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Editorial

The Road to Be Taken

Dalits in Nepal are victims of multiple discriminations. They are discriminated virtually in every sphere of life in Nepal, including marriage, religious practice, access to land, and access to education. Dalits commonly known as 'untouchables' are forced to live in separate settlements completely isolated from people of so called high castes. They are underrepresented and are unable to assert their rights. Majority of the Dalits are forced to remain silent in the face of discrimination even if they perceive it unjust.

Landlessness is acute among various Dalit groups. The Terai Dalits are gripped tight of the landlessness. The average land-owning per household among Dalit groups was 2.46 ropani of khet (farm) and 4.5 ropani of pakho jagga (barren land).¹ Exact statistics of Dalits landlessness is difficult. So far as available, 15.87 percent of Dalits are landless, 49.8 of them have less than 5 ropanis, 5.18 of them own 6 to 10 ropanis, 12.33 percent of them have 11 to 20 ropanis and only 3.87 of them have more than 20 ropanis of land.²

Educational attainment of Dalits is similar as landlessness problem they have. Of 10 percent literate Dalits, 27.7 percent are primarily educated, 8.4 percent of them have received secondary education and 0.8 percent are SLC graduates. Dom, one of the Dalit caste groups is 100 percent illiterate.³ Even the 10 percent of scholarship provisioned to Dalit students for the MBBS programme, Dalits could receive only 41.5 percent (5 seats) of the scholarship where 58.5 percent (7 seats) was occupied by non-Dalits.⁴

Pity as it stands, Dalits are again in the lowest position on the economic front. They yield technical skills but the skills are lowly valued and not recognized by the State. They are discriminated in the payment of equal labour to non-Dalits'. As they are compelled to work as watchmen, bonded labourers, herdsman and ploughmen, their income is very low. Low attainment of economic status has a direct impact on education of the caste group. They are unable to pay school fees and have been jobless. This way they are helpless and excluded.

Discrimination on the ground of race, sex and caste, more importantly, is engaged in a race against time. Even in the age of technological advancement and wisdom, discriminations as recounted above prevail over wisdom and technological advancement. This has threatened our civilization and has been a challenge to entire human kind. Winning discriminations has been as "traveling ... a murky road."⁵

What Dalits share with us is sobering. The plight is more severe in the rural areas, where treatment of people to each other is based on the caste group they belong to. A majority of Dalits feels they are worse off and more insecure than in the past. Invasion of technology has engulfed Dalits skills endangering their livelihood further. Low representation of this caste group in the decision making level has excluded them to effectively formulate plan and policies that are fit to them to fight discrimination. From the perspective of Dalits, bad governance, corruption and abusive behaviour often mar their safety, security, peace, respect and dignity. Though some policies are formulated to address Dalits plight, they are already stretched thin. Discriminatory practices against Dalits call out for all of us to rethink our strategies/attitudes.

This volume of journal attempts to serf the issues of discriminations prevalent against and among Dalits. Though this does not cover all the sectors of discriminations in

depth, we have at least tried to bring the issues to the scene. The issues nail down here by the different contributors make us realize that we are not yet in the age of technology because “Man’s inhumanity to man is not the invasion of modern era.”⁶ This blockade has not been an exception in Nepali society.

Mr. Hira Bishwakarma in his article “Internal Discrimination within Dalit and Ways to Overcome It” reviews the practice of internal discrimination among Dalits. Mr. Bishwakarma opines “practice of untouchability within themselves is not created by themselves rather it is imposed. ... had there not been internal discrimination within Dalits, they would have revolted long time ago.” He sums up the article with some recommendations and says practice of inter caste marriage can be a good beginning of fighting against discrimination. This has to be practiced within Dalit castes too.

Mr. Meen Bishwakarma, former-member of National Dalits Commission, discusses about the “Relevance of Reservation to Dalit Community”. Presenting some exemplary actions and action plan adopted by some countries to uplift Dalits and marginalized groups, he pens down in favour of periodic reservation to dalits which, as he thinks, brings the Dalit community in the national integration. Unless all the communities are integrated, development cannot be imagined. “Dalits want liberation from deprivation, exploitation and negligence by the state and society. They want equal participation in the national governance.” For this too, as he says in abstract, reservation may help them to reintegrate for the common move in equal footing.

Nepal’s prominent psychologist **Dr. Niranjan Prasad Upadhyay** looks at the “Psychological Status of Dalits in Nepal”. As he scrutinizes, psychology “examines the way behaviour is learnt and can be changed.” Psychologically Dalits feel themselves inferior and abused by the “high caste” people. As they are victims of inferior psychology, this has triggered them to be mentally defeated in their efforts and are suffering from intense abuse. Physical violence, social injustice, unjustifiable verbal abuse, failure to furnish nourishment, medical treatment, and emotional support are connected to the psychology that determines human behaviour. Since Dalits have almost no share of such support, they are psychologically retarded to fight social injustice. To overcome such distress, Dr. Upadhyay recommends to introduce radical change in the social, economic and educational sectors the area that Dalits are unabashedly excluded. Poor psychology of Dalits can be overcome integrating them in the mainstream of social flow where they can work with the high caste people on the basis of equality and brotherhood.

Advocate Tek Tamrakar’s article is succinct and analytical. He offers a sharp comment on existing laws and legal provisions in Nepal and their poor implementation. He mentions “the judiciary of our country (Nepal) has not become so dynamic for Dalits.” Despite the “various welfare provisions for the advancement of disadvantaged communities like Dalits, women and ethnics” mentioned in the directive principles of the existing constitution, the community people have never realised their advancement due to the lack of implementation of the provisions. As Mr. Tamrakar observes, many atrocities are taking place against Dalits in the supervision of “local leaders and the parliamentarians.” “The local leaders and the parliamentarians themselves involve to impose so-called low-caste people to continue the traditional occupations. The instance is the social exclusion of Chamar caste people in the eastern part of the country and prohibition of the Dalit’s entry into temples.” This way the right to work and right to religion of Dalits is violated. To address Dalits issues and integrate them in the main stream, Mr. Tamrakar recommends to reform the constitution, where right to work and accommodation, right to nationality, right to reservation for Dalits in public services should be guaranteed.

A relevant contribution to this volume comes from **Advocate Ratna Bahadur Bagchand**. Mr. Bagchand identifies potential faultiness in the implementation of laws

referring to examples. He mentions the state mechanism is biased at treating and taking up the Dalits cases seriously. Even after the government's declaration on 28 July 2003 'practice of untouchability' as a crime, many cases related to untouchability have been taken place. But there is not a single record of such cases in any court of the country. The article also mentions the incidents of defiance of court order by the high caste people and government's negligence to bring the perpetrators under the lawsuit.

Another area that the Dalits are discriminated is education. **Ms. Rachana Rasaili** presents a gloomy picture of Dalits educational attainment. "Acquiring education for Dalit children in the western part of Nepal is like putting hands in a burning fire. Even at schools they have to face discriminatory behaviour by the so-called upper caste people. They have to stay at door side of the classrooms and in some cases, they have to sit separately without touching non-Dalit students", Miss Rasaili mentions.

Truism mentioned in the article is enough to review how effectively the laws are implemented and how conscious the state drivers are. Laws are formulated for social equality and integrity. Discriminatory practices on the ground of castes are declared a crime in law books. But due to the lack of implementation, those who exercise such practices are enjoying impunity. Commitments and behaviours have confronted and Dalits have been the victims in such confrontation.

This volume of journal has tried to explore the problems of Dalits. We do not claim that all the problems have been discoursed. We are conscious many issues are to be raised. But a major glimpse of the direction that we have to take has been highlighted here.

Our core mission is to help Dalits succeed in their own efforts. This volume raises major challenges to all of us concerned about discriminations. We all should be prepared to hold ourselves accountable and try to respond the voices of Dalits. Obviously this is not one person's effort and we cannot do this alone. We hope that you will read this journal and the issues in this journal call you to action as they do us.

Struggle of Dalits for justice and dignity will not end in defeat.

Bal Krishna Kattel
Editor

Notes

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Internal Discrimination within Dalit and Ways to Overcome It

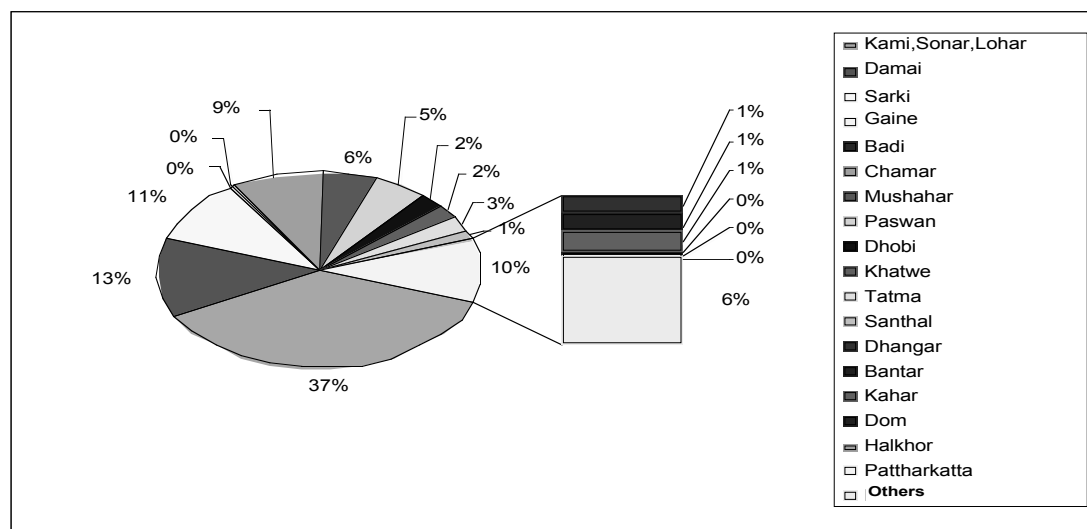
► Hira Vishwakarma ◄

There is a popular story of Rana time during the premiership of Padma Sumsher.

One day three Dalits from Kami, Sarki and Damai of one village somewhere from a hill decided to overcome the practice of untouchability to them from upper caste people. During the Rana regime there was no democracy and sources of law were largely religious practice and words of the prime minister, therefore, if they were successful to convince the prime minister then their caste could be uplifted and would become touchable. These three men left the village and reached Kathmandu after several days of walking. They entered the compound of prime minister's palace and sent the message inside stating their desire of uplifting from untouchables to touchables. The prime minister himself was very clever and asked who they were and upon knowing their caste he sent message ordering them to first cook food and eat together. If they could follow that order, their caste status would be uplifted. Both Kami and Sarki who consider above than Damai felt it humiliating to eat with

him and they left immediately the palace abandoning their desire of being uplifted. This story clearly tells all Dalits want to be equal with upper caste people but not among themselves.

During the Rana regime there was another system of nominating leaders from Dalits who indeed were ruler of their own caste group and their major roles were to reinforce caste system by carrying out some judiciary practices. For example, if there were problems within their caste group, first the problem would go to the leaders and any judgement given by them had to be followed. Such roles were given to those who were very close to Ranas. Mr. Mohan Lal Kapali whom I refer as living history of Nepali Dalit movement recalls the famous Pashupati temple entering movement of 1954 in the leadership of late Saharshanath Kapali. Mr. Mohan Kapali said that Mr. Shyamlal Naik of Kalimati Kathmandu had a very good relation with high class Ranas as he was given leadership of his Kami caste group and used to make jewellerys for them. If a person like him had used their position and relations to



request Ranas to uplift their caste status, it would have been done. Unfortunately none dared to do so though it was a matter of pleasing one authority than the whole system.

Though Dalits practice untouchability within themselves but the system was not created by themselves rather it was imposed. It is quite interesting to note that had not there been internal discrimination within Dalits, they would have revolted a long time ago. A long before British who are known to be imposing 'divide and rule' policy was in fact practiced by high caste Hindu group centuries ago. This is further justified from the written text of civil code of 1853 as Kisan quotes 'the lowest caste group would be Chyame, as Poda would not accept food cooked by them, so they are above Chyame, likewise Badi, Gaine, Damai, Kandara, Sarki, Kami, Kulu, Hindu Dhobi, Kusle and above all would be Kasai caste.¹

Caste Hierarchy within Dalits

Dalits of Nepal can be divided into three groups according to their geographical locations. Hill Dalits which is a dominant group both in terms of 2 Ps (population and politics). Among hill Dalits, Kami is supposed to be at the top, Sarki, Damai, Gaine and Badi followed by respectively. Another geographical group is Newar. Though this group has excluded itself from Dalit group. They are still discriminated on the ground of their caste. I have included Newar dalits in this writing. Within the Newar Dalit group Kasai is supposed to be at the top, followed by Kusle, Dhobi (Rajdhobi, washermen of Kings are not considered untouchable), Kulu, Poda and Chyame respectively. There is another group of Terai dalit on top it is Tatma and contrary to hill and Newar Dalits four caste groups of Paswan, Mushahar, Khatwe and Batar fall under the same hierarchy and they are considered equal. These caste groups are followed by Chamar, Dom and Halkhor respectively.

When we talk about the internal discrimination within Dalit, we need to identify the major issues. They are as follows:

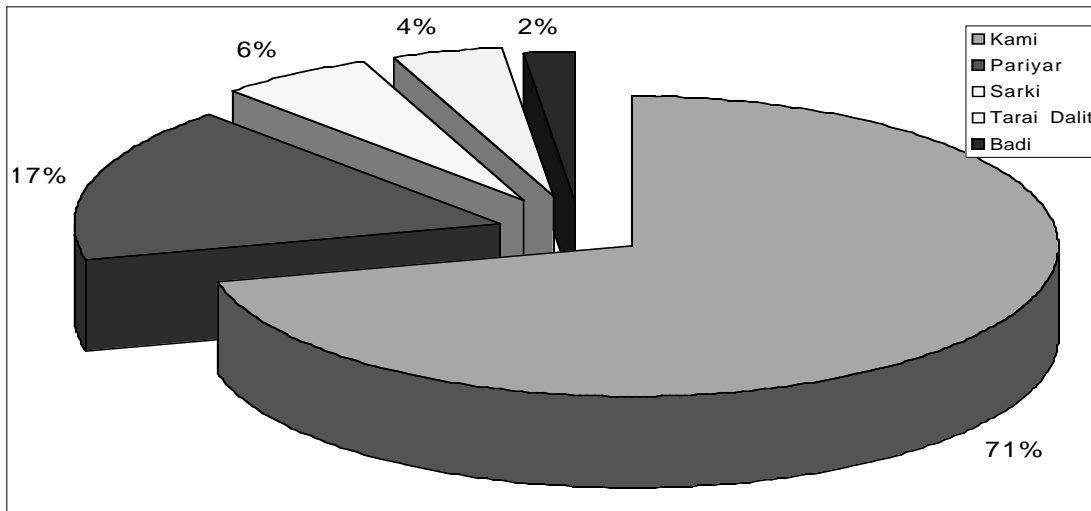
Denial²

As per the social hierarchy those on top consider all lower to them impure and untouchable. In the hills, Kami's are considered to be at the top and practice untouchability with all other caste groups whom they consider below them. Likewise, Sarki practices untouchability with Damai, Gaine and Badi. As a result, they do not accept water and food cooked by caste lower to them and they do not let enter their house to lower caste Dalit. An extreme case was observed when Tatma (one of the Terai Dalit) sided with upper caste Chaudhary during Chamar movement of Siraha a few years ago. In that incident the Former Minister Mr. Padma Narayan Choudhary carried out economic blockade against Chamars who refused to throw a dead body of his calf as they found that practice most humiliating and one of the reasons for them to be discriminated against. The Minister who is a local landlord found the denial of Chamar against his supremacy and domination. The Tatma group who is also considered untouchable, instead of showing solidarity with Chamars who were in trouble, sided with the exploiting group of Choudhary, which was indeed a pity for the Dalit movement. It is lately they felt that it was their mistake to side with Chaudhary.

Representation

Despite Dalits being discriminated, there have been some practices especially after 1954 to nominate Dalits in the parliament and other important positions of government institutions. Especially at the political and organizational spheres some caste groups are considered over represented by other non represented groups. For example Kami and Damai in case of Hills and Paswan in case of Terai seem to be over represented, out of 18 nominated and elected parliamentarians 8 are Kamis, 4 are Damais, one Sarki, two Kusle and two Paswan and one Kasai that means 44 percent Kami, 22 percent Damai, 11 percent Kusle and Paswan and Sarki and Kasai 6 percent each.

Likewise, a sample study was carried out recently in the board structure of 5 National Dalit NGOs: the Dalit Welfare Organization, Feminist Dalit Organization, Jagaran Media Centre, Jana Utthan



Pratisthan and Dalit NGO Federation, these organizations are advocating for Dalits' rights for several years. The following picture speaks itself.

From the study it is very clear that there is over domination of Kami group followed by Pariyar or Damai. According to the population census 2001, the population of Kami within Dalit is 37 percent but they control almost 75 percent of NGO boards. Likewise Pariyar consist of only 13 percent within Dalit but they control by 17 percent. In most cases Terai Dalits are represented the least, in parliament it is 11 percent and in case of NGOs' board it is just 2 percent whereas they comprise of one third of Dalit population.³

Competition

Mainly among these three dominating caste groups Kami, Damai and Sarki Dalits, there is a general feeling of competition. The Sarki group feels that they have been deprived of opportunities because this two-caste groups. The Damai caste group is represented more than the rest of other group but they feel dominated by Kami group. The competition between hill versus Terai has not been observed within Dalit movement but sooner or later it is likely to come once they become aware of the fact that their share of the opportunities have been denied. For healthy growth of the movement, competition is good but it is giving a negative impact on Dalit movement which is evident with the emergence of different caste organizations such as

Bishwakarma Ekta Samaj, Pariyar Sewa Samaj, Ram Samaj, Mijar Samaj and so on. There is no harm to have such caste organizations but there is a tendency of no participation in common agenda of all caste groups.

Acceptance

It is easy to blame Brahmins of Nepal for their over domination in the bureaucracy and other sectors of governance. It is not only because of their access to education and exploitation to other caste group but also of their hard work and dedication. Because of large population within and their leading role in the movement, they seem to be dominating the other caste groups and so is the case with Damai and Paswan and this fact is not being accepted by other caste group. Particularly the Kami are not responsible for all these situations rather than the system itself.

There is great problem of inter caste marriage, if a Dalit girl gets married with a non- Dalit boy, it is unacceptable for the so called high caste family. The same situation prevails with the marriage of a high caste Dalit boy with low caste Dalit girl, as the girl is not accepted by the family of the boy.

In Chitwan the nephew of a renowned Dalit leader of Kami married a Pariyar girl. Instead of coming forward to encourage such marriage he joined his family members to revoke that marriage. It is pity to note that the Dalit movement itself seems very passive to address this problem.

Recommendations to Overcome Internal Discrimination

- ▶ The co-feast programme has been found very effective to eliminate the practice of untouchability as the practice is mainly based on accepting cooked food and water. Therefore, a number of programmes involving Dalits of different groups has to be organised.
- ▶ The marriage between different race and caste is good not only socially but scientifically as well, as the offspring produced are of enhanced capabilities. Therefore, intra Dalit marriage has to be promoted as far as possible. Those who have already got married and leading towards success need to be felicitated so that others will find it encouraging. The civil society should pressurise government to have a good policy to reward such practices and one of the ways could be to provide employment opportunity with the government and other incentives. In other words, a separate Act should be developed to promote such practices.
- ▶ The Dalit organizations who are advocating

for Dalit cause should adopt the policy of integration and include in their boards and staffing from the non represented groups of Dalits. It is more important to include Dalits from Terai as they are least represented in all fronts.

- ▶ Now time has come to redefine the mode of Dalit movement and one of the options could be to establish a federation of Caste group organization in which proportionate representation could be provisioned. Such practice promotes competitions among the people of same caste group in their caste organization, which can nominate its representative to such federation where they can best present the interest of their caste group.
- ▶ The government also needs to keep balance while nominating or selecting for institutions, which are meant for Dalits. For example, in Dalit Commission and Dalit Development Committee the government can nominate people from different caste groups of Dalits and preference should be given for least represented groups. ■

Notes

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Relevance of Reservation to Dalit Community

» Meen Bishwakarma «

Historically, Nepali society holds deep roots in the Hindu caste system, with hierarchy of different groups of people within the system. Dalits or the untouchables are one of the groups of people within this Hindu caste system whose social, economic, health, education and political status is lowest in comparison to other groups in Nepal.

Since the beginning of Nepalese history, Dalits were the main pillars of economic sector because they produce things of daily use for human life like agricultural tools, domestic weapons, kitchen tools, clothes, shoes, ornaments and so on. They were devoted to the music and arts as well as singing and dancing. But their lives turned ruined when the discriminatory social presumptions and legal system based on work and descent were applied in Nepalese ruling system. The history of such system began with the King Jayasthiti Malla in Kathmandu Valley in the Mediaval Age, when he formulated religious code named "Manav Nyaya Shastra" in 1380 A.D. (1437 B.S.).

It's a wonder that state divided the people of own country into different fractions under the hierarchial caste system among the homo-religious like Brahmin, Chettri, Vaishya and Sudra. The vertical system kept Brahmin at the top and Sudra at the bottom of the society. Similarly the first Rana Prime Minister Janga Bahadur Rana legalised the caste discrimination in the Legal Code of 1853 A.D. Sudra

(untouchable castes) were kept aloof from the national mainstreaming of development. Although Dalit community consists 1/5th of total population their participation in decision-making process is nil. That is why; it has been difficult to begin the process of reform.

After the restoration of multiparty democracy, some significant decisions were taken by the State but they have been failed due to the lack of Dalit's participation in decision-making process as well as in their implementation.

Without bringing the Dalit community in national integration, development cannot be imagined. State cannot be recognized as the Well-Fare State but it would symbolize the Laissez Faire State, which doesn't consist the democracy and social justice. To be identified as Well-Fare State, many countries of other continents and most of the Asian countries have practiced different model of reservation like Affirmative Action, Positive Discrimination or the Special Privileges for the backward and marginalized groups of the state.

India had a great black-stain of severe Caste

Indicators	Value (Dalit)	Value (Newar)	Value (Nepal)
Life Expectancy	50.30	62.2	55.0
Adult Literacy Ratio	23.80	54.80	36.72
Mean Years of Schooling	1.228	4.370	2.254
Per Capita Income (NRs.)	4,940	11,953	7,673
Per Capita Income (USD)	764	1,848	1,186
Life Expectancy Index	0.422	0.620	0.500
Educational Attainment Index	0.186	0.462	0.295
Income Index	0.110	0.289	0.179
Human Development Index	0.239	0.457	0.325
Ratio to National HDI:Nepal=100	73.62	140.73	100.0

Source: NESAC (1998:266)

Discrimination. That led the country nearly to be divided into separate Dalit state. The Indian Dalits struggled against caste discrimination and got rid of it during 1950 when Dr. B.R. Ambedkar had led the movement very efficiently. It was the great achievement to get Ambedkar as the Chairperson of the drafting committee for the Indian Constitution on August 29, 1947 after the liberation from British colonism. His committee has mentioned the details of privileges to Dalits in constitution. Sometime it is heard through our political leaders and traditional so-called social gentry persons that reservation system in India has provoked the social conflicts between so called higher-caste and lower-caste people notwithstanding the Reservations for Dalit, tribes and backward communities have been the effective instruments of national unity in India that we have been watching as neighboring country since long.

Even the most developed country, America has applied the Affirmative Action system in education, health, employment and social security for American Blacks since the period of President Johnson in 1960. Before that, even the court has decided ambiguously saying, "Although the Whites and Blacks are equal of human being Blacks could not be treated equal to the Whites" in Ferguson's case which interprets the principle of Equal but Separate.

Similarly, South Africa has implemented the Employment Equity Act 1994 to uplift the marginalized Blacks and the other backward community by the Nelson Mandela's Government. We can read and visit different models and methods of reservation and its application like Diversity Management in Australia, positive discrimination in United Kingdom and Affirmative Action in Nigeria and Namibia.

When we wanted to make Nepalese society harmonious and cordial, different types of discriminatory barriers used to arise. The State could not decide and apply the progressive or reformatory policies, i.e. Former Prime Minister Sher Bahadur Deuba declared some Reformatory Action Plans in the then parliament addressing

the issues of Dalit, Women, Indigenous and Terain people but some MPs who were landlords and had traditional notion upon the society became the barriers and did not let the bill pass. There were many progressive policies and action-plans in ninth Five-Years Plan of HMG but the whole provisions about Dalits were not applied. There are many positive laws in our legal system to establish social justice but still they are in vain. Though Government has established some national institutions like National Dalit Commission and Dalit Development Committee they could not be effective as they are not autonomous and powerful for decision-making.

Recently HMG has announced the reservation policy for the upliftment of Dalit, women, and ethnic minorities. After a long giddiness period of Nepalese history, the State has realised the severe discrimination in every sector of governance. It should be taken as an allegorical action to restructure the society and the state. It has made a concept for the areas of reservation with following sectors:

- ▶ Education
- ▶ Health
- ▶ Representative bodies (like local level and only in Upper House)
- ▶ Employment and public service

The content in proposed concept are not satisfactory for Dalits because this concept has not covered the sectors by which we can build the national integration, like the representation in the House of Representatives, military, police, constitutional organs and the institutions where the government can appoint politically.

Dalits (the marginalized and kept far behind in the human development ratio by past state policy) have been fighting for equality, justice and dignity. These are not the abstracts but the better measurements of human rights and democracy. They want liberation from deprivation, exploitation and negligence by the state and society. They want equal participation in each sector of national governance, which they had missed in the past due to the partial ruling system based on costumes and religion.

Integrated National Index of Governance 1999							
Institutions	Bahun - Chhetri	Mongol	Madhesi	Dalits	Newar	Other	Total
Court Judges/ Court Officials	181	4	18	0	32	-	235
Constitutional Bodies	14	2	3	0	6	-	25
Cabinet	20	4	5	0	3	-	32
Parliament	159	36	46	4	20	-	265
				Up per House			
Public Administration	190	3	9	0	43	-	245
Political Parties' Leadership	97	25	26	0	18	-	165
DDC Chairpersons, Municipalities	106	23	31	0	30	-	191
Industry/ Commerce Leadership	7	0	15	0	20	-	42
Education/ Professionals	75	2	7	1	11	1	97
Culture, Academic & Professional	85	6	0	0	22	-	123
Science & Technology	36	2	6	0	18	-	62
Civil Society	41	1	4	0	8	-	54
Total	1011	108	170	5	231	1	1520
Percent	66.5	7.1	11.2	0.3	15.2		100
Difference (percent)	+34.9	-15.1	-19.7	-8.4	+9.6	-1	
Primary National Index of Governance 1959							
Supreme Court	8		1	0	1		10
House of Representatives	64	17	24	0	4		109
Cabinet	10	5	3	0	1		19
Total	82	22	28	0	6		138
1958 (percent)	59.4	15.9	20.3	0	4.3		100
1999 (percent)	62.7	13.3	17.3	0	6.7		100
Difference (percent)	+3.3	-2.6	-3		+2.4		

Source: Neupane, 2000. pp.82, 83

Though we talk of modern technology and of different model of human rights and democracy we do not show eagerness for their implementation in our own country. That is why, now a days the reservation issue has been spread over the country. It has drawn the attention of Government, political parties, lawyers, people of relevant communities, and the whole civil society of the country. Everyone raises the questions: What is reservation? Reservation for whom?

Who will be the beneficiary of reservation? How long the reservation system is needed? What are the areas of reservation? What result would we get after its implementation in the state? These are not astonishment but how to manage the society destroyed for centuries. In this situation simply we can ask ourselves that "Is there any system of reservation in our country?"

Nepalese society is not divided according to the

costumes and religions but according to caste, work and decent. Certain caste groups are given certain jobs or occupations not because of their skill but because of the supreme order of the ruler. According to our social hierarchy, Brahmins are supposed always to be the priests and rulers, Chhetris are for defence, Vaishyas are for business and Sudras are always supposed to be the servants of upper-caste people. Dalits do not have choice of job. Despite some legal provisions for equality and liberty, society does not accept them. It is easily understood that if a person could not choose his/her job how can he/she develop himself/herself. There are still different types of reservation in Nepal but these are not for the backwards and underprivileged but

for the so-called higher caste people who have always captured the state mechanism. In this way the society is divided and destructed into different small units, which does not mean good for the state. So we have to think good for better unity of nation rather we worry about the beneficiaries and non-beneficiaries of reservation.

Reservation means the compensatory privileges to certain backward or marginalized people by state. It does not hamper other's rights and privileges rather it brings the cordial environment among the different caste and class of people when there will be equality, justice and dignity for all in a society. ■

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Psychosocial Status of Dalits in Nepal

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Abstract

Psychology is about understanding the behavior of people in their physical, social and organizational environment. As a social science, it examines the way behavior is learned and can be changed. It focuses on individuals within the context of families, organizations and other groups, communities, cultures and societies. In fact, psychology deals diversified aspects of human behavior within social setting. The Dalits form the lowest caste in the Hindu caste hierarchy. They are also commonly known as "untouchables." Since Dalits perform menial tasks, traditional societies consider them "unclean." Higher castes are thus required to avoid close contact with Dalits, leading to generations' old segregation of society. The Dalit caste has further been divided into different groupings in accordance with the type of work. For example, communities engaged in tailoring, or playing musical instruments, or communities involved in washing clothes, or in making clay pots, or working with metal will be given different family names in accordance with the type of work they do. Dalits are often referred to as the occupational or artisan caste. However, studies show that the life of Dalits in the Terai region of Nepal, including Dom, Dusadh, Musahar, Chamar, Tatma, Khatwe and Dhobi is even more deplorable than the life of the hill Dalits. They are lagging far behind the hill Dalits in education, health and several other sectors. The tenth plan also stresses a poverty reduction strategy based on social sector development with emphasis on human development, targeted programs with emphasis on social inclusion and improved governance. The implementation modalities initiated are expected to succeed particularly in delivering basic services, enhancing the quality of life of the poor people and promoting economic and social inclusion of deprived communities and regions.

Introduction

Caste discrimination is a shocking crime against humanity which is based on a false ideological construction sanctioned by religion and culture which affects 260 million Dalits in South Asia, as well as others in the Asia Pacific and African regions at the personal, social and structural levels, irrespective of their religious affiliation. World Conference Against Racism (2001) remarks that caste is a historically entrenched form of discrimination based on descent and occupation that results in segregation of communities, including the stigmatization of certain of these communities as 'untouchable', allowing for flagrant violations of human rights and dignity of members of these communities, and making them, especially women, vulnerable to the most barbaric forms of violence.

Nepal is one of the poorest nations on earth, but a glance at the difference in social indicators for Dalits and caste Hindus shows that there are, in fact, two nations here: one is developing and the other is downtrodden. Of the total population, 50 percent are literate, where only 11 percent of Dalits can read and write. Average age of Nepali is 61.9 years, where Dalits average age rates at 42 years. Per capita income in Nepal is US\$269, but Dalits expect to earn only about US\$40 per year. While 40 percent of the population is below the absolute poverty line, an estimated 80 percent of Dalits are living in extreme poverty. Meanwhile, regarding the control of the "means of production," Dalits own merely one percent of cultivable land despite the fact that most Dalits live in rural areas. Every imaginable social indicator lies the systemic socio-economic exclusion that means Dalits are effectively living in a different nation to higher caste Nepalese. Dalit women face even extreme suppression of poverty, humiliation and deprivation than their male counterparts.

Nepal is heavily dependent on tourism and development aid for survival, but this income does not reach to the Dalits. They have been trying to assert their equality and reject caste-based oppression by peaceful means, but these attempts have been met with strong opposition from the dominant castes. Moreover, practices of untouchability are still out of control. They are banned to enter temples and use public utilities. They are forced to use separate water supplies, obstructed to enter shops put up by so called high caste Hindus and are forced to live in a separate community.

The government's Tenth Plan forwards various welfare programs for Dalits. The establishment of 'Committee for Disadvantaged and Deprived Dalit Community' was also a major step forward. The government also pledged to establish special programs for Dalits, which paves the way for a 'reservation policy' (affirmative action) for Dalits in areas such as education, employment and political appointments in the near future. Some programs such as 'reserved seats' for Dalit students are already launched. Nevertheless, the disadvantaged and downtrodden status of Dalits in Nepal remains a national disgrace. Numerous and persistent cases of caste discrimination and atrocities committed against Dalits continue to come to the light.

Gender relations, combined with class and caste, also determine the character and quality of life for men and women. It is still the case that, by and large, gender relations among ethnic minority and dalit (lowest caste, untouchables) groups tend to be more egalitarian than among the high caste Hindus, where patriarchy often retains a powerful hold over the choices available to women, and ensures their continuing subordination (Sheldon and Hussein 2002).

Status of Dalits in Nepal

Abuses against Dalits have been rampant in almost every sphere of life in Nepal, including marriage, religious practice, access to land, and access to education. It has been noted that, despite government action to ban certain forms of discrimination, the caste system still takes a huge toll on Dalits in Nepal. Inside the Dalit

community, there are eight key caste groups and twenty-five recognized sub-castes. Some NGOs researches guess the Dalit population at 4.5 million, or 21 percent of total population. Despite their significant numbers, they continue to suffer from discrimination and human rights abuses by reason of their caste. Legal protections for Dalits have been weakly implemented, and discrimination against Dalits is still very much a part of everyday life in Nepal.

The Constitution of the Kingdom of Nepal, 1990 clearly mentions, "No person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities. Any contraventions of this provision shall be punishable by law" (Article 11.4). In addition to the constitutional prohibition on caste-based discrimination, the government has also taken some legislative actions to prohibit discriminations against Dalits. Unequal treatment of Dalits by the national laws is prohibited. The Civil Code also prohibits some forms of discrimination against Dalits, but excludes places of religious practice from the scope of the act. Despite these provisions, caste and caste-based discrimination remains a central feature of life and social interaction in Nepal, and the government regularly fails to prosecute individuals who engage in caste-based discrimination. Dalits are victims of targeted attacks. Police officials frequently not succeed to investigate reports of violence against Dalits, and perpetrators of attacks on Dalits often go unpunished. Dalits in Nepal face a powerful combination of social discrimination and violence that enforces their second-class status.

Democracy has enabled dalits to make some limited gains but the system must be instrumental in improving their status on the ground. Dalits are also excluded from certain spaces. Those dalit elites cannot find accommodation in a good housing society even when they meet the economic criteria perpetuates the ghettoisation of Dalits. Social exclusion is the root of all exclusion. Dalits are not given the opportunity to come out of their exclusion.

Psychosocial Status of Dalits

Family is the best school where individual gets lesson "how to behave with others and how to react within society". It is the fact that the upper caste people form their unions to forward their common voice to the government. Generally, today Dalits have formed various organizations to raise their voice for empowerment and social inclusion. Certainly, it is true that Dalits have been suffering from intense abuse and it raises extreme stress among them. The term abuse can denote the use of inordinate physical violence, social injustice, unjustifiable verbal abuse, and failure to furnish proper shelter, nourishment, medical treatment, emotional support and other cases of sexual molestation or rape. Sexual abuse is a serious problem. It is prevalent all over the world. Such types of incidents are often available in the print media. Sexual abuse is usually associated with severe emotional problems. These days, mental health experts consider sexual abuse wide-ranging in every developed and developing country.

Every one's personality is creation of their family. It is in the family that the child first experiences the meaning of love. Psychologically, family provides a framework within which the child may find roots, continuity and a sense of belonging. Parents serve as the first socializing agents. The parent-child relationship significantly affects the makeup of child's personality. Psychologically, society and family environments give lessons to their children how to differentiate or behave to the other caste people.

Basically in Brahman family, children are taught as a superior caste and give the lesson to the kids that they do not touch the lower caste people. The political leaders preach lesson that there are no differences in castes. All are human beings. Therefore do not differentiate in behavior. But in practice, the leaders do not live up to their words. In reality, the Dalit people show depressed behavior. Depressed behavior can trigger hostility and anxiety. It is a mental problem that is found in every society. In fact, depression relates loss of curiosity or pleasure, feelings of guilt, low self-esteem, disturbed sleep or appetite,

low physical energy, poor concentration, thoughts of suicide, and obsessive thoughts. Every human being has a set of fundamental physical and emotional needs that have to be met in the environment for that person to live a fulfilled life.

An average Dalit child has a severe inferiority complex. "A Dalit develops feelings of humility, timidity and submissiveness in order to be able to socialize with caste Hindus. Dalits are under immense psychological pressure when their identity is about to be disclosed (Anand 2003). Researcher, Anand (2003) has introduced an article on "Do Brahminical ideologies permeate Indian Psychological Theory?" In that article he has claimed that American blacks have a sense of pride in their identity, which they have built. They can never pass for being what they are not, whereas in India dalits can pass for non-dalits, and are under pressure to do so. This takes a very heavy toll on them.

Strategy for Emancipation of Dalits in Nepal

Economic deprivation is a crippling disability of the people of low castes. They live in abject poverty subject to malnutrition, high infant mortality rate, low life expectancy, indebtedness, and low literacy rates. Their economy is below the subsistence level and lags far behind the marginal economy. The rehabilitation and empowerment measures must be adopted through formal, informal, legal/official and other channels. In order to obtain strength against discrimination, the affected people need to revive their group lives by organizing themselves. In order to acquire strength against discrimination, the affected people need to revive their geo-economic security. A radical change in the economic status of the disadvantaged people should be brought about ensuring them equitable distribution of national wealth through subsidies in business, industry, and higher salaries for employees of those communities etc.

Usually, specific measures need to be framed and implemented so that certain numbers of seats are allocated for the people of backward or disadvantaged groups/castes. Dalits have been demanding reservations in different sectors, such as education, civil service, political

appointments, national representation and in similar other areas. Their demand seems reasonable considering previous state of suppression they have had to live with. Furthermore, the Constitution of the Kingdom of Nepal, 1990 states that the government can enact special legal provisions for the protection and development of this community. Therefore, the government needs to initiate action accordingly. In evolving a strategy the constant interplay between the economic, political, familial and educational processes as well as the attitudes of the individuals and of the entire society must be kept continually in mind. Dalit community organizations should continue their fight against the uncivilized system of unsociability.

Special programs for the upliftment of particular Dalit group may be necessary. The literacy rate and the level of education need to be raised among all the Dalits. Institutional, human resource development, health and sanitation, training and capacity-building, social and economic development and other development program should also be launched with the co-ordination of local level institutions (VDC & DDC). An attempt should be made to distribute water to all the members of communities equitably. This is in regard to banning of dalits from using public water sources in many communities of the rural areas.

Since each Dalit caste specialize in one art/craft or the other, adequate training should be given to them in their own traditional area of activities through the modern method by way of providing them training, credit and marketing facilities. Also research of their traditional knowledge would open up a vast area of study for scholars from all around thus helping the national economy in the process.

Conclusion

Civil society organizations can pressure the government and encourage communities concerned to work in tandem to eradicate the social problems of untouchables. The disadvantaged position of the Dalits can be slowly alleviated through a concerted effort from all sides. Since government legislation or social action is not enough, civil society organizations can bring all the sectors together under one umbrella to work for upliftment of the Dalits. The tenth plan also stresses a poverty reduction strategy based on social sector development with emphasis on human development, targeted programs with emphasis on social inclusion and improved governance. The implementation modalities initiated are expected to succeed particularly in delivering basic services, enhancing the quality of life of the poor people and promoting economic and social inclusion of deprived communities and regions. ■

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Existing Constitutional Innovation for Dalits : Myth or Reality

» Tek Tamrakar «

Introduction

Nepal is a multi-ethnic, multi-religious, and multi-lingual nation exhibiting cultural diversity. Hinduism is constitutionally recognized component of state in Nepal. It is considered that the Hindu system of jurisprudence is the major responsible factor to plant the seed of status-oriented and caste-ridden social value. Hindu philosophy categorized castes into four divisions called Varna system. These Varna might have been originally changable in their function and were formed to facilitate the performance of social duties. Gradually, they developed into static social groups with no social intercourse. In due course of time it also turned into an exploitative economic structure and an oppressive political system.¹ Such static and caste based social structure separates people into distinctive categories on the basis of similar or dissimilar characteristics.² This social and political system influenced the whole legal system also. In this way, those who have power and hegemony in state resource, affect the quality life of the haves not groups. This hegemony direct reflected in the legal tools. One of the law, articulately influenced by the Brahminocry was the first fundamental law of the country namely Muluki Ain, 1853. This law had recognized the untouchability as the integral part of social as well as the political system of the country. Certain castes of the society were provided inferior status before the law itself. This, however was wiped out and equality based law has been introduced by the new Muluki Ain, 1963. This has not been a sufficient legal tool to eliminate untouchability.

Constitutional Mandates for Salvation of Dalit

Law divides into two types relying on its function. One of them is dynamic nature of law. It is therefore; law is regarded as an instrument of social change. The end of law is to provide justice to all irrespective of any caste, sex and religion etc. Justice is a feeling of emancipation from tensions, exploitation and starvation. Without fulfilling these needs, attempt to touch the peak of justice is impossible. So, the law should comprise the attempts and efforts to mitigate the pervasive problems of society i.e. disparity, untouchability and discrimination.

Constitution is the fundamental law of the land. It is called a parent law also. If we define constitution, it is plainly regarded as a legal manifesto to regulate the power of politics. But, narrowing constitution down within the pond of social control cannot include the very important content of law as per the ethic of dynamic nature of law. Some constitutionalists say 'constitution is the reflection of social values, norms and culture and a text may silhouette the sort of community its authors/subjects are or would like to become; not only their governmental structure, procedures, and basic rights, but also their goals, ideas, and the moral standards by which they want others, including their own posterity, to judge the community. In short a constitutional text may guide as well as express people's hopes for themselves as a society...the ideals the words enshrine, the processes they describe, and the actions they legitimize must either help to change the citizenry or at least reflect their current values.³ As this version, the constitution should reflect the social figures and comprise panaceas to mitigate them as well. Constitution if does not

submit the social needs for fulfillment, is called the constitution without constitutionalism. Though, the traditional norm of constitutionalism limits for controlling the power of government against arbitrariness, but new theory of constitutionalism takes social justice as an integral part.

After the popular revolution, the Constitution of the Kingdom of Nepal, 1990 has come with democratic philosophy. Democracy does not only mean political democracy but also social democracy. Social democratic society addresses the needs of vulnerable and protects their basic tenets of human rights.⁴ Apart from comprising the basic values of social democracy, the existing constitution merely has focused on political democracy and be aloof from needs of Dalits, ethnics and women as well. The constitution has only carried out the principle of libertarian but not egalitarian. Civil and political rights have prioritized rather than socio-economic rights.⁵ Though, there are some rights stipulated in the constitution as fundamental rights are not adequate.

Constitutional Weakness

The Constitution of the Kingdom of Nepal, 1990 has enshrined rights to equality as a fundamental right. Article 11 of the Constitution states, "All citizens shall be equal before the law. No person shall be denied the equal protection of the laws." Going further, Sub-article 2 says, "No discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, sex, caste, tribe or ideological conviction or any of these." Sub-article 4 of this Article is specific for reducing the discrimination based on caste. It says "No person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities. Any contravention of this provision shall be punishable by law." Following the spirit of this provision, the Country Law (Muluki Ain, 1963) has made such discriminatory activities punishable.

Constitution has really comprised the procedural equality as propounded by Dicey in 16th

century.⁶ The formal model of equality principle is based on classical liberalism and based on a sameness approach and it is more applicable to civil and political rights. It believes on neutral legislation. Since, we lack the sameness society rather adopt separateness, in addition to this concept, it is necessary to include the substantial equality to deprived and disadvantaged people. Because for the application of procedural or formal equality, there should be equal status. For the equal status, there should be preferential arrangements for the disadvantaged groups as well. Otherwise, only the powerful groups will be benefited before the law. But, here the author does not mean the constitution is absolutely silent for preferential arrangement. We, all of us know that provisos in Sub-article 3 has stated for protective measures. But, law of technical interpretation does not allow any to interpret proviso dynamically or going beyond the special provision. So, problems can come to judiciary to interpret it dynamically. But, the scheduled provision demands interpretation for the application of this provision for Dalit. There are no any words to make any law or the protection and advancement of the interests of Dalits or ethnic or specifically but women, children, incapacitated and economically-socially and educationally backwards.⁷ For the protection of Dalits' rights, this provision does not seem adequate. This provision can merely take its full form, if the judiciary injects life to it. But, the judiciary of our country has not become so dynamic for Dalits. It is therefore, there should be substantial equality for disadvantaged in specific formulation. It is said by one study that the substantive model of equality recognizes that equality is not about women, minorities and the disabled being considered equal as long as they are not treated differently from, for instance, white, able-bodied men. They should be created to that they could enjoy equality with other.⁸ Similarly the Justices of Canadian Supreme Court has also explained the extent of substantive equality:

...Equality, as that concept is enshrined as a fundamental human rights within section 15 of the Charter, means nothing, if it does not represent a commitment to recognizing each

person's equal worth as a human being, regardless of individual difference. Equality means that our society can not tolerate legislative distinctions that treat certain people as a second class citizens that demean them, that treat them as less capable for no good reason or that otherwise offend fundamental human dignity.⁹

So, the constitution should comprise not mere the formal equality concept but also the substantial equality concept. For substantial equality, constitution should assign the specific job to the executive wing of government to carry out special measures for the downtrodden like Dalit community in society. It may not be reasonable to leave the power of interpretation over judiciary in our circumstances where most of the judges are from so-called higher caste people, rather obligation should best upon to the executive wing to introduce compensatory programs for them.

Since, equality gives shape to all other rights: without equality, other rights can only be symbolic, devoid of any true meaning, the constitution should expand its scope relating to the Right to Equality. In the mean while for the compensatory measures for Dalits, the provision relating to the representation, composition and appointment of the constitutional bodies should be amended and articulate specifically for the participation of Dalit as well.

► **Right to Nationality**

Article 9 of the constitution has been an impediment for Dalit women namely Badi¹⁰ from being citizen of the country. The constitution says in Article 9 (2); every child who is found within the Kingdom of Nepal and the whereabouts of whose parents are not known shall, until the father of the child is traced, be deemed to be a citizen of Nepal by descent.' This provision has assigned authorities power to give citizenship certificate to those who come with the name of his/her father but not mother. The citizenship certificate cannot be claimed with the name of mother. It is therefore, this provision effects the Badi children, since the occupation that their mother professed, impossible them to identify the actual father. Their major concern has been

to attain citizenship for their children. The officials at the village development committee, municipalities refuse to register the birth of Badi children, even in case their father is present. Citizenship, therefore, has become a remote thing for them to obtain.¹¹ The basic rights among other rights, however, is called citizenship rights, but the Badi children are being subjects of far from this right. As a result they are compelled to be used by the politicians for vote only and far from obtaining equal opportunities of state resources.

► **Definition of Kingdom**

In one side, the constitution defines nation stating that the united by a bond of allegiance to national independence and integrity of Nepal, irrespective of religion, race, caste/tribe, collectively constitute the nation,¹² but in other side, in defining the Kingdom, the constitution states: Nepal is a multi-ethnic...Hindu...Kingdom.¹³ Here seems some contradiction between these two different provisions. Identifying kingdom on the basis of faith may raise difficulty in the way of integration. Similarly, such provision may discourage the feeling of belongingness to ethnics, and groups of others who follow and adopt different cultures and religion. Since, Dalit themselves, think the Hindu culture is major responsible factor to plant the seed of caste division and untouchability, it is therefore, such provision does not help them to be encouraged for inclusion. Even the principle of pluralism does not give consent to prioritize particular religion by the state itself.

► **Right to Religion**

Article 19 of the constitution has mentioned about the right to religion. According to this Article, "Every person shall have the freedom to profess and practice his own religion as handed down to him from ancient times having due regard to traditional practices". Going further, the proviso of this Article says: "provided that no person shall be entitled to convert another person from one religion to another".

So, this provision may encourage the hurdles to

those who convert the religion and profess as well. In one side it is seemed that the constitution is liberal towards the religion, but in other side, it is calculated easily that the constitution is biased towards Hinduism. Such contradiction and non-clarity leaves discretionary power to the concerned authorities. Conversion can not be allowed by this provision. It is therefore, this is a provision seemed difficult to understand to the laymen. But the neo-concept of rule of law says law must be simple where every layman can understand easily.

These are some examples seemed contradictory and raise confusion in the protection and promotion of Dalit rights. In addition to these, there are also various issues within the constitution. Right to freedoms¹⁴ however has submitted various important rights, as the form of self-determination and civil and political rights, has not been able to comprise the right to life or freedom for dignified life as well. For the physical existence, it has submitted specific Sub-article. But it has failed to comprise right to quality of life. However, the Supreme Court of Nepal has interpreted this keeping with right to dignified life. Right against exploitation is a major right provided by the Constitution of the Kingdom of Nepal. Dalit people who are subject to forced labour and work without reasonable wages may be benefited.

Besides these ambiguous provisions in the constitution, there are other lacking also. Though, there is a right as fundamental relating to criminal justice but right to victim justice is yet to be incorporated on fundamental rights. Meanwhile, there is a right to remedy in Article 23 of the constitution. But this Article can't be functional in the absence of Article 88 of the Constitution. Article 88 (2) of the constitution does not allow any legal institution or organization to file the case as public interest litigation. There should be the physical presence of human as petitioner. These shortcomings directly/indirectly hamper the human justice to the general populace like Dalits, indigents and vulnerable.

Directive Principles (DP) of State and Dalits
Part fourth of the existing constitution has

mentioned about the directive principles of state policies. These are not enforceable rights because an individual has not authority to entertain against non-implementation of the policies.¹⁵ It has specifically mentioned that the principles and policies contained in this part shall not be enforceable by any court.

The directive principle of state policy has various welfare provisions for the advancement of disadvantaged communities like Dalits, women and ethnics. This part has also advocated for inclusion and integration of all castes, cultures and values as well. At the mean time there are some provisions for economic upliftment of backwards and for the elimination of discrimination based on caste and gender as well.¹⁶ To rise educational standard and economic status, part fourth has provided some guiding mechanisms to be adopted by the state. Article 25 (3) of the constitution sets the social objectives of the state as seeking to establish and develop the foundations of justice and mortality, guaranteeing healthy social life by eliminating all types of discrimination. It is therefore, it can be claimed that part fourth has tried to comprise the socio-economic rights. All contents of socio-economic justice like, free education, specific programs for economic promotion, cultural facilities, free legal aid, elimination of discrimination, decentralization, equal distribution of state resources and special measures for upholding integration and inclusion have been submitted by this part. However, these popular provisions, since the lack of power to be enforceable, there needs judicial boldness to make them materialized as well. Without, the judicial articulation, these provisions remain meaningless, and remain as mere the paper tiger. It is the positive sign demonstrated by the Supreme Court of Nepal in interpreting the scope of directive principles of state policies. Judiciary itself is changing its appearance from the textualism,¹⁷ which in the end fails to be of much assistance in discovering the appropriate application of constitutional language. But, in comparison of Indian SC, it has not become similar and dynamic in the interpretation of these provisions keeping with same of fundamental rights.¹⁸

Some Exemplary Cases of Dalits' Victimization ¹⁹					
Atrocities	Date	Place of Event	Victim	Perpetrator	Cause
Beating	5 Aug. 2002	Chitwan District	Amrit Sarki	Krishna Adhikari	Untouchability
Terminated from Job	2002	Green Guest House	Rajendra K. BK	Hotel Owner	Prejudice
Beating	23 June 2002	Chitwan	Lila BK	Amrit Gurung	Untouchability in Public Places
Defame to Headmaster	May 2002	Hetauda	Badri B. BK	Giri Raj and others	Principal was beaten injured as he hired Dalit person as a cook.
Boycott from Family	June 2002	Haputar VDC	Kamal Karki	Local People	He was boycotted because he married
Untouchability in School	Nov. 2002	Ramechhap	Ganesh Pariyar	Teacher and students	State itself involved in discrimination
Prohibited to Enter into Temple	Aug. 2002	Udaypur	Pramila Pariyar	Priest Moti Prasad Neupane	Prohibition to entrance in public place
Prohibited Dalit to Involve in Cultural Program	Sept. 2002	Far Western Region of Nepal	Local Dalit people	Local so-called upper caste people	Untouchability

Practice of DP and Dalits

Rule of Law includes both law in books and practice. Mere inclusion of positive provision is not sufficient to result positive consequence. It is universal truth that constitution cannot submit all things. It does merely include the framework. It is therefore, the responsibility goes to three wings of government to enforce and implement as well. If the three wings of government are honest and committed to their people, no doubt there will be fair implementation and constitution will get its real edifice, but if they are not dedicated as said constitution will be futile. But this philosophy is little bit different with ours. Since our prevailing socio-education system, there should be the constitution wide and submitted all basic things

as well. Otherwise, there will exist problems in application.

Despite the right to equality and right against untouchability under Article 11 of constitution, Dalit people are being subject of untouchability and degrading treatment by the state authorities itself. There seems the silence culture of the government authorities against the events of untouchability. This culture has resulted in bulk of events against the dignity and humanity of Dalit people in Nepal. Some instances are as follow:

Table illustrated above clearly shows that the so-called higher castes people are victimizing to Dalit. The incidents of atrocities and descent-

based discrimination on Dalits are increasing day by day in Nepal because of growing awareness and assertiveness of the Dalits. The Government authorities however are seemed silence because of their prejudice, the culture of silence in Dalit people some how has diminished against the exploitation and injustices. Break of culture of silence is the consequence of NGOs' attempts.

Despite of Right to freedoms articulated in the constitution, there are various cases caused by the conversion of traditional occupation. The local leaders and the parliamentarian themselves involved to impose so-called low caste people to continue the traditional occupations. The instance is social exclusion of Chamar²⁰ caste people in the eastern part of the country, and prohibition of Dalit activists in the entrance of temple. In these

events, Dalits were imposed to deprive all constitutionally guaranteed freedoms like freedom of expression, chose the occupation, walk and agitate against exploitation. Similarly, in the name of witch,²¹ the so-called upper caste couple bit a Dalit woman. This is the list of atrocities happening in the country against Dalit. There are several instances of social

boycotts against couples if they got inter-caste marriages. Even though, no law is existed to prohibit anyone getting the inter-caste marriage, since, biasness endemic in the mind of implementing authorities, the couples are being discouraged and imposed to leave the society and country at all. Dalit woman, are being victimized by such incidents. Equally, there are bulks of events caused by temple entrance. It has enshrined in Constitution that, no one shall be prohibited to entrance in Temple and public places as well. However, one of the members of Constitution Drafting Committee²² was prohibited while he was trying to enter into the temple with Dalit activist in the western part of

the country. At this juncture, the state administration and the district authorities had turned a blind eye to these continuing events.

Since the prejudice of implementing authorities, the legal provisions have not been implemented as per the constitution and law. They normally treat violence against Dalits as a very minor and marginal issue, whether be it police, the prosecutors and the Chief District Officer. Whole local administration remained silent. No one helped Dalits. Similarly, most of the incidents of the crime against Dalits go unreported because of fear of reprisal and refusal to register the cases of Dalit atrocities.

There is fundamental right under the Article 20 relating to right against exploitation and law to

Educational Status of Dalits						
S.N.	Dalits	Primary	Secondary	SLC	Certificate	Total
1.	Gaine	15.7	3.7	0.1	0.1	19.8
2.	Damai	15.2	3.2	0.2	0.1	18.7
3.	Kami	13.7	3.1	0.3	0.7	17.3
4.	Dhobi	8.9	5.3	0.9	0.7	15.8
5.	Sarki	12.6	2.5	0.2	0.1	15.4
6.	Badi	10.1	2.4	0.4	0.1	12.8
7.	Khatwe	5.4	2.4	0.4	0.1	8.3
8.	Chamar	4.8	1.9	0.2	0.1	7.0
9.	Dushadh	4.2	1.8	0.3	0.1	7.0
10.	Mushar	1.4	0.4	0.0	0.0	6.5

Source: National Dalit Strategy Report 'Situational Aalysis' Action Aid. et al. 2002.

eliminate the bounded labour. Despite this provision, Dalit people are subject to that of the Tharu bonded labour called Kamiyas. Many Dalits rely on such system to earn their livelihood. It may be considered as forced or bonded labour.²³ The Act for welfare the liberated bonded labourers however, included the term Hali in the definition part of bonded labor, but the Act has not submitted Dalit Halis in implementation parts.

With a view to implement the policies and principles of the constitution, the Government has enacted various laws and introduced various policies for advancement of Dalits and

downtrodden as well. However, their weaknesses in concept or lack of honesty among authorities in implementation, Dalits have not been able to taste the fruit of these welfare laws.²⁴ There is an Act for providing legal aid to vulnerable, but it has not been implemented in all districts. The implementation of this Act is limited within only eight districts. Even the implementation of this Act has not been result oriented. Baitanik lawyer, as the Act supposed for providing legal aid, since they get minimum remuneration, are not able to defend properly. As a result of that the poor and indigents have to lose the case and be aloof from justice at all.²⁵ At the same time no specialized unit has been established as per the Legal Aid Act under Legal Aid Committee to defend the rights of disadvantaged people. Nepal Bar Association however established a separate legal aid, but it is

situation of Dalits has not been improved. This low socio-economic situation has resulted their low education status as well. The existing situation of Dalits can be illustrated here:

Other Legal Obligations

In addition to the constitutional and legal provisions for the upliftment of the disadvantaged groups of the country, there are several human rights instruments²⁷ that directly denote the obligation to the state parties. One of them is 'International Convention in Elimination of All forms of Racial Discrimination, (ICERD) 1965. It is the basic one that includes work and descent based discrimination as the form of discrimination and oblige state to adopt special measures to abolish the discrimination. The Convention defined widely the term racial

discrimination. The definition includes segregation, distinction, negation, and exclusion as the form of discrimination.²⁸ Treaty Act under –section 10 provides that in the event that the provisions of treaty to which the Kingdom of Nepal has become a party following its ratification, accession, acceptance or approval by parliament contradiction with those of domestic laws, the

Dalits' Participation				
Institutions	So-called Higher Caste	Kirat Caste	Dalit Caste	Madhesi
Judiciary	181	18	0	0
Constitutional Organs\Commissions	14	3	0	0
Public Administration	110	9	0	0
Legislature	159	46	0	4
Educational Organs	75	7	0	1
Science and Technology Sector	36	6	0	18

Source: Integrated Index of Governance- 1999, Quoted in Situation of Dalit in Nepal' National Commission for Dalit, 2003

only concerned with courtroom practices. No mechanism exists to allow women and children to access the legal process from within their communities.²⁶

latter shall be held invalid to the extent of such contradiction for the purpose of that treaty, and the provisions of the treaty shall be applicable in that connection as law of Nepal.

It is also observed that the law enforcement agencies are unaware of these rights properly. The Local Self-governance Act has spelt for Dalit participation in local level and mandated local bodies to formulate the policies for disadvantaged. But the implementation of this provision is not satisfactory. Even the legal mechanism lack the special arrangements to review and evaluate the implementing process.

Despite of some positive attempts, the extent of untouchability has not been reduced. Still Dalits are subject to hurtful discrimination-segregation, exclusion from public institutions such as hotels, temples, schools and restaurants and milk cooperatives, or denied free access to water and other public facilities and opportunities provided by the government. This perpetual discrimination indirectly harms Dalits' self-confidence. Such discriminations result in the lack of Dalit participation in implementing agencies. The socially deemed low castes Dalits have no participation in the state organs. Dalits are not

The national plans and programs however, have included various welfare programs for the socio-economic upliftment, the socio-economic

represented in policymaking and implementation bodies from central to the local levels of the government, donors and INGOs. Dalits are used only as vote banks to the politicians and show piece for attracting green dollars or '*magi khane bhando*' (begging pot) for NGOs and INGOs. They are even deprived to express their opinion by vote fairly.

It is therefore; State only sends report in CERD. Government thinks sending report only is the basic obligation conferred by this convention. As the earlier report for CERD, the Government is going to submit the Sixteenth periodic report of State Parties compiling various positive things. If we go through the report, we easily can feel that government sends report for showing himself as honest and dedicated state party not more than that. Report merely submits the plans, policies, which remain in books as the special measures against untouchability and upliftment of Dalits.

Conclusion and Recommendation

About 20 per cent of the whole population²⁹ constitute the service castes (so-called untouchables and Dalits) who are assigned the traditional hard jobs and unclean works like cleaning the dirty places, making shoes, wiping out the dirty things and removing dead animals.³⁰ Four fold Varna system along with caste hierarchy, purity and defilement of water, food and body, Hinduism of the Indo-Genetic pains of India created division of labor based on decent etc.³¹ These occupied works result hurtful degradation and subject to humiliation and discrimination. Dalits are therefore, becoming victims of denial from entering into temple/public hotels in local evils, participating with social rituals and mainstreaming with state development. They also are depriving to have the share of the distribution of state facilities.

Dalits are so aligned and dependent economically on upper caste that they are afraid even to think to lodge the complaints against the landlords. Some, who lodge the cases, has to be victim of social torture. Since, his/her low economic status, has imposed him/her to tolerate the atrocities. They are subjected to forced labour almost to that of the Tharu and Chaoudhary bounded labours

called Kamaiyas. The Kamaiyas have become freed from bounded labour life. The Special Act has enacted to free and rehabilitate them. But, Dalits are still imposed to work for landlords with minimum wages. Bali-ghare is a system in which so called lower caste labours work for so-called higher caste people and the patrons giving some food grains to their clients during harvesting time. Poor and landless Dalits often rely on such system for their physical survival. Most of the Dalit people are poor and landless. Their traditional occupations are stigmatized by the society and even if somehow they try to pursue it, they cannot compete with the cheap products available in the market. Cheap products have displaced their means of livelihood.³² It is therefore; they are not only socially discriminated, but also economically backwarded. Their low economic growth in comparison of other castes is illustrated by this study carried out by an organization:

Forced prostitution is another problems endemic in Dalit women. Badi, the culturally rich community are forced to involve in prostitution. State still has not initiated any special program to uproot their compulsion behind adopting such immoral practices. They do want to be free from such practices if state arranges special programs for their survival. Badi women have to face various problems. Their poverty, illiteracy and insecurity, they are compelled to be involved in prostitution. One research states; all Badi women complained that non-Dalit police and men occasionally break into the house at mid-night and rape them in front of their family members. Their adult sons/daughters also have to be deprived of getting citizenship certificates by the administration. The Constitution itself is biased in this regard.

It is therefore, this is the time to voice for the constitutional reformation and institutional development for eradication of untouchability and upliftment of Dalits as well. Constitution should address the socio-economic problems of this community. For this, there should be amendment and inclusion of right to work and accommodation, right to language, nationality and right to reservation in public service as well

as private places. Constitutions should clearly comprise the provision for reservation for Dalits in representation, administration, health and education like Indian Constitution. Articulated obligations should be enshrined with a view to make obliged to implement and enforce these all without any bias and prejudice.

The Civil society can educate and encourage the Dalits to develop their consciousness and behaviors for change. The concerned NGOs and INGOs in this regard should help Dalits not to make them dependent in the name of liberating but pushed them for participation in governance process as well.

Now, Dalits have been demanding reservations in different sectors in land allocation, education, civil service, political appointments, political representation and in similar other areas. But it should not be forgotten while raising voice for the areas of reservation is that it should be in private sector also and ensure by the constitutional framework.

Basic things that to be raised are given as follows:

- ▶ Ensure the rights regarding land, farmers and work as well as accommodation.
- ▶ Representation: political participation of the Dalits should be enhanced by amending existing electoral system and introducing proportional electoral system.
- ▶ Ensure right to nationality, language and provision for secular state.
- ▶ Articulate the right to victim justice in the framework of constitution.
- ▶ Ensure right to reservation and oblige state to institutionalize this policy.
- ▶ Enact suitable legislation to recognize and eradicate discrimination based on work and descent, including caste discrimination and untouchability.
- ▶ Take immediate steps to create transparent and effective monitoring mechanisms including the establishment of time-bound programmes to ensure effective implementation of existing welfare constitutional mandates and legal provisions.
- ▶ Declare caste discrimination, as Crimes against Humanity and enact and enforce

legislation to guarantee the right to life and security, particularly the women and children of these communities, to criminalize violence, atrocities and incitement to discrimination and violence committed against these communities, and to effectively and speedily prosecute offenders at all levels.

- ▶ Enforce speedy and effective legal and programmatic measures to aware Dalits about their legal rights and to rehabilitate the Dalit Badi women improving quality of their lives by giving them access to arable lands, proper housing, gainful employment and education.
- ▶ Provide for a living wage and prohibit child labour, bonded labour and manual scavenging. Also implement laws relating to land reform that would guarantee access to and control of land for these communities, and ensure that these lands are officially registered in the name of women of these communities.
- ▶ Create and strengthen transparent policies and systems of affirmative action, irrespective of religious affiliation, that enhance the access of these communities, especially their women, to higher government posts, including scientific institutions, and to posts in the government administration, the judiciary, law enforcement agencies and the private sector, including multinational corporations.
- ▶ Allocate adequate funds to guarantee the enjoyment of their rights to livelihood, land, education, housing, potable drinking water, sanitation, health and employment opportunities, with special emphasis on their women, and establish effective monitoring mechanisms to ensure full and proper utilization of available funds.
- ▶ Introduce measures of reparation for the centuries-old wrongdoings committed against these communities through legislation and appropriate machineries for the purpose of restitution, monetary compensation, and rehabilitation and for ensuring guarantees of non-repetition.
- ▶ Last but not least is the NGOs to lobby to ensure that the relevant Governments are

made accountable to Parliament and to the UN Committee on the Elimination of Racial Discrimination for their implementation of policies and programs aimed at eradicating work and descent based discrimination,

including caste discrimination and untouchability, by constitutionally mandating their Governments to submit and openly discuss the annual reports of National Human Rights Institutions. ■

Notes

1. Rajshekhar, V T . 2004. *Caste a Nation within a Nation 'Recipe for a Bloodless Revolution*. 'BfC' p. 23.
2. Tamrakar, Tek. 2001. *Social Justice to Dalits 'Essays on Constitution'* Kathmandu: NLS Vol.38, p. 88.
3. Allen, Michael et al. 1995. *Constitutional and Administrative Law*. Lawman Pvt. Ltd., p. 5
4. Basic tenets of human rights are liberty, equality and dignity (pursuit of happiness).
5. Right to freedoms, rights relating to the information, Privacy, right against preventive detention are the instances of civil and political that the constitution have enshrined.
6. Dicey propounded the concept on formal equality i.e. right to equality, equal opportunity, equality before the law and non-arbitrariness.
7. Provision goes; provided that special provision may be made by law for the protection and advancement of the interests of women, children, the aged or those who are physically or mentally incapacitated or those belong to a class, which is economically, socially or educationally backward.
8. Forum for Women Law and Development (FWLD). 2003. *Special Measures and Its Impact upon Women*. Kathmandu: FWLD, p. 22.
9. See; Egen v, Canada (1995) 2 SCR. 513 at 543.
10. *Badi* is a community belong to the Dalit, came from India with a cultural skill of dance, playing instrument and subsequently made forced to be involved in prostitution.
11. Quoted from ' Tek Tamrakar' Dalits' Rights under Nepalese Legal System' FEDO, 2003, p.198.
12. Article 2 of the Constitution of the Kingdom of Nepal, 1990.
13. Ibid. Article 4
14. Ibid. Article 12
15. Ibid. Article 24
16. Ibid. Article 25(3)
17. Textualism interprets and applies constitutional tenets strictly to its letter is full of limitation and fallacies (Blackstone Approach)
18. Minerva Mills case
19. Quoted from Tek Tamrakar et.al. 2003. *Related International Treaties, Dalits and Nepal Law'*. Kathmandu: National Dalit Commission'.
20. After this event, Dalit NGO Federation filed the case and Supreme Court made directives in the name of concerned government authorities to adopt measures to prevent such events. Despite of this directive, same kind of event has taken place again.
21. The women victimised in the name of witch was Marani Devi in Mahottari district
22. Damannath Dhungana was prohibited to be entered into Temple with Dalit activist Durga Sob, the Member- Secretary of the National Dalit Commission
23. *Balighare* and *Halighare* system where Dalit worker receive food and shelter as the form of wage.
24. Welfare laws for Dalits and backwards are Legal Aid Act, Local Self-governance Act, Bounded Labour Elimination Act, Education Act, Development Committee Act, Human Rights Commission Act, Rules of All Courts, Consumer Protection Act, Children Act, Child Labour Act, Civil Rights Act, etc.
25. The Indian SC CJ P.N. Bhagwati, therefore, rightly observed that the legal aid provision under adversary legal system is being adverse for poor and vulnerable.
26. Enabling State Programme (ESP). 2001. *Pro- Poor Governance Assessment in Nepal*. Kathmandu: ESP p. 147.
27. Altogether 16 International Human Rights Instruments including ICERD, 1965.
28. Ibid. Article 1
29. This statistic is forwarded by the Dalit activists, but the statistic of Governments calculates about 13% of whole population.
30. Tamrakar, Tek. 2003. *Dalits' Rights under Nepalese Legal System*. Kathmandu: Feminist Dalit Organization.
31. Battachan, Dr. Krishna et.al. 2003. *Existing Practices of Caste-Based Untouchability in Nepal and Strategy for a Campaign for its Elimination*. Kathmandu: Action Aid.
32. Ibid.

Rationale of Making Untouchability Cases of Government Prosecution

► Ratna Bahadur Bagchand ◄

The act of untouchability guided by the Hindu culture and tradition was legalized sometimes in the past and the people not following this trend in the society were punished and even degraded from their caste or were outcaste by the state. Whereas everything is adverse today! The same state, has declared the punishment to those who practice untouchability. Not only this! But it has also declared untouchability as the crime against the state and society and has decided untouchability as the government prosecute! But a Civic Society has suspicion over the decision made for it being just for the sake of decision. After declaring untouchability as the government prosecute on 26 July 2004 many incidents of untouchability have been recorded in the country, of them one is the case of Nanda Sarki of Godavari VDC Kailali district. Though, she was declared wife of Chakra Rawal, a resident of the same village, by the decree of court, but still she has been refused by the family of groom. She is not accepted as the family member just on the basis of caste and government has not taken any action against it.

Not only this! During entire period after the declaration of untouchability as the lawsuit of government, there is not a single record of registration of untouchability cases in any of the courts in the kingdom although many incidents of untouchability have taken place.

Recently HMG/N has formed a high level advisory committee in order to implement the special provision of reservation for women, Dalit, indigenous, and ethnic groups under the coordination of Finance Minister. The committee is responsible to suggest over the management matters after looking into the reservation areas

for Dalit, indigenous, ethnic groups and women in the public institutions like education sector, public administration sector, health sector, other sectors of employment and eradication of discrimination against women. Regarding the elimination of discrimination against women, the International Convention on Elimination of All Forms of Discriminations against Women signed 13 years ago by HMG/N is being initiated for implementation recently, which is somehow a positive measure to be appreciated and at the same time no indication from government to implement the International Convention on Elimination of All Forms of Racial Discrimination (CERD) ratified earlier by Nepal is a tragedy, too.

The government's serious concern and sensitivity on fulfilling the commitment would have been highlighted to build the positive image in the national and international context if it had also allocated the responsibility of advising on the International Convention on All Forms of Racial Discrimination to the esteemed high level Advisory Committee formed, as for elimination of discrimination against women. Simply after declaring untouchability as the government prosecute if state has thought it has done enough and doesn't think important to do further but rather thinks it will get solved itself than the necessity of eradication of untouchability in the state, the sacred mission carried by the international convention to eliminate all forms of racial discrimination and the commitment made by Nepal for it will never be fulfilled. Unlikely from the date of ratification of this convention by Nepal for the last thirty-three years it has not submitted the report of the measures it has taken and the success it has obtained as to help the

mission of the convention as per the provision to produce country report in every two year has not been properly followed by Nepal, rather the records shows only three reports have been submitted so far which were also accomplished in the pressure from the civic society, seven member committee (this writer was himself involved) formed the government two years ago to send the 15th Country Report, the report send was not even shown to the committee and was send to the UN as 15th and 16th Country Report in 2003. This type of sluggish working style of the government also shows that how serious are the government institutions on the matter of elimination of racial discrimination.

Before making untouchability the government prosecute from 1993 to 2002, whatever cases addressed under the Civil Code 1963, registered in the court were all through the endeavors of Dalit organizations. The number of cases found registered so far were eleven. The study of those cases shows that the decree of court has fined the culprits Rs. 50 to Rs. 2000 but none of the decisions were deliberate towards imprisonment of the culprit. Valuation of the decree in these cases according to the provision of the Act shows that the fines declared by the jury were the greatness of the judges but not the intention of the Act. The comparative study of the Article 10 and the Article 10 'Ka' explicitly expresses the intension of the Act.

The provision in the Article 10 of Civil Code 1963 says that the unnecessary disturbance or interference in ones cultural or social rituals will be fined Rs. 1000 or would be a year imprisonment. Similarly, the article 10 'Ka' has provision of imprisonment for one year or three thousand fines or both if discriminated anybody on the basis of caste and race.

The differences in these two articles are that the former article reserves the right of a 'must' to punish the culprit who disturbs the prevalent ritual of caste based discrimination system where as in the latter one talks about the possibility of imprisonment and penalty to the culprit who continues the prevalent inhumane act of caste based discrimination. Thus, the inner intension of

this provision explicitly reflects that any act against social and cultural mind set must be punished and the one supporting promotion of untouchability is not necessarily to be punished.

The amendment in supporting Act made to execute the right on well expressed verse of Right against the Racial Discrimination in the constitution, though, partly has reflected the norms of Constitution, doesn't at all reflect the provision of Convention on Elimination of Racial Discrimination. The article 11 (4) of Constitution though has provision of a must punishment to the culprit, practicing untouchability, the Article 10 'Ka' of Civil Code 1963 provision on punishing culprit on the self-wit of Jury, depending on their understanding of necessity of punishment simply tries to promote the trend of punishment to the culprit of untouchability.

A case of Muna Devi Damai who was fed with human fecese of Dhangadhi Municipality falls under the provision of the Constitution and the International Convention on Elimination of Racial Discrimination is not addressed by Civil Code 1963.

Things not covered and areas not addressed by Civil Code 1963 are: racial group murder, physical assaults, social condemnations, economical benediction, forcefully cadaver feeding, forcefully making dispose the animal carcass, confiscating the land, polluting the source of drinking water, filing in alleged cases, expulsion from village, putting restriction on public streets, police torture, forceful physical assault on women, forced to prostitution, striped and insult.

Regarding international treaty on elimination of caste based discrimination, India, like Nepal has passed Indigenous Discrimination Act 1989 and law 1995 to stop prevailing or latent caste discrimination. It clearly demarks the definition, classification and punishment for discrimination towards enlisted lower caste and indigenous people as well as provides judicial, legal and compensation system to the victims. Similarly, in order to endorse this rules and regulations, committees at the central, district and unit level

have been formed. In addition, to make the general people aware of such rules and regulation, empowering centers have been formed and especial police forces have been formed to investigate over the complaints filed. These systems are of relevant importance to us.

Government decision to make untouchability government case to eliminate caste discrimination is definitely laudable. Even then, there are many home works that the government needs to do, like formulating untouchables and indigenious (discrimination elimination) law as per international treaty, 1965. It covers fixing a definite punishment to the culprit, assign a special section to oversee caste discrimination in district courts, appoint government lawyer to cases related to human rights, untouchability and women rights and provide allowance during judiciary procedure, stay at the district headquarter to the victim apart from compensation, transport.

Before making this adamant legal system, it is necessary to put forward states perspective regarding eliminating caste discrimination and accordingly allocate certain amount in the national budget and establish a national center to coordinate movement to abolish existing caste discrimination.

After this, to check whether legal proceedings have been held or not making National Dalit Commission (making existing Dalit Ayog systematic and effective) and National Indigenious Academy responsible to oversee and evaluate them.

And finally, if the government is rather than showy but really serious by making untouchability case a government case, to prove the general public that it is really committed to reform existing social inequality, it should show it's serious concern. The civil society is ready to help. ■

Dalits and Their Educational Status

►► Rachana Rasaili ◀◀

Background

There was a time when people were far away from greed, desire, envy, hate, jealousy, selfishness, insult and discrimination. With the development of human civilization, hatred started to grow in them. As a result, society stratified in class, caste, high, low and other structures. Discrimination became wide and society drowned into vicious circle of inequity.

Time went by, people started struggling to come out of this vicious circle of discrimination in a society and in this process, society spent centuries. However, mal-practice like untouchability has become successful in staying in a society. Eventually, the practice of caste discrimination and untouchability was exercised according to the will of the rulers. Rulers got power to raise caste status based on their desire and happiness, in other word, if they became happy with a person or group, they are included in their caste and if not, they are outcaste. This kind of behaviours was widely practiced. One after another, rulers started to hold control on common people. They were always put in the lowest position. They were marginalized from wisdom, education and awareness. They were marginalized in such a way that it will take them thousands of years to come up.

Dalit community has been suffering from injustice, discrimination and exploitation due to the social stratification made by feudalistic rulers. Malpractice like this have always dominated them. They were always put aside from education and wisdom because rulers fear that they will revolt against them if they became educated. This kind of ideology is still prevalent in the society and they do not want Dalits get educated.

Segmental Division of Society

The caste system is one of the most complex features, and as such, cannot be easily summarized

in one or two paragraphs. Moreover, caste is not a homogenous phenomenon. It varies significantly from Manushmriti. Therefore, let's see description of untouchable caste, which should help us better, understand the position of the Dalit community.

The main basis of the social system is based on the caste system in which some are addressed as touchable and some as untouchables, which usually does not exist in any other religions. The so-called untouchables in Nepal are created by the Hindu religion. According to this religion, the creator of the world Brahma created Brahmin from his mouth, Kshetria from his shoulders, Vaishyas from his thigh and Shudra from his feet. During the time of feudalistic society, the king (Kshetriyas) used to rule the country. The priest (Brahmin) propounded by the Vedas, the traders and farmers (Vaishyas) used to handle the economy of the country and Shudras had to serve all of these classes of people through menial works. The religion, therefore, treated Shudras as inferior human beings as untouchables. This caste system was more formalized and ritualized by some famous Hindu sage, Manu who propounded rules and regulations and formed Manushmriti.

On the basis of Manushmriti, casteism was made very strong and social moves of discriminatory nature were enhanced and enacted. Since then, all the people belonging to lower castes or untouchable groups were compelled to survive under the slavery of so-called upper caste people. More than that, they were not allowed to acquire property, build their own houses, and touch upper caste people. Education was far beyond their reach, as they were not even allowed to listen to the **Vedas**. According to Manushmriti, if they happen to listen the Vedas, their ears should be blocked by pouring melting hot lead and if they happen to read Vedas, their tongue should be cut off. In the Manushmriti, it has clearly mentioned that

knowledge should not be given to Shudras and if any person makes a mistake by giving knowledge to the Shudras, they will go to hell along with them. Therefore, Hindus, the followers of this religious book still have the mindset of such religious belief, which in result, people never try to realize that lower caste people are also the same as they are.

Dalits of Nepal

Population Census of Nepal, 2001 identifies 101 different castes and ethnic groups in Nepal. Brahman and Chhetri are at the top, known as upper caste/non-Dalit while Sunar (Goldsmith), Kami (Blacksmith), Damai (Tailor) and Sarki (Shoemaker) are at the bottom, and are known as lower caste and Dalit. These lower caste people are also addressed as "Untouchables", whose

touched water is not accepted by so called upper caste people. Sunar, Kami, Damai and Sarki, thus, are socially excluded. Historically, Dalits and non-Dalits are not allowed by social custom to touch each other in any physical way, particularly in regard to handling food and drink, which still exists. This way Dalits have been facing torture and humiliation by the non-Dalit people. They are economically exploited, made socially untouchable, politically devoid of access all and educationally disadvantaged. In general, Dalits are characterized as illiterate, unemployed, landless, poor, ignorant, exploited, docile, unhygienic and ignored by rest of the society. Dalit community has lost its self-respect and dignity. As a result of centuries of social discrimination, oppression, exploitation and

Spatial Distribution of Population of Ethnic and Caste Groups in Nepal			
	Caste/Ethnicity	Population	Percentage in Total
Hill Dwellers	Kami (Blacksmith)	963655	5.21
	Damai (Tailor)	367989	2.11
	Sarki (Cobbler)	276244	1.5
	Gaine (Singer)	44484	0.24
	Badi (Entertainer)	7082	0.04
Terai Dwellers	Chamar	203919	1.1
	Kalwar	162046	0.88
	Dushad	93242	0.5
	Dhobi	76594	0.41
	Khatwe	66612	0.36
	Mushahar	141890	0.77
	Raji	19103	0.1
	Teli	250732	1.36
Kushwah	205797	1.11	
Total		2879459	15.69

Source: CBS, 1994

suppression, they are left with shadowy identity in the society.

The Dalit caste and their population not mentioned are Satar (Santhal), Kisan, Darau, Kasai, Kushle, Poda, Chyame, Sunar, Hudke, Dum and Lohar.

The total population of Dalits can be estimated between 16 – 20 percent of the total population. This comes to be approximately 4.6 million out of 23 million populations as of 2000. Dalits, however, believe that they are under enumerated for several reasons. It is estimated that the Dalit community constitutes 20 percent of the total population of the country, i.e. 4 million out of which Dalit women occupies half of it i.e. 2 million. Since it has

Human Development Indicator								
Indicator	Nepal	Bahun	Kshetri	Newar	Janajati	Tarai	Dalit	Muslim
Life Expectancy	55.0	60.8	56.3	62.2	53.0	58.4	42.0	48.7
Literacy Rate	65.0	58.0	42.0	54.8	35.2	27.2	23.8	22.1
Per Capita Income	7673	9921	7744	11953	6607	6911	4940	6336
Per Capita Expenditure	11866	1533	1197	1848	1021	1068	764	979

Source: NESAC, 1999

become hard to find accurate percentage of total Dalits of Nepal how the condition of Dalits can be measured. Therefore it is most important to find out the actual percentage of the Dalits of Nepal.

Due to the lack of awareness among Dalits and low participation in regard to equal stand in basic needs and rights i.e. social, political, economical and educational, their day to day lives have been resulting in poor living condition, poor health condition, low economic and educational status. Therefore children born in this community are deprived of their basic needs (nutritious food, good health, education etc.) as their parents' lack awareness and unable to afford their children with these needs.

Government of Nepal has ratified the Convention on Elimination of All Forms of Racial Discrimination. So it is the responsibility of the state to concentrate on this matter.

Education and Dalit Children

Education is said to be both human rights and basic need of children. Education is necessary to develop capabilities and potential of a person, which is

Nepal where if people participate in the development process of their own community, the efforts made are more likely to be sustainable and successful. In fact, it helps people gain creative knowledge and skills, but unfortunately, due to fewer opportunities to Dalit community, they lack such knowledge and skills, which in result, they are kept far beyond the reach of their community development processes. Acquiring education for Dalit children is like putting hand in a burning fire. At schools they have to face discriminatory behaviors by the so-called upper caste people. They have to stay at door side of the classrooms or in some cases; they have to sit separately without touching non-Dalit students. Hardly they get admission at schools just because they belong to low caste. This is because of dogmas and discriminatory nature towards Dalits.

Such practice bounds to raise a big question, "How can Dalit, so-called lower caste, children acquire education when they are separated, excluded and ill-treated by the so-called upper caste students, teachers and staff of the school?" They cannot even drink water from the same tap used by upper caste

Educational Status of Dalits (10 castes)								
S. No.	Dalit	Primary Level	Secondary Level	S.L.C.	University	Total	Total Literacy Rate	Women literacy Rate
1.	Gaine	15.7	3.7	0.3	0.1	19.8	31.32	18.33
2.	Damai	15.2	3.2	0.2	0.1	18.7	28.91	17.14
3.	Kami	13.7	3.1	0.3	0.1	17.3	26.87	14.22
4.	Dhobi	8.9	5.3	0.9	0.7	15.8	21.53	08.77
5.	Sarki	12.6	2.5	0.2	0.1	15.4	25.09	13.15
6.	Badi	10.1	2.4	0.4	0.1	12.8	21.52	11.8
7.	Khatwe	5.4	2.4	0.4	0.1	8.3	12.39	03.70
8.	Chamar	4.8	1.9	0.2	0.1	7.0	10.71	03.34
9.	Dusad	4.2	1.8	0.3	0.1	6.5	10.73	04.02
10.	Mushahar	1.4	0.4	0.0	0.0	0.8	04.85	02.40
Total Dalits		11.4	2.8	0.3	2.2	14.6		

Source: CBS

needed from the childhood period. It empowers people to ensure their own rights are not denied. It allows people to communicate at a deeper level and participate in the global community. It is essential for the development and advancement of any community, particularly rural communities in

people. If they do so, they are punished mercilessly. Emergence of such situation is outcome of traditional belief of society towards Dalits. There are many cases where Dalits are badly victimized due to poverty and ill treatment in the villages, schools and other public places.

Government Policy and Education for Dalit

Beginning of modern education has not been a long history in Nepal. Darbar High School, established in 1910 B.S., was the first modern school of a western style. In the beginning, this school provided education to limited persons. Even common people do not have access in this school and there is no possibility of Dalits having access in it. During Lichhavi period, there were schools founded by religious groups such as Boudic Dhara and Buddha Dharma. Boudhic Dhara schools were based on Hindu philosophy and it was not possible for Dalits community to get education in it. Even after the advent of democracy in 1950, many schools were opened. But they were not for Dalits. Access to education is a fundamental right of a citizen. The constitution has prescribed free education to the disadvantaged groups under state policies. Besides, there are some laws to provide free education to Dalits, women and ethnic minorities. Apart from the right to education guaranteed by the constitution and state policies, there is an act for education mentioning, "There shall be free primary education and no fee shall be charged in the admission of community school, free education to the under privileged communities like Dalits, indigenous and women in the secondary level."

From past few years, some programs were brought to increase educational status of Dalits. Dalit-focused program begin from the fiscal year 1995/1996. HMGN's Ninth Plan sees improving education as crucial for overall development in general and poverty alleviation in particular. Government policy stresses on equal access to education. Basic and Primary Education Programme (BPEP) has begun in the fiscal year 2000/1. The government has also launched a non-formal literacy programme within BPEP. Tenth Five Year Plan focused on development and upliftment of Dalits through affirmative action to bring them into equal status as other social groups. Scholarship program, literacy campaign and vocational education were some programmes focused on Dalits.

Despite the policies and programmes, there is no space to satisfy our self-looking at the status of Dalits and their educational status is totally unsatisfactory. There was no proper

implementation of these programmes. Dalits could never have access to education because they were trapped in Manubadi ideology. For instance, if they read the scriptures written by Manubadi, their tongue would be cut down and if they listen to the scripture, their ear will be pierced with iron rod.

Influence of Verna System in Education

The main reason of educational problem of Dalits is dependent on the basis of Hindu Verna system. When Verna system started, base of equality and communal ideology were destroyed and ideology of inequality and discrimination came forward. Caste system and its strict line were created in this way. Casteism differentiated education and physical labours, individual could not choose his/her work according to his/her interest and labours were also divided so that they could not unite against this discrimination. Our education sector is infected with this hierarchical Verna system and it is still not able to make progress.

Untouchability and Education

Untouchability comes as an inhuman and unjust behaviour against Dalits. Due to untouchability, many Dalits have been suffering from disgrace and punished. According to a research carried out by Action Aid Nepal, 205 kinds of discriminations are prevalent against Dalits. Similarly, another study on "Nepalma Jatiya Chhuwachhutka Prachalit Vevaharharu ra Taysko Unmulanko Abhiyanko Rananiti" (Popular Behavior of Caste-based Discrimination in Nepal and Strategy to Overcome It) shows that Dalits are discriminated in water tap, well, temple, wedding ceremony, feast and festivals. Beside this, Dalits are discriminated at schools and hence, it is one of the reasons for their low educational attainment. Government has not taken any initiative to reduce such incidences of discrimination. Dalit children hardly go to schools. Those who are enrolled are treated discriminately. It is child's psychology and children gets easily hurt and they drop out of school. Instead of studying, Dalit children, they develop hatred for school when they come back. They face discrimination from their own friends and even from their teachers. This kind of discrimination is common in every school in Nepal. In some instances, Dalit children even feel discriminated with examples that are given at schools.

Schools are the place of wisdom and knowledge and even these places are surrounded by ideology of untouchability. Therefore, it requires effort from state, civil society and all aware individuals to bring equal participation in education.

Conclusion

Last year, government withdrew the registration of school situated in Siraha district in which Dalit children were studying. With the cancellation of the registration, many children of Dalits became puzzled. Instead of helping, state is striking them. This incident shows the state's attitude towards Dalits is still traditional.

The government has provisioned opportunities for children, women and Dalit communities to empower them in education sector. Dalit children are not able to go to school because of several reasons like social exclusion and poor economic condition or may be neglected by the state. Although the government provides free education for all children between the ages of 6 to 12, many families of Dalit community cannot afford school supplies for clothing which resulted domination and humiliation by the society. So far as the implementation of these provisions is concerned, the students from the Dalit communities are being compelled to pay fee at each and every month even in the community-based school. On the other hand, though the state has scholarship program to the Dalit students, it is being misused and given to their own children or to the non-Dalits on Dalits quota.

There are reform programmes for backward community people to increase their educational status, but such programmes are also influenced by

Manubadi ideology. Hence, these programmes are failed to bring educational change among Dalits. Dalit-focused programmes and interventions are made from time to time but they have just been 'Hattiko Dekhaune Dant' (showing teeth of elephant). Now, people have lost their hope from the state. However, some reforms could be hoped for. To understand this problem, state has to address the root causes. To enhance Dalits' educational status, State has to be hammer on caste discrimination. As long as Dalits remain poor, as long as they do not get proper environment to go to school and as long as caste discrimination prevails, their educational upliftment is never possible. When state brings policy to increase educational status of Dalits, they have to give priority to most backward groups among Dalits. Monitoring of government's work should be started.

Educational, economic and political disparity between Dalits, and other is due to state protected and maintained Hindu Varna System. Declaring Nepal as 'Hindu state', state/government has shown its Hindu fundamentalism. It is not possible to eradicate caste discrimination without freeing our society from Hindu ideology. It is hard to think of hopeful increment in educational development. It is necessary to raise voice against it for educational transformation.

Therefore, there are no two opinions that education is the foundation to bring social equality. Education awakes society and brings wisdom, which in turn enhances economy and also awares people to achieve their rights. Hence, it is important to uplift backward societies educationally. ■

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Synopsis of CERD Shadow Report*

» Ranjana Thapa «

Introduction

International Convention on Elimination of All Forms of Racial Discrimination (ICERD) is one of the core documents on human rights produced by the United Nations. The Convention affirms the necessity of speedy elimination of racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person. The preamble of the Convention says that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere.

The Convention is adopted to combat racial discrimination, which is still in evidence in the world manifested by governmental policies based on racial superiority or hatred, such as policies of apartheid, segregation or separation. The Convention enters into force in accordance with Article 19 of the Convention on 4 January 1969.

Beside other five important documents on human rights, this convention was ratified by the Panchayat regime on 30 January 1971 in Nepal. Being a state party to the convention, the parties are obliged to submit reports on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of the Convention within one year after the entry into force of the Convention for the state concerned and thereafter every two years and whenever the Committee may request further information from the State Parties. In regard to reporting Nepal has submitted the 15th and 16th periodic (combined) report to the CERD Committee in UN Office at Geneva.

Process of Writing Shadow Report

The preparation of the Shadow Report writing was carried out by JUP-Nepal following different processes. A meeting was held on 13 March 2003 to discuss on the implementation of CERD as well as on the preparation of Shadow Report. Different NGOs working on Dalit issues and on indigenous people's rights were present in the meeting. The meeting was called to form the writing committee of the report, first in coordination of JUP-Nepal and the second by the Secretariat itself inviting the organisations and individuals participated in at the meeting hosted by JUP-Nepal. The meeting decided to prepare article-wise report including emerging issues like Armed Conflict and Dalits, Dalit Children, Dalit Women and Intercaste Marriage. A two-day national consultation programme was held among the representatives of NHRC, NWC, NDC, Ministries, INGOs, NGOs, Media persons, Lawyers, individuals, professionals and stakeholders aiming at collecting constructive suggestions and inputs so as to make the report more informative and convincing. A total of 80 participants representing different constituencies and agencies of the country from diverse backgrounds took part in the consultation.

The Shadow Report reflects the implementation of the Convention of All Forms of Racial Discrimination, 1965 in Nepal, as a state party. The report tends to float the information concerning the Convention that the state has failed to incorporate. As Nepal has been a state party to CERD, it prohibits and condemns discrimination based on race, colour, descent, or national or ethnic origin. It applies as domestic law of the land and prevails over the national law

* Shadow report of the 15th and 16th combined State Report, prepared by Human Rights Treaty Monitoring Coordination Committee

to the extent of inconsistency.¹

The Country Code (Muluki Ain), 1854 restructured Nepali society into four-caste hierarchy, including indigenous nationalities. They are tagadhari (“scared thread wearing” or “twice born”) followed by matawali (“liquor drinking”), pani nachalne chhoiee chhitoo halnu naparne (“untouchable, sprinkling of holy water not required for the purification of body”) and at the bottom of the hierarchy was pani nachalne chhoiee chhitoo halnu parne (“untouchable, sprinkling of holy water required for the purification of body”). The New Country Code (Naya Muluki Ain), 1963 abolished such inhuman legal provisions. The Constitution of the Kingdom of Nepal, 1990 promulgated after the restoration of democracy has defined any forms of discrimination based on caste ethnicity and religion as punishable by law.² However, the practices of caste-based discrimination still continue with different intensity and magnitude.

Status of Dalits

The total number of Dalits in Nepal is 2,945,223 of total population.³ There is an on-going debate about the use of the word “Dalit” and so is on their population. Different scholars and institutions give different statistics of total Dalit population in Nepal. As classified on the basis of geographical division, there are three Dalit groups: (a) Hill Dalits such as Kami, Sarki, Damai, etc (b) Newar Dalits such as Pode, Chyame, etc and (c) Madhesi Dalits such as Dom, Musahar, Chamar, etc.

- ▶ Dalits are marginalised community in society. They are treated as ‘untouchables’ and subjected to multi-layers of discriminations. Dignity of Dalit people has always been neglected and challenged by the so-called “high-caste” people. They are restricted to enter the public places and are deprived of equal rights and opportunities.
 - ▶ There is no representation of Dalits in decision-making level of the state.
 - ▶ The biasness and hateful attitude of the so-called “high-caste” people in the planning, policymaking levels and law-enforcing agencies have discouraged Dalits to voice injustice and malpractices imposed upon them.
- ▶ Declaration of Eight-point Programme by the government on 16 August 2001 to intensify the economic and social reform campaign. The programme included many positive aspects, revolutionary land reforms programme with new needs and justification including reduction in land ceiling, no obstruction for the entrance of any one to the places of worship including temples and monasteries; commitment to constitute two commissions for the welfare of Dalits and women on the basis of suggestion and advice of the concerned; and providing land to the freed bonded labourers by February 2002.⁴
 - ▶ The government has constituted three advisory committees on 2 January 2004 for the implementation of the reservation plans. A 16-member committee has been formed under the coordination of Finance Minister to suggest the government on how to implement reservation plans for women, Dalits and janajatis.⁵ A 12-member committee has been formed under the coordination of Minister for Local Development to suggest solutions on local development issues. A 5-member committee, under the coordination of Former Chief Election Commissioner has been constituted to suggest ways to bring reforms in the national Commissions. The later committee has been given two months period to submit its recommendations whereas rest of the committees have been given three months each for submitting their suggestions.
 - ▶ Establishment of National Dalit Commission on 19 March 2002 to deal with Dalit issues.
 - ▶ In the Tenth Five-Year Plan (2003-2007), the government has committed to end all forms of caste-based discriminations through empowerment, allocating equal resources and modernizing the skills to uplift the backward community like Dalits.
 - ▶ Issuing a notice on 11 November 2003, the Home Ministry condemned the caste-based discriminations and encouraged general people to lodge complaints challenging acts against caste-based discrimination to the state agencies and directed the agencies to initiate themselves to punish the

Government Efforts

perpetrators.

- ▶ Formation of Tribal Indigenous Upliftment National Academy.
- ▶ Local Development Ministry has been set as the Focal Ministry to fulfill the reporting liability of the state on CERD on the initiation of NHRC.

Implementation of Concluding Recommendations and Role of NGOs

- ▶ The government has not implemented any recommendations observed by the Committee.
- ▶ Role of NGOs is quite satisfactory in Dalit movement. Many NGOs working for the rights of Dalits still lack policies for a consolidated Dalit movement.

Challenges

- ▶ Prevalence of Hindu barnashram system and dominance of “upper-caste” people on power in the country.
- ▶ Though the Constitution and laws prohibit any forms of discriminations, inhuman behaviours on the basis of caste, denial of entering religious places, denial of services, denial of access to common resources, denial of kinship or social relationships, denial of participation in societal activities and forced labour is widespread in the country.
- ▶ Multi-layers of discriminations against Dalits are rampant in the society. Discrimination in religious practices; occupation; educational institutions; irregularities in scholarships, political spheres, discrimination by the central and the local governments are a few instances of the discriminatory practices prevalent in the country.
- ▶ Lack of specific law that addresses the problems of caste-based discriminations.
- ▶ Lack of positive discrimination to encourage Dalits involved in the mainstream of the development, employment and other basic entities of development.
- ▶ Delay in passing the Dalit Bill by the Parliament for an autonomous National Dalit Commission.
- ▶ Lack of proportional participation in the political parties’ leadership.

- ▶ Ineffectiveness of existing laws, which prohibit caste-based discriminations and ‘untouchability’.
- ▶ Lack of pro-Dalit attitudes, policies, plans and behaviours of the policy-making bodies and law enforcing agencies.
- ▶ Inadequate financial and human resources in institutions entrusted with various obligations related to human rights and Dalits’ rights to carry out their functions effectively.
- ▶ Dalits in Nepal are one of the least studied communities by both the Nepali and foreign scholars. A few organisations in Nepal like Action Aid Nepal and INSEC have studied on Dalit community partially. Till the date, no detailed study about the nature, intensity, magnitude of caste-based ‘untouchability’ and discriminations has been made.
- ▶ Maoist insurgency and political instability is hindering the development of Dalits as well as the Dalits movement.
- ▶ Reservation on Articles 4 and 6 is hindering to fully implement the provisions of the Convention.
- ▶ The government has not recognised the competency of the complaint mechanism of CERD. Therefore, it bars victims to seek international justice as provided by the Convention.

Recommendations

- ▶ Special legislation should be enacted to address the issues of Dalits.
- ▶ Coordination and cooperation should be maintained among the ministries to work under the agenda, programmes and action plans for the upliftment of Dalits.
- ▶ Discriminatory laws against Dalits should be amended and repealed.
- ▶ Special substantive and procedural law should be enacted to protect and promote the rights of Dalits.
- ▶ Reservation made on Articles 4 and 6 should be withdrawn.
- ▶ Government should recognise the competency of the complaint mechanisms under CERD.
- ▶ Massive media campaign should be launched to aware and sensitise the people

- from the policymaking to grassroots level.
- ▶ Government should involve Dalit and other NGOs working on Dalit rights, invite and consult with them on the formulation of policies and plans in favour of Dalits.
 - ▶ Sufficient budget should be allocated to the line ministries and the state agencies to carry out the functional activities.
 - ▶ Action plan of CERD should be prepared to give effect to the Convention.
 - ▶ ‘Untouchability’ crime watch centres should be established in every district and VDC. Such centres should be created as the local branches of National Dalit Commission as independent organisations, ensuring easy access to Dalits who need help or assistance in relation to elimination of caste-based discriminations.
 - ▶ His Majesty’s Government should immediately adopt tri-campaigns depending on time, place and situation i.e. Proactive Campaign⁶, Reactive Campaign⁷ and Interactive Campaign⁸.
 - ▶ Skill upgrade programme should be launched to reap the harvest of expanding markets. Small enterprises, credit and saving trainings, marketing training and external linkage with the banks for loans and market management should be provided to Dalits.
 - ▶ A separate research centre should be established to study on the intensity and magnitude of caste-based discriminations.
 - ▶ Periodical reservation should be provisioned to Dalits in every sector of the development i.e. employment, education, health, political participation and decision-making level.
 - ▶ Complaint, investigation and prosecution against caste-based discriminations should be guaranteed by the state. Special complaint box and facilities should be established in every DDC and VDC.
 - ▶ There should be specific laws to address the multiple forms of discrimination against Dalit women and the problem of ‘untouchability’ as a whole. In case of intercaste marriages amongst Dalits and non-Dalits, the couples are socially boycotted, physically and mentally tortured. These instances are on the rise and therefore, the government should take strict action against

persons who incite such violence.⁹

Concluding Observations of UN Committee¹⁰

Introduction

The Committee welcomes the report submitted by the State party and the additional oral information provided by the delegation. The Committee appreciates the efforts made by the State party to respond to its observations made in 2000. The Committee further welcomes the fact that the State party’s delegation included a member of the National Dalit Commission and a member of the National Academy for the Nationalities and Indigenous People, and expresses its appreciation for the candid and constructive responses of the delegation to its questions asked during the dialogue.

Factors and Difficulties Impeding Implementation of the Convention

The Committee notes that the State party is facing serious economic hardship, extreme poverty of a significant part of its population, as well as severe political and institutional difficulties as a result of the insurgency. The dissolution of the Parliament in October 2002 also constitutes a significant impediment to the full implementation of the Convention.

Positive Aspects

The Committee welcomes the adoption of several action plans within the framework of the State party’s Ninth and Tenth Plans, in particular the programmes for Dalits, nationalities and indigenous peoples of Nepal.

The Committee notes with satisfaction that a number of institutions have recently been established with the aim of promoting human rights and combating discrimination, including the National Dalit Commission, the National Committee for the Upliftment of the Depressed, the Oppressed and Dalits Community, the Academy to Uplift Nationalities and Indigenous Peoples, and the National Foundation for the Development of Indigenous Nationalities.

The Committee is encouraged by the information provided by the State party on its efforts to implement special measures for members of disadvantaged groups, in accordance with Article

2, Paragraph 2 of the Convention, to ensure equal enjoyments of rights by all persons.

The Committee welcomes the consultation that the State party conducted with civil society organisations during the preparation of the present report.

The Committee welcomes the information that the State party is considering withdrawing its reservations on Articles 4 and 6 and making the optional declaration under Article 14 of the Convention.

Concerns and Recommendations

The Committee expresses concern over the effects of the insurgency, especially the impact on the vulnerable groups who are particularly affected. It is also concerned that this has also resulted in the diversion of state resources away from social and development programmes. While acknowledging the State party's national security concerns, the Committee recommends that the State party seek to balance those concerns with its human rights obligations, in particular, for members of vulnerable groups, and allocate its budgets accordingly. Furthermore, the Committee underscores the importance of the restoration of Parliament in order to expedite the process of resuming normality in the country.

The Committee notes that, in addition to the National Human Rights Commission, a number of other institutions have recently been established with the aim of promoting human rights and combating discrimination. The Committee recommends that these bodies be strengthened and given adequate financial support, so as to ensure their independence and effectiveness. Furthermore, the Committee requests the State party to provide in its subsequent reports information, inter alia, on their responsibilities, composition, methods and achievements, as well as measures taken to ensure adequate coordination of these bodies. The Committee would also welcome receiving information on the ability and responsibility of the National Human Rights Commission to act as a countrywide monitoring mechanism.

While the Committee welcomes the establishment of the National Dalit Commission,

it is concerned that the Commission lacks a statutory basis until the Parliament is restored and the necessary Act is adopted. The Committee recommends that the State party consider as a priority the adoption of the relevant statutory law to enable the National Dalit Commission to carry out its mandate effectively.

The Committee remains deeply concerned at the persistence of de facto caste based discrimination and the culture of impunity that apparently permeates the higher strata of a hierarchical social system. It notes in particular concern over information on the existence of segregated residential areas for Dalits, social exclusion of inter-caste couples, restriction to certain types of employment, and denial of access to public spaces, places of worship and public sources of food and water, as well as allegation, that public funds were used for the construction of separate water taps for Dalits. The Committee recommends that the State party as a matter of priority take measures to prevent, prohibit and eliminate private and public practices that constitute segregation of any kind, and make determined efforts to ensure the practical and effective implementation of these measures. The Committee further requests that information be included in the next periodic report on any follow-up measures taken by the State party to General Recommendation XXIX on Descent-Based Discrimination.

The Committee regrets the general paucity of information regarding the implementation of the Convention in relation to the enjoyment of all human rights by the indigenous peoples of Nepal. The Committee is also concerned over allegations of forced relocation and violations of the indigenous peoples' right to own, develop, control and use their traditional homelands and resources in the name of wildlife preservation.

The Committee recommends that the State party take stricter measures to combat discrimination against indigenous peoples, in line with its General Recommendation XXIII on Indigenous Peoples. It requests the State party to include in the next report information on actions taken, especially on its efforts to reconcile indigenous peoples' land rights with the

preservation of wildlife. It further invites the State party to consider acceding to ILO Convention No. 169.

The Committee regrets the lack of information on prosecutions launched and penalties imposed in cases of offences, which relate to racial discrimination, and the role of the National Human Rights Commission and the National Dalit Commission in dealing with such cases. The Committee stresses the need for determined enforcement of the criminal justice system, and reminds the State party that the absence of complaints and legal action by victims of racial discrimination may be the result of the absence of relevant specific legislation, or of a lack of awareness of the availability of legal remedies, or of insufficient will on the part of the authorities to prosecute. The Committee requests that the State party include in its next periodic report, inter alia, statistical information on complaints lodged, prosecutions launched and penalties imposed in cases of offences which relate to racial or ethnic discrimination. In particular, the Committee would welcome further information on cases invoking Article 88 and Article 11 (4) of the Constitution and the Miscellaneous Chapter of the Country Code. The Committee also requests information on legal measures that prohibit activities and organizations, which promote or incite discrimination, or participation in them.

The Committee is concerned over the allegations of ill-treatment, ineffective protection and discrimination against Dalits and other vulnerable groups in society, by law enforcement officials, especially the police. The Committee stresses that prompt and impartial investigations are paramount in counteracting discriminatory attitudes and practices.

The Committee recommends that the State party intensify its efforts to end such discriminatory practices. It further recommends that the procedure relating to the investigation of complaints with respect to the work of the police be conducted and overseen by a body independent of the police.

The Committee notes the lack of information in the periodic report on the situation of women who belong to disadvantaged groups as victims

of multiple discrimination, and expresses concern over the situation of forced prostitution of girls and women of the Badi caste.

The Committee recommends that the State party consider issues of political representation, personal security, employment and education, in line with General Recommendations XXV and XXIX, in taking measures to eliminate multiple discrimination against women who belong to vulnerable groups. The Committee further requests the State party to include in its next report the measures taken in this regard, including specific action taken to eradicate forced prostitution of Badi girls and women.

While welcoming the State party's efforts to implement special measures to advance and protect persons subjected to discrimination, the Committee remains concerned over the under-representation of disadvantaged groups in government, legislative bodies and the judiciary. The Committee urges the State party to engage in efforts to promote awareness among the general public, as well as among members of disadvantaged communities, of the importance of their active participation in public and political life. The Committee recommends that the State party continue to enforce special measures to guarantee to members of disadvantaged groups the right to participate in elections, to vote and stand for election, and to have due representation in government, legislative bodies and the judiciary.

The Committee is concerned that, although the system of agricultural bonded labour known as Kamaiya was abolished in July 2000, the emancipated Kamaiyas are facing many problems, including lack of housing, land, work, and education for their children. The Committee recommends to the State party to ensure effective enforcement of Bonded Labour Prohibition Act 2002 and programmes adopted, to put an end to the practice and discrimination against Kamaiyas. It further requests the State party to include information on the implementation of the Act in its next periodic report.

The Committee is concerned by information that only the Tibetans who arrived in Nepal before 1990 and the Bhutanese are recognised as

refugees by the authorities, and by recent information of forced expulsion of Tibetan refugees. It further expresses concern over the serious restriction of rights for the Bhutanese refugees and the lack of specific measures for unaccompanied refugee children. The Committee reiterates its concern at the absence of legislative protection for refugees and asylum-seekers, and urges the State party to enact relevant legislation, and to ratify international instruments relating to the protection of refugees. It also encourages greater interaction with UNHCR in this regard. The Committee wishes to receive further information in the next periodic report on measures taken by the State party.

The Committee notes that governmental action has been taken to sensitise the general public, including members of vulnerable groups, against discriminatory traditional customs and societal attitudes. The Committee recommends that the State party take further measures to ensure the training and education of teachers, social workers and law enforcement officials, especially those deployed against the insurgents as well as the political segments of the society. The Committee encourages the State party to carry out comprehensive public education campaigns and to include inter-cultural education in school curricula.

The Committee notes that the Government broadcasts in several national languages. The Committee is concerned, however, with the lack of representation of disadvantaged groups in the state-owned media, and that issues such as racial discrimination and human rights receive little coverage by the media in general. The Committee invites the State party to consider introducing special measures to ensure due representation in

the mass media, of members of disadvantaged groups, including Dalits.

The Committee urges that the State party ratify the amendments to Article 8, Paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention. In this connection, the Committee refers to General Assembly Resolution 57/194 of 18 December 2002, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment. A similar appeal has been reiterated by the General Assembly in its resolution .../... of December 2003.

The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, and that it includes in its next periodic report information on the follow-up measures taken.

The Committee encourages the State party to continue its engagement with civil society organizations during the preparation of the next periodic report and to disseminate it widely among the public upon submission. It further recommends that the Committee's concluding observations be similarly publicized.

The Committee recommends that the State party ensure the timely submission of its seventeenth, eighteenth and nineteenth periodic reports, combined in one document, due on 1 March 2008, and that it be an updating report, addressing all the points raised in the present observations. ■

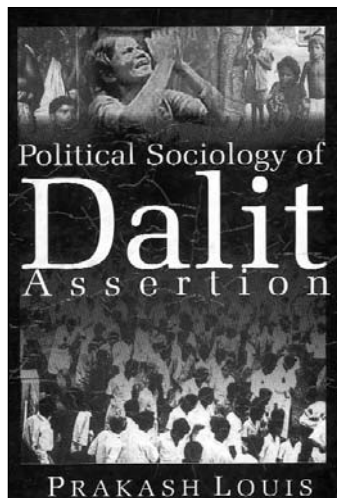
Notes

1. Article 9 (1) of the Treaty Act 1990
2. Article 11(2) of the Constitution
3. CBS. 2002. Statistical Pocket Book. Kathmandu: Central Bureau of Statistics.
4. Executive Summary of Human Rights Yearbook, 2002. Kathmandu: INSEC
5. Ethnic Minorities
6. Counselling, legal actions, capacity building, Dalit awareness raising training/orientation package
7. Temple entry *en masse*, stop providing services (Aran Banda, Sino Uthaaune etc.)
8. Educational/Awareness raising, participatory, networking
9. Recommendations of CEDAW Shadow Report, 2003. Kathmandu: Forum for Women Law and Development.
10. [http:// www.ohchr.org](http://www.ohchr.org) download on 5 July 2004.

Political Sociology of Dalit Assertion

Political Sociology of Dalits Assertion, analyses Untouchability as the historical curse of the outcastes in Indian society which is much more similar to our society where the Hindu philosophy is deep rooted. The society is constructed and based on the principles of purity and pollution, inferior and superior, high and low, included and excluded, mental and menial labour, upper and lower castes.

This book is divided into six parts, first part starts with the Dalits and caste discrimination, social categorization of discrimination such as intentional individual discrimination, unintentional individual discrimination, intentional institutional discrimination and unintentional institutional discrimination, social exclusion of dalits and abolition of untouchability which has been the historical curse of the outcastes in every society. The institutional forms of discrimination and deprivation reduced the Dalits and the downtrodden to a state of non-being. Social exclusion is an institutionalised attempt to keep out or to outcaste a segment of the population from the social order. Social segregation is an institutional form of social distancing expressed in physical separation. It signifies the convergence of physical and social space and is to be distinguished from other social forms, which also structure social distance in hierarchical terms and Dalits became the victims of socio-historical process of segregation, exclusion and discrimination. It is not simply illiteracy, poverty, malnutrition, ill health that became the lot of Dalits, but in the ultimate analysis they are reduced to resourceless, powerless and baseless people. Both the so-called mainline intellectuals, academicians and



Author: Prakash Louis
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 New Delhi, 11002
Pages: 326

administrators, illiteracy, ignorance and poverty as the evils affect the Dalit Community.

The second part of the book illustrates the constitutional provisions regarding Dalits and their rights, legal measures, development measures, reservations made for Dalit community. Constitutional provision is influential in terms of the discourse about caste and racial discrimination. 'untouchability is abolished and its practice in any form is forbidden'. The enforcement of any disability arising out of "untouchability" shall be an offence punishable in accordance with the law' (p.91). And mark

out special provisions for reservation for the scheduled castes and scheduled tribes. Book classifies reservation in the educational institutional, reservation of services and posts in the government services and reservation seats in the legislatures and further more defines some fundamental issues about reservation, which have continued to haunt the political sociology of India and some newer issues like the legitimacy of reservation policies, prolonged preferential policies, determination of factors of backwardness, hierarchy and compartment and reservation and private sector have also come to the forefront. "The contributors critically examine the implications of these developments for Dalits. Providing a perspective from below, they emphasise that though social mobility, economic development and political recognition have benefited a few Dalits, the drawbacks of these changes are manifold. In particular, they have created divergence among the Dalits."

Part third observes that Dalits' identity especially after independence is multi-faceted, multi layered

and multi pronged. The Dalits, once known as "untouchables", have from time immemorial been socially and economically oppressed, culturally subjugated and politically marginalised. However, in recent times, they have begun to assert themselves and have initiated movements aimed at ushering in a new social order based on the principles of equality and liberty. Even though many Dalits have, as a consequence, reached positions of power and prominence, particularly in the political arena, the vast majority of them continues to suffer discrimination, poverty and humiliation and are often targets of inhuman atrocities.

Fourth part addresses emergence of Durban Declaration and Dalit discourse. Durban conference demanded a new look at the issue of racial discrimination and called for evolving national and international mechanisms to combat the menace of discrimination. The exclusion, subordination and exploitation that the Dalits were subjected to in particular were made visible in the international arena for the first time, which was a new beginning. Starting from the local to the national level Dalits forums like the National Campaign on Dalit Human Rights mobilized and organized Dalits and their compatriots, which worked towards international Dalit solidarity, which ultimately enabled the United Nation's Committee on the Elimination of Racial Discrimination to draft General Recommendation of caste based discrimination. This is the beginning of new life, new temples, resisted lost faith and most importantly treated all in an equal footing.

Fifth part highlights the post Durban Dalit Discourse. The Durban conference on racial discrimination did mark a watershed, showing that despite internal differences and polarisation, a broad-based united, struggle alone can help the liberation and emancipation of the Dalits. It is crucial to note that this liberation struggle is not directed to Dalits alone but for restructuring an unequal and hierarchical social order. This part points out the need to be stated all efforts to continue with the discourse of Dalit struggle as well as to initiate concrete actions progressively making stride out.

The last part discusses the Dalit assertion and emancipation, where the author defines the Dalit protest, revolt and movements are also historical process and further states that atrocities and discrimination faced by the Dalits and their assertion for liberation are two sides of the same coin. The Dalits initiated their movement because there has been no genuine movement for emancipation of the oppressed by non-Dalits. The Dalits rely on their own intelligence, because the mainstream intelligentsia has no credibility amongst educated Dalits. The responsibility falls on the non-Dalit intelligence, which must evolve a transparent moral standard for itself; if at all India is to evolve into an all-inclusive society.

Bringing together scholars and activists, this volume examines the many facets of on-going Dalit struggles to improve their position. The discussion is conducted in the framework of four fairly recent developments in the world of the Dalits:

- ▶ Equality for Dalits is increasingly being recognised as a desirable norm in Indian society
- ▶ Capitalist development has begun to weaken the caste system
- ▶ Dalits are beginning to experience a modicum of social mobility thanks to policies of positive discrimination
- ▶ There has been an unprecedented rise in political consciousness among Dalits in recent times.

The main principle of the book is to look at the various attempts made by the dalit communities as well as other human rights groups to ensure the rights of the Dalits to be human and live like human beings. An attempt also has been made here to look at the post-Durban scenario of the Dalit emancipation and liberation. In total this book focuses on many of the historical, day to day structural, issues that affect the dalits and also tries to examine these issues at the arena where these issues unfold themselves as part of the socio-political processes. ■

- Bidhya Chapagain