

# **Existing Pro-Dalit Policies and Barriers in Implementation**

**Mr. Tek Tamrakar  
Public Interest Lawyer**

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## 1.0 Existing Pro Dalit Policies

Nepal is a Hindu state with widely diversified castes, culture and religions. Therefore, the late king Prithvi Narayan Shah observed that Nepal is a garden of four *varnas* and thirty-six castes. Indeed Nepal is the home to a number of ethnic/caste groups with different languages, religions and cultural traditions<sup>1</sup>. But, it is irony of the social system that some communities are treated as "low caste" and regarded as second class human beings.<sup>3</sup> This endemic deep-rooted menace of caste discrimination has provided Dalits lower status in the society. Their lack of participation in governance process has raised the question in the edifice of democracy. Therefore, the state is bound to upgrade their life and uproot the caste discrimination by introducing various policies and plans. The pro policies, provisions and plans carried out by His Majesties Government are categorized as given below:

### 1.1. Constitutional Promises

The Constitution of Kingdom of Nepal, 1990, has clearly mentioned for protective discrimination in the Article 11(3). Prohibiting to the caste as well as sexual discrimination, the constitution has pledged to initiate special programs and welfare laws for the socially, and educationally backward class people. This provision has indirectly paved the way for affirmative action and reservation. Following the spirit of this provision, the fundamental governance of the constitutional frame work (Directive Principles and State Policies) has been enshrined. As a result, the government has enacted various Acts, policies and programs i.e. free legal aid, free primary education, provision for political participation in local level, policies for cultural enhancement, specific program for their economic enhancement. Some programs for social security have also been formulated. Other major obligations for Dalit upliftment, provided to the government by the constitution<sup>2</sup> are given as follows:

- State shall pursue a policy of increasing the participation of the labor force, the chief socio-economic force of the country, in the management of enterprises by gradually securing employment opportunities to it, ensuring the right to work and thus protecting its rights and interests(Article 26(6)).
- State shall pursue a policy of making the female population participation to a greater extent, in the task of national development by making special provisions for their education, health and employment (Article 26(8)).
- State shall pursue the policies in matters of education, health and social security of orphans, helpless women, the aged, the disabled and incapacitated persons and ensure their protections and welfare (Article 26 (9)).
- The state shall pursue a policy which will help promote the interests of the economically and socially backwards groups and communities by making special provisions with regard to their education, health and employment.(Article 26(10))
- In order to secure justice for all, state shall, pursue a policy of providing free legal aid to indigent persons for their legal representation in keeping with the principle of the Rule of law 26(14).

## 1.2. Welfare Legal Provisions

After the restoration of the democracy, the government has enacted various laws and provisions addressing Dalit issues. Though, there is not any specific law like in India for the elimination of untouchability and upliftment of Dalit, there are some laws which directly/indirectly address some of these aspects<sup>4</sup>. Basic laws among them are as follows:

- Legal Aid Act provides legal representation to the marginalized communities;
- Local Self- government Act has mandated for several welfare policies carried out for the upliftment and promotion of Dalit at the local level;
- Scholarship Rule provides 10% scholarship as reservation to Dalit student,
- Education Act provides free education to Dalit students in secondary level;
- Bonded Labour welfare Act, Children Act, Child Labour Act and Social Welfare Act are other important laws that help to the Dalit

Besides the above mentioned provisions and plans Muluki Ain<sup>5</sup> has also included various provisions for the upliftment of Dalits.

## 1.3. Ninth Plans

The Ninth plan took social security and welfare programs as integral part for overall national development. All senior citizens, helpless widows, and disabled citizens were assured for social and economic security and their rights were guaranteed. Besides, the Social Welfare Council has also established a credit guarantee fund and started extending soft loans of up to NRs, 20,000 without collateral to physically disabled, deaf, and blind persons to support them in 1999. All main programs envisaged under this Plan were:

- Establishment of Dalit Council;
- District level committees were made responsible for assessing the feasibility of the proposed projects;
- Step forward for education, training, health and sanitation and capability enhancement. Educational programs are more focused on the need of reservation of the scholarship and management of a higher education fund;
- Compulsory and informal educational system, family planning and women were planed to be encouraged for health volunteers in local level; and
- Certain portion of grant was fixed in the local government authorities i.e. DDC, VDC and mandated for the use of Dalit

The plans and programs to raise the status of depressed/downtrodden people and backward communities were not translated into action. The Council is yet to be established. As such, the Dalit NGO Federation has filed the case in Supreme Court to implement the policies and programs of the Ninth Plan. However, the court has not made the decision.

#### **1.4. Tenth Plan**

The current Tenth plan of the government has also planned the various welfare programs for Dalits, which focuses on such aspects as:

- Employment of Dalits;
- Foreign employment;
- Sensitization programs against untouchability at the local level;
- Encouragement to Dalit women for school teachers;
- Distribution of scholarship programs;
- Job in governmental as well as non-governmental entities;

Other programs visualized by this Plan are:

- Health awareness at all levels;
- Food for Work program;
- Housing arrangement for homeless Dalits;
- Income and skill generating training for modernizing their traditional occupations;
- Arrangement of leasehold forest within community forests for Dalit forest users;
- Provision of grants to poor Dalits for micro-irrigation;
- Focal point will establish in levels of the government for Dalits;
- Discrimination in the entrance into temples will be discouraged;
- Political parties are mandated to nominate Dalits in every level of parties;
- Political parties are mandated to punish them who are involved on discriminatory activities; and
- Abolish all discriminatory provisions and enact new special law to eliminate discrimination.

As per these Plans it is found that the main priorities of Tenth plan are eradication of poverty, women's empowerment and gender mainstreaming. Tenth plan states the importance of the many faces of poverty and focuses on the economic growth distribution of resources, human resources development, social balance, empowerment and social transformation. Tenth plan provides for the compulsory education up to primary level and promises to be taken as national movement and accordingly the institutional, administrative and other necessary improvements will be done.

#### **1.5 The National Commission for Dalit,**

The Government has ratified International human rights instruments, including International Convention in Elimination of all kinds of Racial Discrimination, 1965 (ICERD), International Covenant on Socio-economic and Cultural Rights, 1966 (ICESCR), Convention in Eliminating all kinds Discrimination against Women, 1979 (CEDAW), Convention against Torture (CAT) and Anti Slavery Convention (CAS).

Besides, strong voice has been raised by the Dalits for a watch dog body. Accordingly, for the protection and promotion of Dalit rights, the government led by Sher Bahadur Deuba established National Commission for Dalit in 2002. The main objectives and assigned tasks given to the Commission are as given below-

- Protect and promote the Rights of Dalits;
- Make recommendation for social welfare laws and introducing change in them;
- Investigation on the issues and cases relating atrocities and violation of rights;
- Make recommendation for adopting the special plans and programs to concerned authorities; and
- Adopt special steps for carrying out Dalits into the mainstream of development.

### **1.6 Ministry for Women, Children and Social Welfare**

The Ministry of Women, Children and Social Welfare was established in September, 1995 with the objective of bringing women into the mainstream. The other developments are Ministries having Women Development Units, sections or divisions in all ministries like in Local Development, Agricultural, Labor, Education and the National Planning Commission. But the Ministry of Social Welfare has merely been involved in empowerment of women and children and not for Dalit community, though in principle social welfare includes the advancement of poor, disadvantaged and downtrodden people.

### **1.7 Committee for Deprived/Depressed and Dalit Community**

With a view to uplifting and promoting socio-economic status of Dalits, the government established the Depressed and Deprived Dalit Committee under the Local Development Ministry in 1997. But the Committee could not prove dynamic and pragmatic. The main weakness of this committee is due to its composition and functioning. Since, the nomination of the committee members is politicized; the dedicated and the genuine personality from among the Dalits have not been appointed. Therefore, the members mostly serve the interest of their bosses, who are actors for propagating discrimination. The Committee, however, initiated some activities like distribution of scholarships, awareness campaigns against untouchability, publication of bulletin, radio program, etc. But the insufficient budget, apart from the defective policy in the distribution of scholarships proved impediment. Another barrier behind the effective function of this committee is frequent change in the composition of its structure. Committee is changed as and when there is change in government.

### **1.8 The National Commission for Women**

As per the recommendation of Beijing Declaration, the Ministry for Women, Children and Social Welfare established the Commission for Women in 2002 to design, execute, monitor and evaluate as well as promote the implementation of the policies related to the women. It was intended to promote the legal, political and social safeguards of the

women. This Commission has not its own Act like Dalits' Commission. Yet, this has organized a series of seminars, apart from conducting studies. Similarly the commission has visualized to hear the complaints regarding the sex discrimination issues and operate the awareness programs to make women sensitized and well known about their rights. The Commission has formed the group against the atrocities against women and accordingly it has made case against such social taboo as 'witchcraft'. But, there is a lack of participation of Dalit women in the decision making process of the Commission.

### **1.9 National Human Rights Commission**

As a result of long struggle of human rights activists and the other working organizations in Nepal, the Human Rights Commission was established in 2000. The Commission is empowered to investigate the incidents of human rights violations including violations due to carelessness and neglect. It has a mandate to deal with complaints against HMG/N employees and agencies only<sup>6</sup>. However, it is supposed only to recommend but not to implement its decision on any issue. Similarly, the Commission lacks of the alternative dispute resolution mechanism to deal with complaints. In the absence of this sort of mechanism, the complete protection of human rights is not possible. It is gathered that when a complain is lodged regarding Dalit problem in the Commission, it forwards the case to the National Commission for Dalits. But some of the steps that the Commission has taken against caste discrimination are appreciable, which include case of Maruni Devi and also the case of social boycott. The Commission has to do more for the protection and promotion of Dalit rights. It must correct this stereotype perception and work as strong ombudsman for the protection and promotion of Human Rights of all without any discrimination.

### **1.10 Government Pronouncements**

The then Prime Ministry Sher Bahadur Deuba pronounced the eight point pronouncement in 2002. This was probably the first state pronouncement that clearly accepted the untouchability as inhumane. The pronouncements include:

- Recognize untouchability as a crime and declare it as severe punishment against those who practice it in public places like temples, shops and tea shops etc.;
- Establish Dalit commission and Commission for women;
- Promise for Dalit upliftment and effective implement to the policies, and
- Initiate the land reform programs,

So far as the matter is concerned about the implementation of these declarations, a few of them have already been implemented, which include the establishment of Dalit Commission.

### **1.11 Untouchability as Government Case**

His Majesty's Government has recognized the cases against untouchability as the government case from 2003. It is a landmark state decision for the elimination of discrimination. But, the Dalit activists are not so optimistic and hopeful towards the positive role of the implementing authorities. Since, there is a lack of Dalit representation in implementing agencies, those who are supposed to implement the policies are not far from stereotypical and traditional mind-set.

### **1.12 Citizenship to Dalits**

Citizenship certificate is the identity of the sovereign people. It paves the way for people for the participation and enjoy the state facilities. As such, some jurists have rightly recognized it as fundamental rights among fundamental human rights. But, the Dalit people are deprived of citizenship certificate. Since most of Dalits are involved in traditional jobs, they hardly own their land. Deprivation of land hampers them to have their permanent accommodation. But land is a pre-requirement for citizenship certificate. At this juncture, the decision of Government to provide citizenship certificate to Dalit easily in 1996 played vital role. But still Tarain (Madhesi) Dalit and Badi Dalit are being far from achieving the citizenship certificate<sup>7</sup>.

### **1.13. Citizenship Certificate with *Thar***

Right to self-determination is an inalienable right under civil liberties. Autonomy and independence are considered as the basic infrastructure for human development. The ratified covenant on Civil and Political Rights<sup>8</sup>, 1966 has obliged State Parties to be liable to protect and promote the right regarding self-determination. With a view to providing citizenship certificate entitling *thar*, the Government has made written declaration. Dalits still are deprived of receiving certificate with their *thar*. But the decision of the government is important.

### **1.14 Various Welfare Programs**

The government<sup>11</sup> has declared certain programs to provide social justice to the handicapped, which include 29-point program for educational reformation. The secondary education has planned to empower socially and economically backward communities like Dalit, Tribes and Indigenous. Certain quotas have been separated for technical education to the students belonging to some of these communities.

## **2. Barriers in Implementation**

The pro-Dalit policies and provisions are not self-executorial or auto-operating. They are needed to be mobilized and operated by human beings. The human beings who are supposed to implement these policies are not so pro active and having positive attitude towards Dalit rights. There is a dominant participation of Brahmins, which sometimes is called *brahminocracy*<sup>15</sup>. Most of these problems exist because the existing policies have

not been implemented effectively. The main barriers of implementation of the pro Dalit policies are given below:

- Lack of Call Record Back System

The basic barriers in the effective implementation is the lack of any institutional mechanism for call the record back system in legal as well as governance process. The call record back system is applied for scrutinizing the government authorities against misuse, and mal administration as well as the negligence in implementation of policies, provisions and plans. Calling back the situation of implementation, there should be an institution to fire, fine and imprisonment against the disobedience of the duties.

- Ambiguous Policies and Laws

Another barrier in implementation is the dependence nature of policies. The programs and policies are not independent from the prejudice and pre mind-set. The policy makers leaves the discretionary power while formulating the welfare policies. This discretionary power is used as a tool to be aloof from their legal liability.

- No disincentives Provision against non-implementation

There lacks the special and strong provision under any legal mechanism, which impose the punishment if any policies and provisions are non-implemented. In India, there are several provisions under various laws for looking after the implementing process of the government authorities and make them subject of firing from job and imprisoned if they do not obey their legal duties honestly.

- Stereotypical Attitude<sup>18</sup> of the State Mechanism

Some popular policies and plans were determined by the Ninth Plan. Since, lack of commitment and dedication of the implementing agencies and the instability in the national politics, most of these plans were not executed.

- Lack of Independent and Competent Monitoring Body

The establishment of the Commission for Dalits is the positive attempt for the upliftment of Dalits. Yet it has not become the real watchdog for the protection and promotion of human rights. The commission has not initiated any action to the concerned authorities for effective implementation. Similarly, the commission has not assigned power to look any complaints against the communities and individuals.

- Political instability

Political instability is another problems against smooth implementation of the plans and programs. Frequent change of government and regular change of government staff in the higher positions affected the implementation of programme activities. Everyday strikes,

*band* and other political scandals are also responsible for poor implementation of the policies.

### **3. Recommendations:**

For the effective implementation of pro-Dalit policies, the Dalit themselves should be aware and be sensitized to their rights. The following recommendations have been made to for the effective implementation of such policies:

- O There should be constitutional rights of Dalit for reservation in all state services, distribution of state resources (Acquisition of Land) and private sectors. This system can uphold their participation on governance process and build their self-confidence.
- O Specific law should be enacted with the mandatory provision for implementation of all state policies as well as provisions.
- O Amendment of law is also most important for removing the barriers of implementation. Some laws lack Dalits' representation in implementing process. Lack of their representation in governance process has reduced their enthusiasm and belongingness.
- O Policies should be effective and practical for which feasibility studies could be conducted.
- O There should be the provision for call record back system of the programs directed by the law and planning. If there comes the cases on negligence against any, they should be fined, fired or imprisoned.
- O Public awareness about pro polices and laws is to be ensured. Otherwise, mere policies can not play role. Public should be aware about these provisions and about concerned actors also.
- O Similarly, the government authorities are to be re-oriented about the changing policies, planning and laws. It can not be said that they know everything about existing policies. In this regard, the concerned governmental agencies should be provided re-orientation about the new as well as existing pro policies on Dalits.
- O Stereotypical mind-set and wrong attitude of the implementing agencies and interpreting bodies are also the invisible barriers felt by all victims, which need to be corrected.
- O Clear Law should be framed for strengthening the Commission for Dalits. The commission should be financed by the consolidated fund and its activities should be made independent.

- O Dalit Commission should work as a real human rights watch dog at local as well as central level. It should look after the implementation status of policies and recommend for effective implementation.
- O In every department of Government, there should be a Officer with the name of Liaison Officer for conveying the message from Government side on the process of reservation and facilitating them for effective implementation.

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