

A Need for Identity and Recognition

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Nepal saw an important political change in 1990. The Panchayat rule came to an end, and multiparty polity was reinstated. As a result, parliamentary system, constitutional monarchy, human rights, independent judiciary, and press freedom for the first time in the history of this nation became constitutionally guaranteed features. However, the system was blamed for not being able to bring about social and economic changes demanded by the time. Above all, the state remained indifferent to inclusive politics, especially to the rights of the minority, marginalised and isolated communities. This led to voices of dissatisfaction.

The Maoists, now the United Communist Party of Nepal (UCPN-Maoists), capitalising on voices of dissatisfaction, launched an armed people's war in 1996. In the name of inclusiveness, the Maoists drew strong support from the Dalits, indigenous people and citizens who had felt isolated and marginalised by the state machinery. The Maoists and seven parliamentary parties signed a 12-point peace accord and launched a collective movement in 2006 against the monarchy. This was the first-ever movement that brought the issues of inclusiveness and restructuring of state to the fore. The other movements that followed it were the Madhesh Movement and other movements led by Tharus and Janajatis. Such movements have strongly rooted the agenda of inclusion in national and local politics. This was one of the reasons why the CA formed the Committee on Protection of the Rights of Minorities and Marginalised Communities to ensure that the new constitution addresses the rights of every community in order to make people realise changes.

The Committee made a study on the rights of minority, marginalised and excluded communities, and submitted its report to the CA on 20 April 2009.

Definition Sought

What are the premises to define a particular community as marginalised, minority and backward? This was the first challenge that the Committee on Protection of the Rights of Minorities and Marginalised Communities faced. Moreover, the Committee realised that defining such communities is a must to ensure their rights in the new constitution.

The Committee took seven months to prepare a preliminary draft report. During this period, it conducted lots of discussions, consultations, studies and researches. It passed several issues unanimously. The Committee report proposes to define minority community on the basis of caste, religion, and language. It states, "Minority community refers to the community that has remained oppressed and discriminated by the state. This term also refers to minor religious, linguistic and caste communities, particularly those which have remained oppressed and discriminated". Its draft

further defines marginalised communities as “the ones which have remained backward economically, socially, educationally, linguistically, regionally, politically, in terms of access to health, and also in terms of caste, religion, gender and sex. The term also refers to extremely marginalised as well as communities likely to face extinction”. Likewise, the draft of the Committee says that the excluded community should refer to the one that has suffered physically as well as mentally because of “caste discrimination”, “untouchability”, “linguistic, economic, social, cultural, regional, gender or sexual discriminations, and oppressions”.

Identification Criteria

The Committee has proposed that any religious and linguistic community or caste and religion of small population going through all sorts of discriminations and oppressions in societies should be defined as a minority community. Similarly, the report states that any community that has remained backward politically, socially, economically, linguistically, regionally, in terms of access to health, caste, religion, gender and sex should be defined as marginalised community.

The Committee report states that any community that has remained unable to participate in state politics because of caste “discrimination” and “untouchability” and “linguistic, economic, social, cultural, gender, and regional discriminations and oppressions” should be defined as a backward, isolated and excluded one.

Provisions for Protection

The Committee has proposed different constitutional safeguards in order to protect the rights of minority, marginalised, and backward communities. Individuals from minority communities, the Committee proposes, should have guarantees of their rights against all form of discriminations and untouchability. They should have the rights to live with one’s fundamental identity. They should have the rights to preserve and promote their religion, culture, language and script. Also, they should have the rights to use, protect, and promote their tradition, art, knowledge and skill. They should also have rights to form and run organisations and establish relation with other communities in a peaceful and free manner. They should have the rights to exercise their rights individually and collectively.

The Committee has proposed that individuals from marginalised and isolated communities should have their rights ensured in the new constitution. The state must ensure such individuals equal rights and respects that they hold in the nation. The Committee strongly recommends the state to nullify laws, policies, plans, programmes, decisions and practices that treat marginalised community differently from other communities. The Committee also recommends that the new constitution must bring provisions to punish culprits who discriminate people on the basis of caste, religion and sex, etc. Further, it states that the new constitution should regard caste and religious discrimination as serious crimes against humanity. There should be special provisions to enable people from marginalised and isolated communities to participate in economic, social, religious, cultural, political, administrative, and educational and all forms of public life. The new constitution must ensure them that they hold the rights to participate in creative and constructive work in national, regional and local levels and in all aspects of life of their concern. It should also ensure

them that they have the rights to stand against all of kinds of discrimination. Provided that such rights constitutently guaranteed, the rights of such communities remain protected, the Committee believes.

Methods for Inclusion in the State

In order to assure the values of human dignity, people belonging to all forms of castes and communities must be given equal opportunities and rights. Untouchability- and caste-based discriminations are the worst affronts to human dignity. Thus, they must be eliminated. There should be special provision to protect communities that are facing extinction. Similarly, the new constitution should have provisions to guarantee caste inclusions in state machineries. It must direct the state to provide equal concerns and investment to protect the languages of minorities. Moreover, the constitution must have special provisions to protect languages facing extinction.

The new constitution must also guarantee equal treatments to all religions to end religious discrimination. It should guarantee gender equality so that people of all gender and sex get equal rights and opportunities. It should also guarantee equal access to natural and economic resources for all. There should be equal distribution of resources to people belonging to each and every community.

The new constitution should also guarantee social inclusion, equal treatment to every citizen, end of discrimination and social ostracism. It should guarantee political inclusion, equal access and proportional representation of all caste, tribes, religion, language, colour, gender, third sex, disability, class and region in national politics and political systems. The new constitution should have provisions that guarantee equal rights to people belonging to each and every region as part of ending regional discriminations and constructing federal and decentralised system of government. It should guarantee equal distribution of resources, balanced development, and utilisation of local labour, skill, knowledge and ability as part of ensuring regional inclusion.

Limitations to Rights

The Committee states that no right or liberty can be absolute in itself but limited and relative. Therefore, to curtail absolute and unlimited rights or freedom, the state must have some specific laws and regulations to maintain peace and order in the country. Keeping this in view, the Committee recommends that the new constitution must have some provisions to foil individual and communal activities that harm or disturb nation's sovereignty, national integrity, and harmony among people belonging to different castes, religions, language, and communities. The new constitution should also curb actions that condemn the court, libel and verbal assault, and any moves that might disturb public peace.

The Committee including its sub-committees had organised altogether 48 meetings. It spent 352 hours on discussion over the issues. The full meeting of the Committee took place for 22 times.

In its first meeting on 16 December 2008, the Committee fixed a timetable and terms of references. First, it had held consultations with experts on concerned fields. Only then had the Committee

begun to take suggestions from political parties and other individuals concerned. To make it effective, the Committee had formed a timetable and subcommittees to carry out field study, develop and draft concept paper and to come up with suggestions and recommendations that they could offer to the CA.

Conclusion

The Committee has defined minority, marginalised, backward and isolated communities. It has also proposed some measures to be taken to protect their rights. It has strongly argued for provisions that guarantee inclusions in politics, development, bureaucracy and education among others. The new constitution should also have some provisions to curtail absolute rights of people of belonging to any community in order to maintain peace and harmony.

Finally, there was no serious dispute among parties while preparing the draft. This shows that parties are committed to granting rights to marginalised, minority, and isolated communities.