

**SAMATA Policy Paper**  
2069 BS

# **Vicious Cycle of Non-Representation**

Electoral System and Dalit Representation in Nepal

© SAMATA Policy Paper 2  
Ashwin 2069 BS

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Nepali Munch Monthly

This publication is translated from Nepali to English and published in collaboration with International Institute for Democracy and Electoral Assistance (International IDEA), supported by Royal Norwegian Embassy and Government of Finland.



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Many organizations and individuals have had valuable contribution to bring this policy paper into this shape. Various human rights activists, researchers and academicians have supported by providing documents and publications on Electoral System and Dalit Representation in Nepal. Experts have provided recommendations by reviewing this policy paper prior to publication. Rights Democracy and Inclusion Fund/ Enabling State Program (RDIF/ESP) have provided financial and National Endowment for Democracy (NED) and Foundation Open Society Institute [FOSI] have provided technical supports. However, the views, analysis and conclusion expressed in the policy paper are those of the author[s] and do not necessarily reflect the policies of those institutions. The electronic version of this work will be distributed under a Creative Commons License.

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# Introduction of SAMATA foundation

SAMATA foundation was established in 2065 BS. Formerly known as Nepal Centre for Dalit Study, which was associated with Jagaran Media Centre, SAMATA foundation is now registered under the Company Act, 2063 BS as a profit-not-sharing organization. The SAMATA has been working with civil societies and government mechanisms to ensure the rights of Dalit and other excluded community in Nepal through research and informed advocacy. SAMATA believes that the development and dissemination of knowledge produced can play vital role in creating caste-based discrimination and untouchability free society in Nepal. Moreover, this would also transform the nation from the present transitional politics into a fair, egalitarian and inclusive democratic process and in the development of leadership of the oppressed communities.

In short span of time, SAMATA has been gaining momentum in receiving recognition at national and international levels as an active research based organization on the issues of Dalit and excluded social groups in Nepal. As a part of mission of SAMATA, some of the initiations are: publishing the profile of Dalit Constituent Members, providing research resources to members of Constituent Assembly, providing materials of national and international researches being conducted on Dalit and translation of several important materials available in English and other languages into Nepali. Along with,

the foundation has closely monitored the Constitution making process by analyzing the draft reports of all the thematic committees of the Constituent Assembly and provided recommendations to the Constituent Assembly members.

On Ashadh 2067 BS, SAMATA has organized an international conference named 'Envisioning new Nepal: Dynamics of Caste, Identity and inclusion of Dalits' successfully in Kathmandu. The first of its kind organized in Nepal, the conference was attended by more than 100 renowned academicians, professors, researchers, civil society representatives, Human Rights defenders and political leaders from 12 different countries. In the conference, 24 papers were presented in different themes. The conference was successful in bringing together all Dalit organizations of national level along with experts and political workers at one platform and contributing in creating an international network to work on the Dalit issues.

SAMATA published a book written by Dalit leader and writer Aahuti titled '*Nepalma Varnabyabastha ra Barga Sangharsha*' in 2067 BS. This book, which is not only for comprehensive study of the situation of Nepalese Dalit movement but also is of its kind that assists in determining its direction, has been referred in the course of study as a reading material in the Master's Degree under the Central Department of Sociology/Anthropology, Tribhuvan University.

In 2068 BS, SAMATA focused itself in publication of reports and books useful to Dalit members of Constituent Assembly and research conduction. In this regard, it started a series of interactions with the publication of '*Naya Sambidhanma Dalit: Rupantaranma Almal* [Dalit in new Constitution of Nepal: Confusion in Transformation]' SAMATA Policy Paper. Meanwhile, with an aim to exchange Indian experience about Dalit representation, the book '*Satta-Bimarsh Ra Dalit: Ambedkar, Drishtikon Ra Bibechana*' [Power-Discourse and Dalit: Ambedkar, Perspective and Analysis] has been translated and published in 2069 BS. The review papers titled '*Dalit Lekhanko*

*Prabriti: Nepali Dalit Samudayasambandhi Lekhanko Samikshya* and its English version titled ‘Trends in Dalit Writing: Understanding Knowledge Production for Policymaking] have also been published.

Managing Director of this foundation Subhash Darnal cultivated a dream of establishing an Open University and a Publication House under the SAMATA's banner. Even after his tragic and untimely demise, both dreams are still alive as its mission ahead. Moreover, young researchers from Dalit social groups have regularly been engaged in SAMATA and associated with research assignments. To facilitate and mentoring them, Dr. Narendramangal Joshi and Dr. Rabindra Roy, who have hand on experience in research and development work, have been affiliated with SAMATA. To manage ongoing programs, SAMATA has a management team of experts having comprehensive experience on research and management.

Board of Directors of SAMATA foundation is as follows:

Board of Directors

- Padam Sundas: Chairperson
- Dr. Madan Pariyar: Member
- Dr. Sumitra Manandhar Gurung: Member
- Thakurnath Dhakal: Member
- Sarita Pariyar: Member

## Words from Chairperson

Nepal is on a political journey from exclusion to inclusion. The demand of inclusiveness has become profound and intense due to the prevalence of vicious cycle of exclusion in the Nepalese society for centuries. Dalit trapped in the vicious cycle of exclusion are almost with no representation in political spheres of Nepal. Such non-representation has been making the vicious cycle of exclusion pervasive and impassable. Untouchability and discrimination prevailing in socio-cultural spheres are restricting Dalit from having access to the political leadership and creating obstacles in the economic progress. Non-representation in the political leadership has also contributed in marginalization of the Dalit community even in economic sphere and in continuation of the cycle of untouchability and discrimination. And, marginalization in economic sphere has complemented untouchability and discrimination consequently supporting the non-representation in political leadership. So, the voice of inclusion has become strident to abolish this vicious cycle of exclusion. The underprivileged Dalit community, the most subjugated by the pain of exclusion are extremely in need of inclusion. Exclusion in socio-political organizations has become unacceptable to millions of Dalit who have been isolated from the state and the society for centuries because the Dalit have had extreme acquaintance with the bitter truth of violent conflict, unrest and degeneration that are cultivated by the continuation of exclusion



under the garb of untouchability and discrimination. So, in Nepal, the strong voice for fair demand of all the oppressed communities for the access, representation and participation in social-political organizations raised by the Dalit community is obvious.

Such demand of the Dalit community, in fact, is not mere a symbol of desperation for the emancipation from the vicious cycle of exclusion but also an expression of desire for inclusive democracy too. Present needs and challenges are to address such desperations and desires by state restructuring and more representation of all oppressed groups including Dalit in state and social organizations by developing the sense of ownership. To assist in the task of diagnosing and treatment of such needs and challenges, SAMATA policy paper namely '*Apratinidhitwako Dushchakra: Nepalma Nirbachan Pranali Ra Dalit Pratinidhitwa* [Vicious Cycle of Non-Representation: Electoral system and Dalit Representation in Nepal]' has been published after a year of research. The weaker aspect of Dalit movement is knowledge production on Dalit. With a motive to strengthen Dalit movement by knowledge production, this SAMATA policy paper is published which is surely believed to assist in abolishing the vicious cycle of exclusion and non-representation. With this conviction, heartily thanks to all team members, researchers, scholars writer and editor and reviewer for supporting the campaign of knowledge production.

**Padam Sundas**

Chairperson

SAMATA foundation

## Recommendations

In the context of domination of elite Hill 'High Caste' in the state and society and prevalence of similar situation even in political parties, the party structure, leadership and policy are also necessary to be made inclusive while restructuring the state. During the process of inclusion, for the Dalit community, which is the oppressed community even among the oppressed ones, the provision of proportional representation with compensation in the state structure is mandatory.

According to the agreement signed between the Joint Political Dalit Struggle Committee and the government on 13 Jeshtha 2069 BS, there should be an initiation to implement and enforce the consensus, which ensures the provision of 10% additional rights with proportionality in all the organs, bodies and sectors of the state in the new Constitution as a compensation for the historic oppression imposed upon them in political, economic, social and cultural spheres.

All the political parties participating in the election should be compelled to implement the provision of mandatory proportional candidacy from the Dalit community and elect according to the ranking stated on the closed list as announced in prior. Now, the political parties should be free from pessimistic attitude of nominating Dalit candidates as show-piece gesture only in the election and fielding them in the constituencies

with minimal possibility to win, so that Dalit representation can be made proportional even if the mixed electoral system is adopted.

The leadership of the major political parties should be pressurized to retain 60% of elected seats through the proportional system and 40% through the direct system in mixed electoral system also to address the demand of compensation. They should be warned against any attempt to amend the proportion.

In the election under the mixed electoral system, the present provision in which parties submitting less than 30% of the total candidates in election commission can exempt from inclusive principle compliance should be terminated. The provision in the Election Act where the fluctuation can be made up to 10% in nominees from indigenous nationalities, Dalit, women and Madheshi etc. with regard to their population should be omitted.

As Dalit are not in position to get elected easily because of inequality in political, economical and social spheres, a provisional allotment of certain constituencies would be appropriate for maximum 10 years where only Dalit are allowed to give candidacies from the political parties and on independent basis. Instead, such constituencies are better be rotated in every election rather than making them stable and fixed.

Within a special structure formed in a province, an autonomous region is to be formed in a region with a majority or considerable presence of an ethnic or a community or language. The territories having majority of Dalit population should be demarcated again to create the favorable structure for Dalit to be in power.

To establish the rights of Dalit community of local levels, Dalit representation should be made influential at local levels. For this, with the formation of the province, the borders of the municipality, village council or ward, with the possibility of majority of Dalit population at local level should be demarcated again.

## Summary

Interim Constitution of Nepal, 2063 BS has accepted the proportional inclusive principle and the political parties too agreed with this principle. Now, only if the electoral system to be adopted for new Constitution writing from the Constituent Assembly is also able to incorporate the acknowledgments of the same principle, the representation of Dalit can be fair in the body of people's representatives. The new Constitution with the directive to restructure the state should be able to incorporate this essence by the Constitution. Committee of State Restructuring and Distribution of State Power of the dissolved Constituent Assembly had proposed for the three tier structures for the nation: federal, provincial and local. There is rough consensus among the political parties also on this concept. Based on this, electoral system will determine if there is Dalit representation in federal House of Representatives, province assembly and in local levels of federal democratic republic.

Majority system or direct electoral system was adopted for the elections held on 2015 BS, 2048 BS, 2051 BS and 2056 BS for the selection of members of parliament in Nepal. But in the Constituent Assembly election on 2064 BS for the first time mixed electoral system was adopted. Except the election of Constituent Assembly, Dalit community could not have representation in the House of Representatives through the First Past the Post (FPTP) electoral system adopted in the previous elections. Due to adoption of mixed electoral system, in particular,

for the election of Constituent Assembly, the presence of 51 Dalit representatives became attainable in 601-member of the Constituent Assembly<sup>1</sup>. Among them, total 7 candidates or 3 per cent were elected through direct electoral system whereas all others were nominated through proportional representation system. This also indicates that one of the important reasons of less representation of Dalit is non-adoption of electoral system that ensures Dalit representation. Similarly, it is the political and constitutional denial of provision of mandatory representation of Dalit.

Formal equality does not enhance equality; it only perpetuates inequality. In reality, to maintain equality, the equal should be treated equally and unequal unequally. As Dalit community is lagged behind historically, they should be provided with additional rights with proportionality to make them as equal as others in reality.

Dalit movement of Nepal has been demanding for the rights of additional representation as compensation for the discrimination done politically over Dalit in the past. If this demand is not recognized constitutionally, then, their representation cannot be justifiable in political bodies. So, there should be the provision to ensure the additional representation of Dalit community in proportion as per the principle of compensation in the result itself in any election in the future.

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1 50 Dalit members of Constituent Assembly were elected through the election of Constituent Assembly. Matrika Prasad Yadav and Jagat Prasad Yadav elected from then Communist Party of Nepal (Maoists) quit the party after the party unification of Communist Party of Nepal (Maoists) with Communist Party of Nepal (Unity Centre-Mashal). On the request of United Communist Party of Nepal (Maoists), Election Commission dismissed their Membership of Constituent Assembly and elected Ram Kumar Paswan and Farmud Ahmed through proportionality. There were altogether 51 Constituent Assembly members in the Constituent Assembly including Ram Kumar Paswan.

# Part: 1

## Background

Nepal is heading towards the restructuring of the old state after the historic People's Movement of 2062/63 BS. The main target of the state restructuring is not merely for the change of monarchical Hindu Kingdom, unitary government, centralized governance but also for the radical transformation of the other existing fundamental characters of the Nepali state including hegemony of Nepali language and monopolization of Hill Hindu 'Upper Caste' and to institutionalize inclusive, federal, democratic republic. Because of People's War of Communist Party of Nepal (Maoists), movement of the excluded communities and People's Movement etc, the transformation of non-inclusive character of the state governance has become the major political agenda of the whole country. Vigorous arguments and discussions are going on regarding the various dimensions of state restructuring from the election of Constituent Assembly to its dissolution.

The attempt is going on to document republican, secularism, federalism, and linguistic equality, political management of social diversity, proportional representation and decentralized governance system with inclusive democracy as distinguishing features of new Nepali state, and is being translated into the practices. Obstacles are obvious to

fall in the efforts and during the tough campaigning of changing not only the political system of Nepal but also the fundamental characters of the state for the transformation of a decade long People's War and establishment of ever-lasting peace with justice. Finally, the Constitution writing process was derailed as consensus could not be forged in the prolonged debate on the governance system, electoral system, judicial system and bases for delineation of federal states, naming and demarcation of the boundary of the states. There was a sad demise of Constituent Assembly which was considered to be a prime medium of state restructuring because consensual collaboration could not be forged among various conflicting vested interests and loyalties. Now the process of state restructuring which was supposed to address those vested interests and loyalties has also become slightly sluggish and the process of state restructuring along with federalism have also been pushed back till the second election of the Constituent Assembly and the process of new constitution writing.

The progressive transformation of Nepal is impossible through the state restructuring with federalism unless the rights of the indigenous nationalities, Dalit, women, Madheshi that are excluded and the communities that are lagging behind are established and without progressive transformation, establishment of inclusive democracy is also difficult. In the state being restructured with federalism, almost all the oppressed communities are giving the highest priority to the proportional inclusive representation from the policy-making level to implementation level of the state. And voice is being raised immensely for not only the policy making process of the state structure of any level but also the policy itself inclusive. Electoral system holds an important role in molding the state structure, representation in them, process and policies of decision making according to norms and values of inclusive democracy. So, the inclusive democracy can be institutionalized only if the model of electoral system to be adopted in days to come would be able to ensure the proportional representation of the excluded communities.

## **Social Structure and Representation in State**

In Nepali society, the state favored single caste: *Bahun-Chhetri*, single religion: Hindu, single language: *Khas* Nepali language, single culture: Hindu, single region: Kathmandu valley, one class: elite class and one gender: male -- have been enjoying the dominance over the rest [Bhattachan, 2004]. To end such domination, many movements that took place in a multi-cultural country Nepal have been pressurizing continuously for the formation of inclusive democratic state.

According to the political analysts, the concept of inclusive democracy is based on two factors. At first, social and cultural communities should be included in any kind of decision-making process in multi-cultural countries. According to the principle of democracy, any decision made in the absence of the representation of an individual or group is void. Secondly, civic policies should be such, which encompass all. Participation in decision-making process is one of the mandatory provisions in democracy yet that is not enough (Lawoti, 2004). It signifies inevitability of the creation of state structure with inclusive representation for the transformation of old state. The theme of state restructuring is linked with the electoral system, which ensures the access, proportional participation and representation of various communities, ethnic/nationalities, class, gender etc in state institutions (Khanal, 2065 BS).

In the democracy that runs on the basis of election, electoral system itself can be non-representative and authoritarian. It doesn't support state restructuring and obviously pushes back inclusive democracy. Even in Panchayat Era under the regime of the king, there used to be drama of conducting periodic elections to cover up the autocratic rule. Similarly, the general elections were conducted periodically during the constitutional monarchy and parliamentary democracy also after the People's Movement of 2046 BS. Three general elections held during the period of parliamentary democracy could also not



be different than that of the Panchayat System from the view point of representation of excluded communities in the parliament. The vital cause behind this is “the electoral system which does not allow the minorities to have access in the power of governance.” (Upreti, 2004: 106).

One of the significant reasons of deprivation of representation of ethnic and excluded communities in the parliament, government and other political institutions and their minimal access in governance power is non-adoption of the electoral system which ensures their representation. However, representation of individuals of every group in the electoral system does not assert that the policies would also be inclusive. And those groups may not feel that they are also incorporated in the state and transformed into the rulers. Definitely, democracy synonymous to people’s governance system does neither mean that all citizens are to be included in all the units of the state and rule directly nor the representation of all the people in the governance. Democracy is the governance system by the elected representatives of the people. It requires universally accepted mechanism of representation which is normally fulfilled by the electoral system (Khanal, 2065 BS).

So, selection of electoral system plays an important role behind the non-representation of any community in the state and their minimal access to power. Inclusive democracy can be institutionalized only when the electoral system, which ensures the mandatory representation of all in multi-ethnic, multi-linguistic and multi-culture nation, is adopted. So, for inclusive democracy, what sort of governance system is selected? How will the election be carried out for various institutions? How can the representation and access of the people belonging to all caste, ethnicity, class and communities of Nepal be assured in such institutions? Answers of these questions are related to the electoral system. Electoral system is interlinked mainly with the state’s structure and characteristics. Electoral system gives one answer to the question -- if all the citizens can be made liable to realize ownership and belongingness for the state. This means electoral system is not merely

a formal process of selection of the representative of the citizens but also an important process of democratization.

## **Difference in Electoral System**

In different countries, people's representatives are elected through different types of electoral systems and participate in governance systems. Specially, three kinds of electoral systems are in practice in the world: first-past-the-post system or majority<sup>2</sup> system, proportional and mixed system. In Nepal, before the election of Constituent Assembly, the parliamentary elections and local elections were conducted only through direct electoral system but those elections too fostered exclusionary policies of the state. However, the Constituent Assembly election was held through mixed electoral system on 28 Chaitra, 2064 BS because of a decade long People's War that started on 2052 BS, People's Movement of 2062/2063 BS and movements by the excluded communities for the inclusive democracy. Mixed electoral system was practiced for the first time in Nepal, which was proven to be inclusionary to a greater extent where the first-past-the-post was in practice previously. In the Constituent Assembly through mixed electoral system, total 601 members were elected among whom 240 members were elected through the first-past-the-post system, 335 were elected through proportional representation system on the basis of votes obtained by the parties and 26 were nominated (SAMATA foundation, 2067 BS).

The Constituent Members thus elected were mandated to promulgate the new Constitution within the stipulated time of two years. But, when the Constitution could not be promulgated even for four years due to various types of conflicts, the Supreme Court issued a verdict not to

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2 First-Past-The-post is called majority electoral system. In this system, a candidate is a winner who receives the maximum votes in the constituency among all who gave candidacies. It is being said as the Direct Electoral System to understand easily in Nepal. Even in this policy paper too, First-Past-The-Post is designated as "direct electoral system". Though, direct election occurs in other electoral systems.

extend the term of the Constituent Assembly on 11 Jeshtha, 2069 BS in response to 3 different writ petitions that were filed challenging the attempt of the government to extend the term of Constituent Assembly by three months [Annapurna Post, 2069 BS]<sup>3</sup>. Since the term of the Constituent Assembly could not be extended, following the same verdict, the Constituent Assembly was dissolved without delivering the new Constitution on 14 Jeshtha 2069 BS [27 May 2012]. Same day, Prime Minister Dr. Baburam Bhattarai declared that the election of Constituent Assembly would be held again on 7 Mangsir 2069 BS [22 November 2012]. But it is certain that the election of Constituent Assembly cannot be conducted on scheduled date as political parties failed to forge consensus.

After shutting down the door of reinstatement of the Constituent Assembly, the senior leaders of the major political parties are trying to forge the consensus on the election of the Constituent Assembly again, declaration of the number of seats and date and devise electoral process and procedure. Debate pertaining to who would declare the date of the second election of Constituent Assembly among the political parties of the previous Constituent Assembly has not come to a conclusion, while no consensus could be forged on who would devise the electoral process and procedure. Opponent parties Nepali Congress and Communist Party of Nepal (Unified Marxist Leninist) are ready to forge consensus on electoral process and procedure only after the exit of Dr Babu Ram Bhattarai-led government and formation of new government. And the same ruling coalition of

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3 The government lodged the petition for the extension of tenure of Constituent Assembly when it felt that it would not be possible to promulgate the Constitution on consensus within 14 Jeshtha 2069 BS. But the advocates Kanchan Krishna Neupane, Bharatmani Jangam and Bal Krishna Neupane, Rajkumar Rana, Chandralal Shrestha and Jagdev Chaudhari lodged the writ petitions arguing that the government's proposal to extend the Constituent Assembly term would be against the Article 116 of the Interim Constitution on which Chief Justice Khil Raj Regmi, on single sitting, issued interim verdict in the name of the government not to proceed with its decision to extend the term of the Constituent Assembly [*Sambidhansabhako Myad Nathapne Aadesh*], Annapurna Post, Pp. 1, 12 Jeshtha 2069 BS.

Unified Communist Party of Nepal (Maoists) and Madheshi front and other parties are on a stand that the existing government should decide the date of the election and forge the Constitutional and political consensus for that. Though the efforts are ongoing for the consensus in spite of vast differences in opinions, the parties have not yet come to a point on the issues regarding whether to own the decisions of the former Constituent Assembly and the consensus made during the constitution writing or not, or just to take them as a reference by the second Constituent Assembly.

Different opinions are being expressed by the parties on the number of seats and electoral system for the second election of the Constituent Assembly too. Nepali Congress, with the opinion that there should not be provision of 601 seats, presented the view to go for election as soon as possible keeping the existing 240 constituencies as they are, with 120 seats for proportional representation at the maximum or 311 seats or as small figure as possible. With the similar opinion on reduction of number of the Constituent Assembly members, Unified Communist Party of Nepal (Maoists) expressed its opinion to agree on the previous agreement of making 335-member Constituent Assembly and be flexible in the number. Unified Communist Party of Nepal-Maoists, formed after splitting up of the Unified Communist Party of Nepal (Maoists), has taken a stand to fix the number of members of the Constituent Assembly through round-table meeting without ascertaining the number of seats. Rastriya Prajatantra Party Nepal presented the opinion that the election should be conducted for 311-member to the maximum, 55% to be elected through the direct and 45% through proportional representation (Adhikari, 2069 BS).

The differences among the political parties on the number of seats for the second election of the Constituent Assembly has not come to an end, neither divergent views on the mode of electoral system to be adopted for election has converged in. The prevailing discussion and debate on those issues would determine if the next Constituent Assembly would

be as proportional as the previous one. But, the political parties are more probable to come to a consensus by allocating more percentage for the direct polls and less for proportional representation. The attention, concern and pressure of the individuals, organizations and movements in favor of inclusive democracy with proportional electoral system are not focused on prevention or correction of regressive consensuses. In spite of the condition that the nation cannot progress without new constitution writing by the Constituent Assembly, state restructuring with federalism and inclusive democracy with proportional electoral system, the possibility of reversal cannot be completely denied<sup>4</sup>.

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4 This policy paper is prepared on the basis of the drafts of thematic committees of the Constituent Assembly and latest political consensuses. Along with, this policy paper is written by additional study of academic research materials, manifestos of various political parties and fraternal organizations and on the basis of interactions with many experts regarding this theme.

## Part: 2

# Representation/Non-Representation and Electoral System

The fundamental conception of the democracy is the system in which the common people can select their own representative and is also the system, which ensures the rights of the excluded community to participate in the state mechanism. So, in multi-ethnic, multi-linguistic and multi-cultural country, their justifiable representation in state mechanism through the electoral system is of vital importance for the real practice of inclusive democracy. But in Nepal, the indigenous nationalities, women, Madheshi and the communities that are lagged behind including Dalit are being excluded in policy-making legislature, implementing government and all organs of the state. Even among those who are excluded, Dalit are the most excluded and that exclusion is being complemented by the direct electoral system.

To abolish such kind of exclusion, the communities that are excluded have been raising the demand intensely for the proportional inclusive representation in all levels of the state. The Interim Constitution of Nepal, 2063 BS, has accepted this demand constitutionally and the political parties also have accepted the inclusive democracy in

principle<sup>5</sup>. They protested demanding the full proportional electoral system to guarantee the proportional representation of all the oppressed communities in the election of the Constituent Assembly that was held in 2064 BS. But, in the 23-Point Agreement between the alliance of seven political parties and then Communist Party of Nepal (Maoists) on 6 Paus 2064 BS, they agreed upon to adopt the mixed model for the election of Constituent Assembly. Because of that agreement, the demand of indigenous nationalities, Dalit and Madheshi to adopt full proportional system could not be met<sup>6</sup>. However, due to the adoption of mixed electoral system, the representation of indigenous nationalities reached to nearly 35% and that of Madheshi to 34% in the Constituent Assembly. But the representation of 13% of Dalit<sup>7</sup> had been limited to only 8.49% or 51 CA members (Biswokarma, 2068 BS). Though the Dalit representation could not be proportional to its population yet the Dalit representation in the Constituent Assembly or the legislature was proven to be of historical significance.

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- 5 Parties have mentioned about the methods of the Dalit inclusion in the manifesto of the Constituent Assembly. As far as the methods of Dalit representation in all the organs of the state are concerned, Unified Communist party of Nepal (Maoists) put forward the concept of special rights, Communist Party of Nepal (UML) with progressive reservation, Congress with reservation, Madheshi Janadhikar Forum and others including Communist Party of Nepal (Unified) proposed for proportional inclusive principle.
  - 6 According to Clause 2 of the agreement between Seven Party Alliance and the Maoists on 8 Paus, 2064 BS, they consented for 240 through direct, 335 through proportional and 26 through nomination in the election of the Constituent Assembly by amending the Constitution.
  - 7 According to census of 2058 BS, Dalit population in Nepal is 13.1%. Aahuti mentioned that the population of Dalit is around 21% in his book, '*Nepalma Varnabyabastha ra Barga Sangharsha*' on the basis of nongovernmental data in the situation that the factual data could not be generated in that census as the data of Newar Dalit was not included, many Dalit castes of Tarai- Madhesh were not counted as Dalit, many Dalit were not included into Dalit as their surname and lineage match with that of so called 'High Caste' and during data collection also the enumerators didn't enter into Dalit settlements because of lack of facilities and discrimination and neglected feeling towards them or get information from so called 'High Caste' and fill up the census form.

## Democracy and Electoral System<sup>8</sup>

Electoral system is a method of election of representatives for the state mechanism. The citizens elect their representatives using their sovereignty rights through the election. Election is conducted for representation of citizens even in the main organs of the state like executive, legislature and judiciary. It provides authentication to governance procedure. So, election is considered as a mandatory condition for democratic governance system. Electoral system depends on the form of governance system of every country. So, which model of the electoral system is to be adopted is in relation to the governance system and forms of governance of that particular country. If the governance system and forms of governance are oriented to the exclusion, their electoral system would also insist upon implementing the direct electoral system. In the world having different forms of governance, three types of electoral systems are adopted mainly: majority, proportional electoral system and mixed electoral system. In the world, 12 electoral sub-systems of these three electoral systems are in practice. In Nepal, majority electoral system was adopted before the Constituent Assembly in 2064 BS whereas mixed electoral system was adopted during the Constituent Assembly.

### Majority system

The system of awarding the candidate receiving the maximum votes as winner is the majority electoral system. This electoral system is being addressed also as the direct electoral system in Nepal. In this system, a candidate who gains the maximum votes in a constituency becomes the winner. More votes do not mean complete majority in the respective constituency but only he or she has a larger number of votes than all other candidates.

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<sup>8</sup> Regarding the electoral systems in the world '*Nirbachan Pranaliko Prarup: Anterrastriya Ideako Naya Hatepustak*' in 2006 and Kashi Ram Dahal mentioned about forms of governance and electoral system in an article in half-yearly magazine '*Nirbachan*' 2068 BS which was about election and democratic systems published by Election Committee.



Different elections are also practiced under this electoral system. majority or direct electoral system has been practiced as the first-past-the-post electoral system, the two-ballot majority system, alternative ballot system, cumulative ballot system and party cumulative ballot system. Generally, this is the first-past-the-post ballot system. In this system, the winner is who receives the highest vote from one constituency.

Next two-ballot majority system is in practice in France and some other countries of Europe. Under this system, any candidate must gain more than 50% of the total votes at first round to get elected. If there is failure of gaining more than 50% of the total votes, then one candidate is declared as the winner after the two highest-voted candidates of the first round compete in the second round. In many countries, the provision that only the candidates receiving more than 12.5% votes in first round of election participate in the second round of election again and the highest voted candidate would be the winner is also in practice.

The voters rank their preferences as 1, 2, 3 among the candidates and the first preferred candidate gaining more than 50% of the votes as the winner is the alternative ballot system. If the first preferred candidate gains less than 50% votes, the lowest polling candidate's ballot is ascertained to second preferred contestant. Thus, only the candidate receiving more than 50% votes will get elected through this ballot system. This system is in practice in Australia, Fiji and Papua New Guinea.

Cumulative Ballot System is used for multi-member constituency. In this system, the number of the voters is proportional to the number of the candidates of the respective constituency. Through this system, the candidate receiving the highest votes would be the winner.

Party Cumulative Ballot System is another ballot system used in multi-member constituency. In this system, the voter casts the vote for single party only. The most voted party elects multi-member members.

## **Proportional Electoral System**

Proportional electoral system means a system to elect the representatives in proportion to total votes a party gets at the polls assuming that the whole nation is one constituency. In proportion to the total casted votes nationwide, the respective party candidates get elected. This system is being practiced by two ways: list proportional representation and single transferable vote system.

For list proportional representation electoral system, the parties submit the name list of their candidates in the Election Commission. After the election, the candidates get elected in proportion to the votes the parties receive. This system is considered appropriate for the representation of diverse communities, ethnic, linguistic, gender, religious etc.

List proportional representation electoral system is mainly of three types: open list system, closed list system and independent list. In open list proportional representation ballot system, the Election Commission publishes the names of the candidates submitted by the parties and the voters get known about the types of candidates. Under closed list system, the parties cannot change or alter the submitted name list to the Election Commission. They get elected in order to the preference on the basis of the result of the election. In independent list, the candidate can cast the votes for a political party or an independent candidate according to their choice. In Nepal, during the Constituent Assembly, the closed list was used for PR system. However, the parties altered the name list of the candidates at the time of selecting the representatives instead of electing them in accordance with preference in the list. Because of which the preference list became meaningless.

## **Mixed electoral system**

Mixed electoral system is a combination of positive attributes of majority or direct and proportional representation electoral systems. In such kind of electoral system, the positive attributes of both the

types of electoral systems are inherent. This system has also accepted the principle of compensation of the disproportionality that arises due to the majority or direct electoral system. For example, Communist Party of Nepal (Marxist-Leninist) had gained 6% of the total votes all over the country in 2056 BS but could not acquire even a single seat due to the majority system. On acquiring mixed system, it holds the right to represent under proportionality with respect to total gained votes. Mixed electoral system was used for the election of Constituent Assembly in Nepal in 2064 BS. The election was held for total 601 seats, out of which 240 were through majority electoral system, 335 were through proportional system and 26 were nominated by the government.

In a nation, the representation of diverse ethnicity, language, religion, culture etc. in a state depends mainly upon the electoral system. The representation of communities that are excluded by socio-cultural, economical, political situation, constitutional and legal provisions or marginalized communities in state institutions is possible only when the electoral system is adopted that ensures the representation of those communities. The representation of Dalit community, who claim to be 20% of the total population of Nepal, is very insignificant in the state institutions including legislature, executive and judiciary.

## Part: 3

# Plight of Dalit Representation

Representation in the state is connected to the governance, power and resources. Dalit community, deprived of governance, power and resources, are almost without any representation in the state. *Bahun* and *Chhetri* elites and ruling class with a few elites of *Newar* community have been enjoying the hegemony over the state. Such hegemony started since the mid 18<sup>th</sup> century in Nepal, formed in the process of expansion of the principality of Gorkha, and commencement of the Hindu Kingdom with the establishment of Shah Dynasty. Dr. Harka Gurung analyzed that the structure of Nepal to adopt the Hindu social model became obligatory when the Gorkha empire, which evolved during the regime of Mughal empire follower of Muslim religion, collided with Christian British imperialism (Gurung, 2065 BS).

Ruler strata *Chhetri* and *Brahmin* of intellectual strata had collaborated in the mission of King Prithvi Narayan Shah to declare Nepal as *Asalee Hindustan*, in the name of reformation of society on caste-based hierarchy. Stephen Mikesell argued about the putting forth the proposal of entitlement of divinity for the insurance and

institutionalization of the special rights that the privileged members of the community acquired due to the provision of caste-based hierarchy (Mikesell, 2004). Inspired by such motive, in *Asalee Hindustan*, exclusion of Dalit community economically and politically was legalized and they were considered untouchable and discriminated culturally according to the conspiracy of the Gorkhali rulers. Except a few individuals, no space was provided to the Dalit community who were lagged behind among all from governance, power and asset in Gorkha principality. The great legends like Jasveer Kami, Bise Nagarchi and their offspring who had contributed in the expansion of Gorkha principality could not gain any political status. After the demise of Bise Nagarchi, his son Duple Nagarchi was posted as drummer only to beat the drum according to the imprimatur of 1846 BS (Sundas, 2046 BS).

In two and half century long history of Nepal, the caste structure of the ruling class itself gives the glimpse of inequality and it is clearly visible that the state under the leadership of such ruling class perpetuated inequality and exclusion (Regmi, 1995). Aryal, Pandey, Panth, Khanal, Bohra and Rana were 6 surnames who were in elite political leadership under the Gorkhali Shah Dynasty; later Thapa, Basnyat, Kunwar and Thakuri also started showing their significant presence, who contributed in regional expansion (Baral and Others, 2001 ). Mainly Shah, Thapa, Basnyat and Pandey were four courtiers whose families ruled Nepal since 1770 to 1846 (Rose and Scholz, 1980).

Jung Bahadur Rana who confiscated the power from the Shah king also perpetuated the same policy by the promulgation of Civil Code (*Muluki Ain*) in 1854. The National Council of then ruling class where most of the representatives were Hill “High Caste” legitimized the Civil Code, based on *Manushmriti* prescription and Hindu orthodoxy. Out of 212, who legitimized the Civil Code, 95.1% were *Bahun* and *Chhetri* who were considered as “high caste” (Gurung, 2065 BS).

Table 1: Structure of Ruling Class, in 1854AD and in 1999AD

Social Group	1854AD		1999AD	
	A		B	
	Number	Percentage	Number	Percentage
1. 'High Caste' [Hill]	166	78.3	1011	66.5
2. 'High Caste' [Newar]	32	15.9	231	15.2
3. 'High Caste' [Madheshi]	2	0.9	170	11.2
4. Indigenous nationalities	6	2.8	108	7.1
5. Dalit Caste	0	0	5	0.3
6. Others Caste [Unidentified]	6	2.8		
<b>Total</b>	<b>212</b>	<b>100</b>	<b>1525</b>	<b>100</b>

1. The signatories of *Muluki Ain*, 22 December 1854 [Paush, 1910 BS]
2. Govind Neupane, *Nepalma Jatiya Prashna*, 2000 AD, pp 82 [*Shashanko Ekikrit Rastriya Suchakank*,]

(*Source: From Exclusion to Inclusion, Dr. Harka Gurung*)

*Divya Upadesh* (Guiding Principles) believed to be given by King Prithvi Narayan Shah were the basic principles for the kings of Shah Dynasty to run the governance of the state. After the *Divya Upadesh*, on the foundation of the Civil Code (*Muluki Ain*) the ruler class of Shah and Rana boycotted the nationalities not only socially but also politically under whose supremacy the *Dalit* community had to pass two centuries. In the meantime, Kunwars named as Rana, had monopolistic family reign from 1846 to 1950, reducing the Shah monarchs to figureheads, and maintained the exclusion of rest except *Bahun* and *Chhetri*. After the democratic change in 1950 and return of the Shah kings to power from being mere figureheads, they engaged the political parties in power wrangling. They also consolidated the family dynasty under the garb of Panchayati democratic system since 1960 to 1990 (Maharjan 'Kha', 2069 BS). Actually, the king was at the topmost position in the power hierarchy in Panchayati system among the 17 chief authorities of the governance in the ranking. Deputy Chief

of Army was in 17<sup>th</sup> position whereas the status of the cabinet ministers was much low (Dahal, 2000).

This fact reveals that there is no remarkable change in the political representation than the 19<sup>th</sup> century even after 60 years of advent of democracy. There was monopoly of *Chhetri* and *Thakuri* during the feudalistic and dictatorial regime in Nepal for two centuries since the expansion of the principalities by Prithvi Narayan Shah in 1769 to the end of Rana Dynasty.

During this regime, the members of *Bahun* community were engaged as royal priest, justice, landlord [*jamindar*], gazetted and non-gazetted civil servants [*subba*, *khardar*], writers [*karinda*], councilor, and clerks [*lekhandas*] etc. The posts like landlord [*zimmawal*], revenue officer [*talukdar*], warder/ gate keeper [*dware*] were handed over to the leadership of the communities of indigenous nationalities at local level out of compulsion, but still they were classified collectively as ‘subjects’ to be ruled under the central governance. *Dalits* were mostly fulltime agriculture laborers and many of them were blacksmiths, cobblers, tailors and were dependent in other craftsmanship. The prospectus of the signatories of *Muluki Ain* of 1854 was the evidence of symbolic representation of Dalit in the central governance system [Tamang, 2069 BS: 98].

*Muluki Ain* formulated by Hill elites was the origin of the political injustice till the later age (Gurung, 2007) which was clear by the exclusion of Dalit and others in the structure of the state-power. There is insignificant change in power structure in the context of social structure since 1854 in all political systems, may it be feudalistic, Panchayat and democratic. This also explains the phenomenon that the same conventional ruling class is more established as concluded by Dr Harka Gurung (Gurung, 2065 BS). He argued that after 145 years of promulgation of *Muluki Ain*, there is slight change in the political and administrative aristocracy only after 1999 but yet there is no representation of Dalit in powerful high posts.

Table 2: Representation in the Governance, 2056 BS [1999 AD]

Organization	Hill Threat- Wearer	Newar	Madheshi	Hill indigenous nationalities	Dalit	Total
1. Constitutional Organs	14	6	3	2		25
2. Council of ministers	20	3	5	4		32
3. Judiciary	181	32	18	4		235
4. Legislative	158	20	46	36	4	265
5. Administration	190	43	9	3		245
6. Political Leader	97	18	26	25		166
7. Chief District Development Committee/Mayor	106	30	31	23		190
8. Civil Society leader	41	8	4	1		54
<b>9. Total</b>	808	160	142	98	4	1212
A. Percent %	66.6	13.2	11.7	8.1	0.3	100.0
B. Population %	31.6	5.6	30.9	22.2	8.7	100.0
<b>A-B</b>	+35.0	+7.6	-19.2	-14.1	-8.4	-

(Source: Neupane, 2000AD:82)



This table indicates that the occupation of Hill ‘Upper Caste’ in the bureaucracy, judicial system and in civil society was around 76% to 78% whereas they have grip of 58.4% in politics. It implies that Hill ‘High Caste’ elites consisting of one-third of the total population having monopoly in two-third in the state mechanism. But, the representation of so-called low caste Dalit, in proportion of population, is the most pathetic who are having resemblance in language and culture with Hill ‘High Caste’ (Gurung, 2065 BS).

It means Dalit community of Nepal is excluded in all spheres, economical, socio-cultural, political, administrative, including educational. In fact, the caste hierarchy in *Muluki Ain* formulated to be implemented religiously, politically and geographically keeping in view the supremacy and hegemony of Hill ‘High Caste’ as the directive principle had been proven to be large ‘vicious cycle’ for the Dalit (Gurung, 2065 BS). The untouchability and discrimination against the Dalit in socio-cultural sphere have prevented them from the political leadership and have hindered in economic progress. And non-representation in the political leadership has continued the vicious cycle of marginalization in economical sphere and perpetuation of untouchability and discrimination also. If the social discrimination in one sphere by the state has caused so prominent vicious cycle, then how disastrous the situation can be by social exclusion in all spheres can easily be glimpsed by the plight of political representation.

## Part: 4

# Curvature of Dalit Representation

Dalit representation has remained nominal not only during Panchayati period of 2017 BS to 2046 BS but also in reinstated parliamentary democracy after 2046 BS. One Dalit was elected as member of House of Representative in the election of 2048 BS whereas 18 were nominated as the members of legislature in the reinstated parliament in 2063 BS. Dalit representation has comparatively increased to 51 in the election of the Constituent Assembly, conducted in 2064 BS yet that could not be proportional.

Joanna Pfaff-Czarnecka (1997) has tried to categorize the composition of social structure of Nepal till the People's Movement of 2062-2063 BS into three periods: a. Feudalistic structure of Shah and Rana Regime, b. Nationalistic structure of Panchayati System and c. Patchwork of minority nationalities after 1990. It cannot be said that ruling class of Hill 'High Caste' did not attempt to be inclusive at all in previous two periods in Nepal. The excluded castes/ ethnic communities were represented in the state either to strengthen the vested interest of the state power holders or to prevent the movements for the social transformation. That was only a 'symbolic representation.'

The palace appointed the Dalit as the king's advisor and as the members in the Royal Assembly and the council of ministers during the Panchayat Era to fulfill their vested interest. King Tribhuvan and Mahendra nominated four Dalit as the advisors after the achievement of democracy in 2007 BS. Dalit leaders Siddhi Bahadur Khadgi, Dr. Jhaman Ram and Ganesh Yogi were nominated as advisors in 2014 BS and Dalit leader Saharshnath Kapali as the member in the parliament in 2015 BS. The king nominated Dalit leader and Founder General Secretary of Nepali Congress Dhanaman Pariyar in 2020 BS, Harkumar Singh of Morang in 2024 BS, Dalit Leader Hiralal Bishwokarma in 2028 BS, Dalit leader and initiator of communist party T.R. Bishwokarma of Sunsari in 2036 BS and Dalit leader Tek Bahadur Bishwokarma of Parbat in 2042 BS as the members of National Panchayat (Aahuti, 2004 and Kisan, 2005)<sup>9</sup>

Dalit leader Hiralal Bishwokarma, affiliated to Nepali Congress was appointed as assistance minister for education in 2032 BS and as assistance minister for supply in 2042 BS. Siddhi Bahadur Khadgi of Lalitpur was nominated as member in Royal Assembly in 2038 BS. Dalit leader and writer Jawahar Roka of Koshi and Pratap Ram Lohar were nominated in zonal committee of Back to Village National Campaign in 2031 BS and 2033 BS respectively<sup>10</sup>. But there is no record of even a single Dalit got elected in the election for members of National Panchayat in Panchayat Era. It means not a single Dalit to have political representation by being victorious in the election in the history of 2007 BS to 2047 BS. 'In the span of 30 years, one Dalit Hiralal Bishwokarma, an exceptional case, was made the assistance minister yet their presence was nil in police, administration, justice, schools and universities' since 2017 BS (KC, 2063 BS: 203).

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9 Based on the conversation with Padam Sundas, leader of Dalit movement on 2069 Bhadra 1.

10 Yam Bahadur mentioned about the political representation of Dalit community in the book '*Nepalma Dalit Jatiya Mukti Aandolan*' [2058 BS] and Aahuti explained in '*Nepalma Varnabyabastha ra Barga Sangharsha*' [2067 BS] and other books, articles and working papers.

The King's nominees too had their own grievances and complications during the Panchayat period. Their representation had no connection with the election as they were included in the state mechanism by the king's nomination and not by the people through the election. It was not mandatory for them to have lively relation with their own community and they were not in position to do such. They were obligated to be sincere and accountable to the king or ruler, who nominated them. And their thoughts, interest and mentality were also obvious to be inclined in favor of the ruling class. Thus, such inclusion was to weaken the rights, prestige and representation of the caste/ethnicity and its adversary impacts were proven to be the intensifier of dimension of 'assimilationist inclusion' (Tamang, 2069 BS).

### **Contradiction of Symbolic Representation**

After the People's Movement in 2046 BS Nepali state headed towards the 'recognition of multiple-identity' from 'assimilationist inclusion'. But tragically, the representation of Dalit didn't advance than the symbolic representation in National Assembly (Pariyar, 2063 BS). Miserable Dalit representation from the local bodies to House of Representative, government to National Assembly became a part of multiparty parliamentary system. The mindset to perceive Dalit ineligible for the representation even in local institutions in the regions having dense population and political vigor of Dalit remained in political parties. Dalit continued to remain victimized even in the period of parliamentary democracy. On the other hand, it was tough for the Dalit to get elected by majority of votes in spite of their nominal candidacy in the villages with possibility to get elected through election given the deep discriminative perception of orthodox society towards the Dalit (Prashrit, 2063 BS).

There were no quantitative and qualitative changes in the Dalit representation in restored multi-party parliamentary democracy not only in local bodies but also in House of Representative, National Assembly and the government. Three general elections were held

for House of Representatives during the period of parliamentary democracy in 2048 BS, 2051 BS and 2056 BS but from the view point of Dalit representation, they were simply meaningless. Only one Dalit candidate could get elected in these elections. Krishna Singh Pariyar was the only one parliamentarian to reach in the 205 member House of Representatives. He was elected from the regular constituency no. 3 of Banke District representing Nepali Congress in 2048 BS. But not a single Dalit candidate was elected in the House of Representatives in 2051 BS and 2056 BS because Dalit were not given chance to be the candidates by the major parties for parliamentary election (Prashrit, 2063 BS).

Negligence and reluctance of the political parties on Dalit issues are clearly visible through the Dalit candidacy, both in the election of local bodies or that of the House of Representatives. Declaration of elimination of caste-based discrimination in the election manifesto, denial of adequate representation during the polling: this attitude was exposed by the political parties in all three parliamentary elections. In the election of House of Representatives in 2051 BS, total number of candidates was 1,449 of which the numbers of Dalit candidates from the parties were only 11. Similarly, in the election of 2056 BS, total number of candidacies was 1,604 but Dalit candidates from the parties was only 66 (Pariyar, 2063 BS). It means Dalit could not get any space in executive even after the revolution of 2046 BS. For this, the political parties also did not appear to show much interest and initiation. In spite of majority of Dalit in 15 constituencies out of 205 constituencies, political system and social environment did not favor them from getting elected (Aahuti, 2063 BS).

Dalit were deprived of the tickets by the leaders of the political parties on the basis of fallacious argument that non-Dalit would not cast votes to Dalit candidates resulting the defeat of the candidate. The same argument is put forth by those, who show meanness in giving Dalit candidacy, during the government formation and its expansion too. They do not find it necessary to have even the symbolic representation

of Dalit during the formation of the government. Nepali Congress, which formed the government after having the majority in the election of 2048 BS, showed stinginess to opt only one Dalit parliamentarian in the parliament even as the assistance minister (Aahuti, 2063 BS). In spite of having clear majority, Nepali Congress, the ruling party, didn't even attempt to implement the Dalit-friendly language even symbolically by appointing Dalit parliamentarian at least as a junior minister. Rather, Congress stopped nominating Dalit candidacies in the subsequent elections (Khanal, 2065 BS).

The successive governments of Communist Party of Nepal (Unified Marxist-Leninist) formed after the elections of 2051 BS and 2056 BS executed the same trend. "Communist Party of Nepal (Unified Marxist-Leninist) also proved the same conventional notion by not including any Dalit in its 15 member council of ministers in the first ever communist government of Nepal" (KC, 2063BS: 204). The political parties and their leaders were not required to have Dalit representation because of the absence of Dalit parliamentarian in the House of Representatives at that time. So, they neither had the fear to face the allegation of not making Dalit a minister nor any blame of not forming Dalit-friendly government. There was an easy escape from such fear because the Dalit leaders-workers were not provided with the ticket at first or even if they were, they were contested only in those constituencies where they would lose.

Perception of Dalit representation unnecessary in legislative and executive bodies was not merely minor negligence but also a hostile attitude towards the Dalit. Dalit were not given any space even in the jumbo cabinet formed after the election of 2056 BS. According to the constitutional provision of 2047 BS, non-Dalit member of National Assembly was included in the government but neither the parties nor the government paid attention to include a Dalit member of the same National Assembly (KC, 2063 BS). Thus, in the span of 12 year long multi-party parliamentarian democracy established after 2046 BS, even symbolic representation of Dalit was not taken into account.

Dalit community was completely ignored on account of party leadership, member of the parliament, minister and political appointments during the period of multi-party parliamentary democracy. Though, there was symbolic representation in National Assembly because of King's mercy and favor of the political parties. Eight Dalit were symbolically represented in National Assembly in the period of 2047 BS to 2058 BS. Among them, Man Bahadur Bishwokarma in 2050 BS and Rishi Babu Pariyar 2056 BS were nominated by the King. Dal Singh Kami in 2048 BS, Ratna Bahadur Bishwokarma in 2052 BS and Bijul Kumar Bishwokarma 2056 BS were made to represent by Nepali Congress in National Assembly. Similarly, Communist Party of Nepal (Unified Marxist-Leninist) made representation of Golchhe Sarki, in 2048 BS, Lal Bahadur Bishwokarma in 2052 BS and Ramprit Paswan in 2058 BS. Paswan was even elected as the vice-chairperson in National Assembly in 2058 BS. Only Ratna Bahadur Bishwokarma and Ramprit Paswan were the elected candidates in National Assembly and the rest were nominated by the political parties. Those after being nominated in the National Assembly by the favor of the king and political parties were obligated to be more accountable to those who nominated them than the Dalit community. Mainly, such nominations were to make the Dalit community happy rather than solving their problems. The motive behind was to generate 'false consciousness' of representation to weaken the movement. It was not possible that they would acquire the status to be able to represent 13% Dalit and address their issues because their representation was only symbolic (Pariyar, 2063 BS).

King or monarchy appears ahead in creating 'false consciousness' than the political parties and their hill *Bahun-Chhetri* leadership, who used to show devotion just for the sake towards the Dalit issues. The example is not only the 30 year old Panchayati system under the direct leadership of the king but also three years of royal regime. Monarchy which was antagonistic towards the people-elected parliament and government and trampled on Dalit issues by propelling Hinduisation tried to influence Dalit community by nominating a few Dalit leaders

and tried to seek the support from the Dalit community, may be for mere showing. On Ashwin 18, 2059 BS King Gyanendra included Dalit representation in different cabinets during the course of establishing royal regime after the dissolution of the parliament abolishing multi-party parliamentary democracy. Hari Shankar Pariyar was made assistance minister for physical planning and works in the government led by Sher Bahadur Deuba under the shelter of Gyanendra. Likewise, royal cabinet formed under the chairmanship of Gyanendra, one Dalit was hand-picked at first, while three Dalit were made the assistant ministers for second time.<sup>11</sup> An opportunity provided to three members from the Dalit community to participate in royal cabinet, which existed during the People's Movement in 2062/2063 BS, was the continuation of old trend of the monarchy. "Thus creation of illusion regarding the Dalit's participation on the basis of symbolic representation is an inherent practice since the Panchayat period" (Pariyar, 2063 BS: 11).

It means monarchy and monarchs appeared ahead for creating false consciousness and the creation of illusive representation among the Dalit community. In Panchayat and royal regime, there was not real representation of Dalit as the participation was made in the government by blessing a few Dalit leaders. But still, no eagerness is visible within the elected parties of the nation, government and representatives for the genuine representation. Nevertheless, the Armed Conflict or 'People's War' by Communist Party of Nepal (Maoists) since 2052 BS sharpened the apprehensions of indigenous/ nationalities and Dalit. Since then the state started some initiations to address those apprehensions but they were considered to be quite feeble (Khanal, 2065 BS: 20).

In 2052 BS, "among the 40 demands presented by the Communist Party of Nepal (Maoists), 11 demands were associated to social

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11 Prakash Chitrakar was appointed as the assistant minister for land reforms and management in the government formed at first whereas Pratapram Lohar, Golchhe Sarki and Harishankar Pariyar were made the assistant ministers in the government second time.



inclusion and the government put forward some steps unwillingly in response to the increasing People's War of the Maoists. Those formal steps put forward on the social inclusion lack determination and presented programs also do not solve the structural problems which marginalize and shift them into poverty” (Gurung, 2065 BS: 69). So, social inclusion with representation and state restructuring flared up as the major issues during the fragile decade of 2050 BS and were major theme of opinions and discussions initiated by various intellectuals and by armed conflict and of the organizations struggling for people.

In the same decade, the intellectual class, with the opinion that non-representation in state power and deprivation in the society are not the agonies of Dalit and indigenous nationalities only, also identified social exploitation and economic deprivation as the problems of Dalit. Highly intellectual personality Dr. Harka Gurung even recommended for ‘collegiate election’ as a remedy for the solution of political problem of nominal representation of Dalit (Gurung, 2003). With a view that Dalit are completely discarded in terms of political representation, he recommended, “The problem of deprivation in the state can be solved by changing the electoral method, by adopting any means of power sharing. The foremost condition can be the provision of proportional and representative electoral system for the indigenous nationalities and collegiate election among Dalit voters” (Gurung, 2007: 36).

During such discussion and demand, Maoists armed conflict in the decade of 2050 BS and People’s Movement and other movements of indigenous nationalities, Madheshi, women including Dalit in the decade of 2060 BS demanding their proportional inclusion are the causal factors behind the state’s acceptance of the inclusive democracy by Constitution in the Interim Constitution of Nepal, 2063 BS. After incorporation of inclusive democracy in principle in the Interim Constitution, there was substantial representation of the excluded communities in the Constituent Assembly Election.

## Part : 5

# Leap after the People's Movement of 2062/2063 BS

In fact, Dalit community had a movement continuously for the abolition of exclusion of Dalit representation in legislative and executive bodies. They plunged into the agitation for the termination of the situation 'The country is ours but not the state' and for proportional representation in the state (Bishwokarma, 2063 BS). Along with the People's Movement of 2062/2063 BS, indigenous nationalities, Dalit, women, Madheshi etc have raised the demand for their proportional representation in all the institutions of the state extensively. As an effect, the representation of Dalit was 18 [5.47%] in the Interim Legislature that was formed after the People's Movement. There were 12 Dalit representations from Communist Party of Nepal (Maoists) in the Interim Legislature, three from Communist Party of Nepal (Unified Marxist-Leninist), two from Jana Morcha and one from Congress. Among them, 12 were men and 6 were women parliamentarians. This representation in the Interim Legislature was significant because it was the first ever presence of Dalit women.

One representative from Dalit community, Man Bahadur Bishwokarma, was selected as the minister of state in the cabinet formed after the

reinstatement of democracy. He was representing Nepali Congress. Dalit participation was not sought in formation of the government except one state minister though there were 18 Dalit representations in the Interim Legislature. The representation of Dalit community increased in the Constituent Assembly after the election of Constituent Assembly in 28 Chaitra, 2064 BS.

**Table3: Representation of Caste/Ethnicity in the Highest State Bodies**

Caste/Ethnicity	House of Representatives 2048 BS	House of Representatives 2051 BS	House of Representatives 2056 BS	Interim Legislative Body 2063 BS	Constituent Assembly 2064BS
<i>Bahun-Chhetri</i>	117 (57.07)	131 (63.90)	126 (61.46)	166 (50.45)	200 (33.28)
Indigenous Ethnicity	46 (22.42)	36 (17.55)	38 (18.53)	74 (22.50)	159 (26.45)
Madheshi	41 (20)	38 (18.52)	41 (20)	71 (21.58)	192 <sup>a</sup> (31.95)
Dalit	1(0.47)	0	0	18(5.47)	50 <sup>b</sup> (8.32)
<b>Total</b>	<b>205 (100)</b>	<b>205 (100)</b>	<b>205 (100)</b>	<b>329 (100)</b>	<b>601 (100)</b>

a. Madheshi Caste including Madheshi Ethnicity

b. Hill Dalit and Madheshi Dalit

*(Source: Election Commission, Parliament Secretariat and Bhimprasad Bhurtel, 2065 BS)*

## **Dalit Representation in Constituent Assembly**

The struggles, People's War, People's Movements carried out after 2047 BS by indigenous nationalities, Madheshi, Dalit, women etc that are excluded oriented the state towards the state restructuring and inclusion. These communities who have been excluded intensified the

demand of full proportional representation in Constituent Assembly election. Though there could not be consensus on full proportional electoral system, the political parties agreed upon for the mixed electoral system. Except 26 nominees, 335 (58.26%) members of Constituent Assembly were elected through proportional system and 240 (41.74%) of them were through direct electoral system. At that time, 51 Dalit representatives were able to be in the Constituent Assembly by mixed electoral system of whom seven were through the direct electoral system and rest through the proportional representation. Among them, 26 were men and 24 were women on the basis of gender where as regionally 35 belonged to Hill and 15 were Madheshi Dalit (SAMATA foundation, 2068 BS).

Seven Dalit<sup>12</sup> along with two women were elected through the direct electoral system where as one was Madheshi Dalit among them. The Dalit woman was elected through direct electoral system for the first time in the political history of Nepal. Thus total 51 Dalit could reach the Constituent Assembly including 43 through the Proportional Representation. Their representation could not be proportional though there was significant improvement in their representation in comparison to the previous status. The increase in Dalit representation is due to the mixed electoral system adopted in the Constituent Assembly election and effects of People's Movement along with People's War. Yet there could not be representation of many communities within Dalit community in the Constituent Assembly. Of 26 castes within Dalit, only 9 castes could have had representation (Lawoti, 2011). *Gandharv*, *Badi* among the Hill Dalit and *Newar* Dalit could not have representation and similarly, in Terai, Dalit like *Chidimar*, *Dom*,

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12 Five men and two women Dalit candidates were elected in the direct electoral system in Constituent Assembly Election. Five men namely, Khadgabahadur Bishwokarma from Kalikot, Tilak Pariyar from Banke, Mahendra Paswan from Siraha, Tej Mijhar from Kavre and Gopi Achhami (Sarki) from Morang were elected where as two women, Sita Boudel from Nawalparasi and Durga Bishwokarma from Kaski were elected. All the members of Constituent Assembly thus elected were the candidates of then Communist Party of Nepal (Maoists).

*Halkhor, Khatwe and Mushhar* could also not have representation.

Table 4: Situation of Representation of various groups in the Constituent Assembly\*

Groups	First-Past-The-Post Electoral System		Proportional System		Total		Proportional Quota	
	Identity	Percentage	Identity	Percentage	Identity	Percentage	Identity	Percentage
Women	30	12.5	161	48.1	191	33.2	191	50.0
Madheshi	74	30.8	121	36.1	195	33.1	195	31.2
Dalit	7	2.9	44	13.1	51	8.9	51	13.0
Indigenous nationalities	77	32.1	118	35.2	195	33.9	195	27.8
Backward class	12	5.0	10	3.0	22	3.8	22	4.0
<b>Total</b>	<b>100</b>	<b>41.7</b>	<b>94</b>	<b>28.1</b>	<b>194</b>	<b>33.4</b>	<b>194</b>	<b>30.2</b>

\* The above statistical analysis doesn't include 26 nominees.

*(Source: Kare Vollan, 2011 AD)*

The result of the Constituent Assembly election clearly reflected the effect of the adoption of electoral system in the representation. The fact cannot be ignored at all that the Constituent Assembly has been exemplarily inclusive because of mandatory provision of gender and caste quota and due to more credence to proportional representation in the election. The data clearly reveals that there was no remarkable change in Dalit and women representation in the election for 240 seats under the first-past-the-post electoral system. Out of 29 women and seven Dalit of 240 seats, 23 women and all Dalit representatives were contested from the Maoists whereas the parties like Nepali Congress and Communist Party of Nepal (Unified Marxist-Leninist) did not even provide enthusiastic representation from those communities (Khanal, 2065 BS).

In fact, representation from Dalit communities could not be made by most of the parties that participated in the Constituent Assembly election. Dalit representations were made by nine parties only out of 54 parties, which participated in the election. Politically, the maximum representation of Dalit was only from Unified Communist Party of Nepal (Maoists). Among 51 Dalit Constituent Assembly members, 24 or 46.05% were from the Unified Communist Party of Nepal (Maoists) alone till the dissolution of the Constituent Assembly. It means Maoists Movement had provided the indigenous nationalities and Dalit a marvelous opportunity to participate in the political process since People's War (Gurung, 2003). However, such enthusiasm which was highly observable during the process of making the member of the Constituent Assembly was not observed in the appointment of the cabinet members during the government formation.

No such indication was observed even in the government of Unified Communist Party of Nepal (Maoists) under the leadership of its chairman Pushpakamal Dahal 'Prachand' who was integrated with the legacy of a decade-long People's War. Not a single Dalit Constituent

Assembly member was appointed as a minister from Unified Communist Party of Nepal (Maoists) in the cabinet led by Prachanda from the Dalit community, which had 51 members after the election of Constituent Assembly. Later a Dalit leader Mahendra Paswan was appointed as a cabinet minister after six months, following the wide protest of the Dalit community, who were expecting for the participation in the government formed after the People's Movement and election of Constituent Assembly. The cabinet of Dr Baburam Bhattarai which was instituted with the same legacy of Maoists movement also appointed only one Dalit, who was also made only a state minister and not a cabinet minister. This situation of Dalit in the

cabinet of Unified Communist Party of Nepal (Maoists) which claimed to be political pathfinder on Dalit agenda, is ironic.

Table 5: **Situation of Dalit Representation According to the Parties in the Constituent Assembly**

S. No.	Political parties	Gender			Region			Total
		Male	Female		Hill	Madhesh		
1.	Unified Communist Party of Nepal (Maoists)	15	9	19	5		24 <sup>a</sup> (47.05)	
2.	Nepali Congress	4	5	7	2		9 (17.65)	
3.	Communist Party of Nepal(UML)	6	5	7	4		11 (21.60)	
4.	Madheshi Janadhikar Forum	0	2	0	2		2 <sup>b</sup> (3.95)	
5.	Tarai-Madhesh Loktantrik Party	0	1	0	1		1 <sup>c</sup> (1.95)	
6.	Dalit Janajati Party	1	0	0	1		1(1.95)	
7.	Rastriya Prajatantra Party	0	1	0	1		1(1.95)	
8.	Communist Party of Nepal (Marxist-Leninist)	0	1	1	0		1 <sup>d</sup> (1.95)	
9.	Rastriya Jana-Morcha	1	0	1	0		1(1.95)	
	<b>Total</b>	<b>27</b>	<b>24</b>	<b>35</b>	<b>16</b>		<b>51(100)</b>	

- One Dalit represented from the then Jana Morcha Nepal in the Constituent Assembly. The number of Constituent Assembly members representing from the Dalit community from Unified Communist Party of Nepal, formed after the unification of that party and then Communist Party of Nepal (Maoists), reached to 24.
- 2 Dalit members of the Constituent Assembly had been representing Madheshi Janadhikar forum [Loktantrik] in the Constituent Assembly after the split of Madheshi Janadhikar forum.
- One Dalit member of Constituent Assembly had been representing Tarai-Madhesh Loktantrik party [Nepal] after the split of Tarai-Madhesh Loktantrik Party.
- One Dalit Constituent Assembly member had been representing Communist Party of Nepal [Marxist-Leninist- Samajwadi] after the split of



Communist Party of Nepal (Marxist –Leninist).

*(Source: Parliament Secretariat, 2069BS)*

## Part: 6

# Reasons of Dalit Non-Representation

In Nepal, Dalit representation appears quite nominal in the people elected bodies since the general election in 2015 BS to the Constituent Assembly election 2064 BS. The representation of indigenous nationalities, Madheshi, and women, who was being excluded by the state since the creation of modern Nepal, substantially increased in the legislature after the election of Constituent Assembly. Indigenous nationalities, 38% of the total population, had representation of 35% about 32% population of Madheshi scored 33.1% representation whereas women captured 33.2% of representation. But the most excluded and having the population of 13% of the nation's total population, the Dalit community had only 8.49% representation.

Dalit representation was almost nil in the legislative bodies of the state like the House of Representatives before the election of Constituent Assembly. Economical and cultural aspects were underlying factors other than the political behind the Dalit not being elected in any of the previous elections for the House of Representatives. Dalit communities do have specifically cultural, economical and political problems. It

is a bitter truth that the entanglement of all these problems further deepens and expands the problem which is also the foundation of Dalit non-representation. Socio-cultural problems like untouchability-discrimination not only stratified the Dalit as second-class citizens but also contracted them in overall spheres including economic-political, and has been obstructing in the enhancement of socio-political status. They are compelled to face the problems like untouchability-discrimination, almost zero presence in political-administrative bodies, unemployment, which are imposed upon them because of the economic problems like landlessness and feudal labor relation. And, lack of guarantee of proportional and justifiable representation of Dalit in political-administrative mechanism responsible for the formulation and implementation of policy of the state is the problem of political-administrative spheres. Because, there is no political system to let Dalit have the access in policy-making level in political-administration in the Hindu feudalistic Nepalese society. So, these three problems should be addressed in a package at one go to address the Dalit non-representation. “Presenting untouchability-discrimination as the only problems and ignoring the problems like the landlessness and unemployment and of Dalit representation in political-administrative sectors would be betrayal to the desire of emancipation of Dalit community”(Aahuti, 2063 BS: 199-200).

The exclusionary policy that has been implemented by Nepali state is the only prime cause behind monopoly of Hill ‘High Caste’ elites in the politics and of non-representation of outsiders like oppressed communities including Dalit. Exclusionary state policy against the oppressed communities including Dalit has marginalized them economically and culturally and economically and culturally marginalized poor people would further be lagged behind in education and politics which would continue the vicious circle of making them poorer not only from view point of asset but also from state, power and capacity.

The influence of such exclusionary social structure came into sight

not only in the state but also in the policy and decisions of the political parties. Because of non-inclusionary structure of both the state and the political parties, and rejection of policy of Dalit inclusion, the Dalit representation has not become possible in the previous elections. So, Dalit representation should be made fair not only in the state organs but also in the political parties, which are the main sources for the representatives in state mechanism. There is the paucity in the fair representation of class, caste/ethnicity, gender, and region in the political parties which are under the leadership of mainly *Bahun*, *Chhetri*, and *Newar* and to some extent of Madheshi and ethnic elite class. So, the structure of the political parties and the inter-relation and inter-struggle of the policies which emerge as an impact of the structure of the political parties are very essential to be viewed from the perspective of Dalit.

In Nepal, neither liberal democratic nor leftist communist party analyzed the society as the society based on of Hindu feudalistic system. Because of which Hindu feudalistic hierarchical structure is clearly visible fundamentally in the party leadership. This becomes explicitly clear by the nominal representation of Dalit, who are rural proletariat, in the leadership of leftist communist party whose declared objective is to lead the proletariat class. The dominant the caste and class in the policy making strata, favorable the policy would be for them... On the basis of existing scenario of the structure of those parties' leadership for last half a century, they cannot deny the responsibility of implementation of the concept of reservation-right (Aahuti, 2063 BS:210).

In fact, it would not be feasible to implement reservation-right in the political parties/organizations as in the state institutions and various sectors of the society because those are founded on guidance of fixed opinion. But, with due need of transformation of Hindu feudalistic structure, the parties/ organizations should adopt the transparent policy which should be directed for fair representation of Dalit in the policy-making level of political parties/organizations too (Aahuti, 2063 BS).

In this regard, nominal representation of Dalit in the central leadership of the political parties is also another vital reason behind the disproportionate Dalit representation in the elected bodies. Determining the electoral system and participation in the election, ascertaining the candidates and electing them by the people are the tasks of the political parties only. For the fair representation of excluded groups including Dalit in all spheres, the perspective and structure of the leadership are imperative. There must be remarkable representation of Dalit in the policy making level of the political party to direct their policy towards the mandatory proportional representation of Dalit. But, the Dalit representation is very low in decision making levels of the major political parties of Nepal (Bhurtel, 2065 BS). So, the issues of mandatory proportional representation and additional rights with compensation to Dalit have not been incorporated in the policy of major political parties yet.

The positional status within the political party also does have an important implication for winning the election. The political parties also provide the tickets and play decisive role in electing them according to the status. The incumbent leadership in the higher strata of the party are likely to get elected normally even through the direct system easily or else they represent through proportionality in the prevailing situation. The status of the candidate also plays differential role not only while being nominated for the election but also in mobilization of the party workers to get them elected. But, even though there were a few Dalit representatives in the central committee in the political parties yet Dalit are very rare in higher positions. There were almost no Dalit representatives in the central committee except a few before 2064 BS. Thus, not only due to absence in the central leadership but because of low status also the Dalit representation has remained feeble. Even those Dalit pioneers within and outside the party who have been agitating in the favor of full proportional election could not raise the voice strongly for the proportional candidacy for Dalit. Because of these factors, Dalit

representation was less in the Constituent Assembly and the same situation may prevail again.

**Table 6: Situation of Caste/Ethnic Groups in the Central Committee of the Political Parties**

Caste/Ethnic Groups	Unified Communist Party of Nepal (Maoists)	Nepali Congress	Communist Party of Nepal (Unified Marxist-Leninist)	Madheshi Janadhikar Forum	Tarai-Madhesh Loktanti-rik Party
Hill <i>Bahun-Chhetri</i>	82(59.42)	40(62.50)	68(58.62)	2(5.71)	0
Indigenous nationalities	39(28.26)	13(20.31)	24(20.68)	0 <sup>a</sup>	0 <sup>b</sup>
Madheshi High Caste-ethnic groups	10(7.24)	6(9.37)	16(13.79)	32(91.42)	52(94.54)
Dalit	7 (5.07)	5(7.82)	8 (6.89) <sup>c</sup>	1 (2.85)	3(5.45)
<b>Total</b>	<b>138(100)</b>	<b>64(100)</b>	<b>116(100)</b>	<b>35(100)</b>	<b>55(100)</b>

a. There will be alteration in the statistics if Madheshi nationalities are kept under both lists of Madhesh and nationalities. But, here, Madheshi and Madheshi nationalities are kept in same list to analyze from the perspective of Dalit.

b. Ibid.

c. Among 8 Dalit, 4 were central members and 4 were alternative central members.

*(Source: SAMATA foundation, 2069 BS/ 2012 AD)*

## **Electoral System: Problem of Policy or Attitude?**

Electoral system is an important aspect in the institution of people's representatives. Dalit did not have much discourse with regard to the electoral system to be adopted for their representation in the previous elections before the Constituent Assembly election. In the case of the Constituent Assembly election, Dalit movement protested demanding full proportional electoral system for proportional representation in proportion to population<sup>13</sup>. Indigenous nationalities also propelled the issue of full proportional electoral system as a movement. But mixed electoral system was adopted as there could not be political consensus on full proportional electoral system.

According to the provision made in the Constituent Assembly Election that was conducted on 2064 BS, of the 601 members, members were to be elected by the first-past-the-post system from 240 constituencies, 335 were to be nominated through proportional representation from indigenous nationalities, women, Dalit, Madheshi, Muslim, handicapped, geographically backward regions and others based on gained votes.

And the provision was made to have 26 nominees who have played vital role in the national life and are the experts. But proportional representation of Dalit community was not assured through such direct election in mixed electoral system. Had there been a provision in the Election Act that the political parties must nominate candidates proportionately also in the first-past-the-post election, the Dalit

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<sup>13</sup> Nepal Dalit Mukti Morcha emphasized for its demand for the proportional representation of all class, ethnicity, nationalities, region, Madheshi, woman, Dalit including religious minorities by releasing the press statement on 27 Ashwin 2067 BS by adopting proportional electoral system for Constituent Assembly election. Similarly, Dalit Nagarik movement had also been advocating in the favor of the proportional electoral system.

representation could have been bigger. But even nominating from Dalit was not mandatory in direct election. So, the number of Dalit elected from the constituencies restricted to only seven. This is only 2.91% (around 3%) of the 240 seats through direct election. 43<sup>14</sup> Dalit member had representation in the Constituent Assembly through proportional representation. This was 12.84% representation of the total 335 members. Tragically, out of 26 members of the Constituent Assembly nominated by the government, not a single member was Dalit.

There was lacking of not only the policy but also the attitude in the major political parties for fielding Dalit in the election of the Constituent Assembly through direct electoral system. There was deep-rooted perception among the political parties even in the election of Constituent Assembly that Dalit cannot be victorious in the election. Political parties could not believe that Dalit can get elected through the direct election. And the parties did not have any obligation of Dalit candidacy as there was no mandatory provision for the proportional representation of Dalit community. So, even major political parties became niggardly from fielding Dalit candidates as well as they disregarded the constitutionally accepted principle of proportional inclusion.

Among the 240 candidates for the direct election by Nepali Congress, only one was Dalit candidate and he too belonged to Hill Dalit. Communist Party of Nepal (Unified Marxist-Leninist) also fielded only three Madheshi Dalit among 239 candidates. Communist party of Nepal (Maoists) gave comparatively more candidacies than Nepali Congress and Communist party of Nepal (Unified Marxist-Leninist). Among 240 candidates by the Communist Party of Nepal (Maoists), 14

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14 The representation of Dalit community through the proportionality was limited to 43 only initially. Dalit representation increased to 44 through proportional after incorporating Ram Kumar Paswan and Farnud Nadaf by the Communist Party of Nepal in place of Constituent Assembly member Matrika Prasad Yadav and Jagatprasad Yadav, who abandoned Unified communist Party of Nepal (Maoists).

were males and 4 were females, altogether 18 were Dalit candidates. Among them, 8 were from hill and 10 were Madheshi Dalit.

In fact, Madheshi Dalit occupies 41.44 % of total Dalit population in Nepal. But Madheshi Janadhikar Forum and Tarai-Madhesh Loktantrik Party, whose politics was Madhesh-centric, didn't file even a single Dalit candidacy for direct election. Madheshi parties took maximum advantage of the provision in which they did not have to follow inclusion principle while submitting the list of its candidates to Election Commission below 30% candidacy of total seats. The Election Act, 2007, which allowed up to 10% flexibility while submitting the candidacies from indigenous nationalities, Dalit, women and Madheshi in proportion to population, also helped many parties to give non-inclusive candidacy.

Among 54 parties that participated in the Constituent Assembly, 25 parties had given Dalit candidacies. Among those Dalit, only seven candidates who were from the Communist Party of Nepal (Maoists), succeeded through direct election. This result reflects that most of the other parties gave Dalit candidacies only in those constituencies where they might not get elected.

Most of the political parties with such attitude try to impress upon the Dalit community by showing themselves as Dalit-friendly and manipulate them as a vote-bank. In this candidacy-drama, they do not have any other specific motive than portraying that 'Dalit candidates are also fielded' and winning the votes of the Dalit community. So, in such a drama, mischievous attitude of the political parties of restriction of contesting Dalit candidates even from those constituencies with the possibility to get elected is playing role. In addition, absence of Dalit representation in the stratum to influence the leadership of



the political parties is also causing the poor Dalit representation in direct election.

**Table 7: Situation of Dalit Candidacy in Direct Electoral System**

S. No.	Political Party	Total no. of Candidates	Situation of Dalit Candidacy					Total
			Gender		Region			
			Male	Female	Hill	Madheshi		
1	Unified Communist Party of Nepal (Maoists)	240	14	4	8	10	18	
2	Nepali Congress	240	1	0	1	0	1	
3	Communist Party of Nepal (Unified Marxist-Leninist)	239	3	0	0	3	3	
4	Madheshi Janadhikar Forum	103	0	0	0	0	0	
5	Tarai Madhesh Loktantrik Party	94	1	0	0	1	1	
6	Jana Morcha Nepal	203	20	5	21	4	25	
7	Rastriya Prajatantra Party	232	1	2	2	1	3	
8	Communist Party of Nepal (Marxist-Leninist)	116	7	0	3	4	7	
9	Communist Party of Nepal (United)	55	3	1	0	4	4	
10	Nepal Sadvabana Party	87	0	0	0	0	0	
11	Nepal Sadvabana Party [Aanandidevi]	104	3	1	2	2	4	

*(Source: SAMATA foundation, 2069 BS)*

The failure of Dalit community from getting elected is because of erroneous socio-cultural belief about leadership also. Except a progressive fraction of non-Dalit community, others still have the problem in accepting the Dalit candidate as leader in the Nepalese society. Reluctance in easily accepting the Dalit leadership because of untouchability-discrimination is having its impact in the election too. In election, it is obvious for a candidate to spend a lot for publicity-campaigning of the election along with a wide mobilization of the party cadres. Because of low economic status, the candidates are not in position to manage the expenditure accordingly which in turn would affect the election result. Because of these cumulative reasons, it is found that Dalit candidates could not get elected directly.

## Part: 7

# Debate on Electoral System and Dalit

Proportional representation of ethnic groups, class, region, gender and oppressed communities in all the organs of the state is accepted by principle. But, Dalit representation is determined by whether the electoral system at least addresses the rights of proportional representation of the Dalit community in the institutions of people's representatives along with other organs of the state. The Dalit representation gets ensured only if there is political consensus on the model of electoral system mandated to the justifiable representation of the oppressed groups who are being excluded. Moreover, Dalit community is in need of the electoral system that establishes the rights of additional representation too as a compensation for historical discrimination they underwent. Dalit movement has been raising the voice for the electoral system of Nepal, heading towards the state restructuring that would be able to address the dual problems: The failure of the previous general elections conducted so far to create conducive environment to ensure the proportional representation of Dalit and the inability of non-Dalit to accommodate the Dalit candidate easily<sup>15</sup>. Dalit movement demanded the rights to additional representation of

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15 Dalit leader Aahuti expressed this view in a program organized by SAMATA foundation in Kathmandu in 6 Magh 2068 BS.

Dalit in all organs of the nation-state as compensation for the historic discrimination of Dalit because equal rights among the non-equals cannot establish justice or egalitarianism.<sup>16</sup> If such demands are to be addressed, they should be ensured within the electoral system.

For in-depth consultation on this regard, the election manifestos of four major four political parties for election of Constituent Assembly and discussion regarding separate electorate for Dalit in the Constituent Assembly is presented below:

**Unified Communist Party of Nepal (Maoists):** Parties representing in the dissolved Constituent Assembly have different versions on the electoral system. The largest party in the Constituent Assembly, Unified Communist Party of Nepal (Maoists) is in favor of multi-member direct proportional electoral system. Based on the analysis of Unified Communist Party of Nepal (Maoists), direct election ensures the proportional representation of indigenous nationalities, Madheshi, Dalit etc. which would be proven to be the most appropriate even for Dalit too (Gurung, 2065 BS). Nepal Rastriya Dalit Mukti Morcha [Dalit Liberation Front of Nepal] affiliated to Unified Communist party of Nepal (Maoists) is in favor of multi-member direct proportional electoral system. Then Co-in charge of Morcha and Dalit leader Aahuti opined that ‘Block Voting system’ in which Dalit get elected equivalent to the percentage allocated for them would be appropriate for Dalit. In this system, Dalit get elected directly by the people and non-Dalit communities are also required to cast the vote for Dalit candidate and elect them. Thus, considering the strategy of Dalit emancipation, this electoral system is appropriate to enhance the acceptance level of Dalit leadership and supportive to assimilation with other castes as argued by him.<sup>17</sup> Unified Communist Party of Nepal (Maoists), Communist

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16 In 20-Point Agreement among Political Dalit Association/Organization on 2066 Ashwin 6, insuring of 23% representation was demanded for the Dalit community whereas Dalit Constituent Assembly members Manch demanded additional 7% in proportionality, 20% in total for the time being.

17 As expressed in the program organized by SAMATA foundation on Electoral System and Dalit Representation on 2068 Magh 6.

Party of Nepal-Maoists and Dalit Fronts affiliated to them and Dalit intellectual/advocate Yam Bahadur Kisan too have been advocating this electoral system.

**Nepali Congress:** In the manifesto of Constituent Assembly election, Nepali Congress mentioned about making the provision of proportional representation of indigenous nationalities, Madheshi, Dalit, women and various groups proportionate to their population. Nepali Congress and Communist Party of Nepal (Unified Marxist-Leninist) were in favor of mixed-member proportional electoral system. Shambhu Hajara Paswan, Constituent Assembly member from Nepali Congress was also with the view that reserving the constituencies for Dalit and ethnic groups etc with their majority would be an effective provision.<sup>18</sup> He opined that Dalit participation in proportion to its population does not appear to get ensured by any of the electoral systems proposed. So, we have been demanding for ensuring the participation in the form of compensation. Expressing the view on behalf of his party, he opined that the constituencies should be determined by knowing how many seats should be allocated to ascertain the participation of Dalit, women, Madheshi, nationalities and minorities in proportion to their population.

**Communist Party of Nepal (Unified Marxist-Leninist):** In the manifesto of Constituent Assembly Election, Communist Party of Nepal (Unified Marxist-Leninist) mentioned about the representation of diversity in central parliament, provincial legislature and local bodies. Prior in support of proportional inclusive provision stated by various thematic committees, Communist Party of Nepal (Unified Marxist-Leninist) stood with Nepali Congress later in support of mixed member proportional electoral system. Communist Party of Nepal (Unified Marxist-Leninist), while agreeing for mixed electoral system with 60% for proportional representation and 40% for direct is in a state of changing the stand if there is consensus among the parties.

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18 As expressed in the program organized by SAMATA foundation on Electoral System and Dalit Representation on 2068 Magh 6.

According to Politburo Member of Communist Party of Nepal (Unified Marxist-Leninist) and Dalit leader Chhavi Lal Bishwokarma, the party has supported the process of declaring the reserved constituency even under direct electoral system. By this process, Dalit representation can be ensured not only through the proportional electoral system but also through direct election. According to Bishwokarma, Dalit candidate would be elected as a winner by Dalit and non-Dalit electors in the constituency with Dalit majority. The constituency can be rotated and shifted in cyclic system consecutively in all the constituencies with majority of Dalit population. However, Dalit leaders of all the political parties submitted memorandum in the office of Prime-Minister, to the chairpersons of all the political parties and speaker of the Constituent Assembly demanding reserved constituencies. He opined that the same procedure has to be implemented in the election of the Constituent Assembly and ensure constitutionally in the new Constitution now<sup>19</sup>.

**Madheshi Janadhikar Forum (Republican):** Madheshi Janadhikar Forum (Republican) advocated for full proportional electoral system in their manifesto of the Constituent Assembly election. Advocating for inclusive and proportional representation, Madheshi Janadhikar Forum (Republican), claims that the credit for additional seats for proportionality in the electoral system goes to Madhesh movement. To claim a hike in proportional seats from the limit of previous provision of 20% to 30% in the Constituent Assembly election as a main achievement of Madhesh movement is paradoxical in itself. However, Forum Republican had demanded for social justice and Dalit reservation with compensation in the stagnant situation when most of the Madheshi parties did not utter anything on Dalit rights. Similarly, Tarai-Madhesh Loktantrik party recommended the Constituent Assembly about founding the House of Representatives/ Lower House (*Loksabha*) on the basis of mixed compensatory system

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19 Conversation with Dalit Leader Chhavi Lal Bishwokarma about the Electoral System on 7 Ashwin 2069.

for the representation of indigenous nationalities, Dalit, Madheshi, Muslim and minorities.

Whatever be the previous proposals or stances, main parties of the Constituent Assembly Unified Communist Party of Nepal (Maoists), Nepali Congress, Communist Party of Nepal (Unified Marxist-Leninist) and Joint Democratic Madheshi Front had consensus on mixed electoral system on 2 Jeshtha 2069 BS. According to the consensus, 311 members for House of Representatives and 65 members for National Assembly were to be elected. They had consensus for 171 (54.98%) through direct and 140 (45.01%) through proportionate for House of Representative (Dhungel, 2069 BS). But this system was against the demand for the proportional representation by the Dalit movement. This system also doesn't ascertain the proportional representation of Dalit in National Assembly, House of Representative of provinces and local bodies.

However, immediately after the agreement, the movement by Indigenous Nationalities Joint Struggle Committee for federalism with single ethnic identity put forward the demand for full proportional inclusive electoral system and proportional inclusive representation of ethnic, community and gender in proportion to population in every organ and level of state. On 2069 Jeshtha 8, there was consensus between the Government and Indigenous Nationalities Joint Struggle Committee on the implementation of proportional and inclusive electoral system allocating minimum 60% for proportionate and 40% for direct and insurance of proportional inclusive representation of ethnic, community and gender in proportion to population in every organ and level of state in new Constitution.<sup>20</sup> What would be the situation and status of many such agreements? Perplexity persists. If the pressure of non-governmental agencies regarding access and participation of excluded

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<sup>20</sup> The provision of allocation of 60% through proportionate and 40% through direct by implementation of proportional and inclusive electoral system has been illustrated in Clause no.2 of the agreement paper between the Dialogue team of Nepal Government and Indigenous Nationalities Joint Struggle Committee on Jeshtha 2069.

groups including the model of electoral system becomes feeble, that would enhance the probability of implementation of the 'agreement' of the political parties of decision making level.

## **Demand of Dalit Movement and Electoral System**

There is no single unanimity perspective regarding which electoral system would be appropriate for Dalit even in Dalit movement. In general, Dalit Front (sister organizations) of the political parties, parties and fronts have divergent views. Yet, there is solidarity in Dalit movement in the demand of guaranteeing additional representation of Dalit community as compensation for the historic discrimination in the proportional electoral system. Specifically, three kinds of opinions are being discussed in the context of Dalit and electoral system in Dalit movement. First opinion is - the demand of multi-member proportional direct electoral system, which has been raised by Unified Communist Party of Nepal (Maoists) and its Dalit front. This opinion is already explained above in detail.

Second one is to search Dalit representative within mixed-member proportional electoral system. Especially this concept has been presented as an alternative if there could not be political consensus on multi-member direct electoral system. As per this concept, in direct election under mixed electoral system, there should be constitutional provision to guarantee at least proportional candidacy for Dalit and the provision should be made not to reduce the seats in proportion to population. Thus allocation of at least 60% in proportional representation and 40% in direct in mixed system is expressed upon. If such arrangement could be made, Dalit additional representation can be made possible through proportional representation as compensation even if the candidate could not get elected through the Proportional Representation and through the direct system.<sup>21</sup> But whatsoever be

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21 Dalit leader Aahuti including Dalit Campaigner Yam Bahadur Kisan have been expressing the view that Dalit representation can be ensured like this also.



the system, ensuring of proportional representation being the main agenda, the Dalit movement is simultaneously with the opinion to move ahead by reserving the constituencies for Dalit in direct election. Dalit leader Padma Lal Bishwokarma opined that such constituencies can be rotated in every election and constituency can be reserved for Dalit so that only Dalit candidate would get elected no matter if he wins or loses<sup>22</sup>.

Third opinion expressed by few individuals and organizations in Dalit movement are in favor of full proportional electoral system. Dalit movement had been advocating for full proportional electoral system before the Constituent Assembly election. Some Dalit Rights activists are still supporting this electoral system. They protested against mixed electoral system with an allegation that it protects the representatives of capitalists and seats of the bourgeoisie by using four ways of diplomacy - conciliation, wealth punishment and dissension [*Sama, Dama, Danda, and Bheda*] with incorporation of other groups and communities. Dalit Front affiliated to Unified Communist Party of Nepal (Maoists) and other sister organizations of other parties have also been raising the issue of full proportional electoral system, with an opinion that only this electoral system can address the oppression that is imposed on extant class, ethnicity, nationalities, region, Madheshi, women and other people including Dalit in a proper way in the nation where the state is run on the foundation of one religion, one language, one culture and one Khas High Caste superiority.<sup>23</sup>

Now, Dalit Front affiliated to Unified Communist Party of Nepal (Maoists) has been advocating for multi-member proportional electoral system. Leader Aahuti expresses that Dalit problems cannot

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22 Based on the views expressed by Dalit leader Padma Lal Bishwokarma in the program on Electoral System and Dalit Representation organized by SAMATA foundation in Kathmandu on 6 Magh 2068 BS.

23 The coordinator of Dalit Mukti Morcha, Tilak Pariyar mentioned about this in concept paper presented in the interaction entitled '*Ganatantra ra Samanupatikatako Sandarvama Dalit Adhikarko Sawal*' on 11 Mangsir 2064.

be resolved even if 13% or 16% of Dalit sent on the basis of the votes obtained by the political parties in full proportional system. According to Aahuti, by adopting this system, non-Dalit common citizen won't accept the Dalit leadership even if that is accepted by the political parties. So, the adoption of the electoral system should be as such which solves both the issues of Dalit representation as well as acceptance of Dalit leader by non-Dalit people. According to him, multi-member proportional direct electoral system is more crucial than full proportional representation.

Many intellectuals are expressing that there should be guarantee of proportional and additional representation with compensation in the result irrespective of model of electoral systems. Arguing against the requirement of reserved constituencies on adoption of the proportional electoral system with ethnic and gender quota, political analyst Professor Krishna Khanal has been advocating for single transferable vote system under proportional representation system and regional list even in place of national list. His argument stated that single transferable vote system would not be practical in the country with more illiterate electors and national list system would not let common elector feel intimate with candidate and representative. So, advocating for regional list system for the intimacy between the elector and candidate, Professor Khanal suggested that in the regional list system under multi-member constituencies, elected representatives are declared in every state based on the proportion of the population. To get elected, the formula of vote division for proportional representation used in Constituent Assembly election can also be used or as an alternative, the provision in which the candidate has to receive the vote equivalent to the amount that comes by the division of casted approved votes by the number of representative seats and one is added to the quotient can be applied (Khanal, 2065 BS).

Similarly, Acting Chief Commissioner of National Election Commission Nilkanth Upreti also supports for multi-member proportional electoral system based on constituency list for the proportional representation

of all the excluded community including Dalit community. According to him, 15 to 25 multi-member constituencies can be made in this system. Closed list of the candidates is determined on the basis of the percentage of population in that constituency. The gained votes by the party in that constituency are converted into the seats on the basis of percentage and those seats are divided proportionally. This provision would give the glimpse of geographical and also as regional direct election and ensures the proportional representation too. This system is appropriate for Dalit.<sup>24</sup>

Thus, in spite of discussion on various models of electoral system, the Dalit agitators are unanimous on one aspect. They are unanimous on the demand that there should be extra 10% in addition to proportional representation as a compensation for the historic discrimination on Dalit community. The demand of adoption of electoral system which ensures proportionality with additional representation in all political structures of central (House of Representatives and National Assembly), province levels and local levels is put forth as a movement by the common front of Dalit Political Organizations: Joint Dalit Political Struggle Committee and by Civil Society<sup>25</sup>.

In the draft prepared by Commission on State Restructuring and Distribution of State Power of the dissolved Constituent Assembly, it is stated that there would be additional 3% and 5% Dalit representation in federal and province respectively along with proportionality. Similarly, the draft referred by Commission on State Restructuring mentions about the insuring of additional rights i.e. 5% for federal and 7% for provinces. It is necessary to specify how the electoral system can ensure Dalit representation in the autonomous regions, protected

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24 Based on the expression in the program organized by SAMATA foundation on the topic of Electoral System and Dalit representation on 6 Magh 2068.

25 Joint Political Dalit Struggle Committee started their agitation, with 10-point demands, consecutively on 2 Jeshtha, 2069 BS. The demand of ensuring additional 10% representation for Dalit community through proportionality was also included in the press statement issued in the process of revealing the programs of the agitation to the public.

areas and special zones in the states proposed by the committee and in the National Assembly, centre in central parliament.

## **Representation in National Assembly**

Committee on Determination of Structure of Legislative Body of Constituent Assembly has proposed for 51- member National Assembly in its draft. In the draft, 38 members from each of the proposed provinces in equal number, and remaining 13 members from communities comprising of minorities, women, ethnic, linguistic etc. who could not represent in House of Representatives in the federal parliament and from renowned personalities in national life and experts. But it is not clear how the Dalit representation can be proportional among the representatives sent in equal number from every state to National Assembly or the proportion of Dalit representation among 13 nominees.

Thus among those members who represent National Assembly, the Dalit will not be representing it proportionally. Neither will they be among the 13 national personalities. So it becomes obvious that Dalit representation would not be proportional in National Assembly though this process. Four major large political parties of Constituent Assembly had consented for 11 provinces on 2 Jeshtha 2069 (Dhungle, 2069 BS). In the same agreement, it was mentioned that there would be 5/5 members of Dalit population from 11 provinces altogether 55 in 65-member National Assembly and 10 various renowned personalities to be nominated on referral by the cabinet. But with dissolution of the Constituent Assembly, there is question mark on the liability of that agreement too. But, still, this agreement can also be a ground for discussion during the process of new constitution drafting.

In fact, even political consensus made on 2 Jeshtha 2069 BS could also not ensure proportional representation of Dalit in National Assembly. Because, as per that agreement, it is not sure that Dalit would be among five representatives from the state to National Assembly. And it is

also not sure that Dalit would be among the nominated members. So, there is less chance of proportional representation of Dalit in National Assembly. So, the effort must be done to make the arrangement in the constitution to ensure the mandatory proportional representation of Dalit constitutionally in the National Assembly.

Dalit movement has two concepts about the representation in National Assembly. The probability for Dalit representation in National Assembly is less irrespective of the model of electoral system, may it be multi-member proportional direct electoral system or mixed member proportional electoral system. So, Dalit Rights activist and civil society leader Ganesh BK 'Deulyal' and Political Analyst Shyam Shrestha opine that non-territorial federal province would be appropriate to send Dalit representative to the National Assembly. Leader Aahuti, with contradictory view about non-territorial structure, analyzed that Dalit can have access to national assembly only if the electoral system of the National Assembly is adopted that ensures mandatory provision which confirms certain percentage of Dalit in the National Assembly. He opined that if Dalit get elected for National Assembly through the units voted by Dalit only, then non-Dalit would not be obligatory to take decision on Dalit issues and they may avoid Dalit problems, so system should be developed to make non-Dalit also accountable to Dalit issues. So, he is of the view that such structure needs to be created in which Dalit reach National Assembly by getting elected rather than through non-territorial system (Aahuti, 2068 BS).

Dalit Rights Activist 'Deulyal' and Political Analyst Shrestha believe that non-territorial structure is the best alternative to make Dalit representation possible in National Assembly, so find non-territorial unit/province or council essential for Dalits in federalism.<sup>26</sup> Political Scientist Dr. Mahendra Lawoti has been expressing his opinion that

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26 Ganesh BK expressed his view on this in the working paper entitled '*Sanghiyatama Dalitharuko Apanatwa hune Sahi Bikalpa Gairbhaugolik Sanghiyata*' [BK Deulal, 2069 BS]. Political analyst Shyam Shrestha expressed this opinion in the working paper entitled *Dalitkolagi Kasto Sanghiya Swaroop* on 29 Falgun 2065 BS.

autonomous structure like non-territorial unit/ province/ council would be beneficial for the security of rights of Dalit as well as Hill 'High Caste' including *Bahun*, *Chhetri* who are not accumulated in one region.

Political Scientist Dr. Krishna Hachhethu, a member of State Restructuring Commission, has also been proposing for the essentiality of the non-territorial Dalit state for strengthening Dalit state in political structure and connecting Dalit spread all over the country. Dr. Hachhethu argues that a different non-territorial Dalit state can be formed from the elected Dalit of both state and central assemblies, where Dalit members of parliament are to handle both the responsibilities, executive mechanism for Dalit parliament to be elected from them which would work to solve the problems of Dalit including discrimination and untouchability, and will not harm any other social groups and reduces the election and other expenditures<sup>27</sup>.

But Dalit leaders and activists do not agree on idea of 'Deulyal' and other non-Dalit campaigners. Dalit intellectual/advocate Yam Bahadur Kisan even indicated that advocacy on appropriateness of non-territorial structure for Dalit by non-Dalit and pioneers of ethnic communities have been perceived upon with suspicion within Dalit community (Kisan, 2069 BS). Dalit leader Aahuti has been declaring that non-territorial structure is antagonistic to Dalit (Aahuti, 2068 BS).

Thus, because of divergent views in Dalit movement, there could not be uniformity in determination of procedure for achieving effective representation of Dalit in National Assembly. However, theoretically, there is uniformity in Dalit movement for additional representation as compensation in proportionality in National Assembly also. Insuring of mandatory proportional representation through election itself would be an appropriate provision for Dalit representation in National

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<sup>27</sup> Expressed in the working paper presented in the program entitled 'A Dialogue Program on Dalit Space in Federal State' organized jointly by SAMATA foundation and International Idea.

Assembly. According to this provision, representation by Dalit from Provincial Assembly to National Assembly would be considered as the representation from whole state and would be supportive to establish the leadership also. The Dalit movement which shows solidarity in principal in the demand of addition in proportional representation in National Assembly needs to have clear view about procedure and process of representation too.

## **Representation in Provincial Assembly**

In the drafts of Constituent Assembly, different views are mentioned regarding the formation of provincial legislature. In the draft of Committee on Determination of Structure of Legislative Body, there is the provision of total 35- member in the state legislature, 18 through direct election and 17 through proportional representation. But the proportional representation of excluded communities including Dalit is not ensured in it. Committee on Determination of Forms of Governance submitted three draft reports to the Constitutional Committee due to inability to forge consensus on one draft. Among them, the draft which received 18 votes, mentions that 90% of the members in state/provincial legislature will be elected through multi-member proportional direct electoral system whilst the next draft which received 16 votes includes that the members are elected through mixed-member electoral system.<sup>28</sup>

The draft presented by the Committee on State Restructuring and Distribution of State Power provides 5% additional representation

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28 Three different concepts were presented in Committee on Determination of Forms of Governance. Among 1] consensual presidential system and multi-member direct proportional electoral system, 2] governance system with Constitutional president and executive prime minister and mixed-member proportional electoral system and 3] legislature elected presidential system and mixed electoral system, no proposal on electoral system received a two-third majority out of the three proposals, so, all three drafts were submitted to the Constituent Assembly to be decided. Among thus presented three concept papers, the first proposal received 18 votes, the second 16 and third one 3 votes.

on Dalit proportionality according to population in state legislature. Dalit representation with compensation has been theoretically institutionalized in the federal state founded on the basis of identity as first priority followed by capability. But electoral system is not mentioned for that representation.

The most contentious issue of the Constituent Assembly was the grounds for delineation of federal states, number, naming and demarcation. To settle down the dispute, the government formed a High Level State Restructuring Recommendations Commission of experts on 6 Mangsir 2068 BS. The Commission handed over the state restructuring recommendations to the government on 17 Magh 2068 BS.<sup>29</sup> The report of the commission with majority proposed for 10 territorial provinces and one non-territorial federal state for Dalit. It also includes the necessity of provision of 7 % additional representation to proportionality for Dalit in provinces. But, the model of electoral system is not made clear for the representation of Dalit. The report doesn't mention about the electoral system through which the representatives to be elected in the non-territorial state for the Dalit. During deliberation of the report on non-territorial state in then Constituent Assembly recommended by the commission, only one Constituent Assembly member stood in support and remaining 427 went against the report out of 428 Constituent Assembly members.<sup>30</sup>

Nevertheless, the principle of proportional inclusion is accepted in all the drafts related to state restructuring. But, there is no clear vision not only on the proportional representation of Dalit in Provincial Assembly, but also about the electoral system and procedure which assures attainment of additional 5% and 7% representation in proportional

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29 High-level State Restructuring Commission could not submit single consensual report on state restructuring. Of 9- member commission, 6 members submitted one report whereas 3 members of minority prepared another report expressing differing view on the proposal.

30 Statistics presented by Constituent Assembly member Tilak Pariyar in the program entitled 'A Dialogue Program on Dalit Space in Federal State' organized by SAMATA foundation and Idea International on 19 Chaitra 2068 BS in Kathmandu.



representation respectively. Dalit movement has institutionalized the additional representation in proportional representation in provincial tier in principle but could not clarify how the electoral system can incorporate such provision.

Though there is consultation on the provision with regard to the Dalit's access in the organs of province governance in Dalit movement, a clear vision is to be made on the procedure for this. Additional representation of Dalit in proportionality has to be made by Constitution in Provincial Assembly which implements the Constitutional provisions of the federal state and promulgates provincial laws also as per local need. This issue should be ensured in the central Constitution and the provision of relevant electoral system should be made compulsorily in new Constitution. Only then, Dalit representation will be effective in provincial tier and problems of Dalit community can be solved by promulgating law, policy and program according to local need.

## **Representation in Local Level**

Local level is the organ of the state, which should be the most powerful and with representation. In contrary, the local level where the people have direct access and have their participation retains the least power. The centralized model of state structure, which holds the power at the centre has become old tradition. So, maximum power has to be delegated to local bodies. Such autonomous rights are to be devolved than mere delegation (Gurung, 2007). This can provide all executive rights to local levels in all spheres as well as rights over land and control over natural resources (Bhattachan, 2003). This means now it is not only the state to be decentralized and devolved through the provinces but also decentralization and devolution of state power has also become very essential at the people of local level (Sharma, 2009: 4).

Now, the main foundation of state power should be in the local level in state restructuring, not in the federal or province. Like the people of other communities, the real problem of the Dalit community is also

centralized in local level and such problems should also be attempted to be solved mainly at local level. Because of lack of their effective political representation at local level, acts and laws formulated in relation to Dalit rights are not being implemented whereas programs for Dalit development could also not be implemented effectively with their participation. So, in local levels with people representatives, fair participation of Dalit and active and effective participation should be ensured. Meaningful representation of Dalit community is essential with structural provision in which intervention can be done from local level for behavioral implementation of Dalit rights.

Women participation increased to a great extent after making the mandatory provision of representation of women by Local Self-Governance Act-2055 BS in local bodies. It not only helps to increase the role of women in decision making level but also becomes instrumental to establish women as political leaders. But, Local Governance Act could not make the provision of the representation of Dalit community mandatory (see box titled ‘Dalit representation in local community’). During state restructuring and making rules and regulations for it, mandatory representation of Dalit community should be considered in days to come.

Committee on State Restructuring and State Power Division of dissolved Constituent Assembly mentioned about three tier structure of the state in its draft. They are: Federal, Province and Local. In report, it is mentioned that village councils and municipality councils are to be formed at local level within the province. Similarly, the province provides autonomous region, protected areas and special zone in special structure. On the basis of political debate and efforts for consensus, the state that is going to be restructured would possibly incorporate of such structures. There is not much debate on local structure within the province although there is debate in political level on grounds of delineation of province, naming and demarcation. But, much less attention is gained by the issues of power decentralization and devolution and in the issue of making local structure powerful.

### ***Dalit Representation in Local Level***

*Dalit representation has been very poor even in local bodies. According to a study of scholar Bhim Prasad Bhurtel, in the election of Mayor and Deputy-mayor of metropolitan, sub-metropolitan and chair and vice-chair of municipality held on 2054 BS, Khas ethnicity had the 49.13% representation, indigenous nationalities 8.62%, Madheshi 20.68% and Newar with 21.15% whereas Dalit representation was nil. Similarly, member of Dalit community could not get elected even in president and vice-president of district development committee in that election. Except Hari Shankar Pariyar from Nepali Congress as the president of Udayapur district development committee, there was no representation of Dalit in local level in 2049 BS.<sup>31</sup>*

*Actually, women representation in all wards became possible due to mandatory provision of women representation in all ward levels in Local Self-Governance Act- 2055 BS. That Act had had a provision for representation of those communities who could not represent in village, municipal and district councils but that could not be acted upon in case of Dalit (Bhurtel, 2065 BS).<sup>32</sup> Local Self-Governance Act- 2055 BS provided mandatory provision for a woman to be elected during the formation of ward committee whereas there is no such obligatory provision in case of Dalit, retaining the same problem. Thus, Dalit community could not get elected in the important posts of House of Representatives, National Assembly, provinces and local bodies including cabinet of ministers.*

*Interim Constitution, 2063 BS internalized the issue of inclusion because of high-voiced demand on the issue of representation in state by the excluded community. Because of this, the representation of indigenous nationalities including Madheshi became almost proportional in the Constituent Assembly. Although there is significant increment in Dalit representation than the past however that could not be proportional.*

31 Analyst Bhim Prasad Bhurtel has discussed about this topic in an article entitled Rajnitik Samabeshikaranbaare Rajnitik Dalharuma Samabeshikaranko Abastha.

32 During formation of village, city and district council, Local Self Governance Act- 2055 BS provided a provision of presence of one woman and nomination of 6 representatives from social activists and from ethnic, nationalities, Dalit and indigenous who are backward from economic and social perspectives and could not have representation in district council. But the mandatory representation from Dalit community could not be concreted as provided the representation of at least one woman.

### ***Electoral System: Indian Experience***

*In India, Dr. Bhim Rao Ambedkar continued propagating how the justifiable representation of Dalit could be ensured in the legislature to reflect their voice in the political arena from the beginning. What he was clear about was that the problems of Dalit would not be heard and solved until and unless their fair representation was made in legislature. For this, he had advocated for separate electorate as the best and fair practice for Dalit. According to Ambedkar, Dalit would elect only Dalit representatives to the legislature if there was a provision of separate electorate and if those representatives were Dalit then only their interests could be represented in real sense [Maharjan 'Ka', 2069 BS].*

*In round-table conference, Dr. Ambedkar with Rao Bahadur Shree Niwasan presented the memorandum for separate electorate suggesting even the procedure of its formation. Prime minister Ramsay MacDonald leading British Government announced the provision of 'Communal Award' in British India Constitution, accepting the demand for separate electorates for Dalit. Acceptance of provision of separate electoral for Dalit hurt Mahatma Gandhi and he went to fast-unto-death. He put forth two arguments against the provision of 'Communal Award': 1. unlike Muslims and Sikhs who always remain the same, untouchables do not always remain untouchables. 2. Provision of separate electorate brings fraction and conflict between three upper Hindu castes of four-fold caste categorization [Savarna] and Dalit at the end.*

*On the fifth day of indefinite hunger strike, leaders from three upper Hindu castes [Savarna] and Dalit had agreement, Poona Pact on 24 September 1932. In the pact, the provision was made for holding the election by joint electorate subject or dual electoral system: one, primary election and two, general electorate. Primary election will be held by separate electoral of scheduled castes. They will elect a panel of four candidates belonging to Dalit class for each of reserved seat by the method of the single vote. General electorate will be by joint electorate subject. In it, both the electors from three upper Hindu castes [Savarna] and Scheduled castes, cast votes and final decision is taken.*

*The pact was strongly condemned as unsuccessful and harmful and completely failed in its motive of electing the representatives as wanted*

*by the Dalit through the election under Joint Electorate. According to the condemnation, Poona pact has completely disfranchised the important voting rights of scheduled castes, by making Dalit candidates hostage to votes of Savarna Hindus. The candidate whom the scheduled caste rejected by expressing true index of their will in the primary election, the same would get elected in final election by the votes of Savarna Hindu. In final election, the candidate of scheduled caste who succeeded by the votes of the Savarna Hindus was found to be more accountable to Savarna Hindus than Dalit. Because of which the representation could not resemble the desires of Dalit and their voice representing their aspirations could not be heard effectively in legislature. Denunciating those limitations and flaws, Ambedkar kept on demanding to nullify Poona pact, harmful for Dalit and continued the demand of separate electorate.*

*After the independence of India from the British Empire, Indian Constitution made under the leadership of Dr. Ambedkar himself in 1950 and successive amendments also could not address the demand of separate electorate. Instead of provision of electing the Dalit political representatives by Dalit only, the system of Dalit getting elected through the general election was institutionalized (Aahuti, 2063 BS). In the process of Constitution amendments, Dalit community was enlisted as scheduled caste and the reservation provision was made only in spheres like politics. According to Dalit leader Padmalal Bishwokarma, autonomy was provided to the state governments' discretion for formulation of reservation policies resulting separate reservation policies depending upon the states (Bishwokarma, 2060 BS).*

*At present, in Indian lower house [Loksabha], there is the provision of Dalit representation in 82 seats out of total 543 seats whereas separate political reservations are there in upper house or council of states [Rajyasabha]. According to condemnation, the provision of the political reservation where Dalit get elected with the votes of the 'Upper Caste' in general election made them accountable to upper caste and their interests than the problems of Dalit. The elected representatives of the Dalit community also started looking at problems of Dalit with the perspective of state governance of Hindu Upper Caste. Perpetuation of landlessness and deficit of proper political representation are the main problems of reservation implemented in India which has been reversing the emancipation of Dalit (Aahuti, 2063 BS).*

This means, no empowerment of local people and so are of the local residents; the Dalit. To establish the rights of Dalit community at local level, the representation of Dalit should be made effective at local level. Actually, while forming the local tier on the basis of report of the committee, Dalit movement has been demanding for the mandatory provision of additional representation of Dalit community even in proportional representation. Suitable electoral method should be adopted by addressing this demand by the Constitution. In Dalit movement, the demand is being raised for the re-demarcation of village development committees and wards too along with restructuring of the state. If village council and municipality are formed at local level with the majority of Dalit then they would also reach decision making level. And, they would be able to play an effective role in the establishment of Dalit rights.<sup>33</sup> Such structure and procedure would further help in the development of their political leadership. If provisions are made for proportional representation with compensation at local level then political participation of Dalit will increase significantly.

In the draft of Committee on State Restructuring and State Power Sharing, in special structure to be formed within the state, an area having a domination of or considerable presence of any ethnic / community or lingual community can be formed as autonomous region. So, the provisions should be made to create a favorable structure for them to be in power by demarcating the regions with majority of Dalit community again.

Along with this, there should be mandatory provision of Dalit representation in addition to proportionality in other autonomous regions. Similarly, in the draft of the committee, the proposal of formation of protected area is also put forth for the protection and fostering of those who are extreme minor, extinctive, and remarkably marginalized ethnicity, community and cultural zone. Special zone

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33 Dalit leader Aahuti, Dalit intellectual/advocate and researcher Yam Bahadur Kisan have been expressing in favor of making the local institution powerful and demarcating the local institution again focusing the regions with Dalit majority.

is proposed be established for the area which is not covered by autonomous and protected areas, which is economically and socially backward in the concerned state to for the special development of the area. At least proportional representation of Dalit should be ensured in constitution whereas electoral system should be determined which would address those issues of Dalit community in these areas.

## Part: 8

# Way Forward

With the dissolution of Constituent Assembly, the suspicion surfaced now whether a new Constitution be drafted or state is restructured. Through a new Constitution and with restructuring of the state all oppressed ethnic groups, class, language, region, gender and community have wanted to establish their rights. With the dissolution of the Constituent Assembly, there is already political consensus on fresh-election of the Constituent Assembly whereas consultation is going on among the political parties to forge consensus on contentious issues and adopt referendum for the issues, which are yet to be agreed upon. But, consensus could not be forged under whose leadership the national government will be formed, when the election will be conducted and what sort of procedure and process will be adopted. And, divergent views on whether to accept the proposals of thematic committees of Constituent Assembly can make the proceedings of second the Constituent Assembly more complicated.

Excluded communities are in favor of drafting the new constitution through the new Constituent Assembly as the Constituent Assembly elected by the people is the main station for establishment of the rights of the excluded communities including Dalit. Whatsoever be the alternative means of drafting the Constitution, there is no alternative



to strengthening the inclusive democratic republic with state restructuring. The model of electoral system to be implemented in the coming election of Constituent Assembly and the electoral system to be determined by new Constitution should be oriented towards ensuring proportional and minimum 10% additional representation of Dalit as compensation against the discrimination by the state.

Any electoral system is a political process than a technical one, a process of exclusion and inclusion in the state governance. Electoral system carries a political importance because elected representative plays a role to establish the representation of citizen, ownership and kinship in the state governance. Electoral system is selected on the basis of political decision and its impact is also more political. As process determines the result, the political parties should be committed to ensure the representation of all the excluded communities, at least for proportional inclusive representation and for establishment of the rights of additional representation with compensation in case of Dalit community by the constitution. If the proportional inclusive principle is accepted by the state and political parties only in documents but its result is not as per the principle, then such commitments and declarations are of no use.

In the agreement between Joint Political Dalit Struggle Committee and the government on 13 Jeshtha 2069 BS, there is consensus to ensure 10% additional rights with proportional representation in the new constitution in all organs, bodies and sectors of the state as a compensation for historic oppression on Dalit community in political, economic, social, cultural spheres. This consensus is a symbol of the acceptance of legitimate demand of Dalit community by the state, but policy and attitude of the political parties, who govern the state, are not aimed at that direction. If their policy and attitude is dissected and that consensus could be given the appearance of mandatory provision by constitution, then Dalit representation can be assured irrespective of the adoption of electoral system.

Electoral system is not a mere process of state restructuring but is an important process of establishing ownership and kinship of people over the state. So, the Dalit community, agitating for the demand of state restructuring, needs to amalgamate the agenda and program of their emancipation with the question of electoral system. Dalit emancipation can be meaningful only when the electoral system can be associated with the agenda of establishment of political, economical and administrative access of Dalit community and their social assimilation. Politically, multi-member proportional direct electoral system forwarded by Unified Communist Party of Nepal (Maoists) is more beneficial for Dalit.

If this system is adopted, the situation for mandatory proportional candidacy for Dalit community, establishment of Dalit candidate as the leader for both Dalit and non-Dalit, since it is a direct election, and insuring of proportional representation will be created. Thus Dalit candidate will be elected by the votes of non-Dalit and further would be established as a political leader of that region and this would assist the process of social assimilation also, so this is an appropriate method. But this system also must accept the additional proportional representation of Dalit community.

If only proportional system is implemented, then representatives elected by the community are possible to be called back by the party, so they have more obligations to the party and party leadership than the community who elected them. But the representatives elected through direct election are not easy to be called back by the concerned political parties, so Dalit representatives can be more accountable and can enjoy the opportunity to work for their own community and electors than their parties if they wish to. So, multi-member direct proportional electoral system would be the most appropriate for Nepal because the candidate gets elected through direct system and mandatory proportional representation is guaranteed.

Analyzing the political debate and the attempts of consensus of parties till the date so far, parties have agreed for mixed electoral system and

same consensus is possible to be implemented for second election of Constituent Assembly as well. Following the agreement between Indigenous Nationalities Joint Struggle Committee and Dr. Baburam Bhattarai-led government signed on 8 Jeshtha 2069 BS on adopting the proportional and inclusive electoral system in new Constitution with minimum 60% in proportional representation and 40% for direct election also indicates that the electoral system that would be adopted will be mixed one. Whereas Indigenous Nationalities Joint Struggle Committee has demanded for federalism with single ethnic identity, full proportional and inclusive electoral system and proportional and inclusive representation of all gender, ethnic/communities in all strata of the state. Because of such consensus and agreement, if the mandatory situation appears to adopt not other than mixed electoral system and the provision of at least 60% through proportional electoral system and 40% through direct electoral system, Dalit community need to carry on in-depth discussion and debate on how their representation be ensured. Dalit movement is not being able to focus towards that direction.

According to the perspective of Dalit community, the situation of Dalit representation would certainly be pathetic if the constitutional and legal provision could not be made for mandatory proportional and 10% additional representation as compensation in mixed electoral system. The evidence of first Constituent Assembly election also with only seven Dalit (almost 3%) elected in the election through direct electoral system also elucidates the same fact. So, it would be prudent to try utmost for mandatory provision of proportional representation of Dalit in the direct election result itself while adopting the mixed electoral system.

For this, efforts should be made to exert pressure on the political parties participating in the election to implement mandatory provision of giving proportional candidacy of Dalit. Likewise, it is equally important to play role against the negative attitude of the political parties of opting Dalit candidacy only as showpiece gesture in election and mostly nominating

as a candidate in those constituencies with minimal probability to win. If there is improvement in both of these aspects, Dalit representation can be proportional even under mixed system.

Nonetheless, the approach of Dalit and non-Dalit both participating in the election and getting elected keeping the strategic goal of the Dalit movement at the focal point can be affirmative. But as the Dalit are not in position to get elected easily because of political, economical and social inequality, the provision can be made for allotting separate constituencies for maximum 10<sup>34</sup> years for only Dalit, from all political parties and as independent, are allowed to give candidacy. Instead, such constituencies can be changed in every election instead of keeping them stable and fixed.

Actually, there were few drawbacks of proportional representation electoral system also under mixed even in the first election of Constituent Assembly. In forthcoming election, it is also certain that less the percent for proportional representation in mixed system, more the deficit for Dalit and other excluded and marginalized communities. Dalit movement has an established notion that at least 60% should be elected through proportional representation to ensure Dalit representation from proportional electoral system in mixed electoral system. Efforts should be made to institutionalize such notion in political parties under the leadership of non-Dalit. The seats Dalit community could not claim in prior through the proportional representation system under direct electoral system and additional representation as compensation for the discrimination that is done on Dalit by the state are to be fulfilled by the proportional list system

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34 After representing in House of Representatives or state assemblies for 10 years, strong political leadership would be developed from the Dalit community also and Dalit also tend to develop the capacity to contest with non-Dalit in the election after gaining the experience for 10 years. And, with the conception that, the Dalit candidate elected after the contestation between the Dalit and non-Dalit would be accepted for leadership by the non-Dalit also and this would further enhance social assimilation, the voice is being raised in the Dalit movement that allotment of separate constituencies need not to be more than for 10 years [SAMATA foundation, 2068 BS].

only, so the provision of allocation of more percentage in proportional representation should be made by constitution. Activities are needed to make the political parties under the leadership on non-Dalit realize such requirements.

In the agreement between the government and Madheshi Front on 16 Falgun 2063 BS before the Constituent Assembly election, they consented to the consensus that the political parties submitting less than 30% of the total candidacies in proportional representation system in the Election Commission can exempt from inclusive principle compliance while preparing closed list of the candidates under proportional electoral system [Misra, 2063BS]. In the context of electoral system, such reversing provision prohibited Dalit representation and which cannot be denied even now. So, there should be mandatory provision that all the political parties must give mandatory closed list while providing proportionate candidacy by annulling such agreements.

There was no mandatory provision for all political parties to provide proportional candidacy through proportional electoral system during the election of the Constituent Assembly. According to the Election Act, 2007, the parties were allowed to fluctuate up to 10% in candidacy in proportion to population of indigenous nationalities, Dalit, women, Madheshi etc while submitting the list to the Election Commission. Such provision is required to be annulled from the Act as it helps in reducing the Dalit representation.

In the Constituent Assembly election, the provision that any one from the closed list in proportional representation could get elected as per the wish of party leadership also caused distortion. The situation developed the people unfamiliar to Dalit community but as per the choice of the party leaders or intimate to them were elected than the names submitted in the closed list. “Now, the political parties are required to determine the priority in the list of the candidates submitted by them. The provision should be made that the Election

Commission would be complied with the list of the candidates of the political parties and declare the winner candidate in accordance with the priority ranking as announced in prior on the basis of total votes received” (Khanal, 2065 BS: 48).

The draft of Committee on Determination of Structure of Legislative body of the Constituent Assembly and consensus among the political parties in 2 Jeshtha 2069 BS provided the concept of making equal representation from all the provinces and nomination of some renowned individuals in the National Assembly under legislature. In the consensus among the political parties on 2 Jeshtha 2069 BS, 65-member National Assembly was proposed (Nagarik, 2069 BS), where the provision was made for 5/5 representations from 11 provinces and nomination of 10 renowned individuals from national life. But, proportional representation from Dalit community is not ascertained in such representations from the state and nominations. If such arrangement is made, the constitutional provision should also be made for the mandatory representation of Dalit from the states. The proposal has also surfaced in Dalit movement for a non-territorial unit for the Dalit representation in the National Assembly. It would be disastrous if Dalit movement could not make clear concept on this topic in spite of many discussions.

While restructuring the state, village councils and municipalities under local bodies should be authorized and the provision of additional representation of Dalit with mandatory proportionality in such bodies should be legalized in Election Act and by law by re-demarcating the regions with dense Dalit population. Dalit majority regions should be developed as autonomous regions for Dalit community for the effective representation from municipality to ward level.

If the state be restructured in accordance with the draft prepared by Committee on State Restructuring and Distribution of State Power, Dalit movement need to make clear perception about how Dalit representation can be made in autonomous region, protected areas and

special zone under special mechanism of province mentioned in the draft. It should also be settled down what kind of electoral system would be appropriate for Dalit as per the specialty of those regions.

By this time, the debate and discussion on the process of Dalit-friendly constitution writing from the Constituent Assembly and its content is inevitable in the Dalit movement if by any chance general election is held and second Constituent Assembly is formed. As an inseparable part of the movement, Dalit movement should put an effort for collaboration with the protesters of other communities also, especially indigenous nationalities, Madheshi, Muslim and women. Otherwise, there is possibility of hijacking of the processes: state restructuring, Constitution drafting and inclusive democracy which are very important for the empowerment and inclusion of Dalit community who are the most oppressed even among the excluded groups.

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