

~ four ~

Writing Citizenship: Gender, Race and Tactical Alliances in Nepal's Constitution Drafting

Surabhi Pudasaini

INTRODUCTION

Marginality, and thus the call for inclusion, is today a central concern of the Nepali public sphere. This category of the “marginal” has the capacity to expand along many lines, encompassing bodily, material, regional, cultural, socio-economically, ritual and demographic markers. The category, it appears to me, is broadly an inclusive one; in the public sphere, membership is not tightly controlled. Any identity group can claim to be, and be accepted as, a marginal people. (It is, of course, more complex legally.) Inevitably, there is some chronology—though not a clear linear one—along which groups will have attained some critical level of widespread recognition as a bounded marginal group. Demography no doubt plays some role in this, as does geo-politics, political economy and global ideologies. Later marginal identities may be contained within the earlier groups, and yet establishing difference along some other vector. They may also identify with two or more earlier groups. The relationships within and between groups who claim membership of the marginal category are, therefore, neither clear nor non-

hierarchical. The relationships are also not stable. Different marginal groups can become pivotal at different times for a variety of reasons.

While keeping these complexities in mind, this chapter's frame is narrow; it focuses on the intensive contestations around citizenship which took place from the end of 2014 till the new constitution was promulgated on September 20, 2015. My key intention is to use this limited arc of the activism over citizenship provisions to better understand the potentialities and limitations of placing together various, seemingly bounded groups of people together in a single "marginalized" category. Currently, the most discussed bounded groups in this category are Madhesi,¹ women, Dalits and *Adivasis/Janajatis* (indigenous peoples). Looking at Nepal today, the "marginalized" as a group have been portrayed as constantly demanding material and symbolic resources from the state (understood to be ruled by caste, class, and gender elites), especially the legislature and judiciary. The "marginalized" themselves—whether organized groups or loosely connected movements—also appear to overwhelmingly focus their gaze on the state.

Access to citizenship papers—acceptance as full, non-contingent citizens of the Nepali state—has been a key demand made of the state by a number of marginalized groups. Citizenship is an issue affecting individuals and groups who cut across many bounded marginal identity groups along the vectors of gender, ethnic/regional identity, language, class and sexuality. Any attempts by one or more of the bounded identity groups to legally alter and then fix certain aspects of citizenship policy/practices has direct consequences on groups/peoples not belonging to those groups. If two bounded groups make

¹ Madhesi refers to the people of the Madhes, a broad swath of fertile plains that spread across the length of Nepal, bordering the Indian states of Uttar Pradesh and Bihar. The Madhes is populated by diverse peoples, including various indigenous groups. The majority of Madhesi, however, have strong cultural ties across the border, and speak Bhojpuri, Maithili and Awadhi. For these reasons, they have historically been discriminated against, called Indians or "dhotis," and considered insufficiently loyal to Nepal. For an in-depth treatment of the Madhes, see Jha (2014) and Gaige (2009[1975]).

different demands of the state with regard to fixing citizenship (as also any number of other issues), ripples and readjustments must be made at many points within the umbrella marginalized category.

I am interested in these ripples and readjustments. I believe that the debates, acrimony and efforts that take place within the marginalized category during specific periods of crisis have a number of potential consequences. First, they create new relationships or harden old ones within the marginalized category. Second, they usually lead to some sort of uneasy, temporary, and still contested fixing of new laws which open up new axes of contestation. I particularly dwell on the first of these potential consequences. I am interested in this because I suspect that these realignments are critical in creating shifts in ideological frameworks and individual mindsets in the long-term. Particularly, at a time when the majority of marginal interventions in the Nepali public sphere—as well as analysis of such interventions—is focused on state institutions there has been much neglect of the non-legal impacts of marginal activism. I suspect that there is much potential in this sphere to create new ideological frameworks which can impact state institutions and society in unpredictable ways.

To this end, in this chapter I look at the debates over citizenship papers that were prominent in Nepal from the end of 2014 till the promulgation of the new constitution in September 2015. My methodology in making sense of marginality through the debates and divides around re-legislating access to citizenship centers primarily on my own involvement with activism over citizenship. My entry point into the debate was as a member of Chaukath, a feminist collective which has been active since 2012. Chaukath broadly, and I personally, neither sought nor had direct interactions at the power political level where the legislation was being decided. Nor was I privy to the strategizing of either women's or Madhesi rights civil society groups. In this sense, Chaukath's and my location was peripheral to the direct dealings taking place to alter the legislative language around citizenship—which was the explicitly stated goal of all the parties involved. Instead, Chaukath worked largely to convene

discussions around citizenship, usually oriented towards bringing prominent women's and Madhesi rights activists and/or politicians together on a single platform. That the group placed value on such cross-category discussions as a means of reaching common ground is evident. Equally, this essay too assumes that new ideological and therefore practical (in the sense of practice) frameworks through cross-group interactions are possible and desirable.

While in the midst of staging interventions, I had no intention to write such a chapter. As a result, I did not at any point up to the actual writing have any methodology for collecting sources. At the point of writing, I compiled materials I had previously encountered. All the people/ideas referred to in this chapter were important to me at the time as interventions relevant to the collective goal of gaining citizenship in one's mother's name; they were a part of my daily emotional and intellection landscape as an actor dealing with the flow of events rather than a methodical researcher. The points of view discussed in the essay represent people/groups/ideas I have selectively pinpointed. My inclusion of them is based on three criteria. First, they have visibility in the media or on the street. Second, they have influence within particular political parties. Third, they have legitimacy as experts, which is mostly relevant in the case of the lawyers. In short, these are the people/groups who set the dominant tone for the identity group in question, which automatically assumes that there are other non-dominant voices within the groups whom I do not focus on in this essay.

This biography is a means to justify some significant weaknesses in this essay. Key among these is the limitedness of scope and the presence of clearly non-empirical speculatively leaps in a number of places. While this essay has the dressings of an academic paper, I did not approach it as such while writing; I did not choose to be in conversation with the broader disciplinary work from relevant academic fields or with the full range of existing scholarly or interventionist works on citizenship in Nepal. Treading in my own experiences, I wrote the essay very much in the mode of an activist

probing her set of experiences with the aim of tentatively identifying possibilities. The aim of writing was to share what I knew, and in the process of writing, reflect more deeply on incidents, events, institutions, collectivities, ideas and shifts which were part of my daily activities. To that extent, I did approach the essay analytically, drawing generalizations which I believe are relevant beyond just the Madhesi rights and women's rights groups and require proper scholarly engagement in the future.

These generalizations unfold in the following three sections. The next section provides a historical overview of the different documents which have guided citizenship acquisition. It attempts to locate the debate on citizenship within the whole range of institutions in Nepal, looking at courts and the bureaucracy alongside policy/legislation. It also unpacks the underlying concerns around lineage and *Nepalipan* (Nepaliness) which guide the policies. The third section looks at the three key public discourses on citizenship attributed to groups I name: mainstream, Madhesi and women. The numerous problems of such a categorization are immediately evident. I will, however, stick to these problematic category names as they were used to broadly identify the three main clusters of actors/interests in the citizenship debate.

The groups were identified by their key stances. The Madhesi forces focused on the naturalization clause. They insisted that they would not under any condition allow for non-Nepali women who marry Madhesi men to wait any number of years to acquire citizenship. The women's forces were focused on both citizenship by descent and naturalization. Their priority was to secure the rights of mothers to grant citizenship by descent to their children without having to disclose any details of the father. On naturalization, they sought to decrease the wait time to access naturalized citizenship for foreign male spouses who marry Nepali women. It was over this clause that the Madhesi and women's groups clashed. The mainstream designation identifies groups/individuals fundamentally opposed to formulating rules which allow easier access to citizenship to a range of marginal groups. They cited national security and nationality

(which I have understood as a discussion over *Nepalipan*) as the key criteria for their opposition.

Fourth section focuses on the politics of tactical alliances as it played out among women's and Madhesi rights forces over citizenship through the naturalization clause. I attempt to draw a number of generalizations about the dynamics of intra-marginal alliance building through this example. First, intensive interactions between marginal forces are crisis driven. These groups negotiate only when pressing policy such as citizenship is about to be passed. There is no longer-term, non-urgent, and retrospective attempt at tactical alliance building. Second, all groups choose rights selectively rather than engage in the broader landscape of rights as a moral/political whole. The right to claim victimhood and the responsibility deriving from that status is an important idea in this context. Finally, even as groups claim to be marginal, they are structured by and exist within the exclusionary narrative and space carved out by dominant interests. There are scant attempts to create narratives and ideologies which create spaces where an emancipatory politics can be contemplated.

A BRIEF OVERVIEW OF FORMAL CITIZENSHIP IN NEPAL

The history of administrative structures and regulations to grant citizenship papers in Nepal is short, beginning with the advent of the democratic period in 1951.² Nepal drafted its first ever Citizenship Act in 1952. This act does not distinguish between different forms of citizenship—descent, naturalized, birth—but rather acknowledges as citizens of Nepal anybody born in Nepal, a person permanently settled in Nepal with family one of whose parents was born in Nepal, and any woman who marries a Nepali citizen. The subsequent tightening of the citizenship provisions began with the then King

² That citizenship became a formal, and tightly controlled, category as the ownership of land came to be guided by modern practices of private property following the institution of democracy in 1951 can be understood in the context of Buggeland's (1999) insightful article on the insidious relationship between citizenship papers and landlessness based on her study of the indigenous Santhal community in the eastern plains district of Jhapa.

Mahendra's royal coup in 1960 (CLaF 2011: 308). With the Panchayat Constitution drafted in 1962, the second Citizenship Act was promulgated in 1964.³ The Act distinguished between citizenship by descent and by naturalization, and removed provisions for citizenship by birth. To acquire descent citizenship, a child's father was required to have been a citizen at the time of the child's birth. For naturalization, in addition to provisions on speaking Nepali, the original draft required a two-year waiting period for those of "Nepali origin" and foreign women married to Nepali citizens (CLaF 2011: 325). The act was amended five times. While a range of provisions were added/removed, two points are relevant to this essay. First, the 1976 amendment increased the waiting period for naturalization to five years for foreign women married to Nepali men, and for those of "Nepali origin" (CLaF 2011: 338). The 1982 amendment, meanwhile, altogether removed the waiting period for women seeking naturalized citizenship through marriage (CLaF 2011: 342). This act stayed in place for over four decades, continuing even after the advent of multi-party democracy in 1990, though the fifth amendment was made after the 1990 Constitution was drafted. The 1990 Constitution, however, essentially continued the prevailing format for citizenship. A notable change was that one could now speak a "national language," as opposed to just Nepali, to acquire naturalized citizenship (CLaF 2011: 310).

Subsequently, citizenship provisions were notably altered in the Interim Constitution (IC) 2007. To begin with, as a power emerging from a mass movement, the Madhesi forces negotiated a time-bound, one-time distribution of citizenship by birth for permanent residents. Second, the provision for descent was changed so that children could now acquire citizenship through their mother or

³ The homogenizing and centralizing impetus of the Panchayat state, and its propagation of a hill-based, patriarchal, and Hindu state is today a commonly held view. For an in-depth look at the particular gendered aspect of the Panchayat state, see Tamang (2002). For the Panchayat state's relationship to the Madhes, see Gaige (2009[1975]) and Gautam (2008).

father. But this provision was undercut in a subsequent sub-clause whereby the children born to Nepali women married to foreign men are only eligible for naturalized citizenship (CLaF 2011: 312). Practically, this meant that all women seeking to give citizenship to children had to disclose the identity of the father to establish that he is a Nepali. This also reflects the provisions⁴ included in the constitution whereby both parents have to be Nepali citizens but the child can acquire papers in either of their names.⁵ The current proposal is a further step back in that, legally, it prevents the children of non-Nepali mothers who choose not to take Nepali citizenship from obtaining citizenship by descent (GoN 2015). Now, legally, even children born to Nepali fathers and non-Nepali mothers will obtain naturalized citizenship.

While the majority of the debate has centered around these provisions, it is equally important to look at the manner in which other formal state institutions mediate the (non) acquisition of citizenship. A key institution is the bureaucracy, beginning with the local level bodies such as village development committees/wards, and ending with the chief district officer who has the final authority to grant citizenship. These institutions have proved to be largely conservative, seeking across the board to preserve and protect the status quo. Aware of this, political decision makers use administrative circulars to undercut flexible laws. For example, as per the Citizen Certificates Distribution Procedures Directive, 2007 and the Directives for Citizenship Certificate Distribution Team, 2013, women applying for citizenship need to bring someone as *sakshi* or witness to vouch for them (NWC and FWLD 2014). For women applying for citizenship post-marriage, they are required to

⁴ See Articles 10–15 of the 2015 Constitution of Nepal for the citizenship provisions. Available at www.constitutionnet.org/sites/default/files/nepal_constitution_-_official_translaiton_eng_mljpga.pdf; accessed April 19, 2017.

⁵ A number of proposals around citizenship were floated through the fundamental rights sub-committees in 2010, and also notes of dissent filed. To see details of what each committee suggested and what the points of dissent were refer to the CLaF (2011).

bring either their husband or someone from their marital family. Married women also

have to submit additional documents such as marriage registration certificate, a copy of the citizenship certificate of their husband or father-in-law, support from either their husband, mother-in-law, father-in-law, or brother-in-law, and a copy of the citizenship certificate of their father, mother, or brother from their maternal side. (NWC and FWLD 2014: 13)

Unmarried women, in cases where the father is not present (for whatever reason), are required to bring someone from their father's side of the family. Perhaps even more blatantly, Nepali women whose parents are both citizens of Nepal become ineligible to apply for Nepali citizen by descent when they marry foreigners. If they have already obtained citizenship before marriage, it is not revoked. But they cannot apply post-marriage as per provision Section 8(1)(a) of the Nepal Citizenship Act, 2006.

While the administrative circulars at times create direct barriers, as noted above, in other cases they consciously create indirect barriers of practice on the back of prejudices, as well as a neglect of duties. This point extends to discussions around the powers and duties a modern state claims to embody. For example, it is a state's duty to provide infrastructure to easily conduct vital registrations such as birth and marriage, as well as store proof of such registrations in an accessible manner. Lack of access to technologies for such registration disproportionately impacts the poor as well as peoples from marginalized groups. Therefore, while the legislature sets the broad guidelines for citizenship provisions, the problems around accessing this fundamental resource are embedded in all formal institutions of state.⁶

⁶ The role of the judiciary in citizenship is more ambivalent, and therefore difficult to unpack. The women's movement has largely used the Supreme Court (SC) as a progressive force, seeking and gaining verdicts on issues such as

As this brief overview demonstrates, there are three categories of citizenship under discussion: descent, naturalized and birth. Though this essay focuses on the descent and naturalized categories, it is evident that similar underlying principles drive thinking around all three sets of regulations. Namely, policies on citizenship as a whole hinge on two factors—lineage and the characteristic of Nepaliness. The latter idea of *Nepalipan* is often framed as the importance of “nationality,” and is discussed in more detail in subsequent sections. Of course, many vectors, such as class, are relevant in the practice of acquiring citizenship. Theoretically, all men who embody *Nepalipan* can claim full, non-contingent citizenship. Broadly speaking, ethnicity and language, and to some extent geography, can be taken as proxies for *Nepalipan*. A suitable example is the fact that men from communities along both borders—the Madhes and the high Himalayas—are considered Indian or *Bhote*. While the levels of discrimination and distrust may vary, *Nepalipan* is the impetus from which attitudes to both groups flow. With their *Nepalipan* deemed insufficient or suspicious, they remain contingent citizens even if they have been living within the boundaries of modern Nepal for generations.

Nepalipan is, however, also tied to lineage, which inevitable derives from the male. This is evident in both the naturalized and descent clauses. The naturalized clause allows women who marry Nepali men to get automatic citizenship. Meanwhile, men who marry Nepali women must wait for a long fourteen years, at the end of which citizenship is still not automatic. Women who marry into Nepal, because they are marrying into the male Nepali lineage and will produce Nepali children, can be given citizenship immediately. Meanwhile, men who marry in are a threat; they will produce

property rights, domestic violence, and marital rape. The women’s movement has approached the SC in a similar vein on the issue of citizenship. The Madhesi forces are more suspicious of the courts. Nonetheless, the SC is an actor in the citizenship debate as in other sites of marginal politics. For an overview of the SC’s decisions on citizenship related issues, see FWLD (n.d.).

“foreign” children whose lineage and loyalties lie elsewhere. This line of argument is only borne out by the fact that even women who have citizenship by descent, cannot pass it on to their children. Women’s citizenship is always contingent on their role as daughters and wives. Therefore, it is from this overarching frame that only the male who carries certain markers of Nepaliness has the theoretical potential to be a non-contingent, non-suspect citizen that we can approach the three discourses laid out above.

THREE DISCOURSES

MAINSTREAM DISCOURSE

The “mainstream” discourse has two identifying markers. First, it is the discourse that has the greatest influence on the writing of legislation. Second, it is the discourse circulated, in the media among other places, by those in positions of power. By this standard, the view of lawyers and politicians as circulated in the media become central. In unpacking the ideological stance of lawyers, I focus on a 604-page publication of the Constitutional Lawyer’s Forum (CLaF) titled *Rashtriyata, Samanata ra Rajyavihinatako Sandarbhamana Nagarikata* (CLaF 2011). I focus on this publication because it reflects the views of the most powerful group of individuals involved in shaping public policy, judicial precedence, and the legislative text on citizenship.⁷ I am not suggesting that this group is a monolith; there are no doubt dissenting voices to be found. Yet, that there is a broad ideological consensus on key criteria for granting citizenship at a gathering of the most influential constitutional lawyers is noteworthy.

In his introduction to the book as chair of CLaF, constitutional lawyer Chandra Kanta Gyawali begins by stating that those who

⁷ The publication is divided into five sections, which look at international models for citizenship, Nepal’s proposed laws and Constituent Assembly (CA) debates, the issues that might emerge from the proposed laws, recommendations, and an annex which presents the proceedings of CLaF events on citizenship and compiles relevant documents including constitutions, acts and circulars. All translations from the original Nepali are mine.

“demonstrate deep loyalty towards the state, promising to maintain its sovereignty and unity ...” acquire the legal right to citizenship. Interestingly, he does not focus on the more cut and dry legal aspects of citizenship by blood or birth. This continues when Gyawali lays out the criteria that must be considered in formulating naturalization laws: “carrying capacity, geo-political realities, open border, population growth, natural resources, and refugees.” It is in the mix of these considerations, he argues, that we must look at issues of “nationality, equality and statelessness” (Gyawali 2011: preface). To understand this position, presumably that of the largest network of constitutional lawyers in Nepal, we need to then look at two clusters of ideas. First, what is the basis of establishing loyalty to the state? Second, what are the impetuses for and consequences of the list of criteria for naturalization? These questions will be tackled throughout the chapter.

To get a sense of the legal community’s stance on citizenship, we need only look at the proceedings of an event organized by CLaF. As per the notes of the proceedings published in the above book, 25 people—lawyers, politicians, activists—are recorded as having commented at a program entitled “Citizenship in relation to nationality, equality and statelessness” (CLaF 2011: 114–134). Of the 25 leading lawyers, with the exception of four speakers (one Madhesi and three women), the majority of the rest of the lawyers framed their comments around issues of nationality, the open border, and security; Kashiraj Dahal, a prominent lawyer, asked whether human rights or nationality should form the basis for citizenship. That “nationality” is the ultimate standard in state policies is pertinent in a situation where all minority groups speak the language of rights to make claims on the state.

Messages in the media from those at the helm of political power demonstrates the similarities in approaches to citizenship between lawyers and politicians. Case in point is a newspaper article by Bharat Mohan Adhikari, a senior leader of the Communist Party of Nepal-Unified Marxist Leninist (CPN-UML) and former

finance minister, titled *Nagarikata Vivad ra Samadhan* (citizenship disagreements and solutions). At the outset, Adhikari appears to support gender equality in giving citizenship saying: “mother and father should both have the constitutional right to give citizenship to their children” (Adhikari 2015: 6). But he later clarifies that he is calling for a provision whereby both parents have to be Nepali but the child can acquire citizenship in the name of either parent. This, Adhikari says, is necessary to prevent an influx of “foreign *bhanja-bhanjis*.”⁸ He goes on to say that being flexible on citizenship would put nationality in danger, citing the example of Fiji.⁹

Following the logic of Adhikari’s arguments can lead someone less restrained by electoral considerations to call for deep social and legal conservatism. Balkrishna Neupane, a senior advocate who has consistently opposed flexible provisions in the Supreme Court, firmly represents the ultra-nationalist voice. In an episode on citizenship on the popular talk show *Sajha Saval* (2015), Neupane echoed Adhikari, saying that citizenship through the mother would make Nepalis a minority, as the country would be overrun if one percent of the Indian and/or Chinese population came to settle in Nepal. He went further to urge “Nepali sisters” to consider what harm they would do their children by marrying non-Nepalis in the same way they would inquire about a potential husband’s education and assets. He further raised the alarm over the “or”¹⁰ provision

⁸ *Bhanja-bhanji* is a commonly used term in the citizenship debate. The term refers to a man’s female siblings’ children. Those children are understood to belong to their father’s lineage. In this context, the term is used to refer to the children of Nepali women who marry Indian men.

⁹ “Fijians became minorities and Mahendra Chaudhary was elected the nation’s executive prime minister as a consequence of a liberal citizenship policy which gave citizenship to Indians who originally went to Fiji to farm sugarcane and settled there” (Adhikari 2015: 6).

¹⁰ In the public discourse, the debate over citizenship is largely discussed as the “and” versus “or” sides. This refers to the main clause in the constitution, stating that children can obtain citizenship papers through their “mother and father” versus “mother or father.” The “and” provision usually leads to demands

arguing that it would keep daughters and daughters-in-law in the same house, an idea he considers immensely problematic.

The above discussion established that questions around *Nepalipan* and gender¹¹ roles are the key contested issues. What we see, as will also be elaborated below, is that the articulation of the exclusionary impulse is different in the case of *Nepalipan* and gender roles. With regard to the latter, a combination of international commitments, that aid money is contingent on commitment to gender equality,¹² the state's desire to appear modern, and six decades of activism from women's groups has led to a situation where it is almost compulsory to voice a belief in gender equality. This articulation does not, however, obscure the fact that the prominent public figures are calling for a legalization of the principle that daughters are given away to the husband/husband's family on marriage.

On the markers of *Nepalipan*, a loud silence reigns. All of the mainstream voices quoted above altogether avoided speaking directly about the Madhes. We can assume that the mainstreams' fear of an influx of Indians across the border is closely tied to their suspicions of Madhesis' loyalty. Further proof is evident in the discourse around citizenship in the Madhes being divided between indigenous peoples and Dalits—who are framed as “real Nepalis”—and those of “Indian origin” whose loyalty to Nepal is always suspect.

for the mother to produce the father's papers, but not vice versa, in obtaining citizenship documents for children.

¹¹ As all three discourses are referring only to cis-gender women even when they speak about gender equality, this essay too focuses on that category. It is, however, important to note that a wide range of institutions and individuals advocating for LGBTQI (i.e., lesbian, gay, bisexual, trans, queer and/or intersex) peoples are now active in Nepal, and that a “third gender” category, which was allowed in electoral roles, now exists.

¹² That the Nepali government has committed to the national budget being “gender responsive” is an indicator of the power of international commitments and aid money is forwarding the rhetoric of gender equality. For an overview of gender-responsive budgeting, see MoF (2008).

In his investigative article on citizenship at a time when discussions on citizenship in the Madhes were critical, Gaunle (2006: 28–33) divides the problem of citizenship in the Tarai into four parts. The first and second parts are related to naturalization and birth citizenship respectively. These categories of citizenship are only relevant to the individual, and cannot be passed on to the parents, siblings, and children of the individual as per prevailing law. The third issue, Gaunle says, is that of the *Adivasi/Janajatis* and Dalits, who due to their class background have no proof of their Nepali identity. He quotes an anonymous officer of the home ministry as saying that this category of people must be given citizenship. This same officer, however, says that the fourth category—whom Gaunle classifies as people of Indian origin who have lived in Nepal for many years, and who may or may not be registered to vote—are more active than the third. The implication is that the third are deserving of citizenship while the fourth—who as “Indian origin” are different from those of “Nepali origin”—are using undue power to acquire citizenship papers.

WOMEN'S RIGHTS ACTIVISTS' DISCOURSE

There are usually two categories of voices that emerge around any issue or debate marked as belonging to women. Most prominent in the mainstream are the women's rights activists and non-government organizations (NGOs). Among these, especially the NGOs, there is usually a broad division of working areas. On the issue of citizenship, as in the case of other legal battles, the most prominent NGO is the Forum for Women, Law and Development (FWLD) and its founder/former member of the CA and current Supreme Court judge Sapana Pradhan Malla. The second category of prominent voices is that of a handful of women politicians.

Judicial activism has been key to many strands of the women's movement, and FWLD has been at the forefront in forcing legal precedent. In the case of citizenship, as elsewhere, FWLD consistently uses the language of rights and the rule of law. For example, a key FWLD report states two key points: first that “possession of

a citizenship certificate is significantly associated with gender and caste at the individual level, as well as with intra-family dynamics at the household level,” and second, that “caste and religion are also relevant factors for citizenship acquisition.”¹³ Indeed, the report focuses heavily on the idea of intersectional or relative discrimination, looking at telltale markers such as types of family document presented for acquisition, and acquisition percentage based on status in household (head, grandchild, daughter), as well as talking about sexual orientation and gender identity (FWLD 2014: 14–15). Though these reports are driven by ideas of marginalization and equality, they do not impact the actual practice of intersectional political within/among marginalized groups on the ground as will be discussed in the fourth section.

Beyond FWLD, there have been few prominent voices from within the women’s movement writing (as opposed to street action in which many people and groups have engaged) about citizenship. An exception has been Indu Tuladhar, a well-known voice for women’s rights, who in the period being discussed wrote three pieces about citizenship.¹⁴ Tuladhar consistently makes three points in all her articles: the current provisions neither respect the democratic struggles nor will they solve the existing issues around citizenship; the current provisions create inequality and statelessness for many; the state cannot use the open border as an excuse for

¹³ “The findings of the survey demonstrate that hill Brahmins, Chhetris and Newars are the most likely to possess citizenship certificates, whereas Chepangs, Rajbhansis [sic] and Musahars are the least likely. Muslims clearly lag in citizenship acquisition rates relative to other religious groups” (FWLD 2014: 2).

¹⁴ Each of these pieces has come at a critical time for citizenship clauses. The first piece in the *Kantipur* daily was published when there was confusion over whether citizenship was considered a contested or resolved issue (Tuladhar 2014). The second piece, written jointly with Aruna Uprety, is a direct response to the article by Bharat Mohan Adhikari discussed earlier (Tuladhar and Uprety 2015). Tuladhar’s most recent article in the *Nagarik* daily, was written on after the political decision to keep the “and” provision in the constitution was made public (Tuladhar 2015).

its citizenship provisions. Rather, Tuladhar argues, it is the duty of the state to shore up its governance through border controls, anti-corruption, and good record keeping of vital events. Located within the framework of rights, Tuladhar also looks at issues of power and control over women that is implicit in the existing citizen provisions. This comes through most clearly in Tuladhar and Uprety's joint 2015 piece, where they argue that the citizenship provisions are a means of controlling women's reproduction, including with whom, when, and how many children they can give birth to. These efforts to unpack the motivations of the patriarchal state and family are largely lacking from the public sphere, even from within the women's rights movement.

Meanwhile, it is rare to have prominent women's rights activists take on the racial/ethnic bent of Nepali nationalism. In their response to Bharat Mohan Adhikari, Tuladhar and Uprety do challenge the former's fear mongering around Nepal becoming like Fiji. They locate the influx of Indians into Fiji as part of a long history of colonial exploitation. Importantly they ask, "... did Fiji end because of this? Where did Fiji's nationality get harmed?" (Tuladhar and Uprety 2015: 7). This strikes at the heart of the question around race and difference, and is the only instance of a key women's rights activist talking about race and fear of racial infiltration. But they do not explicitly tie this to issues of race in Nepal, including the Madhes, which the Fiji example obviously refers to.

The second category of prominent voices heard on citizenship, as on other women's issues, is that of political women. These women appear on talk shows, are invited as speakers at discussion events, and occasionally write. The political women are critical of the mainstream view that descent is derived from men.¹⁵ For the most part, the

¹⁵ As the debate over citizenship heated up in the run-up to the unveiling of the draft constitution, the CPN-UML leaders particularly amped up their defense of the current "and" clause. Supporting the "and" provision, the then CPN-UML vice-chair Bidya Devi Bhandari said that the current demands were influenced by Western values, arguing "whether we agree or not in Eastern tradition and culture, women are fully dutiful to men ... even if this

political women are silent on naturalization and nationalism.¹⁶ They also often demand answers from the party leadership¹⁷ on how the shift from “or” to “and” took place. This reflects their alienation from real political power. Alongside, it demonstrates the larger problem—discussed in the next section—of attempting to conduct an alliance-based emancipatory politics within the existing power structures which the political parties represent.

The third voice advocating for women’s citizenship, which emerged as the contestation around citizenship heated up, is a group called Citizenship in the Name of Mother (CITNOM), which calls itself a youth network.¹⁸ The network has worked to involve

is a discriminatory system, society has been moving forward in this manner” (Basnet 2015). She also called for further caution on citizenship as it ties directly to the issue of national security.

¹⁶ Where they do speak about the border, it is more broadly about the need of the day being better governance as in the recent article by Nepali Congress leader Arzu Rana-Deuba (2015: 7): “Citizenship is not just a question of geopolitics. It is not an issue that calls for cowardice towards own citizens based on a suspicion of India. Undoubtedly, we have to be careful to ensure that non-citizens are not acquiring citizenship. It is the state’s duty to make laws, to investigate that. But, it is not correct to punish our daughters by citing geopolitical relevance.” On the question of naturalization, Rana-Deuba says: “In America and India, the world’s large democracies, if a person lives there for three to seven years they get social, economic and incrementally political rights.”

¹⁷ In her article on citizenship, CPN-UML leader Binda Pandey (2014: 7) asks leaders who during election time “promise to ensure equal status for all citizens in a democracy” to explain the citizenship provisions to the “people” clearly. Similarly, at the TV talk program, *Samakon*, CPN-UML leader Ranju Jha said she didn’t know where the “and” terminology came from when the IC 2007 had established the father “or” mother principle (Samakon 2016).

¹⁸ To date, CITNOM has produced three pamphlets/flyers in Nepali, none of which are dated. From the content, we know that all of these were printed during the tenure of the second CA (CA-II) starting in November 2013. The groups became especially active around the deadline to complete drafting the constitution in January 2015. Two of the pamphlets are A4 size, with text on both sides and both have logos of seventeen NGOs on the bottom of the second side. The third pamphlet is also A4, but has two pages with text on all four sides. Titled “Myths and realities around the demand for ‘mother or father’ in the

a wide range of NGOs. One promotional flyer for the group had fifty-seven different logos on it. Nonetheless, the group is housed in FWLD. The network has a strong and consistent social media presence. Alongside, it also organizes protests at critical moments in the decision-making process and has formed a “victims’ network” to advocate for citizenship through mothers. CITNOM’s key slogan is *ra hoina, wa ho* (no to and, yes to or), calling for citizenship to be given through mother “or” father rather than mother “and” father. To begin with, CITNOM chose to not address the issue of naturalization because of its controversial status—tied as it was to the idea of an influx of Indians. Later, as the constitution promulgation neared, at a discussion program including Madhesi activists, it agreed that women who marry in should get immediate naturalized citizenship. To my knowledge, its public rhetoric did not change, however. The value of CITNOM in this period was that it presented itself as an independent umbrella under which many different viewpoints could be accommodated.

Analyzing these three categories of voices, we can make two points about the message the women’s movement is putting out on citizenship. First, it is very much rights based, calling strongly for the respect of international treaties and the rule of law relating to women. Consequently, the movement deliberately attempts to engage with the issues without presenting an antagonistic face. There appears to be less of a preoccupation within the Madhes movement about being seen as polite. Second, the writings of all these groups show that they continue to talk about Nepali women as a homogeneous group.

proposed provision for citizenship in Nepal,” it contains nine myths along with the reality-based responses to them. The pamphlets’ content can be summarized in three points. First, the group states its demands (the “or” provision; equal rights for men and women in acquiring, keeping, and changing citizenship; and ensuring that children are not made stateless). Second, it lists the harms of the “and” provision, namely statelessness, discrimination against men and women, and disproportionate impact on single mothers and children of mixed marriages. Third, while accepting that the open border is an issue, the pamphlets argue that discriminatory provisions are not the way to deal with the problem.

Though the movement speaks about minorities and marginalization as per a human rights framework, nowhere are the arguments and criticisms of *Adivasi/Janajati*, Madhesi, or Dalit women explicitly acknowledged or addressed.¹⁹ Their lack of sympathy to the Madhesi cause, and to expanding the notion of *Nepalipan*, is evident. Equally problematically, and perhaps more surprisingly, they do not question the division of Madhesi women into daughters and daughters-in-law. That this binary is accepted by the women's movement in problematic, especially since women's rights activists recognize that family relationships constrain women's access to citizenship.²⁰ The global language of women's rights—with limited attention paid to the full landscape of rights—as well as the broader context of a male hill-centric state play a key role in shaping the women's rights movements views on citizenship in the Madhes.

MADHESI ACTIVISTS' DISCOURSE

It is telling that there is little coverage of the Madhesi agenda around citizenship issue in the mainstream media while many voices spoke about gender equality in citizenship. This lack of attention at the national level is keenly felt by all the forces involved in Madhesi activism. In this section, I will look at three clusters of voices. First, and forming the bulk of the section, I will unpack the arguments in advocate Dipendra Jha's (2072 v.s.) book *Anagarik* (non-citizen). Running an NGO called Terai Human Rights Defenders, Jha has become a prominent voice representing the Madhes in mainstream media as well as an advisor to Madhesi political leaders. Despite their

¹⁹ This is a point explicitly made by Sah (2017) as also discussed in more detail in the next section.

²⁰ For example, the FWLD report in its findings/conclusion states, "The policy and procedural guidelines that necessitate reliance on family members (fathers and husbands in particular) to acquire a citizenship certificate further exacerbate gendered inequalities within households and structure broader gendered outcomes regarding citizenship certificate possession" (FWLD 2014: 30).

strong presence in the political sphere, there are but a few Madhes-focused NGOs. As Tamang notes:

Compared to Janajati and Dalit women, Madhesi women have not been as successful in pushing their agendas via NGOs. The sphere and activities of NGOs and civil society in the Madhes is comparatively smaller because of the historical neglect by the state and foreign aid-giving agencies. Exemplifying this is the fact that the draft DFID/World Bank report on social exclusion in Nepal, which was completed in June 2005, did not have a chapter on the Madhes. (Tamang 2009: 71)

Second, I will refer to arguments made by Madhesi leaders at public events. Meanwhile, Madhesi women's voices on the current citizenship debate at the national level—and more broadly within both the Madhesi and women's movement—are lacking. Rita Sah is one of the few Madhesi women who has created a space for herself at the national level, intervening in issues that are considered critical to both the women's and the Madhesi movements. As she spoke and wrote extensively about citizenship in the media and other public fora, I will focus on her positions in the final part of this section.

The key issue for the Madhesi forces in the current debate has hinged on naturalization clauses. Their focus has been on naturalized citizenship for non-Nepali women marrying into Nepal. For the most part, all the Madhesi rights actors, who are overwhelmingly male, have argued that their *buharis* (daughters-in-law) must get immediate naturalized citizenship to respect the long-standing cultural practice of cross-border marriage. They have also demanded that naturalized female spouses be able to contest political seats and be appointed to constitutional bodies immediately after naturalization. It is around the naturalization clause that Madhesi forces and mainstream women leaders have clashed openly as will be discussed in detail in the next section.

The most recent and comprehensive treatment of citizenship for Madhesis is articulated in Dipendra Jha's book *Anagarik*. The main thrust of Jha's argument is evident from his prologue, where he begins by asking whether only hill people can be nationalist. He also stages a direct attack on "hill feminists," arguing that the problems around citizenship are as much related to hill nationalism as they are to patriarchy. If the citizenship issue is to be adequately tackled, both have to be addressed together, he argues. Jha also defends Madhesi leaders saying they have strongly called for the "or" provision, while hill women have not been supportive on naturalization.

Jha makes the following key points about the citizenship issue in the Madhes. First, he addresses the question of the nationalism and loyalty of Madhesis, arguing that Madhesis living along the Indian border have protected the land from encroachment for decades. Second, he highlights the close ties between Madhesis and Indians across the border as a relationship that must be respected. Third, Jha sees Kathmandu's attempts at keeping Madhesis from citizenship as being the hill-dominated state's attempt to strip the Madhes of political power. For example, Jha says that overall, 20 percent of Madhesis do not have citizenship, which is a significant potential voting population. Similarly, he also ties the naturalization provisions to political power; this draft is the first one that takes away the right of naturalized female spouses to hold certain political positions. Jha argues that this is a way of keeping Madhesi women out of real power. Overall, Jha argues that citizenship provisions in the constitution and laws should be flexible, with strong penalties for fraud. While Jha has engaged with these ideas in great depth, other Madhesi forces discussed below also speak of similar experiences—of being alienated and suspected, of a concerted attempt by the state to seize Madhesis' political power, and of a disrespect for their cultural practices.

In contrast to the women politicians discussed in the previous section, male Madhesi political leaders are notable power brokers and holders. To begin with, citizenship has long been a key area

of concern for Madhesis. Gautam (2008: 130–139) provides an overview of the central role the discriminatory regulations around citizenship played in creating the category of “Madhesi” and in making Madhesis second-class citizens.²¹ By the mid-1980s, articulations around the need for citizenship papers in the Madhes had become strong. Politician Laxmanlal Karn notes that citizenship was one of the key agendas taken up by the Sadbhawana Party, the only prominent Madhes-centric political party prior to 2007.²² The deep importance of the question of citizenship, in terms of identity papers and belonging, has long been a fundamental fight of the Madhes movement. In the last decade, the Madhesi parties have been a key force in the CA, driving and blocking agendas. Emerging from the mandate of the 2007 Madhes movement, and playing a big part in institutionalizing ideas of federalism and inclusion, the Madhesi parties are agenda setters. Their approach to issues reflects the power political considerations that mark the actions of viable political forces. Madhesi leaders have the ability to mobilize resources, to win elections, and block the passage of laws, including on federalism and inclusion in the form of quotas.

²¹ In a chapter entitled “Politics of Citizenship,” Gaige notes that a vocal anti-Indian sentiment which equated Madhesis with Indians was clearly articulated in the run up to the 1959 elections. Speaking about the role a publication sympathetic to ultra-nationalist forces played, he says, “*Halkhabar* continued during the months before the election to articulate the concerns of those hill people whose nationalism was at least in part an expression of hostility towards Indians and towards the plains people of the Tarai” (Gaige 2009[1975]: 101).

²² Laxmanlal Karn says, “If women are asking questions on citizenship today it has been years since Madhesis have been raising their voices about this. The Sadhbhavana Party was formed with citizenship as one of its main issues. Among nine demands [that were fundamental to the Party when it formed], one demand was citizenship. And we always wanted that nobody in the country should be without citizenship. We know how much suffering that [being without citizenship] cause” (Record Nepal 2014).

Most Madhesi leaders publicly support the “or” provision, which allows women to grant citizenship by descent to their children.²³ It appears, however, that they view the fight to enshrine “or” in the constitution as someone else’s battle. For instance, they have not made descent citizenship a red line issue. On the other hand, naturalized citizenship is very much a non-negotiable topic for the Madhesi political forces. Their primary position is that *buharis* must get immediate citizenship as well as have the right to hold political positions at the highest level. They propose to the women’s rights activists that instead of taking away these rights from *buharis* they give the same right to foreign men who marry in. In support of immediate citizenship and political rights for foreign women who marry in, the Madhesi forces, as also the *Adivasi/Janajati* groups, draw from their broader political agenda of self-rule being formulated on the basis of linguistic, historical, and cultural differences. Issues around gender invariably come under the rubric of the amorphous “culture,” a site that does not necessarily or fully come under the purview of the modern state. In the context of citizenship, the distinct cultural context is the long-standing practice of cross-border marriage. As women are expected to settle in their husbands’ homes upon marriage, while the vice versa is not true, the Madhesi forces are concerned primarily with *buharis* getting immediate citizenship. Furthermore, they see this as necessary to retaining Madhesis’ political power, presumably through both demographics and respect for cultural practices.

As an active voice in both the women’s and Madhesi movements, Rita Sah both strongly supports the “or” provision and firmly argues for immediate rights for women who marry Madhesi men. Despite her strong support for citizenship from the mother, Sah suggests

²³ Laxmanlal Karna says, “I have been repeatedly asking in the committee what difficulty the country faced after we said [in the IC 2007 that citizenship could be acquired through the] mother “or” father? If we [as a nation] have faced difficulties due to this exercise [of giving citizenship through mother or father] let us have point-by-point discussions and make changes” (Record Nepal 2014).

that unequal distribution of rights for male and female spouses is not entirely unreasonable. She argues:

In deciding on this we have to pay attention to the statistics of how many foreign sons-in-law and how many daughters-in-law are affected. A few hundreds or thousands foreign sons-in-law will be affected but in the case of foreign daughters-in-law, hundreds of thousands of Madhesi women and their children will be affected. (Sah 2015)

In this, as more broadly, Sah is highly critical of the “mainstream” women’s movement. She writes:

This clearly shows that women rights activists’ thinking and agenda is also communal. It can be understood from their rhetoric that on the question of taking citizenship they are more hurt by foreign daughters-in-law getting immediate citizenship rather than foreign sons-in-law having to wait fourteen years. (Sah 2015)

Sah’s position on specific citizenship clauses²⁴ as well as her perspective on the women’s movements’ approach to the Madhes and Madhesi women specifically through the naturalization clauses, therefore, is firmly aligned with that of the other Madhesi forces noted earlier (Sah 2017).²⁵ While she has made strong critiques of the women’s

²⁴ See Sah (2015) for a breakdown of her position by constitutional clauses.

²⁵ She makes three key critiques of the women’s movement as it stands: 1) “Mainstream women’s movement does not capture the diversity of women. They present women as a homogeneous category, due to which the issues of Madhesi, Dalit, Muslim and Janajati women have not been addressed.” 2) “The new constitution has revoked the rights of Madhesi women regarding the citizenship provision.” Presumably saying the mainstream has not done anything about this. 3) “The mainstream women’s movement has maintained silence on proportional representation of Madhesi women in state machinery and polity” (Sah 2017: 11).

movement generally and positions on citizenship specifically, she has not made similar critiques of the Madhesi parties and civil society. In this way, while clearly identifying as a women's rights activist, Sah distances herself from the "hill" women's movement and publicly veers away from criticizing the Madhesi movement. In doing so, she draws heavily from the language of cultural rights prominent within the latter movement. Alongside, as with both sets of forces, Sah continues to make a distinction between daughters and daughters-in-law.

THE POLITICS OF TACTICAL ALLIANCES

It has been evident through the essay that disagreements on citizenship provisions between Madhesi and women leaders stem from fundamental differences in their conceptions of the Nepali state, especially the criteria for becoming full and unquestioned citizens of all spheres of that state. While both groups brand the Nepali state a key perpetrator of their oppression, each group also enjoys a degree of power, relative to the other vis-à-vis the state.²⁶ While pledging a rhetorical allegiance to the idea of making the state

²⁶ Really taking this spirit on board requires recognizing that all the individuals quoted in this essay represent the powerful within the heterogeneous categories of Madhesi and women. The lack of voices from the less powerful within these groups speaks to the limitations within these movements. There is ample evidence to suggest that class, race, and gender are intersecting issues in the non-acquisition of citizenship. For example, a study on Tarai Dalit women listed ten clusters of issues from power relations (with *Pahadis*, husbands and in-laws, upper castes, and political party cadre) to money to information and culture of veiling as negatively impacting Tarai Dalit women's ability to acquire citizenship papers. Meanwhile, the Jagaran Media Centre found that 70 percent of Dalits in Saptari district did not have citizenship (Dhital 2007: 13). In another area, with Nepal having officially adopted the "third gender" category in citizenship documents, but with administrative barriers in place to acquisition, this will grow to be a major site of struggle. As more non-gender conforming peoples acquire citizenship as "third gender," issues around identifying mothers and fathers, surrogacy and adoption will become additional faultlines among activist/identity groups (Bochenek and Knight 2012).

more inclusive for all marginalized peoples, both groups actively work to retain their existing power. Such efforts bring the different categories of the marginalized groups in conflict with each other. The conflict over citizenship provisions between Madhesi and women leaders demonstrates that the quest for increasing power, bolstered by long and deeply held prejudices against the other, supersedes concerted attempts at coalescing around and instrumentalizing the “marginalized” category.

This section unpacks some central ideological faultlines between Madhesi’ and women’s activists in the citizenship debate. Further, this section also lays out the broader frameworks within which these arguments are made by both sides. The entry point into this discussion centers around four ideas that highlight the relative powers—and thus fundamental points of conflict—between the two groups. These ideas are:

- 1) the use of the phrase “Nepali origin”
- 2) the divergent understandings of the role of the border in the life of the nation
- 3) the use of familial terms such as *bhanja-bhanji*, *chhora* (son), and *chhori* (daughter) when referring to individual relationships with the state, and
- 4) the manner in which these three ideas came together in the conflict over the naturalization provisions for female spouses.

As has been noted above, the idea of “Nepali origin” has been used to legally and socially privilege those of hill origin rather than those originating from Nepali territory. Breaking down this practice is therefore of grave concern to Madhesi. That women’s rights activists maintain complete silence on this point is seen as their complicity with hill nationalism. Because the question of an unquestioned belonging to Nepal—citizenship in the non-papers sense—is such a fundamental fight for Madhesi, hill feminists’ silence on this matter is a huge impediment in forging any alliances.

Related to the idea of “Nepali origin” is the manner in which the role of the border in Nepali life is understood. Women’s rights activists inevitably discuss the border as primarily a security issue. They argue that the solution should be found through better governance, rather than curtailing citizenship or other fundamental rights. That the state cannot and should not punish any citizens for its inability to do its job is a key line of argument made across the board. But that women rights activists accept the border as primarily a threat, a line of thinking put forward by the Nepali state, implies a suspicion of Madhesis. It suggests that Madhesis are not sufficiently loyal to the Nepali state.

Madhesis counter these narratives. Dipendra Jha (2072 v.s.) talks of how both his mother and grandmother have their *maiti* (natal home) in Bihar, India. He remembers eating hot *rotis* his *phupu* (father’s sister) made in her marital home in Bihar and brought over to his village in Mahottari, Nepal. He says Madhesis in Mahottari regularly cross the border to ask for a bit of sugar when they put the tea to brew. Through these examples, Jha establishes that the daily familial and economic life of Madhesis is intrinsically tied to and operates in a manner which challenges the idea of the feared “open border.”

Jha’s anecdotes suggest that framing the border as only and prominently a threat reflects both an ignorance of and a disregard for the daily life patterns of a significant portion of Nepalis, namely Madhesis. Jha argues that Madhesis have in fact secured the border for the Nepali state for decades, pointing undeniably to the fact that Nepali territory has not been encroached on over all these decades. He compares this to the Nepali state’s “selling” of hill rivers in water-sharing deals with India. On the question of a massive influx of Indians into the Madhes, Jha points to the decreasing attractiveness of Nepal as facilities and security improve in the neighboring Indian states of Bihar and Uttar Pradesh (UP). He states that families now think twice about marrying their daughters into the Madhes, considering the long hours of power cuts and the poor road

conditions. Consequently, he argues that cross-border marriages are now down to about ten percent.²⁷ Neither Jha, nor others, talk, however, about whether the improving facilities across the border in India have increased the practice of marrying Madhesi girls into Bihar and UP. Nor is there any discussion about the safety and well-being of these Madhesi women, nor of their rights to property. That Madhesi leaders don't talk about their *chhoris* (daughters) but just focus on their *buharis* (daughters-in-law) is a critique often made by women's rights activists. Madhesi leaders counter that hill women rights activists become interested in Madhesi "daughters" only when they seek to take away the privileges of the Madhesi "daughters-in-law."²⁸

This language around *chhori*, *buhari*, and most often *bhanja-bhanji* leads to the third point of contention between Madhesi and women rights activists/leaders. In the public sphere itself, male and female (the latter less often) politicians regularly uses the term *bhanja-bhanji* as a bogeyman of the Indian demographic—and therefore we assume

²⁷ While all sorts of numbers are floated to demonstrate the prevalence of cross-border marriage in the Madhes, all are estimates. There are no reliable sources tracking trends as well as disaggregating it by gender.

²⁸ Laxmanlal Karn said, "... when they [the Fundamental Rights and Directives Committee in CA-I] said we will give [citizenship to foreign women who marry Nepali men] after 15 years [of marriage, hill] Nepali women did not raise their voice. Nor did they raise their voices when this clause was passed. When the provision that they [i.e., women who marry Nepali men] would get [citizenship] immediately on coming over [to Nepal] after marriage was passed there was an earthquake in Kathmandu. This [provision] causes gender discrimination [by providing unequal waiting periods for foreign men and women who marry Nepalis]—came the earthquake [in the form of strong protests by women's groups in Kathmandu]. They gave [citizenship rights] to daughters-in-law and not to daughters was said. I was in the Committee at the time. I made many efforts to reach an agreement on this. I held two discussions with Binda ji [Binda Pandey then the chair of the Fundamental Rights and Directives Committee]. After she insisted there had to be a waiting period of some years, I said the Madhes forces won't agree to daughters-in-law waiting for citizenship instead let's keep the same provision [immediate citizenship] for sons-in-law" (Record Nepal 2014).

political—takeover. The thinking here is clear: descent and lineage are passed down from father to children, indeed from father to son. Male Madhesi leaders also subscribe to this idea of lineage.

As a rule, women’s rights activists are wary of the discussion on citizenship being framed around familial terms. This no doubt reflects women’s lived experiences of the many ways in which family is a source of oppression. Therefore, women’s rights activists regularly note that a state does not have sons, daughters, daughters-in-law, or nephews and nieces. Instead, it has only citizens and non-citizens. Tuladhar and Uprety (2015: 7) further state, “Children born of Nepali women are not demanding citizenship in the name of their *mama* (mother’s brother) but are trying to establish citizenship rights in the name of the mother, nationality and identity.” The *bhanja-bhanji* terminology is also, of course, closely tied to the practice of patri-locality and the literal giving away of the women to the husband. For Madhesi men, patri-locality is a part of long-standing cultural practices, and does not require any serious rethinking or contestation. This position is made most clear by senior Madhesi politician Jitendra Dev:

In the Madhes, as Laxmanlalji said—traditionally, culturally, historically—moving to the husband’s house is the traditional practice when the Madhes’ daughters marry in India. Once in awhile, when they cannot get along with husbands or fight with the in-laws, in cases where the *vamshajki chhori* (daughter by descent) lives on this side along with the family, cases of which were minimal then and are minimal now too, what citizenship do we give their children? Naturalized or descent? When the issue came up in the past, the Madhes never said give citizenship to *bhanja-bhanji*. But if there is an exceptional case where the *vamshajki chhori* does not live in her husband’s home, where she gives birth to children in her father’s house and in cases where she lives here [in Nepal] she should be able to give her children citizenship by descent. This does not

endanger nationality, it does good. Madhes is still on this angle, this position. (Record Nepal 2014)

It is clear in this quote that Dev holds marriage as the central event in a woman's life, one that determines her physical location, her lineage, and her citizenship. A Madhesi woman's right to hand over citizenship to her children is, according to Dev, contingent on her physical split from her marital family, leading to her return to her "father's" house. By formulating such cases as exceptions, Dev reinforces the cultural validity of patri-locality. Legally, this cultural standard suggests that not allowing citizenship through mothers is a conceivable position.

These faultlines suggest an implicit aspect of the women-Madhes divide: Each group feels it is the bigger victim. That sense of victimhood is a key issue for tactical politics. A consequence of adopting victimhood is that it frees one up from responsibility, which necessarily derives from power. Seeing oneself as powerless thus also frees one up from the need to analyze one's comparative power in relation to others. With each group refusing to see itself in relational terms to others who have legitimate claims of oppression and alienation, the space for dialogue, collaboration, and empathy is further eroded. At the same time, it is also important to look at why the rhetoric of victimhood is so prominent in these, and other, movements. The claim to victimhood is powerful, and often legitimate. In a sense, the claim to having been made victims by forces beyond one's control is central to the power inherent in the marginal category. It is on the basis of victimization and marginalization that many groups coalesce. That groups claim victimhood and the status of marginal does not, however, mean that they see themselves as helpless. As this essay has made evident, all the forces involved intervene as agentic actors whose interventions are aimed at forcing change. It is in the small spaces between that of the anger at having been victimized and the sense of agency as actors capable of fostering change that marginal groups can forge alliances among themselves.

Key to expanding these small, in-between spaces is the narratives we create about ourselves in relation to others. One of the obstacles to alliance building in the citizenship contestations, as also more broadly, is that the groups involved are willing to locate themselves in narratives and roles created elsewhere. In this case, broadly speaking, while the women's rights groups accept the reigning narrative of Madhesis as insufficiently loyal, the Madhesi groups accept that women should be contingent citizens. In a recent article, Tamang notes that the problem is not "that women do not have roles to play in the making and unmaking of state." Rather, the issue is "that the scripts in which these roles are embedded are written primarily by men, for men, and about men, and that women are, by design, supporting actors whose roles reflect masculinist notions of femininity and of women's proper 'place.'"²⁹ This argument can be extended to say that the current discussion on citizenship is embedded not only in masculinist institutions and processes, but also in other equally chauvinist orientations around ethnicity, language, and other faultlines.

By focusing their gaze solely (this being the operative word) on the state, the marginal groups appear to be placing others within the dominant state narratives while claiming that their own place in that narrative is unjust. This is a key reason why the overwhelming focus on the state by marginal categories becomes problematic. Of course, these categories are more than aware of the nature of the state; this is after all the basis of their cohesion and interventions as a category. We know the state cannot be bypassed either; as the controller of a range of resources—including citizenship—making little shifts in state policy has significant consequences in people's daily lives. But it should be equally important to create narratives and ideologies outside the framework established by the state. These narratives have the potential to impact the state, as also to influence familial, societal, religious, and other public ideologies. Such narratives forged within different ideological frameworks can serve to traverse the current

²⁹ Quoted from the unpublished English version of Tamang (2071 v.s.).

impasse, where all sides are focused largely on throwing legitimate criticisms—hill feminists, patriarchs—at each other.

The difficulty of navigating the sizeable impasse is evident in the contestations over citizenship. The lack of non-exclusionary narratives on both sides has created a logical sticking point in the citizenship debate, as has largely played out around the clauses on naturalization.³⁰ In calling for the “or” provision, women’s rights activists have relied heavily on international examples. The first has been to remind the Nepali state of its obligations to equality under international treaties such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The second has been attempts to shame the Nepali state by highlighting that it is an international anomaly in not giving citizenship through mothers.

The problem this creates is an incoherent logic between descent and naturalized citizenship, which is quickly seized upon by forces opposed to inclusive provisions. This lack of a consistent logic was highlighted by CPN-UML leader Bhim Rawal (2015) in his op-ed. He notes that there is no country in the world that provides immediate naturalized citizenship regardless of gender, and no country that has different waiting periods for male and female spouses. Since the call for the “or” provision is based heavily on citing international norms, Rawal argues that the same international norms should be taken into account when drafting laws for naturalization (let us ignore here the point that the Nepali state has not in fact institutionalized the

³⁰ Tamang critiques the legalistic bent of the feminist movement: “I argue that in contradiction to dominant historical readings of legal changes for women as constituting a linear progression of laws from conservative Hindu laws of old to modern legislation entailing greater and more freedom for women, the legal changes made to the MA [Muluki Ain] entail much more complicated and contradictory consequences for women in Nepal. [...] Framed in the modernization terminology of the transition from the traditional to the modern, the only notion of power evident in these legal accounts is that of patriarchy framed in it’s a historical and unchanging form, stripped of all its caste and ethnic implications” (Tamang 2000: 134).

international norms that led to the call for the “or” provision). Many women’s rights activists have tended to argue similarly for a brief but equal waiting period for male and female spouses to acquire naturalized citizenship.

This call for equality has been viewed as a false construct by Madhesis, one that equates symmetry with equality. They have argued that instituting a waiting period in fact takes away the existing rights of some women, namely women who marry into the Madhes from India. In making this argument, Madhesi leaders/activists inevitably refer to the long-standing practice of cross-border marriage and familial relations that is a critical part of the fabric of Madhesi life.

Some potential ways to traverse the impasse are implicit in the three key faultlines laid out above. Because it seems to me to be a fundamental problem on both side, I will focus on the emancipatory potential of critically approaching the binary language of *chhoribuhari*. From the side of the women’s movement, they can view immediate naturalized citizenship for women who marry into Nepal as a form of affirmative action, a privilege put in place to right other prevalent wrongs. These “wrongs” include a practice of patri-locality, which usually means that these women arrive in Nepal without any citizenship papers in their natal homes. Having the women wait any number of years would make them stateless for those years. Critiques of male Madhesi leaders for accepting this patri-locality as inevitable are entirely valid. But, depriving women who marry into Nepal of citizenship and thus making them more vulnerable to exploitation does nothing to forward women’s rights. While opening the doors to conversation with a wide spectrum of Madhesi groups, such a logic is consistent with a particular feminist spirit, which can look at national borders as artificial and masculinist constructs. If the women’s group do not take the border in that way, it would suggest that they are not concerned about Madhesi women who marry across the border in India (as Madhesi leaders have claimed).

Meanwhile, the Madhesi civil society can retrospect on why immediate citizenship for *buharis* is such a pressing issues for them.

It appears to me that the concern is not necessarily one of rights for women who marry into the Madhes. Indeed, such rights have the potential to take away patriarchal control over the women; and we do not have enough evidence elsewhere to be convinced that Madhesi civil society desires this. Instead, I read this focus on “our *buharis*” differently. It seems to me that Madhesi leaders read the discussion on not giving female spouses who marry-in immediate citizenship as challenging the authority of the Madhesi male. If *buharis* are the possessions of the male-lead household, not giving them citizenship would mean questioning both the citizenship of the male and the male-lead household’s possession of the *buhari*.

In short, it is evident that newer, more productive or even just more sympathetic relationships have not been forged between the Madhesi and women’s movement. This crisis-driven attempt to come to some consensus did not bear fruit. And this is not just in terms of the legislation, but also in the nature of the bonds that were formed. In many ways, the faultlines hardened. In the absence of non-dominant narratives, the hardening of faultlines at various junctures of crisis appears to be a generalizable trend in marginal politics.

CONCLUSION

This essay has unpacked the underlying thinking and practices of Madhesi and women’s rights activists in attempting to alter existing regulations—constitutional and legislative—on citizenship. The political potency of the “marginalized” category in which both groups are placed has provided clear impetus to both sets of actors to engage with each other. These accommodations have, however, largely been rhetorical. They have not emerged from fundamental shifts around the core issues which lead to women and Madhesis being framed as contingent citizens. The overwhelming attention on the state as a potential site for emancipatory politics is problematic. It is evident that the different communities that make up the “marginalized” category are themselves also structured by the state. Each group,

led by the relatively more powerful within it, has its own history of perpetuating oppression as well as internalizing the prejudices of the state. Therefore, the space for dialogue outside formal institutions and narratives are limited. But this is after all what activism is about: creating new spaces, discourses, and ideologies.

ACKNOWLEDGMENTS

This is a significantly edited version of the paper presented at The Annual Kathmandu Conference on Nepal and the Himalaya, July 22–24, 2015. Many thanks to Seira Tamang for encouraging me to write, and for her valuable inputs throughout the writing and editing process. I would also like to thank an anonymous reader for comments on an earlier draft. I am very grateful to the editors of SINHAS, particularly Pratyoush Onta and Lokranjan Parajuli, for the significant work they have put into getting this article ready for publication.

REFERENCES

- Adhikari, Bharat Mohan. 2015. Nagarikata Vivad ra Samadhan. *Kantipur*, January 21, p. 6. Available at www.ekantipur.com/np/2071/10/7/full-story/402451.html; accessed June 15, 2015.
- Basnet, Basanta. 2015. Pashchimi Sanskarko Prabhavma Mahila Adhikarkarmi: Bidya Bhandari. Available at www.ekantipur.com/np/2072/3/29/full-story/412678.html; accessed July 16, 2015.
- Bochenek, Michael and Kyle Knight. 2012. Establishing a Third Gender Category in Nepal: Process and Prognosis. *Emory International Law Review* 26(1): 11–41.
- Buggeland, Anne. 1999. Citizenship, Tenancy Rights and Identity: The Case of the Santals/Satars of Jhapa. In *Nepal: Tharu and Tarai Neighbours*. Harald O. Skar, ed., pp. 97–117. Kathmandu: EMR.
- Chaukath. 2014. Samvidhanma Vibhed Sansthatag Hundaichha. Available at <http://np.recordnepal.com/wire/84#sthash.PQkgKK9q.dpuf>; accessed March 4, 2015.

- CITNOM (Citizenship in the Name of Mother). n.d. *Consequences of Having 'Mother or Father' versus 'Mother and Father' Provision in the New Constitution*. Kathmandu: CITNOM.
- CLaF (Constitutional Lawyers' Forum). 2011. *Rashtriyata, Samanata ra Rajyavihinatako Sandarbhamā Nagarikata*. Kathmandu: CLaF.
- Dhital, Maina. 2007. *Citizenship Problems in Terai: A Case Study of Sunsari and Morang Districts*. Unpublished report submitted to the Social Inclusion Research Fund, Lalitpur.
- FWLD (Forum for Women, Law and Development). 2013. *Acquisition of Citizenship Certificate in Nepal: Estimating Prevalence*. Kathmandu: FWLD.
- FWLD. 2014. *Acquisition of Citizenship Certificate in Nepal: Understanding Trends, Barriers and Impacts*. Kathmandu: FWLD.
- FWLD. n.d. *Nagarikatasambandhi Sarvochcha Adalatma Bhayeka Kehi Phaisalahaaruko Sangalo*. Available at <http://fwld.org/wp-content/uploads/2016/06/Landmark-Decisions-of-Supreme-Court-on-Citizenship.pdf>; accessed April 19, 2017.
- Gaige, Frederick H. 2009[1975]. *Regionalism and National Unity in Nepal*. Kathmandu: Social Science Baha and Himal Books.
- Gaunle, Shiva. 2006. Gaun-Gaunma Nagarikata: Nagarik Nigarani Jaruri. *Himal Khabarpatrika* 16(9): 28–33. Available at <http://nepalihimal.com/article/12730>; accessed June 15, 2015.
- Gautam, Bhaskar. 2008. Parityakta Madhes: Likhatdwara Kaid Nepali Rashtriyata. *Studies in Nepali History and Society* 13(1): 117–146.
- GoN (Government of Nepal). 2015. *The Constitution of Nepal*. Available at www.constitutionnet.org/sites/default/files/nepal_constitution_-_official_translaiton_eng_mljpa.pdf; accessed April 19, 2017.
- Gyawali, Chandra Kanta. 2011. Hamro Bhanai. In *Rashtriyata, Samanata ra Rajyavihinatako Sandarbhamā Nagarikata*. Page not mentioned. Kathmandu: CLaF.
- Jha, Dipendra. 2013. Politics of Belonging. *The Kathmandu Post*, June 3, p. 7. Available at www.ekantipur.com/the-kathmandu-

- post/2013/06/02/oped/politics-of-belonging/249501.html; accessed June 15, 2015.
- Jha, Dipendra. 2072 v.s. *Anagarik*. Kathmandu: Terai Manav Adhikar Rakshak Sanjal.
- Jha, Prashant. 2014. *Battles of the New Republic: A Contemporary History of Nepal*. New Delhi: Aleph.
- Khadka, Anju, Sarad Chandra Simkhada and Bidya Nath Koirala. 2007. *Terai Dalit Women: Situation of Citizenship, Political Participation, and Good Governance*. Kathmandu: National Dalit Confederation-Nepal.
- MoF (Ministry of Finance). 2008. Gender Responsive Budget. Available at www.mof.gov.np/grbc/grb%20new%20englis%20bros.pdf; accessed April 19, 2017.
- NWC (National Women Commission) and FWLD. 2014. *Analysis of Nepalese Citizenship Laws from a Gender Perspective*. Kathmandu: NWC.
- Pandey, Binda. 2014. Nagarikata Muddama Prashnai-Prashna. *Kantipur*, December 15, p. 7. Available at www.ekantipur.com/np/2071/8/29/full-story/400325.html; accessed June 15, 2015.
- Rana-Deuba, Arzu. 2015. Masyauda Pachhadi Pharkyo. *Kantipur*, July 12, p. 7. Available at www.ekantipur.com/np/2072/3/27/full-story/412487.html; accessed July 18, 2015.
- Rawal, Bhim. 2015. Nagarikata Kina ra Kasari? *Kantipur*, July 11, p. 6. Available at www.ekantipur.com/np/2072/3/26/full-story/412433.html; accessed July 18, 2015.
- Sah, Rita. 2015. Nagarikatako Barema Abhiyanta Rita Sahko Yesto Ayo Vichar. Available at www.esaharatimes.com/2015/07/blog-post_38.html; accessed April 19, 2017.
- Sah, Rita. 2017. Feminism in the Margins: A Madhesi Perspective. *The Kathmandu Post*, February 19, p. 11. Available at <http://kathmandupost.ekantipur.com/printedition/news/2017-02-18/feminism-in-the-margins-a-madhesi-perspective.html>; accessed April 19, 2017.

- Sajha Sawal. 2015. Citizenship through Mother. Episode 374. Available at www.youtube.com/watch?v=fT_wyFRrp0o; accessed June 15, 2015.
- Samakon. 2016. Provisions on Citizenship. Season 2, Episode 13. Available at www.youtube.com/watch?v=3BhhqGLYLds&t=57s; accessed May 15, 2017.
- Tamang, Seira. 2000. Legalizing State Patriarchy in Nepal. *Studies in Nepali History and Society* 5(1): 127–156.
- Tamang, Seira. 2002. Dis-embedding the Sexual/Social Contract: Citizenship and Gender in Nepal. *Citizenship Studies* 6(3): 309–324.
- Tamang, Seira. 2009. The Politics of Conflict and Difference or the Difference of Conflict in Politics: The Women's Movement in Nepal. *Feminist Review* 91(1): 61–80.
- Tamang, Seira. 2071 v.s. Rashtra, Rashtriyata ra Nagarikatako Laingikikaran. In *Rupantaranma Mahila*. Meena Acharya, Sudha Tripathi, Indu Tuladhar and Manju Thapa, eds., pp. 1–20. Kathmandu: Asmita Mahila Prakashan Griha.
- Tuladhar, Indu. 2014. Nagarikata Adhikarko Mudda. *Kantipur*, October 20, p. 7. Available at www.ekantipur.com/np/2071/7/3/full-story/397366.html; accessed June 15, 2015.
- Tuladhar, Indu. 2015. Nagarikatama Rajnitik Sahamati. *Nagarik*, June 15, p. 7. Available at www.nagariknews.com/opinion/story/39809.html; accessed June 17, 2015.
- Tuladhar, Indu and Aruna Uprety. 2015. Bharat Mohanlai Patra. *Kantipur*, February 4, p. 7. Available at www.ekantipur.com/np/2071/10/21/full-story/403191.html; accessed June 15, 2015.