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Dalit: Local Self-Governance & Issue of Representation

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Foreword

Dissolution of Constituent Assembly I led Nepali people, eagerly waiting for People's Constitution, into bewilderment. The progressive rights agreed upon to ensure with regard to Dalits and women by the First Constituent Assembly were historic. Safeguarding them is the major challenge at present. There is reduction of Dalit representation after the formation of Constituent Assembly II and the political parties also appeared to get inclined into retrogression. That is why conscious Dalit community is apprehensive if Dalit friendly constitution would be formed.

This publication is the outcome of the conclusions of one of the consultations conducted in series by SAMATA foundation and Samabeshi foundation. The objectives of the consultation was to inform about the demands with regard to entitlements and rights of Dalits in the Constitution making process from Dalit CA members and non-Dalit CA members dedicated for Dalit rights in Constituent Assembly II.

In the consultation, Paper was presented by Dr Mukti Rijal who is Local governance expert and ED. And commentators on this paper were current CA members Ms. Anita Pariyar and Ms. Kamala Bishwokarma. Along with, many other activists expressed their views. I would like to express my sincere gratitude to all on behalf of SAMATA foundation and Samabeshi foundation. Last but not the least, I thank Ms. Pritika Thapa for the support provided on the language translation.

Padam Sundas

Chairperson, SAMATA foundation

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1.

Background

The members of parliament elected in the year 2064 failed to complete the constitution writing even in four years period. The election for CA was held for the second time last year and discussions are being held on new pressing issues in the CA. The topics such as, restoration of states, federation, formations of government and the existence of local government yet to be finalized in the new constitution. More over, it will take a substantial amount of time for the discussions and decision makings on the topic like the role of local government. Similarly, there is a huge challenge pertaining to guarantee for the accessibility, representation and participation of marginalized communities like Woman, Dalit and Janajatis in the inclusive and democratic local governments. . In this draft discussion paper , an effort is made to analyze the accessibility, representation and participation of Dalit communities who have been politically socially, economically marginalized and excluded in light of current world-wide practices and values, historical context of Nepal, important issues raised by the thematic committees of the former CA.

2.

Significance of Local Government

Due to diverse geographical, economical, and cultural conditions any country has its own varying needs and expectations. Hence, to address these expectations and needs of a particular locality or community and for the growth and sustaining of individual's, political, ,economical, social, cultural and governing rights, a competent democratic local government is required. A Local Government is an administrative body for a small defined geographic area, such as a city, town, county, or state, preferred by the general people and ensures for the guaranteed and uninterrupted administrative services . A system of the government which guarantees the accessibility of general public to the central governing system is the local governance. In any country, the major provisions like local governance or local self governance will be mentioned in the Constitution itself. The Constitution will ensure the necessary economical, administrative and executive capabilities required for the local governance. The prime goal of any government is to foster the democracy and ensure that general people will be benefitted individually through the local governance. A. Local government is considered as an initial and basic foundation of a democracy. It is important that the local government shall be established through the people's vote only. Hence, the local governance is referred to as democratically constituted elected decision making bodies by

European Charter of Local Self Government, 1975. In a democracy, a capable local government with proper legal and financial authority is essential in order to serve the local residents with their day-to-day livelihood. The practice of local governance is largely based on the inability and the autonomy of the local government. Local governance is a political agency meant for providing services to the local people. Local government is obliged to local people as they are elected by the local people.

In the context of contemporary governance system, local government holds a significant role. By safeguarding the interest and by providing services to the people, local governance plays a vital role as of a foundation for the democracy. The work area of local government is confined within a defined geographical area to fulfill the basic needs of the local citizens therein. The main concern that comes under these needs are water, electricity, sewage, sanitation, prevention and control of contagious diseases, education and medical support, recreation and construction of roads etc. In the modern days, it is observed that the scope of local governments is being extended. The local government is responsible for ensuring the free flow services related to the social and economical securities provided by the democratic nation.

In the modern days, it's hard to control and facilitate the wider areas only by central government so the role of local government has become more significant. Today local governance has been developed not limiting itself to a particular work area rather it works beyond its periphery reaching provincial and central state level and to the extent of developing the leadership. Local government is also regarded as a center for creating, developing and testing the leaderships. This is why, local government is considered as the finest state of institution.

3.

Principles and Models of Local Government

Local government holds various models and principles. In democratic countries one finds various models and forms of local governance in practices. e., In some countries it is found that the local governance is fully functional with much competence and independence, being fully committed towards their citizens whereas in some countries for the local governance has not been so effective and practiced for namesake only. Local governance in these countries are fully dependent on the central government for every little actions, decision makings. One can find the various models of local governance particularly in European nations where the application of local government has been proved to be successful.

Scandinavian countries like Denmark and Sweden are the good examples of successful implementation where the concept of governance based on welfare of general publics. The local governments there are operated more legitimately as compared to provincial governments and are powerful and competent. All the services pertaining to social securities those are to be provided by the government are being delivered through its local governments. They collect the all kind of lawful taxes locally and are almost self dependent.

Other important and significant model of local government is Swiss model. In this model local government has the authority to take decision regarding the important matters of states. Each and every mechanism and tool of the democracy such as referendum collection, actions based on participatory philosophy etc have been practiced there. Hence, Switzerland can be considered as the example of non-centralized local governance.

Another model is, British model of local government. In this model, although the local government has the authority however they have to depend upon the central government for the important decisions regarding mobilization of good and services.

Although the local governments are solely responsible for tasks of coordination and monitoring at local levels, the political changes at the central level makes substantial impact at local governments. Generally the Conservative Government fosters the policies to minimize the authority of local governments whereas the Labor Party tends to reinforce and expand the local governance. During the period of Margaret Thatcher , former prime minister, there was a major setback made on local governance, hindering the authority of local governments by introducing parallel networks and involving private sectors at local levels.

The constitutional and legal provisions determine the legitimacy of the local government in addition to state of power sharing, capabilities and competencies as mentioned in the models of local governance above. In countries like India, Africa, Brazil, Uganda the role of local governance is defined by country's constitution itself. In our neighboring country, China the local governments are formed by the ordinance passed by central executive body, formation of Competency of local government of any country exists only if their power, role,

responsibilities, and financial and administrative authorities are clearly defined in constitution of that country. ¹

Nepal, being centralized country now entering into federal system. One doesn't find the uniformity in the formation of federal structures here especially when observed from the perspective of exercising of authority . All states can not be decentralized. Constitutionally, the exercise of authority at local levels differs. Countries like America and Australia are proven to be better at practicing local governance much beyond the provisions defined constitutionally. Countries like India and Pakistan have constitutional provisions for the local governance; however they seem to be politically, economically and administratively weak in practice. Brazil, Germany, Africa, Switzerland etc have clearly stated about local governance and its modus operandi in their constitution and in practice the local governments there are endowed with policy making , executive ,political, economical autonomy.

1 See page 33 of local government of developing countries published by World bank and edited by Anwar Shah.

4.

Relevance of Local Government in Nepal

Nepal had been practicing justice and administration system since the time of Kirat rulers. Institutions like, “Panchali” was popular during Lichhavi and Malla era. During Rana regime, in 1976 BS, municipalities in the cities and “Kachahari” in the villages established in 1986 BS are the remarkable examples. In the first Constitution of Nepal formed in the year 2004 BS, it has been aimed with the objective of maximum representation of citizens at local levels. Similarly, functions of the village Panchayat, Nagar Panchayat and District Panchayat were also defined .² Likewise, it is observed that the interim government ordinance of 2007 BS had worked to empower the Gram Panchayat through the directives of political principles. The next constitution of 2015 BS made not any attempt for the development of local governance . In the year 2017 BS, the constitutional system was dissolved and an autocratic , Panchayat system was introduced.

2 The interim Rana Prime Minister Mohan Samsher had initiated to establish the Panchayati system. The growing pressure of establishing democracy through participating general people in the state, compelled Mohan Samsher to introduce Gram Panchayat, Nagar panchayat in some places. In fact the rulers were interested more in prolonging their tenure rather than actually empowering the citizens. (Bhattarai 2064)

This government had proposed a system of increasing people's representation at all levels of government. Following this, Rastriya Panchayat, Zonal meeting, District Panchayat and Village Panchayat had been developed. Due to the absence of competitions stemming from multi-party system, the aforementioned systems can not be exactly defined as local governance.

In the year 2046 BS, the multi-party system was reinstated once again. A constitution of 2047 was released with the objective of institutionalizing of Multi-party Democracy and Constitutional Monarchy. It was mentioned therein that with an application of decentralization system, people are to get maximum benefits of democracy through the involvement maximum number of citizens in the governing bodies. There was provision of forming an Electoral team comprising of heads and assistant heads and members from local level from villages and district s. this team was destined for conduction of election Rastriya Sabha. There were elections held under multi-party system twice in Nepal. Both the elections failed in terms of mobilization of people politically as well as development of leaderships at local levels.

Based on the similar principles, Local Autonomous Governance Act was released in the year 2055 BS. The Act has been considered as the one of the best move made to foster decentralization and local governance. Based on Local Autonomous Governance Act, 2055, formation of local bodies on the basis of direct election among multi-parties , local councils at all local levels , provision for the clear authorities and responsibilities for the heads and assistant heads, special provisions reserving quotas for women , Dalits, Janjatis for adequate representation at all local levels etc had been mentioned . Based on the principles the Act , the second local level election was held.

Meanwhile, 10 years people's war was begun. Local bodies failed to function as per the spirit of the Local Self-Governance Act, 2055. No

local level election could be held as mentioned in the Act. Despite the availability for provisions to extend the terms of existing local governments, all bodies were let to be dissolved including VDCs, Municipalities and DDCs. Since one and half decade, the local elections has not been conducted. It is a pity that the local election has not been done despite the fact that the country has come already moved into republican system, abolishing the Monarchy system completely and has seen two Constituent Assembly Members' elections . In this way, the liberty owned by the general people through the election of 2054 BS was completely devastated in end of Asad, 2059 BS. Though there are provisions of extending the terms of the local level governments and to carry out the further elections, the act of undertaking the charge of local bodies by the government bureaucrats themselves was not democratic at all.³

3 Professor Dr. Yagya Prasad Adhikari, Janpratinidhi bihin Sthaniya Sarkar: Ek Addhyayan.

5.

The Major Recommendations Made by Thematic Committee for the Local Government

The interim Constitution, 2063 has mentioned about local governance. It has highlighted about the people's participation, availability of services at local levels, institutional development of democracy from the local levels and formation of local governments through political consensus etc. in this constitution. Based on this constitution, the 1st election for 601 CA members was conducted. Due to the strong differences and debates on the issues like reconstruction of the states, type of federal system and form of a government, the interim constituent assembly failed to release the constitution for the country. Again, there was the 2nd CA election was held on Kartik. Now, it is quite obvious to have debates and discussions to get started whether there will be a ideal case of local governance or not at this juncture of federal system in the country. However, as the 2nd CA is likely to own most of the areas / themes concluded by 1st CA, one can still have some discussions on the type of structure of the local governance. Major recommendations made by Theme Wise Committees for the Local Government

There has been a void concerning a separate theme wise committee in the constitution pertaining to the local self-governance. However,

some major drafts and proposal on various themes concerning local self-governance have been elucidated below.

5.1 Provisions Related to Formation of Local Government

- There are three levels federal system as National, Provincial and Local in the republican Nepal.
- The province will form a high level commission in order to define and determine the local government in terms of its name, area, and area as per the standards as defined by the national level federal government. This commission is suppose to form the local government appropriately based on the situation of the concerned area and shall try to maintain the similarity as with any other local governments.
- The number, boarder, and area of local government shall be defined within one year of the formation of respective province.

5.2 Proportional and Inclusive Representation:

It has been recommended that, the areas within the local government are to be divided into various subunits and 70 % of the members are directly elected following the multi-parliamentary electoral system ensuring the proportional and inclusive representation. Remainder 30 % will be fulfilled by the communities which could not be included by direct election but in this case all the areas within the local level will be treated as a single unit and voting shall be done for the political parties following the proportional representation system.

5.3 Rights to Forming laws:

It has been recommended that the local government will be able to form the appropriate laws within its jurisdiction without contradicting the concerning provincial and federal laws. For the agreed jurisdiction

the federal legislative body will delegate the authorities to the local and provincial government by forming basic laws. Likewise, based on the federal laws, provincial legislative body and local government will form non contradicting laws and implement the same.

5.4 Forming of Own Policy, Program, Budget and Implementation:

The local government can form its own policies, programs and budgets and implement those remaining within its jurisdiction as prescribed by the provincial and federal laws.

5.5 Responsible for Strengthening the Capacity of the Local Government:

The federation will monitor the development activities and public service activities of the provinces and likewise provinces will monitor the similar activities of the local levels. The federation will support the provinces and the provinces will support the local governments in order to enhance their competencies and skills for the effective implementation.

5.6 Exercise of Local Executive Authority:

Based on the constitution and other laws, the local government will be legitimized with all executive authorities.

5.7 Justice System and Structure at the Local Levels:

To ensure the easy access to justice for all kinds of citizens at the local levels, unit, city or village level court/justice centre will be established on the basis of the laws formulated by the concerning province.

5.8 Inclusive Local Governance:

As per the federal system, the oppressed area, class and the communities those have been remained backward politically, economically, socially,

culturally and from the perspective of gender and education will have equal share in structures of the state following the principle of proportionality and inclusion. Based on the population, Dalits have right to participate in the all political structures at the local level governments as per the principles of the inclusion. The laws for the Dalits will be formed accordingly.

5.9 The Official Language for the Local Government:

Apart from the official language endorsed by the central government, the local government may use other local languages for the official purpose as prescribed by its respective Province.

5.10 System and Structure to Resolve the Inter Government Disputes:

Natural Resources Commission is to be established in order to resolve the conflicts regarding the sharing of natural resources between federation and province, province and local government and between the local government.

5.11 Mechanism for Resolving the Disputes among Federal, Provincial and Local Government:

A Conflict Resolution Commission is to be established by the Prime Minister or the President if the conflicts regarding executive power are raised between the local and provincial government, provincial and federation or among the local governments, among the provinces or between the provinces and the federation.

6.

Representation of Dalit at local level

6.1. Dalit and Significance/Usefulness of Local Government

In any state, local level government should be the strongest and the most representative.

Generally, the local government is considered as a third pillar of any state. Principally, from the point of view of democracy, social justice, delivery of public services, the local governance should be the most important and be the first pillar of the state. Local government is the first and foremost access and the platform for the general people. Local government is the one which can be directly observed, met and experienced by the general people.

Because of the followings, the local governance is significant and useful for general people and the especially for the underprivileged communities:

1. Local government is the prime platform where the general people can exercise the self- governance and supremacy .
2. Local government is the first formal entry point for the local people through which information regarding their needs, requirements and matters for their welfare will be passed to the

high level authorities. It also plays a role of a conduit to deliver the government's services to the general people.

3. The activities of local governments are simple, understandable and can be easily evaluated ,
4. At local level it's the local government who is responsible for collaborating and coordination the various service providing mechanisms such as government agencies at local level, non-governmental organizations, etc. Hence, it is vital that the underprivileged groups like Dalits should have the guaranteed access, representation and participation at the local governments.
5. The possibility for the social, economical, and cultural development occurs seen at the local government and it is responsible for various planning of various development projects, implementation, monitoring and the evaluation for the same. Therefore, strong local government is the platform where general people can feel the political, social and economical rights.
6. Local government is the basis for social and political development. Hence, the underprivileged and marginalized communities should have the strong access, representation and participation at various governmental agencies and mechanisms which provide the .Leadership Apprenticeship.
7. For the legitimacy , stability and for the people's participation in the local governments, it is vital that the representation of backward and underprivileged communities should be ensured.

6.2 Representation of Dalit at Local Government

In local governments, the representation of Dalit's have been quite negligible . According to the study of a researcher, Bhim Prasad Bhurtel , it states that in the year 2056 elected members in metropolitan,

sub metropolitan and municipality are 49.13 % were from Aarya (Bahun, Chhettri, Thakuri, Sanyasi) background, 8.62% were Janjati, 20.68% Madhesi and 21.15% were Newar but the percentage of Dalit representation was none. Even, there was no one elected as the chairperson or vice chairperson of district development committee from the Dalit community. In year 2048, Except for ,Hari Sankar Pariyar the only one from Dalit community who had been appointed by Nepali congress as the chairperson for District development Committee in Udaypur . Other than this no Dalit had been appointed anywhere in the position like this.

All the wards at the local levels in Nepal were compelled to have women representation as per the Local Self- Governance Act 2055. However, as there was no provision for the inclusion in the Act, hardly any Dalit female was seen at the ward offices. Despite the Act had provision to have the representation of non-represented communities at village. city, councils etc. it was not applied in the case of Dalit communities. The Act, as such, has a provision of having one female candidate compulsorily elected at ward committees at local level but since it has no provisions made for the representation of Dalit communities, there were no significant presence of Dalit at local governments.

7.

Conclusion and Recommendation

Going by the existing constitutional and legal systems, there are not any policies and Acts for local government and governance in particular, in order to include the most excluded, boycotted and neglected at the local levels. The Local Self-Governance Act, 2055 is considered as the best Act ever in Nepal but it was not resulted out of our own thoughts and realization of the needs rather it resulted because of the support made by the foreign donor agencies. The inability to conduct the local level election since one and half decade proves that the government resleased the Act just for the sake of pleasing the donors. This Act has provision of having compulsorily a woman at VDCs, Municipalities and as a executive board member at District Development Committees but there were no provision of having women at any decision making positions. The Act has the provision for the Dalit members able to join the mass meetings for protesting or supporting by clapping which has no significant meaning in decision makings.

The 1st CA has not adequately made provisions for Dalit's representation and governance at local sector and the government. The state restructuring and resources distribution committees have proposed the special mechanisms (Autonomous Areas, Special Areas, and Reserved Areas) only from the perspective of Adhivasi Janjatis. It is not clear

what would be the stake of Dalits in the given mechanism. The nature of the village levels and Municipalities are poorly defined. Those are kept within the jurisdiction of the commissions formed by the central government. Hence, there is still ambiguity on the nature of the local government itself. For establishing Dalit's rights and self-governance, there should be re-demarcation done on local levels based on the density of Dalit's population and in other areas with sparse population of Dalits, the areas are to be re-demarcated with the principle of proportional representation and there should be a constitutional or legal provision of special addition 10 percent compensatory provision against the losses borne by Dalits. In fact, it is vital that the bases for demarcation required for the local governments, formation of local government, Local people-representative elections should be stated in the constitution itself. In case of Nepal, the Scandinavian model seems to be most appropriate. Adequate discussions should be carried out to apply this model.

At the moment, the ordinance for the amendment of the Local Self-Governance Act, 2055 is under review in the secretariat of Constituent Assembly. The amendment specially highlights on the representation of women from the perspective of inclusion and streamlining the overall governance of the local bodies. This amendment still fails to address issues of exclusion of Dalit. This indicates there has been a deliberate move made to exclude the Dalits from the local government, policy making and implementation positions and services and benefits. It is proven from the implementations of various other laws that if one doesn't hold a position at decision making areas, it's obvious that the person will be excluded from receiving the services and the benefits as well. Hence, while amending the above Act, there should be a provision for a guaranteed and proportionate representation of the Dalits from local ward offices, executive committees and councils. For this, the CA members from Dalit communities have to submit a proposal with

necessary amendments. They should also set out for lobbying and pressurize the government with conduction of necessary programs.

There is no such provision which describes the representation and association of Dalits in first constitution. There are some findings in favor of schedule tribes at the time of recomposition of states but no such provisions for Dalits present in this proposal.