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SHIFTING CONCEPTIONS OF SOCIAL (IN)JUSTICE IN NEPAL

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ABSTRACT

The purpose of this paper is to analyse and situate the changing discourses of social (in)justice in the context of political transition and restructuring process that Nepal has gone through since 2006. This paper discusses the origin and development of the discourse and analyses how its meaning has changed over time. As the paper argues, the earlier discourses of social justice in Nepal can be linked to the Hindu and Buddhist notion of *dharma* and various other ethnic cultural traditions. After *Janandolan-I* in 1990, the policy and practice of social justice began to be equated with the principle of equality, which was based on the assumptions of sameness. After *Janandolan-II* in 2006, the public conception of social justice has shifted towards a more vocal emphasis on social equity, inclusiveness, proportionate representation and participatory decision-making. The article provides empirical manifestations of social injustices in Nepal, linking them with various discourses and traditions of justice in the early and modern historical, socio-cultural and political contexts. It is hoped that a thorough understanding of historical shifting of public conceptions of social (in)justice in Nepal will be useful in guiding the country's future public policies towards inclusive restructuring and equitable development.

Key words: Social justice; injustice; Hinduism, Buddhism; history; movements; Nepal

INTRODUCTION¹

There are several forms of social and cultural inequalities and injustices in contemporary Nepal and these result from differences mainly based on caste, ethnicity, gender, language, religion and culture, and region (geography). These exist on top of the problem of inequality of class division, which is perhaps the most ubiquitous dimension of economic disparity. The

hierarchical and highly stratified structure of Nepalese society based on these differences has perpetuated socio-cultural exclusions and discriminations against various groups (such as the poor, women, Dalits, Janajatis and Madhesis) who have been denied equitable access to resources and opportunities.

It is against this backdrop that we need to understand public conceptions of social

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¹ This paper draws from two fieldwork visits in Nepal (November 2006-February 2007 and July-September 2007), mixture of secondary sources and the author's previous experiences of living and working in Nepal. The author is grateful to Dr Fraser Sugden and three anonymous referees for their helpful feedbacks in refining the paper.

(in)justice in contemporary Nepal. This is because the way we think about justice is grounded within historical, social, political, economic and cultural relationships (which are often unequal) among different actors in a society. In other words, because of the complicated and relative nature of the concept of justice, it is crucial that issues of justice and injustice be understood against the socio-economic and cultural context of multifaceted, historical and structurally embedded problems.

Despite half-a-century of donor-driven development projects in Nepal with a large amount of foreign aid, there has been little progress in the well-being of Nepalese, as demonstrated by the slow pace of improvement in living standards.² National statistics for economic growth and human development become even gloomier when they are disaggregated, as the figures reveal widening gaps between the advantaged regions (and) or people and the disadvantaged ones (World Bank and DFID, 2006; UNDP-Nepal, 2009, p.2). Nepal's uneven and inequitable development pattern has, in various degrees, favoured urban rather than rural areas and people, and particular communities and castes over others (higher caste Brahman-Chhetris over Janajatis, Dalits and Muslims; and Pahadis or hill origin people over Madhesis or plains origin people), men over women, eastern and central development region over far western, and so on. In particular, the plight of Dalits highlights the severity of inequitable development in Nepal as their place has been

constantly at the bottom of all national averages (DFID, 2007; BK, 2006, pp.6-10). Similarly, hill Janajatis, Muslims, and women in Nepal suffer from more severe inequalities in terms of most development and health indicators, and lack fair access to opportunities and resources (UNDP-Nepal, 2009, p.2).

It is in this context of inequity and injustice in Nepal that the country has frequently experienced political conflicts, as is evident from the chain of events in much of its recent history, particularly *Janandolan-I* or people's movement-I (1990), Maoists' *Janayudda* or People's War (1996-2006), and *Janandolan-II* (2006). During these political movements, social injustices arising from continued exclusion and inequality of various groups provided ample grounds for the hitherto excluded groups to fight against an exclusionary state, in addition to other causes (political instability, authoritarian tendencies, poverty, corruption, bad governance, mounting foreign debt etc). While Nepal is navigating through a political transition and restructuring since 2006, it is timely to discuss the shifts in the discourse of social justice over time in the country. This might lead to a better understanding of the root causes of injustices and inequities, against which the current constitution building and state restructuring should be targeted. This might also offer insights into how and why these shifts matter to those who wish to steer the transition in particular ways.

² According to the Human Development Report 2009, Nepal ranks 144 out of 182 countries with a Human Development Index value of 0.553 (UNDP, 2009, p.173). About 32 per cent of the population still live below the poverty line with inadequate or no access to basic needs such as food, health and education.

EARLY JUSTICE TRADITIONS IN ANCIENT NEPAL AND THEIR INFLUENCE

With a majority of Hindus (80.6 per cent) amongst its population, followed by Buddhists (10.7 per cent) (CBS, 2001, p.3), both sharing many common cultural traditions, Nepal's traditional notions of justice, cultural beliefs, and practices largely have their historical roots in Hindu and Buddhist philosophy. In Addition, Nepal also has various indigenous ethnic groups with their own distinctive cultures and justice traditions.³ With the concept of *dharma*, classical Hindu philosophy is centred on the principles of justice and morality, albeit sometimes imperfectly and unjustly according to modern traditions (as is the case with the hierarchical caste structure). According to Hindu and Buddhist philosophy, *dharma* constituted the religious and moral doctrine of rights and duties of each individual, and it provided guidance and administration of justice in much of Nepal's ancient history.

Although the notion of *dharma* guides individual actions, it emphasises promoting

collective good for the universal order. By embracing the desire to promote the common good with a conception of higher law and justice, the concept of *dharma* differs to some extent from modern justice system, which is predominantly influenced by the liberal tradition (with the focus on an individual's free-will) and rational choice theories. In non-Western cultures such as in Nepal, the individual is not perceived to be a unitary free agent, as it is in the Western liberal tradition. Instead, the definition of self is more a function of the social context.

The concept of *dharma* is derived from the rules and laws encrypted in the *dharmashastra* (ancient Hindu texts). Early Hindu texts such as the *Vedas*, the *Puranas*, the *Ramayana*, the *Mahabharata*, and the *Gita* cite anecdotes of ancient kings and sages with their just traditions, truthfulness and fairness, and provide various references to justice traditions and practices in early Hindu culture. Based on Hindu mythology, justice traditions in Nepal can be traced back as early as to the *Satya Yuga*, the pre-historic time during which the development of Hindu civilisation and culture is believed to have originated (Wright, 2000, p.77).⁴ King Manu,

³ In Nepal, there are 103 castes and ethnicities (including 61 Janajatis) who speak at least 92 different languages (CBS, 2006, p.6). Besides Hinduism and Buddhism, there are more than eight different religions being followed in the country: Islam (4.2 per cent); Indigenous Kirat religion (3.6 per cent); Christianity (0.5 per cent); and other groups (0.4 per cent) (CBS, 2001, p.3).

⁴ Although very little is known about the early history of Nepal, legends and documented references reach back to the first millennium BC. Hindu scriptures establish the country in antiquity as an independent political and territorial entity in the Bharat Barsa (Indian sub-continent). During the time of the Kirats (before 250 AD), Nepal's political boundary was said to have extended to Tista in the East and Trisidi in the West. However, before the present political entity appeared in the eighteenth century, the designation 'Nepal' was largely applied only to the Kathmandu Valley and its surroundings. During the reign of the Mallas, Nepal's boundary was expanded widely, into the Tarai and western Tibet, before disintegrating into small principalities. Later, these became known as Baisee (i.e. the twenty-two principalities) and Chaubise (twenty-four principalities) (Whelpton, 2005, pp.24-25). Kathmandu Valley was split in three kingdoms from the 15th to 18th century.

the first ruler of *Satya Yuga*, was said to be a noble man who ruled areas around *Bharat Barsha* with his wisdom and fairness and his justice rules were encoded in the form of *Manusmriti* (codes of Manu).⁵

During the time of Buddha (c. 563-483 BC), who was born to a Shakya King family in Lumbini of present-day Nepal, the notion of *dharma* was interpreted further. Buddhism had its origins in the teachings of Buddha and *dharma* (*dharmma*) in Buddhism refers to the right ways of living (achieving self-awakening, eradicating greed, hatred and delusion). Buddha provides eightfold noble path to spiritual awakening or enlightenment: right understanding, right thought, right speech, right action, right livelihood, right effort, right mindfulness, and right concentration. Accordingly, a *dharmic* or *dharmic* person (i.e. a righteous person) is the one who is impartial, understands the reality or truth and follows the natural law.

Ancient Nepal was ruled by the Kirats (before 250 AD), who comprised of ethnic

groups such as the Limbu, Rai, and Yakkha who were originally from eastern Nepal and are considered the first of the known ruling dynasties of the Kingdom of Nepal.⁶ Their sacred and holy text, the *Mundhum* (also known as Kirat Veda) became the main source of law and provided important guidelines for governance and the delivery of justice (Khanal, 2000, p.4). Various kings of the Lichhavi dynasty (250-1140 AD) in Nepal, originally from the Hindu region of Baishali in India, made many laws (in the form of historical texts of *Sutras* and *Smritis*) in accordance with the Hindu scriptures (such as codes of Manu) under which the government and administration of justice was conducted (Whelpton, 2005, p.18; Khanal, 2000, p.6). Based on their Indo-Aryan heritage, the Lichhavis introduced Hinduism as the official religion of Nepal after the overthrow of Kirats. The first Lichhavi monarch, King Supuspa, is also thought to have introduced a caste-based system for the first time in ancient Nepal which was modelled after the already existing organisation of Hindu society in

⁵ Some of the provisions in Manusmriti include: rules relating to law; rules of action in normal times; fourfold dharma of a Brahman; rules of action for a king; rules of action for Vaishyas and Sudras ('low' castes); rules of action in times of adversity; and rules relating to penance. A king was described as the upholder of justice and above the natural justice system. Brahmans (priest caste) were given concessions in fines and punishments. While certain verses glorified the position of women, other verses were against their freedom (for example, it discouraged women from reading Vedic scriptures). Similarly, in Treta Yuga (the second age in Hinduism), King Janak (father of Hindu Goddess Sita) of Mithila (present-day Janakpur in the Tarai of Nepal) was widely known for his fair administration of justice. Nepal, an adventurous place full of high mountains and great forests, was also chosen for reclusive meditation by noted sages of Hinduism at various times such as Biswamitra, Agastya, and Valmiki, who provided early framings of what constitutes justice and morality through their writings in early Hindu literature.

⁶ Some historians, however, believe that Gopals (literally, the 'cow-herders') and Mahishpals ('buffalo-herders') were the first and second ruling dynasties of Nepal respectively (Regmi, 1977, p.33).

North India.⁷ The influence of the concept of *dharma* and the prominence of the caste-based Hindu structures continued significantly through subsequent dynasties such as the Mallas (1140-1768) and the Shahs (post-1768). During the Malla period, those who belonged to upper Chhetri (warrior) caste in Hindu hierarchy and were originally from the western hills of Nepal, believed that the principal duty of a monarch was to follow *dharma* and protect and preserve justice traditions (Whelpton, 2005, p.21).

The well-documented case of early justice traditions in ancient Nepal is more frequently linked to the Gorkha Kingdom for its righteousness. Gorkha, the seat of Shah dynasty and the birthplace of modern Nepal, was also considered the seat of justice at that time in Nepal, as is evident from a common saying even today: "*nyaya napaye Gorkha janu*" ("Those who are denied justice should go to Gorkha") (Khanal, 2000, p.12). This is credited to King Ram Shah who was renowned to be a very noble man who would dispense justice and display fairness. King Ram Shah, who ascended the throne in 1606 and ruled the Gorkha Kingdom for 26 years, was also one of the country's earliest reformers of land revenues and the inventor of the penal code in Nepal (Khanal, 2000, p.11).

With this brief review of justice traditions in ancient Nepal, it is clear that the discourse of justice was mainly derived from the concept of *dharma* in consonance with the religious values and codes, and other non-formal laws derived from cultural traditions. There were not, as such, written codes or constitutions agreed in the form of a social contract as is highlighted by modern justice theories. With the increased influence of religion also came an entire cultural system centred on the king as the upholder of *dharma*. This political concept of the king as the righteous centre of the political system would continue to have a powerful impact in later years in modern Nepal. While *dharma* in general provided altruistic moral doctrine, Hindu cultural traditions also inherently barred certain groups such as women, and lower castes and various ethnic communities outside the caste hierarchy from having equal rights.⁸ Thus, in ancient Nepal, even the principle of equality, and the basic and minimum criteria of modern justice traditions were ignored on many occasions due to preferential treatments meted out mainly on the basis of caste structure. These early traditions of exclusions and biases continue to influence and reinforce unjust social arrangements in contemporary Nepalese society.⁹

⁷ Although the caste-system was originally based on the division of labour, occupation structure and family history, it created far-reaching injustices and discriminations that are perpetuated even in modern-day Nepal.

⁸ For example, Brahmans were exempted from capital punishment, whereas Dalits and ethnic Janajatis were punishable even for small offences. Similarly, sati practice was the worst form of gender inequity, in which the wife of a higher caste Brahman had to burn herself in the pyre of her dead husband.

⁹ It is useful to elaborate how some of these historical discriminations are reinforced by social practices even in present-day Nepal. Unequal gender relations stem from patriarchal worldview embedded in traditional socio-cultural structures, which still define formal and informal rules for women's participation. Caste and ethnicity differences in Nepal result from the norms and socially

JUSTICE TRADITIONS IN MODERN NEPAL (AFTER 1768)

Although early justice traditions influenced by Hindu culture continued to guide most of Nepal's modern history, issues of equality and justice remained more restrained and silenced in Nepal's post-1768 political economy. After King Prithvi Narayan Shah's 'unification' of Nepal with the aggressive invasion of various small principalities, many of which were ruled by ethnic rulers, the hegemony of Hindu philosophy, cultural traditions and thus caste-based structure flourished much more than ever in Nepal's history.¹⁰ A continued war-like situation driven by the ambition of unification (which was followed later by successive rulers as an ongoing process of empire building) meant that demands for equality and concerns for justice were rare.

The questions of civil liberties and social justice were more deliberately suppressed in public discourse during the more than a century long oligarchic rule of the Ranas (1846-1951). The Ranas adopted a feudal and autocratic form of politics and followed the deliberate strategy of stagnation and seclusion, suppressing education and isolating Nepal from the rest of the world

(Whelpton, 2005, pp.61-85). This strategy was aimed not only at controlling any internal voices of possible dissent, but also at preventing potential external influences. Under the closed politics of the Ranas, justice traditions were also based on the essential religious provisions. For example, the first codified law that applied to a unified Nepal was the *Muluki Ain* (Civil Code) of 1854, which went through a number of amendments in several occasions, took legal approaches for non-formal and customary laws without substantial changes in earlier values and practices (Khanal, 2000, p.19). The *Muluki Ain* formally created two categories of citizens: the *Tagadharis* or the upper-caste Hindus who monopolised privilege; and the *Matwalis* (today's Janajatis) and the 'lower' castes. It thus legally validated the caste system and helped preserve the socio-cultural status quo as defined by the Hindu elite rulers.

In 1951, the Rana regime had to ultimately succumb to the growing pressure from a new wave of consciousness in Nepal influenced by the ongoing independence movement in neighbouring India (especially in the 1940s) (Whelpton, 2005, p.73). The influence and achievements of the Indian

defined practices of dominant caste groups that define the degree and form of discriminatory practices towards disadvantaged castes. In particular, the plight of Dalits is serious as they are still considered 'untouchables' and are prohibited in many instances of social life (e.g. from their entrance into temples and from touching public drinking water taps and wells). Linguistic discrimination arises from the historical domination of Nepali language over other native tongues, which consequently results in the exclusion of non-Nepali speakers (mainly Janajatis). In similar way, religious discriminations have been perpetuated through monopoly of Hinduism over other faiths and belief systems for years.

¹⁰ Many in Nepal, however, believe that King Prithvi Narayan Shah acknowledged and promoted the pluralistic nature of Nepal with a mosaic of different ethnic communities and cultures. His popular quote as cited in his *Divyopadesh* (a book of 'divine teachings' of Shah) "Nepal char barna chhattis jatko phulbari ho" ('Nepal is a garden of four castes and thirty-six sub-castes') is taken to support this argument.

movement for freedom, external influence, and later experience of democracy in India served as a major catalyst for similar movements and demands in Nepal. A disenchanted public widely participated in the protests organised by two main parties, the Praja Parisad and the Nepali Congress, whose leaders (many of them were Banaras-educated) had been personally involved in the Indian independence movement, while secretly operating against the Ranas from India. For the first time in Nepal's history, discourses of social justice itself (*samajik nyaya*) were mentioned prominently in the major demands of the opposition groups. These were associated with demands for democracy (*prajatantra*) and equality (*samanata*), arising from external ideologies of freedom and suffrage rights with their roots in European enlightenment, and which in turn facilitated popular revolt against the regime. Following the fall of the Ranas, Nepal was open to the rest of the world for the first time in its history, more particularly after its membership of the United Nations in 1955. With the removal of the Ranas, political discourse in Nepal was dominated by promises for participatory constitution-making in the form of constituent assembly elections to write a new constitution that would address demands of social justice and democracy. However, these promises did not materialise.

Following some years of political bargaining, power-sharing and transition, Nepal experimented for the first time, albeit briefly, with multiparty democracy in 1959. The new Nepali Congress government announced some populist social justice policies (such as nationalisation of private lands and forests assigned to the Ranas and the ruling elites) (Whelpton, 2005, p.95;

Ghimire, 1998, p.65). Similarly, some biased provisions in *Muluki Ain* (1854) were scrapped. New provisions in the revised *Muluki Ain* sought to promote social harmony and declared all persons theoretically equal in the eyes of the law, thus ending legal discrimination based on caste, creed, and sex. It also permitted inter-caste marriages, abolished 'untouchability', granted the right to divorce, and applied uniform family law for all religious communities. The justice system and jurisprudence began to be modernised and largely modelled in line with the British-Indian legal system (Khanal, 2000, p.34).

This brief democratic experience, however, did not last long. When King Mahendra introduced his self-styled monopolistic *panchayati* system in 1960, there was no room for any alternative voices of political dissent. In particular, *panchayati* system encouraged the ideology, policy and practice of 'sameness' with 'one nation one culture', consisting of a centralised (unitary) state, dominant culture (Hindu) and one language (Nepali). Any demands for justice and equality were suppressed as protests were banned and were many times brutally dealt with. The three decades of authoritarian rule of party-less *panchayati* system (1960-1990) with domination and injustice under monarchy represented another *déjà vu* of repressive political culture in most of Nepal's modern history (with centralised state structure of post-1768 period and the authoritarian Rana regime from 1846-1951). As a result, it took some time for issues of justice and equality to reappear in the political landscape of Nepal.

However, despite the presence of a different political environment, the country's exposure to Western globalising influences

since the 1950s, established an overt link between Nepal and the West which, in turn, continued to guide and influence Nepal's future modernisation and development agenda (Panday, 1999). Ideas of progress, economic growth, and development became a major theme in national discourses. With Nepal's growing dependence on foreign aid and involvement of different international agencies also came the heavy penetration and influence of international players (mainly the US, UK and India) (Acharya, 1998; RRN and CECI-Nepal, 2007, p.6). Nepal also became a tourist attraction for mountaineers and hippies and an exotic holiday destination for international tourists throughout the sixties and seventies. External influence, mainly through the national and local projects funded by international agencies which often came with their own priorities, methods, benchmarks, conditionalities and evaluation criteria, eventually contributed in making the country a colonised cultural space. Ordinary people in Nepal had to constantly negotiate and live in these hybrid cultural situations. In this context, meanings and understandings of certain ideas and concepts such as those of social justice remained no longer confined within local frames of references, and were constantly influenced by globalised ideas.

JUSTICE DISCOURSE IN POST-JANANDOLA-I PERIOD (AFTER 1990)

It was only in the 1990s that an agenda for social justice (*samajik nyaya*), albeit subsumed within the larger struggle for multiparty democracy, re-emerged in the public and political discourse in Nepal, most prominently during the People's Movement-I (*Janandolan-I*) in 1990. One of the main

reasons for social justice issues to reappear late in the political discourse in Nepal can be attributed to the way the authoritarian rules and values conditioned the ordinary people to tolerate the status quo. Another reason was because the literacy rate was still low and most of the older generation were accustomed to ancient traditions rooted in the concept of *karma* with fatalistic orientation, or fatalism (Bista 1991, pp.76-100). Many Hindus in Nepal still attach the concept of *karma* to the present sufferings (including cases of injustices and inequalities) they face with their own supposed past actions in earlier forms of life. Although this belief makes people constantly judge their present actions with regard to their fate in the next life, at the same time, submission to one's fate encourages the tradition of overlooking current injustices and inequalities. This belief together with the old ideas of justice based on caste and authority can also be linked to the persisting culture of nepotism and clientelism in politics and general life in Nepal: if someone's *karma* is right, they are lucky to have their *afno manchhe* (one's people) around for any help and support.

Within the overarching term of social justice (*samajik nyaya*) during the post-*Janandolan-I* period, were the ideas of equality (*samanata*) and inclusion (*samabeshikaran*) which dominated political discourses in Nepal. It was the time when the dominance of select classes of ruling elites and upper-caste Brahman-Chhetris in national political and socio-cultural structure began to be questioned by various groups such as the poor and the landless, women, Dalits and Janajatis. The rapid ascendancy of ethnic politics largely in the form of indigenous movements during this period signalled the growing importance

of 'politics of recognition' in making social justice claims in Nepal. Similarly, constitutionally granted freedom of speech and association, political and civil rights coupled with increasing involvement of the outside agencies and the donors, and a mushrooming of NGOs, civil society organisations, and mass-media, provided more public awareness on the issues of social justice, through concern for human rights, and equality of opportunity. With the emergence of a multiparty democracy and a new constitution, policies such as economic liberalisation and institutional pluralism were also introduced with the support of multilateral and bilateral aid organisations that became powerful stakeholders in the policy regime, most particularly in the areas of development, democracy, and poverty alleviation (Panday, 1999; Acharya, 1998).

Although the democratic politics of post-1990 provided more civil liberties and political space to raise social concerns by diverse groups, the dominant understanding and hence policy imperative for successive governments on the issues of social justice was by now that of 'equality' to all, in which everyone was entitled to equal treatment. In this context, equal opportunity and 'basic human needs' were the fundamental rights constitutionally granted to everyone, irrespective of their class, caste, ethnic origin and gender (GoN, 1990, Article 11). However, there were no provisions for special treatment to various disadvantaged groups, such as in the form of reservation or proportional representation. Similarly, despite the fact that the constitution enabled greater freedom of expression for minority religions and cultures, it still legitimated the country as the world's only Hindu kingdom

retaining the hegemonic monopoly of Hindu culture in Nepalese society. Even though the cultural and religious rigidity of the Hindu culture and caste system started to erode slowly, mainly among the educated youths and in cities, the influence of Hindu culture was still significant among the older generations and in rural areas.

During the 1990s, the policy and practice of equating social justice (*samajik nyaya*) demands with the principle of equality (*samanata*) based on the assumptions of sameness, though a seemingly neutral and 'just' arrangement, did not address the root causes of the persisting inequalities. In reality, it perpetuated the status quo and reinforced the widening gaps between the historically marginalised groups and the dominant groups even further. The practice of interpreting social justice as 'sameness', was to some extent influenced by the persisting 'one nation one culture' discourse inherited from the unitary and singular approach of the *panchayati* period. It was insufficient to address the complex, contested and multifaceted forms of injustice existing in a multi-caste and ethnic, multi-religious, multi-cultural and multi-lingual country such as Nepal.

Moreover, extremely factionalised politics with frequent changes of the government became a characteristic feature of multiparty democracy in Nepal in the post-1990 period. This allowed the continued capture of the central political stage by the ruling elites and conservative elements. Although reducing poverty and removing inequalities became the national policy rhetoric of successive democratic governments, these promises did not translate into any concrete actions. They offered only partial cosmetic changes on

what were the fundamental problems of social injustice and inequalities and could not fulfil public aspirations, particularly of the disadvantaged groups. Due to the continued apathy to the problems faced by historically marginalised people, women, excluded caste and ethnic people, the poor and those living in remote areas of Nepal became more disgruntled and dissatisfied with the inadequate functioning and outcomes of multiparty politics.

The grievances of various disadvantaged groups could have been addressed only by radical structuring of the state in a more equitable and just political framework. Their more radical imaginaries of social justice and the vision of 'just' Nepal, as is still highlighted in several indigenous movements and ethnic politics, is through combining the 'politics of redistribution' and 'politics of recognition', a politically challenging objective. In their 'identity politics', envisioning 'just' institutions requires re-interpretation of the notion of equality largely on a material basis, which is not only about a general rejection of all forms of discriminations and injustices but also a more radical provision for fair and equitable (re)distribution of resources and opportunities.

Under the 'rules of the game' of the multiparty system, the 'majority' continued to rule over the 'minorities', of which the country is mostly made up of, thus neglecting the voice of various groups (Geiser, 2005, p.8; Gellner, 2003, pp.1-30; Karki and Seddon, 2003, pp.3-48). Furthermore, political crisis in Nepal in the post-1990 period, mainly fuelled by the Maoists' rebellion in the form

of the decade-long *Janayudda* (1996-2006), meant that peace and stability remained the priority, yet elusive goal for successive governments. This not only sidelined issues of social justice, but seriously curtailed people's basic rights and freedom. In fact, the core fundamental issues for the elusive goals of peace and stability, as documented in the Maoists' popular 40-point demands before the start of *Janayudda*, were the radical agendas of social justice, eradication of all forms of social discriminations and exploitations, land redistribution, and restructuring of the state (Gellner, 2003, pp.1-30; Karki and Seddon, 2003, pp.3-48). When King Gyanendra assumed executive powers in 2002 and 2005, whatever restricted political rights and civil liberties people were accustomed to during a decade of multiparty politics, were further curtailed.¹¹ Repressive and authoritarian nature of King Gyanendra's direct administration later provided premises for the Maoists and other political parties to organise and mobilise campaigns against monarchy, which gave rise to galvanised protests in the form of *Janandolan-II* of 2006. The political set-up of Nepal has drastically changed since then.

PUBLIC CONCEPTIONS OF JUSTICE IN POST-JANANDOLAN-II PERIOD (AFTER 2006)

It was after *Janandolan-II* that a more vocal emphasis on social equity (as opposed to a mere equality that *Janandolan-I* had partially offered), issues of fairness, inclusion (*samabeshikaran*) and justice, with eradication of all forms of

¹¹ King Gyanendra became the monarch when King Birendra and his entire family were killed in the Nepalese royal massacre that occurred on 1 June 2001.

discrimination, featured in the guise of anti-monarchy protests and pro-democracy demonstrations. Since more than a decade's experience with *prajatantra* after *Janandolan-I* did not bring any considerable effect to soothe the disadvantaged and ordinary people's grievances (rather, it brought more turmoil and instability in the country), many people had felt disenchanted and deceived by the euphoria. During *Janandolan-II*, dissatisfaction with the previous political change of 1990 that could not bring radical transformation to the structure of the unjust and inequitable Nepalese polity and society was expressed with the invention of a new word for 'real' democracy, *loktantra*. *Loktantra* (literally meaning rule of people) differs from *prajatantra* (democracy) in the sense that the latter treats people only as subjects (of the ruler). A major difference in the *loktantra* based notion of justice of the post-2006 period was its stress on social rights (linked to notions of *samanata* (equality) and *samabeshikaran* (inclusion)) and the 'politics of recognition and redistribution' by hitherto disadvantaged groups, whereas *prajatantra* could only offer the political rights (e.g. freedom of expression, right to vote, individual choice etc.).¹² With calls for *loktantra*, ordinary people in Nepal understood it as a harbinger of radical

changes in the social and political structure of the country with social justice, fairness, and inclusion occupying centre stage in the national political conversation. Discourses of proportional representation, equitable participation and empowerment of hitherto disadvantaged groups have also dominated the restructuring agenda of the country. Following the political change of 2006, public discourse on social justice in present-day Nepal has perhaps reached a higher profile than at any other time in Nepal's history, as is evident from the almost-daily demonstrations and regular strikes by various groups with demands of fair treatment, effective participation and a proportionate share of resources and benefits.

The talk of building a *loktantra*-based 'new Nepal' - one built along federal and multicultural lines rather than uni-cultural and centralised - has become the latest sloganeering post-*Janandolan-II*, which can be understood as a decentralised, inclusive and a just nation (RRN and CECI-Nepal, 2007, p.41). Along with this call for a 'real' *loktantra* and a 'new Nepal', there is now a consensus among major political actors that Nepal cannot become a modern nation-state without acknowledging and addressing layers of exclusionary practices based on class, caste, ethnicity, region, and gender.¹³

¹² It can be argued that *prajatantra* based notion of justice has its links to neoliberalism (such as in the ideologies of aid agencies), which can come into conflict with the *loktantra* based notion of justice that can only be realised through more radical proposals (such as inclusion, proportionate representation, decentralisation, federalism and political autonomy).

¹³ What was once considered the popular rhetoric upheld only by the ultra-left Maoists, social justice in Nepal has now become a popular sloganeering for not only the leftists such as the Communist Party of Nepal-United Marxist and Leninist (CPN-UML), but also of the centre-right Nepali Congress Party and other parties belonging to the right of the political mainstream such as the conservative Rastriya Prajatantra Party. However, Maoists are ahead in raising radical issues such as the right to self-determination, cultural and regional autonomy, and linguistic, religious, and gender equality (elimination of patriarchy, eradication of Brahman-Chhetri domination, and caste-based untouchability) more vociferously than other mainstream non-ethnic political parties in Nepal.

These sentiments are well-documented and addressed in the 2007 Interim Constitution of Nepal, which recognises the discrimination and injustices against women, Dalits, Janajatis, Madhesis, and other disadvantaged groups and clearly states the need to give due respect to these groups in the process of restructuring the state (GoN, 2007, Article 33D). The historic Comprehensive Peace Agreement (2006) between the government and the Maoists also clearly states the way forward to reorganise power relations based on a proportionate and federal-based system of political governance while writing a new constitution by the Constituent Assembly, which is the first step towards achieving an egalitarian societal structure. Successive governments post-*Janandolan-II* (interim government of seven major political parties, Maoist government after the Constituent Assembly elections and the 22-party coalition government) have sought to address issues of social justice based on socio-political agendas stipulated in the Comprehensive Peace Agreement (2006) and the Interim Constitution (2007). These governments have also made efforts in various degrees to reduce cultural, political and socioeconomic exclusion while signing agreements with various agitating groups (such as Madhesis, Janajatis, and Tharus). These agreements specify the need to ensure a fair representation of various excluded groups in the political system in a way in which they can participate

effectively and change the outcome in their favour. A review of political programmes and manifestos of major political parties during the Constituent Assembly elections of 2008 also shows their common concerns, at least in their commitment towards the establishment of a full-fledged democratic federal republic of Nepal. However, they differ remarkably in their vision of federalism in Nepal.¹⁴

Hence, at least in the rhetoric of political leaders and popular tea-house discussions of ordinary people, social justice has been a hotly debated issue in present-day Nepal. These debates are taking place in different sites and forms from which 'new discourses' of social (in)justice are being produced and circulated: from intra-party discussions to interparty agreements, from national level interactions to village level meetings, from mass media (newspapers, TV and radio) to various internet forums, and from heated exchanges between parliament members (on provisions of future constitution) to frequent demonstrations by various groups (on premises of perceived injustice and inequalities).

However, access to these platforms and participation in debates is still limited and insufficient for a majority of needy stakeholders (i.e. the poor, women, Dalits, and other disadvantaged groups) who require the most from current and future social justice policies and programmes.

¹⁴ For example, the Maoists have been campaigning for ethnic-based autonomous states with right to self-determination. Nepali Congress and other centre-right parties oppose ethnic-based federalism but lack a clear agenda on the issue. Madhesi parties have been strongly demanding a single autonomous Tarai state with their slogan of 'One Madhes, One State'. UML has been taking a middle ground with their vision of future federal states based on the lines of ethnicity, geography, history and language.

Nevertheless, with the restructuring of the state becoming the main agenda among various political actors, issues of justice, fair representation, and proportional participation will remain at the forefront of debates and guide the demands of various hitherto marginalised communities and groups. Whether and to what extent the present and future political order is able to counter these various forms of historically produced and perpetuated social injustices and discriminations is yet to be seen, but it certainly depends on the strong political will and consensus among major political actors.

It needs to be stressed that there is still a large gap between the conceptualisation of social justice and its actual practice and delivery in Nepal. To some extent, this contradiction between the discourses of social justice in the political rhetoric and its actual reality in day-to-day practice can be attributed to their constantly evolving and frequently contested interpretations and articulations. Social justice is not a static and rigid concept but a hybridised and dynamic notion that changes over time. With a multiplicity of conceptions and meanings, justice may mean different things to different people, groups, contexts, space and time. These discourses of social justice are mediated by the relative influence of diversity of actors and interest groups (including international donors and INGOs, government, political parties, civil society, ordinary people, and various disadvantaged groups), and shaped by different interpretations based on diverse modalities of configurations of power among different social and cultural agencies.

As mentioned earlier the concept of justice in Nepal has, at its historical and cultural

roots, the Hindu notion of *dharma* and various other indigenous traditions. However, the concept of justice, as it is understood today in contemporary Nepal, also contains elements adapted and borrowed from elsewhere through experiences and external networks as a result of a globalised world order. Despite a usual two-way interaction between the older and modern justice approaches, it is to be noted that in many circumstances in Nepal, these older and modern conceptions co-exist and do not engage each other. Modern concepts of justice circulate within the public sphere of national politics, the media, civil society activism, but people's attitudes, behaviours and practices are still governed by various traditional rules and cultural norms. As a result, people selectively apply one set of ideas of justice to the sphere of everyday life and ordinary interactions, and another set of ideas in public debates about the nation and policy. This, in turn, has a bearing on the extent and limitations of national level debates and policies to influence and address existing injustices and inequalities on the ground.

CONCLUSION

As this paper has shown, the discourse of social justice has evolved historically over time in Nepal as a result of internal and external factors, picking various ideas from a variety of sources and actors, and its meaning has shifted gradually from previous indigenous understandings. An interpretation based solely on the Hindu and Buddhist notion of *dharma* has evolved into one based on the principle of equality, which has lately incorporated ideas of procedural justice (fairness, inclusiveness, proportional representation and participation) and libertarian values of

dignity and freedom. Behind this shift and broadening of the concept lies the influence of internal dynamics (for example, the changing role of religion and culture, social and political movements, and education) as well as exogenous factors (for example, the influence of outside world affairs, the transfer of global ideas, and the influence of aid donors).

In present-day Nepal, there are various dimensions of social injustices and inequalities, arising from complexities of differences based on class, caste, ethnicity, gender, religion, culture, and region. Without focusing on the priorities and concerns of various disadvantaged groups who have been marginalised historically, no country can achieve a fair and just social system. This is particularly true in the case of Nepal, which is a country of 'unequal citizens', where there are disparities between the rich and the poor, Brahman-Chhetris and other caste and ethnic groups, Pahades and Madhesis, men and women, cities and villages, and where there is development which only benefits one set of people while neglecting the other. In that sense, the aim of addressing and realising social justice in the complex case of Nepal is a long journey, the first step of which needs to focus on adequately addressing various dimensions of historically produced and perpetuated social injustices.

Social justice in Nepal can only be achieved through the realisation of human dignity (and therefore respectful recognition of various marginal groups), equality of social security, resources and opportunities. This necessarily implies expanding basic rights, ending discrimination, securing long-term

communal property rights, ending the 'untouchability' of the Dalits, and inclusion in national social policies and practices. The constitution-building process in Nepal is an opportunity to create the necessary framework within which the conditions for realisation and delivery of justice can be envisioned with a fair provision and distribution of rights and liberties, resources and opportunities within Nepal's polity, economy and society. Most importantly, as this paper has stressed, for the realisation of any real sense of social justice it is essential that the current restructuring agenda and future public policies of Nepal should address the special needs and aspirations of historically disadvantaged groups that are marginalised in various forms and degrees.

It is also argued that the national policies that principally has the provisions and practices of distribution of benefits and services based on the notion of equality, have failed to recognise the special concerns and priorities of the poor and disadvantaged groups, who actually require special provisions and practical actions with fair and equitable treatments. Claims of justice by mere cosmetic changes and insistence on the existence of policy measures that ensure equal treatment for all (based on the notion of equality) will not be sufficient to address the historically inherited socio-economic divisions between the marginalised and dominant groups. To overcome these differences, there should be special arrangements and more affirmative action for these groups (for example, in the form of reservation and proportional representation) in order to bring them into an equitable 'original position' from which

mutually agreeable social contracts can be explored. In that sense, Nepal's ongoing political transition and constitution-making process should provide an opportunity for different social actors, in particular the historically marginalised groups, to agree to a 'basic structure' from which a more meaningful social contract is developed and their dream for equitable and inclusive 'new Nepal' is fulfilled.

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