

Reservations, Federalism and the Politics of Recognition in Nepal

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Affirmative action is an absolute necessity at this juncture in the history of Nepal. The question is how to create a system that best serves the long-term interests of the country's marginalised communities, as well as the nation state as a whole. If the massive machinery of India's welfare state suffers under the demands of its own reservations system, Nepal will have to think carefully about its own infrastructural limitations when crafting its version of affirmative action. One of the biggest challenges will be balancing the prerogatives of federalism with policies of reservation, which by definition require a strong central infrastructure to provide for equitable recognition and distribution of benefits.

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Last year, the gujjar agitation swept across Rajasthan and beyond, leaving 26 dead in its wake. Frustrated by unrequited demands for recognition as a scheduled tribe (ST), gujjar protesters met grave ends as police opened fire on the crowds. The violence soon struck a communal chord, causing more casualties as gujjars clashed with meenas, a dominant ST community opposing gujjar demands for ST status. In November 2007, the issue erupted again in Guwahati, Assam, when a mob turned on adivasis demanding ST status after the protesters went on a vandalising rampage. When order was finally restored, hundreds lay injured in the streets with at least two dead. The carnage was the latest in a litany of troubles stemming from the policies of reservation in India.

Even as the politics of recognition continue to generate violence across India, similar strategies for legislating difference are being considered with relative optimism in Nepal, where nation (re)making and social inclusion are the order of the day. With pundits, politicians and activists pondering how to restructure the state to create a 'naya Nepal' ('new Nepal'), reservations and proposals for ethnic federalism figure prominently in ongoing debates over the country's future.

Nepali leaders need not look far to find compelling illustrations of such policies in practice. In the hills of West Bengal's Darjeeling district, the Nepali-Indian (also known as Gorkha) community is currently ensnared in India's policies on federalism and reservation. Current dynamics in Darjeeling offer insights that might help policymakers craft an affirmative action system better suited to Nepal's needs, avoiding some of the pitfalls inherent in such proposals, and building upon the progressive achievements of the 'janajati' (indigenous nationalities),

dalit, madhesi (tarai dwellers) and women's movements.

Affirmative action is an absolute necessity at this juncture in the history of the Himalayan nation. The question is how to create a system that best serves the long-term interests of Nepal's marginalised communities, as well as the nation state as a whole. Administrating difference through positive discrimination is not easy on political or practical levels. As recent events in Darjeeling show, the effects of such policies can be unpredictable, often resulting in unintended consequences for the very people whose lives they are designed to improve.

Current Dynamics

In December 2005, the chairman of Darjeeling's hill council, Subash Ghisingh, signed a memorandum of understanding (MOU) with West Bengal and the central government to recognise Darjeeling as a tribal territory under the purview of the sixth schedule of the Constitution. This was a complete turnabout from the 1980s, when Ghisingh, then the leader of the Gorkhaland National Liberation Front (GNLF), rejected such a proposal, proclaiming, "Those provisions are applicable only to Assam's backward tribal populations. But we are not tribals... We are civilised. We are advanced people" (*Frontline*, August 9-22, 1986). Twenty years later, the eccentric leader has positioned Darjeeling on the cusp of becoming a Tribal Area. According to the MOU, the sixth schedule is the "full and final settlement" to the question of sovereignty in the Darjeeling hills. However, it is increasingly doubtful that the bill will be passed.

After being introduced in Parliament's 2007 winter session, the bill was deferred to a standing committee. Local opposition to the sixth schedule – spearheaded by a Gorkha Jana Mukti Morcha (GJMM) – capitalised on this delay by launching hunger strikes and an indefinite bandh to protest against the bill and the seemingly endless reign of Subash Ghisingh. With the hills paralysed and pressure intensifying, West Bengal chief minister Buddhadeb Bhattacharya announced the resignation of Subash Ghisingh on February 29. Just a

day earlier, the standing committee recommended that Parliament make “a fresh assessment of the ground realities” before proceeding with the bill. With Ghisingh’s fate now sealed, the sixth schedule remains an unsettling question mark in Darjeeling’s future.

At present, only 32 per cent of Darjeeling’s population are recognised as ST members. However, the majority of non-ST ethnic groups within the greater Gorkha community have ST applications pending. A deeper look at Darjeeling today reveals a social fabric radically reconfigured by the politics of reservation and ethnic federalism in recent years. With groups scrambling for recognition as STs, the sixth schedule bill in political limbo, and multiple opposition parties once again pushing for a separate state, identity politics in Darjeeling have never been more contentious.

In the erstwhile Hindu kingdom of Nepal – now undergoing a fundamental makeover as a secular, republican democracy – reservations and ethnic federalism are the credo of multiple identity-based interest groups. Even the largely elite leadership of Nepal’s major political parties who comprise the interim government have begun to take such demands seriously. Major agreements between the government and the Nepal Federation of Indigenous Nationalities (NEFIN) and the Madhesi People’s Rights Forum (MPRF) were signed in August 2007, taking initial steps to develop a framework for federal restructuring, and establishing proportional quotas for the constituent assembly. In October 2007, the government announced that 45 per cent of 4,000 new positions in the police forces would be subject to reservations. The agreement which brought the Maoists back into government in December 2007 after a three-month hiatus committed the then as yet-unelected constituent assembly to declaring Nepal a republic in its first session. Earlier in the same month, senior madhesi leaders left their respective parties to form a new regional front. After a 16-day agitation, major madhesi parties signed an agreement with the government on February 28, which guaranteed an “autonomous” madhesi state, as well as group inclusion in the country’s armed forces. These are

unprecedented times in Nepal, a country in which discussion of ethnic difference was illegal until 1991.

Radical transformation is necessary in Nepal, and now. But rushing to implement policies of federalism and reservation for immediate political effect without a thorough evaluation of their administrative and social ramifications may cause more harm than good over the long haul. Such details are for the most part left undiscussed by the groups demanding these reforms, as well as the government that will be responsible for implementing them. Although factions within both NEFIN and MPRF were quick to criticise the agreements their leaders made with the government for not going far enough to ensure proportional representation and ethnic/regional autonomy, they offered few substantive alternatives to foster genuine inclusion. Madhesi leaders have yet to demonstrate how they will bridge the differences between the multiple geographical, linguistic, religious and ethnic groups that make up the madhes in order to achieve a genuine mandate. Despite the rhetoric of “social inclusion” and “state restructuring”, proponents seldom acknowledge the immense challenges that the Nepali government will face in reworking administrative boundaries along ethnic, linguistic, and regional lines, as well as in implementing new policies of affirmative action in a country where there are not adequate provisions for certifying individuals as members of recognised marginal groups. These inconvenient realities simply cannot be overlooked.

Creating Difference in Darjeeling

A recent clash between two Nepali-Indian ethnic communities in Darjeeling, both seeking ST status, shows how reservations can drive a wedge between communities.¹ Upon returning from a trip to Delhi to seek clarification from the central government about the criteria for recognition as a ST, members of one group’s organisation were shocked to find their office ransacked. They soon began to suspect that the culprits were another group of tribal hopefuls looking for hard-to-get information about how to construct a successful application. This accusation led to a fist-fight outside the former group’s office.

Although no one was seriously injured, this episode showed how the inter-ethnic unity that characterised Darjeeling’s Gorkhaland movement of the 1980s has been a substantial casualty of recent identity politics.

All of the dozen or so ethnic groups that make up the Gorkha community are currently entangled in the often brutal politics of reservation. Four groups (Bhutia, Lepcha, Sherpa and Yolmo) were included in the first ST list in 1950. By the 1980s, the perceived political and economic advantages of these groups – including reserved seats in governance, civil service and education, as well as financial subsidies in a range of sectors – had compelled others to seek ST recognition. The Tamang and Limbu applied for ST status in 1981 and 1991, respectively, but due to the disturbances caused by the Gorkhaland Movement, collapsing governments at the centre, and the slow pace of the certification process, they were not included in the ST list until 2003. In the meantime, other groups had joined the race. The Rai and Gurung began their applications in the late 1990s, and their applications are still pending. Then, as Ghisingh’s plans for the sixth schedule began to take form, a flurry of applications were filed by the remaining “left-out” groups, who feared political and economic marginalisation as “non-tribals” within the newly proposed Tribal Area. Many of these groups are already designated as other backward classes (OBC) or even scheduled castes (SC), but unsatisfactory benefits and local political circumstances have inspired these groups to seek the coveted ST status.

How the Gorkha community will survive this climate of opportunism and the stresses of the current moment remains to be seen. It is ironic that at the precise moment when the long-held aspirations of the Gorkhaland movement were finally supposed to be met via the territorial sovereignty promised by the sixth schedule, the Gorkha community finds itself splintering under the strain of competing paradigms for recognition that reservations and ethnically-based sovereignty entail.

Fortunately, Darjeeling has not experienced the type of violence that rocked Rajasthan last year, but as with the gujar-meena row, the politics of reservation

have bred competition between the various ST aspirant groups in Darjeeling. Communal sentiments and accusations thereof colour the public sphere in the hills. Incumbent STs view the pending applications of other groups as encroachments upon their slice of the pie, and thus resist sharing resources that would help others. Moreover, the divisions between groups continue to deepen as political allegiances increasingly map onto cultural differences. There is now a palpable distrust and non-cooperation between ethnic groups. This is not just a facet of urban elite identity politics; it also trickles down into daily life in the bastis and tea estates, where members of previously friendly inter-ethnic residential communities now refuse to celebrate holidays such as Dasain (Dussera) and Diwali together. Neighbours are now “others” and must be treated as such. Children of inter-ethnic marriages – which have been extraordinarily common in Darjeeling for generations – must now accept a single ethnic label. To call the results of these processes a “balkanisation” would be premature, but the negative effects of reservation on inter-group relations in Darjeeling are clear.

Inter-group boundaries are not the only new lines being drawn between Darjeeling’s residents. The logistical stresses of submitting an ST application, coupled with the pressure to distil diverse sets of practices into homogeneous cultural fronts has also created new fissures within individual communities. Every ethnic group the world over is internally differentiated. However, the perceived rigidity of the central government’s criteria for aspiring ST groups (as listed below) has compelled the more strident activists within Darjeeling’s communities to attempt to mute such intra-group diversity. Ethnic associations have turned to cultural policing to curb the celebration of Dasain, Diwali, and other “Hindu” holidays because they are not in accordance with perceived criteria of STs – this despite the fact that such holidays have been celebrated for generations in both Darjeeling and Nepal. Cultural codification has become an obsession for many ethnic leaders, with dictionaries produced to dictate the most “authentic” speech form, and the ritual chants of

individual shamans and lamas recorded and distributed on cassette or VCD to demonstrate the “right” form of devotion. For those who do not conform, social alienation often ensues. Others have formed alternative organisations to champion their version of tribal authenticity, thereby fomenting the politics of cultural practice. For the average individual, cultural choices have now become political as well, creating divides within both ethnic communities and families. Such fragmentation only hinders the capacity of already marginalised groups to interface effectively with the state and central governments, and leads to unpleasant politics at the most personal of levels.

Problems of Classification: India

State projects of classification face inherent problems. These issues are especially acute in the Indian system, where it is unclear whether marginalisation should be defined in cultural or economic terms. Nowhere does the Constitution mention the specific criteria for recognising STs.² It is only after some digging that one finds the semi-official criteria established in 1965 by the Lokur Committee, which are:³

- (a) Indication of primitive traits,
- (b) Distinctive culture,
- (c) Geographical isolation,
- (d) Shyness of contact with the community at large, and
- (e) Backwardness.

That none of the aspiring tribal groups of Darjeeling knew these criteria at the time they began the application process demonstrates how lacking in transparency the certification system can be. Furthermore, it shows how misunderstood the term “tribal” is in contemporary India.

There is a significant disconnect between the Lokur Committee criteria and the popular perception of what it means to be “tribal”. The term carries substantial baggage in the post-colonial Indian context, which directly affects how groups ascribe to it. While government officials and documents alike reiterate that “religion is no bar to being tribal”, this does not change the fact that in the colonial history of India, the term “tribal” was largely conceived in opposition to Hindu designations of “caste”. In independent India, the residual effects of this

dichotomy live on in the popular and bureaucratic imagination. Regardless of the fact that the official literature does not mention Hinduism’s relation to the category of “tribe”, there is a common presumption within the government and Indian society writ large that tribes must be “non-Hindu”. This belief manifests in the process of certification, since certifiers in the field and verifiers in government offices are explicitly concerned with the position of the aspiring groups vis-à-vis the “Great Tradition” of Hinduism. As a result, communities who aspire to inhabit the tribal category engage in elaborate cultural acrobatics to create an impression of non-Hindu tribal authenticity, which often entails a marked departure from previous cultural practice.

In Darjeeling today, cultural engineering of this sort is typically shot through with class relations, with elites coaching and coaxing their constituents into the proper “tribal” mold, the results being power-laden alterations in daily life. By codifying abstract cultural types (in this case that of the “tribal”) and hanging benefits on such essentialised notions of identity, state policies may in fact encourage communities to abandon traditional practices that do not correspond to actual and perceived criteria for becoming ST, and to adopt or accentuate other practices that may better conform to the stereotypical image of the “tribal”.

In such a way, reservations based on cultural criteria often perpetuate the very paradigms of difference that they aim to ameliorate, transforming rather than preserving cultural practice in the process. Certainly, vulnerable cultures and languages merit protection. But it is worth considering whether reservations and ethnic federalism are the proper instruments for projects of cultural documentation and protection.

The central question here is whether marginality should be defined culturally or socio-economically. If the end goal is economic and political equality, fields measurable by a variety of quantitative indicators, then why is recognition based upon cultural, and hence largely qualitative, criteria? Beyond the ways in which culturally-based categories themselves reinforce difference, the inherent

fuzziness of cultural criteria also leads to epistemological problems. On the one hand, it allows aspiring tribals to finagle their presentation to the government. On the other, it enables government officials (many of whom are not anthropologists or sociologists, and some of whom will never lay eyes on the applicant community) to incorporate their own religio-cultural prejudices into their judgments of the groups in question. In both gross and subtle ways then, defining “backwardness” in cultural terms allows religious ideology to sneak in the back door of a supposedly secular system of recognition.

Problems of Classification: Nepal

Nepal now faces the challenge of deciding how marginalised groups should be classified – and then politically represented – to ensure that they are most effectively offered opportunities for greater equality without reifying their socio-economic disadvantages as essential cultural traits. Rather remarkably for a country with over 100 caste and ethnic groups (according to the 2001 Census), Nepal had no modern legal provisions for recognising difference until 2002. The elementary forms of classification that have been introduced since then are by no means robust enough tools with which to implement a full-fledged reservation system.

While India was refining its constitutional classification system during the middle decades of the 20th century, Nepal’s panchayat state was attempting to erase difference through the promotion of the Nepali language and dominant Hindu-derived cultural forms. Instead of maintaining the “caste”/“tribe” opposition, Nepal’s Shah and Rana rulers attempted to collapse it by reconstituting Nepal’s ethnic groups as impure castes in the 1854 Muluki Ain. While this legal code made social mobility nearly impossible by establishing a rigid hierarchy that assigned varying legal rights to most of Nepal’s ethnic communities, panchayat policy made any discussion of ethnic inequality illegal, and treated cultural difference with the salve of homogenisation. Such rhetoric legitimised and reinforced the stranglehold that high-caste brahmin and chhetri (as well as some newar) elites

from the hills held on political and economic power.

It was only after the people’s movement of 1990 that ethnic grievances could be addressed freely. NEFIN was founded in that year, and quickly rose to prominence as the most vocal proponent of janajati issues. Under pressure from NEFIN, in 2002 the government passed the Nepal Federation for the Development of Indigenous Nationalities (NFDIN) Act, which made three important interventions. First, the act introduced the term ‘adivasi janajati’ (indigenous nationalities) into official parlance for the first time, making Nepal only the second Asian country (after the Philippines) to recognise “indigenous people” as a legal category. This category gained additional weight with Nepal’s 2007 ratification of the International Labour Organisation’s Convention 169 on the rights of indigenous peoples. Second, the 2002 NFDIN Act established a government body by the same name to oversee janajati issues. Finally, the legislation officially recognised 59 janajati groups, defining them 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.”⁴

Listing the criteria so clearly was a progressive step, which saved Nepal’s ethnic communities from the confusion that affected their Darjeeling counterparts. But as in the Lokur Committee’s criteria for tribes, the official Nepali definition of janajati relies on assumptions of culture’s static and bounded nature which originate in pre-1960s anthropological discourse. Although academic anthropology has long since moved on to recognise the constructed and dynamic nature of ethnic categories, in classic “strategic essentialist” fashion, Nepali activists appropriated these rigid definitions in their efforts to make a clear and compelling case for official recognition from the state, which in turn enshrined those criteria in law. In the process, ethnic activists created a conundrum for themselves similar to that of Darjeeling’s aspirant tribal communities: for generations, many janajati communities had engaged in Hindu practices, such as Dasain, but ethnic

activists were now compelled to downplay those aspects of their practice in order to meet the “traditional rites and customs” criteria of the janajati category. Without the carrot of ST benefits, ethnic organisations in Nepal have not had a powerful political stick with which to compel their members to comply. Cultural transformation has therefore proceeded relatively slowly in comparison to Darjeeling, but that could change if reservations were to be implemented on the basis of the existing criteria.

By 2004, NEFIN was an umbrella organisation for 59 “indigenous people’s organisations” representing individual groups, and had the ear of both the government and the influential international donor community. In the same year, as part of the multimillion pound Janajati Empowerment Project (JEP) funded by the British Department for International Development (DFID), NEFIN introduced a new five-fold classification system for ranking Nepal’s “indigenous nationalities” as “endangered”, “highly marginalised”, “marginalised”, “disadvantaged” and “advantaged”. Based on economic indicators, this rubric is intended to ensure that any future policy intended to help marginalised communities would genuinely benefit those who need it most.⁵ JEP project funds were allotted accordingly, with 60 per cent of the operational budget reserved for “highly marginalised” and “endangered” groups.

This is an intriguing case of “self-classification”, through which non-governmental ethnic organisations have responded to the lack of an effective state policy to link benefits with ethnic categories. Although the Nepali government has yet to adopt NEFIN’s classification system in any official manner, many international donors have embraced it enthusiastically. Several generously budgeted projects to target “highly marginalised” and “endangered” groups with both “rights-based” and “livelihood-based” projects have been launched by large INGOs over the last few years. Whether or not the state has anything to do with it, this influx of funding is contributing to the rapid naturalisation of NEFIN’s categories. The perceived and real disparities in the distribution of donor funds to different janajati organisations

are also sowing the seeds of difference within the janajati community, whose previously unified front (at least at the public political level) has been a major factor in its successful negotiations with the state.

The late 2007 formation of the National Alliance of Highly Marginalised Indigenous Nationalities Nepal (NAHMINN), which provides an organisational umbrella for the 24 “highly marginalised” groups (funded by ActionAid), shows that such categories are beginning to shape political discourse in substantive ways. NAHMINN’s rallying cries are that NEFIN is dominated by urban elite members of relatively “advantaged” groups, and that NEFIN’s August agreement with the government does not adequately address the needs of their “highly marginalised” constituents. Why? Because the agreement still relies upon political parties to nominate ethnic candidates, and more “advanced” janajati groups who count veteran party politicians among their ranks are likely to end up with disproportionately high representation.

This argument highlights just one of the challenges introduced by the prospect of proportional representation. Another is that of multiple identification: for example, how should constituent assembly candidates from the Tharu ethnic group – who are ethnically janajati and regionally madhesi – be classified for the purposes of meeting the inclusion quotas established by the Electoral Act? These issues demonstrate why Nepal is in need of a more nuanced system of classification if the grievances felt by its peoples are to be effectively addressed. Clearly, NEFIN’s classification system is only intended to classify groups that more or less identify themselves as “indigenous nationalities”, and cannot accommodate those who use other paradigms for self-definition, such as dalit – for whom caste, not ethnicity, is the operative concept – and madhesi, for whom identity is territorially defined. But then again, why should it? NEFIN is a non-governmental organisation that represents a specific interest group, not a state responsible for developing a comprehensive system of recognition and implementing policies of affirmative action based upon it. This is part of the quandary in Nepal: the lack of effective state measures

has left the work of classifying difference and distributing benefits to individual NGOs (often with INGO and multilateral support), which inevitably results in a piecemeal framework. NEFIN (along with other organisations) has risen to the challenge admirably by developing a classificatory rubric that takes a positive step away from the Indian model by defining marginality in primarily economic rather than cultural terms, but it cannot provide the administrative infrastructure necessary to implement a full-blown reservations system. That responsibility lies with the Nepali state, which will need to develop a more comprehensive model that avoids relying on essentialised cultural categories by cross-referencing economic, social, regional and gendered forms of exclusion to assess marginality.

The Administration of Recognition

Reservation policies require immense administrative capacity. In India, this responsibility falls upon a convoluted anthropological bureaucracy which sprawls across national, state and local governments and struggles to meet the demands put upon it. Reports often go missing for months on end as communities await word on the status of their application. When and where anthropological teams successfully fulfil their responsibilities, their recommendations are often undermined by the hard realities of high politics.

In India, the machinery of recognition emerged out of a well-documented entanglement between anthropology and colonial administration. As Nicholas Dirks has argued, in the 19th century, “Anthropology replaced history as the principle colonial modality of knowledge and rule”.⁶ Toward this purpose, the British instituted a massive anthropological administrative system specifically designed to classify India’s people. Through projects like the Gazetteers and Census, classificatory schemas and ethnological techniques came to play a central role in colonial governance. By the time of India’s independence, the Indian “ethnographic state” had become the world’s largest anthropological apparatus. Today, many of its structures, practices and categories live on in

the governance of independent India. Even with these infrastructural antecedents, the current system of tribal recognition in India is perpetually backlogged.

In marked contrast, the Nepali state never developed a full-fledged anthropological apparatus comparable to India’s. In fact, the 1991 Nepali census was the first to collect data on ethnicity. It is thus difficult to imagine how Nepal might now develop appropriate administrative machinery overnight.

At present, there are over 700 STs in India. Recent estimates put the number of additional groups applying for ST status at upwards of 1,000. While the numbers alone are staggering, the complexity of the certification process itself compounds the difficulties. As per the “modality” established by the government of India in June 1999, the primary point of engagement for communities seeking ST status is with their own state.⁷ Years of correspondence may ensue between ethnic leaders and civil servants before a formal inquiry is initiated. Typically this consists of an ethnographic survey spanning several days during which government investigators view performances by the groups in question. If the state supports the application, it is first forwarded to the ministry of tribal affairs, which then sends the application on to the Social Studies Wing of the registrar general of India (RGI). The registrar’s office then cross-references the ethnographic report with existing literature on the group in question, some of which dates back to the days of colonial ethnology. From there, the file moves on to the National Commission for Scheduled Castes and Scheduled Tribes and concerned ministries before finally reaching Parliament as a bill to amend the presidential order. Should anyone along the way be dissatisfied with the application, the entire file may be sent back down the chain of certification, or it may be rejected outright. It is not uncommon for applications to reach New Delhi only to be returned years later with demands for further information.

If a community is finally scheduled, then the identity of individuals must be certified before they can be issued ST certificates. Much of this responsibility falls to local ethnic associations, which issue

vouchers that applicants must present at the district magistrate's office, along with other verifying documents. Should the ethnic organisations and local authorities be unable to resolve a case of disputed identity or financial status, it may be sent to the state level, where a costly field inquiry of the individual in question may be initiated.

Scheduling tribes and ensuring that individuals reap the promised benefits is thus time-consuming, expensive and frustrating, for both the government and applicant groups. Applications typically take not months or years, but decades. One Darjeeling ethnic leader made 77 personal trips to Delhi before his group was recognised as ST. Spanning 22 years, his community's tactics included hunger strikes in Delhi, local bandhs, massive ethnic mobilisations, and tireless lobbying at various levels of government. Sustaining an effort over so many years

exhausts communities who are by definition under-resourced. The extended duration furthermore fosters discontent, misunderstanding and competition, which can easily morph into the kind of disruptive politics that troubled Assam and Rajasthan in 2007.

Challenges to the State

Recent events in Darjeeling and across India raise the question: are policies of ethnic-based sovereignty a Pandora's box? Charting the internal territorial demarcation of India since the State Reorganisation Act of 1956, the nation state appears to be in perpetual fission. The principle reactants in this experiment with federalism continue to be ethnicity and the promise of sovereignty, provisions for which are built into the fifth and sixth schedules of the Constitution. Where these provisions for regional tribal autonomy do not satisfy the demands of the people, there is

always the call for a separate state ready-at-hand. Successful attainment of a new state or autonomous area by one community spurs on others who perceive themselves to be equally worthy of such status. Once a precedent is established, the government has little recourse to these claims.

In the months since Nepal's interim parliament made the radical resolution to restructure the state along federal lines, the country's press has been filled with dire predictions that federalism in Nepal will lead to a similar slippery slope of ever-increasing demands for ethnic, linguistic and regional states. These critiques are now moot, since the landmark February 28 agreement between Nepal's interim government and agitating madhesi groups makes clear that, "Nepal will become a federal democratic republican state", in which "states will be fully autonomous and empowered" (*Kathmandu Post*,

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February 29). Yet the “division of powers” and “structure” of Nepal’s federal system are left to the constituent assembly to determine, and there is little clarity regarding the specific mechanisms through which to best achieve this administrative overhaul. Some advocate redrawing the map along exclusively ethnic and linguistic lines, while others argue for geographically defined states. The question remains how, on a practical level, the creation of federal states can most effectively bring about the economic and infrastructural improvements, as well as the recognition of cultural and linguistic difference, that citizens desire.

Reservations pose similar challenges to the nation state. Since the original list of India’s srs was drawn up in 1950, the numbers have been steadily growing. Clearly, the benefits provided for India’s srs are in high demand, and not without merit. However, it is equally clear that the constitutional provisions for sc, st, and obc communities have propped open the door for incessant demands upon the welfare state. By attempting to enshrine inherently blurry cultural criteria in the Constitution, these laws introduce into the juridical realm all of the paradoxes of anthropological classification.

Amid the violence that surrounds India’s current politics of difference, one wonders whether the architect of India’s Constitution could have imagined the present results of a system seemingly so well-intended. Yet in the writings of Ambedkar himself, there is the inkling of the paradox at hand. In 1936, he acknowledged:

However desirable or reasonable an equitable treatment of men may be, humanity is not capable of assortment and classification. The statesman therefore, must follow some rough and ready rule, and that rough and ready rule is to treat all men alike not because they are alike but because classification and assortment are impossible.⁸

For Ambedkar, positive discrimination drew its impetus from disadvantage, not difference. Despite his championing of the Depressed Classes as a collective political force, in Ambedkar’s view, identity was not something to be cultivated by the state. Once present, it had to be addressed and accommodated. There is, however, a fine line between acquiescing to the

politics of difference and encouraging their manifestation. Sixty years later Nepal now finds itself at a juncture not wholly unlike that which faced Ambedkar and his colleagues in India’s constituent assembly (1946-1950).

Towards a ‘New Nepal’

The People’s Movements of 1990 and 2006 have paved the way for a profound rebalancing of socio-economic and political power in Nepal. Getting to and through the elections is the preoccupation of the moment, but serious consideration of the logistical challenges that will face the 601 elected constituent assembly members when they take office should begin as soon as possible. If the massive machinery of India’s welfare state suffers under the demands of its own reservations system, Nepal will have to think carefully about its own infrastructural limitations when crafting its version of affirmative action. One of the biggest challenges will be balancing the prerogatives of federalism – which will devolve authority to new, untested state governments – with policies of reservation, which by definition require a strong central infrastructure to provide for equitable recognition and distribution of benefits.

In the meantime, the path of least resistance for the Nepali state may be to continue contracting the work of social and economic improvement – and by default, the prerequisite work of classification and recognition – to non-governmental organisations supported by foreign donors. Since there are no universally accepted standards for defining disadvantaged groups, each organisation currently relies upon its own criteria. These are shaped by a range of ideological positions, which spawn as many different strategies to distributing benefits. The donor community’s piecemeal approach to recognition and classification may have unfortunate lasting ramifications for the restructured state when it is ready to take greater control of its own classificatory policies.

Difficult questions stand between the current moment and a veritably “new Nepal”. The constituent assembly will provide a forum for comprehensive deliberation over the structures of federal governance and affirmative action.

Incorporating the experiences of Nepali-Indians in Darjeeling into this debate can help ground the discussion with a case study that is “close to home” for many Nepalis. Clear proposals for establishing a system of recognition at both federal and state levels should be put forward, with specific attention to designing administrative mechanisms that will work effectively for both marginalised groups and their individual members. Some of the necessary groundwork can be provided by the next Nepal Census, due in 2011, which can be designed with the specific mandate of providing a demographic foundation for affirmative action policies. Accurate, in-depth enumeration of data disaggregated by gender, caste, ethnicity, language, religion, region, and other factors can help avoid over-reliance on essentialised cultural categories.

Nepal now has an unusual opportunity. The quality of the policies enshrined in the new Constitution, as well as the administrative mechanisms set up to implement them, will have long-lasting ramifications. As ongoing efforts across the country to change the status quo have made clear, the question is no longer whether affirmative action and the devolution of power are necessary. With this much certain, the debate must now shift towards practical strategies for achieving these objectives in the most effective manner. Nepal’s elected assembly members will no doubt be held accountable by the public, and will owe their constituents nothing less than a clear road map to a more equitable and inclusive future.

NOTES

- 1 Sara Shneiderman and Mark Turin have described some of these dynamics in ‘Seeking the Tribe: Ethno-politics in Darjeeling and Sikkim’ in *Himal Southasian*, March-April 2006, 19 (2): 54-58.
- 2 Articles 342(1,2) and 366 (25) contain the constitutional provisions for scheduling tribes.
- 3 The Advisory Committee on Revision of SC/ST Lists (Lokur Committee) 1965.
- 4 As cited in Susan Hagen, ‘Creating a “New Nepal”: The Ethnic Dimension’ (Policy Studies 34), the East West Centre, Washington, 2007, 21.
- 5 David Gellner has outlined this scheme in detail in the pages of this publication ‘Caste, Ethnicity and Inequality in Nepal’, May 19, 2007, 1825-26.
- 6 Nicholas Dirks, 2001, *Castes of Mind*, Princeton University Press, Princeton, NJ.
- 7 See *Handbook of the National Commission for Scheduled Tribes*, 2005.
- 8 ‘Annihilation of Caste’ (1936) in *Dr Babasaheb Ambedkar: Writings and Speeches*, Government of Maharashtra, Education Department, 1979.