



National Governance Symposium 2023

Governance Innovations for Inclusive Development

Breaking Barriers: Moving Beyond Representation to Dignity and Self- determination

SESSION
BRIEF





Summary

The Constitution of Nepal 2015 shows a commitment towards inclusive and participatory principles as well as the aspiration for the establishment of an equitable society that includes all minority communities, including those with disabilities. Its core aspect calls for the 'ending discriminations relating to class, caste, region, language, religion and gender', while ensuring the rights of women and historically excluded groups.

Despite the progress since the introduction of federalism in 2015, Nepal has struggled to institutionalize inclusive policies and the dominance of the same groups has continued. However, challenges persist in fully implementing the progressive constitution and policies, leading to the neglect of marginalized communities by state mechanisms. The ongoing domination of the privileged individuals, even in the Proportional Representation System, shows deeply rooted issues in Nepali Society. The constitution's perceived lack of depth and weak foundation has created loopholes in various policies and plans, further amplified by the failure of political parties and state authorities to address these ingrained problems.

It is crucial to address these issues now to rectify historical injustices, ensure inclusive development, and establish justice. The current context highlights the need for collaborative efforts, constitutional amendments, and policy reforms to create an inclusive and respectful federalism that accommodates Nepal's diverse communities.

The policy brief recommends reinforcing current legal and policy frameworks for inclusivity by enhancing monitoring and evaluation mechanisms. The strategies should intensify their focus on legal frameworks, revising the quota system, and ensuring genuine representation in governmental bodies. Simultaneously, there is a call for fostering open dialogue, increasing awareness among policymakers, and collaborative efforts with partners for a cohesive approach in addressing shortcomings and proposing effective solutions.



Context

Nepali Society has grappled with deep-rooted systemic discrimination and exclusion for centuries, with certain dominated groups, primarily Bahun, Chhetri and Thakuri, exerting dominance over political, social, cultural and economic domains. The historical oppression left other communities like Janajati, Dalit, Madhesi communities marginalized and devoid of rights and opportunities. As a result, Maoist-initiated civil war took place aiming to address these disparities, resulting in the abolition of monarchy and establishment of Democratic Republic of Nepal, pledging a more inclusive democracy that considers factors such as gender, caste, class, ethnicity and religion. Subsequently, the Constitution of Nepal, 2015 incorporated Federalism for the decentralized, inclusive and innovative governance.

In the recent 2022 federal election, despite the dual election systems of first-past-the-post (FPTP) and proportional representation aimed at ensuring diverse state representation, only one Dalit representative was elected through FPTP, constituting only 17% of the total Dalit representatives. In contrast, the Khas Arya community secured 47.27% of Federal Parliament representation, while the indigenous community lagged with only 24%, and the Dalit community held a meager 5.82% representation in total. These figures show the stark social inequalities prevalent in the political landscape, signaling disparities in the distribution of political power in all levels of government.

Intersectionality of patriarchy with various socio-economic hierarchies such as ethnicity, geography, religion, physical abilities etc. results in the privilege of certain groups over others. At the same time, women from marginalized backgrounds often face various layers of intersectionality and oppression which limits their rights and entitlements. The influence of gendered and caste social norms have affected the meaningful participation of both women and excluded groups in governance and decision-making processes. These aspects have led to limiting the inclusion only to representation in some forums, rather than also addressing the dignity and self-determination of the marginalized groups. Major obstacles include insufficient awareness among the policymakers and rights holders regarding existing laws and policies as well as accessing public services due to existing caste/ethnic and economic prejudices.



Issues Analysis

On the day 1 of National Governance Symposium, a session titled "Breaking Barriers: Moving Beyond Representation to Dignity and Self-determination" was conducted in partnership with the Dignity Initiative. The session consisted of Opening remarks by Mr. JB Biswokarma, Chairperson of Dignity Initiative, followed by Panel Discussion moderated by Ms. Kailash Rai, a Social Science Researcher. The panelists consisted of Ms. Mohna Ansari, Former Commissioner of Nepal Human Rights Commission representing the civil society and former policymaking. Dr. Bal Krishna Mabuhand, an Associate Professor at Tribhuvan University represented the academic landscape, meanwhile Ms. Sudha Regmi Pant, a section officer from MoFAGA, represented the state policymaking.

Mr. JB Biswokarma, Chairperson of Dignity Initiative presented opening remarks highlighting the challenges faced by marginalized communities for centuries and stressing on the neglect by state mechanisms and political parties. These issues were underscored by the guise of so-called "progressive policies" and an inequitable Proportional Representation system within political parties.

The panel discussion began with the challenges faced by the marginalized communities from centuries ago, including the consensus that we are having an ethical crisis while defining true inclusion. At the same time, there was recognition of the need of reforms in the state structure in order to accommodate every group in a way that respects their rights such as the right to self-determination. Post Federalism inclusion issues and intersectionality of inclusion, especially in women's leadership was deliberated on. Dr. Mabuhand emphasized constitutional amendments and policy reforms as tools for genuine inclusion.

The panel concurred that Nepal has made significant progress in inclusion, citing the perception of our constitution as a progressive one and the government's efforts aimed at engaging the marginalized communities. However, the discussion also brought attention to the inherent exclusivity and lack of depth in the constitution's foundation itself upon a closer observation. Additionally, there was criticism of the misuse of Proportional Representation electoral system by political parties, highlighting the need for a more appropriate utilization.

Key components of the discussion :

- Federalism failing to address the inclusion issues.
- Need thorough review and changes in constitutional provisions and policies for inclusion.
- Need for improved and genuine inclusion.



The panelists addressed the imperative that the state must critically review both constitution and inclusion policies, urging the active involvement of relevant stakeholders and representatives in this process. At the same time, the panelists emphasized the need for political parties to be accountable, as they express commitment to inclusion in their manifestos but fall short in implementation. The focus was on the crucial need for self-assessment in their advocacy.

The Chairperson of the session, Mr. Suman Raj Aryal, the Secretary of the Ministry of Women, Children, and Senior Citizen, concluded the session by posing thought-provoking questions about identity definitions and advocating for the fundamental right to live with dignity. He stressed that Inclusivity is the key engine for growth, stressing the necessity for mainstreaming approaches, emphasized equity management, and highlighted the crucial role of research in achieving genuine inclusion.

Policy Options



In the Constitution of Nepal 2015, the preamble in the fourth paragraph has guaranteed the adoption of inclusive and participating principles, while striving for an equitable society that encompasses all minority communities, including the disability community.

Article 18 has established Right to Equality, Article 24 prohibits untouchability and discrimination and Article 31 guarantees the right to education. Furthermore, Article 42 centers on social justice, and Article 43 secures social security- safeguarding the special rights of individuals with disabilities. Additionally, Part 27, along with Articles 258 and 259, establishes the Inclusion Commission, which is tasked with overseeing matters related to inclusion and providing recommendations for the government's comprehensive development plans. Part 27 includes other commissions such as National Women Commission, Dalit Commission, Indigenous Nationalities Commission, Madhesh Commission and Muslim Commission, which were established to work on including and empowering the marginalized communities through the focused constitutional bodies.

Strategies

The GESI strategy (2021-2023) aims to comprehensively integrate inclusive policy-making and accountability mechanisms with GESI principles and indicators aligning with specific outputs. It includes various interventions like GESI audits, and capacity building initiatives, with the goal of mainstreaming GESI across all the dimensions of development to promote inclusive and accountable governance at provincial and local levels.

Acts:

Civil Service Amendment Act of 2014 - Commits to inclusivity by implementing quotas for 45% of civil service positions, allocating specific percentages for various groups: 33% for women, 27% for Adivasi Janajatis, 22% for Madhesis, 9% for Dalits, 5% for persons with disabilities, and 4% for other excluded groups.

Policies:

National Gender Equality Policy 2077 aims to promote the socio-economic development of girls and women, while striving for a just society free from gender discrimination and violence. It emphasizes gender-responsive governance through accountable laws and policies at all government levels. The Key strategies include capacity-building, institutionalizing Gender Responsive Budget, integrating gender equality into policies, establishing workplace codes of conduct and implementing an online GESI disaggregated data system. The overall goal is to economically empower women and ensure gender-sensitive practices across government tiers.

Gender and social inclusion policy of the Election Commission (2013) was introduced aiming at achieving gender equality at all stages of the electoral process from the voting system to candidacy in election.

Policy Analysis:



Nepal has been able to craft a comprehensive legal and policy framework with the key goal of promoting inclusivity and safeguarding the rights of marginalized communities. This commitment is evident across various dimensions, from constitutional provisions to establishment of specialized commissions catered to address the unique challenges faced by different marginalized groups. Introduction of quota system, aimed at promoting active participation of the marginalized communities in state mechanisms.

Additionally, implementation of a proportional representation system in elections is a key element ensuring that the marginalized communities across the nation have a meaningful presence in the Federal and Provincial Parliaments. Moreover, Nepal has demonstrated its commitment to gender and social inclusion by instituting specific provisions, such as ensuring the involvement of Dalit women in the local-level executive bodies of municipalities. This targeted approach recognizes the intersectionality of identities and strives to create a more representative and equitable governance structure at the grassroots level.

Nevertheless, challenges persist as revealed through desk reviews and panel discussions. The deep-rooted injustices, oppression and discrimination that have ensured for centuries are still in today's Nepali Society. Over time, influential groups have further dominated society. Despite the initial promise of Federalism to introduce a more inclusive governance system, it has fallen short in addressing the nuanced needs of marginalized communities. The representation reality within various constitutional commissions should be reviewed properly, given the prevalent issue of token representation. Existing constitutional provisions and policies are the evidence of lack of inclusivity towards specific marginalized communities. The challenges faced by marginalized communities extend beyond the surface level of state policymaking, What we currently lack is an ethical conflict that addresses the underlying issues. Despite these challenges, there remains a glimmer of hope for positive change.

Recommendations

- Strengthen the implementation of existing legal and policy frameworks for promoting inclusivity, and reviewing and upgrading monitoring and evaluation mechanisms for effectiveness at different levels.
- Conduct a comprehensive review of the quota system in order to evaluate its effectiveness in promoting active participation of marginalized communities in state mechanisms, and consider adjustments or alternative approaches to sure more equitable representation by policymaking authorities.
- Rigorous review of representation in constitutional bodies, parliaments and local government to eradicate token representation, with the government and political parties taking measures ensuring genuine and meaningful inclusion of marginalized communities, prioritizing diversity and inclusion.
- Strengthen gender and social inclusion efforts by recognizing the intersectionality of identities, considering the experiences of different marginalized communities, and incorporating specific provisions for groups such as Dalit women in policies and initiatives, aligning with the plans of specialized commissions for various marginalized communities.
- Promote open dialogue, public discourse and reconciliation to address underlying issues of injustices, oppression and discrimination, ensuring these efforts will reach out to marginalized communities through a thorough and inclusive approach tackling societal biases.
- Enhance awareness and sensitization within the state policymakers in order to actively include marginalized groups in decision-making processes, ensuring informed policies that prioritise empowerment over as a form of sympathy.
- In order to identify shortcomings and propose effective solutions, it is essential for the government to engage in collaborative efforts with various partners, necessitating a unified approach.

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