

HOW TO DO JUSTICE TO DALITS IN NEW CONSTITUTION

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I AM PISSED AND I AM NOT GOING TO TAKE IT ANYMORE.¹

Yes, I am pissed and I am not going to take it anymore. My forefathers from centuries have given up their lives, shed their blood, fought your wars, contributed to your economy, worked in your lands for meagre food and made you rich. You, your children and pedigrees have flourished and thrived on my and my forefathers' sweat and blood. You have deprived us to practice my own religion freely. You have poured hot boiling lead in ears of my forefathers if they happen to hear the sacred verses of my own religion. You forbid us to enter the very temple that my forefathers helped build. You have twisted facts of my own religion to discriminate us. You don't want us to touch you because it will defile your body. You have made us walk a different path in my own villages so that my shadow does not touch your body. You prevent us from entering your house yet the very houses you live in were and are built by my own hands. You do not want to sit or eat with us yet the very food you cook and eat are produced by my hands and my labour. You don't want to collect our milk for processing/ pasteurization because the cows belong to us. But you accept the milk of my cow if it is milked by you. You make us wash the dishes that we used to eat the food that we bought from your restaurants. If we refused to wash our dishes in your restaurants, you come in masses to beat us and humiliate us. You have taken away our identity. You have forced us to put a label on our name so that you can recognize us and prevent us from progressing in the society. You have forced us to live in the outskirts of a neighbourhood. So that you can use our skills but not let mix with you. You redirect drinking waters of our villages to your villages and we have to walk miles to get drinking water for our families. We accepted our position in the society to appease you. But we are not going to take this any more. You have deprived my fore-fathers from education and you are continuing to do so. When my forefathers did make it to schools you did not let him/her enter the school premise or kept him/her separated from the other students. You have developed a very

¹ This is a poetic expression of Dr. Ramesh Kumar Sunar, a Dalit from Myagdi, who is now residing in New York, USA and a Dentist by profession.

well planned system how to keep us away from education in the modern era also. You don't let our young students rent your houses because it will defile your houses. We have to lie about our identity to find housing for our young students. When you find out about our background you beat and humiliate our young students and throw them out of your houses in the streets. You have also developed a well oiled system to keep us deprived from national and international opportunities.

Besides providing our skills and knowledge to run the local economy we have equally participated in all political change of Nepal. Our fore fathers Bise Nagarchi, Latokami and Maniram Gaine contributed in the unification process. Chandrabahadur Sarki and Maniram Damai got martyrdom in the fight against Rana rule in 1950. Bingeswar Paswan, Nyaule Bishwakarma, Harkabahadur Sarki and many others got killed in their fight against feudal Panchayat system. Gyanbahadur Sarki, Rekha Bishwakarma Mohitkrishna Baiju and many more were killed to reinstate multi-party democracy in 1990. Highest of all three Dalits Dipak Kami, Setu BK and Chandrabahadur Bayalkoti sacrificed their lives to overthrow the autocratic regime of the King in 2006. Now Maoist have entrenched their victory over the martyrdom of more than 1000 Dalits. Despite all these sacrifices you still think Dalits did not agitate as Madheshi and Janjati did. Our issue were not taken up by Ministry of Peace and Reconstruction stating that there is no unified Dalit movement.

When there was need of Dalit sacrifice to ascend you to the power there was no issue of our unified movement

When there is an issue of sharing power and prestige that became prime issue. That behaviour reminds us the famous proverb, "Na dine Baraju Budhabar Barchhin" (meaning, one who does not want to give makes several excuses).
OH, YES I AM VERY ANGRY.
 Oh, yes, I am angry. I am ready to fight you NOW.

Despite all the sacrifices in the political processes and to let ascend all Brahmin, Chhetri and Newar to the rule of the country the situation of Dalits remains still pathetic, the following figures speak itself:

S. No.	Subject	National Average	Dalit
1	Population	2.3 Million	13% Claim 20%
2	Life Expectancy	59 years	50.8 years
3	Mortality under 5	104.8	171.2
4	Infant Mortality	75.2	116.5
5	Fertility	4	4.7
6	Use of Contraceptives	44%	28 %

7	Literacy above 6 years	54%	33.8 %
8	SLC and above	17.6	3.8
9	Bachelor and above	3.4	0.4
10	Poverty	31%	47 %
11	Average Income	Rs. 20689	Rs 13340
12	Landlessness		44% Terai Dalit 15% Hill Dalit
13	Legislatures	574	7+43(8.71%)
14	Empowerment and Inclusion Index	0.4	0.3

Has the justice been made to Dalits?

According to the Oxford Advanced learner's dictionary, justice means fairness. Justice is seeing things impartially.² Has the history or change of the political process made justice to Dalits? For the first time in the history of constitution making, the constitution of 1991 acknowledged the fact that caste discrimination still prevails in Nepal and it should be made punishable by law. Subsequent to that several amendments and declaration took place. The 10th amendment of Mulukiain (civil code) made a provision of cash punishment upto Rs. 3000 and jail of upto one year or both for those practicing untouchability in the public places. Likewise, National Dalit Commission was constituted which I consider as a toothless tiger and a place to fill in the political cadres of ruling political party (ies), in July 2004 the case of untouchability was made a public offence or crime against the state.

After the sacrifice of 3 Dalits out of 25 in the April movement of 2006, the reinstated house of representative declared Nepal as a country free of untouchability. For the first time in the Nepalese history though lately a Dalit was included in the constitution making process and interim constitution 2007 was promulgated. It still acknowledged the fact that caste based problems related to Dalits continues to exist. It made various provisions to fight against the problems of untouchability. It made one of the fundamental rights against the untouchability in clause 14 sub-clause 1 and states that no one shall be discriminated based on the descent, caste, occupation and or any other form, those who practice will be punishable by law and the victims of such practice will be compensated as provisioned by the law³. This provision can be considered a more progressive one as there was no such provision in the constitution of 1991. Unfortunately, no subsequent law of compensation was made by the interim parliament. It is known that to materialize the parliamentary declaration of "untouchability free country" and to compensate the victims of caste based discrimination a draft bill with a compensation of upto Rs. 50,000 was prepared by National Dalit Commission but has been withheld by the Ministry of Law, justice and parliamentary affairs. The reason of withheld is said to be the provision for those civil servant who practice untouchability to be suspended once charged and put on trail. Since such provision affect them, they rather thought not to let table in the parliament as a result of that it succeeded to by pass the different sessions of interim parliament.

² Swift Adam, Political Philosophy, p. 23, Polity Press UK, 2003

³ Interim constitution of Nepal, 2007, p. 5, Gov of Nepal, Ministry of Law, Justice and Parliamentary Affairs, Law Book Management Committee.

The academic discourse of justice states that "justice has concerned both the terms of membership of a social group (social justice) and the distribution of burdens and benefits within that group (in distributive justice term) and the virtue of justice is common good. This assimilation of different forms of justice makes it cardinal virtue of political order as well⁴. Justice is a central moral standard in social life, it is conventional to distinguish 'formal justice' (the law) and material justice (morality and politics), likewise it has other side which is retributive justice which is also called the corrective justice, which is for wrong doing.⁵

If we apply some of the terminologies of justice from academic discourse to the situation of Dalits of Nepal then I find it very difficult to comprehend that justice have been made to them. The virtue (religion or intention) of justice is the common good, if it is so then Dalits would not have remained at the lowest rung of the society. The retributive justice is to correct the wrong doings. For example a thief is punished for his/her wrong doing to the society and in most of the societies of the world stealing is considered crime against individual and society. In case of Dalits, we have been victimized by the society and state for not any kind of crime that we committed, rather for providing services through arts and skill so that we never acquire a good position in a society and keep on serving them for meagre wages or compensation. If the principle of retributive justice is applied then Dalit need to take it other way round and society and state need to be punished for its wrong doing to us. In that case the Nepali states owes an apology to whole Dalit community of Nepal for its wrong doing for centuries and declare a due compensation to us.

Among the famous philosophers who contributed so much in the discourse of justice and commonly known as social justice John Rawls (1921 and his book Theory of Justice 1971) has argued very strongly. Though he is considered to be a thinker of liberal tradition and written his book in the context of Anglo American society, I think he has contributed very significantly to the cause of down trodden people like Dalits as well as the principle of justice is almost universal. Many of the western democracies have adopted the welfare state modalities of their governance and I think he has contributed to bring in such shift in the western democracies, otherwise they would have remained more laissez-faire and their social problem of inequality between rich and poor and problems related to it would have mounted more than that of now.

As quoted by Adam Swift, society for Rawls should be understood as a fair scheme of cooperation between free and equal citizens, and the original position models or represents that understanding.⁶ If this concept is applied to Dalits, then legally we have become the free and equal citizens but in reality it has not been the case, neither there have been a fair scheme of cooperation. If there had been fair scheme of cooperation then Chamars⁷ would not have been compelled to do the humiliating job of throwing carcasses.

Rawls also states that justice is the first virtue of social institutions, and it is giving people what is due to them, and not giving them what is not due to them. That means what the most important set of moral considerations relevant to politics and the organization of the society is that which concerns giving people giving their due and it is to do with what they have a right

⁴ Oxford concise dictionary of politics, p. 287 Indian Edition, Third impression 2006

⁵ Oxford dictionary of sociology, p. 333, Indian Edition, Third impression, 2006.

⁶ Swift Adam, Political Philosophy, p. 22, Polity Press UK, 2003

⁷ Chamar is a caste group in Teria region of Nepal whose traditional occupation is to skin the dead animals and make shoes and other products out of it. They also play musical instruments in different auspicious occasions.

to⁸. There might be things it would be morally good to do that aren't the requirements of justice. Therefore, there is no point in showing sympathy to the situation of Dalits and feel that oh, yes, we have been thinking of doing something for Dalits, and this has been the case in Nepal. As we all know that most part of the society today seems sympathetic to the cause of Dalits, but when it comes to sharing power, prestige property with them then things turn to other way round. Therefore, justice is central to the political morality.⁹ And time has come for the politics of Nepal to be moral and render justice to Dalits.

Equality and Justice

Dalits of Nepal since 1963 have been treated equal before the law therefore; formal equality has not been a much concern to us, though there were flaws in the legal system which has been subsequently rectified especially in the constitution of 1991 and more recently in the interim constitution. Likewise, an institution totally dedicated for Dalits to ensure our rights have been established, the National Dalit Commission. But if we see the justice both from philosophical and practical point of view the Dalits of Nepal have been grossly denied of. In the contemporary political debates of Nepal inclusion has been a major issue of all and this is trying to rectify some of the injustices caused to Dalits but these are too inadequate. As all the legal and political systems are treating un-equals as equals. We have seen what is the overall economic, social and political situation of Dalits in the data, if we are treated equally then will our situation improve, definitely not. Therefore, there is a need of treating us un-equally. Here again Rawls state that "social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged, and (b) attached to the offices and positions open to all under conditions of fair equality of opportunity".¹⁰ Inequality is justified if they serve to maximize the position of the worst-off. He further states that the odd bit of 'trickle down' is not enough to satisfy the principle, what matters is whether the worst off are as well off as they could be, not whether they are better off than they might have been.¹¹ All these arguments of Rawls justify that in order to create justice to certain segment of the society they are required to be treated un-equally so that they can be better off and come to the level of those who are better off and this is the part of justice.

Justice as desert

First of all I had difficulty to understand the meaning of desert and what it has to do with justice. Literally desert means either a place of sand where nothing grows, or a sweet food item eaten as a last course of meal. I was happy to find interesting meaning in the philosophical debate of justice as desert. As per Robert Nozick (1939-2002, another American Philosopher) people have to be treated unequally and if a nurse and brain surgeon are paid equally then it will be injustice to the brain surgeon as s/he would have gone through the several years of hard work, training and investment compared to a nurse. At the same time he talks the term desert as term for compensation and equalization. Suppose if people, whose work is dangerous, stressful, dirty, boring or inappropriately stigmatized should, other things equal earn more than people whose work is safe, comfortable, interesting, healthy or prestigious.¹² I think the principle of desert in justice is very much applicable with the case of Dalits. As we all know that though Dalits have been the backbone of the local economy

⁸ Ibid, p. 12

⁹ Ibid, p. 13.

¹⁰ Ibid, p. 24

¹¹ Ibid, p. 27

¹² Ibid, p. 45

through their services and skill, their work has been grossly underpaid in the form of *Balighare*¹³, stigmatized terming as a profession of untouchables, a work of black smith can not be considered a good work, neither the work of Poda Chayame¹⁴. A Mushahar¹⁵ has to work in the field ploughing and cutting the mud and in return they are paid just 2-3kg of unhusked rice. Therefore, justice as desert is very much applicable to the case of Dalits and they deserve special treatment by the society and the state so that they would be compensated and a process of equalization would begin.

How to do justice to Dalits in the new Constitution of Nepal.

I have discussed so far what a Dalit feels for the situation that s/he is compelled to live in, what are the philosophical aspects of justice and what the situation of Dalits is. Now I would like to present what has been provisioned so far in the 1991 and interim constitutions and other legal provisions what needs to be done in a tabular form.

¹³ A Nepali system of compensating the services of Dalit of the whole year in the form of inferior quality grain during the harvesting season, amounting 10-15kg of the grain.

¹⁴ This is another caste group within Newar community of Kathmandu valley whose traditional occupation is to clean the public places including septic tanks and treated inhumanly by rest of the society putting them in the lowest rung.

¹⁵ Mushahar meaning mouse eater is another caste group of Terai whose traditional occupation is to work as agriculture labour by cutting and leveling the earth. They are also treated as untouchable and are in the lowest human development index out of 103 caste groups identified in Nepal.

Dalit agenda for Constituent Assembly

Major Agenda	Sub-Agenda	Existing Constitutional and other provisions (1991 and 2006)	What needs to be done by CA
Economic Agenda	To abolish all the exploitative system such as Balighare, <i>Khalo haliya, haruwa, charuwa</i>	<p>Supreme court verdict of 2007 regarding abolishment of <i>Haliya</i> system and to rehabilitate them in a same way as <i>Kamaiya</i>.</p> <p>The directive principle clause 33 sub-clause (i) states that the state shall adopt a policy to provide economic and social security to the class of people belonging to <i>Sukumbasi Kamaiya, Haliya, Harwa, Charwa</i>.</p> <p>In the fundamental rights under clause 29, it is stated that there will be a right against exploitation to all citizens.</p> <p>In the sub-clause 2 it is stated that in the name of tradition and convention no one can be exploited.</p> <p>Sub-clause 4- No one can be forced to work against his/her will.</p> <p>Directive principle clause 15-ascertains the number of <i>Kamaiya</i> and adopt the policy to arrange appropriate land and employment.</p>	<p>The government should be pressurized to implement immediately.</p> <p>This clause needs to be continued and a constitutional guarantee should be provided to the groups of these people.</p> <p>There should be the provision of compensation to <i>Haliya</i> who are mostly Dalits.</p> <p>This policy needs to be applicable in case of <i>Haliya</i> as well as per the verdict of supreme court.</p>

	<p>Development of traditional occupations as industry and make it more dignified.</p>	<p>Clause 35, directive principle, sub-clause 18- The state shall adopt the policy of protecting, promoting and modernizing the traditional knowledge, skill and practice of the country.</p>	<p>This provision needs to be continued and a word to be made dignified to be added.</p> <p>While opening industries related to Dalits occupation they need to be given employment and to be made shareholders as well.</p>
	<p>Employment and Inclusion in the private sector</p>	<p>No any provisions so far and not discussed either.</p>	<p>The private sector need to fully adopt the policy of inclusion and quota allocated in the employment for Dalits.</p> <p>The state should adopt the policy of providing incentives to the private sector who comply to the inclusive employment policy..</p>
	<p>Revolutionary land reform and establishment of Dalit rights in the land.</p>	<p>Abolishment of dual ownership of land in 1997 and then Prime Minister Sherbahadur Deuba announced to limit the land ownership and to distribute equitably in 1998.</p> <p>The state policy, clause 33 and sub-clause (f)feudal landownership to be abolished and to implement scientific land reform policy.</p>	<p>The revolutionary land reform to be implemented and those landless <i>Dalits, Haliya, Haruwa, Charuwa</i> and freed <i>Kamaiya</i> to be distributed equitably.</p> <p>The dual ownership of land to be established on the land being used by Dalits and their equitable rights to be established.</p>
	<p>Economy and Dalit women</p> <p>Un-equal wages for women</p>	<p>Fundamental rights clause 20 sub-clause 1: No discrimination shall be made being a female.</p> <p>Same clause states, equal rights in hereditary property.</p>	<p>The system of giving un-equal wage to women worker should be abolished both from policy and implementation.</p> <p>This needs to be continued.</p> <p>While distributing land to Dalits equal rights of Dalit women to be established</p>

			by the state.
	Madhesi Dalits in economic agenda		Madhesi Dalits to be given priority while distributing land and providing employment opportunities. Or while creating constitutional provisions for Dalits a policy of prioritization to be mentioned based on the economic and social conditions within Dalits..
Social Agenda	National promise and commitment to abolish untouchability from all sectors.	<p>Replacement of 1854 civil code by new civil code in 1963 and all citizens including Dalits were made equal before law.</p> <p>The 1991 constitution 11/4 provisioned that no one shall be discriminated based on caste and punishable by law if some one practices in the public places.</p> <p>The tenth amendment of 1993 provisioned upto cash punishment of Rs. 3000 and jail upto one year or both.</p> <p>In July 2004 the case of untouchability was made a crime against the state.</p> <p>6 June 2007, Nepal was declared a country free of untouchability by the re-instated parliament.</p> <p>In 2007 the amendment of civil code provisioned upto Rs. 25,000 cash punishment and</p>	

	<p>Promotion of social harmony</p>	<p>imprisonment upto 3 years or both.</p> <p>Fundamental rights clause 14-fundamental rights against untouchability and punishment to the culprit and compensation to the victims as provisioned by the law.</p> <p>The same clause and sub-clause 2 states that no one shall be prohibited to enter any religious place and to perform religious rites.</p> <p>The same clause, sub-clause 4 states that no one shall be allowed to sponsor a feeling and or promote based on the high and low status of caste and ethnicity, nor they shall be allowed to spread any ideology of the same.</p>	<p>All these provisions need to be continued.</p> <p>There should be special mention of provisions which shall promote the individual and institutional harmony among caste and ethnicity.</p> <p>As of now, practice of untouchability has been confined in the public places, now time has come to eradicate such practices from individual houses as well.</p>
	<p>Inter-caste marriage and Dalit women</p> <p>Mass Communication and Dalits</p>		<p>A Dalit woman who marries non-dalit man and non-dalit woman who marries Dalit man to be protected and promoted and established in the society.</p> <p>Under the right to information the role to be played by the media for the establishment and promotion of Dalit rights to be mentioned</p>

Political Agenda	First Past the Post Election	A compulsory provision has been made for women that at least 33% of them get elected through FPTP and proportionate system.	In the forthcoming constitution similar provisions should be made for Dalits. At least 20% of them get representation.
	Proportionate Election	Only those parties having more than 30% candidates are required to enlist Dalits as well.	In the future a provision should be made that all parties should have Dalits.
	Dalit's own political party	The current constitutional provision requires Dalits to have proportional candidates.	This agenda to be discussed and appropriate suggestions put forth.
	Local Election		In all structure from federal to local level there should be a constitutional provision for Dalits to have proportional representation.
	Political parties	No provision for political parties to be inclusive, it is left at their discretion.	All the national parties are required to be inclusive in their structure and functioning as well.
	Political Appointment		In all political appointment there should be the constitutional provisions for Dalit's nomination.
Education Agenda	Compulsory Education	Under fundamental rights, article 17, clause 2 guarantee the right to free education upto secondary level as provisioned by the constitution.	While there is free education for all, a provision of compulsory education for Dalits and other excluded groups should be made in the constitution.
	Reservation in the higher education	Under the directive principles of article 35 and clause 10 provisions a reservation system for <i>Dalits, Janjati, Madhesi</i> , labour and peasants in health, education and	While making education compulsory to the children, the parents of Dalits should be given incentive by providing employment and other incentives. In the field of medical,

	Quality Education	other sector of employment.	<p>engineering, forestry a proportionate reservation should be given to Dalits. Reservation should be provisioned as a part of social justice to Dalits.</p> <p>A school like Budhanilkantha should be opened in all districts and proportionate quota should be fixed for Dalits and other marginalized groups.</p> <p>Special efforts should be put to minimize the gap between government and private schools.</p>
Health Agenda	<p>Preventive Health services</p> <p>Curative Health Services</p> <p>Health of Dalit Women</p>	<p>Article 16 and clause 2 provisions free health services to all citizen as per the law of the country.</p> <p>Article 34 and clause 8 states that the state will adopt the policy of ensuring health, education and employment to women and mainstream them in the national development.</p>	<p>A provision should be made for basic health facilities to the Dalits and other marginalized groups.</p> <p>Dalits should be entitled to get free health services at all levels.</p> <p>It should be emphasized that priority will be given to Dalit and women of other excluded communities.</p>
Dalit Human Rights	National Dalit Commission	Formed as per the decision of cabinet	It should be made constitutional and at par with the National Human Rights Commission.

Conclusion

We have seen what a Dalit even though he resides in the US feels for the gross injustice caused to his group, we have also seen that some efforts have been made to redress the pathetic situation but one can conclude that no justice have been made by the state.

While coming upto this stage of making new constitution for Nepal through constituent assembly the representation of Dalits have increased a mark level high of 8.71% with the representation of 49 parliamentarians. Though it falls short by more than 4 point as promised by the interim constitution of proportionate representation. For the second time in the history 7 Dalits have been elected which we consider as exception, as we could not have thought of in the normal situation of regular election. Through these elected and proportionately represented CA members we can expect to have better representation from issue point of view. However, if we see the performance of the 18 parliamentarians in the interim parliament then there is no reason to be satisfied. If same situation continues in the forthcoming CA then Dalits will not get justice. For that there is a need to put pressure on government and CA members in one hand in other they need to take up seriously the suggestions put forth in this document. Many of us know that the most powerful democracy of the world the US lags behind than Nepal in ratifying many international human rights and other conventions. Likewise, as a country Nepal seems to be very generous to formulate policies and plans as I myself had the opportunity of drafting interim plan (2007-2010) and if that plan would be implemented honestly I would not have much grievances, but I know even 25% of that plan and policies will not be implemented. If it is so then what will be the point if we will come up with a very good constitution for Dalits and not implemented. Again Dalits will be deprived of justice. Therefore, there is a need of having a very good constitution and a firm commitment to implement it with an appropriate policies and structure in place. Only then there will be justice to Dalits of Nepal.

The followings are the un-compromisable demands of Dalits in the new constitution

1. It should acknowledge the fact that Dalits went through the gross injustice and inhuman practices by the state itself, and there should be a firm commitment that any form of the caste based discrimination will be eradicated within specific time frame not just in the public places but in private places as well.
2. The state should adopt social justice as means to compensate Dalits for the gross injustice caused to them and apologize formally.
3. It should ensure proportionate representation at all levels of state organs.
4. The reservation for certain period to bring them to the level of economic development has to be in place, not just in government services but in the private sector as well.
5. The constitution should guarantee the protection and promotion of Dalit rights at all level of state structure (Central, federal and local level).

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