

## IMPLEMENTATION OF CEDAW DUE TO HUMAN RIGHT AND EDUCATION DISCRIMINATION REGARDING DALIT WOMAN IN INDIA

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### **Abstract**

*The focus of this research is to understand the problem in implementing the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) due to human right and education discrimination regarding Dalit woman in India. This research is using International Law, Human security and human right education concept to analyze the problem. Qualitative method is chosen to accommodate a more understanding of the social phenomena rather than numbers. Data are collected through literature review from a variety of resources. The finding of this research is that India society interacted in hierarchies. Historically, the Hindu caste is divided into four categories, but there is still the lowest caste level, known as Dalit. Discrimination of Dalit's is normally practiced because they are considered a group that does not have Varma. Dalit's are often subjected to inhumane treatment, even being excluded from everyday life including the right to have education. The majority of Dalit women have experienced one or more incidents of violence, such as verbal abuse, physical assault, sexual harassment, rape, and domestic violence. The implementation of CEDAW in India is not the main reference in its national law. This is because there are several articles that are reserved by the Indian government, even though it has been ratified and included as international law.*

**Keyword:** CEDAW; Gender Discrimination; Human Security

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## INTRODUCTION

As a Hindu practicing country, India social power operates in a hierarchical way which embedded in Veda. According to Bhagavadgita 4.13, the society is created in four groups depending on their nature and occupation. There for, Catur Warna (Brahmana, Ksatria, Waisya, Sudra) in the Hindus Veda is quite difference in the definition of caste. Critics argue that the fact that it is because of the process of institutionalization, the religions started establishing authoritarian tendencies and engaged in inhuman practices, especially towards the lowest caste showing fascist nature Brahmanic philosophy. According to the teaching, Dalit doesn't even worth to introduce as caste (Anil, 2016).

The Dalit is born into a life of discrimination influenced by centuries of societal stigma. As a minority social power in India, they are often faced with discrimination, marginalization, stigma and violence because they do not have Varma. Varma is a belief held by Hinduism that in general humans are created from various body parts from the Purusha God. The understanding of Dalit taken from Sanskrit is defined as a cracked or divided (adminwebs1antro, 2022).

Discrimination based on heredity results in their lives being marginalized and ostracized, so it is closely related to violations of human rights (HAM). It turns out that discrimination based on heredity does not only have an impact on institutional arrangements, social structures, and daily life, it becomes the shadow of the government which is implemented through applicable laws. The after effect of injustice and discrimination causes trauma and suffering for generations. Stigma is attached to a person from birth to death, affecting aspects of life starting from education, place of residence, employment, and access to justice and political participation. Dalit women are often victims of sexual violence, human trafficking, and are vulnerable to early and forced marriage, forced labor, and harmful cultural practices.

## METHODS

Before coming to substantial matter, this research is carried out using qualitative method to understand social phenomena that occur between individuals and groups. It focuses on the things such as reasoning, meaning, and definitions of a particular phenomenon or everyday life problems (Mohtar Mas'ud, 1994).

Regarding women discrimination in India, data are being collected through literature review in the form of text and also from other digital data such as audio and video. After the data are collected, this research used a thematic technic of analyses to find a pattern and there for, a theme.

This research is subjected to a state actor and international law. There for, data are being sought and filtered through official Indian government websites and documents in investigating or explaining the reasons for an incident (Rasyid. et. al., 2019). By doing so, hopefully it can explain descriptively the role of CEDAW advocacy in implementing and overcoming cases on gender discrimination against Dalit caste women in India

## RESULT AND DISCUSSION

Law and power had such a great impact in the international society. Law is influence by political elements and it cannot isolate from social-politics

surrounding. In other words, Power and law are mangling related yet the law inherently contains an element of power. However, power can produce law, direct law and limit its reach. The Law is an *ex post facto* instrument of the stronger to control over the weak and it's proven through ancient lineage such as in ancient India (Kautilya) or ancient Greece if you prefer more. There for, international law is an instrument of an exclusive influence of force in the arena of international relation. Power is essential factor of international relations. To make way for international law from primary force, diplomacy can put to navigate (Kolb, 2016). Through international law, interest can be push forward regarding international problem such as human right and gender discrimination. It can influence nation actor within policy making. Yet, domestic actor such is the real policy maker through governmental sources, such as structural and political accountability to Indian government. Domestic policy is being influence with political accountability such as party competition and elections and leadership structure such as various groups and individuals involved in government (Azmi, 2023). In India, Bharatia Janata Party (BJP) is the dominant party to influence Indian Government as policy maker. One of the pending promises of the BJP is the Women's Reservation Bill.

Women are a commonly known of a group being tucked down by discrimination widely. It involves inequality discrimination, human right and the right to have education. Human right has been the debates in legal and political theory for a long time. Human right is based on moral intuition which developed from several religious element of society. Human rights ignite basically in the later natural rights tradition of the Enlightenment era (Verdirame, 2014). Human right can also define as dignity as human individual (Rosen, 2012).

Human right can be viewed as primarily ethical demand, so it is not principally legal, *proto legal* or ideal legal commands. It relates to freedom both the opportunity aspect and the process aspect of freedom. Human right generates reason for power actor to make action to help or safeguarding freedom. Yet the reason of action can be perfect obligation or imperfect. The implementation of human rights can go well beyond legislation such as public recognition that can socialized and generate acknowledgment of human rights. Human right by concept can also include economic and social freedom for instant educational right and at least to the idea of survivability (Sen, 2004).

Human right education (HRE) concerned with the kinds of educational theories and practices that encourage teachers and students to develop interconnecting relationship among ideology, power and culture. Since it will create influential in determining lived experiences in an interconnecting dimension of ideology and power which in the end shape culture. Culture partially represents all forms and levels of vulnerability created by asymmetric power relations in terms of gender, class, race, age, and other categories of discrimination articulated in human rights instruments (Leistyna and Woodrum, 1996). By institutionalizing HRE, it can turn into a harmful tool in the hands of those in power and in the other hand, HRE can becomes a strategy to build a culture of human rights that can dismantle structures of oppression (Abu, 2020).

With the human right education issue, often derail as a foremost focus in the developing like India. Never the less, human right education has an impact

in poverty alleviation, and the advancement of socio-economic rights (Keet, 2007). The social system in India is based on heredity, which impact on education, profession and influences social life. As a group born in divided caste, Dalit often receive forms of humiliation (undignified) and unfair treatment. Not only that, Dalit is also deprived from political, social and economic rights. This is a common norm in the social system that applies in India. This discrimination occurs due to the dominance of the upper-class superior. Based on the concept of human rights and equality, the weak Dalit begun struggling to claim their dignity and rights.

Caste segregation also dictates matters of residence, marriage, work, and social interactions which are exacerbated by practices and threats to social exclusion, economic boycotts, and physical violence. The practice of exclusion and human rights violations experienced by Dalit in India is considered normal because of the labeling of social identity. By fact, 90% of the poor and 95% of illiterate Indians come from Dalit. It makes it more difficult for them to rise from the oppression (Mayell, 2003). The cruelty of violent practices is the outcome from the intricate access to justice despite special laws that apply to minorities, such as the Protection of Civil Rights Act (PCR) and Prevention of Atrocities (POA). Apart from being difficult for the public to reach, law enforcement authorities actually prevent the public from reporting depending to their caste and status.

Dalit caste is the victims of a structural caste hierarchy, which perpetuates inequality. Dalit women are in the most worrying position, considering Indian society is based on caste. Dalit women experience discrimination and are oppressed not only by those in the dominant upper caste, but also by Dalit men. Most Dalit are landless laborers who depend on the dominant caste for wages, but most Dalit women and girls are forced or raped by men from the dominant caste. This even can happen in any given time, for example when they go to the fields to fetch water or work (Mandal, 2013).

Despite the struggling spirit for justice and to come forward for justice is quite high, yet it collides with law enforcement officials taken un-seriously in responding to cases. From 2009 to 2018, data shows an increase in crimes reported and pending investigation by the local police all over India. This number increased dramatically from 6,095 cases to 16,300 cases, which sums up to 167.43% (National Dalit Movement for Justice, 2020). This situation is the result of the unimplemented prevention of atrocities (POA) act 1989 regarding the scheduled castes and the schedule tribes been charged under some other law. By doing so, apparatus in dealing with the Dalit discrimination problem is not taking it seriously and very often ends in light compensation and punishment. This is the indication of the apparatus failure in registering cases in a proper manner.

In 2009, roughly 33,594 cases were recorded related to Dalit as the victims of violence practice. Yet only 11,143 cases or 33.2% were charged under the POA Law. Apparently in 2018, there was an increase in services. From the total crimes against SCs which is 42,793 cases, almost all were charged with the POA Law or 42,539 cases equal to 99.4% (National Crime Record Bureau, 2009-2018). Yet the main problem is still unsolved. Dalit still find it difficult to fulfill them and their family needs because they are bound to be placed in menial jobs with very low

wages. It's merely meeting the needs of clothing, food, and shelter. Access to social services is being limited for them such as educational right, let alone discussing land ownership and capital which are relatively limited. Low economic income has an impact on the lack of meeting the needs for clothing and food, let alone the need for housing. The hierarchy that occurs in India does not only apply to humans, but also applies to animal. The upper classes tend not to consume beef because it is considered a sacred animal. Meanwhile, the lower class, especially the Dalit actually consumes beef. Cow a considered secret to the Hindus believes and consuming them is prohibits. The evidence is that cow is allowed to go everywhere they roam in India and not to be disturbed. The impact of financial difficulties forces more than 70% of Dalit to consume beef (Homegrown, 2018). The habit of consuming beef turns out to be one of the factors of rejection when Dalit try to blend in within society because it is considered contrary to common habits. Furthermore, Dalit do not entitle and impermissible to own land, so they cannot meet housing needs. The upper caste monopolizes land ownership. Land is not only an economic matter, but also shows one's social status and dignity because 70% of Dalit are only laborers, so it is difficult for them to have their own production land in the economically perspective.

The Indian government places schools as agents of social change, but their implementation does not instill egalitarian values. Different treatment is being played for different caste. This systematically nurtures discriminatory practices. Due to tremendous International Organization critics, the government of India is taking effective steps, so that education can be more equal and felt by all. For instance, in the form of the Child's Right to Free and Compulsory Education Act in 2009 (Priya and Kumari, 2023). The program is funded by state and local authorities, so that the availability of quality education for children aged 6 to 14 years is checked. Even so, in reality there are still reports of discrimination and there is still a quota system for Dalit at the higher education level that applies to students and teaching staff. The government's policy direction aims to provide education for Dalit, but in reality, is not supported by a good educational environment. It seems to be a consequence for Dalit who have the opportunity to continue their education. Most of the Dalit who have succeeded in continuing their education in tertiary institutions are first-generation learners.

During covid-19, millions of Dalit children in India are at risk of malnutrition or stunting and all sort of disease. During the pandemic the government failed to ensure the provision of food, health care and immunization on which marginalized children depend. The same goes for the education sector. Government schools are less facilitated, especially those in rural areas. Many high castes attend private schools that offer online classes, but only 24% of households in India have internet access. Thus, the disparity between education in rural and urban areas is increasing, as well as the gender gap that widens to the learning gap between the dominant and marginalized castes as well as families with high, middle and low incomes. There is a high risk for children from the Dalit caste to drop out of school due to the impact of the lockdown imposed by the Indian government when it was hit by COVID-19.

Regarding the lives of Dalit women, they are indoctrinated to accept the fact that they occupy the lowest level in the prevailing caste system and at the

same time in the gender hierarchy. Discrimination experienced by Dalit women occurs in various sectors, starting from access to education and health services, as well as employment opportunities. It is not surprising that the difficulty of access has a significant impact on the lives of Dalit women. Most of them are illiterate, suffer from malnutrition or stunting, and have a high mortality rate. In the Indian societies, Dalit women suffer the most. Dalit women are being given menial jobs and receiving wages that is lower in nominal terms than Dalit men (Pramod, 2020; Smith, 2020). The majority of Dalit women are victims of humiliation and rape. Dalit women are vulnerable to acts of violence and are hopelessly needed for special protection. The Indian government is considered to have failed in punishing the perpetrators and providing justice to the victims, which cause an eroded faith in justice.

Low economic and social status is another reason for engaging in prostitution for the sake of survival. It is closely related to the cultural context in the form of the ancient practice of the Devadasis system. Devadasis is a term for servants of god who need a girl who has not yet entered puberty and is married off by a god or temple and is not allowed to live outside the temple. When the girl comes to an age of menstruation, she will be thrown out from the temple because she is considered impure. Devotees satisfied their sexuality by having sex with Devadasis. This cultural practice led to the increase of sexual harassment of Devadasis by priests and men from upper castes. When the Devadasis period of Dalit women has ended, their way of life usually ends up as prostitutes. Former Devadasis are not welcome and not accepted by society because of their former experience and that their Devadasis status, will stick for the rest of her life. In result, access to housing, health and educational facilities is unreachable.

From the perspective of law, India actually has written laws against the practice of Devadasis, but in reality, in rural areas at the most, this practice is still happening from generation to generation. The law against devadasis practice is overrun by power. It is true that there are rehabilitation facilities provided by the local government, but in practice these programs are still do not address the full range of the problems. The local law enforcement officers represented by the Indian National Commission on Violence against Women are still working off target. The impact of this Devadasis cultural practice is ruining the lives of Dalit women. Indian government rehabilitation program is also not helping since it only provides loans that must be repaid instead of skill development or financial assistance.

One way to suppress oppression and superiority is by facilitating protection through legislation. The government of India is making the same effort to reduce the number of violence, as well as providing protection to a victim which is realized by the applicable law. Article 17 of the Indian Constitution prohibits the practice of untouchability. In 1955 a felony law was enacted regarding untouchability practices. Until 1976 the law changed its name to the Protection of Civil Rights Act (PCR), but it was still inadequate to prevent crimes against Scheduled Caste (SC) and Scheduled Tribes (ST) (Chakma, 2015). SC refers to Dalit while ST refers to the ethnic community contained in the law or known as Adivasis. On the basis of an assessment of the ineffectiveness of PCR, in 1989 the Indian parliament enacted SC and ST which had special courts,

and there were also rehabilitation facilities for victims. Unfortunately, the implementation felt that the formation of SC and ST does not really provide access to justice because discriminatory treatment still occurs. Yet an amendment Accor in 2009 and made a position paper. After five long years of advocacy and lobbying, it's finally paid off as the President of India, Pranab Murkherjee agreed to the amendment.

Still, no matter how well regulations are made, if they are not matched by the professionalism of law enforcement officials and a lack of oversight, then they are considered useless. The law enforcement authorities claim that they have taken appropriate measures to address the injustice of what Dalit women are fighting for. In fact, the implementation of the law is still poor and access to justice is still difficult to achieve due to obstacles imposed by a related party. Thus, it is clear that India is not lacking in laws, what must be evaluated is the enforcement aspect from the dimension of power owner. Creating justice for society on the basis of race, social class, gender, religion, and power can boomerang the emergence of social phenomena, such as discrimination and discriminatory treatment. This can happen for certain reason, such as gender, social strata, and power related to legal and judicial matters. To achieve equality and justice before the law is still far from expectations to pursue of human right, because it collides with cultural values. The social reality between men and women has different needs and experiences in daily life in India's society.

It is importance to change the law for solution, even though it is often opposed by those who claim to be patriarchal. The process of creating laws often only prioritizes the interests of certain rulers and elites from a higher caste. The lack of a specific legal basis that addresses gender will have a further impact on its implementation. Although in the end, international law will begin to enforce, for instant CEDAW which actively improves alignments with women's human rights. These improvements are important to show and determine the role and movement of women in implementing CEDAW.

CEDAW is recognized as having been instrumental in bringing women into talks about rights. When the government has ratified CEDAW, it has entered into a social contract with women and declared equal civilian, political and economic, as well as social and cultural rights between men and women. CEDAW also stipulates that discrimination experienced by women must be eliminated through preventive actions that can be implemented through existing policies, for example prevention by the right to have education since knowledge itself is power.

Referring to previous studies, the fact that India ratified CEDAW, the consequences is that India obligates to implement the convention agreement according to international law. Domestic policy should drive with the intention of eliminating all forms of discrimination against women. Not only that, the article also emphasizes that apart from ratifying CEDAW India also made a reservation against article 29 paragraph (1) with the intention that the Indian government thinks that they are not bound by article 29 paragraph (1). The article also explains other articles relating to country-specific declarations and objections to CEDAW, such as article 5 point (a), as well as article 16 paragraphs (1) and paragraph (2). (Sezgin, 2013). The state also has the obligation to eliminate discrimination by preventing, reducing and eliminating conditions

and attitudes that cause or perpetuate and enact special measures to reduce or suppress conditions that trigger such discrimination (Mangubhai & Capraro, 2015). CEDAW serves as the International Women's Rights Act and provides explanations for countries on how to use and grant these rights for their people. This convention requires the state to carry out the realization and implementation to eliminate all forms of discrimination through laws, policies, practices and customs that apply in the country concerned. The aim of this convention is to provide and guarantee equal opportunities for women in every aspect of social life, as well as to guarantee all human rights and freedoms for women. CEDAW describes the critical aspects of women's rights that are often depicted through international legislation related to women's rights. By ratifying CEDAW, countries agree to make efforts to eliminate forms of discrimination against women and set an agenda to end this discrimination.

Article 1 CEDAW defines discrimination against women as a form of distinction, exclusion or restriction that prevents women from enjoying rights in various fields. Not only that, Article 1 of CEDAW also includes a definition of discrimination which includes direct, indirect, intentional and unintentional discrimination. So, it is clear that discrimination against women must be used broadly. The principle of non-discrimination provides an illustration of equality by underlining that women must be able to enjoy and receive human rights protection, as well as freedom in the public and private spheres. Countries that have ratified CEDAW are still making efforts to lobby for articles deemed inconsistent with state practice, including India. So that in practice, there are still obstacles to its implementation. Reservations made by the state can be in the form of rejection of a certain article contained in CEDAW, which applies to national or domestic law in that country. Gender discrimination against Dalit women in India, are closely related to a culture which holds men are in a superior position compared to women. Therefore, it is an obligation for countries that have ratified CEDAW to abolish the notion of the inferiority of the role of a gender. In article 6 of CEDAW which regulates the making of laws to eliminate all acts of discrimination against women. The contents of Article 6 of CEDAW also cover the elimination of trafficking or buying and selling of women. Articles 7-9 of CEDAW contain a description of civil rights and political rights for women. These rights include the right to freedom from human trafficking and slavery, to obtain equal status in legal matters, to be treated equally without discriminating against gender, and to have freedom of opinion and to determine religious beliefs. Meanwhile, Articles 10-14 of CEDAW include women's rights in various fields, such as the economy, education, social, health, culture, and employment. Articles 15-16 of CEDAW then discuss and emphasize the equal roles of men and women, especially toward marital and family relations. It is written in CEDAW that when building a marriage and family it must be based on equal rights and responsibilities. This includes the right to choose one's own partner. Then articles 17-30 which explain the functions of the CEDAW committee, discuss the review process, reporting procedures to communication with other UN Agencies.

In addition, the CEDAW committee has the authority as a human rights observer. This consists of independent experts tasked to monitoring the implementation of states member regarding this agreement. The independent



experts assigned to the committee are consisting of people who have the morals and expertise in the areas covered by CEDAW. The CEDAW Committee does not only serve as an international supervisory body for countries that ratify CEDAW. The task includes giving influence in the decision-making process related to human rights in domestic law. The CEDAW Committee functions as international oversight, including making decisions regarding state efforts to implement international obligations as a result of ratifying CEDAW. To consider the progress made in implementing this convention, a committee was formed consisting of 23 competent experts related to CEDAW. The experts are selected by the member countries and the members of the committee will be selected by closed ballot from a list nominated by countries that ratify CEDAW. Selection of committee members will be held at a meeting of member at the UN Headquarters by the UN Secretary General.

Even though India has ratified CEDAW, still the number of discrimination reports is high. Cases of gender discrimination experienced by Dalit women are relatively high and so are the numbers of fatalities. According to CEDAW draft of report, India reported several problems to realizing the elimination of discriminatory acts against women. The obstacles are related to socio-cultural norms that apply to local communities, patriarchal culture, and the lack of real action in applicable law.

The content of CEDAW does not only suggest that the state should treat women and men with equal treatment when in comparable situations. The impact arising from the treatment must be equal. Men and women are also given the same freedom to make a decision, for example when they marry until a divorce occurs. By including these provisions, the responsibility of the state becomes wider to the private sphere. These provisions function to prevent human rights violations against women in the personal or family sphere. Bearing in mind, there are still many human rights violations against women that occur individually, in families, or in groups.

Caste discrimination is practice across generations and still happening in India to this very date. Caste discrimination happens in a vary element of society. Even to the extent of accessing vital natural resources like namely fresh water. Apart from not having ownership of land, Dalit also find it difficult to access water resources, so they only depend on public water resources provided by the state. The process of searching for and taking water from the source is hard since they don't have access land in the first place. Dalit also find it hard to move around. While moving from one place to another, Dalit faced deprivation and discrimination and bound to faced verbal and physical abuse from other castes which is a normal norm in India. This discrimination, especially experienced by Dalit women is a violation to human rights. Discrimination and violence systematically deny opportunity, choice and freedom in all areas of life. Discrimination against Dalit women is carried out by the dominant caste, both men and women. Refusal from Dalit women will only be getting them to trouble and a more pressing matter. This situation reflects the magnitude of the suffering which even causes their mental health from the feeling of constant humiliation.

This discrimination and violence against Dalit women are a manifestation of the caste hierarchy in the feudal order. This is directly and indirectly contradicting to human rights. India is being viewed to be unable to protect and

guarantee the rights and dignity of their marginalized groups. During the Bharatiya Janata Party (BJP) regime, government seems to be neglecting yet encouraging to normally harassing, arresting and prosecuting human rights defenders, activists, journalists, students, academics and other parties who are critical to the government and its policies. This behavior can be the result from leader structure or political accountability. The government continues to blatantly impose restrictions and engage in discriminatory acts. The lockdown policy implemented by the Indian government due to COVID-19 resulted in significant losses from the marginalized groups of people, most of all from Dalit. They have lost their livelihoods and lack of food, shelter, access to health care and other basic needs.

By the rapid knowledge and courage given from the international organization program, Dalit start to have the nerve to stand up. Yet, a peaceful protest turns violence against the Indian government's discriminatory citizenship policies and killed at least 53 people in down town Delhi on February 2019. More than 200 people were injured, property destroyed and people displaced. Tensions are running high with BJP leaders openly advocating violence against protesters and branding them as traitors. Witness reports and video evidence point to police involvement in the violence. There were reports that the violence in Delhi was premeditated and targeted towards a minority group as the local police defended the BJP leaders. Data from 2019 indicates that crimes against Dalit are increased by 7%. According to Dalit rights activists, it is partly a backlash from members of the dominant caste against any attempts to challenge the caste hierarchy. In August 2019, United Nations (UN) experts, raised concerns about the government's proposed environmental impact assessment process that exempts some industries and major projects from public consultancies, as well as granting post-facto permits to projects initiated without valid permits. Environmental activists fear that relaxing provisions for public consultations and post-facto permits will undermine the rights of indigenous peoples who have been violated.

Cases of domestic violence also increased when the lockdown policy was enforced. Authorities executed four people convicted of the gang rape of Jyoti Singh Pandey in 2012 in Delhi. Although there was a 7.9% increase in registered rape cases in 2019 compared to the previous year. Calls for the death penalty have also failed to address villains. The obstacle is real and systemic for survivors of sexual violence in India to have justice. Police responses are hostile and dismissive which create fear. Not only that, the lack of access to legal and health services is also inadequate.

In September 2019, a 19-year-old Dalit woman died after being gang-raped and tortured by four men from the dominant caste in Uttar Pradesh. The authorities' response highlights how women from marginalized communities face institutional barriers. State authorities cremated the victim's body without family consent and deny that the woman had been raped as a form of protection against the dominant caste. The state government claimed that the protests against the rapes and killings were merely an international conspiracy, and arrested a journalist and three political activists. To sum it up, in the case of gender discrimination against Dalit women, India was considered weak and

reluctant. Related programs for solution have been limited, and mostly off target from the lower caste and gender background.

## CONCLUSIONS

India is one of the countries with the highest rates of violence against women in the world. It's come down to the basic patriarchal system, caste system, culture and traditions in the social system. The Indian government has actually made efforts to protect women from discrimination, such as the Protection of Women from Sexual Harassment Bill. The Indian government is also continuing to amend the law of violence against women. However, the implementation of the law is poorly executed and far from expected due to the lack of Dalit social power. To underline the solution, human right education is the most solution to answer the problem. By knowledge, Dalit women will be able to speak for their right from the inequality issue and eventually gain power to uphold the law implementation.

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