

Decision No. 9636 - Mandamus
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Supreme Court, Joint Bench
Honourable Justice Shree Deepak Raj Joshi
Honorable Justice Shree Devendra Gopal Shrestha

Date of Decision: 2016/06/08/04
070-WO-0745
Subject: Mandamus

Writ Petitioner: Advocate Shyam Kumar Bishwakarma et.al. representing self and Justice and Rights Institute Nepal (JuRI-Nepal)

vs

Respondent: Right Honourable Prime Minister, Government of Nepal, Office of the Prime Minister and Council of Ministers, Singha Durbar, Kathmandu et al.

Since Nepal has ratified the International Convention on the Elimination of All Forms of Racial Discrimination, 1965, which has important provisions related to the prevention of racial discrimination, Nepal has an increased responsibility to implement the provisions of the Convention in the national context. Section 9 of the Treaty Act, 1990 provides that once Nepal ratifies international treaties, conventions and protocols they shall be applied as Nepali laws which means that the CERD is applicable as Nepali law. In order to enforce such provisions accepted through the Convention, Nepal has made a special legal arrangement by promulgating Caste-based Discrimination and Untouchability (Offense and Punishment) Act, 2011. The Constitution of the Kingdom of Nepal, 1990, the Interim Constitution of Nepal, 2007 and the current Constitution of Nepal, 2015 have given constitutional recognition to the right against caste-based discrimination and untouchability as a fundamental right. Now, therefore the regulations need to be urgently framed in order to fulfill the obligations arising from the international commitment. That the Government of Nepal has not framed a regulation even after five years of the promulgation of the CBDU Act requires to be taken as an undue delay.

(Paragraph No.7)

The present society has entered entered the 21 century, and the Constitution itself is seen to have prohibited slavery-era vices, ill-customs and all forms of racial discrimination that create undue distinction among humans by creating social division. That the regulation required to implement the CBDU Act, 2011 framed to enforce the constitutional provision has not been

framed for a long time will mean that this delay will directly affect the implementation of the constitutional provision. The continued delay, in whatever pretexts, in the framing of the regulation of the Act which is required to implement the provisions of the Act cannot be considered proper from the standpoint of constitutional and legal requirement.

(Paragraph. 9)

On behalf of the petitions : Learned advocate, Raju Prasad Chapagai, Khusi Prasad Tharu and Shashi Basnet

On behalf of the Defendants: Learned Assistant Attorney General Shyam Kuman Bhattarai

Adopted precedent:

Concerned Laws:

International Convention on the Elimination of All Forms of Racial Discrimination, 1965

Section 9, Treaty Act, 1990

Caste-based Discrimination and Untouchability (Offense and Punishment) Act, 2011

Articles 13 (1), 13 (3), 14, 16, 24 (1), 24 (3), 24 (4), 24 (5), 25 (5), 25 (6), 25 (7) of the Interim Constitution of Nepal, 2007

Verdict

Justice Dipak Raj Joshi: The brief facts and judgment of the writ petition filed under the jurisdiction of this Court in accordance with Article 32 and 107(2) of the Interim Constitution of Nepal, 2007 are as follows.

We, the petitioners, and the organization represented by the petitioners, are conscious citizens and organizations that have been helping the state to ensure the rule of law by debating, discussing and advocating at various levels for the purpose of effective implementation of existing laws. Even though caste-based discrimination and untouchability were eradicated in law by the Country Code on 5 September 1963, due to the fact they were not criminalized in law, the caste-based discrimination and untouchability continue to exist in Nepal even for half a century. As a result, there is an obstacle in the exercise and enjoyment of the rights provided in the international human rights instruments, the constitution and the existing laws.

Due to caste-based discrimination and untouchability, there is a situation wherein victims of discrimination and untouchability are required to comply, like others, all the obligations as prescribed by the prevailing Nepali laws, while they are not being able to exercise the rights provided by the same laws. From the point of view of the victims of caste discrimination and untouchability, the rights of equality provided by the constitutions of Nepal and the commitments made by Nepal in the international arena have been limited only to paper commitments. Since caste-based discrimination and untouchability are inhuman and reprehensible acts, the Caste-based Discrimination and Untouchability (Offense and Punishments) Act, 2011 was enacted with the aim of eradicating them. Even though the said Act has placed caste discrimination and untouchability in the category of punishable offenses under the law, they are still happening in Nepali society. Article 13 of the Interim Constitution of Nepal, 2007 guarantees the right to equality, Article 14 guarantees the right against caste-based discrimination and untouchability, and the Constitution has thus not only guaranteed the equality of all citizens but also made acts of caste-based discrimination and untouchability punishable by law. Various international treaties to which Nepal is a party have completely prohibited any discrimination and exclusion on the basis of ethnicity. In particular, the Convention against Racial Discrimination, 1965 has created an obligation to protect the victims of racial discrimination and untouchability by eliminating, solving and controlling the acts caste-based discrimination and untouchability by making provisions for the elimination of discrimination on the basis of caste, descent, profession and community. Effective implementation of such international legal obligations is the constitutional responsibility of the Opponents. In addition, a directive order has also been issued by the honorable Supreme Court in the name of the government to formulate a separate law to address all aspects of caste-based discrimination and untouchability (Writ No. 46 of the year 2061, date of decision: 2005/03/21).

Caste-based Discrimination and Untouchability (Offense and Punishment) Act, 2011 not only prohibits committing acts of caste-based discrimination and untouchability by oneself or through others, but also prohibits and makes punishable the act of supporting, encouraging or inciting such acts of discrimination and untouchability. Apart from that, the list of prohibited grounds of caste-based discrimination and untouchability is also clearly mentioned under Section 4 of this Act. Such prohibited grounds include custom, tradition, religion, culture, customs, caste, clan, community or profession. If anyone does or causes any discriminatory act on any of these grounds, it is considered caste-based discrimination and untouchability. Similarly, another important provision in the Act is that it has brought both public and private places within the ambit of the law. There is a provision of criminal punishment under the Act in case someone commits caste-based discrimination or untouchability in public or private places on any of the prohibited grounds by the Act. Three years have passed since this Act has come into force. However, instead of decreasing, the number of crimes of caste-based discrimination and untouchability in the Nepali society are increasing in a modified manner. The Nepali people, especially the Dalit communities who are suffering from caste-based discrimination and untouchability, hoped that the caste-based discrimination and the crime of untouchability against them would gradually decrease and be eliminated after the implementation of the current law. But that is not happening in practice.

If someone commits an offense by violating the present Act, it is clear from the structure of Section 5 of the Act that there is a compulsory need of a regulation in order to implement the provisions of the Act. It is also compulsory to have the regulation to enforce the provision of Section 5(1) of the Act to file a complaint to the police if there is an offense committed or if an offense is going to be committed. The regulation is required also to enforce Sub-section (3) which provides for the filing of a complaint with the National Dalit Commission in case the police does not act in accordance with the law and for the National Dalit Commission to order in writing for the necessary action. In other words, without the regulation, the very acts conferred by the Act have stopped, and due to the lack of regulation, the hands of the person who files the complaint, including the agency that receives the complaint and has to take or cause to take actions are tied. Due to this the implementation of the Constitution, international human rights laws and the Act itself has been stopped. We have appeared with this petition because the action of the opponent to not formulate the regulation is also a matter of public concern.

After the Legislature has passed the Act with an immediate effect, it is the responsibility of the opponent, the Cabinet of the Government of Nepal to implement it as per the intention of the Legislature. Therefore, it is the duty of the opponents to frame the regulation and prepare for other structures in accordance with the purpose of the Act to make it enforceable from the very date of its commencement. So, in order to promote the right of social justice and equality by eradicating from the society the worst criminal acts like untouchability and caste-based discrimination, let there be an order of mandate for the issuance of regulation and its implementation so the Caste-based Discrimination and Untouchability (Offense and Punishments) Act, 2011 is effectively implemented within a period of a month as under Article 107 (2) of the Interim Constitution of Nepal, 2007. Writ Petition submitted by Shyam Bishwakarma et al. with the above claim.

What happened to this case? Why shouldn't the order as requested by the petitioner be issued? Send a notice to all the opponents, including the Office of the Prime Minister and the Council of Ministers, Singh Durbar, to send a written reply through the Attorney General's office within 15 days from the date of the receipt of the order, and send a copy of it to the Office of the Attorney General. After receiving the written answer or after exceeding the deadline, submit it according to the rules. Also, considering the nature of the matter, it seems that a quick decision should be made, so submit as per the rules by according priority to the case. The Court's order as above in this paragraph.

The Government of Nepal is always committed to maintain mutual harmony and equality among all castes, classes and communities in the society by discouraging social crimes like caste discrimination and untouchability, and this CBDU Act has been introduced for that purpose. The written response submitted on behalf of the Minister for Law, Justice, Constituent Assembly and Parliamentary Affairs stating that the Government of Nepal is sensitive to the issue of making regulation for the implementation of the Act, and since the Government of Nepal is taking initiatives to make regulations in consultation with all relevant stakeholders, let the writ petition filed by having me as an opponent be dismissed.

A written response submitted by Secretary Bheshraj Sharma on behalf of the Ministry of Law and Justice, Constituent Assembly and Parliamentary Affairs Ministry requesting that the writ petition filed by making the Ministry as an Opponent be dismissed as the Government of Nepal is sensitive to the need to make regulations under the Act to implement the Caste-based Discrimination and Untouchability (Offenses and Punishments) Act, 2011, and when there is a request from the relevant agencies to make a regulation on the matter, this Ministry will undoubtedly take the necessary action.

To monitor, supervise and coordinate the actions taken by various agencies to end untouchability and discrimination on the basis of caste, race, colour, community or profession; for the implementation of the legal provisions and and achieve the main objectives mentioned in the preamble of the Caste-based Discrimination and Untouchability (Offenses and Punishments) Act, 2011; and for the creation of a certain mechanism to give necessary instructions to the concerned agencies from time to time, a Mechanism for Ending Caste-based Discrimination and Untouchability and for the Promoting the of the Rights of Dalits, 2011 has been issued and is in the course of being implemented. The said Mechanism for Ending Caste-based Discrimination and Untouchability and Promoting the Rights of Dalits has a provision for the appointment by the Prime Minister of five members representing the Dalit class on behalf of the five major political parties represented in the Constituent Assembly, the Chair of the National Dalit Commission and there members appointed by the Prime Minister from among the organizations active in the non-governmental sector for Dalits' upliftment and for the ending of caste-based discrimination and untouchability. Similarly, a Central Steering Committee to end caste-based discrimination and untouchability under the coordination of the Chief Secretary of the Government of Nepal and with the Secretary of the Ministry of Women, Children and Social Welfare as the Deputy Coordinator, and the secretaries from the National Planning Commission, National Human Rights Commission, National Dalit Commission and the secretaries of concerned with the issue as members has been established. Likewise, a Coordination Unit is also formed at the Office of the Prime Minister and Council of Ministers. Both of these bodies are doing the needful. At the local level, a District Coordination Committee to end the caste-based discrimination and untouchability under the coordination of the Chief District Officer, and Monitoring Centres on Caste-based Discrimination and Untouchability at the Village Development Committees and Municipalities are established and operating. The statement of the writ petitioner that there is no work being done towards the implementation of the Caste-based Discrimination and Untouchability (Offenses and Punishments) Act, 2011 - while in reality the Government of Nepal has created various mechanisms to implement it - does not seem to be based on facts. As far as the writ petitioner has demanded that regulations should be made to implement the Act, there can be no dispute that regulations are required for the effective implementation of the Act. In Section 16 of the Act, the Government of Nepal has been given the right to make necessary rules to implement the objectives of the Act. I would like to assure the honorable court that the government of Nepal is always committed to making regulations by using the powers given by the said law to further strengthen the implementation of the law under the said arrangement and after completing the necessary studies and procedures in this regard, the regulations will be issued. Therefore, there is no need to issue an order from the honorable court as per the demand of

the writ petitioner in this regard, and hence the the writ petition should be dismissed. The written reply submitted on behalf of the office of the Prime Minister and the Council of Ministers and the Prime Minister as above in this paragraph.

In this writ petition submitted for decision with weekly and daily cause list as per the rule, the learned advocates Mr. Raju Prasad Chapagai, Mr. Khushi Prasad Tharu and Ms. Shashi Basnet, present on behalf of the petitioner, stated that the purpose of the Act will be defeated if the rules are not formulated for a long time after the drafting of the Act. They also argued that there is a problem for the victimized citizens to file a complaint for the offense of untouchability due to lack of the regulation, and therefore, an order should be issued as per the demand for the formulation of regulations as soon as possible. Similarly, the learned Assistant Attorney General Mr. Shyam Kumar Bhattarai, present representing the opponent, the Office of the Prime Minister and Council of Ministers, Government of Nepal stated that the Government of Nepal was in the process of drafting the rules and since it would take some time to draft the rules to comply with the procedural requirements, there is no need to issue the order immediately as per the demand. The writ petition should be dismissed as the regulations will be drafted in the due course in such a way as to satisfy the demands of the petitioner. The arguments as above in the paragraph.

After studying the writ petition and the written reply submitted, after hearing the arguments presented by the learned legal practitioners and after considering for the decision, it is seen that a decision is required to be made regarding whether or not to issue an order of mandamus as per the demand regarding the drafting of the regulations raised by the petitioner.

2. In this case, a petition has been submitted with a demand of an order of mandamus to issue and implement a regulation citing that despite the enactment of the Caste-based Discrimination and Untouchability (Offenses and Punishment) Act, 2011 with the aim of eradicating caste-based discrimination and untouchability as reprehensible acts, the regulations necessary for the implementation of the said Act had not yet been drafted due to the undue delay on the part of the Government of Nepal. In the written responses submitted by the opponents, the Ministry of Law and Justice, the Constituent Assembly and Parliamentary Affairs and the Office of the Prime Minister and the Council of Ministers have argued that the government is sensitive about making regulations, that an initiative is being taken to make the regulation in consultation with all the relevant stakeholders, and that the regulation will be issued after a detailed study. The writ petition should therefore be dismissed as there is no reason to file an application with unnecessary doubts and issue an order based on the same application when the regulations will be issued.

3. Regarding the matter raised by the writ petitioner, it is seen that the respondents, in their response have accepted the responsibility of drafting a regulation by saying that although a regulation is not yet drafted, considering the sensitivity of the matter raised, the Government of Nepal is in the process of drafting the regulation. Now it is clear that the petition needs to be considered from the standpoint of the need of the drafting of the regulation and the delay in its drafting. It is seen that the Act Made to Regulate Caste-based Discrimination and

Untouchability (Offense and Punishment), 2011 was authenticated on 1 June 2011. The preamble of the said Act stipulates the main aim of the enactment of the Act were "to make timely provisions to protect the right of every person to equality, freedom and to live with human dignity, by creating a situation where there exists no untouchability and discrimination, on the ground of origin, caste, race, descent, community, occupation or business or physical condition, in the name of custom, tradition, religion, culture, ritual or any other name, while recognizing the principle that every person is equal in terms of rights and human dignity, to make punishable the acts of untouchability, exclusion, restriction expulsion, contempt or any other discriminatory act that is against humanity, to provide compensation to the victims of such acts, to keep intact the national unity and create an egalitarian society, by strengthening the relationship subsisting among the general public." It is seen that the purpose laid down in the preamble of the Act covers a wide scope and makes caste-based discrimination and untouchability punishable as anti-human discriminatory acts. Considering that although the Act has made basic provisions regarding the caste-based discrimination and untouchability, but not incorporated other provisions as per the spirit of the Act, it seems that there is a provision under Section 16 of the Act whereby the Government of Nepal can make rules to implement the purpose of the Act. Looking at it in this way, it is seen that the regulations are an important means of implementing the main spirit of the preamble, which is the broader purpose of the Act. Hence, although the government has an important responsibility for the formulation of regulations, which are an important tool for the implementation of the law, the Government of Nepal is not seen to have fulfilled the responsibility. From the date of the enactment of the Act in 2011 to the date of filing of the writ petition in the year 2014, the regulations have not been formulated, and in the written response submitted on the show cause order issued by this court, it is stated that it is the Government's responsibility to formulate the regulations and that the government is working towards the drafting of the the regulations. From that period till now two years have passed, and the learned Assistant Attorney General present representing the Government of Nepal has not been able to submit an argument indicating which stage the drafting of the regulation has reached, and hence it does not appear that the Government of Nepal has put the work of drafting the regulations in the order of necessity.

4. When considering the need to formulate regulations, it is to be remembered that the creation of an Act, i.e. the main law, is done by the legislature, i.e. Parliament. As the scope of work of the Parliament is wide, it is not possible to put everything in the law covering all the subjects due to lack of time during the law making. There are also such specific aspects of the implementation of some laws that the legislative authority is delegated to the executive branch for the full achievement of the purpose of the law with the help of experts. With the intention of fulfilling the actual requirements of the implementation of the Act, the gaps in the Act are filled by making various arrangements. In this sense, the completeness of the Act means the formulation of regulations with a procedural structure. The main legal provisions are mentioned in the Act in substantive form and the regulations are designed to fill the loopholes in the law with the intention of fulfilling the spirit of the law. So, the need of the regulation is considered important for the implementation of the Act. In the case where the Act itself envisages the regulation, the Act cannot be considered complete until the regulation

is formulated. Section 16 of the the Caste-based Discrimination and Untouchability (Offenses and Punishment) Act envisages that the Government of Nepal can make regulations to implement the purpose of the Act. So the drafting of the regulation a way that fulfils the objective of the Act is seen as an important necessity .

5. There is no dispute that the law has been drafted with the provision of punishment to eradicate the traditional belief of caste-based discrimination and untouchability from the society as a whole. It can be easily estimated how serious the offense of caste-based discrimination and untouchability is as the reprehensible and mean acts like untouchability, which show inequality and discrimination among the people of the same society under the guise of religion and culture, have been listed as a criminal offense. The fact that caste discrimination and untouchability as a social stigma cannot be completely eradicated from the society only by punishing the person involved in such crime cannot be ignored. For this, it is seen that attempts should continue towards uprooting the main root of this crime that has remained as a social disease through widespread propagation and dissemination of the gravity of the crime and the division it has brought about in the society, its effect on the present and future generations, and the impact on the social reputation of the offender punished in the crime of committing caste-based discrimination and untouchability. This does not seem to be possible only from the limited legal scope provided for in the Act. For this it is evident that the task as envisioned in Section 16 of the Act need to be accomplished and activities in accordance with the purpose of the Act should be launched. In the same way, its is also seen that regulation is required for the citizens, who suffer from caste-based discrimination, to file a complaint against the offender, to register such a complaint, to investigate the case, to designate an officer to look into the case and to determine the procedure, and also to provide for forms related to various issues including monitoring of the of caste-based discrimination and the crimes of untouchability. In the absence of the mentioned provision, it does not seem to be easy for the aggrieved party to use the Act. In this way, in the absence of a regulation, it is seen that there will be an obstacle in achieving the larger objective of the Act to help a victim get justice as there as the absence of a regulation creates an uncomfortable situation for the aggrieved parties at the very start of the process of a legal action against the perpetrators of caste-based discrimination and untouchability. Therefore, the need of the formulation of the regulation important also for the simplicity of legal remedies for citizens suffering from caste-based discrimination and untouchability.

6. Nepal has acceded to the International Convention on the Elimination of All Forms of Racial Discrimination, 1965 on 30 January 1971 which was adopted through a resolution of the the United Nations and open for ratification. This means that Nepal has accepted this Convention as an international law. The Convention was a milestone as an important international effort towards the eradication of racial discrimination. As the Committee under this Convention makes important recommendations to the State parties to eliminate all kinds of caste-based discrimination, and Nepal as one of the important member States that has accepted the Convention, has an obligation to implement its provisions. The Convention has made following important provisions regarding racial discrimination and untouchability:

Racial discrimination is defined in Article 1 (1) as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

In Article 2 (1), the State parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races.

In Article 2(1) (a), each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to end sure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

In Article 2(1) (b), each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

In Article 2(1) (c), each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

In Article 2(1) (d), each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

In Article 2(1) (e), each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

Article 6 - States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

7. As Nepal has ratified this Convention with important provisions to prevent racial discrimination, Nepal has additional obligation to implement those provisions at the national level. In the context of the provision in the prevailing law as per Section 9 of the Treaty Act, 1990 that the international treaties, conventions and protocols that Nepal ratifies will apply as good as the domestic law, the provision the the CERD should apply directly as domestic law. In order to locally implement provisions accepted in such Convention, national laws are also needed, and for this purpose Nepal has enacted the Caste-based Discrimination and Untouchability (Offense and Punishment) Act, 2011. The Constitution of the Kingdom of

Nepal, 1990, the Interim Constitution of Nepal, 2007 and the present Constitution have also recognized the right against discrimination and untouchability as a fundamental right. Therefore, it is necessary to frame the regulation within a short time frame in order to fulfill this obligation as per the international commitment. As the Government of Nepal has not framed the regulation even after five years of the enactment of the CBDU Act, 2011, this must be considered as undue delay.

8. The Interim Constitution of Nepal, 2007 has constitutionally guaranteed the right against untouchability and caste-based discrimination in its preamble and several Articles. This right has remained as a milestone against caste-based discrimination and untouchability. The second paragraph of the preamble of the Constitution mentions the phrase "to solve the problems relating to . . . ethnicity". Article 12 (1) provides every one with the right to live with dignity. Article 13 (1) under Right to equality provides that "all citizens will be equal before the law". Article 13 (3) provides that "The State shall not discriminate against citizens among citizens on grounds of religion, race, caste, tribe, sex, origin, language or ideological conviction or any of these." Article 14 makes the following special provision against the caste-based discrimination and untouchability:

- (1) No person shall be discriminated against as untouchable and subjected to racial discrimination in any form, on grounds of caste, race, community or occupation. Such discriminatory treatment shall be punishable, and the victim shall be entitled to such compensation as determined by law.
- (2) No person shall, on grounds of caste or race, be deprived of the use of services, facilities or utilities available to the public or of the access to any public place or public religious sites or of the performance of any religious function.
- (3) In producing or distributing any goods, services or facilities, no person belonging to any particular caste or tribe shall be prevented from purchasing or acquiring such goods, services and facilities nor shall such goods, services or facilities be sold or distributed only to the persons belonging to any particular caste or tribe.
- (4) No such act as to purport to demonstrate any superiority or inferiority of the person or persons belonging to any caste, tribe or origin or to justify social discrimination on the ground of caste or race or to publicize ideology based on racial superiority or hatred or to encourage caste discrimination in any manner shall be allowed.
- (5) Any act contrary to clauses (2), (3) and (4) shall be punishable by law.

9. The above-mentioned constitutional provision have also made the caste-based discrimination and untouchability a punishable offense and have made provisions of compensation to the victims as part of fundamental right. The present society has entered entered into the 21st century, and the Constitution itself is seen to have prohibited slavery-era vices, ill-customs and all forms of racial discrimination that create undue distinction among humans by creating social division. That the regulation required to implement the CBDU Act, 2011 framed to enforce the constitutional provision has not been framed for a long time will mean that this delay will directly affect the implementation of the constitutional provision. The continued delay, in whatever pretexts, in the framing of the regulation of the Act which is

required to implement the provisions of the Act cannot be considered proper from the standpoint of constitutional and legal requirement.

10. The current Constitution of Nepal seems to have more sophisticated provisions regarding caste-based discrimination than the provisions in the Interim Constitution. In the preamble of the Constitution, commitment has been made to end all forms of caste-based untouchability. Under Part 3 Fundamental Rights and Duties, Article 16 guarantees the right of every person to live with dignity. Similarly, in Article 24, a special fundamental right related to the right against untouchability and discrimination has been provided under which -

in 24(1) "no person shall be subjected to any form of untouchability or discrimination in any private or public places on grounds his or her origin, caste, tribe, community, profession, occupation or physical condition."

In 24 (2) it is provided that "in producing or distributing any goods, services or facilities, no person belonging to any particular caste or tribe shall be prevented from purchasing or acquiring such goods, services or facilities nor shall such goods, services or facilities be sold, distributed or provided only to the persons belonging to any particular caste or tribe."

In 24 (3) "No act purporting to demonstrate any person or community as superior or inferior on grounds of origin, caste, tribe or physical condition or justifying social discrimination on grounds of caste, tribe or untouchability or propagating ideology based on untouchability and caste based superiority or hatred or encouraging caste-based discrimination in any manner whatsoever shall be allowed."

In 24 (4) No discrimination in any form shall be allowed at a workplace with or without making untouchability on the ground of caste.

In 24 (5) All types of acts of untouchability and discrimination in any for committed in contravention of this Article shall be punishable by law as a severe social offence, and the victim of such act shall have the right to obtain compensation in accordance with law.

The Constitution made provisions for the National Dalit Commission from Article 255 to 257 giving it the recognition of a constitutional body with the power to design and implement programmes on policies, legal and institution reforms for putting an end to caste-based discrimination and untouchability and concerning the interest of the Dalits. In this sense, the special provisions in the preamble and the in the fundamental rights of the of the current constitution and the provision of a special constitutional commission for putting an end to the caste-based discrimination and untouchability, the urgent need of the regulation with procedural provisions for the implementation of these constitutional provisions has increased for putting an end to the caste-based discrimination and untouchability.

11. There is no other alternative than to have a regulation for the fulfillment of the broader vision of "right of every person to equality, freedom and to live with human dignity" as

provided for in the preamble of the Caste-based Discrimination and Untouchability Act (Offense and Punishment), 2011. The Office of the Prime Minister and Council of Ministers of the Government of Nepal which is supposed to be a companion in the smooth implementation of the Act by formulating the regulation, has mentioned in its written response of issuing the Dalit Rights Promotion Mechanism, 2011 and the establishment and operation of the Central Steering Committee, District Coordinating Committee and Local Monitoring Centre for putting an end to the caste-based discrimination and untouchability, however, it does not clearly say anything as regards its obligation towards framing the regulation as stipulated by the Section 16 of the CBDU Act, 2011. This inaction on the part of the Government of Nepal in the formulation of regulations should be considered as an unreasonable delay. Even after a long time of the enactment of the Act, the Government of Nepal has only submitted a reply saying that the regulation is being formulated, but there does not appear to be any meaningful effort initiated for the formulation of the regulation as yet, and therefore, the government cannot be said to be making real efforts towards the drafting of the regulation. Hence, considering that the regulation deemed important by the Act itself has not been framed for a long time, and considering the inconvenience caused due to the Nepali citizens who are suffering from caste-based discrimination and untouchability and are trying to use the Act, it is seen that the order needs to be issued as per the petitioner's demand.

12. Based on the analysis of the grounds and reasons and the analysis done on the grounds of the need to formulate the regulations, it is seen that there is an urgent need to formulate regulation for the smooth implementation of the Caste-based Discrimination and Untouchability (Offense and Punishment) Act, 2011. Therefore, it is herewith clearly established that an order of a mandamus has to be issued in the name of the Government of Nepal, the Office of the Prime Minister and the Council of Ministers et al. to formulate Caste-based Discrimination and Untouchability (Offense and Punishment) regulation within three months from the date of the receipt of this order by including the objectives as envisioned by the Act. Send a copy of the order to the respondents through the Office of the Attorney General to inform about the order. Also, send a copy, informing about the order, to the Monitoring and Inspection Division and Judgement Enforcement Directorate asking them to monitor and submit a report regarding the implementation of this time-bound order issued for the formulation of the regulation. And finally submitted the case files to Records Department as per the rules.

I concur with the above decision.

Justice Devendra Gopal Shrestha

Bench officer: Chandra Prakash Tiwari

Dated 08 June 2016, Wednesday.