The ‘Unwanted’ People of Nepal: Revisiting State discrimination and Marginalization of Madhesis in Constitution Making Process in Nepal

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Abstract: Nepal’s modern political history is a history of constitution making and democratic consolidation. The discord and dissension among the major stakeholders concerning representation and inclusiveness pose a grave challenge to the national development and democratic consolidation process of Nepal which remained unresolved even today. Hence, it is imperative to investigate into the major issues of Madhesi and address those promptly and thereby bolster the national development for facilitating every groups to get the benefits of it in a more evenly manner. The present paper would critically analyse the uncertainty and instability in constitution building process in Nepal and the consequent unrest among the disadvantage sections especially Madhesis to address the issues of political representation and inclusion in Nepal’s newly constitutional and democratic set up.

Keywords: Madhesis, Constitution-Making, Marginalization, Representation, Nepal

Introduction

Nepal consists of different ethnic, cultural, religious groups and people. The population in Nepal is diverse. Hence the problem of their representation and participation is an imperative policy concern. There are many groups in Nepal which demand for their well-being and progress. The Mongol National Organization is a testimony to it which tries to unite the people on the basis of their Mongol ethnicity. They sought to bring some fundamental changes in the state institutions and polices by pushing the agenda of restructuring of Nepal as a federation (Hangen 2005:40). The social discrimination and inequalities have been persisting in Nepal since time immemorial. Nepal’s social framework has been legalized and validated through certain legal documents like Muluki Ain of 1854. The state’s official categorizing is mainly based on caste, language, religion and ethnicity. However, state never classified the people on the basis of race (Hangen 2005: 58). Muluki Ain of 1854 classified the population on the basis of caste. The concept of purity and pollution played a decisive role in the categorization of the population in which where the purity of groups have been decided by the cultural practices. For example the Hindus who are refrained from eating meat and
drinking alcohol have been placed at the top. Ethnic groups are placed at a middle level that was called a matwali (Alcohol drinkers) (Hangen 2005: 58). This kind of legal documents which divided the people on different bases have been instrumental in creating deep divides between the people which led to ethnic and caste clashes.

State has defined its population through cultural differences, especially language, religion and ethnicity. This was reflected in the subsequent constitutional and legal documentation process. For example, before 1990, the primary aim of the state was to make Nepal as a country of Nepali speakers and Hindus rather than as a diverse country. Through state and other legal mechanisms, religion and language became official and hegemonic. State defined national identity in terms of religion and language through its constitutions in 1951 and 1962 (Hangen 2005: 58). These legacies exist even till today despite the advent of multiparty democracy in 1990. Historically Bahun, Newari and Chettri groups in Kathmandu has the cultural and political dominance over the national narrative of Nepal. The traditional representation of Nepali speaking hill Brahmin at the cost of the diverse population who lives in plain areas with various languages has been existing in Nepal since many decades (Sen, 2016). Madhesi issue should be looked within this context and to a certain extent it is a culmination of state validation of discrimination in Nepal.

Who are Madhesis?
The demography of Nepal and especially the Terai region in Nepal is diverse which includes groups like Tharus, Madhesis etc. Tharus are about 16 lakh in number here. The others with the hill caste are around 60 lakh. Madhesis are 56 lakh in number. The people of hill origin are called as ‘pahadis’. (Ghimire, 2015). Madhesis are very vibrant groups and are also in news for several reasons. Most frequent question that is asked about Madhesis is whether Madhes is a geographical entity or an ethnic identity? The term ‘Madhes’ actually stands for ‘Madhya-desh’, a region between hills and plains. Many Madhesis are of Indian origin and they have robust socio-cultural and ethnic linkages with the people adjacent to their border (Nayak, 2010). People living in Nepal Terai are popularly known as the ‘Peoples of Indian Origin’ (Manchanda, 2001). Thus, Madhesis, in popular conception in Nepal, are considered as people from UP and Bihar (Thapliyal, 2015). The caste and ethnicity of Madhesis are similar to Bihar and eastern UP. Intermarriages between families are a frequent phenomenon on both sides of the border. Historically Madhes has been the part of Mithila region. Madhes consists of 22 out of total 75 districts of Nepal. It occupies 17% of the total country’s area and is home to more than 50% of the population. The land of Madhesis lies along with Nepal’s southern border with Nepal. This region is very fertile. Despite this, the people of Terai face deep discrimination from Kathmandu (Ghimire,
Only eight districts in the Terai region have been given the status of a province. The remaining fourteen districts are to be joined with the hill districts with the purpose of converting the local people into a minority (Jha, 2015).

Until 1954, Tharus and Madhesis constitute 94% of the total population in Terai region. However, since 1970s the state government promoted the hill migrants into Terai region and cleared the thick forests for their settlement. Thus landlessness became common among the Madhesis and they got no piece of land as part of the resettlement policy. Some portion of Madhesi population migrated into India and those who remained there were forced to work as domestic help in the houses of those hill migrants. Under the rules of Ranas and kings, large tracts of land were gifted to army officers, civil servants and family members of the ruling class. The kings of Nepal never employed Madhesis in civil services. Even their presence in judiciary, security agencies, corporation, industries and private sector was very minimal. Until mid of 1950s, Madhesis had to get the permit to enter into Kathmandu (Jha, 2015).

Madhesis and Tharus have always been humiliated by the power structures way back to British period where central and eastern parts of Terai were gifted to British East India company partly after Sugauli Treaty in 1816 and partly after the Sepoy Mutiny in 1860 (Jha, 2015). Many Madhesis are deprived of citizenship certificate even till today (Nayak, 2010). There were attempts from the side of the government to make Nepali language compulsory for both official work and as a medium of education in Madhes region. Infrastructure in this area is much poorer than those of the hill areas. Thus the people of Terai finally decided to act and lastly be heard at the centre (Gellner, 2007). Madhesis consider that the hill identity was purposely constructed in Nepal to project them as ‘others’. Thapliyal argues that translating the cultural differences between the Madhesis and the hill people into political inclusiveness is the major challenge for Nepal. Madhesis have been demanding for power in state structures and inclusive democracy through the mechanism of federalism since 1951. The representation of Madhesi in public and private sector is very minimal and they have been marginalized in the social, political and economic spheres (Thapliyal, 2015).

**Madhesis and Constitution Building**

The efforts to integrate the Madhesi population into the constitution making process and the mainstream development process of the country have started way before. For example, in 1947 Prime Minister Padma Shamsher suggested 4 people from the Terai in the Constitution Reforms Committee. Bedananda Jha has raised the Terai rights in the public platform for the first time in 1960s. However, he ended his movement and became a part of the system and the power structure. Later on he became a minister and
Nepal’s Ambassador to India. Leaders like Gajendra Narayan Singh raised the demands for Terai rights after the advent of democracy in 1990 (Ghimire 2015). There was a strong Terai uprising in 2007 and as a result the government formulated a formal agreement with the Madhesi leaders for the formulation of a single autonomous region along with the right of self-determination (Jha, 2015). From 2007 onwards more regional parties came into public arena. However, Madhesi leaders could not push their agenda when they were in power in 2008. However, they started a strong assertion for their rights when there was fall out with major political parties in power sharing in 2014 (Ghimire, 2015).

When the interim constitution was promulgated in 2007, Upendra Yadav one of the Madhesi leaders burned the copy of the documents. This sparked a biggest Madhesi movement in the country. They demanded state restructuring through the adoption of federalism, proportional representation for Madhesis and increased representation for electoral seats. Thus a first amendment was made to the interim constitution which guaranteed Nepal a federal structure (Sen, 2016). However the violent protests have not ended in Nepal. The killing of a 16 year old boy, who was protesting the arrest of Upendra Yadav, escalated the movement to a higher pitch (Sen, 2016). Under these circumstances, a new constitution was promulgated in Nepal on September 20, 2015.

The adoption of a constitution through an elected CA on September 20, 2015 was a watershed moment in the political and constitutional history of Nepal. After the April 25 earthquake, Nepal has fast tracked the constitution making process on the basis of promises made in the Comprehensive Peace Agreement of 2006 which put an end to civil war (Sen, 2016). However, Terai was under the curfew after the promulgation of new constitution and violent clashes took place between police and protestors. There was a six month blockade which affected the lives of people in Nepal. On 5 February 2016, the blockade was ended.

The constitution which promulgated on 30 September, 2015 failed to satisfy the Madhesis and Tharus of Terai who constitute around 70% of the population. They have been sidelines in the entire constitution making process majorly due to the distrust towards them among the political parties (Jha, 2015). Even though Bijay Kumar. Was initially a part of the constitution making process, later on he did quit the alliance as his View points were not taken into consideration (Jha, 2015). Immediately after the promulgation, violence erupted in Nepal. Army was mobilized to counter the protests. Hundreds of Protesters were killed and injured. When the ruling political parties were celebration the promulgation day, Madhesi parties observed it as a black day (Jha, 2015).

The provisions for state restructuring, citizenship rights and proportional representation of Madhesis in the new constitution have been perceived as
mere ‘tokenism’ by the Madhesi leaders. They have rejected seven new provinces provided by new constitution and newly demanded the inclusion of Central Madhes Province with districts namely Sunsari, Morang and Jhapa. They also demanded delimitation of constituencies based on population. Thus their major demand has been the representation through federalism based on ethnicity (Thapliyal, 2015).

The discontent among the Madhesis regarding new constitution consequently escalated into violent protests. The agitators obstructed the flow of goods and other essential commodities entering into Nepal from India (Ghimire, 2015). This has aggravated the problem and invited a lot of criticism from the scholars, academicians, politicians, media and leaders from across the world. This incident brought India into their conflict.

**Issues of Representation and Inclusiveness**

The recently promulgated constitution is completely discriminatory in nature. None of the Madhesi based parties signed the constitution. The new constitution inserted a provision of 165 member parliament. According to the new constitution the people from the hill and mountain regions will get 100 seats despite the fact that they constitute less than 50% of the total population. Terai region has only 65 seats despite the fact that they constitute more than half of the population (Jha, 2015). The constitutional draft of September 20, 2015 eroded their representation and compromised with the principle of inclusion. Moreover it has deprived them of self-rule and it institutionalized the provisions of discriminatory citizenship (Prashant, 2016). Madhesis and Tharus could get only 10% seats in the 601 member Constituent Assembly (CA-2) elections in December 2013. Three Madhesh based parties contested in 2008 CA elections. In second CA elections, there were 13 Madhesh based parties. Three major political parties took the advantage of split among the Madhesi political parties and completely excluded from the constitution making process (Jha, 2015). Even after the 9 years from mass protests, little has done to address the issues of Madhesis (Khalid, 2016). Madhesis’ fight against the government is to push the agenda for equality, representation and inclusiveness in the newly promulgated constitution (Ranjan, 2015).

**State and Constitutional responses**

One of the recent state responses after the Madhesi blockade of goods and other essential commodities is the overhauling criticism against the alleged Indian government’s involvement in the conflict. The government also gave thumbs up to the Nepal’s intelligentsia when they interpreted the Indian government’s involvement as a tactic of Modi government to win the Bihar elections (Raman, 2015). The constitutions in Nepal failed to address the issues and demands of various ethnic and caste
groups within Nepal. Rather some provisions in the constitution of Nepal further aggravated the tension and conflict among the marginalized sections and other ethnic groups. For example, the 1990 Nepal’s constitution has prevented the Election commission from registering the political parties that are conspicuously based on community or region. Hence many political parties such as MNO have been declared illegal by the constitution of Nepal (Hangen, 2005: 50).

The major issue lies here is that the issue of readdressing the various groups of different regions and communities. I would argue that the present issue of Madhesis is an offshoot of this sort of discriminatory provisions in the constitution. If the present constitution is also carrying the legacy of its predecessors, then the issues plaguing the country today will remain forever which would deeply affect the progress and prosperity of the country. The intention of including the provision of this sort may predominantly be the matter of unity and integrity of the nation. Even if so, the counter narratives to this remain undisputable which lead to increasing tensions and dissent among different groups based on region, religion, community, race and ethnicity. The major questions arises here in the context of various constitutional provisions are why political parties be banned only on the basis of community and region and why not based on race or caste? Why should they be banned when their issues and demands remain unresolved and unaddressed? If the provision is for the unity and integrity, then what about the already existing deep divisions of the country based on one’s caste or race? The purpose of a constitution or a legal document should be the implementation of justice, equality and fraternity. The constitution of Nepal should be formulated keeping these principles at the forefront. Rather than banning the rights of the people to form groups and put their problems forward, the constitutional provisions should ensure that the grievance of different groups get addressed within the constitutional framework and the reasonable logical understanding.

**Conclusion**

The growing resentment among the Madhesis against Kathmandu seems to be detrimental for the development of the country as a whole. The absence of sense of belongingness to Nepal’s institutional structures, symbols and constitution among the Madhesis due to the discrimination they faced throughout their life is a grave issue which the government should seriously dwell upon. The losing legitimacy of the state and growing radicalism is a long term challenge to Nepal. The blockade and the protests by the Madhesis should be looked as a genuine resentment against the discriminatory policies of the government but not as a movement to destabilize the country. The major issue lies in identifying the problem in a wrong manner. The Nepal government should sincerely revisit the question of political representation of Madhesis. The progressive civil

society organizations and the media groups should genuinely work towards a more inclusive society where everyone’s needs are met and addressed by the government. The Terai parties also need to come together to work for their common cause. The most urgent need of the hour is that the government should realize that the deep social divisions based on caste, race or ethnicity and the sheer discriminations against them would serve no purpose for the betterment of people and society. The government should be run to end the inequalities and create an inclusive society and not for establishing the rule of a particular upper caste elitism. Unless and until the government of Nepal realize this and make necessary corrections, then the state will lead to a more damages situation.

References