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Federalization and the Dalits

Yam Bahadur Kisan

INTRODUCTION

As Nepal prepares to hold its second elections for federal and provincial governments under the Constitution of Nepal, 2015, the question over the efficacy of federalism looms large. In particular, the system when viewed from the perspective of the Dalits, offers a mixed result. Even as the principles of inclusion and proportionate representation remain the cornerstone of the constitution, their implementation has lagged behind in spirit.

There were lots of hopes when Nepal embarked on a journey towards a major transformation following the success of *Jana Andolan II* in 2006. That *andolan* was also followed by various agreements that the Government of Nepal reached with different social groups that were staking claims for their identities and proper recognition in the new constitution that was then in the making. One such group was the Dalits, albeit they were not as vehement in their claims as some of the other groups. They, nonetheless, were in the midst of the events as inclusion and proportionate representation gained currency in the wider political discourse, especially following the elections to the first Constituent Assembly (CA-I) in 2008, often touted as the most representative elected body in the history of Nepal. The Dalit community had benefited from the various accords

reached by the different groups with the Nepali state as inclusion became the principle to restructure the state.

Additionally, the Dalits had their own, though differing positions on federalism, especially regarding the formation of a territorial or non-territorial unit for the community in the proposed constitution. These positions were shaped by the views of the political parties and those of various members of the civil society advocating for Dalit rights. Further, the workings of CA-I also gave the issues raised by the Dalits center stage. Likewise, some alternative ideas such as the possible formation of a National Dalit Assembly were also floated. However, one issue that remained central to the question of Dalit identity was whether they are a homogeneous community in themselves.

In the following sections, I discuss these issues at some length. I also try to show how the issue of inclusion was addressed in the CAs and in the constitution of 2015. The first section deals with various positions of Dalits on the issue of federalism. The second section deals with the claim making process of various social groups and the agreements they reached with the Government of Nepal that further consolidated the foundation for inclusion as a political principle. The third section points out the provisions agreed in CA-I that were favorable to the Dalit community. The fourth section highlights some of the features related to inclusion in the 2015 Constitution.

DALIT POSITIONS ON THE FEDERALISM DISCOURSE

The Dalit community in Nepal was neither inspired nor attracted to the discourse on federalism and federalization during the constitution making process. The Dalits feared repetition of the same structure that ensured their continued servitude and domination in the past. Moreover, a majority of the Dalit intellectuals and activists were either confused or passive when it came to the issue of federalism. They were not in a position to advocate for or against federalism. The leaders and supporters of party-affiliated Dalit organizations followed the policy of their respective parties without any reservations whatsoever. They did not have any alternative vision

on the discourse of federalism. Despite passiveness, indifference, dilemma, despair and dissatisfaction, three types of discourses existed within the Dalit community with regard to federalism: 1) anti-federalist discourse; 2) pro-federalist discourse; and 3) Dalit-centric federalist discourse.

ANTI-FEDERALIST DISCOURSE

During the period of constitution making in the first Constituent Assembly (CA-I), the Dalit leaders and activists of the Jatiya Samata Samaj (JSS), affiliated to Rashtriya Jan Morcha/Communist Party of Nepal (Masal), were largely opposed to the idea of federating Nepal. Those supporting the line of JSS (and its parent party) raised the concerns of national integration and sovereignty if Nepal were to become a federal polity. According to Santa Bahadur Nepali (2010), the federalization process would negatively affect the sovereignty, national integration, and communal harmony of Nepal just as it had done in the case of Ethiopia and Nigeria. Similarly, Dhanarupa BK (2066 v.s.: 3) maintained that the discourse on federalism was a “manipulating tool for the vested interest of foreigners (especially of Indians) and a conspiracy to dismantle [Nepal’s] national integration. Rather, democratic decentralization and local autonomy within the unitary state will be a better way of power-sharing”. Likewise, Nepali (2009) added that federalism would weaken the class-based movement and strengthen the caste-based one. It would also weaken the unified Dalit movement at the national level.

The leaders of JSS had openly opposed federalism. But, at the same time, there were a number of other Dalit leaders, activists and academicians who were not satisfied with the idea of ethnic identity-based federalization with its attached provision for prerogative rights for the dominant ethnic groups in the provinces for a fixed number of term. They opposed this idea because they believed that this kind of ethnic identity-based federalism may result in extra discrimination and exclusion of the Dalits by the ethnic groups.

PRO-FEDERALIST DISCOURSE

The pro-federalist discourse among the Dalit groups, especially among the party affiliated ones, was taken up by the sister organization of the then Unified Communist Party of Nepal (Maoist). Members of the Nepal National Dalit Liberation Front (NNDLF) were in favor of federalizing the country. In line with its parent party, the NNDLF advocated for ethnic identity-based federalization. The NNDLF, however, never entered the debate on federalism keeping the Dalit community and its interests in mind. The group adopted a policy of opposing any federal unit for Dalits, be that territorial or non-territorial. Its members believed that most of the problems of the Dalit community were closely related to caste-based discrimination and untouchability. They, therefore, believed that the separate territorial units for Dalits would not be able to address the untouchability issue because this arrangement may lead to separating Dalits from other communities/groups rather than integrating them which, according to them, was the ultimate goal of the Dalit movement. But they were not eager to understand the logic of federalism which was not directly related to caste-based discrimination and untouchability. It is almost nonsensical to push all the problems of the Dalits into the broader basket of untouchability.

The core value of federalism is related to self-rule, shared rule, and devolution of power and resources to provincial and local units rather than caste-based discrimination and untouchability. A group of Dalit cadres (belonging to various parties) demanded surplus representation (with special rights) in addition to a proportional representation of the Dalit community at all levels and sectors of both federal and provincial governing structures as compensation for the past misdeed against the community. A special/compensatory right is a basic issue for the Dalit community. However, this issue did not constitute the core issue in the federalism discourse (Kisan 2065 v.s.: 34).

DALIT-CENTRIC FEDERALISM DISCOURSE

A group of Dalit social activists was on the forefront advocating support for the federalization of the state with a special arrangement for Dalits, especially federal administrative units where the community would be in a majority. However, even these activists did not agree about everything. Some of them were in favor of separate territorial provinces for Dalits; others advocated for a non-territorial cultural province. Still others called for territorial sub-provinces and local units within the provinces. In the following paragraphs, these positions will be elaborated.

Possibility and Efficiency of Separate Territorial Units for Dalits

A group of Dalit social activists such as Biswokarma (2009), M. Nepali (2010), Sunar (2009) and Hemchuri (2009) advocated for separate territorial units (provinces/sub-provinces/autonomous regions) for Dalits, based on traditional dwelling places of the community. Some of those proposed territorial units included the “Sahalesh Region” comprising Dalit inhabited areas of Mahottari, Siraha, and Saptari districts of eastern Tarai-Madhes (currently Madhes Province); “Sarbjait Region” comprising some Dalit inhabited areas of existing Parbat, Baglung and Myagdi Districts of the western hills (currently Gandaki Province); “SetuBK Region” comprising some Dalit inhabited areas of existing Surkhet, Dailekh and Kalikot Districts of the mid-western hills (currently Karnali Province); and “Bhul Region” comprising some areas of Achham, Bajura, Bajhang, and Doti districts of the far-western hills (currently Sudurpaschim Province). Similarly, there were other alternative proposals as well such as “Sahalesh Autonomous Region” in the eastern Tarai-Madhes and the “Khaptad-Dravid Autonomous Region” in the far-western hills (NCARD 2011). The group of activists and intellectuals who favored such territorial formations made a sustained effort to stitch together evidences to claim that these places had seen cultural continuity of the Dalit community. This line of thinking was also a response to the claim for ethnic identity-based federalization with prerogative rights for the dominant ethnic community. The

members of the Dalit community advocating this line of argument feared that if ethnic groups were able to secure prerogative rights, then that could lead to further exclusion of the Dalits.

There is now a constitutional basis for claiming such special regions. Article 56(5) of the 2015 Constitution provisions for the formation of “special regions,” “protected regions,” and “autonomous regions” via a federal law. Such regions can be created within the existing provinces. However, such territorial units alone cannot address all demands and resolve the problems of the Dalits across the country. This is so because the problems of the Dalits arise not only from the exclusion from the state (“political” exclusion) but also from caste-based discrimination and untouchability (“socio-cultural” exclusion). Hence, no matter what federal units have been created at present or will be created in the future, the Dalit movement needs to think about how they will help to resolve both the “political” and “socio-cultural” demands and problems of the Dalits in due course of time. For that a meaningful federalism needs to be operationalized for Dalits which allows for sharing of power and secures their dignity.

Possibility and Efficiency of the Non-territorial Federal System for Dalits
A group of Dalit leaders and social activists such as Barali (2011), Biswokarma (2009) and BK Deulyal and Yatri (2010) advocated for a non-territorial federal system for the Dalit community. The non-territorial federal scheme was demanded by those Dalit activists who did not see the rationale for territory-based federalism for the Dalit community. Besides these, some non-Dalit intellectuals like Lawoti (2065 v.s.) were also in favor of this idea. The leaders of the JSS seemed quite frustrated by the Indian-model of federalism which they thought not only weakened the unity among the Indian Dalits but also seriously affected their movement. So, they argued for the need to think differently in Nepal. Hence, the non-territorial arrangement could be an option. This group thought of this scheme as “only one foundation for Dalit liberation” (Biswokarma 2009). However, others criticized this type of non-territorial scheme as “ceremonial”

and “island structure” (Kisan 2011) and as a “playground for a few Dalit elites” (Bishwokarma 2010).

The concept of the non-territorial scheme in federalism has been explored to address the issues and problems of tribal as well as indigenous people, lingual and cultural minorities, and dispersed “cultural groups.” According to Kneitschel (2004), the Austrian Social Democrat Karl Renner who tried to find a fair and democratic solution for the ethnonational diversity in the Austro-Hungarian Empire had propagated the idea of non-territorial federalism at the beginning of the twentieth century. The idea was to represent different nations at the state level in separate autonomous national councils. These councils would have the power to legislate in the matters of cultural policy and education. Non-territorial autonomy has been applied extensively in Eastern Europe, Canada, Australia, America and New Zealand. The case of Dalits in Nepal is, however, different. The Dalit community of Nepal is not a distinct lingual and cultural group and the major issues of the Dalits are not the protection and promotion of their language, religion, culture and script.¹ In this context, no one can assure that a non-territorial scheme or “cultural province” (Breen 2010: 5) would be a better alternative for Dalits within the Nepali federalism discourse. Even as the report of the High-level State Restructuring Commission formed by the government to suggest possible ways of federating the country proposed a “non-territorial province,” none of the major political parties in both the CAs supported this scheme. Consequently, the 2015 Constitution of Nepal included neither “territorial” nor “non-territorial” federal units for the Dalits.

¹ The Dalit community comprises various linguistic groups such as Khas Nepali, Newari, Doteli, and Indo-Aryan (Awadhi, Bhojpuri, Maithili, Magahi/Thethi) but no single language is recognized as a separate language of the Dalit community as a whole. There is no separate “Dalit language” and “Dalit culture.” It is true that wherever Dalits live they have followed the mainstream language and culture of the region. Dalits have no separate linguistic and cultural demands.

Possibility and Efficiency of Sub-regions and Local Territorial Units for Dalits

According to Kisan (2011), any form of territorial federal units in areas where the Dalits have dense habitation would be a better mechanism to address their issues such as the elimination of caste-based discrimination, development of inclusive infrastructures, human resource development, and protection and promotion of traditional knowledge. Some leaders like Nepali (2009) have raised these issues. Creating one or several sub-provinces and local autonomous units based on most of the population of any single caste, ethnicity, community, religion and language and providing autonomous rights to that majority group under federalism would be the best scheme to establish Dalits as real rulers. This scheme is easy, possible and realistic as well.

Table 1: Districts with More than 15 Percent Dalit Population

District	Dalit Population (%)	District	Dalit Population (%)
Kalikot	29.90	Arghakhanchi	18.62
Achham	28.37	Gulmi	18.53
Jajarkot	27.86	Dhanusha	17.42
Surkhet	26.17	Jumla	17.23
Doti	25.80	Baitadi	17.16
Dailekh	25.08	Mahottari	17.00
Bajura	24.36	Rolpa	16.80
Baglung	23.19	Kanchanpur	16.36
Myagdi	22.35	Bajhang	16.9
Saptari	21.22	Kaski	15.91
Parbat	20.42	Lamjung	15.85
Pyuthan	20.12	Rautahat	15.64
Dadeldhura	19.56	Sarlahi	15.53
Mugu	19.55	Tanahu	15.06
Siraha	19.36		

Source: BK (2065 v.s: 40).

In the Nepali context, the settlement of Dalits is spread over geographical, ecological and political landscapes. According to the Census of 2011, the Dalits constitute more than 13 percent of the total population. Dalits are more than 30 percent of the population in fifty municipalities of the west and far-west hills and the eastern Tarai. Hill Dalits mainly Kami, Damai and Sarki are widely distributed across the country. They are the single largest group in eight districts, and in twenty-nine districts, the Dalit population is above 15 percent of total population (See Table 1). Although the constitution of Nepal has already fixed the seven provinces and 753 local governments, under this proposed concept, four sub-province level and fifty municipal level Dalit self-rule autonomous units could still be formed.

Possibility and Efficiency of the Formation of a National Dalit Assembly

Mere formation of sub-provinces and local autonomous units cannot address the entire issues of Dalits. If the experience of the Indian Dalit community is anything to go by, their Nepali counterparts should draw lessons from the former's experience within the Indian federalism. The Indian Dalits have been enjoying the proportional seat reservations in the federal House of Representatives (Lok Sabha), state legislative assemblies (Bidhan Sabha), and village panchayats for six decades. But the issues of non-discrimination, equality, dignity, and access to justice are yet to be addressed in a meaningful manner. Nepali Dalit community has the time to work out different arrangements than those of their Indian counterparts, for whom both the experience of federalism and reservation have proved inadequate. The idea of an alternative arrangement for Nepali Dalit community has already been explored through the concept of the National Dalit Assembly or a Dalit Parliament (Kisan 2010) or a National Dalit Council (S. Nepali 2010). These structures can be both meaningful and useful. Their usefulness, formulation process, and jurisdiction are described in the following paragraphs.

Kisan (2010) argues that the Dalit community is obviously a large and dispersed one. But they constitute neither a single cultural group

nor are they an “extreme” minority group. Therefore, either creating territorial or non-territorial provinces, let alone the separatist way cannot solve its problems. The existing constitutional and legal provisions and their implementing structures concerning Dalits are weak and are not enough to address their issues and problems. In this context, in order to guarantee Dalits’ constitutional rights, enact necessary and effective legal provisions, and arrange the development policies and plans there should be a representative and national level permanent institution for the Dalit community called the National Dalit Assembly (NDA).

It would be better to design two types of representation systems within the NDA. The two-thirds of the members of the NDA will be elected directly from the hill Dalits, Madhesi Dalits, Newar Dalits, and Dalit women by the communal roll (votes) system of the Dalit adult franchise through the first-past-the-post (FPTP) electoral system. For this scheme Dalit adults need double voting rights: one for the member of the House of Representatives (HoR) and the National Assembly (NA) of the Federal Parliament and another for the member of the NDA. The remaining one-third members of the NDA will come from prominent Dalit personnel such as intellectuals, experts, representatives of Dalit civil society, members for backward Dalit caste, region, and minority elected by the NDA itself. The Dalit member of the HoR and NA can be invited for the session of the NDA. These kinds of arrangements make the NDA more effective and realistic.

The creation of an institution or a structure itself is not always enough to address the issues and problems. To make it more effective and practical, such institutions need wide jurisdiction. To address the Dalit issues and problems and protect the interests of the community, the NDA needs to be provided with jurisdiction that includes elements of executive, legislative and some veto power. These powers given to the NDA would ensure that the laws formulated are in line with the interests of the Dalit community.

Even as various options—both legal and institutional—for securing the rights of the Dalits in the constitution was being explored by the concerned stakeholders, it was the various agreements between the state and different cultural groups that laid the foundation for constitutionalizing these rights. In the following section those agreements will be explored.

CLAIM MAKING, NEGOTIATIONS AND THE DALIT ISSUES

Although the organized movement by the Nepali Dalits for equality, dignity and non-discrimination has a long history starting from the first half of the twentieth century, “Dalit” identity-based political movement only started after the restoration of democracy in 1990. During this latter period, non-discrimination and inclusion became the major planks to frame the issues of the Dalits at the political and the constitutional levels. This has led to “Dalit” being accepted both as a political and legal category.

In the aftermath of the 2006 Popular Movement, various agreements were reached between different groups and the Nepali state. These included the Comprehensive Peace Accord (CPA) signed between the then Maoist rebels and the state in late 2006. This and the other agreements opened a space for the Dalits to place their agenda at the political forefront either separately or in alignment with other marginalized groups. The following are some of the examples of those agreements that paved the way for the provisions of non-discrimination and inclusion to be instituted in the Constitution of Nepal, 2015.

- 1) The Comprehensive Peace Accord (CPA), which later became an integral part of the Interim Constitution (IC) 2007, was a foundation stone for establishing the discourse of “non-discrimination” and “social inclusion” for the future constitution and legislation (see Section 3.5 of the CPA).
- 2) Article 21 of the IC 2007 provisioned “to enable Madhesi, Dalits, indigenous ethnic groups, women, laborers, peasants, the

- physically impaired, disadvantaged classes and disadvantaged regions to participate in all organs of the state structure on the basis of proportional inclusion.”²
- 3) A comprehensive decision made by the Seven Party Alliance (SPA) and the CPN-Maoist leaders on November 8, 2006 for the effective implementation of previous agreements adopted an inclusive composition of the Interim Legislature-Parliament/ILP (Section III [3a]iii), and a mixed electoral system—FPTP and PR—(Section III [9b]).
 - 4) An agreement between the government of Nepal (GoN) and the Madhesi Janadhikar Forum-Nepal signed on August 30, 2007 adopted various issues of inclusion from the perspectives of the marginalized. The agreement says: i) “To ensure proportional representation and partnership of Madheshis, Adivasi/Janajatis, Dalits, women, backward classes, disabled people and minority communities, including Muslims, who have been excluded for generations in all organs and levels of government and in power structures, mechanisms and resources” (Point 4 of the Agreement). ii) A high-level inclusion task force to be formed to prepare necessary laws and policymaking “for the inclusion of Madheshis, Adivasi/Janajatis, Dalits, women, etc. in all organs and levels of the state” (Point 20 of the agreement). iii) Inclusion of marginalized groups in all types of political appointment including in constitutional bodies, ambassadors, and leadership in educational institutions shall be considered (Point 8 of the agreement); Point 12 of the agreement provisioned for solving various Dalit-related problems.³
 - 5) An agreement between the GoN and the United Democratic Madhesi Front on February 28, 2008 provisioned for the

² For more on the IC 2007, refer to https://constitutionnet.org/sites/default/files/interim_constitution_of_nepal_2007_as_amended_by_first_second_and_third_amendments.pdf; accessed August 24, 2022.

³ For details of the agreement refer to www.peaceagreements.org/viewmaster/document/1745; accessed August 24, 2022.

proportional representation of Madhesis, Dalits, women, indigenous people, other backward regions and minorities in all appointment, employment and promotion in the state bodies. Likewise, the agreement also mentioned proportional representation and group entry of Madhesis and other communities in the Nepali Army to give it a “national and inclusive” character.⁴

- 6) An agreement between the GoN and the Muslim Struggle Committee struck on March 16, 2009 provisioned that there should be protection of political, economic, social, cultural, and educational rights of Muslims, Indigenous Peoples (IPs), Madhesis, Tharus, Dalits and minority groups. The agreement also provided for “carrying out census in a manner that separate numerical and other particulars of all Adivasi, Janajati, Madheshi, Tharu, Dalit, minority communities of the country, including Muslim.”⁵
- 7) An agreement between the GoN and the Tamsaling United Struggle Committee reached on April 11, 2009 stated that the Nepali Army shall be made inclusive by forming “diverse battalion.” It also called for the government to institute laws to provide “ownership to the local communities” on natural resources by the indigenous nationalities in line with the international commitment of the Nepali state.⁶
- 8) An agreement between the GoN and the Nepal Federation of Indigenous Nationalities (NEFIN) and Indigenous Nationalities Joint Struggle Committee of August 7, 2007 provisioned for a State Restructuring Commission with the inclusive representation of IPs, Madhesis, Dalits, women and other marginalized groups to “present recommendation to the Constituent Assembly”

⁴ For further details, refer to www.peaceagreements.org/viewmaster/document/1749; accessed August 25, 2022.

⁵ For more on the agreement, refer to www.peaceagreements.org/viewmaster/document/1762; accessed August 25, 2022.

⁶ For more on the agreement, refer to www.peaceagreements.org/viewmaster/document/1765; accessed August 25, 2022.

(Point 4 of the agreement); “Proportional representation of all marginalized groups in various agencies and levels of the State shall be ensured and an inclusive taskforce to recommend on the matter will be constituted” (Point 8 of the agreement); and “In line with the spirit of gender mainstreaming, equal participation of women belonging to Dalit, Madhesi, indigenous nationality will be ensured while distributing the dividends of development programs” (Point 14 of the agreement) [Wakugawa, Gautam and Shrestha 2011: 94].

- 9) An agreement between the GoN and the Rashtriya Badi Adhikar Sangharsha Samiti on October 15, 2007 provisioned for formulating a task force to study the provision of scholarship to the children of the Badi community. It also stated that the use of derogatory words used against Badi women such as “*bhand*” (those who bring social vices) and “*patar*” (prostitutes/characterless) should be banned. It was also agreed that arrangements will be made to provide citizenship certificates to all Badi community members.⁷
- 10) The GoN agreed with the Rashtriya Haliya Mukti Samaj Mahasangh on September 5, 2008 to write off their loans and declare Haliyas free from any form of bonded labor.⁸
- 11) An agreement between the GoN and the United Political Dalit Struggle Committee reached on December 29, 2011 provisioned for the formation of a high-level mechanism for effective implementation of the Caste-based Discrimination and Untouchability (Offense and Punishment) Act, 2011.

The Constituent Assembly itself became the forum to secure the provision of non-discrimination and inclusion for the Dalits in

⁷ For more on the agreement, refer to www.peaceagreements.org/viewmaster/document/1747; accessed August 25, 2022.

⁸ For more on the agreement, refer to www.peaceagreements.org/viewmaster/document/1754; accessed August 25, 2022.

the new constitution that the assembly was tasked to generate. The following section dwells upon that process in the CA.

ADDRESSING DALIT CONCERNS IN THE CONSTITUTION ASSEMBLY PROCESS

The draft report of the Committee on State Restructuring and Distribution of Power of CA-I proposed the principle of proportional representation and inclusiveness based on the population size of all caste, ethnic and gender groups/communities in all state structures. It also adopted compensatory rights for Dalits by providing an extra 3 percent representation at the federal level and an extra 5 percent at the provincial level political structures. The draft report also provisioned for inclusion of Dalits by formulating a separate rights commission for the Dalits (RPSBS 2066 v.s.)

The constitution making process in the first CA identified and recommended Dalit issues/agendas to be included in the new constitution via two different institutions: 1) The Committee for the Review and Recommendation of the Thematic Committees' Reports; and 2) The High-level Commission for the Recommendations of State Restructuring. A comparison between their relevant recommendations is provided in Table 2.

The essence of both the reports was to secure Dalit rights in the constitution. The Constitution of Nepal, promulgated by CA-II in September 2015, has safeguarded almost all of the rights recommended in these reports (some of them are discussed in the next section) except for two main provisions. First, it did not provision for surplus representation of the Dalits as recommended in both reports. Second, the Constitution does not include a non-territorial Dalit province as recommended by the commission.

Table 2: List of Relevant Recommendations of the Review Committee of CA-I and the SRC Report Concerning Dalits' Rights

The Committee for the Review and Recommendation of the Thematic Committees' Reports	The High-level Commission for the Recommendations of State Restructuring
<p>1) No person shall be subjected to any form of untouchability or discrimination in any private and public places on grounds of his or her origin, caste, tribe, community, profession, occupation, or physical condition.</p>	<p>1) No person shall be subjected to any form of untouchability or discrimination in any private and public places on grounds of his or her origin, caste, tribe, community, profession, occupation, or physical condition. Any act of untouchability and discrimination in any form committed in contravention of this Article shall be punishable by law as a severe offence against humanity, and the victim of such act shall have the right to obtain compensation in accordance with law.</p>
<p>2) Any act of untouchability and discrimination in any form committed in contravention of this Article shall be punishable by law as a severe social offence, and the victim of such act shall have the right to obtain compensation in accordance with law.</p>	<p>2) Dalits' rights for employment in the government, semi-government, industrial institutions, and private sectors shall be safeguarded by employing the principle of proportional representation.</p>
<p>3) The Dalits shall have the right to participate in all state bodies on the basis of the principle of proportional inclusion. Special provisions shall be made by law for the empowerment, representation, and participation of the Dalit community in public services as well as other sectors of employment.</p>	<p>3) The state shall accord priority to the Dalit community in modernizing their business related with their traditional occupation and provide skills and resources towards that end.</p>

The Committee for the Review and Recommendation of the Thematic Committees' Reports

4) Provision of free education with scholarship, from primary to higher education, shall be made by law for the Dalit students. Special provision shall be made by law for the Dalit [students] in technical and vocational education.

5) Special provisions shall be made by the law in order to provide health and social security to the Dalit community with priority to the poor among the Dalits.

6) The Dalit community shall have the right to use, protect and develop their traditional occupation, knowledge, skill, and technology. The state shall accord priority to the Dalit community in modernizing their traditional occupation and provide skills and resources for the same.

7) The state shall for once provide land to the landless Dalits.

The High-level Commission for the Recommendations of State Restructuring

4) The State shall for once provide land to the landless Dalits as required for the fulfilling of their basic livelihood and arrange the basic settlement for them.

5) Provision of free education with scholarships, from pre-primary to higher education, shall be made for the Dalit students. Ten percent surplus scholarship with free education provision shall be made for the Dalits in technical and vocational education based on the national population ratio of the Dalits.

6) For the social upliftment of the Dalits, there shall be skill-based education along with health service, and special measures for employment along with providing skills and resources required for financial wellbeing of the community.

7) The state shall, in accordance with the law, arrange proportional representation of Dalits in federal, provincial, and local state structures with seven and five percent surplus representation in federal and provincial state structures.

The Committee for the Review and Recommendation of the Thematic Committees' Reports

8) The state shall, in accordance with law, arrange place of living for the Dalit who do not have housing.

9) The state shall, in accordance with the law, arrange proportional representation of Dalits in federal, provincial, and local state structures with seven and, five percent surplus representation in federal and provincial state structures.

10) The facilities conferred to the Dalit communities of all regions such as Hill Dalits, Madhesi Dalits, and Dalit women must be distributed proportionately.

The High-level Commission for the Recommendations of State Restructuring

8) The Dalits shall have the right to participate in all bodies of the state including policy-making levels, governance-levels, executive-levels, Army, Police, corporation, institution, and development committees based on the principle of proportional inclusion as per the population ratio with 10 percent surplus representation by laws. Proportional representations provisions with inclusiveness shall be made by law in the high-ranking positions of the state too.

9) The facilities conferred to the Dalit communities of all regions such as Hill Dalits, Madhesi Dalits, and Dalit women must be distributed proportionately.

10) The country will be divided into 10 territorial provinces and one non-territorial Dalit province respectively.

Source: RPSUAS (2068 v.s.: 20–22) and Baral, Dhungana and Budhathoki (2070 v.s.: 158–228).

The Constitution of Nepal 2015, has adopted provisions that are important in upholding the principle of inclusion and proportional representation of the Dalits. The next section highlights some of those provisions.

DALIT-RELATED PROVISIONS IN THE CONSTITUTION OF NEPAL, 2015

Despite various reservations expressed by the Madhesi, *Adivasi Janajatis*, Dalits, and other marginalized groups, the Constitution of Nepal 2015 remains a common and a comprehensive document that has the spirit and the element of various accords and agreements preceding it. Towards that end, the constitution has codified issues and rights of Dalits in various articles and sections (see Boxes 1 and 2). The preamble itself has adopted the principle of proportional inclusiveness and participation and it envisions the elimination of all forms of discrimination including caste-based discrimination and untouchability.

Similarly, Article 18(3) [right to equality] has adopted the principle of affirmative action policy (AAP). Likewise, Article 38(4) [rights of women], Article 40(1) [rights of Dalits], Article 42(1) [right to social justice], and Article 285(2) [positions in all federal government services] have adopted the principles of proportional inclusion that could be fruitful for members of the Dalit community to some extent.

Article 84(2) [the composition of the federal House of Representatives], Article 86(2a) [the composition of the National Assembly], Article 176(6) [the formation of the Provincial Assemblies], Article 222(2) [the composition of the Village Assemblies] and Article 223(2) [the composition of the Municipal Assemblies] have provisions for the inclusion of Dalits in legislatures in the three-tiers of government under the federal system. Interestingly, almost 12 percent of the seats in the National Assembly and 25 percent of the seats in the Ward Committees of the Village and Municipal Assemblies are reserved for Dalits.

As for the executive positions, Article 76(9) [Federal Executive] and Article 168(9) [Provincial Executive] provision for inclusiveness. However, there are rooms for maneuver that allow the executive heads at the federal (namely, Prime Minister) and provincial levels (namely, Chief Minister) to deploy the principle of inclusion as

per their convenience while forming their respective cabinets. Appointment in other positions of the state such as ambassadors and diplomatic representatives (Article 282) and members of Constitutional commissions/organs (Article 283) also seem to fall into this tricky use of the principle of inclusiveness.

Box 1: Article 24 of the Constitution of Nepal 2015

Right against Untouchability and Discrimination

- 1) No person shall be subjected to any form of untouchability or discrimination in any private and public places on grounds of his or her origin, caste, tribe, community, profession, occupation, or physical condition.
- 2) In producing or distributing any goods, services or facilities, no person belonging to any particular caste or tribe shall be prevented from purchasing or acquiring such goods, services or facilities nor shall such goods, services or facilities be sold, distributed, or provided only to the persons belonging to any particular caste or tribe.
- 3) No act purporting to demonstrate any person or community as superior or inferior on grounds of origin, caste, tribe, or physical condition or justifying social discrimination on grounds of caste, tribe or untouchability or propagating ideology based on untouchability and caste-based superiority or hatred or encouraging caste-based discrimination in any manner whatsoever shall be allowed.
- 4) No discrimination in any form shall be allowed at a workplace with or without making untouchability on the ground of caste.
- 5) Any act of untouchability and discrimination in any for committed in contravention of this Article shall be punishable by law as a severe social offence, and the victim of such act shall have the right to obtain compensation in accordance with law.

Recognizing the National Dalit Commission (Article 255) as a constitutional organ/commission is a commendable task. This commission, however, is not autonomous in terms of its control over its finances and staffing provisions. It has also not been given

the rights to investigate and prosecute offences as per the norms and values of the Paris Principles, 1993.⁹ The constitutional provisions for Dalit regarding the social inclusion and non-discrimination appear to be okay. However, the spirit of these provisions need to be translated into laws, policies, plans, programs, schemes, strategies, budget, and activities meant for the Dalit community in earnest.

Box 2: Article 40 of the Constitution of Nepal 2015

Rights of Dalit

- 1) The Dalit shall have the right to participate in all bodies of the State on the basis of the principle of proportional inclusion. Special provision shall be made by law for the empowerment, representation, and participation of the Dalit community in public services as well as other sectors of employment.
- 2) Provision of free education with scholarship, from primary to higher education, shall be made by law for the Dalit students. Special provision shall be made by law for the Dalit in technical and vocational education.
- 3) Special provision shall be made by law in order to provide health and social security to the Dalit community.
- 4) The Dalit community shall have the right to use, protect and develop their traditional occupation, knowledge, skill, and technology. The State shall accord priority to the Dalit community in modern business related with their traditional occupation and provide skills and resources required, therefore.
- 5) The state shall once provide land to the landless Dalit in accordance with law.
- 6) The state shall, in accordance with law, arrange settlement for the Dalit who do not have housing.
- 7) The facilities conferred by this Article to the Dalit community must be distributed in a just manner so that the Dalit women, men, and Dalit in all communities can obtain such facilities proportionately.

⁹ For more on the Paris Principles, 1993, refer to www.un.org/ruleoflaw/files/PRINCI~5.PDF, accessed August 25, 2022.

CONCLUSION

This chapter has brought together related issues of Dalit rights in Nepal in view of the constitution-writing process and the adoption of the new constitution in 2015. It has clearly demonstrated that the creation of a homogeneous identity for Dalits in Nepal is very difficult owing to the widespread distribution of members of this community across the country.

Therefore, it was conceptually wrong to pitch for a single territorial province for Dalits. Instead, it would have been better if sub-units, based on the density of the Dalit population were formed. The chapter also tried to show how the concept of a National Dalit Assembly with some executive, legislative and veto rights and compulsory representation, proportional representation, and compensatory representation measures would ensure shared and self-rule for the Dalit community in the federal system. The chapter also showed differing positions of Dalit activists and scholars on federalism with some supporting the system while others were against it. The chapter also highlighted some of the provisions included in the Constitution of 2015 that are beneficial to the Dalit community. However, even after seven years of its implementation, the provision of inclusion and proportionate representation do not meet the desired spirit as envisioned in the 2015 Constitution.

REFERENCES

- Baral, Thakur Prasad, Tek Prasad Dhungana and Jibraj Budhathoki. 2070 v.s. *Samvidhansabha Darpan (2065–2069)*. Kathmandu: Vyavasthapika Samsad Sachivalaya.
- Barali, Ranendra. 2011. Dalitka lagi Abhaugolik Sanghiya Dhanchako Mahatwa. *Jana Utthan*, February-March, pp. 5–6.
- Bishwokarma, Hiralal. 2009. Adhyaksha Mandaliya Pranali ra Dalit Swayatta Pradesh. *Sahabagita* 42: 17–19.
- Bishwokarma, Sarojdilu. 2010. Gairbhaugolik Sanghiyata: Na Banchha Na Tikchha. *Dalit Nigarani* 1(14): 6.

- Biswokarma, J.B. 2009. Gairbhaugolik Sanghiyata: Dalit Muktikko Adhar. *Jana Utthan*, July-August, pp. 11–14.
- BK Deulyal, Ganesh and Ananta Yatri. 2010. Naya Samvidhanma Dalit Sansadko Agenda. *Dalit Nigarani* 1(15): 6.
- BK, Dhanarupa. 2066 v.s. Naya Samvidhan Nirmanko Sandarbhamma Sanghiyata ra Dalit Adhikarko Prashna. *Hank*, Asoj 28, p. 3.
- BK, Man Bahadur. 2065 v.s. Sanghiya Shasan Pranalima Dalitko Sthan. In *Sanghiyatama Dalit*. Man Bahadur BK and Chakraman BK, eds., pp. 36–41. Kathmandu: Dalit Sewa Sangh.
- Breen, Michael G. 2010. Non-territorial Federalism: Options for Dalit, Muslim and Other Scattered Communities. Paper Presented at the Centre for Constitutional Dialogue (CCD), UNDP, January 9, Kathmandu.
- Hemchuri, Kamala. 2009. Dalit ra Bhaugolik Sanghiyata. *Jana Utthan*, October-November, pp. 7–9.
- Kisan, Yam Bahadur. 2065 v.s. Sanghiya Rajyama Dalit Samudayako Sthanko Khoji. In *Sanghiyatama Dalit*. Man Bahadur BK and Chakraman BK, eds., pp. 30–35. Kathmandu: Dalit Sewa Sangh.
- Kisan, Yam Bahadur. 2010. *Dalit ra Sakaratmak Upaya*. Kathmandu: ActionAid Nepal and National School of Research.
- Kisan, Yam Bahadur. 2011. Dalit ra Sanghiyata: Sambhawana ra Chunauti. *Dalit Sandesh* 2(6): 25–31.
- Kisan, Yam B. 2012. Federalization and Dalits: Aspirations and Suspicions. In *Ethnicity and Federalization in Nepal*. Chaitanya Mishra and Om Gurung, eds., pp. 276–299. Kirtipur: Central Department of Sociology and Anthropology, Tribhuvan University.
- Kneitschel, Dietmar. 2004. Federalism and Non Territorial Minorities. Available at www.panarchy.org/kneitschel/federalism.html; accessed August 23, 2022.
- Lawoti, Mahendra. 2065 v.s. Sanghiyata ra Nepalka Dalit. In *Sanghiyatama Dalit*. Man Bahadur BK and Chakraman BK, eds., pp. 1–7. Kathmandu: Dalit Sewa Sangh.
- NCARD (National Coalition against Racial Discrimination). 2011. *Bahiskaranma Pariyeka Samudayako Drishtima Sanghiya*

- Loktantrik Ganatantra Nepalko Samvidhan, 2067*. Kathmandu: NCARD.
- Nepali, Santa Bahadur. 2009. Rajyako Punarsamrachana ra Sanghiyata ko Prashna. *Hank*, September 2, pp. 2/7.
- Nepali, Santa Bahadur. 2010. Deshlai Sanghiyatama Janabata Rokaun. *Hank*, February 10, p. 2.
- Nepali, Motilal 2010. Sanghiyata Bhitra Dalit Andolanka Sambhawanaharu. An unpublished working paper.
- RPSBS (Rajyako Punarsamrachana ra Shakti Bandphand Samiti). 2066 v.s. *Rajyako Punarsamrachana ra Shakti Bandphand Samiti: Avadharanapatra ra Prarambhik Masyaуда Sambandhi Prativedan*. Kathmandu: RPSBS.
- RPSUAS (Rajya Punarsamrachana Sujhav Uchchastariya Ayogko Sachivalaya). 2068 v.s. *Rajya Punarsamrachana Sujhav Uchchastariya Ayogko Sujhav Prativedan*. Lalitpur: RPSUAS.
- Sunar, Tej. 2009. Naya Banne Samvidhan ra Dalitka Sawalharu. An unpublished working paper.
- Wakugawa, Izumi, Prawash Gautam and Anil Shrestha, eds. 2011. *From Conflict to Peace in Nepal: Peace Agreements, 2005–2010*. Kathmandu: Asian Study Centre for Peace and Conflict Transformation.