Carrier of Social Justice in India: Implications for Affirmative Action Programs in Nepal

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The effort, contributions and support of many have made this two-day event possible. We are extremely grateful to Professor Gopal Guru for coming to Nepal and sharing his experiences with us and for raising important questions. We would like to thank International IDEA for providing the funds necessary to organize SAMATA Annual Lecture II and the discussion program. The board of directors offered strategic advice and support. We would like to express our heartfelt gratitude to each member of the board. During the discussion, former Dalit Constituent Assembly members, political leaders, scholars and civil society activists presented their views on affirmative action. We would like to thank the speakers for their insights that added more color to Professor Guru’s presentation. We would also like to acknowledge the contribution of Mr. Binod Pahadi, Dalit leader and editor of Nepalimanch (monthly) for chairing the discussion program. Moreover, thanks go to Shyam Nepal and Erisha Suwal from SAMATA and Rem Bahadur Bk (Tomata) from Jagaran Media Center [JMC] for their effort to make this annual lecture a success. Last but not least, the contributions made by Dr. Rabindra Roy, Rajendra Maharjan and Razen Manandhar to bring this publication into this shape are also duly acknowledged. We thank all the participants for attending and engaging in the discussions.

SAMATA foundation family
Carrier of Social Justice in India: Implications for Affirmative Action Programs in Nepal

Professor Gopal Guru
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Letter from Chair of the Board

The report is on SAMATA foundation's two-day event on "Carrier of Social Justice in India: Implications of Affirmative Action Policies in Nepal". Professor Gopal Guru from the Centre for Political Studies at the Jawahar lal Nehru University presented on the topic. On 20 December 2012, SAMATA organized SAMATA Annual Lecture II, which was attended by 164 participants. The lecture aims to create an environment where activists, academicians and other interested individuals can come together to discuss issues on social inclusion and transformation. Through these discussions and debates, we hope to deepen the discourse on social inclusion and Dalit rights with the underlying objective to influence the state's policy-making process. Such discussions are particularly important today when Nepal stands at a politically challenging juncture with political consciousness of oppressed groups reaching new levels.

On 21 December 2012 SAMATA organized a Discussion Program with former CA members, which was attended by 61 participants. There, Professor Guru shared his presentation with politicians from different political parties, students, and representatives from civil society, INGOs and the media.

The event is part of SAMATA's larger goal to end discrimination and promote inclusive democracy in Nepal by conducting research,

The SAMATA also published Suvash Darnal's *The Land of Our Own: Conversation with Dalit Members of Constituent Assembly*, Aahuti's *Nepalma Varna Byawastha ra Varga-Sangharsha (Caste System and Class Struggle in Nepal)*, *Satta-Bimarsha ra Dalit (Power Discourse and Dalits)*, a compilation of articles on Babasaheb Ambedkar's philosophy and more recently *Dom Samudaye ko Pahichan: badalido Jiwanshaili (Identity of Dom Community: Changing Lifestyle)*.

We hope to get your support as we continue research for policy-making.

Padam Sundas,
Chairperson
1. Introduction

SAMATA Foundation’s primary focus is research-based policy advocacy. To advocate for policy issues SAMATA believes that first level of academic and philosophical understanding of policy issues and debates surrounding the policies should be increased. For this, SAMATA organizes lectures and discussion programs with Dalit political and civil society leaders, scholars, students and journalists. With this in mind, SAMATA started the first Annual Lecture series last year in 2011. The objective of the lecture is to bring leading thinkers of Dalit policy making from all over the world and provide a space to have academically grounded discussions on policy issues relevant to Dalits. Last year Professor Marc Galanter presented on “Designing Affirmative Action for Nepal: A Tour of the Choices and Problems.” This year Professor Gopal Guru presented on the topic "Carrier of Social Justice in India: Implications of Affirmative Action Policy in Nepal." Furthermore, based on the speech provided a summary at the discussion program with Dalit political and civil society leaders.

Gopal Guru is a professor of social and political theory in the Centre for Political Studies at the Jawaharlal Nehru University. His areas of interest and specialization include Indian political thought, humiliation, social movements and Dalit politics. He is the co-
author of *The Cracked Mirror: An Indian Debate on Experience and Theory* (2012) and editor of *Humiliation: Claims and Context* (2009) and *Atrophy in Dalit Politics* (2006). His publications have appeared in numerous journals inside and outside India. His work on reservation including journal articles "Reservation within Reservation", "Politics of Reservation, Society and Change," and "Reservation and the Sanskritization of Scheduled Caste, Some Theoretical Aspects" are particularly relevant to Nepal.
2.

SAMATA Annual Lecture II

Carrier of Social Justice in India: Policy Implications of Affirmative Action for Nepal

-Prof. Gopal Guru

Let me thank SAMATA for inviting me to give a special lecture on reservation policy in India and its implication for social justice with special reference to marginal communities particularly Dalits in Nepal. Re-contextualizing India’s reservation policy in Nepal makes sense for those who see commonality of social context that prevails in both the countries. Ironically, in both the countries - India and Nepal - members of the Dalit population measuring up to 17 per cent in case of the former and about 14% (The Dalit groups in Nepal do not seem to be happy with this figure. They suspect that Dalit population in Nepal is much larger than the figures provided by the state. ) in case of the later, continue to be subjected to social discrimination, humiliation and material marginalization. Caste and untouchability that perpetuate comprehensive forms of marginalization continues to be the social reality since historical times in both the countries. Although both these countries are sensitive about the social disabilities and the resultant backwardness
among the social groups in question, it has to be acknowledged that India took early lead in adopting elaborate reservation policy as an ameliorative mechanism to help Dalits to better their positions. Early response to reservation policy makes it quite reasonable to evaluate India’s experiment with reservation policy with the purpose to explore if not prescribe whether such evaluations can help Nepal to adopt much enlightened reservation policy in order to accelerate the ameliorative process for Dalits in Nepal. Since discussion about reservation for Dalits of Nepal have already figured in the part of constitutional deliberation that took place on earlier occasion; this particular talk, in my opinion, is expected to contribute to the more robust and balanced understanding of reservation for Dalits in Nepal.

The discussion on reservation policy also become crucial in the context where various Dalit groups in Nepal have been struggling to put across the table their demand for reservation as one of the important devices to ameliorate the conditions of Dalits of Nepal. Such groups seem to be looking at reservation as a constitutional device having positive implication for addressing the issues of social injustice and material inequality that is claimed to be existent in Nepal. The question that one has to raise is, when several countries have adopted affirmative action in some form or the other, why should one look at reservation policy in India as the possible reference point? In order to address this question, let us discuss, in some detail, the normative justification of reservation policy, its mechanisms and impacts that the reservation policy seems to have on the realization of social justice in India. Let us explain in brief, what is the significance that the concept of social justice has for advancement of social groups in India and the system that has produced this concept at the first instance.

**Social Significance of Reservations in India**

Social justice as a liberal concept is basically justificatory in nature. That is to say adoption of social justice as principle and reservation
policy as its legal codification is not an arbitrary act. In fact, it is necessary to defend it on the grounds that are morally sound. These grounds are moral, pragmatic, political and a matter of right. There is moral justification behind the reservation policy. It is moral as it is based on social recognition that Dalits are the part of Indian society and it is the moral duty of every Indian not to leave their problems unattended. To put it in the language of justice, it is unfair to leave Dalits to the ‘wretched margin’ to fend for themselves. This notion of social justice with moral undertone is to be found in the philanthropic efforts made by private persons and organizations that have been active in India in the modern times. In this regard, corporate social responsibility towards underprivileged social groups could be cited as another example. But the Indian state, for that matter any other state, is influenced less by moral but more by the political considerations that lead the former to adopt the reservation policy as a part of the principle of social justice.

States in India seem to have been historically compelled to adopt reservation a) in order to avoid fragmentary impact on the social solidarity among otherwise socially diverse groups and b) to balance the conflicting interests in the society. Reservations are seen as a mechanism to achieve social harmony through preventing social tension from acquiring dangerous proportions. This has been the state perspective. From the Dalit perspective, reservation provisions are viewed as a matter of right for parity and not for charity, which provides foundational principle for the moral conception of social justice. Their demands for reservation at least in India are backed by the entitlement argument. Some of the Dalits have been arguing since Babasaheb Ambedkar’s time that their contribution to the development of nation has to be taken into consideration while the fruits of this development are being distributed. Apart from these rather intersecting grounds there is also a normative ground on which the reservation could be defended. The reservations help create social condition within which Dalits are expected to acquire
recognition to their social achievements. To put differently, it can morally empower them to fight social stigma. However, others might seek to use reservation to stigmatise Dalits. But what is important here is to take into consideration what could be termed as an authentic perception of those who are the recipient of reservation. Since Dalit look at reservation as a matter of right, they would not prefer to look at reservation as a source of stigma. For them it is a device to compensate for the historical humiliation for which they do not hold themselves responsible.

All these justificatory grounds as mentioned above, though intersecting in their essence, acquire coherence in as much as they dismiss the ideal of equality as the starting point. This point acquires importance in the familiar context of Nepal, where some of the Indian scholars addressing the audience in the past have put emphasis on formal equality, as the starting point of debate on reservation. It is possible to reverse the order and make social justice as primary concern as it is important for achieving some tangible results at the ground level. To put differently, it is important to treat social justice as an initial condition and substantive equality as essential condition. This is the aim of reservation policy, which would ultimately become unnecessary after absolute equality is established. In this regard, it is interesting to note that thinkers like Jotirao Phule in 1850s and enlightened princely kings like Chatrapati Shahu Maharaj of Kolhapur in 1902, gave preference to social justice over formal equality. All these justificatory grounds ultimately found their culmination in social contact that signified acceptance of reservation policy by different groups in India.

**Reservation: A Result of Social Contract**

Social justice and the reservation policy which are constitutive of this concept have resulted from the social contract signed by different socio-political groups at the dawn of India’s Independence. Constitution is the concrete expression of this social contract. Social
contract is a moment which involves social consensus on issues that are problematic in nature. Different social forces with divergent interests reach a historical consensus on the issue, which motivates the former some kind of collective promise in the future. Indian social contract, which came into being in the form of a written constitution, in 1950, also involved consensus by different social forces on the issue of affirmative action and quota system in India. There were several socially significant and politically important social groups, whose consensual agreement on reservation was deemed to be necessary. Thus, among the minorities, the Muslims particularly, the Muslim League had adopted a lackadaisical attitude towards reservation. They at one point in time were interested in reservation even after the partition. The elite Muslims were interested in political reservation in the form of separate electorate, which they could not get. Later on the Muslim gave up the demand for reservation. One, however, does not know whether the common Muslims were really consulted in the whole deliberative process. It is only in the contemporary times, the demand for Muslim reservation in the jobs has come up. Sachar committee report has been voicing the reservation for the poor Muslims among the Muslims. However, Muslim did not object the reservation being given to the SC and ST. In any case the elite interested in Pakistan had no reason to object to reservation. And the middle class from among the Muslim also agreed on pragmatic ground that they would not be immediately affected by the arrival of reservation to opportunity structures. Parsis and the Christian, other minority communities, also did not have problems being given to these sections.

The rural India around 1950s had no reason to compete for the salaried post. This was because, the rural development and the opportunities developing in the rural areas through cooperative institutions and community development program did not find it necessary to try for government job hence they also did not have any reason to oppose reservation. Finally, the private sector did not have any objection to reservation as long as they were in the public sector. The Congress
government also was committed to make reservation as the part of the constitutional commitment. This was primarily because of the rising tension in India during the 1940s partition, northeast tension and the Telengana armed struggle led by the communists. All these factors together forced the Congress government to introduce the reservation policy. Thus, the state could achieve a social consensus on the principle of social justice and resultant policy. However these were immediate factors that can explain the adaptation of reservation policy in India.

In case of Nepal, the process is still on and I am also aware that the deliberative process has been on for quite sometime. I hope different social and political forces have made considerable progress in terms of achieving social consensus on major issues. There is a need to know the progress in terms soliciting the support of all the major social and political forces working for the promotion of democracy and peace in Nepal. It has to be acknowledged that the Dalit groups in Nepal matter and matter equally in terms of the deliberation on the question of inclusive development.

**Foregrounding Reservation in Background Conditions**

What is important at this moment to be kept in view is, either the state or the movement does not become active automatically on his or her own. In fact, they require background condition in order to become active in favor of reservation policies. These conditions could be delineated as democratic set up, written constitutions, decent state laws promoting freedom and census of the target groups.

Democracy in general and parliamentary democracy in particular has a bearing on the bright carrier of the principle of social justice and the resultant policy package of reservations. I am already suggesting that systems other than democratic one would seek their legitimacy primarily from the traditional network of patronage that would make benefits flow only to a selected few and the criterion of patronage would be loyalty to the rulers. Even people’s democracy may not
guarantee a smooth carrier for social justice. In fact, the public wisdom, which sustains people’s democracy, may not be able to devise and respect the mechanism that would ultimately promote this principle. Such guarantee therefore can flow from the constitutional democracy as well. It is for these reasons, Indian constitution provides for the reservation for the historically deprived groups. Thus, democracy both constitutional and parliamentary acts as a precondition for the success of social justice principles. In addition to democratic conditions, it is necessary to ensure freedom for the groups to pursue the vocation of their choice. They should not be tied to the traditional work that is considered to be dirty and defiling. Finally, most substantive condition is creating material condition so that Dalit enjoy freedom to choose their vocation. The state has created laws to do away with constraining conditions like slavery, bonded labour or wet begari, semi-slavery and scavenging that create serious hurdles. The parents need to have some resources so that they do not force their kids in child labour for self-subsistence family economy. It is this economic constraint or material insecurity that has been singularly responsible for the large drop out of Dalit kids from the school. It is necessary to equip Dalits with adequate livelihood resources like land and other clean jobs in service sectors. Government of India did adopt Zamindari abolition laws and ceiling act with the intention to distribute surplus land among the Dalits. However, it was a failure except in West Bengal, where the left government could achieve some success. But on the reservation front the left government does not have a very bright record. In contrary, Dalit from Andhra Pradesh and Karnataka and to some extent Maharashtra could use little land holding as a leverage to use reservation more effectively.

Second precondition which has bearing on the bright careers of the principles is the imaginative and innovative mind of the state. The state has to take several initiatives and implement them earnestly and on time. It is these two conditions – democracy and innovative state - that also form the basis on which one can evaluate the social justice
policies in India for the last 63 years. The government needs to be proactive in terms of providing some help for the retention of kids in the schools and colleges. In order to ensure the regular and continuous flow of Dalit students into classrooms it is necessary to remove the family constraint like chronic poverty and persisting helplessness. It is important to support the parents with decent livelihood resources. Livelihood resources that carry stigma with them need to be positively kept out of the option. Land and other pretty trade could be considered as such decent resources. The government can distribute the government land to begin with. The government of India at least in the initial years did try to distribute the land to Dalits. But this has not achieved any great success.

Finally, at the more practical level, what becomes necessary to work out the proportion of population that has bearing on the quantum of the preferential treatment or affirmative action? It is therefore necessary to prepare the population census of those social groups that are the potential beneficiaries of the proposed policies.

These conditions have been an objective opportunity for Dalit movement led by Ambedkar to subjectively organised Dalit for the realization of social justice through the formulation of reservation policies. To put differently, reservation policy in India has resulted from the historic struggle singularly led by Babasaheb Ambedkar from 1919 to 1950. As has been documented by several scholars like Prof. Marc Galanter, the struggle through its deliberative force successfully convinced and at times compelled the mainstream political forces to agree to the Dalit demands for reservation and its subsequent adoption and incorporation in the Indian constitution. I guess there have been struggles by the Dalit in Nepal not so much in the form of a political party but through the formation of civil society groups to push for the reservation in the Nepali constitution.

As far as the experience of India shows it is always the force of political party (Republican Party of India and Bahujan Samaj Party) that is
effective in terms of pushing reservation as a transformative agenda. Other parties can see the merit of such agenda offer and often support such social policies. Of course there are exceptions as well, as some of the political parties oppose reservation at the level of promotion for the Dalits (Shiv Sena and Samajwadi Party). The opposition to reservation in promotion seems to have political angle to it. It is meant to consolidate the Other Backward Classes (OBC) votes in UP and correspondingly dim the chances of Bahujan Samaj Party (BSP) in UP electoral politics. Similarly, there have been attempts to suggest that reservation in India have a time limit.\textsuperscript{12}

In this regard, it is important to keep in mind the constitutional position as mentioned by Prof. Marc Galanter. Although this point has been continuously debated by scholars, re-affirming it is important because there have been position that are likely to create confusion in the minds of people. For example, some of the scholars who have been commenting on the Indian constitution have knowingly and unknowingly followed those scholars who hold the view that there is a time cap for all the reservation provisions in India.\textsuperscript{13} This misconception has been dismissed by one of the leading experts on reservation Prof. Marc Galanter, who says that not all reservation require constitutional authorization.\textsuperscript{14} This has also been endorsed by another important cross-country study of reservation by Devenesan Neshiah.\textsuperscript{15} It is only political reservation that requires approval of constitution in every ten years.

Those social sections which are privileging formal equality over social justice have been arguing that there should be a time limit for the reservations benefits. They do not suggest the progressive reduction in the number of beneficiaries in the groups. Instead they seem to be suggesting an abrupt reduction. Some of them make an interesting suggestion: instead of blocking the institutional position through reservation, give such people financial assistance from time to time. This suggestion goes very close to the suggestion of cash transfer. In fact, the central government has already started implementing cash
transfer in a limited way. Central agencies like University Grants Commission (UGC) have increased both the number and amount of PG research fellowship to the SC/ST student (Rajiv Gandhi National Fellowship : RGNF).

Others suggest that reservation be given on economic basis. Still others suggest exclusion of the elite from among the SC and ST by applying creamy layer clause. In fact, the court has already imposed creamy layer clause for OBC. However, the SC/ST do not have a creamy layer criterion. The supporters of reservation, however, do not suggest any time limit for reservation. They are found arguing that as long as social discrimination exists in the society and Dalits, irrespective of their positional mobility, continue to face casteism, reservation needs to be continued. This implies that the termination of reservation coincides with the termination of caste system. Reservation gets tied with untouchability and not with relative economic advantage.

Dalits of Nepal, in my opinion, need not think about the timelimits as they have to start experimenting with reservation policies. In any case, for them it is necessary to think about reservation as one of the major devise to ameliorate their conditions. They need to think of reservation policy not in isolation form affirmative action or protective discrimination but in tandem each level building into another, thus producing tangible outcome at the ground level. It has happened in case of Dalits of India.

Second misconception about reservation in India is that it is considered by many that the unit of reservation is individual and not social disabilities. In fact, it is the social nature of disability –untouchability -- that has been considered as a distinct criterion for Dalit reservation in India. However, there is also another side to the issue. That is to say, uneven demographic representation does not have any bearing on the distribution of benefits accruing from the proportion of SC and STs in the population. For example, state like Punjab with large SC population are entitled to 15% reservation in the centre services, and
SC population in Gujrat, which is less than 6%, has access to the same 15% reservation at the central level. The aggregation of SC population standardised the access to the advantage to be had from the common pool of 15% of reservation.

Third, social criterion that the constitution has adopted for choosing the beneficiaries is basically religion and more particularly caste. As far as the SCs are concerned, it is basically Hindu religion that makes them qualified to be the beneficiaries of the reservation. In this connection, it is interesting to note that SC Sikh and Buddhist have been recognised as the beneficiaries of the 16.5% reservation. However, Muslim and Christian Dalits are yet to get accommodated in the pool of reservation, although they are accommodate in the state list of reservation. Still, state government like Kerala and Andhra Pradesh have made provision for a small percentage of reservation for the minorities. The OBCs have 27% reservation in the centre services and educational institutions. An acute problem that the Indian state is facing is the expansion of list of beneficiaries. However, OBCs do not have political reservation. In fact, in most of the states (Bihar, UP, Rajasthan, southern state) they are in power without back up of reservation. And the paradox that one can find is that when the jobs in public sector are sinking and the government has stopped creating permanent posts, the policy of reservation has remained relevant only on paper. The redistribution of resources through the state is preferable to Dalits than the distribution through market. For Dalits the state works better than the market. Let us examine this preposition on the basis of the following points.

State, Market and Reservations

An important question that one has to raise at this juncture is-- why is state intervention necessary for the development of Dalits and not the market? Dalits tend to favour state over market. Even Dalits are asking for diversification in the private sector only through the intervention of
The state intervention is recommended for the following reasons. First, it is the state sector that opens up relatively more opportunity to a large number of Dalits who basically have not inherited any asset from the past except their poverty and exclusion, induced by caste system and intensified by the experience of untouchability. It is less likely that those who have inherited resource form the past would not be too willingly to share them with Dalits. Hence it is in this context, the state intervention for the purposes of redistribution become so absolutely important. Second, for Dalits, it is not the matter of pushing forward the private or individual ambitions but to advance group aspirations. Reservations are not meant to strengthen possessive individualism but to promote collective advancement. Third, it is the state alone that can offer Dalit an opportunity to treat reservation as the matter of right and not somebody’s patronage flowing from somebody’s benevolence. They can articulate this language of rights only through the state. The Dalit mobilization for reservation led by Babasaheb Ambedkar, actually was built up around this language. This language of right as associated with the demand for reservation also guaranteed Dalits a sense of dignity. Fourth, as has been documented by some of the important leaders for the Dalit community during the freedom struggle, it is through the government that Dalit would get confidence. The decent state driven by the concern of Weberian ideal type would force the upper caste to treat Dalits with consideration. Such officer will not scorn Dalits of no consequence. Dalits can expect a fair deal form the state. Finally, reservation would help common Dalits to gain some designated empowerment from their Dalit officers who join the government through reservation route.

Such a position would fly in the face of those scholars who are invoking Foucault in Indian context. Similarly such a position would not privilege the role of market over the state. Market promotes
possessive individualism which would go directly against the collective aspiration. Market would not guarantee Dalits an immediate space to exercise power against those who are social tormentors. Keeping in view the role of state in facilitating the social agenda, the Dalits would like the state to achieve an institutional expansion for the accommodation of Dalit aspiration.

However, accommodation of Dalits into differentiated opportunity structure is contingent upon the expansive institutional structures. In this regard, it is important to take note that, even though India has been successful in expanding the institutional scope of reservation for the Dalits and tribals, these institutional mechanisms seem to be inadequate in terms of meeting the rising job needs of the educated youth from these social groups. This is because of the pressure of neo-liberal ideology on the state sector to limit reservation. Many state and central universities in India have stopped requirement both for the general as well as reserved quota. According the newspaper report, by 2012, there were 40 backlogs in several state run departments. In view of this, the Dalits now are demanding reservation in the private sector as well. This demand for reservation has been supported by the left parties.

The Dalits are seen to be diversifying their demands for reservation and asking for reservation even in NGOs. Let me make this point very clear, even if the state is withdrawing from the social welfare field, for Dalit, state is the best bet for progress. Why? Let me explain it a little further by citing the progress that Dalits have made under the reservation policy regime that has been in practice for the last 63 years.

**Affirmative Action for Dalits in India**

The operative part of the principle of social justice contains a series of policies starting with affirmative action, preferential treatment, reverse discrimination and reservation. These are different dimensions that
have a bearing on the carrier of the concept of social justice. To put differently, a principle of social justice, in order to become effective at the practical level, has to disaggregate itself into different policies. Hence in India, the government had adopted affirmative action which is an enabling provision to create an equal playing ground to just compete with other. It does not by itself guarantee the outcome i.e. actual placement in an opportunity structures. In fact, expansive institution and placement grow in a symbiotic relationship.

As mentioned above, the concept of social justice at its operative level works in tandem. For example, one has to start with affirmative action as an enabling condition for the positional mobility of the groups from the margin. At this level, what is at stake is the issue of modernity. Any mobility including Dalit mobility for better future cannot be devoid of modernity. They need to have minimum qualification in order to occupy seats even if they are to be acquired through preferential treatment or reservation quota. Hence, no one is suggesting that reservation could be filled with people without merit, skill and ability for efficiency. It is for this sake of acquiring minimum skill that one requires creating level playing field. Government of India which adopted reservation in the years 1943 did make such enabling provision like, education, scholarship, training, subsidised fee structures and hostel accommodation. These provisions need to be made at all the four levels (IV manual, III clerical, II semi officers, I of higher administration position) of recruitment in the government sector. As the experience of India shows, the Dalits may not be ready (in terms of required qualification and competence) to take up the posts at the higher levels. They need to be accommodated at the lower levels that, in time, help Dalits develop capacities and required qualification to capture posts at the higher levels. It is the reservation at the lower level that provides a critical mass for the emergence of Dalits at the higher level. At least this has been the experience in India. These provisions were made with the intention of empowering Dalits to run the institutions with ability and modernist confidence.
This policy covers a wide range of opportunity structures. The government of India has adopted this policy as the part of affirmative action in education. The SC and the ST are given almost absolute support to the students’ belonging to these two social categories. Post matriculation scholarship continues to exist even today. Higher education has been supported by the UGC by the special fellowship program known as Rajiv Gandhi National Fellowship for students doing research. The affirmative introduced in education is aimed at creating an equal playing field, where the Dalits can compete with other students. The state government also provided some institutional structure in order to facilitate the higher learning, which is so essential to qualify for the benefits of reservation policy. As we know, in order to become eligible as the recipient of reservation policy, one is required to acquire a minimum qualification. For instance, to apply for the post of class I officer, one has to acquire in the minimum, graduate level education. There are now several lakhs SC and ST students who have been taking advantage of the scheme. In the recent years, because of the changing nature of higher education in India, the social sciences are undergoing the process of ‘Dalitization’. That is to say, in India, there is more Dalit student who now join social science than any other social category. One could claim that the social sciences in India have got a subaltern social face. While it has got a social face, the students are forced to hide their face because they do not get a job. Thus, for creating minimum competence among the Dalits, it is necessary to create level playing field through affirmative action as discussed above. But creating enabling conditions in it are necessary but not a sufficient condition. In the open competition, and in a society where the appointing authority is driven by the subjective bias of caste, a Dalit may find it difficult to acquire the position, and hence there is a need to keep certain percentage reserved for the Dalits and Tribals. In India, the state has reserved 16.5% for the SC and 7.5% for the ST. These figures are in proportions to the population of these social groups.

Preferential treatment is the next stage where the justice principle deepens in terms of its purpose. It becomes effective in terms of ‘other
things being equal preference would be given to the candidate from the under-privileged section’. It is at this level, the sense of justice of those who decide on the matter of distribution of outcome or positions, or those who can stay with the sense of fairness, comes into play. The element of fairness in a human being is on trial at this level. It is at this level that social justice principle has been found to be problematic concept in India. In India, reservation policy has entered the realm of contestation. This contestation shows both the success and also the limits of social justice principles. We need to evaluate the social principles in terms of its successes and promises to mitigate the challenges in the future.

The practice of reservation policy in India gives a case for us to evaluate its efficacy in terms of the desired social goal with which it was designed at the first instance. As we all know, the reservation policy in India was formulated with the intention of reducing the gap between the privileged and the under-privileged communities. As has been argued by the scholars of social justice, the package of reservation policy adopted in the Indian constitution is the most elaborate policy framework that any country so far has adopted.22

**Reservation as Protective Discrimination**

As mentioned above, reservation as protective discrimination has been justified in the context of the subjective judgment not going in favour of a qualified candidate competing for the open position and secondly, it would be unfair to expect the Dalits to compete with the general candidate. With so many handicaps affecting their competence, Dalits need to be given protection in the form of quota guaranteeing them a place. Keeping these twin justifications in focus, the Indian constitution has made an elaborate provision for the Dalits. Indian constitution gives reservation in the field of employment in government sector and in the elective institutions.

In the sphere of political reservation, article 14, 15, 16 (4), 46, 330 and 332 and 338 have provided SC and ST with political reservation
in Lok Sabha (the lower house of the Parliament of India) and Vidhan Sabha (state legislative assembly). Out of the total number of Lok Sabha members, i.e 544, SC constitute 79 while the ST constitute 38, which comes to 15% and 7% of the total respectively. In the Vidhan Sabha, out of the total of 3997, the SCs have 540 reserved and 282 are reserved for the ST. However, the upper house that is Rajya Sabha does not provide reservation to these categories. Of late, women have been demanding 33% reservation in the lower house. But this has been the most disputed issue for different reason: patriarchal opposition across parties which does not favour OBCs. However, patriarchy does not mind if women are given reservation at the Panchayati raj level. Hence, we have 73rd and 74th amendment to the Indian constitution that has provided reservation for women at the local level. It has been observed that in some cases, the policy has helped strengthen the patriarchal hold over the power at the local level. In the popular parlance, it is said that it is ‘Sarpanch Pati’ who actually takes the decision at the local level. In this regard, it is interesting to note that as compared to women at the higher level, women at the local level seem to be doing a good job for the development of their constituencies.

Reservation in the government institutions have shown a steady progress in terms of the placement of SC and ST at different levels of recruitment.

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The figures for SC and ST need to be judged against the total population of these groups which is 15% and 7% respectively. If
one takes that into consideration, these figures show deficit at class I and class II level in both the categories. SC seems to have succeeded in completing their designated quota particularly at class III level. However, one might be amused to notice that at class IV level, the SCs have overshot their designated quota. Why? This is because the jobs that are available at this level are mostly in sanitation field. Employment in sanitation does not count as meritorious job, except for Mohandas Karamchand Gandhi who thought there is a spiritual merit in cleaning one’s own shit.

**Merit Vs Reservation**

The SC recruitment over and above the prescribed 16% only shows that reservations do not decide merits at this level. As mentioned above, scavenging and sanitation is not considered to be meritorious sector. It only shows that Indian public has a very hierarchal sense of merit which seems to have been arbitrarily decided by the upper caste elite. According to this claim, which considered higher echelon of Indian administration as the reservoir of merit and efficiency, it is the majority of upper caste in such section that has protected merit. If majority is the criterion of measuring merit, then why not scavenging with the Dalit majority in it? Even though the number of SC is more in this sector, one cannot blame them for having destroyed the institution of sanitation. Conversely, they cannot be held responsible for having destroyed the merit in other institution. This is because either percentage is so low that it is not enough to destroy the merit. Merit gets destroyed when it engulfs a huge percentage of the SC. Thirdly, it was argued that the SCs do better than the rest because they have a stake in preserving the institutions particularly in the age of privatization. In fact they have been demanding the reservation and diversification even in the private sector as well. Their confidence to do well in the private sector is quite high. Hence the critique of reservation on the basis of merit does not seem to be convincing both on moral as well as analytical ground.
It is true that one can notice rather skewed implementation of reservation policy in India. Similarly, it is also true that the government of India has kept the following areas out of the purview of reservation policy: a) Defence services including all the technical posts therein but excluding civil posts. b) All technical posts in establishments engaged in research and development including those connected with atomic energy, space and production of defence equipment. C) Post of pilots in Air India. D) Indian Judiciary. However, the government does not openly say that it is for the reason of merit that it has kept such departments out of the preview of reservation. There are a number of places in the opinion of the court, where it is critical to use caste as a criterion of backwardness.\textsuperscript{24} But it is quite clear on close inspection that the court puts forward no constitutional objection to the use of caste or community as a unit of designation, although it deplores this use on policy grounds.\textsuperscript{25}

The logic behind this exclusion is that these are open posts and need to be filled in on the basis of merit alone. The government and the court in India perhaps need to further define merit and skill. In case of all these posts as mentioned above, what is required is skill and not merit. Merit is not a mechanical concept, it is also about justice and hence a normative concept as well. For example, moral merit is one such normative concept. We need to debate the merit of this government policy in greater detail. But, here, I would like to just flag the issue of merit being different from skill. What government and the Indian court seem to be doing is to treat skill as constitutive of merit.

Apart from the merit question, the opposition to reservation on grounds of efficiency and nationalism, secularism and social solidarity and social harmony has been well documented by prof. Galanter.\textsuperscript{26} There is no need to repeat it here. But let me just flag some points of criticism that ‘merit’ some attention. They argue that preferential treatment denies other equality of opportunity to compete. Equality is affected, they say -- casteism would be perpetuated, mediocrity, efficiency would be affected, social tension and monopolization would result. Merit would
be affected, why should we be punished for somebody’s historical fault? These are the questions that are generally considered legitimate even by those who are supposed to be holding a balance view about reservation.

Other side of the critical angle is the sub-caste of the Scheduled Caste who are asking for reservation within reservation. Their main argument for quota within quota is that the reservation benefits have been monopolised by the educationally if not socially dominant caste among the Dalits. In factual terms, they are right. But the question that requires to be addressed is, it the conspiracy that the dominant among the Dalits have hatched against those who are latecomers to the very flow of reservation? One needs to offer some historical/analytical explanation in order to understand the relative lag in terms of the access to reservation policies. To make a quick point, those who seem to have gained early access to reservation like Mahars (Maharashtra) and Malas (Andhra Pradesh) were thrown into the process of modernization much earlier that those (Manga and Madigas) who were still stuck up the traditional occupation. However, we need to deal with this point at greater length elsewhere. But suffice it to say that the internal criticism coming from the deprived SC is enabling and not dispelling the criticisms coming from the upper castes.

The common danger that reservation policy seems to be facing is the rampant impersonation of caste. That is to say, there have been reports published in national daily newspaper many non-Dalit are found obtaining either SC or ST or mostly OBC certificate. The non-Dalit upper caste would prefer OBC certificate as it is an ambiguous sphere where it is relatively easy to masquerade as lower caste. Cases are being reported regularly. It is for this reason that certain states like the state of Maharashtra have introduced the process of caste verification so as to check the malpractices at the level of the implementation of reservation policy. The third problem that is related to reservation is the crowding of constitutional provision. Today there are more claimants to reservation policy than ever before. These new claims range from de-notified tribes to the top of the twice born (Dvija) i.e. Brahmins
(Rajasthan). The most vocal in these claimants are the Jats, Gujjar from North India to the Marathas from the western part of India.

It is interesting to note that it is the middle castes people, who now are demanding reservation. This demand has to be understood in terms of the poor from this caste not being able to join the professional courses due to high fee structure. They are compelled to join the social sciences. Hence, the pressure on state sector to produce more jobs. This criticism does not have any bearing on the question of introducing reservation in the public sector in Nepal. As we have seen in the above sections, the reservation, if handled in tandem, can produce impressive tangible results. Since Nepal is yet to embark on the reservation policy, it has to adopt the reservation policy as package that is synchronised so as to produce concrete results. To conclude this lecture, let me make a final point -- reservations policy presupposes education, and education in turn presupposes placement into adequate opportunity structures, which take time to evolve.

In the meantime, those from the margin need to survive meaningfully. For such survival, they need perennial source of livelihood. They need to emphasise this need as well while demanding reservations. This has reference to the population living in rural India or Nepal. Hence, the need to create such perennial resources so that Dalit do not feel distraught or distressed, and are ready to take advantage of reservation that opens up more avenues for better life.
3. Discussion Program

(Note: Discussion have been translated from Nepali and summarized)

The case for affirmative action and reservation in Nepal has not been effective. Although the nation has gone through historical change of becoming a republic, marginalized groups continue to struggle to get equal opportunities and justice. With this in mind, SAMATA foundation and International IDEA co-organized a discussion program to provide an opportunity for Dalit political leaders, members of Dalit sister wings of political parties, civil society members and scholars to discuss with each other and with Professor Gopal Guru on the implications of affirmative action policies in Nepal. The specific objectives of the discussion are:

1. to understand the operational challenges of affirmative action policy in India;
2. to assess the lessons for Nepal from India to improve affirmative action policy designs;
3. to examine the various aspects of affirmative action policies and enhance discussion to ensure that affirmative action leads to social justice; and
4. Discuss existing conditions of laws related to affirmative action and its implementation
Highlights from the Program

Affirmative Action in Nepal

Padam Sundas
Chairperson, SAMATA foundation

Yesterday we learned about the movement for affirmative action and reservations in India. Nepal's Dalit movement is about seventy years old. Nepal's Dalit problem is similar to that of India. India's reservation policies and the progressions that it has gone through have a lot of lessons for Nepal. Even in Nepal, the ruling class never viewed the reservation policies in India positively. Only in 2029 BS we raised the issues of reservation in Nepal so that Dalits could have equal level to compete with the ruling class. We first talked about reservation and progressive reservation and now we are talking about special rights. Dalit movement has reached the stage where it can demand special rights in all areas of life. All political parties have agreed to this demand. In this connection, the Dalit movement in Nepal seems ahead of the Dalit movement in India. The government is positive towards this as well.

The special rights issue that we have been raising needs to be articulated further with the lessons learned from the Indian experience. Therefore, the objective of the program was not for Gopal Guru to teach us from Indian experience but to have a healthy discussion on how to cooperate and collaborate in addressing some of the common problems that we face while talking about reservations. We are grateful to Professor Gopal Guru for being here.

Dalit issues in the Constitution

Yam B. Kisan
Scholars

I will highlight the issues of Dalits covered in the report of thematic committees of Constituent Assembly. The work of thematic committees
on issues of Dalits can be divided into two groups. These groups are the areas, which the entire Dalit Movement and the Dalit member of Constituent Assembly have continuously raised. They are: 1) Equality, dignity and human rights of Dalit, as one group and 2) Representation of Dalits in all organs and mechanisms of state, as another group. The thematic reports have indicated the issues of inclusion and it has also talked of the inclusion of Dalits within themselves as well. In relation to the report of Fundamental Rights Committee, the report on "Right against untouchability and caste based discrimination” is particularly important. Compared to the previous constitution, this report addressed untouchability not only in the public sphere but in all spheres including private.

**Keynote Speech**

**Prof. Gopal Guru**

Right now everything is in transition, so there is an opportunity to raise your issues much louder because you represent those groups who have suffered historical injustice. When you express your problems and grievances, others have to listen. But what are the issues and problems that you should express? Even if one word goes into the constitution, then it is going to be a serious word. It should be clear. All the grievances of Dalits should be manifested in the words that go into the constitution.

In India, we use SC. It is not an ethnic title but only a list and a group is referred to as SC because they are listed in the SC list. So in the case of Nepal, when we say Dalit in the Constitution, we need to be clear on what is the population of the Nepali Dalit community. I am getting two estimates. One side says it is around 20% and government census says around 12-13%. But this estimation is key. You have to pay attention to this estimation. If you talk about proportional representation, then this estimate should be strong. You have to take time and correct the census. Based on the population, the policies of the future will
be determined. You must have accurate data on your census. Some people do not express their caste because they are scared. You have to keep this in mind as well. You must get an authentic figure of the Dalit population.

What is the most important question for you - social justice or equality? At the end both are important but what is of higher priority. Social justice is more important because you have to create a society without caste system and one with dignity. Right to dignity, right to social equality is very important. The treatment that Dalits get is very important. The Constitution should address this issue. We do not want too much or too little. We should focus on proportionate.

Social justice is about opportunity. How can we get that opportunity for us and for the next generation? We need opportunity to education. We need opportunity and this opportunity comes from justice. The constitution also says compensation. What is compensation? Is compensation a principle or is it just a help? I think compensation is principle. We need to compensate for the Dalits because of the historical suppression. We need to compensate for them because the caste system has put them behind. We need to bring them forward and equalize it, make up for the loss they have suffered historically. That is why we need to compensate. It is not the language of charity and patronage, but it is the right of the Dalits. Dalits have contributed to nation building, so we need to acknowledge their contribution. Compensating for a crime is a different thing. That is not the compensation we are talking about. We should not reach a point where we talk about compensation for a crime. Compensation for history is different from compensation for a crime and loss of property or life. The second type of compensation should not be an issue.

Thirdly, organization is important to achieve affirmative actions and reservations. You need institutions. In India you have Dalit
Development Corporation in every state. It provides financial help to Dalits to start enterprises or for medical emergency. You need many kinds of institutions. Just army etc. is not enough. You need more institutions because there is a high population. These issues are important for all not just Dalits. You have to say that your demands are the same as others. Dalits need constitutions more than others. Why do you need constitution? It is to get justice for violations of rights. Acts in the constitution should protect the individual. All small issues should be covered.

Lastly, when you are fighting, who are you fighting for? This is the biggest moral point. We have many Dalit parties. Are you fighting for yourself or for the community? You are not going to benefit from the reservation fight today. You are fighting for the next generation. You should work with people you trust. The benefits for the country and the benefits for the Dalit community is the same. You have to repeatedly affirm this.

Responses from Dalit Political Leaders

Bishwobhakta Dulal (Aahuti)
UCPN (Maoist)

Personally I was expecting that the professor coming from India would give a philosophical understanding of the Dalit movement. What he has said today, it is something that has been said repeatedly fed to us by foreign delegates during the period when the Constituent Assembly was functioning.

First thing is that in the entire South Asia, we need to rethink about the direction of the Dalit Movement. Ambedkar understood state power sharing and used republicanism. In Nepal, we are using Ambedkar's teachings on caste system and ending caste discrimination, but his political teachings on state-capture and power-sharing have been ignored. In Nepal, we are trying to bring something new that is
looking at the Dalit issue from a class angle and not just from caste angle only. Ambedkar too explained that caste is also a class issue. But, in 2000 years history, the caste do not remain as castes. They have changed. Because of this, how does Dalit Movement move ahead in South Asia? As Ambedkar did, do we take this forward in Buddhism or should we take it materially? The Dalit Movement should depend on the world-view. Should it be idealistic or materialistic? We need to have a discussion on this.

Should the political direction be based on caste? Saying Dalits should have a different party means that it will not be a philosophy based party. Any Dalit can become a leader of that party because of his or her identity. This is not encouraged by political thoughts. We have been saying that there should not be a political party based on caste for Dalits. Why was Ambedkar not a Marxist is the topic of debate in Nepal? Even today, Indian communists have not seen Dalit struggle as part of the class struggle. In Nepal, for the last 30 years, all types of communists of Nepal have agreed to address Dalit problem as a class problem. In India, Dalit problems have been accepted as problems in the constitution under the group of Scheduled Tribes or Castes. My interest is having an interaction between Indian and Nepali scholars on Dalit and leaders to discuss how political movements addressed Dalit problems and what strategies it used. We need an in-depth review on this.

Tilak Pariyar
CPN-Maoist

The issue of Dalit Movement requires a study from new perspective and I agree with the view of Aahuti. Manu was born in India. The caste system and also the movement against caste system were imported from India. Even communists have imported terminologies of reservations and affirmative action from India. So we need to take this in a new way. What is an alternative to reservation? Besides, proportional representation, we demanded for special rights to compensate for
historical discrimination. The state has to give this compensation. It should be given as a right. To get that compensation, Dalits should enjoy proportional representation. We struggled for special rights. Dalits have invested a lot in the armed conflict - almost 5,000 from the Dalit community were involved in the conflict. We need to be compensated for the amount we have invested.

**Padam Singh Bishwokarma**  
Nepali Congress  

Dalit word has come to represent the castes that are kept behind. What are the causes for being a Dalit? These reasons should be understood and addressed. Dalits are economically exploited, socially oppressed, politically disrespected, educationally deprived, and culturally and religiously humiliated. These are the five elements that have to be addressed. Dalits are economically weak and this affects everything. Dalits' land has been appropriated. This type of tradition has exploited Dalits economically. In the social aspect, it is about dignity and respect. Even if one gets everything to eat and drink but is treated like an animal, then no economic well-being is worthy. As for political party, there is no decision making and political power for Dalits. Whoever constructs the society he will have greater influence. If any community is educated, people of that community can shape their own past and future. Education is important.

**Rampreet Paswan**  
CPN (UML)  

I was in the fundamental committee of CA, out of 32 about 4/5 issues were related to the Dalits there. Regardless of how much we worked hard on addressing Dalit issues in the constitution, the biggest problem is that we couldn't draft the constitution. The subject should be the constitution. Our issues have been in the shadows. About Dalits, we
have been influenced by India in every way. Even with Dalit issues, the caste system is also created in India.

In the parliament 60% were communists and if that CA was unsuccessful, it is time that we should learn a lesson. They did not want to draft a constitution and they did not want to have it. They were looking for an excuse and they found this on the number and names of the federal provinces and dissolved the CA on this excuse. They have now decided that the new constitution will give fewer rights than we have demanded and one that will maintain their Brahmanbad (Brahmanism). There is a trend -- all the leaders of the political parties are Brahmins so the Brahmanbad may prevail. They will therefore never be supportive towards protecting the rights of others, especially Dalits.

Today there is a communist influence and since they have a strong relationship with communists in India, the leaders here learn from there. The communists there raise the issue of class issue but not of caste. They do not take the caste issue seriously. Class issue is of our priority. Here, caste issue is also not discussed as much. I heard the political cadres speaking only in the language of class struggle. Whatever we discuss here, we need to have a perspective and philosophy of direction we are going to take. We should take a new path. We should demand for a philosophy which can guarantee liberation of Dalits.

**Question and Answers**

**Om Prakash VK Gahatraj**

Dalit Activist

We are engaged in drafting constitution. There are a few questions on the technical aspect. You said yesterday that affirmative action is a precondition for reservation and reservation is for social justice. What
we have said in the constitution drafting process is we emphasize the reservation and not much on affirmative action. If affirmative action is a precondition, are we compelled to mention affirmative action in the constitution or can it be only done through cabinet?

How can we make the carry forward system of reservation effective in Nepal? Especially in engineering and MBBS? We missed some quotas from last year.

The private sector is stronger for job opportunities. Is this practiced in India and can we copy it in Nepal?

Regarding Dalit word, it is confusing. Some friends are provoking to eliminate the word and replace it something that is suitable. Will we be proud to mention the word Dalit in the constitution?

**Jitu Gautam**
CPN-UML Central Committee Member and Ex-State Minister

What are the problems of Nepal's Dalit Movement and what are the solutions? There isn’t too much confusion. Nepal's Dalit Movement has developed a new philosophy of compensation or progressive reservation or special rights. The state is also convinced on this. In relation to state restructuring, 3% and 5% additional representation on top of proportional representation for compensation. The state is convinced. Another aspect is organization of Dalit Movement. This is strong and the exercise of consensus has reached certain level. Political powers are also committed to understanding and resolving Dalit issues. The UN is also committed. The important thing is that because the problem has been imported from India, we have to say that the way it has been solved in the India is not enough. So Nepal has to address this issue from a new perspective. India does not take Dalit issue in international platform and for this reason the Dalit problem will not be solved. This influence may also be seen in Nepal.
Ms Guna Laxmi Sharma/BK  
Former Ambassador to Myanmar

I suggested to make the occupation and profession of Dalit respectable and add value to it. And request not to feel guilty and insulted doing one's occupation.

Ms Durga Sob  
Chairperson, FEDO

I am interested to hear from Professor Guru on whether Nepalese Dalits should have a state of their own or not. I am concerned whether Dalit representation would be ensured in the election for the next Constituent Assembly. What kind of electoral system would be Dalit-friendly? We are also not united in issues of federalism, how do we get united?

Moti Lal Nepali  
Chairperson, Dalit Welfare Association

Progress in India is imitated in Nepal. Dalits should claim state power. Only a few people have enjoyed the benefits of the achievements of the Dalit movements. We need a process to come to power. The movement should be both for caste and class emancipation. Indian Dalit activists should also learn from Nepal's Dalit movement that takes class struggle into consideration.

Answers from Professor Gopal Guru

If you decide to incorporate reservation in Nepali constitution then you have to follow affirmative action with ‘intensity’. The word ‘intensity’ is important but reservation side by side of affirmative action is also important. It is not a question of "either or". You need intensified
affirmative action and reservation. If you have 2 empty quotas for this year then you should remove it so that next year you can get four. This is a new thing in terms of Nepal. It has to be codified in the constitution.

Dalit is a political category and not an administrative category, which has come from struggle of the people. Another point that Nepal got everything from India, good and bad, particularly bad. I must tell you that power has no territory. If people in Nepal find caste system beneficial, they will adopt it. Let us not be under constraint that only Nepal has imported it.

Reservations have two kinds of impacts - one is creative impact. The most intense debate on Marxism and liberalism took place among Dalit intellectuals. We debated liberalism first or Marxism as well. I am not trampling on your intellectual autonomy. It is a creative thing because it shows the limitations of reservations. You cannot know the limitations until you have followed it. We can criticize reservation because we have followed it. It is symbolic but only a small gain. This is another thing you have to think about. Consider the gains and move forward.

**Vote of thanks**

**Leena Rikkilä Tamang**

International IDEA

First of all my thanks to Professor Gopal Guru for his talks and insightful questions and suggestions. I only want to repeat one thing that he said to be clear and knowledgeable about the data. Political parties are thinking through the modalities for the election for the next Constituent Assembly elections. I also thank leaders from political parties, activists and scholars who participated in this discussion and SAMATA foundation for putting this event together.
Concluding Remarks

Binod Pahadi
Dalit leader and editor of Nepalimanch

Thank you all the participants, the organizations and especially to Professor Gopal Guru. It was an important meeting today. India has to learn from Nepal and vice versa. Nepal is way ahead of India in the field of Human Rights. Dalit participation in media is high in Nepal than in India but in civil service there is higher representation among Indian Dalit. Repeating Aahuti's statement, we should start a South Asia's regional movement against caste-based discrimination. Dalit in media is also important in Nepal and we need to promote the achievements as well.
4.

Conclusion

Professor Gopal Guru in his lecture and presentation provided conceptual differences between reservations, affirmative action and protective discrimination. He said that affirmative action is a precondition for reservation, which in turn is a precondition for protective discrimination. He also laid out the necessary conditions - constitutional democracy and an innovative state – for effective implementation of affirmative action and reservation policies. He repeatedly mentioned that although affirmative action is a pre-condition for reservations, the two policies have to go in tandem. Moreover, he emphasized that the Dalit population had to be ascertained properly because the number would be essential when designing affirmative action policies.

Based on the discussions that followed Professor Gopal Guru's presentation among Dalit political and civil society leaders, it can be concluded that more discussions are necessary to philosophically ground the understanding of affirmative action and reservations among the Nepali Dalit community. While there are demands for special rights for Dalits, which have been so far positively received by the government as well, the Nepali Dalit community needs to engage itself in intense discussions on the modalities of providing special
rights. These discussions also need to be taken into consideration; the various conditions are necessary to implement affirmative action policies as Professor Guru explained.

During the discussion it was repeatedly mentioned that the caste system and measures to address the consequences have been 'imported' from India. This view was held by Dalit leaders from various political parties. Such an attitude needs to be questioned with an understanding of how the powerful class uses caste system to maintain their stronghold in a society.

Having presented in the Indian context, Professor Guru provided an excellent opportunity to comparatively assess the Dalit movement in India and in Nepal. Aahuti rightly raised the complex issue of the intermingling between caste and class. He mentioned that in India the Dalit movement is primarily premised on looking at the Dalit problem from a caste perspective. Whereas in Nepal, the Dalit movement looks at the Dalit problem from both caste and class perspective. In fact, with the increasing influence of communist philosophy especially since the People's War (1996-2006), the class perspective on Dalit problems seems to be the widely accepted one. Aahuti argued that the way the society responds to caste changes over the years and therefore class is more useful in addressing the Dalit problem. While the debate of which perspective is more useful continues, what is evident is that affirmative action policies should be designed with awareness to both caste and class dynamics of the Dalit problem.

In conclusion, the discussion was successful in laying out the fundamental differences between affirmative action and reservations, and the conditions necessary for implementing affirmative action policies. Also, the discussion revealed that more work is needed in terms of Dalit leaders engaging in the details of implementing affirmative action policies. For example, concepts of carry forward and reservation in the private and non-profit sector need to be thought through.
Endnotes

1. Marc Galanter is the John and Rylla Bosshard Professor of Law and South Asian Studies at the University of Wisconsin, Madison. He studies lawyers, litigation and legal culture. He has worked intensively on such questions in the United States, the United Kingdom, Israel, and India. He is recognized as a leading American student of Indian law. In particular, he has for half a century been a close student of India’s policies of affirmative action. He is the author of Competing Equalities: Law and the Backward Classes in India (1984, 1991) and Law and Society in Modern India (1989, 1992) and many articles on the legal system and legal culture of India. He has lectured on Indian legal developments at dozens of Universities and professional groups around the world. He is currently engaged in research on access to justice in India and in preparation of a new edition of his classic work on affirmative action in India. He is the editor of the Law & Society Review, the leading journal on the empirical study of the legal system, President of the Law and Society Association, Chair of the International Commission on Folk Law and Legal Pluralism, a member of the Council on the Role of Courts, a Guggenheim Fellow, and a Fellow of the Center for Advanced Study in the Behavioral Sciences. He is a member of the American Law Institute and a Fellow of the American Academy of Arts and Sciences. Until recently, he was the LSE Centennial Professor at the London School of Economics.

2. This was the memorandum prepared by several Dalit groups working in Nepal.


6. This has been my own experience with Indian scholars, who spoke at Kathmandu conference a few years back.


8. My discussion with Satish Jha.

9. Ibid.

10. This was the report prepared by Justice Rajendra Sachchar in 2006. This report suggests reservation for the Muslims. Complete Sachar Report is available at http://zakatindia.org/Files/Sachar%20Report%20(Full).pdf
11. This has been brought by many studies conducted by The National Council of Educational Research and Training (NCERT), New Delhi.

12. Some experts on constitution spoke in a panel discussion on NDTV. See www.youtube.com/watch?v=McU0zDgWO0U.


17. Ibid. p. 85.


20. Phadke, op cit.


22. Ibid.


24. op cit. p.191

25. Ibid.

Gopal Guru is a professor of social and political theory in the Centre for Political Studies at the Jawaharlal Nehru University. His areas of interest and specialization include Indian political thought, humiliation, social movements and Dalit politics. He is the co-author of The Cracked Mirror: An Indian Debate on Experience and Theory (2012) and editor of Humiliation: Claims and Context (2009) and Atrophy in Dalit Politics (2006). His publications have appeared in numerous journals inside and outside India. His work on reservation including journal articles “Reservation within Reservation”, “Politics of Reservation, Society and Change,” and “Reservation and the Sanskritization of Scheduled Caste, Some Theoretical Aspects” are particularly relevant to Nepal.