

From Margins To Rights: *The Erasure Of Caste In Disability Rights Jurisprudence In Nepal*

Shailee Chaudhary

Master of Human Rights Law Candidate, University of Melbourne
Australia Awards Scholar 2025. Email, shaileechaudharynp@gmail.com

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Abstract

In Nepal, caste-based discrimination and disability exclusion are persistent; however, legal frameworks fail to address their intersection. This paper argues that Nepal's jurisprudence, including the Constitution and Rights of Persons with Disabilities Act (2017), profoundly erases Dalits from disability rights framework, rendering compounded discrimination of Dalits with disabilities invisible legally. This paper demonstrates, through legal analysis founded in intersectionality theory and an illustrative case study, how the single-axis framework approach fails to address the harms arising from the complexities of multiple intersecting identities. This paper concludes by stating that preventing the caste erasure from disability jurisprudence is essential for substantive equality and necessitates reforms, such as operationalising intersectionality into law and policy, mandating disaggregated data in each state mechanism, and training legal actors to recognise and adjudicate these intersecting forms of discrimination.

Keywords: Caste, disability rights, intersectionality, legal erasure, systemic discrimination

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INTRODUCTION

In Nepal, descent-based discrimination, rooted in Hinduism, manifests itself in the social hierarchy of the caste system.¹ Caste plays a crucial role in shaping social relations and political identities in Nepal, influencing both individual experiences and broader societal dynamics.² The disadvantages

faced by Dalits (historically considered 'untouchable') are the result of societal norms and structures constructed by a casteist society. Caste-based inequalities contribute to human rights abuses, reinforcing the caste system that negatively impacts not only social standing but also overall well-being.³

Caste and Disability are interconnected systems of oppression, where the ideology

1 Amnesty International, "No-One Cares": *Descent-Based Discrimination against Dalits in Nepal* (Amnesty International, 10 May 2024) <<https://www.amnesty.org/en/documents/asa31/7980/2024/en/>>.

2 David N Gellner, 'Caste, Ethnicity and Inequality in

Nepal' (2007) 42(20) *Economic and Political Weekly* 1823, 1823–7.

3 Balmurli Natrajan, 'Place and Pathology in Caste' (2009) 44(51) *Economic and Political Weekly* 79, 81.

of merit and ableism rationalises the exploitation of oppressed castes and persons with disabilities (PwDs) by implying that success is achievable through hard work, which overlooks systemic barriers faced by these groups.⁴ ‘Intersectionality’ is not merely a combination of different identities; rather, it explains how an individual faces compounded discrimination due to overlapping identities.⁵ Dalits with disabilities face multiple exclusions. It is necessary to analyse the social and legal contexts to understand the experiences of Dalits with disabilities.⁶ The *Committee on the Rights of Persons with Disabilities* (CRPD Committee) emphasises that PwDs in Nepal continue to face intersectional discrimination based on caste, ethnicity, religion, and gender, highlighting Nepal’s gaps in addressing this marginalisation.⁷

Intersectionality theory critiques the use of the ‘single-axis framework’ in antidiscrimination laws that view discrimination resulting from a single identity, ignoring the complexities of multiple intersecting identities and their contribution to disadvantage, often erasing the compounded discrimination faced by individuals with different identities, like a PwD from the Dalit community.⁸

The term ‘erasure’ can mean the action or an instance of erasing or obliterating, or destruction leading to complete ‘wipe out’.⁹ This paper argues that legal mechanisms in Nepal erase Dalits from disability jurisprudence. This paper examines how the legal systems of Nepal erase caste in disability rights framework and its implications on Dalits with disabilities. It explores the concepts of disability, critiques the dominant approach, the limited recognition of intersections in Nepal and highlights the exclusion of caste. It further explains the brief history and current statistics on caste-based discrimination, analysing the limitations of existing legal protections and establishing the legally unrecognised vulnerabilities of Dalits with disabilities. The paper, then, introduces intersectionality theory and explains its importance to understand the harms faced by Dalits with disabilities. It positions intersectionality as the critical approach to overcome legal erasure and explores the practical implications of adopting an intersectional lens.

Disability In Nepal: Concepts, Law, And Limitations

Historically, ‘disability’ was seen as a medical problem of an individual.¹⁰ It was often viewed with a sense of pity and tragedy.

4 Rossi D’Souza, ‘Ableism and the Ideology of Merit’ (2016) 36(3) *For the Learning of Mathematics* 21.

5 *The Urgency of Intersectionality* | Kimberlé Crenshaw (Directed by Ted, TED Talks, 8 December 2016) <<https://www.youtube.com/watch?v=akOe5-UsQ2o>>.

6 Mary E John, ‘Intersectionality: Rejection or Critical Dialogue?’ (2015) 50(33) *Economic and Political Weekly* 72, 73 (‘Intersectionality’).

7 Committee on the Rights of Persons with Disabilities, ‘*Concluding Observations on the Initial Report of Nepal*’, UN Doc CRPD/C/NPL/CO/1 (13 April 2018)’ <<https://www.ohchr.org/en/documents/concluding-observations/committee-rights-persons-disabilities-concluding-observations-0>>.

8 Kimberlé Crenshaw, ‘Demarginalizing the

Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’ (1989) 1989(1) *University of Chicago Legal Forum* 139–40 <<https://chicagounbound.uchicago.edu/uclf/vol1989/iss1/8>> (‘Demarginalizing the Intersection of Race and Sex’).

9 ‘Erasure, n. Meanings, Etymology and More | Oxford English Dictionary’ <https://www.oed.com/dictionary/erasure_n>.

10 Colin Barnes, ‘Understanding the Social Model of Disability: Past, Present and Future’ in *Routledge Handbook of Disability Studies* (Routledge, 2012) 12 (‘Understanding the Social Model of Disability’).

It was only after the 1970s that the social model of disability (SMD) started rejecting the medical model, which frames disability as an individual ‘defect’, and defined disability as societal oppression caused by structural barriers.¹¹ SMD distinguished impairment as a biological and/or physical condition from disability as social exclusion.¹² Although the SMD is rooted in 1970s movements by PwDs, demanding autonomy and equality, and informed by anti-discrimination laws, it neglects the lived experiences of impairment like chronic pain and mental health and often ignores overlapping identity oppressions like race and gender.¹³

Human Rights Model (HRM), based on a rights-based approach to disability, aligns with modern human rights frameworks like the Sustainable Development Goals (SDGs).¹⁴ Moving beyond SMD, HRM anchors disability rights in human dignity, integrates civil, political, social, and economic rights, recognises impairment as human variation, embraces intersectionality, allows ethical prevention policies without stigmatisation, and links poverty to disability, offering transformative solutions.¹⁵ However, there is a risk of the state adopting HRM rhetoric without systemic reforms and reproducing ableist narratives if not carefully implemented.

Despite being the world’s largest minority, PwDs are denied education, employment opportunities, and health services, subjected to violence, resulting in their

fragile socioeconomic and political status, especially in the Global South countries.¹⁶ Critical Disability Theory (CDT) shifts beyond the traditional social model of disability, critiquing the existing frameworks and categories within disability studies, and emphasising on complexities of disability and its intersection with broader societal issues.¹⁷ To critique the universal approaches to and homogenization of disability in law and society, CDT aims to deepen the understanding of disability by questioning established norms and advocating for a more nuanced and politically engaged approach to address the issues and challenges faced by PwDs.¹⁸

The *Convention on the Rights of Persons with Disabilities (CRPD)* recognises the inherent dignity of PwDs¹⁹ and aims to promote the human rights of PwDs with consideration of their intersecting identities.²⁰ It further recognises the right to equality and non-discrimination, prohibiting discrimination based on disability.²¹ The Convention urges targeted actions and ‘reasonable accommodation’ to achieve ‘de facto equality’ of PwDs and legal

11 Barnes (n 10); Theresia Degener, ‘Disability in a Human Rights Context’ (2016) 5(3) *Laws* 35.

12 Barnes (n 10).

13 Ibid 17–22.

14 Degener (n 11).

15 Ibid.

16 Helen Meekosha and Karen Soldatic, ‘Human Rights and the Global South: The Case of Disability’ (2011) 32(8) *Third World Quarterly* 1383, 1383 (‘Human Rights and the Global South’).

17 Dan Goodley, Konstantin Butz and Rouven Schlegel, ‘Dis/Entangling Critical Disability Studies’ in Anne Waldschmidt, Hanjo Berressem and Moritz Ingwersen (eds), *Culture – Theory – Disability: Encounters between Disability Studies and Cultural Studies* (transcript Verlag, 2017) 81, 83, 106 <<https://www.jstor.org/stable/j.ctv1xxs3r.10>>.

18 Ibid 95; Meekosha and Soldatic (n 16) 1384–6.

19 *International Convention on the Rights of Persons with Disabilities*, Opened for Signature 24 January 2007, 2515 UNTS 3, UN Doc A/RES/61/106 (Entered into Force 3 May 2008) Preamble (‘CRPD’).

20 Ibid art 1.

21 Ibid art 5.

protection against discrimination.²² Although the *CRPD* does not explicitly use the term ‘intersectionality’, it addresses its relevance to the rights of PwDs. For example, the explicit provisions on ‘women and girls with disabilities’²³ and ‘children with disabilities’²⁴ and PwDs face multi-fold discrimination based on factors like gender, race, ethnicity, and other identities.²⁵ The preamble also acknowledges the need to address multiple and aggravated forms of discrimination.²⁶ The *CRPD* is a critical document that shapes the commitments to ensure equal rights and full inclusion for PwDs and highlights the need to enable individuals to participate fully in society.

The *Constitution of Nepal*, promulgated in 2015, adopts the principle of non-discrimination, inclusivity, and the rule of law to ensure economic equality, prosperity, and social justice and build an egalitarian society.²⁷ Article 18 ensures the ‘right to equality’, prohibiting ‘discrimination based on origin, caste, physical condition, ... or on similar other grounds’.²⁸ Although this article does not overtly mention ‘disability’ as a ground, it provides for ‘affirmative actions for Dalit, PwDs, and marginalised

communities’.²⁹ Similarly, article 24 ensures an individual’s ‘right against untouchability and discrimination’, prohibiting ‘discrimination based on origin, caste, ... or physical condition’;³⁰ nevertheless, it also does not use the term ‘disability’.

Nepal’s Constitution also ensures the right to social justice, mandating the right to inclusive participation in state mechanisms and the rights of PwDs to live with dignity.³¹ Yet, there are no explicit articles guaranteeing the rights of PwDs. PwDs are limited within other rights like ‘right to education,’³² and ‘rights of the child.’³³ Similarly, the use of terms like ‘helpless’ in different articles of *Nepal’s Constitution* propagates the negative connotation around different groups and identities.

Nepal signed and ratified the *CRPD* on 3 January 2008 and 7 May 2010, respectively.³⁴ Consequently, Nepal enacted the *Rights of Persons with Disabilities Act*³⁵ in 2017 to safeguard the human rights of PwDs. The Act prohibits discrimination based on disability and provides for punishment for such acts.³⁶ It also guarantees PwDs’ right to community life, protection, participation, social security, and access to services and justice, among other rights.³⁷ However, Nepal still follows the medical framework of disability in the legal

22 Ibid.

23 Ibid art 6.

24 Ibid art 7.

25 Committee on the Rights of Persons with Disabilities, ‘General Comment No. 6 (2018) on Concluding Observations on Equality and Non-Discrimination, UN Doc CRPD/C/GC/6 (26 April 2018)’ para 19 <<https://documents.un.org/doc/undoc/gen/g18/119/05/pdf/g1811905.pdf>> (‘General Comment No. 6 (2018)’).

26 *CRPD* (n 19) Preamble.

27 *The Constitution of Nepal 2015* Preamble (‘*Nepal’s Constitution*’).

28 Ibid art 18(1)-(3).

29 Ibid art 18(3) and its proviso.

30 Ibid art 24.

31 Ibid art 42(1), (3).

32 Ibid art 31.

33 Ibid art 39.

34 *CRPD* (n 19).

35 *The Act Relating to Rights of Persons with Disabilities 2017* (Nepal) (‘*Rights of Persons with Disabilities Act*’).

36 Ibid ss 8, 55.

37 Ibid ss 7-18.

framework³⁸ and practice, and often perceives ‘disability’ as the ‘punishment’³⁹ for the sins in the past or present life. Approximately 2% population in Nepal live with some kind of disability.⁴⁰ Nepal’s civil war from 1996 to 2006 also resulted in the disablement of thousands of people.⁴¹

The state mechanisms repeatedly create structural, attitudinal, and procedural barriers, resulting in further exclusion of PwDs.⁴² In day-to-day lives, PwDs face discrimination in accessing the infrastructure, complaint mechanisms, legal procedures, and the justice system due to the negligible availability of disability-informed and disability-responsive structures and a lack of legal awareness. A research report states that some of the major barriers for PwDs to access state mechanisms and the justice system are inaccessibility, information gaps, lack of disability-disaggregated data, procedural and systemic neglect, attitudinal stigma, financial constraints, lack of trained personnel in government offices, and privacy and safety violations.⁴³

This indicates the vulnerabilities experienced by PwDs, who are often ignored by the state. These barriers get multiplied when PwDs come from the Dalit community. While the Act is responsive to PwDs with recognition of the limited intersections like women with disabilities⁴⁴ and children with disabilities,⁴⁵ it has been unsuccessful in fully aligning with the principles of intersectionality and ignores ‘caste’ as an intersecting identity, adversely affecting their full realisation of human rights.

Dalits In Nepal: Systemic Discrimination And The Vulnerability Of Dalits With Disabilities

The 3000-year-old caste system is the longest system of social hierarchy and categorises people into social groups ‘castes’ assigned by birth, often including occupation, and is hereditary. It is associated with the notion of ‘purity or pollution’,⁴⁶ categorising ‘Dalits’ as the ‘lowest’ caste⁴⁷ and resulting in a unique phenomenon of ‘untouchability’ and enforcing the rule of endogamy.⁴⁸

Although the earliest inroad of Hinduism is believed to be around the 5th century in Nepal, the oldest surviving manuscripts, written in *Devnagari* (script for both Nepali

38 *Rights of Persons with Disabilities Act* (n 35).

39 Zia Akhtar, ‘Scheduled Castes, Dalits and Criminalisation by “Descent”’ (2020) 9(1) *State Crime Journal* 71.

40 National Statistics Office, ‘National Population and Housing Census 2021: Disability Statistics’ 2 Individual Table.

41 Bhimsen Devkota and Edwin R van Teijlingen, ‘Understanding Effects of Armed Conflict on Health Outcomes: The Case of Nepal’ (2010) 4 *Conflict and Health* 20 (‘Understanding Effects of Armed Conflict on Health Outcomes’).

42 Jalasa Sapkota, ‘Systemic Barriers Deny Justice to Nepal’s Persons with Disabilities’ (Disability Discrimination, National Federation of the Disabled, 23 May 2025) <<https://nfdn.org.np/external-resources/systemic-barriers-deny-justice-to-nepals-persons-with-disabilities/>>.

43 Kapil Aryal et al, *A Study on Identifying Barriers to Accessing Justice for Persons with Disabilities*

(No 294 (Central Office), National Human Rights Commission of Nepal, 2022) <<https://nfdn.org.np/research-report>>.

44 *Rights of Persons with Disabilities Act* (n 35) s 19.

45 *Ibid* s 20.

46 AM Shah, ‘Caste in the 21st Century: From System to Elements’ (2007) 42(44) *Economic and Political Weekly* 109, 111 (‘Caste in the 21st Century’); *Special Rapporteurs on the Topic of Discrimination Based on Work and Descent* (Final Report, UN Doc. A/HRC/11/CRP.3, 22 May 2024).

47 Dalit Lives Matter, ‘ABOUT DALITS’, *Dalit Lives Matter Global Alliance* <<https://dalitlivesmatter.org/about-dalits/>>.

48 Shah (n 46) 109.

and Hindi languages), were discovered in Nepal roughly around 1040 A.D. and a categorised system of caste was only introduced in different parts of Nepal around the late 13th century.⁴⁹ The law and justice in Nepal became identical to the *Vedas* after the introduction of the extensive caste system in the 13th century in Kathmandu (now the capital of Nepal) and followed by other kingdoms later on.⁵⁰ The caste system, guided by the *Brahman* orthodoxy (referred to as *Bahunbad* in the Nepali context), had already advanced, consequently infiltrating the law of Nepal until the whole legal system was governed by Hindu religious texts and local customs.⁵¹

Systemic exclusion has historically deprived Dalits of access to state mechanisms, services, and opportunities, and pushed them to the margins of society, leading to extreme disenfranchisement. Dalits constitute approximately 14% of Nepal's population.⁵² Dalit children constitute around 17% of Nepal's population aged 5 to 25, among which only 15.17% are currently attending education, 18.89% have ever attended, and 27.41% have never attended school in their lifetime. Similarly, about 33% of Dalits are illiterate, which is significantly higher than the national average of 24%.⁵³

The *Universal Declaration on Human Rights* (UDHR) or any other international human rights treaty does not list 'caste' in the non-discrimination provisions.⁵⁴ However, the *Convention on the Elimination of All Forms of Racial Discrimination* (CERD) prohibits discrimination based on 'descent'⁵⁵ and the CERD Committee has unequivocally interpreted 'descent' to include caste-based discrimination,⁵⁶ which has recognised that 'descent' encompasses 'caste' in international human rights law. After Nepal ratified the CERD on 30 January 1971, the CERD Committee found constant practice of caste-based discrimination in various sectors and institutions like education, marriage, and judiciary, and recognises the gendered impact of caste, urging Nepal to take essential actions.⁵⁷ However, apart from the CERD Committee's acknowledgment of Nepal's ratification of the CRPD and its Optional Protocol in 2010,⁵⁸ the report does not mention or analyse the intersection of caste and disability and its repercussions on Dalits with disabilities.

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- 49 Michael Witzel, 'The Development of the Vedic Canon and Its Schools: The Social and Political Milieu' (FID4SA-Repository, 1997) <<https://fid4sa-repository.ub.uni-heidelberg.de/110/>> ('The Development of the Vedic Canon and Its Schools').
- 50 Kanak Bikram Thapa, 'Religion and Law in Nepal' (2010) 2010(3) *BYU Law Review* 921, 921.
- 51 Ibid 921–2.
- 52 National Statistics Office, 'National Population and Housing Census 2021: National Report on Caste/ Ethnicity, Language, & Religion'.
- 53 Ibid table 26.

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- 54 IDS, *CASTE DISCRIMINATION AND HUMAN RIGHTS: COMPILATION OF UN REFERENCES* (International Dalit Solidarity Network, January 2022) <<https://idsn.org/wp-content/uploads/2022/01/UNcompilation-Jan-2022-Web.pdf>>.
- 55 *International Convention on the Elimination of All Forms of Racial Discrimination*, Opened for Signature 21 December 1965, 660 UNTS 195 (Entered into Force 4 January 1969) art 1 ('CERD').
- 56 UN Committee on the Elimination of Racial Discrimination (CERD), 'CERD General Recommendation XXIX on Article 1, Paragraph 1, of the Convention (Descent)' pt 1 <<https://www.refworld.org/legal/general/cerd/2002/en/11409> [accessed 15 June 2025]>.
- 57 Committee on the Elimination of Racial Discrimination, 'Concluding Observations on the Combined Seventeenth to Twenty-Third Periodic Reports of Nepal', UN Doc CERD/C/NPL/CO/17-23 (29 May 2018) <<https://docs.un.org/en/CERD/C/NPL/CO/17-23>>.
- 58 Ibid para 3(d).

Nepal's Constitution guarantees the 'rights of Dalit' and ensures specific rights like 'participation, education, traditional occupation, availability of land and housing.'⁵⁹ This right ensures the fundamental rights of Dalits, both men and women, but does not consider the intersectionality of Dalits with disabilities. A critical analysis of *Nepal's Constitution* stresses that the rights silo caste and disability and does not address the intersection of caste and disability and the unique compounded discrimination. This proliferates the exclusionary practice within legal frameworks, state mechanisms, and society.

Caste has become an integral part of Nepali society. People have internalised it into culture and everyday actions in the context of powerful hierarchical ideology and hegemonic cultural formations.⁶⁰ The idea of clustering individuals into binary groups like 'Dalit and non-Dalit', 'disabled or abled', and 'men and women' is mainstreamed into cultural meanings, experiences, and everyday practices, resulting in 'othering' people when they don't match certain groups. This process of 'othering' frequently leads to extreme human rights violations. In real life, these 'other' identities often entail intersecting status, facing structural violence and exclusion due to multiple identities.

Let me present an anecdote (based on a real event) to illustrate how the intersection of caste and disability manifests when systems of oppression collide uniquely:

Sarita (name changed), a 15-year-old Dalit girl who lost her leg due to polio, lives on the outskirts of a rural village in Nepal's Rautahat district, physically segregated. The nearest government school is a few kilometres away along a rough, unpaved path. While the *Rights of Persons with Disabilities Act* (2017) mandates accessibility,⁶¹ the school building has no ramp, and the narrow doorways and steps are impassable for someone with disability. Furthermore, the teachers resisted her presence and asked her to sit on the floor while her peers sat on the bench, invoking notions of 'purity'. Sarita, as a person with disability, struggled to sit on the floor and eventually dropped out of school. Her Dalit parents, socially excluded and fearing retaliation, lack the social capital to effectively advocate for her rights under either disability or anti-caste legislation. As a result, Sarita is denied her 'right to education'⁶² and 'right against untouchability and discrimination',⁶³ a denial stemming simultaneously from inaccessible infrastructure as a disability barrier and caste-based untouchability practices and social exclusion.

Reporting caste-based discrimination requires navigating a system often dominated by dominant castes, and reporting disability discrimination requires proving the denial of a 'reasonable accommodation.' Neither legal framework is designed to recognise the interplay of caste prejudice and disability-based exclusion that defines Sarita's experience. The harm of being excluded due to overlapping identities disappears within the silos of existing law.

59 Ibid art 40.

60 Steven M Parish, *Hierarchy and Its Discontents: Culture and the Politics of Consciousness in Caste Society* (University of Pennsylvania Press, 2016) 3 ('*Hierarchy and Its Discontents*').

61 *Rights of Persons with Disabilities Act* (n 35) s 15.

62 *Nepal's Constitution* (n 27) art 31.

63 Ibid art 24.

The exclusion of Dalits, intensified by disability bias within the system, undermines their access to justice and services that are further hindered due to inaccessible and unwelcoming police stations, courts being physically inaccessible, and economic barriers. The neglect of caste from disability jurisprudence not only impacts them socially but also limits effective legal remedies and perpetuates systemic injustice.

In Nepal, Nepal Law Review (NLR) is the only ‘reporter’ that documents the precedents of the Supreme Court. There are no other ‘online’ databases that archive the cases from the district and high courts, and the judicial committee at the local levels. Surprisingly, there are no precedents on the intersection of caste and disability reported in NLR. The cases of disability or Dalits rarely mention other identities and frequently frame them as independent issues.

One example of such cases is *Nepali v Federal Parliament Secretariat* (2021).⁶⁴ *Nepali* requested an order to formulate a comprehensive National Dalit Rights Act, to implement the provisions in *Nepal’s Constitution* to ensure the *Rights of Dalits*.⁶⁵ While the case did not explicitly state the issues arising from the intersection of caste and disability, the judgment briefly mentioned disability as a discrete issue.⁶⁶ The judgment also highlighted the multiple discrimination that Dalit women face every day.⁶⁷ Although

the judges focused on the intersection of caste with gender, they neglected the intersection of disability and Dalits. In this case, the court had an opportunity to explore the intersection of caste and disability, highlighting the legally unrecognised vulnerabilities of Dalits with disabilities like Sarita. This analysis would have provided a framework for concerned policymakers to acknowledge and address the unique discrimination faced by Dalits with overlapping identities. The judges could also have issued a directive order to examine the true status of Dalit communities and adopt best practices to respond to the unmet needs of the Dalit community as a whole.

Additionally, the stand-alone cases of ‘Dalits’ or ‘PwDs’ hardly mention the interconnectedness of identities as a compounding factor of their lived experiences.⁶⁸ The lawyers and judges also often refrain from framing claims in the cases from an intersectional perspective. The findings from the National Dalit Commission and the National Federation of the Disabled – Nepal (NFDN) emphasise the challenges of ‘Dalits’ and ‘disabilities’ in their (annual) reports, respectively, also neglecting the unmet needs of Dalits with Disabilities. This silence and absence of registered cases and data from various (non) governmental institutions highlight the erasure of caste from disability jurisprudence.

64 *Nepali v Federal Parliament Secretariat* (2021) 64(8) Nepal Law Review Supreme Court of Nepal Decision No 10923 (*‘Nepali’*).

*The cases from Supreme Court of Nepal are originally published in Nepali language and have been translated by the author.

65 *Ibid.*

66 *Ibid* para 60.

67 *Ibid* para 78.

68 *Kami v Government of Nepal* (2018) 60(4) Nepal Law Review Supreme Court of Nepal Decision No 9991; *Rawal v Government of Nepal* (2022) 65(11) Nepal Law Review Supreme Court of Nepal Decision No 11199; *Yadav v Government of Nepal* (2023) 61(1) Nepal Law Review Supreme Court of Nepal Decision No 10179; *Ambedkar v Ministry of Health & Population of Nepal* (2021) 63(6) Nepal Law Review Supreme Court of Nepal Decision No 10675.

NFDN, in its submission to the *CRPD* Committee, highlights the multiple forms of discrimination and violence faced by marginalised groups like Dalits with disabilities and their exclusion from health, education, representation, participation, and data collection.⁶⁹ The lack of an intersectional approach in policies has further marginalised minority groups with disabilities in every sector, including representation, due to the dominance of privileged caste groups and the adoption of a single basket approach for PwDs, often seen as homogenous groups.⁷⁰

CONCEPTUALISING THE GAP: INTERSECTIONALITY AS THE NECESSARY FRAMEWORK

Kimberlé Crenshaw coined the term ‘intersectionality’ in 1989 to explain how an individual with race and gender identity experiences multiple forms of exclusion and how anti-discrimination law failed Black women by treating race and gender as mutually exclusive categories.⁷¹ Intersectionality theory provides a framework to recognise and acknowledge that an individual holding overlapping identities is impacted the most by social problems and intersecting social dynamics, and often left to suffer in virtual isolation, creating multiple

levels of social injustice.⁷² Identities like Dalit and Disability are not additive; they are interactive and constitutive.⁷³ Systems of oppression, like casteism and ableism, interact to shape experiences, opportunities, and vulnerabilities in specific ways that single-axis frameworks cannot see or address.⁷⁴ Intersectionality has expanded to various institutions and societies, advocating for the incorporation of multiple layers of complexity, such as race, gender, and ethnicity, to themes of social inequality, power, and social justice, rather than limiting itself to single-issue problems.⁷⁵

Social exclusion segregates individuals, in principle and practice, maintaining the power structures and denying the oppressed groups access to opportunities, resources, markets, and services.⁷⁶ Additionally, the knowledge in society is determined by dominant caste perspectives, which disproportionately marginalise the contributions and capabilities of Dalits and PwDs.⁷⁷ The dominant groups decide who holds the power. The exclusion and the caste hierarchy are maintained by dominant caste groups who claim power through dominance, reinforcing the stigmatised notions of karma (fate) that Dalits have to face.⁷⁸ This practice

69 National Federation of Disabled-Nepal (NFDN), ‘Supplementary Information to the List of Issues in Relation to the Initial Report of the Federal Democratic Republic of Nepal on the Implementation of the Convention on the Rights of Persons with Disabilities’ (Submission to the United Nations Committee on the Rights of Persons with Disabilities, as Adopted by the Eighth Pre-Sessional Working Group, 4-8 September 2017) 7–8 <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCRPD%2FCSS%2FNPL%2F30065&Lang=en>.

70 Ibid 9.

71 Crenshaw (n 8).

72 *The Urgency of Intersectionality* | Kimberlé Crenshaw (n 5).

73 Crenshaw (n 8).

74 *The Urgency of Intersectionality* | Kimberlé Crenshaw (n 5).

75 Chelsea Jones, ‘Review of Hill Collins, P., & Bilge, S. (2016), “Intersectionality”’ (2017) 6(4) *Canadian Journal of Disability Studies* 210, 212–3.

76 Ishwar Modi, ‘Social Exclusion and Inequality: Challenges before a Developing Society’ (2015) 64(1) *Sociological Bulletin* 3 (‘Social Exclusion and Inequality’).

77 D’Souza (n 4) 22.

78 Mary Cameron, ‘Considering Dalits and Political Identity in Imagining a New Nepal’ (2007) 27(1) *HIMALAYA, the Journal of the Association*

of systemic exclusion and categorisation impacts the access of oppressed groups, exacerbated by overlapping identities.

Children with disabilities experience significant (institutional) barriers to education due to inadequate support systems in schools, poverty, stigma, inaccessible infrastructures, and the lack of safe and accessible roads, resulting in denied access to education.⁷⁹ The exclusion is compounded for Dalit children with disabilities like Sarita, who also face caste-based discrimination from teachers, peers, and school management.

The intersection of caste and disability creates unique compounded marginalisation among Dalits with disabilities. The experiences of Dalits with disabilities are qualitatively different. They are not just ‘Dalits who happen to have a disability’ or ‘PwDs who happen to be a Dalit.’ The caste stigma of ‘pollution’, ‘untouchability’, and ‘low status’ continuously interact with the notion of ‘burden’, ‘dependence’, and ‘perceived incapacity’ associated with disability to create a uniquely intense devaluation. The *CRPD* Committee underscores the continued prevalence of multiple discrimination faced by PwDs in intersection with caste, ethnicity, and other grounds, and recommends that Nepal adopt and implement mechanisms, policies, and programmes to prevent this discrimination.⁸⁰ The Committee also highlights the use of ‘negative’ language

and lack of awareness regarding PwDs from Dalit communities.⁸¹

The application of single-axis legal frameworks, like the *Rights of Persons with Disabilities Act* (2017), causes the erasure of Dalits in disabilities jurisprudence. Intersectionality provides the framework to describe the specific harms of compounded exclusion that current single-axis laws fail to recognise. It provides a new lens of understanding discrimination and designing legal responses. An intersectional analysis of entrenched caste hierarchy with disability stigma helps to understand discrimination within Nepal. Intersectionality further centres the experiences of the marginalised communities’ at the most complex intersections, like Dalit women and girls with disabilities, to highlight the failures of the system.

In Nepal’s context, legal frameworks often ignore the intersectional approach while formulating and implementing laws to address social issues. It becomes crucial to apply intersectionality while adopting a human rights approach in designing laws, policies, and legal arguments that specifically target the intersectional harm, not just one axis of it, and to avoid the erasure of certain groups within disability jurisprudence. Intersectionality helps to overcome the homogenisation of PwDs by directly challenging the tendency in law to treat ‘PwDs’ as monolithic groups while ignoring caste in disability rights frameworks.

for *Nepal and Himalayan Studies* <<https://digitalcommons.macalester.edu/himalaya/vol27/iss1/4>>.

79 Kamal Lamichhane, ‘Disability and Barriers to Education: Evidence from Nepal’ (2013) 15 *Scandinavian Journal of Disability Research* 311, 321.

80 Committee on the Rights of Persons with Disabilities (n 7) paras 9-10.

81 Ibid para 15.

OPERATIONALISING INTERSECTIONALITY: PREVENTING ERASURE AND TRANSFORMING PRACTICE

Adopting an intersectional approach shifts how an individual understands, uses, and reforms the law to address the compounded discrimination. This section discusses concrete and practical strategies for translating theory into tangible change within the legal system and beyond by exploring two interconnected pathways, policy pathways and legal practice.

A Policy Pathways: Towards Intersectional Law Reform

The *CRPD* adopts the model of inclusive equality that recognises the dignity of individuals and mandates an intersectional approach.⁸² Nepal, as a signatory to the *CRPD* and *CERD*, must amend the *Rights of Persons with Disabilities Act* to explicitly include ‘caste’ as a ground for non-discrimination and redefine discrimination to encompass intersectional discrimination. Consequently, other laws and policies must be amended to recognise caste and disability as intersecting factors exacerbating exclusion and discrimination.

Similarly, the government needs to advocate for and adopt intersectional guidelines⁸³ for all disability-related programmes and policies like education, health, livelihoods, social protection, and social justice. The

government must refrain from clustering a single identity group and acknowledge that the marginalisation and oppression of Dalits with disabilities are interlocking and their identity is layered with a range of ‘norms’.⁸⁴ While adopting these frameworks, the government must be mindful that Dalits with disabilities are not ‘tokenised’ in the state programmes and policies, but rather included with meaningful participation in state mechanisms, reflecting the principle of ‘*Nothing About Us Without Us*’. These policy reforms must be institutionalised at all levels of government and constitutional bodies.⁸⁵

The Washington Group Short Set on Functioning (WG-SS) provides a short set of questions for national census and data collection, reflecting the progress in disability frameworks.⁸⁶ The collection and dissemination of disaggregated data, such as disability prevalence by caste, ethnicity, and gender, access to services by caste and disability, complaints received involving both caste and disability grounds, adopting WG-SS as a tool for data disaggregation, across all government agencies, should be mandated. This data makes the communities

82 Committee on the Rights of Persons with Disabilities (n 25) para 11.

83 United Nations Network on Racial Discrimination and Protection of Minorities, ‘GUIDANCE NOTE ON INTERSECTIONALITY, RACIAL DISCRIMINATION & PROTECTION OF MINORITIES’.

84 Karen Soldatica et al, “‘Nowhere to Be Found’: Disabled Refugees and Asylum Seekers within the Australian Resettlement Landscape’ (2015) 2(1) *Disability and the Global South* 501, 513–5.

85 Nir Shrestha, ‘Disability Inclusive Local Governance: Practices and Challenges in Nepal’, *Disabled World* (6 May 2023) <<https://www.disabled-world.com/disability/blogs/local-governance.php>> (‘Disability Inclusive Local Governance’).

86 Washington Group on Disability Statistics (WG), ‘The Washington Group Short Set on Functioning (WG-SS)’ <https://www.washingtongroup-disability.com/fileadmin/uploads/wg/Washington_Group_Questionnaire_1_-_WG_Short_Set_on_Functioning_October_2022_.pdf>.

and their specific challenges statistically visible, countering erasure. It also provides evidence for targeted program design, resource allocation, and monitoring.

Integrating intersectionality into the law and policy forces the system to account for the unseen needs of Dalits with disabilities facing compounded discrimination, recognising them as a distinct group. It moves Dalits with disabilities from invisibility to being a mandated focus.

B Legal Practice: Making Visible the Invisible Harms

There is also an urgency to create enabling environments where individuals with intersecting identities, such as Dalits with disabilities like Sarita, can challenge the oppressive ideologies, question the dominant narratives, and assert their understanding within the application of existing laws.⁸⁷ Nepal must mandate and organise capacity-building workshops for judges, lawyers, policymakers and service providers to equip them with knowledge on intersectionality, unconscious bias, and the impacts of compounded discrimination, international human rights frameworks, and the obligations of Nepal to international legal mechanisms. These sessions will provide an opportunity to train stakeholders to see and acknowledge the intersectional discrimination and articulate it as compounded harm arising from the interaction of both identities, like denial of education to Sarita due to her Dalit with disability identity, rather than fitting the experience into a stand-alone claim.

Additionally, lawyers can argue for interpreting constitutional rights and non-discrimination clauses in statute, in light of

intersectionality theory and international laws, to encompass intersectional discrimination. Legal practitioners can further collect evidence, like the client's testimony and data, to demonstrate the interactive nature of the discrimination and leverage international mechanisms like the *CRPD* and *CERD* to address both aspects of harm, like compensation for Sarita reflecting compounded indignity. Additionally, judges should analyse cases through an intersectional lens, discarding single-axis thinking in their judgments and citing *CRPD* and intersectionality frameworks.

It is also critical to acknowledge the role of civil society and social movements in shaping the legal narrative. Nepal is one of those countries that has several grassroots movements like the Dalit movement, the Disability movement, the Feminist movement, and the Madheshi movement, organising vertically in the civil society. These movements have marked crucial reforms politically and legally. The people's movement played a vital role in removing the monarchy from Nepal in 2006. Today, these movements also need to collaborate and partner with each other horizontally to advocate for inclusive policies that address the issues arising from intersectional identities. Additionally, the civil society and organisations led by Dalit (with disabilities) must amplify their voices and leadership while exchanging their best 'community-led' solutions and intensifying their work on participatory research and advocacy.

Additionally, NGOs should increase the submission of parallel reports to treaty bodies, highlight the status and challenges of the caste-disability intersection in Nepal. By equipping legal actors with the conceptual tools and practical skills to recognise,

87 D'Souza (n 4).

articulate, and validate the unique experiences of Dalits with disabilities, it prevents their harms from being dismissed, misinterpreted, or forced into ill-fitting legal categories. With the combined efforts of national and international stakeholders, the erasure of caste from disability laws in Nepal can be addressed and mitigated by moving towards an intersectional disability jurisprudence.

CONCLUSION

The *CRPD* Committee has highlighted the need and importance of intersectionality to promote and protect the full human rights of PwDs.⁸⁸ Intersectional theory also notes the urgency to address the challenges of an individual from an intersectional perspective.⁸⁹ However, Nepal is yet to adopt the intersectional approach in its legal frameworks, despite being a party to international mechanisms like the *CRPD* and *CERD*. *Nepal's Constitution* ensures the rights of PwDs, Dalits, women and minority groups and mandates their protection as self-contained groups.⁹⁰ The *CRPD* Committee has underscored these gaps and critiqued Nepal's non-intersectional approach.⁹¹ This

exclusion has resulted in compounded marginalisation of Dalits with disabilities and denied them access to state mechanisms, services, and opportunities, resulting in further exclusion and extreme poverty. This erasure of caste from disability jurisprudence is not just an oversight but the perpetuation of systemic injustice against a uniquely marginalised group.

Nepal needs to adopt the principle of intersectionality and reform the Acts and policies to address the issues faced by Dalits with disabilities. Intersectionality allows for the precise identification of the real compounded harm and mandates visibility at the systemic and practical levels. The integration of intersectional theory in policy frameworks and legal practice is essential for true equality of Dalits with disabilities and the full realisation of Nepal's constitutional and international human rights commitments.

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88 Committee on the Rights of Persons with Disabilities (n 25).

89 Crenshaw (n 8).

90 *Nepal's Constitution* (n 27) arts 18-42.

91 Committee on the Rights of Persons with

Disabilities (n 7).

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