

SAMATA Policy Paper-4
2069 BS

Federalism and Dalit Governance

Dalit-Friendly Federal System

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2069 BS

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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. 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 titled '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 entitled '*Nepal ma Varnabyabastha ra Barga Sangharsha*' [Caste System and Class Struggle in Nepal] 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 the Constituent Assembly and research works. In this regard, it has started a series of interactions with the publication of *Naya Sambidhan ma Dalit: Rupantaran ma 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 Bibechna* [Dalit and Power Discourse: Ambedkar, Perspectives and Analysis] has been translated

in Nepali and published in 2069 BS. In the same year, the review papers titled *Dalit Lekhan ko Prabriti: Nepali Dalit Samudaya sambandhi Lekhan ko Samikshya* and its English version titled *Trends in Dalit Writing: Understanding Knowledge Production for Policymaking* have also been published. Adding to this, SAMATA has also published another policy paper titled *Apratinidhitwa ko Duschakra: Nepalmaa Nirwachan Pranali ra Dalit Pratinidhitwa* [Vicious Cycle of Non-Representation: Electrol System and Dalit Representation in Nepal] in Nepali language.

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. Narendra Mangal 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 moving ahead towards federal system, overcoming many ups and downs. Definitely, it is not an easy task for a country to shift from unitary and centralized state system to federal state system. The mission of making federal state system has slowed down in the due course of overcoming many barriers. After the dissolution of the Constituent Assembly, there is the process of state restructuring through federalism met with many hindrances and the mission has recessed. But, there is no way back from the mission of federalism in spite of huge barriers and difficulties.

Federalism has been in demand for the access, representation and identity of all the communities in Nepal. Federalism, endorsed by People's Movement is the state system, which has already been enshrined in the Interim Constitution-2007. However, negligence of Dalit towards federal state system is worrisome. The concern on Dalit's access to power in future federal state has been least discussed. Serious discussion is yet to be started on the access and representation of Dalit in the federal, various provinces, and local structures of federal nation.

So, the focal point of the discussion, at present, should be the ways to make federal state system Dalit-friendly and the target of Dalit state attainable. Everyone in Dalit movement has a different view

and stance on federalism and Dalit province. But, justifiable access and representation in federal structure can be a common point even among various diverging proponents. And SAMATA foundation has been conducting discussions and interactions on ‘Dalit in Federalism’ to pave various dimensions on the agenda. Meanwhile, discussions on this agenda were organized twice in Kathmandu and Dalit Sookhanaa Mela [Information Expo] and interactions were carried out in Biratnagar, Hetuuda Dhangadhi and Butwal. Based on those discussions and interactions, this Policy Paper titled ‘Federalism and Dalit Governance: Dalit-Friendly Federal System’ has been published.

I would like to thank Dalit intellectual/advocate Yam Bahadur Kisan for outlining this SAMATA Policy Paper at initial phase and Rajendra Maharjan for editing it. I also thank Research Coordinator Erisha Suwal, Research Officers Rajan Kumar Pariyar, Arjun Bishwokarma and Bhola Paswan, Advocacy Officer Shyam Nepal, Research Director Dr. Rabindra Roy and Managing Director Dr. Narendramangal Joshi for their valuable contribution.

Padam Sundas

Chairperson

SAMATA foundation

Recommendations

Federalism is directly associated with state-power devolution. So, it is an important matter of concern for Dalit community too. When Nepal is determined to heading towards federal system, it is relevant and legitimate for Dalit community to claim their due share on the state. If legitimate claim cannot be established in federal, provincial and local bodies, the state power would be at the verge of loss. Before the start of any such peril, the Dalit movement should abandon the anti-federalist impression, which provokes that ‘federalism is not worth to Dalit because it doesn’t offer anything rather confiscates all.’

Now, the discourses should be concentrated on the ways to acquire appropriate stake in the state through the occupancy in all the dimensions like of as federal, provincial and local structures of the federal system. Discussions and discourses are imperative in order to identify and establish suitable type of governing models and structures for Dalit based on the type of geographical territories and population densities pertaining to Dalit communities.

Though Dalit community is scattered throughout Nepal, there are some geographical territories with significant densities of Dalit population. Hence, such factors can also be considered while delimitating federal provinces in order to develop them as Dalit majority regions. The 14 provinces proposed by the State Restructuring Committee should also

consider the possibility of occupancy of Dalit in state mechanisms where the Dalit have substantial numbers of population. Formation of such provinces would ensure the environment for Dalit occupancy in federal governance rather than just the name and identity.

In the process of state restructuring, non-territorial province does also have its own significance; so the framework of non-territorial province, as proposed by the State Restructuring Commission, for Dalit cannot be ignored. However, it is still skeptical that non-territorial province and with a provision of full-fledged legitimate 'Dalit Parliament' (exclusively only with the Dalit representation) could fulfill the aspirations of entire Dalit communities scattered all over Nepal.

As another alternative for the territorial and non-territorial province, a proportional representation with compensation can as well be the best option for Dalit. This may guarantee the establishment of the governance favoring Dalit in the dimensions of federal system like federal, provincial and local structures.

Summary

Federal system is not a new concept for Nepal, neither is this the practice of autonomy. Nepal, where the slogan of *Sangham Sharanam Gachchami* [I go to *Sangha*, a organization, for refuge], is echoed repeatedly, has the history of practice of federal system for past 25-26 centuries. Especially Bideh and Malla republic provinces, associated to the Federal Republic of Brijji, established in Terai region in Nepal practiced federalism. And, the history has proofs that practice of autonomy also continued in the kingdom of Nepal from Lichchavi Dynasty to Malla Dynasty.

From the 25-26 centuries old republic system, Nepal has returned to republic era again after the monarchy with unitary and centralized state system. The process to replace the unitary and centralized state system with federalism, coupled with autonomy and self-governance, is going on. The process is initiated due to the claims by all excluded and marginalized communities for their ownership over the state. They have been demanding their share of pie in the federal, province and local structures on the basis of their power, capability and resources. It means they are seeking for their justifiable share in state and power.

During this preface, the voice of Dalit, the most excluded among the excluded and marginalized communities in Nepal, is too feeble,

unclear and immensely disorganized. As a result, the intervention of Dalit movement over the federal state is also proven to be insignificant followed by different and divided versions about federalism within the Dalit movement. Moreover, a small fraction of the movement is opposing the concept of federalism itself. In addition, the proponents of federalism are again divided into three categories: The first group supports territorial Dalit province. Second group supports non-territorial federalism and the third group stands for proportional representation with compensation. The third group argues that there cannot be either of territorial and non-territorial provinces for Dalit community and from the prospective of assimilation, such provinces should not be made. With this argument, the proponents of third group have been loudly demanding for acquisition of state for Dalit in all the provinces. So the proponents of this group have been supporting the prospect of federalism, raised by excluded and marginalized indigenous nationalities and Madheshi community.

The space for Dalit is being searched in federal, provincial and local structures in the process of craving for Dalit governance in federalism. In the present context where the base for pre-requisite for delimitation of provinces in federal system does not support a separate province for Dalit, then how could the access and representation of Dalit be ensured in the provinces?

At the stand point of social integration, for Dalit, forming a separate province, that too, without any firm base cannot justify valid stake at local level structure. In the context of structure of non-territorial province proposed by the State Restructuring Commission is there any possibility of establishing it as an authorized Dalit parliament or not? These issues, related with Dalit governance in federal system, are the themes of argument and debate at present.

Ideological clarity must to pave a way for Dalit governance in federal, provincial and local structures. Along with ideological clarity,

the capability to work together in coalition with other oppressed communities and to strongly intervene is required. The necessity of strong intervention through organized-joint- unified efforts of Dalit movement is being realized.

At present, the federalists of various movements, communities and political parties are challenged to present a clear framework for making of Dalit province in federal system. It would be wiser for Dalit movement, other communities and political parties to find the path of solution through multiple interaction and justifiable measures.

Part 1

From Unitary System to Federalism

In the history of Nepal, the federal system of governance was practiced by the republican states of Lichchavi [Bajji] and Malla clan on the foundation of a covenant in the 4th century BC in east-south region [Kosambi, 1993 and Jha, 1995]. A separate organized predominant confederation of such republics prominently known as Brijji or Bajji confederacy existed there [Acharya, 2060 BS]. Along with Lichchavi republic, Mithila state or Bideha state of eastern Terai (its capital was Janakpur) was also associated with Brijji confederacy. After the disintegration of Brijji confederacy, some Lichchavi clan [Brijji] migrated and settled in Nepal Valley [Bajracharya, 2030 BS]. Similarly, other confederated clans like Malla, Shakya and Koliya also settled in Nepal, most of them as rulers and some as citizens [Tamang, 2065 BS].

With the advent of campaign of principality expansion of King Prithvi Narayan Shah of Gorkha, Nepal entered into Hindu monarchical unitary and followed a centralized governance system. This campaign not only omitted the boundary of many small principalities but also created the situation of extinction of language, religion, culture, script, art of local principalities and of ethnic, linguistic, religious and cultural groups. Moreover, with the campaign of principality expansion of

Prithvi Narayan Shah, the domination of Hindu religion and Caste system, Khas language and culture and Kathmandu centric unitary governance system also expanded [Gurung, 2004].

The state, with the motive to institutionalize *Asalee Hindustan*, had imposed Hindu *Varnashram* [social system with different duties allocated to four castes and four stages in life] on Dalit community even more forcefully, and the Kirat who were not familiar with the practice of caste discrimination and untouchability were also forced to practice the same over Dalit community [Aahuti, 2067 BS]. Such unitary state and governance system based on Hindu *Varnashram* continuously ruled Nepal for 240 years in the form of monarchical system of Shah Dynasty. This monarchy was demolished by the joint People's Movement of 2062/63 BS and drove Nepal in the direction of making it a federal, secular, inclusive, democratic republican state.

People's Movement of 2062/63 BS, followed by promulgation of the Interim Constitution and successive consensuses and agreements, has not only accepted the call to restructure the old state but also to establish inclusive democracy by adoption of federal state structure. Now, the right to rule and responsibility are to be delegated from the center to the federal, provincial and local bodies, which demand the restructuring of the structure and system of the state based on the principles of federalism. This reality has been, willingly or unwillingly, acknowledged by all.

The state of Nepal has already been declared a federal democratic republic with the assumption that it would adopt inclusive democratic system; but the declaration is yet to be implemented. The responsibility of constitution drafting process of the Constituent Assembly with the participation and the feeling of ownership and affinity of the people remained incomplete with the dissolution of the Constituent Assembly, because of which the progressive task of state restructuring through federalism could not be initiated yet. The Constituent Assembly

dissolved without accomplishing the responsibility of constitution drafting because of the disputes on bases of federalism, naming of the provinces and the delineation of borders.

Due course of time and circumstances developed accordingly have proved that Nepal cannot progress through unitary governance system and centralized state system. The ruling class and political party that lead the unitary governance system cannot be expected to implement inclusive democracy. In the context when federal structure and inclusive democracy are considered as pre-requisite for the abolition of injustice and inequality being practiced in the name of ethnicity, language, religion and region, the execution of federalism will remain a hard nut to crack. Those political parties, their leadership and few intelligentsias who claim to be the supporters of federalism have not been able to detach themselves from the affection of unitary system and centralized state structure. Their reluctance to address the fair demand of almost all the suppressed communities for self-governance through federal structure is pitiable.

Nepal is not progressing for the federal state structure merely because of the whim of campaigners of few ethnicities, language, community or region. The demand of federalism has been established as structure and process to accomplish their desire of self-governance. There are basically three generally accepted notions behind restructuring of Nepal through federalism, which are proposed for emancipation from the imposition of rule over them: The first reason in support of federalism for Nepal is addressing the existing ethnic and cultural diversity. Federalism has become mandatory to address this diversity in state system in justifiable and proportional way. Majority of ethnic communities and culture were excluded by the state because of the unitary characteristics of the state system in multi-ethnic and multi-cultural country. There was monopoly of limited 'high caste and ethnicity' mainly: Hill Bahun, Chhetri, and Thakuri occupying two-third of every form and strata of the state whereas they share less than one-third of the total population [Neupane, 2005]. Remaining two-

third occupants like indigenous ethnicities, Madheshi and Dalit have to be victimized of discrimination and exclusion from unitary state system. Federalism has become mandatory to abolish such situation and to ensure the justifiable representation, access and recognition of all caste, ethnicity, class, religion, region and culture in all forms and strata.

Second fundamental reason behind the adoption of federalism by Nepal is to institutionalize self-governance and autonomy with ethnic, linguistic and cultural identity by eliminating centralized state system. The culture of accumulating resources, asset and authority in the power center or in Kathmandu and refraining remaining regions and units beyond Kathmandu from all kinds of structures, processes and culture neither give them chance nor rights to develop their regions. So, self-governance and autonomy with ethnic, linguistic and cultural identity have become mandatory for establishment of development and rights in areas outside the capital and in lower layer units of local bodies. And it is targeted that this kind of self-governance and autonomy will be acquired through federalism.

Third basic reason that supports federalism in Nepal is to build one nation by encompassing all caste, ethnicity, language, class, religion and region. Though Nepal is a single country from the geographical point of view, it has not been able to integrate the aspirations of all Nepalese and actual unification of the country has not been done yet. The feeling of ownership, affinity and affection could not be generated towards the state among the suppressed communities. Such feeling is not possible to be generated until and unless the campaign that makes a 'nation' and state liable to one language, caste, ethnicity, culture, gender and region is terminated. Federalism is necessary to transform a state into a 'country' by incorporating all languages, castes, ethnicities, religions, culture, gender and regions.

The non-inclusive state, that marginalizes and boycotts and makes most of the Nepalese 'others' cannot form a country; it neither

generates national unity nor it strengthens nationalism. So, the country is facing the responsibility to transform the state into country through federalism and generate the ownership, affinity and affection of people towards it and establish people's share in development, rights and state-power through self governance and autonomy.

Thus, during the state restructuring, people should be focussed and among them are the Dalit community, who consist of 13 % of the total population¹. Still, the tendency of treating Dalit problem as trivial issue, indifferent to federalism, has not been diminished yet. The activists of Dalit community also have not been able to voice for Dalit problems in connection with federalism. Similarly, indigenous nationalities, Madheshi and almost all the supporters of federalism also do not pay attention to Dalit problems in the context of federalism. Dalit problems are taken as an issue to be mentioned merely for the word's sake in the framework of federalism presented by them; and federalism and the issue of emancipation of Dalit community are not combined yet. But, it is a vital question, whether the federal restructuring of Nepal, being done through federalism will accept the issue of Dalit as fundamental question of Nepal's specialty or not [Aahuti, 2967 BS].

At present, Dalit can't afford to be the mute spectators and wait for other communities, political parties and state to consider Dalit issue as a fundamental question of Nepal's specialty and in line with federalism. Now, Dalit movement should be mobilized in a way that creates pressure and an impact that compels them to accept. Mainly, in the precious time when state is turning into a 'nation' via federalism, if Dalit do not claim over the state and institutionalize inclusive democracy, and remain a mute spectator and confused, it might lead Dalit movement into marginalization again.

¹ This is governmental statistics of 2058 BS. Dalit community has not accepted this data with allegation that it is not the real data of Dalit. They have been claiming that the population of Dalit is more than 20%.

Part 2

Campaign for Federalism in Nepal

Nepali people raised the voice against the unitary state and centralized governance system based on Hindu *Varnashram* [social system with different duties allocated to four castes and four stages in life] along with the movement against Rana regime in 2007 BS. The demands of autonomous governance and federalism were integral parts of democratic movements in Nepal. Coinciding with the downfall of Rana regime, Nepal Tarai Congress was the first to introduce the demand for Autonomous Terai Region in 2008 BS [Tamang, 2065 BS]. Though the leaders could not take a firm stand in their demand but this step attempted to direct Nepal towards federalism [Khanal, 2065 BS]. In its periphery, the proposal that was presented by the founding general-secretary of Nepal Communist Party Pushpa Lal Shrestha and approved by first convention of the party also included the conception of local and regional governments [Shrestha, 2062 BS]. Similarly, Nepali Congress presented a proposal in Janakpur Convention in 2009 BS to modify the state structure of pre-2007 BS system and set up a new structure with zones, districts, villages and municipalities [Thapa *et.al* 2060 BS].

Meanwhile, Raghu Nath Thakur in 2015 BS, Madhesh Mukti Aandolan in 2024 BS and Nepal Sadbhawana Parishad in 2040 BS advocated the conception of federalism [Shrestha, 2066 BS]. But the rulers of

Panchayati system stood firm in support of unitary and centralized state whereas the leaders of opposition parties who led People's Movement also could not understand the spirit and importance of federalism. As a result, the issue of federal state structure remained in shadow.

The state, administration and political parties showed stinginess to address the demand of people's self-governance time and again. Nonetheless, the demand of restructuring of Nepal on ethnic, linguistic and regional ground was raised even in Panchayat period in order to implement the rights of the self-governance. Nepal Rastriya Janajati Party proposed for 12 ethnic provinces on the basis of ethnicity in the course of advocating federal system [Tamang, 2065 BS].

After the restoration of the parliamentary democracy as a result of People's movement of 2046 BS to end the Panchayati system, the ethnic and Madheshi organizations have started to raise the demand of a federal states in Nepal. Nepal Sadbhawana Party founded of the issues of Madhesh and ethnicity demanded federalism on the basis of Tarai-Hill, likewise Karnali Mukti Morcha demanded on regional basis and simultaneously Rastriya Janamukti Morcha [MS] and Janamukti Morcha, Nepal [Thing] on the basis of administrative units [ibid]. Nepal Rastriya Janajati Party including various other ethnic parties and intelligentsia also raised the voice and pointed out the necessity for adoption of the federal state restructure for Nepal [Khanal, 2065 BS; Tamang, 2065 BS]. Nepal Janajati Mahasangha put forward the demand for ethnic autonomous governance with the right to self-determination in its first convention that was held in 2049 BS [Tamang, 2065 BS].

The period when the demand for justice, freedom and equality of language, ethnicity, religion and culture was neglected, concurrent was the situation of the demand of federal state structure. It continued to remain neglected even after the People's Movement of 2046 BS as it could not garner continuation and receive enough credence.

In the general election of 2048 BS, Nepal Sadbhawana Party issued the manifesto articulating the need to change Nepal into the federal structure with Eastern Madhesh, Western Madhesh, Eastern hill, Central Hill and Western Hill. While advocating for federal system, it raised the issue of federalism with five provinces and regional governments again in its second convention in 2050 BS [Tamang, 2065 BS]. The party that transformed from its founding as Nepal Sadbhawana Parishad and adherent of federalism in the decade of 2040 BS could not fortify the demand with priority, and it could not garner significant support of people in parliamentary competition also. Similar was the situation of ethnic parties which advocated for federalism. Those parties could not establish the demand of federalism and garner remarkable support in parliamentary and local election [Khanal, 2065 BS].

Prior to People's War, 40-point demands submitted by Samyukta Janamorcha Nepal, the official front of Communist Party of Nepal [Maoists], demanded for autonomous governance in 2052 BS. It highlighted the issues of autonomous governance in the ethnic majority regions, regional autonomous governance in backward regions and end of regional prejudice and misunderstanding between Terai and hilly regions.² After the advent of Maoist's People's War, the demand of autonomy along with that of federalism also started getting relatively more credence because People's War sharpened the dual issues of indigenous nationalities, who were demanding for federalism, and that of Dalit too -- further providing a platform for them to participate in the political process [Gurung, 2003; Khanal, 2065 BS].

Because of waning of unitary state system along with constitutional monarchy and parliamentary democracy as a result of internal struggle, the debate on state restructuring started by the decade of 2050 BS and it became the discourse of federalism later. The debate on state restructuring was initiated by the groups of indigenous nationalities. Similar debate slowly proliferated through

2 Report of the Committee on State Restructuring and Distribution of State Power 2066 BS.

the stakeholder communities like Dalit, women, Madheshi and intelligentsia and even the political parties [Khanal, 2065 BS]. After inserting the demand of state restructuring by various organizations of indigenous nationalities, the discussion held by a few intelligentsia on the meaning and necessity of state restructuring nationwide for a few years helped to present different frameworks of federalism in front of the people.³ But, the reluctance and threat perpetuated among the parliamentarian political parties for considerably long time to accept the agenda of state restructuring and federalism.

A decade long the People's War that started on 2052 BS and ended in 2063 BS under the leadership of Communist Party of Nepal [Maoists] shook the foundation of unitary state and centralized governance system for the first time. The credit goes to the Maoists for making the common people familiar with the term 'federalism', spreading it nationwide and practicing it during the People's War. After having complete control over almost 3/4th of the whole country in the decade of 2060 BS, it formed nine autonomous provinces with autonomous people's government [Shrestha, 2066 BS].

In the meantime, royal massacre that occurred in the palace on 19 Jestha 2058 wiping out the entire family of King Birendra and himself abolished the propriety of the monarchy; and it further emphasized the necessity of Constituent Assembly election and state restructuring. In addition, the royal move by King Gyanendra, who eventually took over the executive power on 19 Magh 2061, led a favorable environment

3 Govind Neupane and Bhavani Baral re the authors of 'Nepal ma Jatiya Prashna'[2000] and 'Yasto Hunuparcha Rajya ko Samrachana' [2061 BS] respectively whereas Dr. Harka Gurung has written article on 'Rastriyata ra jatiyata' in the book 'Nepal ko Sandarvama Samajshastriya Chintan' and Dr. Pitamber Sharma has written an article on 'Pradeshik Bargikaranka Aadhar ra Parinati' And in 2062 BS, a book 'Nepal ko Sandarva ma Rajya ko Punarsamrachana' edited by Sita Ram Tamang. Before that Mulyankan monthly has been making the discourse on state restructuring and federalism intense and comprehensive by publishing the views of political and intellectuals Professor Krishna Khanal, Dr. Pitamber Sharma, Narahari Acharya, Dr. Chaitanya Mishra, Shankar Pokhrel, Pradeep Giri, Jay Prakash Gupta, Padam Lal Bishwokarma, Rakshya Basyal, Dr. Krishna Bhattachan, Rajendra Shrestha and Dr. Baburam Bhattarai since Mangsir-Paush 2060 BS.

to minimize the distance between the warring Communist Party of Nepal [Maoists] and parliamentary political parties. New scenario developed led Communist Party of Nepal [Maoists] and seven party alliance to have consensus known as ‘Twelve-Point Understanding’ in Indian capital, New Delhi, on 7 Mangsir 2062 and they agreed upon to build the ground for the foundation of People's Movement-2062-63 BS for the progressive restructuring of the state to resolve the issues of class, ethnic, gender, region etc. Following the joint People’s Movement that occurred in 2062/63 BS on the foundation of Twelve-Point Understanding with a goal to restructure the state progressively, King Gyanendra finally capitulated. And he was compelled to declare the reinstatement of dissolved House of Representatives on 11 Baishakh 2063. This is the formal political beginning for the Constituent Assembly that oriented towards the establishment of federalism with state restructuring.

The reinstated House of Representatives on 4 Jeshtha 2063 declared democracy, the election of Constituent Assembly, state restructuring, inclusive state system and secular state.⁴ Communist Party of Nepal [Maoists], which joined in the peace process after the overwhelming success of the People’s Movement, and alliance of seven parliamentary parties signed an agreement on 22 Kartik 2063 which pledged for inclusive, democratic and progressive restructuring of the state to resolve existing problems in the country based on class, caste, language, culture, religion and regional discrimination by eliminating the present centralized and unitary model of governance.⁵ The Comprehensive Peace Accord, which was immediately signed by Nepal Government and Communist Party of Nepal [Maoists] on 8 Mangsir 2063 reiterated their commitment regarding progressive and democratic restructuring of the state.⁶

4 House Proclamation 2063 BS.

5 Decisions of meetings of seniors leaders of seven parties and Communist Party of Nepal[Maoists], clause no. 10.

6 Comprehensive Peace Accord 2063.

Interim Constitution of Nepal 2063 BS was issued on 1 Magh 2063, which was the compilation of documents of declarations of House of Representatives at various intervals, agreements between parliamentarian political parties and Maoists and Comprehensive Peace Accord between Nepal Government and Maoists. This Constitution expressed commitment⁷ to restructure the state progressively to resolve the existing problems of class, caste, region and gender. But because of successive flexible agreements, the Interim Constitution 2063 BS also could not incorporate the issue of federalism substantially that resulted in Madhesh Uprising the very next day. Madhesh Uprising, began on 2 Magh played a significant role to lead Nepal into the direction of federalism, which started with the slogans “State restructuring on the base of ethnicity and region for federal democratic republic Nepal” [Gautam, 2064 BS: 185] and “Entire Madhesh one province” [Yadav, 2064 BS: 115]. Prime Minister Girija Prasad Koirala was compelled to address the nation and express the commitment to build⁸ federal democratic state system in response to the scorching Madhesh Uprising. Similarly, Maoists, who were compelled to compromise in the issue of federalism during the process of drafting Interim Constitution, instantly made of a draft proposal of federalism with 13 provinces [including sub-provinces] on the basis of ethnicity, language and region and re-arranged the structure of the organization accordingly, to save the face, gain the reputation and people’s support that was lost during the Madhesh Uprising.

After the election of Constituent Assembly on 28 Jeshtha 2064, in the agreement⁹ between Nepal Government and the representatives of indigenous nationalities, the agreement¹⁰ between Nepal Government and Madheshi Janadhikar Forum, Nepal and in the consent letter¹¹ between Nepal Government and Chure Bhavar Rastriya Ekta Samaj, the

7 The preface of Interim Constitution of Nepal 2063 BS.

8 The address by Prime Minister Girija Prasad Koirala to the nation on 24 Magh 2064.

9 The agreement between Nepal Government and the representatives of indigenous nationalities.

10 Clause No. 6 of the agreement between Nepal Government and Madheshi Janadhikar Forum.

11 The consent letter between Nepal Government and Chure Bhavar Rastriya Ekta Samaj.

issues of federal governance system with autonomous provinces were included keeping the sovereignty, indivisibility and integrity of Nepal intact. Then, in 23-point consensus between Communist Party of Nepal [Maoists] and senior leaders of seven political parties alliance on 8 Paush 2064 incorporated the clause, which announced that Nepal would be a federal democratic republic state.¹² On the basis of this consensus, a provision was made to make Nepal a federal democratic republic state by amending the Interim Constitution of Nepal 2063 BS for the third time.¹³ Subsequently, Nepal was declared a federal democratic republic state in the first session of the Constituent Assembly on 15 Jeshtha 2065 BS by fourth¹⁴ amendment of the Interim Constitution.

Thus the agenda of federalism was institutionalized by the first session of the Constituent Assembly constitutionally, which was established by the People's War, People's Movement, the movement by nationalities and Madhesh Uprising. But federalism has been proven to be the most contentious issue since the first session of the Constituent Assembly dated 15 Jeshtha 2065 to its dissolution on 14 Jeshtha 2069. It is crystal clear that the contention specifically on bases of formation of the provinces, naming and demarcation of their borders, autonomy and distribution of power and resources, good governance, right to self-determination and political preferential rights were the causes of dissolution of the Constituent Assembly without promulgating the Constitution. Wrangling and lack of consensus among the political parties on the agenda of naming the provinces prioritizing, the identity of marginalized and excluded communities in federalism were the determining factors of dissolution of the Constituent Assembly without the Constitution. So, rigorous and more intense discussions should be carried out if the federalism should be designed on the bases of single identity or multiple identities. Such discussions will be advantageous in determining the design of federalism that suits Nepal.

12 23 point consensus between the senior leaders of Communist Party of Nepal [Maoists] and seven party alliance on 8 Paush 2064.

13 Third amendment of Interim Constitution of Nepal 2063 BS on 13 Paush 2064.

14 Fourth amendment of Interim Constitution of Nepal 2063 BS on 15 Jeshtha 2065.

Part 3

Federalism: International Practice

Nepal is at the verge to enter into federal country in the political map of the world. Among 192 member countries of the United Nations, around 28 countries including Nepal has adopted federalism or are about to adopt it [Anderson 2064 BS]. It cannot be said that all those nations adopted all values and norms of federal structures with uniformity because even the federal countries have adopted centralized and unitary governance system in large. The practice of a single model of federalism is neither appropriate nor suitable in the present scenario, where almost 28 countries and half the population of the world have embraced a federal model.

Basically there are two ways of formation of the federal states in the countries with diverse backgrounds. First one is separate states or republics coming together voluntarily to form a federal state for common benefit and interest and they are bound together by a covenant. The countries thus emerged are former Soviet Union, United States of America and Switzerland. These countries were recognized as 'aggregated federation' or 'coming together federation'. The country formed from previously separate states that came together to form a country are given the right to self-determination that provides the liberty even to separate from the federation also [Shrestha 2066 BS].

Next is, many centralized and unitary countries have transformed into federal states mainly to address the conflicts and divisions based on ethnicity, language, region and religion emerged due to the discrimination and oppression by the state. They are Canada, Spain and Belgium. Federal states thus formed are called ‘concurrent/holding together federalism’ or ‘disaggregated federalism’. Such federalism is propounded in the process of addressing the demands of communities that are unsatisfied and want to separate by providing autonomy and self-rule through structural framework. They are not provided the right to self-determination to the extent of separation. Many unitary countries have transformed into federal states mainly to address the internal conflicts and people's grievances in unitary and centralized governance. Nepal is also at the verge to enter into federalism in the similar manner.

Among the countries that converted from unitary to federal state, Switzerland [26 cantons] is the smallest and the largest is Russia [21 provinces and 7 regions]. Others are Argentina [23 provinces and 1 autonomous city], Australia [6 states, 2 major and other geographical regions], Austria [10 states], Papua New Guinea [18 provinces and 1 autonomous region], Belgium [3 regions and 3 language communities], Bosnia Herzegovina [2 main units and 10 cantons], Brazil [26 states and 1 federal district], Canada [10 provinces and 3 geographical regions], Comoros [3 states], Ethiopia [9 provinces and 3 chartered cities], Germany [16 Landers], India [28 states and 7 union territories], Belau [16 states], Malaysia [9 sultanate, 2 states and 2 federal regions], Mexico [31 states], Micronesia [4 states], Nigeria [Initially 3, now 36 ethnic states], Pakistan [4 provinces], South Africa [9 provinces], Spain [17 provinces and 2 centrally ruled states], Saint Kitts and Nevis [14 states], Sudan [26 provinces, divided into two countries now], United Arab Emirates [7 emirates], United States of America [50 states], Venezuela [23 states] and Iraq [18 states].

According to ‘Encyclopedia of Democracy 1995’ there are five fundamental specialties of federalism in the world, irrespective of the

situation and way that propelled them to adopt federalism [Shrestha 2065 BS: 95-96].

- **Noncentralization:** In federal political model, a powerful center is missing but state-power is diffused at various centers. Such centers are established in the forms of province, region, state etc. and are granted with self-governance and autonomy. And constitution, law, federal parliament and central government are the political provisions formed on the foundation of the common consent, which are symmetrically implied upon to such institutions and are concurrent.
- **Distribution, regulation and check over the power:** Power and authority are divided between federation and units in federalism. Such division is scrutinized by the political mechanism that regulates and checks each other.
- **Social/ cultural inclusion:** Federalism ensures the access, representation and identity of minorities by embracing the perspectives of language, ethnicity, region and culture in every model and tier of the province through the customized Constitution, law and state system. The attempt is made to maintain a multi-cultural country by mitigating the possibility of division and conflict and maintaining solidarity.
- **Overt and steady bargaining:** In federalism, the process of negotiation and bargaining between federation and its units, between units, province and dissatisfied communities is a steady and fraught process. Overt bargaining for authority and division of power is legal, constitutional and democratic process. So, discontent, conflict and turmoil can possibly be addressed before transforming into violence.
- **Written constitution and constitutionalism:** The division of power, authority and responsibility between the federal and its units mutual consent is provided by the provision in written constitution in a federation. A constitutional court is established to resolve dissatisfaction and dispute in the system.

These five specialties make the federalism an easy task. However federal structure without any flaw cannot be imagined. There are evidences of facing difficulties while practically exercising federalism with these specialties. There are the countries which converted back to unitary governance system on failure of federal governance system for example, Czechoslovakia, Yugoslavia, Cameroon and Uganda. Czechoslovakia and Yugoslavia have been disintegrated into a dozen of new countries. Division of Sudan into northern Sudan and southern Sudan has not resolved the problems whereas the number of provinces has increased into 36 ethnic provinces from 3 provinces in the time span of 45 years of federal history of Nigeria.

Special kind of federalism in neighboring country India is not based on federal design of former Soviet Union with right to self-determination or that of America which is formed with many independent nationals on the basis of mutual consent. Centralized and united India, which was unified by Mughal Empire and British imperialism, was made a federal nation by restructuring it on the bases of social, culture, language and geography. Started with 8 provinces initially, federal India has 28 provinces and seven center-governed union territories including the national capital. The demand of additional province and formation of new provinces from the old ones has become an ongoing process. Even recently, new provinces were formed - Chhattisgarh from Madhya Pradesh, Jharkhand from Bihar and Uttaranchal from Uttar Pradesh. And Gorkhaland and Telangana are being demanded to get separated from West Bengal and Andhra Pradesh respectively. In fact, the local inhabitants of Nagaland, Assam and Punjab expressed their desire to have separate existence as independent countries at various time periods. But in Nepal, none of ethnic, communities and regions has created illusive conception of segregation from Nepali territory and emerges as an independent country. They wanted to substitute unitary centralized governance by devolution of state-power to the local levels and right to access of all ethnicity, communities and region in the state-power.

Many countries have experienced disintegration due to inefficient management of federalism whereas many countries are undergoing through the problems in spite of addition of provinces. Meanwhile many countries have adopted unitary system in place of federalism whereas a few countries have been transformed into federal state from the unitary state. This shows that federalism cannot be considered as one-way traffic and it has been proven a good model in many countries and also failed in a few. But the inclusive democracy is the crux of foundation, structure and culture of a federal state so it is natural to be stronger and more successful than unitary and centralized state because non-inclusive, unitary and centralized state cannot be a propellant of strong national unity as much as a federal state can be. Federalism is synonymous to inclusive state; multi-center; division of state-power and authority among the units; the mechanism to regulate and check; steady bargaining with a motive to mitigate discontent, conflict and turmoil and implementation of constitutionalism; so, disintegration of the nation by federalism is an exception.

Part 4

Federalism: From Madhesh Uprising to Constituent Assembly Dissolution

Federalism is the highly modified dimension of state restructuring that is the theme of movements of many communities and of discourse among the revolutionist intelligentsia. The agenda of federalism, which was constitutionally established by Madhesh Uprising, has become the most complex issue for contemporary political ploy and flaring demand of common people by the time of Constituent Assembly dissolution. The case of federalism is being more complex due to problem in its understanding. Some find it with only positive attributes and others with mere flaws. Some view federalism as the panacea of all the political, economical and social ills whereas others visualize it as a heap of troubles. Actually, at present, the communities and individuals who were blindfolded by unitary and centralized state system are horrified about the disintegration of the nation on introduction of federalism. But for the majority of communities and individuals who experienced marginalization and exclusion from the unitary and centralized state, federalism is a symbol of national unity, which ensures their access, representation and recognition in the state.

Federalism is neither a means of repaying the former *Baise Chaubise*

principalities and making the dream of ruling other ethnicity come true, nor is it a mechanism of disintegrating an existing country and being ruled by others. The fundamental principle of federalism is to decentralize the governance and power, to make the minorities in the center a majority in the provinces and local bodies and is a political mechanism which makes the excluded and marginalized communities since past practice co-governance, self-governance and autonomous governance. But in Nepal, the proponents and antagonists of federalism entangled the problem as they were unable to convince the people about its specialties and applications. And those who are well aware also led to bewilderment and made it a conundrum by misinterpreting the conception of federalism as they are scared to lose the privilege of enjoying state-power in the unitary state system. As a result, dichotomy between the section with superiority complex of being a ruler and the remaining with inferior complex of being ruled came into existence. Especially, the Dalit community suspected about mere increment of rulers and palaces under the cover of federalism, which was obvious. Because of such suspicion, they refrained themselves from being the proponents or antagonists of federalism for considerably long period. In consequence, Dalit community was perplexed about the advantages of state restructuring and federalism. And Dalit intervention was trifling in the discourse of federalism and in decision-making process.

The Committee on State Restructuring and Distribution of State Power of the Constituent Assembly proposed for 14 provinces on the basis of single ethnic identity and the provision of political preference to the respective ethnicity at the top executive level of the provinces effective for 2 successive terms. In the context of the report, the issues of naming and delineation of the provinces on the basis of 'single ethnic identity' and about 'preferential rights on the basis of ethnicity' gained a huge controversy, and callousness was shown while opting for suitable alternatives to the proposal. Much less attention was paid to guarantee access, representation and identity of marginalized and excluded community and to develop leadership to those who have never been to the state power. On the top of it, it was rumored that

ethnic states are going to be formed in the name of provinces.

The strife did not lessen even after the report of High Level State Restructuring Recommendation Commission was made public. Instead, it was flared up by extending the perimeter of controversy by exaggerating the issues of distribution of rights and that of autonomy of the local level or to retain it within in province. New debate was introduced with a blame that the commission wanted to concentrate the power and authority of federal and local level in the provinces. Those who were with the doubt on the imposition of provincial unitary system against the centralized unitary system became very vocal. This made the discourse of federalism multi-dimensional but not productive and comprehensive, instead it assisted to deepen the suspicion.

Thus the political parties, ethnic groups and communities, scholars and common citizens were polarized as they stood in support and against of federalism, depending on their own vested interests and appropriateness. The anti-federalist and a few supporters of federalism created the anti-federalist environment by rumors and commenced the psychological war against the prospect of 'federalism with identity and constitution with federalism'. The agitators of Dalit community, who could not speculate the advantage of federalism that ensures autonomy and self-governance of all communities, could not keep themselves indifferent from this environment. But the intervention and efforts of all the oppressed ethnic communities including Dalit in favor of federalism and acquiring the self-governance and autonomy were proven to be too feeble to have any impact. In such circumstance, restructuring of the state with the establishment of federalism became a far cry because of the dissolution of the Constituent Assembly without accomplishing its task of constitution drafting.

Part 5

Nepali Federalism: Proposed Structures

The most contentious issue of prevailing discussion and debate on federalism is the base of federalization. The State Restructuring Committee of the Constituent Assembly and High Level State Restructuring Recommendations Commission have proposed to consider identity and capability as the bases of federation and identity is given the first priority. On analyzing the name, geographical location and economic prerequisites of the provinces proposed by both the bodies, the bases of the delineation of provinces appeared to be based more upon ‘identity and non-identity’ than ‘identity and capability’. And the discourse of identity is directed towards whether ‘single ethnic identity’ to be focused within the provinces or perpetuation of existing dimension in the name of retaining ‘multy-identity’. So, the discourse of federalism is better to be concentrated on ‘identity and non-identity’. And to address the resistance of identity-based naming, a federal unit may be named on the basis of cultural, geographical and historical identity in addition to single identity based naming. Thus it would be rational to accept the naming on collective identity at the provincial level and single identity as the primary basis for the local level.

History shows that the number of provinces is not permanent in any federal state in the world. Instead, the data shows that the number of provinces increases following the demands of victimized communities for their access, representation and identity when they claim for the separate province with sufficient bases. The demand of provinces on the basis of identity cannot be restricted by fixing the number of the provinces in the constitution. So, any prohibiting act cannot be accepted which will lead the demand of the identity-based province into a violent conflict. So, it is wise to be flexible to alter the number of provinces rather than fixing it in the constitution.

Federalism does not hold any value and importance until and unless it addresses the aspirations and demands of communities and regions that are struggling against unitary and centralized state for their identity, access and representation. Such federalism can be perceived by the marginalized and excluded communities as mere renaming of old state system which cumulates the whole of authority, power and rights at the center in conservative way and enforces to assume 14 zones and 75 districts as provinces and autonomous regions. In this dilemma, if new federal structure of the state could not guarantee identity, access and representation, then that environment would be proven to a fertile soil for new dimensions of discontent, conflict and turmoil that are invited by the rumor that federalism disintegrates the nation. So, it is the high time to show prudence to address such crisis by addressing single or collective identity as the base of federalization and demarcating and fixing the number of the provinces accordingly and naming and delineating the local levels.

Federalism Proposed by the Committee: Base and Structure

Terms of Reference of State Restructuring and Distribution of State Power Committee of the Constituent Assembly as defined were to determine the structure of the federal democratic republic state, to ascertain the principle and grounds for delineation of federal units, to demarcate every federal unit and give them names. Similarly,

distribution of power between the legislative, executive and judiciary of the different levels of government of federal units, determine the list of the jurisdiction of different levels of federal units and determine the common list, the inter-relationship between the legislature, executive and judiciary between federal units, the resolution of disputes that may arise among federal units and other necessary things relating to the work of the committee.

The report that was prepared by the committee in its sphere of action has the provision that the main structure of federal Nepal shall be of three tiers that include federation, province and local¹⁵, and the exercise of Nepal's state power shall be used by federation, provinces, local units and special structures.¹⁶ Along with by putting an end to the existing unitary and centralized state structure, Federal Democratic Republic of Nepal shall be divided into 14¹⁷ autonomous states, and special structures [autonomous regions, protected regions and special zones]¹⁸and at local levels. As far as federalization [province formation] of Nepal from a unitary state is concerned, the committee put forth identity and capability as the grounds to be considered for fixing federal units, moreover, it took identity as the primary ground and capability as secondary. In the same line of ground of identity, ethnic/communal, lingual, cultural, geographical/continuity of regional identities and continuity to historical identities are taken into consideration. And economic inter-relationship and capability, infrastructure development and potential, availability of natural resources and means and administrative accessibility are the basis of capabilities¹⁹. And on the ground of identity, 9 provinces on the base of single identity [Limbuwan, Kirat, Tamsaling, Newaa, Tamuwan, Magarat, Tharuwan, Sherpa and Jadan], on the ground

15 Report on concept paper and preliminary draft of the Restructuring of the State and Distribution of State Power Committee 2066 BS. Article 4[1].

16 Ibid, Article 3[1].

17 Ibid, Article 5[1].

18 Ibid, Article 8[1] [2] [3].

19 Ibid, p.15.

of regional identity, 2 provinces [Madhesh and Karnali] and on the basis of capability 3 provinces [Sunkoshi, Narayani and Khaptad] are proposed. The provinces proposed on the basis of single ethnic identity are demarcated again with the majority of ethnicity concerned.

During the delineation of the provinces on the grounds of majority of certain ethnicity, community and region but still without majority of single ethnicity, which is an obvious phenomenon in a nation of minorities. But, it seems that the demarcation of the provinces is proposed considering five fundamental specialties of principle of federalism. Those specialties are: to ensure the access, representation and inclusion with identity of marginalized and excluded communities in the state. According to the demarcation of the Committee, there are 27% Limbu in Limbuwan, 34% Rai in Kirat, 36% Sherpa in Sherpa, 36% Newar in Newaa, 44% Tamang in Tamsaling, 32% Gurung in Tamuwan, 34% Magar in Magarat and 26% Tharu in Lumbini Awadh Tharuwan. Similarly, single identity of any caste or ethnic community is not taken into consideration for Sunkoshi, Narayani, Karnali and Khaptad provinces but there is majority of Bahun-Chhetri yet they do not have single majority whereas in Madhesh province, the people of Madheshi origin are with single majority. But no province was proposed for Dalit and Muslim communities with their majority. By this scenario, it can be concluded that hill Bahun-Chhetri, Madheshi caste/ethnic communities and indigenous nationalities are possible to be the ruler at provincial level but no such possibility appears on the way to Dalit and Muslim communities.

Similarly, this committee has made a provision for different structures apart from the local bodies in the province as autonomous region, protected region and special zone under special structure. According to that provision, an area with majority of an ethnicity or linguistic community or with dense population within a province shall be maintained as an autonomous region; any region shall be maintained as a protected area in order to protect and promote the ethnicity/community, cultural area, declining and marginalized ethnic groups

who are in the extreme minority; and the backward areas which have remained behind in socio-economic terms and not covered by both area or to develop any subjective area within the province, any specific geographical area shall be maintained as a special zone.²⁰ According to that provision, autonomous regions were named after 22 ethnic communities under indigenous nationalities²¹. This also clearly mentions that autonomous regions are for the minorities of minority indigenous nationalities. But the target groups for protected regions and special zones are not specified.

The committee has made provision of village councils and municipalities as local bodies. The provincial government shall constitute a high-level commission in order to determine the name, number and area of the local level and that commission would consider homogenous population, geographical and administrative accessibility, density of population, transportation facilities, availability of natural resources, and the cultural and communal aspect of the people living in the area concerned. But, while determining the local level institutions considering those aspects by provincial governments, it is not made clear if local level institutions would also be formed for indigenous nationalities who are in extreme minority and other communities who could not get their own province and autonomous region.

The federal structure proposed by the committee is mainly oriented to indigenous nationalities, Madheshi communities and hill Bahun-Chhetri. No structure was suggested considering Dalit and Muslim communities. But, the report of the committee has proposed for proportional representation in the state structure of federal, provincial and local level and additional representation in addition to proportionate

20 Report on concept paper and preliminary draft of the Restructuring of the State and Distribution of State Power Committee 2066 BS. Article 8[1][2][3].

21 They were Kochila, Jhangad, Dhimal, Meche, Santhal, Lepcha, Yakkha, Chepang, Dura, Kumal, Danuwar, Pahari, Thami, Majhi, Baram, Thakali, Chhantyal, Sunuwar, Surel, Jirel, Helmo, and Byansi. Report on concept paper and preliminary draft of the Restructuring of the State and Distribution of State Power Committee 2066 BS. Annex 2.

[special rights/ compensatory rights] in political structure of federal and provincial state. In this sense, the proposal of the committee is very much affirmative and as per the demand and spirit of Nepali Dalit movement.

Federalism Proposed by the Commission: Base and Structure

Following the decision of cabinet of Nepal Government, a High Level State Restructuring Recommendation Commission was constituted in accordance with clause 138 [2] of the Interim Constitution of Nepal 2063 BS on 6 Mangsir 2068. The Terms of Reference for the commission was 'to prepare the report incorporating the views and reflections of State Restructuring and Distribution of State Power Committee; whole aspects of deliberations of the Constituent Assembly on the grounds of identity and capability and submit it to Nepal Government with recommendations'. As per the Terms of Reference, the commission handed over the state restructuring recommendations to the government on 17 Magh 2068. The report of the majority faction of the commission proposed for 10 territorial provinces and one non-territorial federal state for Dalit, whereas the report submitted by the minority faction provided 6 provinces. The modality of federal structure proposed by the main report of the majority of the members is going to be discussed as follows.

This commission, as proposed by State Restructuring Committee of the Constituent Assembly, has made provision for multi tier in the state structure that includes federation, province, special structure and local level bodies, and defined village council and municipality to be formed as local units under the province. The commission also put front identity and capability as the grounds to be considered for formation of provinces with identity as the primary base. In line with the ground of identity, ethnic/communal, lingual, cultural, geographical/ continuity of regional identities and continuity to historical identities are taken into consideration. It has proposed for 10 territorial provinces and one non-territorial province for the restructuring of unitary modality of the state considering economic inter-relationship and capability,

infrastructure development and potential, availability of natural resources and means and administrative accessibility as the basis of capabilities. It proposed 7 provinces on the basis of single ethnic identity [Limbuwan, Kirat, Tamsaling, Newaa, Tamuwan, Magarat, Tharuwan], province on the basis of regional and linguistic identity [Madhesh- Mithila- Bhojpur] and 2 provinces on the grounds of capability or without identity [Karnali- Khaptad and Narayani].

It proposed for ‘non-territorial province for Dalit’, which was a progressive step than that of State Restructuring and Distribution of State power Committee. It recommended for non-territorial Dalit province for Dalit community who are more than 13% of the population in Nepal²² that doesn’t follow the grounds of delineation of federal and local units. It has accepted the 22 autonomous provinces proposed by State Restructuring Committee as they are. And the provinces of Sherpa, Jadan and Sunkoshi are merged into other provinces and similarly reduced the number of provinces by merging Karnali and Khaptad together. Likewise, the commission augmented proportional representation of Dalit in various units of the state and made the proportion of reservation in education, health and employment tangible.²³

The new concept proposed by the commission was ‘non-territorial Dalit province’. The concept of ‘non-territorial’ structure, which has been occupying a significant space in intellectual discussion was put forth as recommendation at first by the commission. This is absolutely a new proposition for Dalit community proposed by the commission.

22 The view presented by the chairperson of High Level State Restructuring Recommendation Commission Dr. Madan 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 in Kathmandu.

23 State Restructuring Committee recommended for 3% and 5% proportional representation for Dalit in federal and province where as the Commission increased those proportions into 5% and 7% respectively. Similarly, the Committee recommended for formulation of law for reservation policy for Dalit in education, health and employment and the Commission has also provided substantial recommendations on it.

In fact, the report of 109 pages submitted by the commission consists of a statement ‘the non-territorial Dalit province would be as prescribed by the law’ on page no. 31. This statement does not ensure that the means of other provinces, local bodies and autonomous regions formation; structure; electoral system; governance system and rights would automatically be prescribed for non-territorial Dalit province too. The provision is quite contradictory in the sense that federation, province, special structure and local units would be formed according to the Constitution and the rights to be enshrined in the appendix of the Constitution; but the non-territorial province is to be formed only as per the law.²⁴

‘Non-territorial Dalit province’ is directed by the concept of formation of ‘Dalit parliament’ where the Dalit representatives would be accumulated at the level of federation nationwide as they do not occupy a separate large geography. Actually, the presentation of this proposal is perceived with the conception that ‘something is better than nothing’ for Dalit in federalism and is analyzed accordingly. But whatsoever be the underlying factors behind the presentation of this proposal, this concept is very supportive in the sense that this correlates the issues of Dalit and their accessibility to the state-power with federalism. So, this report is more progressive than that of the committee. This proposal primarily resembles with the federal modality of few Dalit and non-Dalit intelligentsia, but it does not comply with the demands of the mainstream political parties and the Dalit movement. So, this proposal has not been able to gain enough attention and get shaped in Dalit movement. And, ‘non-territorial Dalit province’ is perceived as non-invitee or unwanted beautiful gift among the mainstream political parties and Dalit movement.

24 For further information, please see, Yam Bahadur Kisan, *Dalit ka lagi Gairbhaugolik Sanghiyata: Sandarvikta ra Upadeyata*, Janautthan Monthly, Falgun 2068, p. 3-7.

Part 6

Discourse on Federalism in Dalit Movement

The issue of federalism could not be the matter of attraction, enthusiasm and exultation for Dalit community as much as for Madheshi and indigenous nationalities from the beginning. This issue could not be the topic of institutional discussion for long time except a few intellectual discussions and writings by few intelligentsia and political leaders. The political initiators, intelligentsia, and social activists of Dalit community remained in the state of indolence and impasse for long time; neither they were in position to oppose the prospect of federalism, or could they support it. And the state of impasse in Dalit community was obvious because State Restructuring Committee of the Constituent Assembly recommended the provinces that ensured indigenous nationalities, Madheshi and hill Bahun-Chhetri be the ruler by some or other means. In the prevailing situation, three different orientations are found among the Nepali Dalit community the anti-federalist trend; the trend that supports federalism but do not seek space in it; and the trend that seeks space for Dalit in federalism.

Discourse against Federalism

Communist Party of Nepal [Mashal] and sister organization of

Rastriya Janamorcha Nepal, Jatiya Samata Samaj and Dalit leaders and workers associated with it oppose the prospect of federalism openly. According to this association, ‘Federalism would impinge adversely on sovereignty, integrity and national solidarity and the state would resemble Nigeria or Ethiopia because of conflict and hostility’ [Nepali, 2066 BS, Kha: 4]. It won’t be an exaggeration to claim that such view is the presumption of the mother party as the organizational system lack autonomy for their sister organizations. They understand federalism as vested interest of foreign countries, especially that of India and an imported conspiracy to disintegrate the country, and advocate unitary governance system with autonomous governance based on democratic decentralization [BK, 2066 BS]. They have been insisting upon need to consider the movement against federalism as an integral part of Dalit movement because they believe after Nepal goes in federalism, the struggle against the class oppression would fade and intensify the ethnic conflict; joint Dalit movement of national level would be feeble as in India; the situation would crop up when neither federal nor provincial governments would be accountable to resolve the Dalit problems and implementation of revolutionary land reform policy would be difficult [Nepali, 2066 Kha].

Only this group within Dalit community has been opposing federalism openly and its mother party is tightening its grip in the communities other than ethnic groups and Madheshis. In fact, there is considerable number of Dalit leaders-cadres who have not surfaced their anti-federalist views yet they are discontent with its prospect of federalism. Moreover, they fear that ethno-federalism might enhance the extremity of discrimination and exclusion of Dalit community.²⁵ With this fear, they may become anti-federalist which can be devastating but at the same time the possibility is not deemed that they may support federalism, with collective identity.

25 Dr. Chet Bahadur Pariyar and other intelligentsia of Dalit community have been advocating against the formation of states on the ground of identity.

Support to Federalism and Discourse on Special Rights

Majority of Dalit of Nepal support federalism. There are mainly three reasons behind their support -- First, they support because they believe that federalization makes the state accessible to them. Secondly, they support because their affiliated political parties support federalism. Thirdly, Dalit's emancipation is not attainable without that of indigenous nationalities and Madheshi community, so they support federalism in line with indigenous nationalities and Madheshi community [Aahuti, 2067 BS].

The Dalit proponents of federalism argue that the target of Dalit in federalism is to enhance their representation with compensation in all spheres. The rights of proportional representation with compensation in federal government, federal parliament, National Assembly, Provincial Assembly, police, administration including local bodies and other units should be enshrined in the constitution clearly. Enshrining and implementation of those rights would eventually be proven the best method to solve the problems of Dalit²⁶.

Thus, Dalit leaders-cadres of Unified Communist Party of Nepal [Maoists] and Communist Party of Nepal-Maoists belong to the category that are genuinely committed to federalism but do not openly advocate self-governance and co-governance of Dalit. The Dalit leaders and cadres of both the parties understand that gaining proportional representation with additional rights in all the organs of state is synonymous to getting space by Dalit community in federalism. Dalit leader affiliated to Communist Party of Nepal [Maoists] Ranendra Baraili shares the risk of losing special rights and compensatory rights while advocating territorial federalism at the present context. Still, he has not opposed for non-territorial federalism openly.²⁷

26 The speech by Aahuti in the discussion on '*Sanghiyata ma Dalit*' during Dalit Information Expo on 17 Chaitra 2068 in Biratnagar organized by SAMATA foundation and Human Rights Commission, Biratnagar branch.

27 The speech by Ranendra Baraili in the discussion on '*Sanghiyata ma Dalit*' during Dalit Information Expo on 25 Chaitra 2068 in Dhangadhi organized by SAMATA foundation and Jagaran Media Centre.

Dalit leaders-cadres of both the parties supports neither territorial province nor non-territorial structure for Dalit. According to them, the root problems of Dalit are caste discrimination and untouchability which are to be resolved by the means of assimilation and not by the segregation approach, and demarcation of territorial or non-territorial Dalit province would create hindrance in assimilation. The crux of the matter is, Dalit problem is not mere untouchability and it is not directly interlinked with federalism. The queries that can be addressed by federalism are with regard to autonomous, self-governance, co-governance and division of natural resources. So while participating in the discourse of federalism, the queries should be concentrated on where, how and what questions of governance units, governance rights and share of the resources Dalit community needs. So, the issue of caste untouchability should not be intermingled or interchanged with the discourse of federalism, instead the prospective of making a Dalit a ruler should be a focal point from the perspective of representation and access. But, the alertness is necessary as there can be the attempts of the perpetuation of evil practices like untouchability in the name of ethnic, linguistic and cultural autonomy, practice, tradition and conservation of the culture by the provinces, sub-provinces and local bodies.

The principle of this group is that provision of proportional representation with compensation or special rights²⁸ and declaration of caste discrimination and untouchability as ‘grave social crime’ are the prerequisites of Dalit community and not a separate province or territorial governance unit. They claim that the provision of special rights would create a favorable environment for the access of all Dalit, who are scattered throughout the nation, to the state and in turn make them rulers. This group supports re-demarcation of local bodies ensuring the majority of Dalit community. The apprehension of the group on ‘assimilation’ is appropriate. But federalism is not meant to swap with untouchability and representation.

28 Mutual consensus among Joint Political Dalit Organizations on 26 Ashwin 2066 BS.

Discourse on Space for Dalit in Federalism

A tendency of searching for space for Dalit in federalism is enhanced in Dalit community after the report of State Restructuring Committee of the Constituent Assembly was published. Dalit community was eager to seek the space in state restructuring when they observed that provinces were allocated also for Limbu and Sherpa communities who hardly occupy 2% of the total population. Especially many intelligentsia of Dalit community and social campaigners associated with non-governmental organizations are with the assumption that Dalit community also require governance unit of any form. This orientation is far better than the propensity, which directly opposes federalism and does not seek governance unit for Dalit. Yet, this group also lacks collective voice. Even within this, the proponents are with diverse opinions like: 1] ‘Dalit also require separate territorial province’; 2] ‘Non-territorial structure is sufficient’; 3] ‘Geographical governance unit like sub-province or district and local in federal structure is appropriate’. [This discourse will be further discussed in next chapter].

Part 7

Three Issues of Dalit Community in Federalism

Issue of Separate Territorial Dalit Province

There is a huge disagreement in Dalit movement on the contention if Dalit community need separate 'territorial Dalit province'. Dalit leaders in the central leadership of the political parties and of Dalit sister organizations have been discussing on the need of separate territorial province and they do not see any application of it. They believe that demand of territorial Dalit province would be a wrong principally and practically and is impossible too.

Some number of politicians, social workers and intelligentsia in Dalit community are with the opinion that Dalit require a separate territorial province and it can be formed. Specially, Moti Lal Nepali [2067 BS], Kamala Hemchuri [2066 BS], Tez Sunar [2066 BS] and Hira Bishwokarma [2067 BS] have been raising this issue consistently. Apart from them, Gajadhar Sunar, Chakraman Bishwokarma, and Ganga Mahara are among the few, who raise this issue.

The alternatives proposed by many of them by taking the Dalit majority into consideration are: 'Sahales province' covering Siraha and Saptari;

‘Sarbjit province’ comprising in Parbat, Myagdi and Baglung; ‘Setu BK province’ consisting of Surkhet, Dailekh and Kalikot and ‘Bhul province’ comprising in Bajhang, Bajura, Acham and Doti in far western²⁹ region. Some of them called for only two provinces: ‘Sahales autonomous region’ and ‘Khaptad-Dravid autonomous region’ [*Jatiya Bhebbhav Biruddha Rastriya Manch* 2067 BS]. For this, attempts are being made to present those proposed provinces had states of Dalit in ancient time, they have uniformity in language-culture and that they have majority of Dalit community [Kisan, 2069 BS]. But when the protests are going on against naming of province on ethnic identity, the claim of the province on individual's name could be only exhibition of sentimentals.

Similarly, Dr. Man Bahadur BK opines respecting Dalit identity by declaring of one among the 14 proposed provinces as Dalit majority would be appropriate instead of demanding 'Dalit province' and it would implement provisions of political preferential rights accordingly. If it turns unlikely, Dr. BK believes that formation of autonomous region consisting of Jadan and Karnali and Sahales autonomous region in Terai-Madhesh and making of a non-territorial federalism at central level are viable.³⁰

Dalit Human Rights activist Gajadhar Sunar puts forward the logic that Dalit should demand territorial province in federalism and this is possible. In his opinion, only territorial Dalit province would ease the assimilation process.³¹ But Maoists Dalit leader Aahuti says the motive of formation of territorial Dalit province is not appropriate. He believes that at first, this is not possible and then, it would be

29 Intelligentsia and rights activists of Dalit community namely Hira Bishwokarma, Tez Sunar, Moti Lal Nepali, Kamala Hemchuri, Chakraman Bishwokarma, Gajadhar Sunar and Ganga Mahara has been demanding separate geographical 'Dalit Province'.

30 The view expressed by Dr. Man Bahadur BK in the program organized by SAMATA foundation on ‘*Dalit and Rajya Punarsanrachana*’ on 13 Paush 2068.

31 The speech by Gajadhar Sunar in the discussion on ‘*Sanghiyata ma Dalit*’ during Dalit Information Expo on 25 Chaitra 2068 in Dhangadhi organized by SAMATA foundation and Jagaran Media Centre.

recognized as ‘province of untouchables’ psychologically for a long time and it won’t be able to address the problems of Dalit.³²

Some non-Dalit Bahun-Chhetri as well as intelligentsia and leaders of nationalities are also coming forward with the opinion that a separate territorial Dalit province is needed, possible and one should demand. Journalist Kanak Mani Dixit says that if there is ethno-federalism then initiation for Dalit province should also be made. He adds, ‘If respect, prosperity and equitability are the bases of federalization, then Dalit should also get a separate province and a prosperous Dalit province should be formed on the basis of economic geographic federalism. Likewise, sub-autonomous provinces should be divided. Its modality and assertion of rights should be decided mutually. But the discourse on non-territorial federalism is just to appease Dalit, and it is nothing else that an idea to allure them. This modality cannot provide rights to Dalit in reality.’³³

Similarly, sociologist Dr. Krishna Bhattachan also foresees territorial state for Dalit and its application. According to him, it was Bhul king who was the innovator of the golden coin wrapped in skin in Thalara of Far Western region in ancient days and Sahales state in Terai-Madhesh region existed. Noting the Dalit majority in those regions, Dr. Bhattachan says, ‘the approach of allocating 4 provinces, Khaptad, Karnali, Sunkoshi and Narayani, for Bahun-Chhetri whereas one province for each of rest, with a reservation, is not commendable’. There are three probabilities for Dalit community in federalism: 1] demand of non-territorial autonomy for Dalit; 2] demand of regional autonomy for Dalit of Far-western and Mid-western hilly regions and of Siraha and Saptari; 3] demand of sub-autonomous regions in autonomous ethnic, linguistic and regional regions.³⁴

32 The speech by Aahuti in the discussion on ‘*Sanghiyata ma Dalit*’ during Dalit Information Expo on 17 Chaitra 2068 in Biratnagar organized by SAMATA foundation and Human Rights Commission, Biratnagar branch.

33 The view expressed by Kanak Mani Dixit in the program organized by SAMATA foundation on ‘*Dalit Ra Rajya Punarsamrachana*’ on 13 Paush 2068.

34 The view expressed by Dr. Krishna Bhattachan in the program organized by SAMATA foundation on ‘*Dalit Ra Rajya Punarsamrachana*’ on 13 Paush 2068.

Having coinciding views regarding Dalit community by two scholars of different caste, different opinion and different ideology is an unusual co-incidence. Such expression by Dixit can be a ploy to alter the ethno-federalism discourse vis-à-vis Dalit issue and that of Bhattachan to strengthen the demand of indigenous nationalities. But both seems have obvious intention to get the support of Dalit community, which is not unnatural.

In totality, it is not that Dalit community should not demand a separate province, a territorial unit cannot be formed with Dalit majority and Dalit community does not need any territorial governance unit. But, the discussion should also be carried out if this concept does meet the pre-requisites of federalization, it solves the problems and demands of Dalit community spread throughout Nepal. The pre-requisites of federalization and identity on the basis of which Madheshi and indigenous nationalities are claiming for separate province, such pre-requisites and identity are lacked by Dalit community. Dalit identity is not to 'construct' rather to 'destruct'³⁵ and based on the logic that assimilation is necessary for the abolition of untouchability, forming a separate province on the ground of Dalit term and identity would be a mistake and is not viable.

But, from another perspective, like Sunkoshi, Narayani, Karnali and Khaptad, forming a separate province on the ground of capability and non-recognition encompassing the regions of Dalit majority can be demanded. A small or big province likely to be formed with Dalit majority by any identification. Because the Dalit are scattered throughout the nation, only one province is not probable to be formed with Dalit majority. Similarly, it is also not possible to form four

35 The identity can be identified as positive and negative depending upon its conception. The identity based on positive conception is constructive [need to conserve] and the identity based on negative conception is destructive [need to efface]. Dalit identity is based on negative conception [caste discrimination and untouchability], this identity is to be effaced with abolition of discrimination and untouchability and it would. So state should not be formed and named on the basis of such temporary identity which is required to be effaced.

proposed provinces. If province is likely to be formed or rather formed with Dalit majority by any other identification, then there should not be any objection.

But, the crux of the matter is if any separate province of Dalit is formed, such 'Dalit province' will not be able to address the problems of Dalit living beyond the border. So, formation of Sahales province may not be the matter of joy for Dalit of Khaptad and similar would be the case for Dalit of Siraha-Saptari on formation of Khaptad-Dravid province or vice-versa. Instead, it can be a cause of perplexity between hill and Terai Dalit because the concern of Dalit is not mere queries on governance or to establish autonomy or co-governance, but to abolish the practice of discrimination and untouchability on the basis of caste and *Varna* also. These issues should be addressed nationwide in every Dalit settlement, not only in a single province. Along with the abolition of discrimination and untouchability, the concerns of overall development, justice and equality for Dalit community should also be addressed. The solution of such concerns should be explored in self-governance, autonomy and co-governance related to federalism.

Discourse on Non-Territorial Province for Dalit

The members of the group who do not anticipate territorial Dalit province or cling to the opinion that separate Dalit province should not be formed, speak with reference to Indian federalism and the context of Dalit. They presented the system of non-territorial province as an alternative in the context of Nepal because federalization in India could not solve the Dalit issues specifically discrimination and untouchability. The leaders of Jatiya Samata Samaj even passed a satire on them, saying that some are trying to ride donkeys because they see others riding horses. (*Aru Ghoda ma Chadeko Dekher aafu Gadha mathi Chadna Khojneharu*) [BK, 2066 BS: 3]. But a significant number of people from Dalit and non-Dalit communities perceive non-territorial federalism as, 'only place for Dalit' [Baraili, 2067 BS: 5-6] and 'as beautiful as a rainbow' [BK, 2064 BS: 13-14; Kisan, 2069 BS].

High-level State Restructuring Recommendation Commission has proposed a non-territorial province for Dalit community in the later phase.³⁶ During deliberation about the non-territorial state recommended by the Commission in then Constituent Assembly, only one, out of 428 Constituent Assembly members, stood in support of it.³⁷ The Constituent Assembly member who voted in support was Pari Thapa. The Communist Party of Nepal (Unified), has been advocating for non-territorial province and conducting the discussion in support of party agenda.

Parashu Ram Tamang [2065 BS], Mahendra Lawati [2065 BS], Dr. Krishna Hachhethu, Shyam Shrestha and Uddhav Pyakurel are among some non-Dalit proponents of non-territorial province. Shyam Shrestha has been arguing that the provision of non-territorial federal representation system is appropriate to enhance the access of Dalit into the national mainstream politics as Dalit community doesn't have any separate geography. He added that non-territorial federal structure is a necessity not only for Dalit and Muslim but also for labour and farmers too for their representation in National Assembly³⁸.

Dr. Krishna Hachhethu puts forward the logic that Dalit community is not in position to claim separate territorial province because they are scattered throughout the nation and are not inhabited to any land from the perspective of heredity or history. So the concept of non-territorial Dalit province would be appropriate and beneficial to connect Dalit scattered throughout the nation and to strengthen Dalit governance in political structure.³⁹ Dr. Hachhethu, a scholar of Political Science and

36 Recommendation Report of High Level State Restructuring Recommendations Commission 2068 BS, Pp 8 and 31.

37 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 in Kathmandu.

38 Expressed by Dr. Krishna Hachhethu in the program entitled 'Dalit in Nepal's Federal Design: Challenges and Opportunities' organized jointly by SAMATA foundation and International Idea on 4 Kartik 2068.

39 Ibid.

member of State Restructuring Commission also argues that a different non-territorial Dalit province can be formed from the elected Dalit of both provincial and federal assemblies, where Dalit member 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 is cost effective [ibid].

Similarly, Dr. Uddhav Pyakurel also favors non-territorial province as the programs of capacity building, conservation of culture and professional identity of Dalit community, programs related to social security, empowerment, social mobilization and inclusive development programs can be carried out keeping Dalit community at the center⁴⁰.

There were some Dalit in favor of non-territorial province in the beginning but in later stage, only Ganesh BK Deulyal, leader of Utpedit Jatiya Mukti Samaj, Nepal affiliated to Communist Party of Nepal, [Unified Marxist-Leninist] is seen to support non-territorial Dalit province among the individuals affiliated to political parties. In his opinion, though the territorial province for Dalit is a requirement, non-territorial province is proposed after the possibility to form territorial province diminished because they are territorially dispersed. According to his view, there would be Dalit representation via non-territorial province even in provincial upper house and federal national assembly in future.⁴¹

Many Dalit and non-Dalit identify the non-territorial structure essential for the representation in national assembly, if not for other purposes. But, it should be understood that Dalit and Muslim representation in the national assembly can be ensured through the election of their provincial representatives. But, based on the concept of non-territorial

40 Working paper [unpublished] presented by Uddhav Pyakurel in the program entitled 'Dalit in Nepal's Federal Design: Challenges and Opportunities' organized jointly by SAMATA foundation and International Idea on 4 Kartik 2068.

41 The speech by Ganesh BK Deulyal in the discussion on '*Sanghiyata ma Dalit*' during Information Fair on 25 Chaitra 2068 in Dhangadhi organized by SAMATA foundation and Jagaran Media Centre.

province proposed by Dr. Hachhethu, non-territorial provinces are to be formed by reducing the cost of election and investing less in the administrative functions with the representation of Dalit and Muslim, which endorse their representation in the state later.

The conception that social assimilation would get affected because of territorial and non-territorial mechanism is also considerable. According to Aahuti, the leader of Unified Communist Party of Nepal [Maoists], "the identity and existence of Dalit are perceived with an offence. So their assimilation should be preceded with other communities to annihilate their identity and the discourse of synchronization should be adopted with non-Dalit to the maximum. The more segregation with non-Dalit, worse the situation would be. So, non-territorial mechanism should not be formulated at all which may result more segregation of non-Dalit with Dalit and with their problems too. If so happens, the situation would deteriorate more".⁴²

What is a Non-Territorial Mechanism?

Theoretical clarity regarding the conception of non-territorial mechanism is necessary here. The conception of non-territorial system in federalism is developed with a motive to address the problems of indigenous and nomadic people, linguistic and cultural minorities and territorially dispersed 'cultural communities'. Basically, the conception of non-territorial federalism had been propagated already at the beginning of the 20th century by the Austrian Social Democrat Karl Renner, who tried to find a fair and democratic solution for the indigenous nationalities and internal ethno-national diversity. The aim of preliminary idea of this conception was to make different indigenous representation at the state level in separate autonomous national councils; the prime responsibility of these councils was to form policy about culture and education [Kneitschel, 2004]. Belgium

⁴² The speech by Aahuti in the Information Fair in Biratnagar organized by SAMATA foundation and Human Rights Commission, Biratnagar branch on 17 Chaitra 2068.

is the only one country to adopt this idea at present. There are three non-territorial ‘communities’ or ‘cultural community’ with separate cultural regions. In the same way, Sami community Finland, Sweden and in Norway have separate and non-territorial parliaments.⁴³ Except this, non-territorial structures are formed in Eastern Europe, Canada, Australia, New-Zealand and America. Such structures are called ‘cultural provinces’ which are provided with the autonomous rights on education, culture, library, museum, art, sports, youth cases and tourism [Coakley, 1994, Breen, 2010]. Such rights are specifically related to religion, language, culture, education and in taxation to some extent [Follesdal, 2008]⁴⁴.

The point to be noted is that formation of non-territorial or such structures are intended to indigenous linguistic and cultural groups of that particular part of the world. But as far as Nepal is concerned, Dalit community is not a separate ‘linguistic or cultural community’. And the core of the problem of Dalit community is not to uplift and conserve its language, religion, culture and script.⁴⁵ So, non-territorial structure or ‘cultural province’ for Dalit community cannot be declared as the best alternative.

The problems of Dalit are located in the ‘lower strata’ in the hierarchy than in the ‘upper strata’ and they are dispersed throughout the nation. So, the provision formulated on ‘upper strata’ and ‘at distance’ as well as those ‘ceremonial province’ or ‘island province’ cannot address the basic problems of majority of Dalit community dispersed in various villages. In fact, the conception of non-territorial province was not

43 Sami is indigenous people having separate language and cultural specialties. There is a separate non-territorial cultural parliament for cultural autonomy.

44 For further information, please see, Yam Bahadur Kisan, *Dalit ka lagi Gairbhagolik Sanghiyata: Sandarvikta ra Upadeyata*, Janautthan Monthly, Falgun 2068. Pp. 3-7.

45 Dalit in Nepali Dalit community speak hill Khas, Nepal [Newari Bhasha] and Indo-Aryan languages [Maithili, Bhojpuri, Awadhi, Magahi] and Doteli languages and neither of these languages is their language or sole language of Dalit and separate ‘dalit language’ doesn’t not exist. Dalit have been accommodating themselves with the main stream language and culture of that particular geography. Though they are interested and participated in the linguistic and cultural movement of respective regions but they don’t have separate demand or movement for their own language and culture.

formulated in the context of Dalit community, nor was it formulated to solve the problems, being faced by the Dalit community. So, trying to implement the modality developed in different context and with an aim to fulfill different intention in a similar way in the context of Nepali Dalit cannot be proper and practical.⁴⁶ However, if modality of federalism in the context of Nepal could be implemented creatively in the process of identifying and resolving the basic Dalit problems, the non-territorial province or 'Dalit parliament' can be an innovative experiment. The concern on the extent of rights, state-power and economic resources that would be devised would be of great importance in this conception.

According to the classical model of federalism, the privileges Dalit community will be able to enjoy are : to send their representatives in the National Assembly, collect levy from federal and territorial provinces and organize the sports, conduct Dalit literature and cultural academy and organize trainings and seminars only. Except these rights, they do not possess the authority to formulate the measures for overall development of Dalit like to take decisions regarding politics, justice, security, economy and development. These rights are enjoyed by mainly federal and territorial provinces, so non-territorial province need to depend upon them. But, if this conception is authorized and provided constitutional recognition as 'Dalit parliament', this structure would be much more authoritative, inclusive organization with elected representatives than the Dalit Commission. In this context, when it could become institution to use state-power and elected constitutional body, the Dalit Parliament and non-territorial province may not be a proposal to neglect.

Discourse on Local Body

Proportional representation and special rights of Dalit community in all bodies, tiers and spheres of federal, province and local level resolve the concerns of Dalit representation in those units. It leads to

46 For further information, please see, Yam Bahadur Kisan, *Dalit ka lagi Gairbhaugolik Sanghiyata: Sandarvikta ra Upadeyata*, Janautthan Monthly, Falgun 2068. Pp. 3-7.

participation, coordination and co-governance of Dalit community in governance and civil services. But, when separate territorial province or non-territorial structure do not exist or cannot be formed, the query on self-governance of Dalit in federalism is palpable. Although self-governance for Dalit community is needed not for conservation or uplifting of language and culture, the need of Dalit is the territorial self-governance, which is enjoyed by every province and local body.

Demarcation and naming of local bodies [district/village/municipality] are done with the help of irrigation channel, road, track, *Chautari* (a platform under a tree), trees, rivers, hill and stream. Now, if demarcation and naming are done by restructuring of such bodies on the basis of majority of ethnicity, community, language, religion and culture, local bodies can be formed, the local bodies will become institutions with representation of Dalit and other minorities. Because Dalit population is dense in eight districts of Nepal namely: Baglung, Jajarkot, Surkhet, Dailekh, Kalikot, Achham, Bajura and Doti though that may not be enough to form a province. Dalit account 23 to 30% of total population there. The presence of Dalit community is denser than that of Yadav in 11 districts from Jhapa of Eastern Terai to Parsa [Sharma, 2008].

There are many places in Nepal that can be formed autonomous village council/ municipality having the majority of one group within a province that is formed because of the majority of any other specific language or nationalities. Dalit are in absolute majority in 12 villages development committees in VDC level and they lead in 287 village development committees. Similarly, even the extreme minorities like Chepang are with absolute majority in 4; Thami in 3; Chhantyal and Sunuwar in 2 VDCs. Muslim community is also with absolute majority in total 36 VDCs in the nation [ibid]. Thus adoption of autonomy within autonomous would create a favorable situation even for Bahun also because no province can be formed on the basis of Bahun majority but they are with absolute majority in 102 VDCs. Rest of the communities can also get advantage out of this model. To be noted, Chhetri enjoy absolute majority in 387 VDCs [ibid].

Districts with 15-30% Dalit population

S. No.	District	Total Population	Dalit Population	Percentage in Total Population
1.	Saptari	5,70,282	1,21,015	21.22
2.	Myagdi	1,14,447	25,576	22.35
3.	Parbat	1,57,826	32,223	20.42
4.	Baglung	2,68,937	62,354	23.19
5.	Pyuthan	2,12,484	42,748	20.12
6.	Surkhet	2,69,870	70,619	26.17
7.	Dailekh	2,25,201	56,477	25.08
8.	Jajarkot	1,34,868	37,576	27.86
9.	Kalikot	11,510	3,441	29.90
10.	Bajura	1,00,626	24,515	24.36
11.	Achham	2,31,285	65,612	28.37
12.	Doti	2,07,066	53,425	25.80
13.	Siraha	5,69,880	1,10,349	19.36
14.	Dhanusha	6,71,364	1,16,973	17.42
15.	Mahottari	5,53,481	94,075	17.00
16.	Sarlahi	6,35,701	99,386	15.63
17.	Rautahat	5,45,132	86,339	15.84
18.	Lamjung	1,77,149	28,081	15.85
19.	Kaski	3,80,527	60,532	15.91
20.	Tanahu	3,15,237	47,487	15.06
21.	Gulmi	2,96,654	54,972	18.53
22.	Arghakhanchi	2,08,391	38,792	18.62
23.	Rolpa	2,10,004	35,287	16.80
24.	Jumla	69,226	11,930	17.23
25.	Mugu	31,465	6,151	19.55
26.	Bajhang	1,67,026	26,869	16.09
27.	Kanchanpur	3,77,899	61,837	16.36
28.	Dadeldhura	1,26,162	24,677	19.56
29.	Baitadi	2,34,418	40,262	17.16

Source: *Dalit Bibliography, JUP-Nepal 2007.*

According to Dr. Man Bahadur BK, at least two autonomous regions can be formed from the perspective of density of Dalit settlement. In accordance with his proposal, Khaptad or Karnali can be declared as Dalit majority region in hill and the remaining and comprising of

Siraha, Saptari, Dhanusha, Mahottari in Terai as Sahales region [BK, 2065 BS].

Territorial governing unit, irrespective of size and kind, is a requisite to control and eradicate oppression in relation to caste discrimination and untouchability over Dalit community; development of physical infrastructure and human development and ethnic assimilation. But formation of one or two Dalit provinces does not sort out the problems of Dalit specially untouchability, discrimination and atrocity in Nepal. So the authority for territorial self-governance should be provided by recognizing the sub-province and local level bodies with complete Dalit majority within the province [Kisan, 2067]. Coinciding with it, the leaders of Jatiya Samata Samaj are also raising their voice for ethnic self-governance for the minorities based on Human Development Index, extinctive ethnicity, nationalities and Dalit in the region with their majority and provide the authority to rule by themselves [Nepali, 2066 Ka]. But they are giving emphasize for local self-governance in the form of 'decentralization of unitary governance' and not as a local territorial unit in federalism [Kisan, 2069].

One needs a governing territorial unit at first to be a rulers. Such territorial unit where there would be its own citizen, natural resources, economical bases, and source of revenue with the structure of police, bureaucracy and administrative structure. But the community or an individual cannot be a 'ruler' on absence of territorial region, citizen, resources, economical bases and administrative structure and his rule cannot be termed as 'governing' in actual. Certainly separate Dalit province or ceremonial non-territorial province does not intend to solve the problems of Dalit. So the way forward is to construct governing structure in the locality with Dalit community. The ways should be sorted out and geographical regions should be identified where a Dalit can be a ruler in his region with majority and can rule. Not only that, the means should be searched to have the state relatively more intimacy of Dalit community who were comparatively far from the access to territorial and administration of the state.

The way forward is to restructure, re-demarcate and re-name one or more bodies: district, village council and municipality and provide authority to territorial and ethnic autonomy and self-governance as per requirement by ensuring majority or at least 51% of the total population of any specific caste, ethnicity, community, linguistic and religious groups in a province. If so, Bahun, Chhetri, Thakuri, Sanyasi, Muslim, hill indigenous minorities, Madheshi caste/ethnicity minorities and Dalit community would achieve territorial governance unit or power in federalism. This is an easy, practical and possible too.

This provision can create at least four districts with Dalit majority, which are claimed to form the province, dozens of village council and municipality irrespective of size. Local body can practice the list of authority enshrined in the Constitution and mobilize the state mechanism. By practicing such authority, the local bodies with Dalit majority can accelerate the process of assimilation along with human and physical development by abolishing caste discrimination and untouchability, with punishment to the perpetrator, and justice to the victim. It should be noted that 'Dalit' identity or any specific caste or personality of Dalit community should not be the base of naming of such territorial governing unit with Dalit majority. Such naming procedure segregates Dalit province again by widening the gap and interrupts assimilation. This can be the best and most practical means to achieve territorial governing unit and practice the governance in federalism by Dalit community.

Part 8

Way forward

The community that are excluded and marginalized by the unitary and centralized state demand federalism and democratic republic with inclusion to have access in governance, power and resources. The access and representation of the people of Dalit community who are the most excluded and oppressed even among those communities is negligible. Dalit have not got their share of representation in proportion to their population, neither in Constituent Assembly nor in the government or other units of the state.

The first session of the Constituent Assembly has declared that Nepal would adopt federal state system. Even in this context, the concerns of justifiable space, representation and access in the federal, provincial and local structure have not gained momentum in the discourse; the solidarity among them is a far cry. Most of the Dalit community has yet to give enough credence to federalism in the long way starting from the election of Constituent Assembly; dissolution of the Constituent Assembly without promulgating the Constitution; formation of two commissions for state restructuring in the Constituent Assembly inside and outside, and presentation of different recommendations and proposals. Instead, they cling to the conception that ‘federalism doesn’t provide anything instead it confiscates’. Quitting such attitude and opinion and moving

forward for achieving space, access and representation in the state reconstruction would be a rational decision by.

Appropriate federal system should be sought for political representation and ascendancy in territorial regions with dense population. And other proponents of federalism should not delay to formulate a concrete structure and system for their fair representation for social, economical and political justice in federal state system. Consensual governance system is as much important as proportional representation with compensation not only in state organs but also in policies and systems in relation to education, health and employment.

Only consensual governance system in Nepal enhances the capacity of bargaining power and builds the culture and situation of co-governance. Thus, the generation of feeling of ownership, kinship and affinity of Dalit has also become obligatory towards the state by transforming unitary centralized ethnic state into multi-ethnic state, democratic republic into multi-cultural inclusive democracy. Otherwise, the discontent, anger and turmoil of the communities including Dalit community, deprived of governance, power and resources would get spatter through various means including formation of a Dalit party.

Territorial and non-territorial provinces are not appropriate

Formation of separate Dalit province is not entirely impossible, yet its demand on basis of identity cannot be taken in positive note principally and practically. Dalit province in any part of the country may provide justice to the Dalit living in that province, progress economically and develop physical structure and might also give them an opportunity to practice governance. But it would not be able to address the problems and necessities of Dalit who are dispersed throughout the country or residents of other provinces. It is not feasible to make ‘new Israel’⁴⁷

47 Israel is newly created state in Arab world for the Jews of the whole world in 1948. Because of Israel, a Jews state and formed by the partition of Palestine state, violent conflict is going on since last half a century in Arab world with Muslim majority.

by gathering scattered Nepali Dalit from all over Nepal through migration and this is not correct way also. Had such province be formed, Dalit of other regions would be compelled to sort out their problems and fulfill their necessities according to Constitution, of the nation and ordinance and law of respective province. In such situation, 15-20% of total Dalit population would enjoy the privilege of having a separate province and the rest 80-85% of Dalit live with inferiority complex of citizen without the province and which would not be right solution.

Similarly, non-territorial Dalit province can be formed but classical model of federalism doesn't equip such structure with state-power. If such structure is not equipped with state-power then it would not solve the problems of common member of Dalit community and fulfill their needs. According to classical non-territorial model, protection of language, religion, script and culture are not the main problem or demand of Dalit movement. The tasks like establishment of Dalit literature academy; organization of sports and meeting and seminar, which can be conducted by non-governmental organizations, cannot solve the problems of Dalit community. Such super structure would provide opportunity to a few limited leaders of Dalit to be the members of symbolic council of ministers and parliament but interest and rights of Dalit lying at the bottom, far from the state and belonging to lower strata and regions cannot be preserved. So, non-territorial structure is not appropriate if it provides 'non-political' rights only. Instead, the structure where Dalit can enjoy special political rights is necessary.

Emphasis on proportional rights and special rights

Representation is second main agenda of Nepali Dalit movement. By implementation of mandatory representation, proportional representation and special rights/ principle of compensatory rights under positive discrimination, Dalit representation can be ensured in political, public and security institutions and all spheres, tiers and

institutions of the state.⁴⁸ So, the policy, procedure and implementation mechanism for mandatory representation, proportional representation and additional representation with compensation in federal, province and local level as per requirement of Dalit should be enforced. The search of rights to get into the power in all the provinces should be the Dalit agenda rather than being the ruler in any single province. Considering various proposed provincial frameworks and Dalit distribution, the chance to Dalit to bargain on increment of number of province, state sharing and participate in governance would enhance. Dalit have not attained the status of forming a separate party on Dalit identity as in India, so bigger and less provinces would not be in the favor of Dalit to compete in election through the existing political parties.

Formation of local institution with Dalit majority

Dalit community is scattered throughout the nation. This community consists of ethnic, linguistic, cultural and geographical diversity. The issue of Dalit representation would sort out by the policies of positive discrimination, proportional representation and special rights. Dalit community would be able to exercise co-governance in federal, provincial and local structures through such representation. Along with this, dozens of local institutions can be formed with single majority or just majority of Dalit. The representative of Dalit community can be the prominent ruler through democratic process and Dalit community can also exercise State Power in general. And by the use of State Power, the development of Dalit community would be possible and the problems would also be solved. Similarly, the process of assimilation can be accelerated with the abolition of caste untouchability.

48 Interim Constitution of Nepal 2063 BS has provided the provision of affirmative action in Article 13 and proportional representation rights in Article 21. State Restructuring Committee of the Constituent Assembly has provided the provision on compensatory right.

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