarized the challenges faced by Dalits in acquiring a good legal education:

¹⁷⁷ Video call interview with a lawyer in the state of Uttar Pradesh (May 27, 2020); video call interview with a lawyer in the state of Bihar (May 27, 2020); video call interview with a lawyer (May 29, 2020); telephone interview with an academic (Jun. 17, 2020); video call interview with a researcher (Jun. 20, 2020); telephone interview with a journalist (Jun. 26, 2020); video call interview with a senior advocate at the Supreme Court of India (Jul, 11, 2020); written responses interview with a senior advocate at the Supreme Court of India (Jul. 13, 2020).

¹⁷⁸ Written responses interview with a senior advocate at the Supreme Court of India (Jul. 13, 2020).

¹⁷⁹ Telephone interview with an academic (Jun. 17, 2020). See written responses interview with (Jun. 25, 2020) (“As an academic I have always felt so less has been done in terms of the law. So much left to be done. Opening legal aids and legal clinics like the NAACP for backward classes in India. The more and rigorous the better.”).

¹⁸⁰ Chirayu Jain et al., *School Accessibility and Inclusivity at National Law School*, ECONOMIC & POLITICAL WEEKLY (Jan. 6, 2018), <https://www.epw.in/journal/2018/1/notes/accessibility-and-inclusivity-national-law-school.html?destination=node/150735>.

¹⁸¹ Video call interview with a lawyer (May 29, 2020); video call with a researcher (May 29, 2020); written responses interview with a sitting High Court judge (Jun. 16, 2020); video call interview with a researcher (Jun. 20, 2020);

[The] first challenge is that of access to good legal education, thus amounting to a sparse representation. Professionals coming from such deprived communities lack adequate training, especially from a practical point of view. India today is spanned with both public and private law schools. But to what extent are such beau monde law schools accessible by the oppressed sections like the Dalits? To be in such schools, higher income is a prerequisite to getting into a premier institution like NLS; Bangalore also needs good coaching and pre-preparation. Apart from that, even if a Dalit student benefiting from the reservation criteria reaches there, the struggle for him/her commences from that very point, for survival.¹⁸²

The late Professor Shamnad Basheer started an organization, Increasing Diversity by Increasing Access (IDIA),¹⁸³ through which a few students from underprivileged communities were trained every year to enter elite national law schools—a group of specialized schools with five-year law degree programs in India.¹⁸⁴ However, one issue was that not all students who qualified through the entrance exam for law schools with academic support from IDIA could get funding. Basheer had expressed his sorrow at the fact that out of the 12 IDIA scholars who gained admission to leading law schools in 2019, seven students could not get financial donors.¹⁸⁵ Basheer had further been advocating for reform of the entrance criteria for elite law schools, which, in his view, was exclusionary to students from marginalized groups. As he observed:

CLAT [Common Law Admission Test] can be made more equitable by ensuring that questions that disadvantage sections of a society (such as questions requiring knowledge of golf, a rich man's game) are not posed. And that the paper assesses legal aptitude and not prior knowledge of the law. Prior knowledge of the law would invariably constitute another huge access bottleneck, as it then requires students to study tons of legal tomes and go to expensive coaching centers. And unduly advantages those with prior legal backgrounds.¹⁸⁶

Despite these concerns, several students from the Dalit community, due to reservation in national law schools, are able to enter these elite schools every year. However, the stereotypes against them continue. Basheer had shared that some of the IDIA students had to face prejudice, discrimination

telephone interview with a journalist (Jun. 26, 2020); video call interview with a former judge at the Supreme Court of India (Jul. 14, 2020).

¹⁸² Written responses interview with a sitting High Court judge (Jun. 16, 2020).

¹⁸³ *An IDIA that democratized law*, THE INDIAN EXPRESS (Jun. 4, 2013), <http://archive.indianexpress.com/news/an-idea-that-democratized-law/1133553/0>.

¹⁸⁴ *Empowering Underprivileged Students through Legal Education*, MONEYLIFE, (Jun. 9, 2016), <https://www.moneylife.in/article/empowering-underprivileged-students-through-legal-education/47140.html>.

¹⁸⁵ Mahtab Alam, *Shamnad Basheer, My Friend And One of the Country's Brightest Legal Minds*, THE WIRE (Aug. 11, 2019), <https://thewire.in/law/shamnad-basheer-tribute>.

¹⁸⁶ Chirayu Jain, *An unpublished 2016 interview with Shamnad Basheer: Our Harts are in our villages*, LEGALLY INDIA, (Sept. 3, 2019), <https://www.legallyindia.com/lawschools/an-unpublished-2016-interview-with-shamnad-basheer-our-harts-are-in-our-villages-20190903-10826>.

and harassment from peers.¹⁸⁷ Several respondents who graduated from or currently study in one of the national law schools openly acknowledged their privilege as members of the upper castes and noted that the academic or student culture has been dominantly against reservations in their law schools.¹⁸⁸ It was an “upper-caste-narrative based, elite English-speaking culture.”¹⁸⁹ Abhishek Asha Kumar, a Dalit student at NLSIU Bangalore, penned a strong note on his experiences in the law school:

Academic achievers and discourse creators keep discussing how caste-based discrimination has either vanished or radically reduced with the onset of education. As someone who studies at the premier center for legal instruction in the country, I would like to categorically disagree. Caste discrimination has merely evolved into discrimination by other means. Language, clothing, taste in music or your consumption of pop culture, each act as a proxy for your socioeconomic location. While the cliques that form around these may seem banal, they represent a much deeper divide ... When you enter, they ask you your rank, and then look at you with pity. When you speak English, they mock, and they jeer ... Their spoken English reeks of condescension and their debates uplift none. Their pretense of inclusivity dies when they shoot down someone for speaking Hindi, and again, when their moot courts ‘groom’ and ‘polish’ the pre-polished selected for ‘grooming’ and ‘polishing.’¹⁹⁰

This sentiment was shared by several respondents, who were students in different law schools throughout the country.¹⁹¹ Manisha Arya, another student at NLSIU, also wrote strongly about the experiences of Dalit students:

The importance of mentorship in law school can only be understood by someone who did not receive it. Unlike many other students, I did not get a mentor in the form of a rank parent, got no guidance on how to go about college, had no one to proofread my projects—no one to provide the support which could have made my journey a bit easier. I am not the only reservation student who has faced this problem, it is a vicious cycle, where the category students are so caught up in their own academics that they

¹⁸⁷ Anurag Bhaskar, *Professor Shamnad Basheer: Reminiscences From Harvard Law School*, LIVELAW.IN (Aug. 16, 2019), <https://www.livelaw.in/columns/professor-shamnad-basheer-reminiscences-from-harvard-law-school-147248>.

¹⁸⁸ Video call interview with a researcher (Jun. 20, 2020); written responses interview with a recent graduate (Jul. 6, 2020); written responses interview with a student (Jul. 17, 2020).

¹⁸⁹ Video call interview with a researcher (Jun. 20, 2020).

¹⁹⁰ Abhishek Asha Kumar, *Learning at Law School – Of High Tables and Floors*, QUIRK (May 9, 2020), <https://nlsquirks.in/learning-at-law-school-of-high-tables-and-floors/>.

¹⁹¹ Video call interview with a lawyer in the state of Uttar Pradesh (May 27, 2020); video call with a researcher (May 29, 2020); written responses interview with a student/recent graduate (Jul. 1, 2020); written responses Interview with a corporate lawyer (Jul. 3, 2020); written responses interview with a practicing lawyer in Delhi, India (Jul. 5, 2020); written responses interview with a recent law school graduate (Jul. 10, 2020).

often do not have the time and energy to invest in another student ... Two of my batchmates ended their lives, and both of them belonged to the reservation category. I hesitate to write about it as the struggles they suffered in their minds can only be known to them.¹⁹²

This is the situation in different national law schools. One recent graduate from a leading law university in Delhi shared his trauma as follows: “For many months I faced an inferiority complex within and it was totally difficult for me to intermingle with my batchmates.”¹⁹³ Another Dalit student from the same law school said:

the caste operates within law school which affects the opportunities that come our way in the law school. The mentorship plays an important role in getting these opportunities, be it the corporate jobs or the admission in the postgraduate programs. Most often the social circles within the law school are a consequence of caste, class, language, privilege, and in this way the mentorship is descended through these circles into the students belonging to same background, leaving little scope for students from underprivileged backgrounds, especially the first-generation learners.¹⁹⁴

There were several examples found of fellow classmates and some teachers leading a “practice of othering.”¹⁹⁵ Several students believed that professors in law schools are not sensitive to the concerns of Dalit students and carry stereotypes such as Dalit students being less meritorious.¹⁹⁶ This seems to be related to another remark made by the professor from the United Kingdom,¹⁹⁷ who stated that the Indian legal academia has been misinformed as well as dismissive of the caste question, unlike their American counterparts, who have led tremendous legal discourse on race and race-based disadvantages.¹⁹⁸ A few respondents shared that Article 17¹⁹⁹ of the Constitution

¹⁹² Manisha Arya, *Graduating as an Upper-Class Bahujan Woman*, QUIRK (Apr. 18, 2020), <https://nlsquirks.in/graduating-as-an-upper-class-bahujan-woman/>.

¹⁹³ Written responses interview with a senior advocate at the Supreme Court of India (Jul. 13, 2020).

¹⁹⁴ Written responses interview with a recent law school graduate (Jul. 10, 2020).

¹⁹⁵ Written responses interview with a corporate lawyer (Jul. 3, 2020); written responses interview with a practicing lawyer in Delhi, India (Jul. 5, 2020); written responses interview with a recent graduate (Jul. 6, 2020); written responses interview with a student/recent graduate (Jul. 12, 2020); written responses interview with recent law school graduate (Jul. 12, 2020); written responses interview with a senior advocate at the Supreme Court of India (Jul. 13, 2020); written responses interview with a student (Jul. 15, 2020); written responses interview with a student (Jul. 15, 2020); written responses interview with a student (Jul. 15, 2020); written responses interview with a student (Jul. 17, 2020); written responses interview with a recent law school graduate (Jul. 10, 2020).

¹⁹⁶ Video call interview with a lawyer in the state of Uttar Pradesh (May 27, 2020); video call interview with a lawyer in Bihar, India (May 27, 2020); video call interview with a lawyer/activist (May 29, 2020); video call interview with a researcher (May 29, 2020); video call interview with a researcher (Jun. 20, 2020); Kumar, *supra* note 190.

¹⁹⁷ Interviewee requested to remain anonymous.

¹⁹⁸ Telephone interview with an academic (Jun. 17, 2020).

¹⁹⁹ Article 17 of the Constitution of India provides: “‘Untouchability’ is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of ‘Untouchability’ shall be an offence punishable in accordance with law.”

of India and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989²⁰⁰ were not at all discussed by their constitutional law professors.²⁰¹ Besides these issues, some institutional practices in national law universities have been problematic, too. One respondent pointed out to the hostel room allocation by different NLUs on the basis of the entrance exam CLAT ranks, and hence ghettoization of individuals on the basis of caste. For instance, in NALSAR University of Law, Hyderabad,

students belonging to Scheduled Caste/Scheduled Tribe category were given rooms on the upper floors of the hostel, while those belonging to the general category were given rooms on the ground floor for the first two years, the rationale being rooms allotted on the basis of marks.²⁰²

This “essentially also meant the ghettoi[z]ation of those who had gotten admission through reservation.”²⁰³ The practice has continued in other law schools.²⁰⁴ As she noted, “[t]he administration is drawing such lines and creating such an environment that can result in future acts of discrimination.”

These narratives show that Dalit students have lacked access to a good legal education and face discrimination and stereotypes when they do enter into educational spaces through the help of reservations/quotas.²⁰⁵ The pressure on them to excel in academics is immense.²⁰⁶ Further, some complained about the lack of a mental health support mechanism in their law schools.²⁰⁷ A Diversity Survey conducted by IDIA in 2018-19 also revealed that “A sizeable percentage of students [at various NLUs] have suffered discrimination or been subjected to disparaging remarks by their classmates and/or faculty members.”²⁰⁸ The report rightly put an onus “on the NLUs to

²⁰⁰ Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989 (“An Act to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.”),

²⁰¹ Video call interview with a lawyer in the state of Uttar Pradesh (May 27, 2020); video call interview with a lawyer in Bihar, India (May 27, 2020); video call interview with a lawyer (May 29, 2020); video call interview with a researcher (May 29, 2020).

²⁰² Bendukuri Maurya Tej, *NALSAR: How Hostels Used to be Segregated on the Basis of CLAT Scores – And Caste*, LIVE WIRE (Jul. 12, 2019), <https://livewire.thewire.in/campus/nalsar-caste-hostel-segregation/>.

²⁰³ *Id.*

²⁰⁴ See written responses interview with student at the National Law University (Jul. 17, 2020) (sharing that such practice is still being carried out in her law school).

²⁰⁵ Video call interview with a lawyer in Uttar Pradesh, India (May 27, 2020); video call interview with a lawyer in Bihar, India (May 27, 2020); video call interview with a researcher (Jun. 20, 2020).

²⁰⁶ Video call interview with a lawyer in Uttar Pradesh, India (May 27, 2020); video call interview with a lawyer in Bihar, India (May 27, 2020); video call interview with a researcher (Jun. 20, 2020); video call interview with a sitting High Court judge (Jul. 18, 2020).

²⁰⁷ Video call interview with a lawyer in the state of Uttar Pradesh (May 27, 2020); video call interview with a lawyer (May 29, 2020); video call with a researcher (May 29, 2020); written responses interview with a senior advocate at the Supreme Court of India (Jul. 13, 2020); written responses interview with a student (Jul. 15, 2020); written responses interview with a recent graduate (Jul. 20, 2020); written responses interview with a student (Jul. 17, 2020); written responses interview with a recent graduate (Jul. 10, 2020).

²⁰⁸ INCREASING DIVERSITY BY INCREASING ACCESS TO LEGAL EDUCATION (IDIA), *supra* note 8.

first, acknowledge the existence of such problems, and second, to channel conversation around them in a manner that helps students assimilate better into the law school environment.”²⁰⁹ A former Solicitor General for India explained that “so long as this culture [of discrimination] is prevalent in our society, the legal profession cannot become the epitome of social justice, which it ought to become otherwise.”²¹⁰

Apart from national law schools and other government colleges, there is no affirmative action in private law schools, even among the leading ones. Six recent graduates from one of the leading private law schools in India shared that there was not a single Dalit student among them.²¹¹ One student respondent pointed out: “Upper-caste students monopoliz[e] networks in college, be it academia, debating, or mootings, which are all exclusionary (closed societies, etc.) ... as opposed to being able to account for the background of students while offering opportunities to improve.” Another respondent said:

“Most individuals who study at the law school belong to an upper-caste background (such as Brahmins, Kayasthas, Kshatriyas, Vaishyas, etc.) or come from economically prominent families from non-Hindu religions (especially Christians, Sikhs, and Buddhists). There are comparatively fewer Muslim students and barely any students from a lower-caste background (such as Dalits, Mahadalits, etc.).”²¹²

However, these remarks could not be cross-checked with any data, as the law school had not disclosed data in public in this regard. Some explained that that the student culture is hostile to the concerns of Dalit students, who are already present in very limited numbers. This raised the issue that private law schools should formulate a formal affirmative action policy, which could ensure enrolling of more Dalit students and hiring of more professors and administrative staff from the Dalit community.²¹³

Further, a few respondents also noted that there were stereotypes against law professors who belonged to the Dalit community and were considered undeserving.²¹⁴ This facet of the issue also should be explored. Four respondents specifically pointed out that apart from Dalit students, the experiences of Scheduled Tribes, Denotified Tribes, and Muslim students must also be recorded.²¹⁵ One respondent made an important suggestion—the need to study how many candidates from the

²⁰⁹ *Id.*

²¹⁰ Written responses interview with a senior advocate at the Supreme Court of India (Jul. 13, 2020).

²¹¹ Written responses interview with a corporate lawyer (Jun. 30, 2020); written responses interview with a recent graduate (Jul. 1, 2020); written responses interview with a law school graduate (Jul. 2, 2020); written responses interview with a recent graduate (Jul. 5, 2020); written responses interview with a recent graduate (Jul. 20, 2020); written responses interview with a current student (Jul. 21, 2020).

²¹² Written responses interview with a recent graduate (Jul. 5, 2020)

²¹³ Written responses interview with a recent graduate (Jul. 20, 2020).

²¹⁴ Video call interview with a lawyer in the state of Uttar Pradesh (May 27, 2020); video call interview with a researcher (May 29, 2020).

²¹⁵ Video call interview with a practicing lawyer in Maharashtra, India (Jul. 8, 2020); telephone interview with a practicing lawyer in Delhi, India (Jul. 12, 2020); written responses interview with a student (Jul. 15, 2020); video call interview with a sitting High Court judge (Jul. 18, 2020).

Dalit community and other marginalized groups have gone abroad for their LLM or other master's degree programs or qualified for prestigious scholarships.²¹⁶ Due to structural challenges, it can be difficult for Dalits to get selected for prestigious scholarships such as Rhodes, Chevening, Inlaks, etc. At the same time, there seems to be no active effort from scholarship committees to ensure social representation among their selected candidates.²¹⁷

Some of the recent Dalit graduates and current students showed a reluctance to take on a career as a litigating lawyer, as they do not have networks or financial support from family. Thus, the job would not be financially stable.²¹⁸ One current student said, "I always had that feeling that in the legal fraternity of nepotism, how will someone like me, who will be a first-generation lawyer, survive litigation? Also, the Dalit community in the field of litigation is not that strong, which weakens my aim for litigation."²¹⁹ However, there were positive messages from respondents as well. A number of Dalit students stated that despite all challenges, they chose to study law as they found it empowering.²²⁰

VI. CONCLUSION AND RECOMMENDATIONS

In 1950, when India adopted its constitution, enshrining the values of liberty, equality, and fraternity, it was hoped that it would bring positive change for its citizens from the Dalit community. Unfortunately, as this chapter illuminates, even after 70 years, citizens from the Dalit community are struggling to create a presence in the legal profession and the judiciary. As a number of respondents stated, the first thing that must be done is for relevant stakeholders to recognize discrimination faced by the Dalits.²²¹ A sitting High Court judge believed that representation of Dalits in the legal profession would increase "with the support from all quarters in that regard."²²² It is hoped that this chapter will help facilitate such a dialogue and that immediate steps will be taken to address the structural problems highlighted herein.

To that end, the following recommendations are offered:

For the Government of India:

²¹⁶ Interview with an academic in Sonapat, Haryana, India (Jul. 10, 2020).

²¹⁷ *Id.*

²¹⁸ Written responses interview with a recent law school graduate (Jul. 12, 2020); written responses interview with a senior advocate at the Supreme Court of India (Jul. 13, 2020); written responses interview with a recent law school graduate (Jul. 10, 2020).

²¹⁹ Written responses interview with recent law school graduate (Jul. 12, 2020).

²²⁰ Video call interview with a lawyer in the state of Uttar Pradesh (May 27, 2020); video call interview with a lawyer (May 29, 2020); video call interview with a researcher (May 29, 2020).

²²¹ Video call interview with a lawyer in the state of Bihar (May 27, 2020); video call interview with a judicial officer (May 27, 2020); telephone Interview with an academic (Jun. 30, 2020); written responses interview with a recent graduate (Jul. 6, 2020); video call interview with a practicing lawyer in Maharashtra, India (Jul. 8, 2020).

²²² Written responses interview with a sitting High Court judge (Jun. 16, 2020).

1. Adopt a firm and systematic policy of affirmative action, not just for members of the scheduled castes and Adivasi (indigenous) community, but also OBCs and other marginalized communities, in order to drive systemic change.
2. Collect and publish data on social diversity in the legal profession and the judiciary be every year for public discourse and scrutiny.
3. Establish an initiative similar to the Judicial Diversity Taskforce in the United Kingdom, so that a pool of potential candidates from Dalits and other marginalized communities is made available.

For the Judiciary:

1. Ensure that there is a fair share of representation of Dalits and other marginalized social groups in the Supreme Court and the High Courts.
2. Prevent tokenism in appointments by ensuring a reasonable number of best candidates from the Dalit community are elevated to the High Courts and Supreme Courts in the same way as advocates from different social segments / regions of the country / states or different religious communities.
3. Clear all backlogs in judicial vacancies reserved for Dalits in the lower judiciary as soon as possible.
4. Create a policy for the Supreme Court and High Courts to make the recruitment process of law clerks/judicial clerks transparent and inclusive by maintaining a fair representation of young professionals from Dalit and other marginalized social groups
5. Conduct a study on the social profiles of law clerks who have worked or are working in different High Courts and the Supreme Court.
6. Train judges at all levels to avoid usage of problematic terms based on implicit bias, stereotypes, and gestures which affect the dignity of Dalits and those from other marginalized communities.
7. Conduct studies to understand why and how Dalit lawyers have not been able to qualify for district judge posts through direct recruitment in different states.

For Law Firms and the Bar Council:

1. Encourage senior advocates to mentor lawyers from the Dalit community and for bar councils and law firms to create institutional mentorship and scholarship programs for Dalit lawyers guaranteeing them greater access to work in various chambers.
2. Establish schemes in bar councils and bar associations to support young law graduates from the Dalit community who wish to enter the field of litigation.
3. Ensure that more members from the Dalit community are represented in the leadership of bar councils and associations so they can improve efforts to diversify the legal profession.
4. Facilitate an open and transparent dialogue on the issues of representation and challenges facing Dalit lawyers among senior advocates and leaders of the bar.

5. Recognize eligible lawyers from the Dalit and other marginalized communities as senior advocates in each cycle.
6. Commission and conduct studies on the career trends of lawyers from the Dalit community.

For Law Schools:

1. Adopt effective affirmative action policies in the admissions and hiring process for private law schools.
2. Ensure that all law schools create anti-discrimination monitoring and evaluation institutions within the law school administration.
3. Facilitate conversations between law schools and judicial academics on removing myths against affirmative action/reservation.
4. Establish adequate mental health support programs for members of various castes and indigenous communities at all law schools.



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