



Ethnicity, Belonging, and the State: The Dynamics of Identity Politics in Nepal

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Abstract

Managing identity politics within a democratic system has turned into a crucial concern for nations like Nepal. To address identity politics, it is necessary to examine and analyze the roots or factors that have fueled identity movements for recognition. This paper focuses on two-fold issues: the first is identifying causes of identity politics, and the second is exploring potential solutions for accommodating identity politics in Nepal, followed by a literature review. Based on the doctrinal method, this paper reviews some key literature available in physical and virtual libraries in order to address those two issues. In the first part, it analyzes the socio-political and legal causes behind the uprising of identity politics in Nepal. Socio-political exclusion in the political apparatus and discriminatory laws against many ethnic, linguistic, and religious groups are major causes of the grooming of identity politics in Nepal. In the second part, this paper has discussed different models of accommodating identity politics, which include basically three dimensions: the first is recognizing identity groups, the second is designing inclusive state structures and institutions, and the third is horizontal and vertical power sharing, under which, the authors believe to accommodate identity politics in Nepal. The first issue covers socio-political values and legal measures, which acknowledge issues of recognition and identity politics. The second issue analyzes the level of state efforts to make a proportional and inclusive state apparatus. The third issue is related to power sharing between the state structure (institutional level) and the segment of society (people's level).

Keywords: Identity politics, federalism, power-sharing, division of powers, separation of powers.



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Introduction

Nepal is a diverse country with ethnic, linguistic, religious, and cultural diversity. The Constitution of Nepal, 2015 has clearly stated that all the Nepali people, with multi-ethnic, multi-lingual, multi-religious, multicultural characteristics and in geographical diversities, and having common aspirations and being united by a bond of allegiance to national independence, territorial integrity, national interest and prosperity of Nepal, collectively constitute the nation (Article. 3). The first line of the national anthem of Nepal, '*sayou thunga fulka hami eutai mala Nepali*' (we are hundreds of flowers, (but) one Nepali garland) (Hutt, 2012, p. 315; cited in Hachhethu, 2023, p. 1) manifested real diversity of Nepal. Nepal's population census 2021 recorded a total of 142 castes/ethnicities, 124 mother tongues, and 10 religion groups (NSO, 2024, p.1), which showed really diverse characteristics of Nepali society.

As a landlocked Himalayan country lying strategically between the two large neighboring countries, China and India, Nepal is a country having ethnic, linguistic, religious, and cultural diversity. By understanding this fact, Article 3 of the Constitution of Nepal, 2015 mentions that Nepalese people are multi-ethnic, multi-lingual, and multi-cultural who live in different geographical territories. In spite of these differences, they have common hopes and dreams. They are united by their loyalty to the independence of the nation, the integrity of its territory, the national interest, and the prosperity of the entire nation.

In an ethnically, linguistically, religiously, and culturally diverse society, politics is not only guided by the philosophy that we believe in a homogenous society, but also guided by the different interests of diverse identity groups. The words 'identity' and 'politics' are commonly interconnected and widely used in today's world, where societies are divided ethnically or different communities are under threat from this globalized and liberalized world. Politics, in fact, matters for human development because people everywhere want to be free to determine their own destiny, express their views, and participate in the decisions that shape their lives. (UNDP, 2009, p. 1) In an ethnically diverse society, when the political powers are highly captured by a single community by isolating others, the remaining groups also claim those rights by creating a social group(s) that also claim equal recognition. Because misrecognition or denying recognition shows a lack of due respect for human beings, that may cause deep dissatisfaction and also victimization. Thus, identity politics may (contrary to most views) actually strengthen nation-states (Mann, 1997, p. 494).

Human Development Report 2004 published by UNDP states that the rise of identity politics opens up the door for equality, freedom, and justice. In vastly different contexts and in different ways – from indigenous people in Latin America to religious minorities in South Asia to ethnic minorities in the Balkans and Africa to immigrants in Western Europe – people are mobilizing anew around old grievances along ethnic, religious, racial and cultural lines, demanding that their identities be acknowledged, appreciated and accommodated by wider society (UNDP, 2004, p. 1). Nepal is not far from this reality; thus, we have to discuss much for accommodating identity politics in the context of Nepal. Aiming to explore the issues and accommodating pattern of these issues related to ethnic groups, and identity politics, this article tries to scholarly discuss the socio-political and ethnic context of Nepal.

Literature Review

This literature review part basically covers the concept of identity politics and prevailing theories of accommodating identity politics in the Nepali context. The conceptual part focuses on the relation of ethnicity, identity, and politics. The second part discusses on major literature related to identity politics in Nepal. The third part of the literature review is a comparative discussion on the major theories of accommodating identity politics, which

covers the assimilation model, the pluralistic model, and the inclusive democratic dialogue model.

Analyzing from the conceptual viewpoint, the phrase “identity politics” has been used very wisely in the political arena and also found in the shared experiences of injustice of members of certain social groups, e.g., ethnic, linguistic, religious, cultural, and other minority groups. The main purpose of forming an identity group is to achieve a common goal and justice by recognizing their own specific socio-cultural affairs. Thus, the concept of identity is accepted as a broad and important concept for individuals and communities since it concerns their belonging, their way of thinking, feeling, and acting, which is directly related to human dignity. The identity to be protected and promoted may be national, ethnic, cultural, religious, or linguistic, or all of these altogether, because of their overlapping character (Medda-Windischer, 2009, p. 172).

Friedrich Hegel argues that human history is driven by a struggle for recognition, which comes initially from a warrior who is willing to risk his life in a bloody battle, not for territory or wealth, but simply for recognition itself. Hegel further explains that the struggle for recognition is the ultimate driver of human history, a force that was key to understanding the emergence of the modern world (Fukuyama, 2018, pp. 39, 10). A human being is only such a social being who easily sacrifices his/her entire life for getting dignity and recognition as a separate group within society.

Brubakar (2004) states that identity politics requires group involvement of the people having social, cultural, linguistic, and/or religious harmony (pp. 4-5). In a study, Parker (2013) discussed identity as understanding from an outsider on the one hand and experiences from an insider what they experienced in day-to-day life, under which the identity is created. (pp. 81-82) She analyzes identity as a negotiable and non-negotiable value, under which she believes religion, ethnic identity, language, diet, and agriculture, ethnic identity are non-negotiable values of our society (p. 152). One of the issues of identity politics is to get recognition from both the state and non-state actors. The recognition of identity of the peoples provides them to be human beings and a need for self-respect and respect from others, which is very crucial for human beings.

Human perception of identity varies. Lemert (2014) mentions that there are three classes of men: lovers of wisdom, lovers of honor, and lovers of gain (p. 6). Likewise, Taylor (1994) says that the discourse of recognition has become familiar on two levels, which include the intimate sphere and the public sphere (pp. 37-38). In the intimate sphere, people understand the formation of identity and the self as taking place in a continuing dialogue and struggle with significant others, while, in the public sphere, a politics of equal recognition has come to play a significant role. Because the role of identity politics is to support on leadership development among indigenous ethnic groups on the one hand, and on the other hand, it plays such role for recognizing the existence of ethnic groups and their future opportunities for the political participation and representation not only in the parliament but also in the government services (Thapa Magar, 2015, pp. 14-15). Thus, Taylor described that the politics of recognition has come to mean two different things, with the two major changes that include honor to dignity as a politics of universalism, emphasizing the equal dignity of all citizens, on the one hand, and, on the other hand, the politics of equal rights and entitlements. The politics of equal dignity is based on the idea that all humans are equally worthy of respect (Ibid. p. 41).

Identity politics is highly contextual and local, because they are affected by so many variables, socio-economic change, changing centre-local relations, political transformation, and historical mortgages (Pieterse, 1993, p. 18). Ethnic politics is one of the dimension of identity politics which is pre-eminently the terrain of the new social movements – particularly single-

issue movements, such as those promoting rights of different social groups individually – but it has also filtered through into the strategies of more established political parties, not least in the attempt, typically on the left, to form so-called 'rainbow coalitions'. (Jenkins, 2000)

Identity is fundamentally political. But when people have forged unities and come together in search of specific forms of social and political change, whose outcome is termed 'identity politics' (Elliott, 2014, pp. xxi-xxii), which is later extended to cultural and political interests. However, it is very interesting to answer why some political interests have been disturbed by the onset of identity politics (ibid). Elliott explains that if identity-politics is dispersed and plural – extending into race, ethnicity, sexual orientation, citizenship, environmentalism – traditional institutional politics is about structure and unity, which confronts traditional institutional politics with a demand for social change that, from one angle, is excessive – jealously protective as identity – politics is of its particular claims for collective awareness and political recognition (ibid).

Francis Fukuyama, another prominent scholar, also explains why a particular person seeks identity by connecting it to politics. He argued that a political leader has mobilized followers around the perception that the group's identity had been affronted, disparaged, or otherwise disregarded. This resentment engenders demands for public recognition of the dignity of the group in question. According to him, we cannot get away from identity or identity politics, because it is the powerful moral idea that has come down to us (Fukuyama, 2018, pp. 7 and 163).

Fukuyama (2018) argues that the modern concept of identity places a supreme value on authenticity, on the validation of that inner being that is not being allowed to express itself. (p. 25) It contains three different phenomena – the first is thymos, a universal aspect of human personality that craves recognition; and the second is the distinction between the inner and the outer self, and the raising of the moral valuation of the inner self over outer society; while the third is an evolving concept of dignity, in which recognition is due not just to a narrow class of people, but to everyone (p. 37). According to him, the rise of politics of identity has been facilitated by technological change. When the internet first became a platform for mass communication in the 1990s, many observers (Fukuyama himself) believed that it would be an important force for promoting democratic values. (p. 180)

When individual and collective identity becomes a subject of politics or if they are politicized, it is called identity politics. Folmar cited the idea of Kruks for defining identity politics as:

... demand for recognition on the basis of the very grounds on which recognition has previously been denied: it is qua women, qua blacks, qua lesbians that groups demand recognition. The demand is not for inclusion within the fold of 'universal mankind' on the basis of shared human attributes; nor is it for respect 'in spite of one's differences. Rather, what is demanded is respect for one-self as different (Kruks [2001] cited in Folmar, 2010, pp. 97-98).

Sanchez (2006) analyzes two useful categories for exploring identity: positioning and positionality. According to her, identity formation is itself a process shaped by political, economic, and cultural forces that come together and mutually constitute one another in distinctive and dynamic ways. A critical realist theory of identity formation, on the other hand, necessarily implies viewing class/structural positioning as part and parcel of *all* social conjunctures and inseparable connected to every distinctive conflictual difference. According to her, social location and identity could be said to be distinct but inseparable (pp. 34-35).

In the Nepali context, Bhattachan categorized three distinct phases in the study of ethno-politics in Nepal as a part of identity. These are the structural-functional phase (1950-70), conflict phase (1970-90), and public debate phase (1990 post movement). The first phase focused on ethnic and anthropologists' perspectives, and the second concentrates on conflict

between caste and non-castes ethnic groups, while the third phase focused on politics of identity and accommodation of these groups (Bhattachan, 2013, pp. 36-37). One of the report published by International Crisis Group (ICG) identified three key findings on identity politics – (i) for the elites, the recognition of greater diversity evokes a fear that they will be discriminated against in a Nepal organized along ethnic line, (ii) political and economic opportunities clearly differ by caste and ethnicity, and (iii) Nepali nationalism was previously based on monarchy, Hinduism and the Nepali language, while the monarchy has been abolished and secularism introduced so an important remaining issue of contention is the dominance of Nepali language. (ICG, 2011)

The third issue in this literature review part is the detailed discussion on the major theories of accommodating identity politics. There are three models for addressing ethnic issues that may be useful for accommodating identity politics in an ethnically divided society. These are the assimilation model, the pluralistic model (Amiri and Kavousy (2010), and the inclusive democratic dialogue model. (Pruitt and Thomas, 2007) Non-democratic societies that apply centralization of powers prefer the assimilation model that creates a biological, cultural, social, and mental combination of individual and discriminated ethnic groups to create a society with no ethnic differences. This model prefers an integrated and congenial society, which will not be different in terms of race and culture of the groups; citizens will be known as individuals, not as members of an ethnic group. The second is the pluralist model, which views to have organized country's political frame in which each reflective ideational group has the facilities and tools to protect their special values, to reach their goals and rights, and to prepare the conditions for their political contribution. In this model, the governing power needs to accept some kind of neutrality and the existing institutes and groups need to contribute to reach public goals. (Amiri and Kavousy, 2010, pp. 391- 392)

The democratic dialogue model is a new model in order to handle conflict in society. This is widely used in a democratic country to address any conflict based on ethnicity and identity. Pruitt and Thomas quoted an idea of Hal Saunders for defining the term 'dialogue' as a process of genuine interaction through which human beings listen to each other deeply enough to be changed by what they learn. Each makes a serious effort to take others' concerns into her or his own picture, even when disagreement persists. No participant gives up her or his identity, but each recognizes enough of the other's valid human claims that he or she will act differently toward the others (Hal Saunders, 1999, p. 22; cited at Pruitt and Thomas, 2007, pp. 20-21). The democratic dialogue, generally, requires meaningful purpose to address complex social problems, active participants to identify problems and solutions, and a consensus process that recognizes open and inclusive dialogue, allowing the building of trust necessary to reach agreements for concrete action (Pruitt and Thomas, 2007, pp. 24-25).

If we review the constitutional provisions of Nepal, we can find three major models discussed above in different constitutions. The constitutions of Nepal promulgated in 1962, in 1990, and in 2015 followed the assimilation model, the pluralistic model, and the inclusive model, respectively. The Constitution of Nepal, 1962 granted the sovereign power in the hand of King (Article.20.2), whatever followed religion, caste, ethnicity, Nepali people devoted to crown as nation (Article.2.1), monarchical Hindu kingdom (Article.3.1), Nepali language as language of nation (article.4) are basic features of the 1962's constitution, which do not recognize and protect the real diversity of country.

Besides, the Constitution of the Kingdom of Nepal, 1990 committed to consolidating adult franchise, the parliamentary system, constitutional monarchy, and the system of multi-party democracy. It followed a pluralistic model to address ethnic issues by recognizing the country as multiethnic, multilingual, democratic, independent, indivisible, sovereign, Hindu, and

constitutional monarchical Kingdom. (Article. 4) However, it promoted Nepali language in the *Devanagari* script as the language of the nation and also as the official language (Article 6.2). But it did not make any provision on inclusion and representation of different ethnic groups. Not only that the 1990s constitution allowed the Election Commission to withhold recognition from any political party which had been formed on the basis of religion, community, caste/ethnicity, tribe, or region (Article 112.3).

The Constitution of Nepal 2015 is committed to acknowledging autonomy and self-rule by ending all forms of discrimination and oppression created by the feudalistic, autocratic, centralized, unitary system of governance. Through its preamble, it recognizes the country as multi-ethnic, multi-lingual, multi-religious, multicultural, and diverse regional characteristics. Basic features of the constitution are to follow the proportional, inclusive, and participatory principles in the state's apparatus, elimination of discrimination based on class, caste, region, language, religion, and gender, and follow a secular and inclusive nature of the state (Article 4.1), social justice (Article 42)¹, inclusive federal executive (Article 76.9) and provincial executive (Article 168.9), inclusive representation in federal parliament (Article 84.2) and provincial assembly (Article 176.6), appointment of ambassadors (Article 182.1), constitutional bodies and agencies (Article 283) in an inclusive manner.

Statement of the problems, objectives, and methods

Managing identity politics in the democratic system has become a crucial issue for countries like Nepal. To accommodate identity politics, we need to explore the causes or the factors that have implanted the identity movements for recognition. This paper focuses on two-fold questions: (i) What are the causes of identity politics? (ii) What are the potential solutions for accommodating identity politics in Nepal? In order to answer these questions, this paper sets two objectives: analyzing the causes of identity politics and exploring the potential solutions for accommodating identity politics in Nepal. This paper is based on a doctrinal study depending on secondary information. Analytical and comparative approaches have been employed while preparing this paper. Much literature has been collected from libraries and archives.

Causes of Identity Politics

Socio-political and legal causes are the major contributing factors when discussing the major causes of identity politics in Nepal. In fact, when ethnically sensitive issues are neglected or inclusive democracy is denied either by the state or the political system, the situation of identity politics becomes visible. Some ethnic scholars claimed that identity politics emerged through the century's suppression, oppression, and discriminatory policy and practices existed in the society (Gurung, 2006). Social discrimination and inequality under the caste system have become major issues to escalate ethnic politics in Nepal (Thapa Magar, 2015, p. 14).

In Nepal, political and social life has for centuries been regulated by caste and ethnicity, famously inscribed in the Country Code (*Muluki Ain*) by the Kingdom since 1854, which served to legitimize the power of upper-caste Hindus and their control of the state apparatus through hierarchical categorization of groups. In this schema, a number of groups outside the Hindu caste system that trace their origin to Tibetan-Buddhist cultures - over time

¹ The economically, socially or educationally backward women, Dalits, indigenous nationalities, Madhesi, Tharu, Muslims, backward classes, minorities, marginalized communities, person with disabilities, gender and sexually minorities, farmers, labourers, oppressed or citizens of backward regions, and indigent Khas Arya shall have the right to participate in the State bodies on the basis of principle of proportional inclusion (Article. 42.1).

variously describing themselves as tribes, nationalities, and ethnic or indigenous groups - were placed somewhere on the middle of the ladder, above the lower-caste Hindus and the 'impure' castes on the bottom, but clearly below the upper-caste Hindus (Brahmin-Chhetri). While the schema was abolished by a new Country Code (*New Muluki Ain*) in 1963, its socio-political legacy still remained. In the past, Nepal had declared a Hindu Kingdom and Nepali as the official language under the previous constitutions. The present constitution, promulgated through the Constitution Assembly (CA) after the people's uprising of 2006, shifted Nepal to a federal, republican, secular, and inclusive nation, which Nepal had never been in the past; however, Nepali language has still been accepted as the sole official language.

Much literature commonly identifies that discrimination, exploitation, and suppression are major causes of identity politics. Discrimination that affects indigenous and nationalities, Madhesi, and other marginalized groups in a negative way has encouraged identity politics. Traditionally, ethnic groups have been deprived of their ancestral land, i.e., the Limbu from *kipat*, the Tharu from their homeland, Newar from their cultural city. In the case of Madhesi, as they think, they have been exploited and cheated by the hill high caste elite and discriminated against and unequally treated by the central government.

Poor representation in the state apparatus and subjugation in the governance system are the other factors that have influenced identity politics. In the CA election and then after, many communities were represented in elected bodies; however, they are not sufficient. The identity groups had expected to have secular states with recognition of their cultures, languages, and religions as official status; and proportional representation in elected and non-elected bodies with ethnic autonomy. But socio-political aspects of the state do not pay due attention to this issue. Socio-political suppression is another cause that fueled identity-based politics in Nepal.

It was believed that the constitutional and legal dimensions of identity politics, the constitutional and legal system of the country in the past, were discriminatory. The Muluki Ain of 1854 legally discriminated against people by dividing them into distinct *jats* (both castes and ethnic groups), which subsumed all groups under a strict caste hierarchy and assigned differential laws and punishments for each of them (ICG, 2011, p. 3). Ethnically, they have been treated as second-class citizens as identified by the old Muluki Ain, 1854. Some of the ethnic communities did not follow the Hindu religion, but imposed Hindu orthodoxy over them.

During the Panchayat regime, major causes of identity politics were the constitutional provisions and state policy on citizenship, resettlement program (of hill people in plain), land reform program, and *Guthi* (Trust) related laws. Getting citizenship for the Madhesi community was also difficult due to many linguistic conditions, which continue to date. In order to get citizenship, they should prove that they are Nepali and can speak Nepali. Another major cause of discrimination against indigenous nationalities and Madhesi is the language policy of the state.

Model of accommodating identity politics

Identity politics of Nepal has to be adopted, assimilating with the inclusive democratic practices. There should be a feeling of social inclusion, recognition, assurance of opportunities, and mutual respect among different identity groups in the country besides the constitutional guarantee to accommodate the identity politics in Nepal. However, there is not a single approach or dimension to admit the model of accommodation. Among many approaches to accommodate identity politics, three dimensions have been discussed here,

which are: (i) recognizing identity groups, (ii) designing inclusive state structures and institutions, and (iii) horizontal and vertical power sharing.

Recognizing Identity Groups

While discussing accommodating identity politics in Nepal, the recognition of identity is considered a first step. As Gellner (2007) commented that if the period from 1960 to 1990 was one of nation-building, the post seventeen years since then has been a time of ethnicity building, and Nepali anthropologists also have similar views (cited in Hachhethu, 2023, p. 66). As mentioned earlier, even the constitution of Nepal, 1962, homogenized separate ethnic, linguistic, religious, and cultural identity under the single policy of Nepal, the recent constitution acknowledged and recognized multi-ethnic, multi-lingual, multi-religious, and multi-cultural characteristics of Nepali people, which has been continued since the Constitution of Nepal, 1990.

Another important legal measure to recognize identity groups is the National Foundation for Development of Indigenous Nationalities (NFDIN) Act, 2002, which defined *Aadibasi/Janjati* (indigenous peoples and nationalities) as a tribe or community as mentioned in the Schedule having its own mother language and traditional rites and customs, distinct cultural identity, distinct social structure, and written or unwritten history. In accordance with this provision, Schedule 1 of the Act recognized 60 social groups as indigenous people and nationalities. The mandate of NFDIN, in accordance with section 6 of the Act, is policy formulation, study and publication, and legal sensitization and reform. Under the policy formulation, the Act has given the powers to NFDIN to formulate and implement or cause to be implemented the programme necessary for the promotion and preservation of the languages, scripts, literatures, histories, arts, cultures, traditional skills and technologies of the indigenous nationalities; and undertake special programs aimed at enhancing the economic and social status of the poor and the marginalized groups among the indigenous nationalities.

Constitutionally incorporated commissions (i.e., Indigenous Nationalities Commission Act, 2017; Madhesi Commission Act, 2017; Tharu Commission Act, 2017; and Muslim Commission Act, 2017) also made some significant provisions regarding recognition and development of concerned ethnic groups. They also granted for conduct study and research on the languages, scripts, literatures, histories, arts, traditions, and cultures of the indigenous nationalities, Madhesi, Tharu, and Muslim; disseminating findings. Besides, reforming laws from ethnic perspectives also assures belonging as a mandate of the NFDIN. As groups have recognized, the ILO Convention 169, Declaration of Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities, and United Nations Declaration of Indigenous Peoples have created a moral obligation for State parties to take necessary actions.

Designing inclusive state structures and institutions

The second dimension of accommodating identity politics is to design inclusive state structures and institutions. At present, liberal democracy that allows absolute competitive politics has failed to manage ethnic and identity issues in many countries of the world. It is because this system allows competitors to take all if s/he won in the election. Thus, some unique models of democracy have been developed for managing ethnic diversity in the world, which cover consociation, multicultural, and ethnic democracies (Smootha, 2002: 424-26); however, they are not sufficient to address ethnic and identity issues in the modern era. Consociation democracy provides the minority with maximal recognition, separate institutions, autonomy, representation, and equal status, while multicultural democracy acknowledges cultural differences and supports groups that are organized separately, but neither legislates collective rights nor extends self-rule and power sharing. In the place of

separateness, multiculturalism invokes openness, tolerance, intercultural fertilization, civil and minority rights, and the politics of identity, and it takes different forms and meanings in different countries. Besides, ethnic democracy accords the minority collective rights that are deemed non-threatening in the eyes of the majority.

In the context of Nepal, it is important to consider whether the state structure and its political institutions are inclusive and capable of addressing identity issues. Inclusive representation at the federal, provincial, and local levels within the state structure and inclusiveness within political institutions within state bodies, especially the legislature, executive, judiciary, and subordinate bureaucracies, are important. In the context of Nepal, although a federal system has been adopted to address the issues of diversity management and identity, it does not appear to be reflected in Nepal's federal structure. In accordance with the spirit of the Interim Constitution of Nepal 2007, the federal structure of Nepal was not determined according to the report of the Constituent Assembly's thematic committee and the High-Level State Restructuring Suggestions Commission, but rather only by making some changes to the old structure. Although the federal structure of seven provinces is appropriate to divide and form the geographical shape of Nepal, its demarcation structure does not appear to be able to manage identity politics.

From the perspective of inclusiveness, the representation of the hill high caste groups is higher than that of indigenous peoples, Madhesis, Dalits, Tharus, and Muslims, while the representation of Dalits is very low at the federal, provincial, and local levels compared to the population (EC, 2017; EC, 2018). This clearly shows the lack of consistency between federal design and the representation system. Similarly, when we look at the extent to which state institutions are inclusive, we see that there is a majority of hill high c groups compared to other communities (Ibid). This shows that there is still a need to review the federal units and electoral system to manage identity politics in the context of Nepal.

Power-Sharing: Horizontal and Vertical

The horizontal and vertical power and resource allocation are major agendas of identity accommodation in Nepal. Before the promulgation of the present constitution (2015), the Government of Nepal, including many stakeholders, came into to compromise in order to end all forms of discrimination against Madhesi, Adivasi/ Janajati, Dalits, women, backward classes, and minorities, including the Muslim community. Comprehensive Peace Agreement (CPA) 2006, which played a significant role in ending decade decade-long armed conflict in Nepal, also brought major political parties to carry out an inclusive, democratic, and progressive restructuring of the state by eliminating the current centralized and unitary form of the State (Point 3.5). Of course, a unitary and centralized political system failed to recognize identity and power-sharing, and the demand for a federal system became inevitable in Nepal. As said by Williams (2005), the federal system serves four main purposes (i) guaranteeing culture of distinct groups with some degree of right to self-determination, (ii) empowering local people to handle local problems, they know and understand their problems best, (iii), encouraging local people to become involved in their own affairs (own problems and solutions), and (iv) allowing sub-political unit for sharing the powers with the central government (p. 16).

By realizing normative values and different agreements signed between different political parties and stakeholders, the Interim Constitution of Nepal, 2007 (IC, 2007) has guaranteed provisions to restructure the unitary state in the form of a federal, democratic, and inclusive state with social justice. The preamble of the constitution envisages the restructuring of the state to resolve "the existing problems of the country based on injustice and discrimination

based on ethnicity, class, caste, and gender. Article 4 of the Constitution² declared Nepal as an independent, indivisible, sovereign, secular, inclusive Federal Democratic Republican State. To fulfill these provisions, Article 138 (1) of the Constitution reads:

To bring an end to discrimination based on class, caste, language, gender, culture, religion and region by eliminating the centralized and unitary form of the state, the state shall be made inclusive and restructured into a progressive, democratic federal system."

In addition, the article 138 (2) further ensured that, Nepal shall be a federal democratic republic on the basis of the sovereignty, unity and integrity of Nepal.

The first CA Committee on 'Restructuring of the State and Distribution of State Power' *submitted* the report with an outline of the federal structure of Nepal by determining the areas, numbers, and names of the federal units. The report clearly stated three tiers of the main structures of the state (federation, state, and local), three categories of special structures (autonomous areas³, protected areas⁴ and special zones⁵). On this basis, the draft report proposed 14 political units or provinces and 23 autonomous regions under the provincial territory, as a counterpart of local government, but no numbers have been proposed for local government, as well as protected areas and special zones. The report also proposed different lists for sharing the powers among different layers of the government.

The Interim Constitution of Nepal 2007 had made a provision to form a High-Level Commission on State Restructuring to suggest to the CA for designing the federal structure of Nepal. Article 138(3) and (4) of the Interim Constitution of Nepal 2007 reads that:

A High-Level Commission shall be constituted to make recommendations for the restructuring of the State in accordance with clause (1)⁶ and (1A).⁷ The composition, function, duty, power, and terms of service of such Commission shall be as determined by the Government of Nepal. The final decision relating to the structure of the state and federal system shall be made by the Constituent Assembly.

In the current constitution, the distribution of horizontal and vertical rights and resources among geographical structures and community groups does not appear to be balanced. Since the distribution of powers of a horizontal nature occurs among the organs of the state, it is necessary for those organs to exercise their powers in accordance with the diversity and characteristics of Nepali society. The actions taken by the states can play an important role in managing identity politics in the context of Nepal. One dimension of accommodating

² This article had been amended on May 29, 2008, Fourth Amendment Act, 2008. Originally read: *and fully democratic State.*

³ An area with a majority of an ethnicity/community or linguistic community or with dense population within a province shall be maintained as an autonomous region.

⁴ Any region shall be maintained as a protected area to protect/promote the ethnicity/community, cultural area, declining and marginalized ethnic groups who are in the extreme minority.

⁵ The backward or areas which have remained behind in socio-economic terms and not covered by the area as per autonomous regions and protected areas, or to develop any subjective area within the province, any specific geographical area shall be maintained as a special zone.

⁶ Clause (1) of Article 138 of the Interim Constitution states, "To bring an end to discrimination based on class, caste, language, gender, culture, religion, and region by eliminating the centralized and unitary form of the state, the state shall be made inclusive and restructured into a progressive, democratic federal system."

⁷ Accepting the aspirations of indigenous ethnic groups and the people of the backward and other regions, and the people of Madhesh, for autonomous provinces, Nepal shall be a Federal Democratic Republic. The provinces shall be autonomous with full rights. The Constituent Assembly shall determine the number, boundary, names, and structures of the autonomous provinces and the distribution of powers and resources, while maintaining the sovereignty, unity, and integrity of Nepal.

diversity can be reflected when the legislature makes laws, the executive executes laws, and the judiciary interprets laws within the state organs in line with multi ethnic characteristics of Nepali society.

The vertical division of state power is considered equally important in both unitary and federal systems. However, the pattern of distribution of power in unitary and federal systems of government is completely different. Basically, in a unitary state system, power is delegated to the lower levels through decentralization, while in a federal system, power is constitutionally devolved in sub-political units. In a federal system, the establishment of political units and their rights are ensured by the constitution itself, while in a unitary system, this right is determined by the central government itself. Therefore, in a country that is full of diversity, the task of managing such diversity and identity politics has arisen because it is considered easier under a federal system. Additionally, in a federal country with diversity, it is expected that the structure of the state will be determined in a way that manages diversity.

When discussing accommodating identity politics in a federal system, the design of the federal structure, allocation of authority and resources, and representation of all segments of society are important. Although there is no particular problem with the demarcation of the territorial level in countries where independent states have adopted a federal system, when a unitary state transforms into a federal state for various reasons, the demarcation of territorial units becomes a political agenda. In such a situation, the central level may dominate the distribution of powers. However, while it would be wise to consider the need for federalism and the risks of its use when designing the federal structure and distributing powers, this does not seem to have been considered in the context of Nepal.

Nepal's federal system has not been open in addressing representational and community-based rights as expected by the ethnic and indigenous people of the country. In terms of representation, although the proportional electoral system is expected to minimize unbalanced representation results, the problem of involving all communities in proportional representation remains. Similarly, when political influence dominates the distribution of resources, it has become difficult for the distribution and use of rights and resources to reach the community.

Conclusion

This paper has examined the appraisal of different identity movements in Nepal and explores some models to address such movements within a democratic framework and system. Nepal is a country having 142 caste/ethnic groups, 124 languages, and 10 religions, which has made it one of the most diverse societies in South Asia. Despite having such diversities, the history of Nepal is based on the central governance, hierarchy of caste and ethnicity, and also the experience of some discriminatory laws among the marginalized and subaltern communities in the past. The central government practices and the priority of one language and the higher caste had fueled the grievances, identity politics among different identity groups like Madhesis, Janajatis, Tharus, Dalits, and Muslims.

Identity politics in Nepal is created due to the discriminatory nature of the unitary state, socio-political exclusion, lack of proportional representation in different political state structures, and lack of cultural and linguistic rights. However, the Constitution of Nepal 2015 has recognized Nepal as a multi-ethnic, multi-lingual, inclusive federal republic.

The paper focuses on three major modalities to accommodate the identity politics of Nepal. The first is recognition of different identity groups from the constitutional and legal provisions, and other socio-political legal reform works under the national institutions like the NFDIN and others. The second is the establishment of inclusive state structures and institutions through the electoral system in politics, and also the fair representation of

subaltern, marginalized, and disadvantaged groups in the executive, legislative, judicial systems, and bureaucracies. The third is the horizontal and vertical power sharing to be implemented through federal-state structures with equitable resource distribution and proportional representation in the political system.

Nepal has now adopted the federal system of government; yet, many people opine that there is a lack in recognition of ethnic identity according to the cultural diversities in different states, due to which there is still dissatisfaction among marginalized identity groups. Thus, there should be proper accommodation of this sort of identity politics within the framework of the democratic system by ensuring recognition and proportionate representation.

This paper concludes that the identity politics in Nepal was caused due to exclusion and a discriminatory system prevalent in the socio-political and cultural practices. To address this issue, there should be practices of recognition that ensure the inclusiveness, proportional representation, and equal power sharing among different identity groups in the country. The federal structure of the country implemented a framework, but the state has yet to accommodate diverse cultural and identity groups by incorporating a proportionate democratic framework for the welfare of the entire nation and its people.

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