

## **Dalit Agenda in the New Constitution**

Rastriya Dalit Network (RDN), Nepal and Dalit Studies and Development Center, Kathmandu, “**Ensuring Dalit Rights in the Forthcoming Constitution**” Program has prepared the Dalit agenda to be included in the new constitution, and made it public. The organization, which has played a vital role in Nepalese Dalit Rights Movement, prepared its agenda during the district-wise visits of the members of Constituent Assembly (CA) for collecting suggestions for constitution drafting, and sent the same to all its branches and district organizations. The *Dalits* of the rural area had also made a request to forward these suggestions. A call was made to present other suggestions, besides these agenda prepared at the central level, which was based on the factual position of the district.

### **Background**

It is known to all that the tradition of Nepalese constitutional development and drafting is non-inclusive and centralized. The constitutions so far have been promulgated by the rulers. These constitutions were not in a position to equip the people of all levels, sexes, castes, regions, and classes with their rights. On top of that, the inclusion, access, and ownership of the *Dalits* that have been oppressed as untouchables for thousands of years became a mere mirage. Today, people are breaking the tradition of drafting and implement such non-inclusive and centralized constitutions and creating another one in their direct participation. However, the *Dalits* have not had a just participation even in this exercise. The structural complexity of Nepalese society, racial discrimination and untouchability, conventional thoughts and structure of the political parties, and lack of widespread awareness among the *Dalits* and the like factors have been detrimental to the just inclusiveness. Even the Constitution of the Kingdom of Nepal, 2047 as introduced after the restoration of democracy and the Interim Constitution, 2063 promulgated after the historical people’s uprising of 2062-63 could not uproot the millennia-old discrimination inflicted on the *Dalits*. The provision of the Interim Constitution Article 14(2) that **No individual shall be deprived of the opportunities to use public services, amenities or utilities or to enter a public place or public shrine or to perform rituals on the basis of his/her caste** is a sheer circumlocution to keep on the discriminatory tradition. This is another evidence to the fact that the *Dalits* were never involved in the process of building a constitution. If the *Dalits* were not aware of the situation on time, their condition will remain unchanged in the new constitution as well. Therefore, it is imperative that the *Dalit* organizations of all the levels and sectors, political sister organizations, common civil society, and *Dalit* intellectuals take the matter seriously and become active while making the entire *Dalit* community active towards participating in the constitution making process. Keeping this in mind, the Rastriya Dalit Network (RDN), Nepal and Dalit Studies and Development Center held an extensive discussion and prepared the *Dalit* agenda to be included in the new constitution. As these agenda came from the *Dalit* community during the visits of the members of parliament right in the villages, they can be more effective and, therefore, we request all those concerned to take these suggestions to their respective areas and take part in making a *Dalit*-friendly constitution.

## **1. Fundamental Rights and Directive Principles**

### **Suggestions Regarding the Dalit Rights**

- Right against untouchability and racial discrimination
- Right to compensation and scientific reservation
- Right to education and employment:

The *Dalits* shall have a right to receive free education. They shall be compulsorily and proportionately included in different stipends. They shall have a preferential right of 20 percent seats of total employment in overnment, private, nongovernmental sectors besides a right to employment in accordance with their academic qualifications.

- The *Dalits* shall have a right to get basic health treatment.
- The *Dalits* shall have a right to social justice and social security.
- Untouchability should be regarded as a crime and legal action be taken by local authorities with due priority.
- There should be a provision to remain under the main constitution and increase the *Dalit* rights rather than decrease them in the federal states.
- Such statement as there shall be no questioning in any court regarding the implementation or lack of implementation of the issues mentioned herein as provisioned in Article 36 of the Interim Constitution of Nepal should be omitted.
- There shall be no reduction in the everyday activities of people's livelihood pertaining to their social, economic, and cultural rights like education, health, employment, and food sovereignty.

## **2. Committee for Safeguarding the Rights of the Minority and Marginalized Communities**

### **Suggestions Regarding the Dalits' Rights**

- The state discrimination (against the minorities, marginalized and highly marginalized) should be defined as the crime against humanity, and there should be a uniform definition of the same on both regional and central levels.
- While defining the minorities or marginalized communities, there should not be one definition of all the communities; rather, there should be a clear definition that the

*Dalits* belong to that community that has been forcibly discriminated against (water avoidable ones) in accordance with their caste, dynasty, and profession.

### **3. Committee for Restructuring the State and Sharing of State Power**

#### **Suggestions Regarding the Dalits' Rights**

- While restructuring the state, a Terai state should be delineated with the prominent distribution of *dalils* in Terai such as Siraha and Saptari (a the centre) by extending it up to Kapilvastu, and in the hilly region - from the mid-western region of Baglung and Salyan to the Far-west should be established as a hilly state with autonomy.

#### **Proposed States/Provinces and Sub-states**

- **Sales State/Province:** Siraha and Saptari with Kapilvastu as the center
- **Sarvajit State/Province:** Neighboring areas with Baglung as the center
- **Bhul State/Province:** From Salyan up to Far West
- Create non-geographical federal states
- Such federal states may not provide any right to self-rule and autonomy, however, they will prepare an environment conducive to the *Dalits* assembling at a place on national or regional level and elect their representatives. That place will be a site to take all basic decisions regarding the *Dalit* rights. This can be named as a constitutionally recognized Rastriya Dalit Union (National Dalit Union) or Dalit Samsad (Dalit Parliament).
- The election system should of mixed variety that will have a constitutional provision of compulsory reservation as relative (in proportion) to their population.
- At least 20 percent of constituencies shall be reserved for the *Dalits* under the direct electoral system. This reservation area shall be determined on basis of a rotation system.
- There shall be a provision for compulsory candidacy and representation in the proportionate system in proportion to the *Dalit* population.
- The interrelation among the federal states shall be bilateral, cooperative, and competitive. An inter-state commission should be formed to arbitrate into the debates between federal states and provinces.

- In case of *Dalits*, there should be a constitutional provision of increasing and not decreasing the rights in the central constitution keeping in mind the psychology of the isolated states.

#### **4. Committee for Determining the Structure of Legislative Body and the Committee for State Restructuring and Distribution of State Power**

##### **Suggestions Regarding the Dalits' Rights**

- The *Dalits* shall have a right to 20% of scientific reservation in all the state agencies.
- Basing on the right to social justice, there should be a provision to including the *Dalits* in all sectors at both the center and region in accordance with their population.

#### **5. Committee for Determining the Structure of Governance of State**

##### **Suggestions Regarding the Dalits' Rights**

- The state structure should be divided in three tiers.
- That is, center, province, and local bodies (districts, municipalities, and village development committees—VDCs).
- There should be a provision of increasing and instead of decreasing the *Dalit* rights in the federal states while remaining under the main constitution.
- The President should be constitutional and there should be a provision of rotational system of Presidency from *Dalits*, women, Madhesis, *adiwasis* and *janjatis* and so on. However, the Prime Minister should be elected as an Executive Head through direct elections.
- There should be a provision for proportionate election system along with scientific reservation in the local elections as well. The states should also follow the rotational system of appointing a chief minister.
- **Formation of a Federal Parliament:**
  1. The federal parliament shall be a bicameral legislative comprising a Lower House and *Jatiya Sabha* (the House representing ethnic groups). The Lower House shall be formed with a total of 301 members, of which 120 shall be elected directly, another 120 shall be nominated by the Council of Ministers (Cabinet), and the rest of 61 shall be nominated from the *Dalits*, *janjatis*,

Madhesis, minorities, marginalized people, and outcastes that could not make their representation through direct elections.

2. *Jatiya Sabha* (the House representing ethnic groups) shall be constituted with a total of 101 members—including a total of 60 members from 12 states with 5 members each consisting of 2 women and 1 *Dalit* in accordance with the law through each member each vote. The rest of 41 members shall be nominated by the federal government from the minorities, marginalized communities, *Dalits*, third sex, homosexuals, and the disabled people in order to ensure their representation. Similarly, the regional state shall be bicameral under the regional legislative. The Lower House shall be called the House of Representatives and the Upper House shall be called the Racial Assembly. The House of Representatives shall be constituted with a total of 75 members of which 40 members along with 10 *Dalits* shall be elected directly, 25 members from proportionate system, and the rest 10 members shall be nominated.

### **Suggestions Regarding Dalits' Rights**

A Commission for Dalit Rights should be established as a constitutional body in order to alleviate/eradicate untouchability and discrimination. There should be a provision of regarding the Chairperson of the Dalit Rights Commission as an ex-officio member of the Human Rights Commission.

- Other constitutional organs should be proportionate and inclusive providing for reservations.

## **8. Committee for Distributing Natural Sources, Economic Rights, and Revenues**

### **Suggestions Regarding Dalits' Rights**

- Natural means and resources should be proportionately distributed among the center and provinces, in accordance with the concept of the right of the minorities / marginalized / deprived communities to social justice or of priority or of preferential right.
- There should be a just distribution of the means and resources.
- The preferential rights of the *Dalits* should be ascertained.
- At least 20% of the national, provincial, and local budgets should be separated (sanctioned) for the *Dalits'* development.

## **9. Committee for Determining the Basis for Cultural and Social Solidarity**

### **Suggestions Regarding Dalits' Rights**

- Traditional skill and art should be safeguarded (protected) and promoted.
- All the languages and cultures should be equally protected and promoted.
- Racial discrimination and untouchability should be eradicated and the basis for social solidarity should be created.

## **10. Committee for Preserving National Interests**

### **Suggestions Regarding Dalits' Rights**

- There should be a provision for a national army not exceeding 50 thousand.
- 20% of *Dalits* should be compulsorily included in the national security agency.
- A boarder security force (BSF) should be formed.
- International treaties and agreements should be transparent and oriented towards people's welfare. Decisions regarding significant treaties and agreements should be made through national referendum.

## **11. Constitutional Committee**

### **Suggestions Regarding Dalits' Rights**

- **Preamble:**

The Preamble of the forthcoming constitution should state that "WHEREAS we regret the racial, class, regional, gender problems and discrimination, we the sovereign people of Nepal have issued the Constitution of Federal Democratic Republic Nepal drafted through the Constituent Assembly in order to eradicate all forms of discrimination including racial one and set up an equitable, inclusive state system."

- **Elementary:**

While describing the State of Nepal, it should be mentioned as an independent, indivisible, sovereign, secular, and free from untouchability, inclusive, federal democratic republic state.

- There should be a constitutional provision in the forthcoming constitution for safeguarding against economic exploitation, safeguarding against a communal

Executive, safeguarding against social and administrative injustice, safeguarding against social exclusion, right to representation in the Executive, right to representation in the services in accordance with the population, facility in higher education, concept of new settlements, system of free election, and a right to acceptance and protection of the provisions made in the constitution and laws for the *Dalits*.

### **Additional Suggestions Received from the Districts**

#### **Dalit Issues to be Addressed in the new Constitution:**

1. The Preamble of the Constitution should declare the state to be “Just and equitable and free from untouchability”.
2. There should be a provision of confiscation of property and life imprisonment, or a penalty of 50 thousand to 1 lakh rupees and 10 years of imprisonment or both to an individual or institution accused of committing any form of untouchability and racial discrimination.
3. There should be a provision of maximum punishment of life sentence with confiscation of property for anybody accused of brutal crimes such as the attacking and torching the households or the village inhabited by *Dalit* community, or beating, raping, and ousting Dalits from the village on the basis of racial discrimination and untouchability. Provision should also be made to provide a compensation of 1 lakh to 1 million to the victim or the family of the victim by the concerned accused to institution involved in the crime.
4. There should be a provision for a special court to look into the cases related to untouchability (on the basis of caste discrimination) and *Dalit* rights.
5. There should be a provision for attaining a citizenship certificate on the basis of the caste of the *Dalit* communities by scheduling their actual caste, surname, and clan.
6. There should be no mandatory provision for the *Dalit* communities to mention the caste of their ancestors in a derogatory form either in the citizenship certificate or in any other sector.
7. There should be a provision for introducing textbooks from primary to higher education levels aiming at eliminating untouchability and racial discrimination.
8. There should be a provision for providing completely free health services by the state to the *Dalit* communities in government, community, and private hospitals.

9. There should be a provision for landholding and employment to the *Dalit* communities having no or little landholding.
10. There should be a provision for 1 compulsory *Dalit* staff in all the state agencies.
11. There should be a provision for compulsorily including the educated unemployed people of the *Dalit* community in all the organs of the state and providing them employments.
12. The state should imperatively implement the “concept of one *Dalit* household, one employment.”
13. There should be a provision for the state providing loans to the *Dalit* community without any collateral and interests.
14. The state should make a policy of reaching all its amenities to the target *Dalit* community.
15. The state should make a policy of launching a campaign of empowering the *Dalits* and eradicating untouchability and racial discrimination within a given deadline.
16. There should be a provision for safeguarding the helpless, disabled, incapacitated, and *Dalits* by the state.
17. There should be a clear mention about the position of the *Dalit* women among the general women.
18. There should be a provision for giving proper delivery allowances to the *Dalit* community for 4 months for up to 2 children.
19. There should not be any age bar for providing widow allowances to the *Dalit* single women.
20. There should be a competition among the *Dalit* women only as regards their inclusion in all state agencies.
21. There should be a provision for 505 ????? for the *Dalit* women for all opportunities provided to the women in general.
22. There should be a provision for property confiscation and life sentence to the individuals accused of abducting, violence, and raping women, and children, and complete protection to the victims from the state.
23. There should be a provision for women’s right to parental property at par with the sons.



24. The women should have an access to and control over the sources of property.
25. The state should give proper protection and respect, along with education and employment, to the *Dalit* couple making an inter-caste marriage.
26. There should be a provision for completely free health services for the *Dalit* women.
27. There should be a provision for a compulsory quota for the *Dalit* women in such income-generating activities as skill development.
28. There should be a provision for the state to provide proper compensation and rehabilitation to the *Dalits* affected by the natural calamities.
29. There should be a provision for the state to move the *Dalit* settlements inhabiting the vulnerable precipices to a proper place and provide accommodation to them.
30. There should be a provision for making it mandatory for the political parties to determine the percentage of the *Dalits* in accordance with the principle of inclusiveness to the quotas (tickets/seats) provided by them in all the decisive agencies of the state.
31. There should be a provision for banning the political parties that do not make representation in the parties and state agencies in accordance with the principle of inclusiveness, and are involved in anti-*Dalit* activities.
32. There should be a provision for a separate Ministry of the Dalits for safeguarding the rights of the *Dalits*.
33. The official language of the government should Nepali using vernacular script.
34. The sovereignty and state power should be manifest in the Nepalese people.
35. The federalism should not be bases on castes.
36. There should be a provision of 5 states on the basis of geography complying with the natural means and resources, different regions like Himalayas, hills, and plains (the Terai), and population.
37. While making a structure for the local government, it should consist of 50-75 in proportion to the population of the given geographical region.
38. The electoral system should be fully proportionate and closed one.

39. Acts and laws should be framed in order to ensure the execution of the *Dalit* rights as provided by the Constitution.
40. Some of issues of the *Dalit* rights are mentioned in the Constitution just within directive principles of the state and the state till now has not been made obliged to execute them; therefore, these issues should be provisioned right under the fundamental rights in the new constitution.
41. There should be a provision for privileges for the *Dalit* community in all the sectors of the state and progressive reservation in education, employment, and politics for them as compensation to their being oppressed for thousands of years.