

# Issues of Reservation and Affirmative Action for Minorities in Nepal

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### Abstract

There are mainly six types of minorities in Nepal. It is categorized not only numerically but also on the basis of access in ruling process of the state. The caste, gender, region, religion, inhabitation and language, which have no access in the governing process is also categorized under minorities. Dalit is a caste which are being discriminated as an untouchable group since the beginning of Muluki Ain of Nepal. Women are marginalized politically, socially and financially and treated as the weak individuals. Western and far western regions of the country are very much backward in terms of infrastructure development, human resource, education and in all sectors in comparison to other regions of the country. All religions are discriminated by the state excluding Hindu religion. Madhesi is another part of discrimination by inhabitation of the country. We can take some affirmative action towards enhancement of minorities. Provision of proportional representation, reservation, different acts and statutes, secular state including the interim constitution, made by state is also an example of affirmative action towards promotion of minorities.

**Keywords:** Indigenous, nationalities; Dalits; Untouchable; Discrimination; Muluki Ain; Higher caste; Egalitarian, Inclusion, Proportional.

### Background

According to UN declaration (1992), on the rights of individuals belonging to National or Ethnic, Religious and Linguistic minorities, the community who have separate stable Ethnic, Religious and Linguistic traits are minorities. The community, who have not access to hold state power, numerically small groups and owner of separate religion, mother tongue and culture, who have committed

to protect existing separate religious norms and values, linguistics and culture are generally minorities.

Discrimination had started from the beginning of Muluki Ain of Nepal (1910 B.S.), which was signed by 95.1 percent out of 212 from higher castes. Latest hegemony of higher caste is only continuity of Muluki Ain (1910 B.S.), which has created enough discriminations over minority groups in different forms. In Nepalese context, identification of minority groups are as follows:

(a) Indigenous Nationalities: There are fifty nine ethnicities namely Rai, Gurung, Tamang, Magar, Sherpa, Tharu, Newar, Chepang, Raute and so on. They are recognized by the Government of Nepal.

(b) Dalits: Government of Nepal has identified twenty three Dalit castes, who are also minorities. Kami, Damai, Sarki, Paswan, Chyame, Pode, Musahar and so on are in Dalit category. They are treated as untouchable castes in traditional society.

(c) Madhesis: Madhesis are also in minorities. They have been treated as second class citizens from the side of state. During the Rana rule they were required to obtain visa to visit the Kathmandu valley.

(d) Women: women are also in minorities. All Nepalese women are victims of gender discrimination. But the nature, forms and degree differ among different castes, ethnics, religious and cultural groups.

(e) Religious groups: Other minorities are religious groups. State has discriminated among different religions. Kirata, Buddhist, Islam and Christians are dominated by Hindus.

(f) Linguistic minorities: There are one hundred twenty three linguistic groups, but they are in vertical relation and position with each other.

(g) Regional minorities: Karnali region is poor and backward region, which is located in the mid-western region of Nepal. But Kathmandu, which lies in central development region, is highly developed. This sort of regional disparity exists due to regional discrimination. Eighty eight percent representation in supreme court is from higher caste, respectively 69.1 percent in appellate court, 89.0 percent in district court, 73.4 percent in secretariat post in bureaucracy, 75.0 percent of I.G.P. and A.I.G.P. of Police force, 86. 1 percent in C.D.O. whereas representation of minorities in the above posts are 11.2 percent, 30.3 percent, 11.0 percent, 31.6 percent, 26.6 percent, 25.0 percent and 13.9 percent respectively are some glimpses of vertical position and

relationship among the various caste of minorities. In this scenario, National Federation of Indigenous Nationalities demanded the state for the reservations.

To remove inequality, discrimination and exclusion from Nepalese society, egalitarian, equity and reservation are essential things. To do these things, some radical changes will have to be done in political system especially focusing on model of representation P.R. from F.P.T.P., division of quotas in entry gate of bureaucracy, educational institutions, science and technology, security forces, planning mechanism, judiciary and each and every organ of the state. It is evident that the brighter sight of the government are reforms and progressive performances into inclusion. Government has been trying to reform existing structure of minorities in different forms of action. For example, we can take formation of National Nationalities Development Committee-2054B.S.; Dalit Bikas Samittee-2054B.S.; Aadibasi Janjati Rastriya Utthan Pratisthan-2059; Nepal Women's Commission-2059; Nepal Dalit Commission-2059; Suggestion Committee for Reservation-2060; and Declaration of Reservation Policy-2061. Except these, some practices of reservation in multisectors as a quota in percentage are being practiced in Nepali educational institutions, security forces, public service commission and another employment, which we should take as affirmative action for minorities. Not only these, but in politics too there are efforts to practice the P.R. model. These favorable steps for minority groups to access the positive role in modeling the nation towards the path of development.

Nowadays, the case of minorities is highlighted in Nepalese politics. The term "minorities" have been used in different sense. Mostly, it is used for the backward and undeveloped human beings, who have not access in social, economic and political activities of ruling process. However under the discourse of nation building process in Nepalese politics, it is in core region. Everywhere the minorities are sensitizing in regards to their power, rights and position. For the upliftment of their position in each mechanism and organs of the state is under procedure. It is accepted that the long term policy and short term policy are needed to raise their political, social and economic status. In this regards, reservation is accepted

from the government side as the positive discrimination. Reservation system should have helped to promote the position of minorities. But for how long reservation system should be implemented for the upliftment of the minorities? It is a pertinent question to be discussed. Enough arguments are flowing in the society both to and against the reservation system. So, it is a topic which is under hot discussion. The article has been written about the position and causes of minorities, practices of affirmative actions and present needs for the durable solution confronting the minorities in Nepal.

### **A Glimpse to Minorities of Nepal**

In Nepal, numerically, minorities are Raute, Chepang, Kusunda, Thakali, Majhi, Duma, Lepcha, Meche, Sural, Hayu, Jirel, Thami, Sherpa and so on. Not only numerically but also accessless in state are Tamang, Gurung, Magar, Rai, Limbu, Tharu, Newar and so on. Indigenous Nationalities as well as women and Dalits are minorities on the perspectives of access less community towards exercise of power, position and opportunity of the state (Tamang, 2062, B.S. p. 3). Hindu, a community follows Indo-European culture. It is followed by Bahun, Chhetri, Damai, Kami, Sarki etc. It is divided into two groups: higher caste (touchable) and lower caste (untouchable). Damai, Kami, Sarki, Gaine, Mushahar, Chamar, Dom and many others are called untouchables. They are called Dalit in Nepalese society likewise Harijan in India (Tamang, 2062, B.S. p. 83). Not only Dalits, ethnics and women but Madhesi also are regional minorities, women are gender based minority, Muslims and all religious groups excluding Hindu are minorities. They are all in minorities because of discrimination and unequal treatment from the side of state. The ethnic groups including the Dalits and Adibasi Janajati have been facing a number of problems like, caste discrimination, suppression, oppression and exploitation through which generating the minorities (Dahal, 2006, p. 135). Politically ethnics and Dalits remain under represented and religiously they are terribly exploited. Dalits have demanded right to equality, abolition of untouchability, right against exploitation, egalitarian society, expansion and access to opportunity, free and compulsory education and equal treatment to all by the state and proper representation

(Dahal, 2006, p. 136). Like the Dalits and Janajati, the Terai people or Madhesi are exploited. They feel that they are discriminated by the central government and treated as second class citizens in their own country. As blacks, they are discriminated in every sector including the armed forces (Ibid). The nature of the discrimination in Nepalese society can be studied on the ground of ethnicity, caste, religion and geography. In spite of the multi-ethnic character of the Nepalese society political, administration and judicial sector are dominated by three groups like, the Brahmins, the Chhetris and the Newars. It generates a wide gap between the three advantaged groups and ethnics (Dahal, 2006, p. 137). We can see an example of wide gap of academic position: seventy percent graduates are from higher caste and Newar community. 6 percent graduates are from Janjati and 03.01 percent are from Dalit (Benet, 2004, p. 12). Not only generating a wide gap but also expanded the volume of minorities. So, to minimize this gap affirmative action is needed.

Discrimination and minorities had been originated from the beginning of fourteenth century by late Jayasthiti Malla. He called five Brahman from India and according to advice of them he divided Newar community into sixty four classes, gradually higher to lower caste (Tamang, 2063, p. 68). Then Prithvi Narayan Shah declared that Nepal was Chaar Jaat Chhattis Barnako Fulbari and Asli Hindustan (Ibid). Likewise, Jang Bahadur Rana declared an act namely Muluki Ain in 1910 B.S. He divided the people into four categories namely, Brahmans, Kshetriyas, Baisyas, and Sudras. Brahman, Chhetri, Baisya means tagadhari and matawalis are touchable but Sudras are untouchable till now. These were the continuity and legalization of Jayasthiti Malla and Prithvi Narayan Shah March of Hinduization and castism (Ibid: 69). The period 1960-1990 was the climax period of discrimination and formation of minorities. It is proved by the dictatorial slogan of "Ek Bhasa Ek Bhes, Hamro Raja Hamro Desh"(Ibid: 69). The Muluki Ain of Nepal is first beginning sources of exclusion, discrimination and minority. 95.1 percent out of 212 individuals who had signed in this act were from higher castes (Gurung, 2066 B.S., p. 20). It was the beginning of domination of higher caste. So-called the democratic constitution of Kingdom of Nepal-2047 continued to the Hindu Kingdom,

Hindu Monarchy and His Majesty. The constitution declared that His Majesty means the followers of Hindu religion, Arya Sanskriti and younger generation of Prithvi Narayan Shah (Tamang, 2063, p. 69). Dictatorial declaration of Hindu State, single language policy, hinduization is the major error of contemporary rulers (Ibid: 73). The contemporary ruler did not accept Nepalese society as the salad bowl, but they had tried to assimilate them as melting pot. It was the prime reason of present existing minorities. Newar and Madhesis were restricted to join in military forces. Tamangs were prohibited to be recruited in governmental jobs (Ibid: 131). Minorities have been created by domination by Hinduism in political, social and economic spheres. Hindu state with Hindu Monarchy and classification into touchable and untouchable caste by Muluki Ain-1910 is the major cause of minorities (Lawoti, 2063 B.S., p. 65-66). Provision of free education up to Ph.D. in only Sanskrit discipline, slaughtering of a cow as a punishable offense for twelve years of jail are some glimpses of educational and cultural discrimination which created minorities (Lawoti, 2063 B.S., p. 68). When attempts were made to introduce Maithili and Newari language at the local government in 1998, the Supreme Court ruled it illegal (Gurung, 2003, p. 5).

The state subsidizes Sanskrit language, which is not a mother tongue of any Nepalese social group, at all levels of education (Gurung, 2003, p. 5). Casteism is originated and related with Hindu religion and culture. It has grown within the feudal characteristics, which affected Dalit society (Acharya, 2062 B.S., p. 77). Feelings and expression of Nepal is a hilly and mountainous nation is expressing and writing till now. It is the deep symptom of feudal and autocratic characteristics, which hits to the Madhesi (Acharya, 2062 B.S., p. 79). Seventy percent of Nepali indigenous nationalities, Dalits and Madhesis are out of main stream of the state. Besides, women are also out of main stream of the state. Regionally, western regions are backwards. These are the facts of Nepal (Tamang, 2073 B.S., p. 10). The 240 years long unitary, autocratic and centralized hegemony is the salient cause of regional inequality (Tamang, 2073 B.S., p. 33).

**Table : 1 A glimpse of comparative representation in cabinet and secretary of bureaucracy:**

Caste	2007		2015		2048		2051		2058		2062	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Higher caste	8	80	10	52.63	10	66.67	11	73.33	20	62.5	13	52
Higher Madhesi	1	10	2	10.53	1	6.67			2	6.25	2	8
Indi./Nationalities			5	26.32	1	6.67	2	13.33	5	15.63	4	16
i)Hilly												
ii)Madhesi			1	5.26					3	9.37		
iii)Newar	1	10	1	5.26	2	13.33	1	6.67	2	6.25	4	16
Dalit												
i) Hilly											1	
ii) Madhesi												
Muslim					1	6.67	1	6.67				1
Total	10	100	19	100	15	100	15	100	32	100	24	100
Man	10	100	18	94.74	14	94.33	15	100	30	94.75	22	92
Women					1	5.67			2	6.25	2	8

Source: *Nepalko Sandarvama Rajyako Punsamrachana 2073*

Not only within 240 years long despotic regimes but also after restoration of democracy by 2046, twelve years period is not satisfied in the sense of inclusiveness in main stream to minorities. The domination of higher caste is continued (Khanal, 2014, p. 91).

### Policy of Reservation in Abroad

Protected seat or quota in politics, finance and social for backward community is generally reservation. It will be included in education, health, employment to the minorities. America, India, Malaysia, Croatia, Lebanon and so on countries are practicing the reservation system (Tamang, 2073, B.S., p. 25). The country believed that reservation ignores the equal competition and equal opportunity among the unequal. It decreases the degree of gap between haves and haves not, rich and poor, advanced and backward. The Indian constitution provides for reservation of parliamentary seats for the scheduled caste and tribes in accordance with their proportion in the population. Article: 331 limited this provision for twenty years, but it has extended every ten years. Nehru said that "I try to

look upon the problem not only in the sense of religious minority, but also in the sense of helping backward groups in the country” (Jayal, 2002, p. 92). Equity and egalitarian is reservation, which help to create equality. If goods are distributed equally among the unequal it creates injustice only. In a society, if inequality is existing unequal distribution gives justice. So, need-based distribution of goods and opportunities is reservation and affirmative action (Chandhok, 2004, p. 134). Equality is not fully favorable for democracy if there is inequality. The democracy should be measured by the indicator of its output behind distribution. Each distribution should be targeted towards equal output. To remove existing inequality and ensure the enhancement among different capability, unequal distribution of goods, services and opportunity is justifiable. In this reference, we should understand reservation is essential thing to make a welfare society and state. If individuals of community are discriminated socially, politically and financially, they become backward. They cannot contest with another. To make them capable, extra opportunity is most needed, which gives an environment of equal contest among equals. It is professed that if persons or communities were exploited, they must claim for compensation from the state. In this sense, reservation is a kind of compensation too (Chandhok, 2004, p. 136). We should conclude that need-based distribution of opportunity is generally reservation, but not equal distribution among unequal.

### **Reservation in Nepal**

There are fifty nine indigenous nationalities in Nepal. They are not only indigenous nationalities but minorities too. In addition to indigenous nationalities, women, dalits, madhesis and the people of far western region of Nepal are minorities. They have their own separate issues concerning with politics, social welfare and economy. Minorities are politically representativeless, financially poor and incomeless and socially discriminated as a higher and lower caste, touchables and untouchables. Due to above reasons, they have gone towards marginalization. So, they have raised some demands in order to uplift their own position so as to share power and opportunity. The common organization of all indigenous

nationalities “Nepal Federation of Indigenous Nationalities (NEFIN),” has demanded to the state for reservation in parliament, police force, military force, education and employment as the compensation (Tamang, 2062 B.S., p. 114). They have demanded to change upper House of parliament in to the House of Nationalities with full legislative power (Ibid).

### **Affirmative Action**

To address the demand and needs of minorities, some affirmative action have been made from the side of state. Affirmative action is essential to reduce earlier injustice and it is continued unless equality is not restored (Glen, 2013, p. 22). The amendment of *Muluki Ain* for twenty eight times in Nepal is more or less in favor of minorities of Nepal. Not only in *Muluki Ain* but also some provision of international organizations are in favor of minorities of Nepal. We can quote the declaration of U.N.-1992 on the rights of individuals belonging to ethnics, religious and linguistics, which has expressed that egalitarian is compulsory in order to participate in decision and policy making process from the minorities (Upreti, 2065 B.S., p. 14, 15). Nepalese constitution has provisions as affirmative actions. Some example we can take the following from the interim constitution of Nepal, 2063 (Interim Constitution of Nepal, 2063).

- ◆ Nepali Bhasa is the official language, though mother tongue is not restricted in use as official language at local level (part-1, article-5.3).
- ◆ Caste based discrimination and untouchable tradition are punitive (Article-14).
- ◆ Provision of restructuring of the state with inclusive, democratic and federal structure instead of unitary and traditional form of state (Article-38).
- ◆ Provision of inclusive participation with proportional representation in each organ of the state (Article-33).
- ◆ Implementation of international treaties supported and signed by Nepal (Article-33).
- ◆ Provision of proportional representation (Article-63).

- ◆ Provision of secular state and federal democratic state (Article-4).
- ◆ Provision of proportional representation of one hundred ten members out of two hundred seventy five (Constitution of Nepal, 2072 B.S., p. 121, article 84).

### **Anthropological Justice in Reservation**

Reservation is not absolute, but it is relative. It is not a separate thing, but a creation of discrimination for a long time. Even some scholars criticized the reservation system. Critics claimed that reservation or affirmative action is against of merit base system, it promotes casteism but not reduced, few men on the name of minorities gained an opportunity (Despanday, 2013, p. 20). Apart from this coherent, somebody says that merit, capacity and knowledge is a natural thing, it can't change on the efforts of human beings. However, those coherent are not true. The state is also artificial thing, which was formulated by the social contract. The elements of the state, organs of the government are all the artificial. Artificial means the creation of human beings. Constitution, law, acts; statutes all are the will of ruler. Ruler is formed through the two ways, first based on heredity and second on popularity. Hereditary ruler rules tyrannically and popular ruler rules democratically. Democratically means as per the general will of the people. But we saw the history of Nepalese hegemony been ruled by tyrannical ruler for a very long period. In this context, we can conclude that tyranny has always created discrimination, exploitation and marginalization. Therefore, to restore the real equality once again, we should need affirmative action, in other words, reservation.

### **Conclusion**

There are fifty nine indigenous nationalities, twenty three Dalits, more than fifty percent women, as well Madhesis, the region of disparity are the districts of Achham, Kalikot, Jajarkot, Jumla, Dolpa, Bajhang, Bajura, Mugu and Humla. They are minorities numerically as well as accessibly in Nepal. Backwardness in social, financial and political aspects are the major features. The backward position of them is harmful for the whole nation building process in different form. In long term, it affects negatively to

the nation building process of Nepal. So, to promote their access and enhancement of capacity and position in all areas of the state, reservation is the general need of the hour. It is helpful to reduce inequality and generate equality against all the members of the community. In the upliftment of minorities, we should take new policy in order to promote the position in politics, economy and social spheres. Promotion of access in decision and policy making of the state is possible when the state implements the proportional model of representation. If it is not implemented, traditional system of representation named FPTP no longer can promote access of minorities in politics. Minorities are always marginalized from the main stream of the state. Financial aspects are another crucial factor together with politics for the enhancement of capability of minorities. If a community or an individual is living under the poverty, what can they do except for fighting against the problem of hands to mouths. So, generation of income source is the most important thing. Skill, knowledge and factors of production or capital are second vital things including provision of employment. Social, cultural, religious, lingual and traditional domination is no weak factor to the minorities. All kinds of domination, even if protected by law, should be banned. The domination creates terrible barriers and hindrances towards the path of moral boost up of the minorities. The partial role and treatment by state against its citizens is harmful to promote national unity in long term.

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