Caste-Based Discrimination In Contemporary Nepal:
A problematisation of Nepal’s national policies that address discrimination
based on caste.

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Abstract

This paper critically interrogates Nepal’s national policies on caste based discrimination, that were implemented post the signing of the Comprehensive Peace Agreement in 2006. It uses Carol Bacchi’s ‘What’s the Problem Represented to be?’ (WPR) method for policy analysis to understand the problem representations within existing policies that address discrimination based on caste in Nepal today. This study is conducted vis a vis the role of the current government in shaping the understanding of the ‘problem’ representation in these policies. This study aspires to show that the problem of caste based discrimination in Nepal cannot be represented solely as a problem of poverty and development. Instead policy reforms need to prioritise the recognition of caste based discrimination as a problem, in and of itself in order to alleviate the suffering and discrimination of caste affected groups in Nepal.

Keywords: Caste based discrimination; Dalits; Social Justice; Recognition; Redistribution; Nepal
List of abbreviations

CBS: Convention on the Rights of the Child
CEDAW: Convention on the Elimination of all forms of Discrimination of Women
CERD: Committee on the Elimination of all forms of Racial Discrimination
CON: Constitution of Nepal
CPA: Comprehensive Peace Agreement
CRC: Convention on the Rights of the Child
GESI: Gender Equality and Social Inclusion
GON: Government of Nepal
IC: Interim Constitution
ICCPR: International Covenant on Civil and Political Rights
ICESCR: International Covenant on Economic, Social and Cultural Rights
ICERD: International Convention on the Elimination of all Forms of Racial Discrimination
IDSN: International Dalit Solidarity Network
NC: Nepali Congress
UML: Unified Marxist-Leninist
NDC: National Dalit Commission
MoFLAD: Ministry of Federal Affairs and Local Development
NPC: National Planning Commission
PWD: Persons with Disability
TIP: Three year Interim Plan
UDHR: United Declaration of Human Rights
UNDP: United Nations Development Programme
WPR: ‘What’s the Problem Represented to be’

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1. Introduction

1.1 Introduction

“All human beings are born free and equal in dignity and rights.”


“Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”

Preamble The Universal Declaration of Human Rights.

“It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.”

Preamble, The Universal Declaration of Human Rights.

Contrary to aforementioned universal and inalienable rights that are protected by various national and international legislations of all members of human family, more than 270 million people across the globe today continue to face discrimination based on caste. Caste based discrimination is the one of the most abhorrent realities of the 21st century, that manifests in itself a gross violation of civil, political, economic, social and cultural rights. A chronic human rights condition that continues to affect communities in numerous states in Asia, Africa, the Middle east, the pacific region as well as several diaspora communities around the globe.

Nepal is one of many such states that continue to retain its archaic system of caste. In Nepali society caste remains a fundamental part of the social structure, and does in many cases transcend faith and religion. In 1854, The Muluki Ain (translated as the Legal Country Code) was constituted, and gave differential privileges, rights and duties to higher, middle and lower caste groups in Nepal. The direct implications of its promulgation exists even today (Subedi 2016, p.2). The practice of ‘untouchability’ was, however, abolished in 1963 and anti-discrimination reforms have been an integral part of the last four constitutions of the state.
Subsequent to the signing of the Comprehensive Peace Agreement (CPA) in 2006, after a decade long civil war, the Nepali state has been persistent about its strong commitment to eliminate caste-based discrimination that exists in the country. A number of legal and policy reforms have been enacted, one of which is the Untouchability (Offence and Punishment) Act which came into action in 2011. The 2011 act on untouchability paved paths for many policy level changes and affirmative action, specifically to the civil service hiring quotas, special scholarships for the caste affected children as well as guidelines for local bodies with spending targets for marginalized people to name a few. However, implementation of these policy reforms to promote social inclusion has been shamefully weak.

Caste based discrimination, including the practice of untouchability is still very prevalent in Nepal and exclusionary state practices continue to maintain the historical divides between communities resulting in a great lack of trust in civic institutions. As Carol Bacchi points out, the ambiguity about how to best address structural discrimination lies behind much of the debate about affirmative action (Bacchi 1996, p.20). Such is also the case of Nepal. Affirmative action was part of a broader social inclusion agenda introduced after the signing of CPA in 2006. However, despite the good intentions and a ten-year civil war fought over exclusion, among other issues, affirmative action today remains reduced to a derivative of the political settlement that emerged post-conflict. The catch was a bargain struck by the elites to maintain peace and social control (Drucza 2016, p.162).

1.2 Research area

The research area of this thesis accumulates the discourse that shaped the current national policies that address caste based discrimination in Nepal which were formulated after the signing of CPA in 2006. A historic agreement that marked the beginning of policy reforms that began to formally addressed caste based discrimination in Nepal. The CPA(2006) also laid the foundation for the Interim Constitution (IC) that was set forth in 2007. The ‘Untouchability (Offence and
Punishment) Act (2011)’ is one of many historic achievements in regard to caste based discrimination that the IC (2007) thereafter passed. Historic because, the act happens to be the very first time Nepal has adopted specific legislation that addressed the serious crimes of caste-based discrimination and untouchibility. Given that caste based discrimination relates to the issues of recognition, identity, marginalization, equality and justice in the broader sense, these topics also fall into the area of this study and will be probed when necessary.

1.3 Research problem

The state of Nepal has always been persistent about its strong commitment to eliminate caste-based discrimination. However, the practice of untouchability, deeply rooted in the caste system, continues to be one of the most overseen human rights issues in Nepal today. People who are considered of low caste in Nepal also known as ‘Dalits’ or ‘untouchables' are considered “lesser human beings”, “impure” and thus “polluting” to other caste groups. They face marginalization, social and economic exclusion, segregation in housing, and are often denied their basic human rights. They are also often forced to be employed to do the dirtiest and most menial jobs, which further adds to the stigmatization of impurity they face in their day to day lives.

The inherent structural inequalities in these social relationships create various socioeconomic and civil inequalities. The result is, markedly lower levels of literacy, political representation, land ownership and life expectancy in lower-caste groups. Dalit women and girls are particularly vulnerable and face serious forms of discrimination and violence, sexual abuse, early and forced marriage as well as bonded labour. Young girls from Dalit communities are at a severe risk of being trafficked and sexually exploited. This leads to a default deprivation from development processes, which simply means a dalit child is highly unlikely to get a chance at any meaningful participation in public and civil life, let alone involvement in decision making. Therefore, instead of asking ‘Why’ despite of periodic policy reforms, and being a party state to various international human rights treaties, the state of Nepal has fail to eliminate the problems relating to caste based discrimination; the main research problem that relates to this study, is to analyse
‘What’ has been the problem representation in policy responses in regards to caste based discrimination in Nepal.

1.4 Aim and research question

1.4.1 Aim

The aim of this thesis is to conduct a policy analysis of Nepal’s existing national policies on caste based discrimination. In order to conduct the intended analysis, this paper begins by providing a brief account on the origin of the caste system and how it transverses in the context of Nepal. It further provides a detailed account of constitutional provisions and policies with prior focus on historical discourses and current state of affairs simultaneously. This study is motivated by thinking about the task of policy analysis in a wider political context. This task in this study is endured by critically interrogating Nepal’s national policies that address caste based discrimination in the light of following set of questions.

1.4.2 Research question

*What is the ‘problem’ represented to be in the existing national policies that address caste based discrimination in Nepal?*

In order to answer the research question the following interrelated questions that are built in and designed for policy analysis, in Carol Bacchi’s WPR method will be answered.

1. *What assumptions underpin this representation of the problem?*
2. *How has this representation come about?*
3. *Where are the silences of this representation?*
4. What are the effects produced as a result of this representation?
5. How could this representation be questioned?

1.5 Method and Theory

This paper uses Carol Bacchi’s “What’s the problem represented to be?” (WPR) method designed for policy analysis. The method uses a framework that aims to analyse the genealogical, archaeological and discursive aspects of policies. The main motivation to write this thesis derives from an aspiration to understand the current realities of caste based discrimination in Nepal not from a problem-solving perspective but from a problem-questioning perspective. Bacchi’s WPR method is well suited to ask these questions because the method itself aims not to find a singular ‘right’ solution, but to interrogate how representations come about and how they shape solutions and subjectivities (Bacchi 2012, pp.21-24).

The national policies questioned in this study are organized to address the historical and structural exclusion through redistribution and recognition. Nancy Fraser’s (1995, 2003) three dimensions of social justice i.e economic redistribution, cultural recognition and political representation complement the recurring themes that appear in the findings of the analysis of this study. Fraser’s social justice approach that integrates the cultural and distributive dimensions of theory of justice imparts a credible relevance to the discussion of policy reforms that address caste based discrimination in Nepal and is thus included in this study. Although it is noteworthy that the primary tool that operationalises the material used to conduct this study is Bachhi’s WPR Method, Fraser’s theory of justice assists this study with perspectives that it needed to probe the silences (addressed in question 3) as well as to question how the ‘problem’ representation can be questioned differently (addressed in question 6) in the final stage of the WPR method.

1.6 Relevance to Human Rights
Finding a place for caste-based discrimination in the international legal framework has been a very lengthy and arduous process. The caste affected members of various societies have endured unfathomable difficulties to prove that practices as abhorrent as untouchability be recognised as human rights violations under international law. Strong and persistent activism that led to global awareness about the prevalent discrimination based on caste in various societies around the globe has today made their struggles relevant to human rights law.

International human rights law today addresses caste-based discrimination both directly, through the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) and the UN Human Rights subcommission, and indirectly, through non-discrimination clauses found in various treaties. ICERD was the first international human rights treaty to explicitly outlaw caste-based discrimination within its mandate by finding a place for caste within its definition for racial discrimination. In order to do so, The Committee on the Elimination of all forms of Racial Discrimination (CERD) was formed in 1996 to monitor the ICERD. The Committee also made a link between caste and descent (the term ‘descent’ in Article 1 of the ICERD is where the CERD first placed caste within its definition for racial discrimination). This linkage was further justified by the committee on the factors relating to one’s birth in a specific caste and that one’s caste is unchangeable in societies that they belong in. Having said that, ‘descent’ also weakened the rightful recognition of caste as a category of its own, which is why CERD welcomed Resolution 2000/4 of the Human Rights Commission’s sub-commission for the protection of human rights that recognised caste based discrimination as ‘a form of discrimination prohibited by international human rights law’.

Outside of the ICERD, caste based discrimination can also be indirectly addressed through various other human rights treaties. Many of the defining characteristics and outcomes of the practice of Untouchability encompasses several human rights violations. The International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of all forms of Discrimination of Women (CEDAW) and Convention on the Rights of the Child (CRC) are some other prominent
legal frameworks where non-discrimination clauses can be found, and can be called upon through their specialized perspectives. Nepal is a signatory state to all of the aforementioned international instruments of human rights. And, whilst the state is very keen in ratifying international instruments its violations is rampant. It cannot be stressed enough that caste based discrimination violates a cross section of basic human rights including civil, political, social, economic and cultural rights. An inquiry of any facet of caste based discrimination, thus, carries in itself an enormous amount of importance and relevance to the study of human rights.

1.7 Delimitation

The estimates of the number of Dalits in Nepal vary greatly, which remains one of the greatest impediments to this thesis. According to the official 2011 census, Dalit’s constitute 13.6 percent of the total population. Many researches and Dalit organisation assess this number to be well above 20 percent. Due to lack of credible alternative population data i will be relying on census data in spite of its flaws relating to Dalit population.

Furthermore, the debate over the appropriateness of using the term ‘Dalit’ is also far from new, but must be largely omitted due to the lack of space. Although, it might be worth noting that the terminology has evolved over a period of time and that the nomenclature is chosen and used by the community itself. Today the term ‘Dalit’ symbolises self-respect, assertion, solidarity, and opposition to caste oppression. The genesis of this term that reflects the struggle of a community to reassert its identity however, remains relevant to this study and will be discussed and often revisited thereon.

2. Previous research

There is now a plethora of literature on the exclusion and its impact on socio-economic and political representation of Dalits in Nepal. An ample amount of literature can also be found on the politics of culture and identity in contemporary Nepal. The existing research surrounding the
topic of caste based discrimination in this regard can be comprised in the following few categories:

1. Caste based exclusion in Nepal
2. Current socio-economic and political status of various caste affected groups.
3. Inclusive and affirmative agendas in Nepal

Some focus has been dedicated on the historical context of caste-based discrimination by Bista (1991) and Subedi (2014). The historical account of caste systems in Nepal highlighted in their research provides a basis for the genealogical analysis within this thesis of how/where this representation of the problem has been produced. Poudel (2007) provides a poignant account by focusing on how power, knowledge and pedagogical practices that interact to produce exclusion or inclusion in society. By analysing periodic policy texts in regards to inclusion and exclusion of Dalits, Poudel presents how 50 years of policy history show that most education policies introduced during this time have failed to include Dalits in them (Poudel 2007, p. 189).

Yogendra Gandhari’s research which employs a system analysis to account for the continuation of caste-based discrimination in Nepal, focusing on the socio-cultural and religious factors, economic factors and political factors and the interrelationship between these factors (Gandhari 2014, p. 28). He intends to find the “tipping point” that could break the cycle of exclusion by conducting a system analysis in his research, an approach that seeks to analyse the aforementioned multiple influencing factors (ibid, p.21). Similarly Dahal (2012), Maharjan (2012) and Nepali (2012) contribute to the research and discourse of identity among Terai Dalits, Dalits based in the capital of the state and Dalit women respectively. The socio-economic aspects of concerning the caste affected groups is also extensively researched. Some of the notable ones were conducted by Bishwakarma (2009), Wagle (2014), Bhatta (2012) and Mainali et al. (2017). The topics probed in these research include an analysis of educational status of Dalits in Nepal, economic inequalities among different caste/ethnic groups in Nepal, marginalization as a
byproduct of discrimination and wage differentials among various castes in Nepal respectively.
Kirstie Drucza’s sharp critique of the CPA of 2006 where the author researched the
“contribution of social protection to building an inclusive state in the post-conflict era in Nepal”
(Drucza 2016, p.17) is an important contribution to the study of caste based discrimination and
has also played a significant role in providing important insights to this paper.

3. Methodology
This thesis applies to Carol Bacchi’s ‘what’s the problem represented to be?’ approach to analyse
the existing policies and legal reforms that address caste based discrimination in Nepal. Nepal
passed a law against caste based discrimination and untouchability in 2011 which was followed
by various affirmative action as a tool to promote social inclusion. After almost a decade later,
caste based discrimination continues to stain Nepal’s social fabric. Carol Bacchi’s approach
therefore in some sense resonated as a reminder for the need to analyse Nepal’s policies that
address caste based discrimination from a different perspective.

As stated by Bachhi, “The ambiguous notion of ‘the problem’ as well as ‘the solution’ are
heavily burdened with meaning” (Bacchi 2012, p.24). The main motivation to use Carol Bacchi’s
WPR method for this thesis, therefore, lies in an inclination to apprehend how this meaning was
created in policy discourses in regards to caste based discrimination in Nepal. The first step
hence, is to shift the focus from ‘problem’ solving to ‘problem’ questioning configuration to
order to interrogate the ways in which proposals for change represent ‘problems’.

3.1 Method

3.1.1 Policy as discourse

Policy as a discourse provides us with a systematic way of exploring the discursive aspects of
policy, this according to Susan Goodwin, includes, exploring how problems are represented in
policy and “how policy subjects account for these representations of problem” (Goodwin 2011,
p.167). It has been particularly important in shifting the focus to the role of policy in ‘making’
social problems. Instead of taking a policy as the response to pre-set policy problems, Goodwin points out that policy as discourse is grounded in an understanding of nuances such as the fact that every actor involved in the process of a policy making has their own interpretation of the problem. These interpretations therefore affect the proposed solutions (ibid, p.170).

While there is no unitary ‘method’ for analysing policy as discourse, Bachhi’s method is highly influenced by Foucault or by post-structuralism more generally. It combines the analytical strategies used by Foucault in its framework including discourse analysis, genealogical analysis and archeological analysis (Goodwin 2011, p.173). Furthermore, the strategies that are equally vital to this framework are the ones that are associated with critical policy analysis, interpretive analysing (like the analysis of ‘lived effects’) as well as cross-cultural analysis (ibid, p.174).

The ‘What’s the Problem Represented to be?’ (WPR) approach as a methodology focuses on the study of policy (as well as other areas of thought/analysis/action) and is grounded on two main propositions. The first demands that instead of evaluating policies for their ability to ‘solve’ problems, the focus must be given to study the way policies construct problems (Bletsas 2012, p.38). The second key proposition is that “problematization is central to the practice of government— to governing” (Bacchi 2009, ix-xiii). According to Bacchi, the task in ‘WPR’ analysis is to identify how the ‘problem’ is represented within them and to subject this problem representation to critical scrutiny (Bacchi 2012, p.21). In order to trade on this legal and somewhat of a theoretical minefield, the ‘WPR’ approach provides the following elaborative six guiding questions:
What’s the problem represented to be?:
An approach to policy analysis

1. What’s the ‘problem’ (e.g. of ‘problem gamblers’, ‘drug use/abuse’, domestic violence, global warming, health inequalities, terrorism, etc.) represented to be in a specific policy?

2. What presuppositions or assumptions underlie this representation of the ‘problem’?

3. How has this representation of the ‘problem’ come about?

4. What is left unproblematic in this problem representation? Where are the silences? Can the ‘problem’ be thought about differently?

5. What effects are produced by this representation of the ‘problem’?

6. How/where has this representation of the ‘problem’ been produced, disseminated and defended? How could it be questioned, disrupted and replaced?

Source: (Bacchi 2009, p. Xiii)

3.2 Material

The WPR approach as a methodological tool recommends ‘working backwards’ from concrete policies, program and policy proposals in order to identify what is represented to be the ‘problem’ within them (Goodwin 2011, p.171). Thus, the work of an analyst as stated in Goodwin starts with texts. ‘Text’ in the generic sense, that includes different written, verbal and nonverbal communication from recent or distant past that are of relevance for interpretation. Policy texts in this sense could include documents, files, records, legislation, judicial, decisions, bills, speeches, interview transcripts, media statements, organisational charts, research reports
and even statistical data. Textual analysis will be applied in instances that are not literally textual i.e. in the case of ceremonies (spoken or acted) or organisational culture (as symbols). Contrary to other discourse analysis such as the Fairclough that often selects texts that represent ‘a moment of crisis’ or considered typical, Bachhi’s approach propounds Foucault’s advice to consider ‘practical texts’ (Bacchi quoted in Goodwin 2011, p.172).

The primary data that this study relied upon include legislations that address caste based discrimination as formulated in the Comprehensive Peace Agreement (2006), Interim Constituion of Nepal 2007 and the current governing Constituion of Nepal (2015). The texts that are formulated in National Periodic Plans for policies of the state post CPA (2006) formulated by the National Planning Commision (NPS) of Nepal and the texts from the speeches made on the behalf of the state by one of its prominent actors in two separate occasions are also used as primary data. The secondary data includes material obtained through the electronic version of Nepal’s national newspaper which can be found in both nepali and english language through their respective official websites, independent reports presented by national and international government organisations as well as scholarly articles published in regards to the topic. It is noteworthy that the official government dataset for statistics obtained from the Central Bureau of Statistics (CBS) are often contested by researchers but are chosen primarily because they stand for the position of Nepali government but also due to the lack of reliable alternative data.

3.3 Ethical consideration

No interviews were conducted and no participants were observed during the process of conducting a research for this thesis. The data used in this research are also formal documents and news reports. The ethical concerns in regards to consent of a participant, invasion of one’s privacy etc. therefore, does not arise in this paper as it involves no primary data collection. Transparency and honesty are nonetheless vital to this research and the respect of dignity of the group/community this thesis directly addresses are highly prioritized.
4. Conceptual and Theoretical framework

The WPR method draws on four intellectual traditions namely the social construction theory, post-structuralism, feminist body theory and governmentality studies. While the theoretical underpinnings of the approach are significant, Bacchi clarifies that it is possible to apply the approach ‘without immersing oneself in complicated theory’ (Bacchi 2009, p.xxi). This is precisely why Bacchi’s approach provides a conceptual ‘checklist’ in a set of aforementioned six questions that guides the analytic process. Bearing that in mind, the theories and concepts used in this paper will only play a supplementary role that supports the analysis process whilst the six questions remain at the frontline to probe how ‘problems’ are represented in policies that address casted based discrimination in Nepal.

Bacchi also recommends (although not mandatory) to apply the full set of questions. I have chosen to use all six questions provided and follow the framework that has already been integrated within these set of six questions. The task in Question 1 is to simply “read off” the implied problem.¹ Question 2 requires one to think beyond just policy texts in order to tease out the presuppositions or assumptions that underlie the representation of the ‘problem’ and is supplemented by a form of Foucauldian archaeology which is built to aid the exercise of finding conceptual logics or political rationalities.² Question 3 involves a form of Foucauldian genealogy to trace how the dominance of this problem representation occurs over time and time again by looking at the country's National Reports on Human development. To address the silences in the problem representation as Question 4 demands, Nancy Fraser’s integrated theory of redistribution and recognition is used to supplement the analysis. Finally Question 5 aims to find out the effects of the problem representation. Here the analyst can simply ask various questions like what is likely to change/remain the same or who benefits/who is harmed or who is

¹ In this case policy texts.
² In this case I have taken two speeches that were delivered in two entirely different contexts by Dr. Baburam Bhattacharai. Dr. Bhattacharai in the first instance is making the statement as the Prime Minister of the country and in the second instance as a Chair of Constitutional Political Dialogue and Consensus Committee of the Constituent Assembly of that time.
to blame for “how does the attribution of responsibility for the ‘problem’ affect those targeted etc as Bacchi suggests (Bacchi 2009, p.48). Due to the lack of space I will only be looking at the aspect of how does this representation affect the targeted groups i.e Dalits in this case. And finally finish with question 6 by analysing how this representation of the problem can be questioned, disrupted and replaced. In what follows I would like to briefly elaborate on the concepts of Nancy Fraser that this study is supplemented by.

4.1 Nancy Fraser’s theory of social justice

Although there is a plethora of perspectives in regards to social justice, I only focus on Fraser as they reflect the primary themes of this study. Fraser’s social justice approach integrates the cultural and distributive dimension. According to Fraser (2003) whilst economic injustice is embedded in the political and economical structures of a society, its remedies adressess economic marginalisation and deprivation of resources. Whereas, cultural injustice like caste based discrimination are deeply rooted in the social patterns (Fraser 2003, p.13) whilst the former creates socioeconomic maldistribution the latter on the other hand create status subordination where certain groups can be placed in a position where they can be exploited, these cultural injustices therefore create misrecognition and disrespect (ibid, p.13).

Fraser’s theory is also of relevance because it further focuses on the aspects of remedies that are proposed to address these injustices. Fraser begins by stating that ‘justice today requires both redistribution and recognition’ and one without the other is insufficient. Fraser further points out in speaking about the remedies that whilst the remedy to redistribution can be ‘affirmative’ the remedies of recognition are ‘transformative’ (Fraser 2003, pp. 74-75). A transformative approach to the cultural dimension of recognition could mean keeping the group difference and also revaluing it which raises the self-esteem of the recognised group.
5. Background

This chapter intends to provide a historical overview of the origin of caste, its prevalence in Hinduism, the birth of the notion of ‘Dalit’ and how these themes transversed in the context of Nepal. It also intends to provide a brief sociological and anthropological understanding of the caste system that exists in modern-day Nepal particularly in the case of Dalits. I also intend to revisit relevant previous attempts in state policies in this regard as well as the ones that are in place today. This chapter will also function as a foundation to chapter 6 particularly for Questions 3, 4 and 6 as they rely on the genealogical account for the discussion.

5.1 The origin of Caste

Tracing back more than three thousand years, the Hindu caste system is believed to have originated in the Indian-subcontinent. The notion of caste is also widely believed to be rooted in one of the oldest known Vedic Sanskrit texts known as the Rigveda (The knowledge of verses), which is one of four canonical texts of Hinduism known as the Vedas (sacred writings of wisdom/knowledge). Rigveda is a collection of 10 books and 1028 hymns in approximately 10,000 Vedic Sanskrit verses (Jamison & Brereton 2014, p. 3). Although many of the verses continue to be recited during various Hindu rites in order to initiate ceremonies such as a naming ceremony of a newly born, weddings and funerals making it the world’s oldest religious text that continues to be used today (Kurtz 2015, p. 64), only one of these verses mentions caste. The eternal variety of these texts is also highly controversial amongst many scholars based on how they were believed to be transmitted.

According to Witzel for example, it is unclear as to when exactly the Rigveda was written down, as these Vedic texts at first were believed to have been orally composed and transmitted, without the use of script, in an unbroken line of transmission from teacher to student (Witzel 1997, p. 259). Bearing that in mind, the Rigveda first “introduced” the notion of caste in Hinduism, and
the notion was later elaborated extensively into a system by King *Manu*. An ardent practitioner of the *Vedas* who authored an authoritative book on Hindu law called the *Manusmriti* (*The laws of Manu*) in the 3rd century. And, in this way, a single hymn of *Purusha Sukta* (cosmic being) from the *Rigveda* that was amplified out of its original magnitude in *Manusmriti* further reinforced caste into a system of four *Varnas* (*Colors or Caste*). The word *Varna* is thus significant in the history of the development of caste and consequently untouchability.

According to Waughray, it is in the *Manusmriti*, the *Varnas* were first linked to occupation or social functions namely, *Brahmana* (priests), *Kshatriya* (warriors and rulers), *Vaisya* (traders and artisans) and *Shudra* (serfs and labourers) and are said to have been born from elevated body parts of the Hindu god *Brahma* and are, therefore, associated with a notion of purity (Waughray 201, p.328). The *Brahmanas* are created from the mouth of *Brahma*, the *Kshatriyas* from his arms, *Vaisyas* from his thighs and *Sudras* from his feet (Viswanath 2015, p.259). The caste hierarchy according to the Hindu religious scriptures is shown in figure 1 as adapted in Gandhari (2014). This is precisely where the system of purity comes to play, with utmost purity at the level of *Brahmanas* declining successively and regarding those at the bottom as polluted. Outside the category of hereditary and below the categories of a *Varna* system is the fifth group, the *Ashprishyas or Avarnas* (literally translated as untouchables) in Hindu social order (Kumar 2014, p.36).
The emergence of the fifth Varna is a result of inter-varna marriages, which is technically a result of an individual’s mobility up or down the hierarchy and wasn’t even included in the original class hierarchy structure sourced from the Hindu scriptures. The *Manusmriti* however, as Chandra points out provides a detailed description as well as various consequences directed towards the posterities of mix marriages that create any form of caste mobility as this ultimately creates complexities in the hierarchical system; which isn’t in any circumstances supposed to be contaminated (Chandra 2019, p.1). Consequences predominantly are subjected by exclusion from the *Varna* system followed by structural cruelty and untouchability once excluded.

The *Manusmriti* also inscribes violence to be meted towards those who fall into the fifth category, in verses like the following:

“A low-caste man, who tries to place himself on the same seat with a man of a high caste, shall be branded on his hip and be banished.”

*Manusmriti VII. 281* quoted in (Chandra 2019, p. 2)
“If he mentions the names and castes with contumely, an iron nail, ten-finger long, shall be thrust red-hot into his mouth”.

Manusmriti VII. 270 quoted in (ibid, p.2)

Basically, the varna system functioned as the foundation of the caste system and is precisely where the fundamental materiality of untouchability was conceived, fostered and continues to subsist. The two most important characteristics of this system as we have established in previous parts of this section is to do with endogamy and restrictions in accordance with one’s occupation. According to Deshpande however, the caste system also imposes restrictions regarding food habits i.e only certain kinds of foods can be exchanged between certain castes (Deshpande 2010, p.15). There are also barriers regarding social interactions, the belief of pollution and purity, and the restrictions of class mobility (birth, in particular, confining a person to particular caste) which we have also established in the previous parts of the chapter as other vital characteristics that played a big role in stabilization of the caste system. However, Hinduism, castes and untouchability individually continued to be transformed through many intricate complexities of historical development coupled with the perpetual deconstruction of these ancient texts throughout history up until the present day.

Today there are several subdivisions of the caste called the Jatis (sub-castes), each integrated to various Varnas according to hereditary and occupation (Deshpande 2010, p.22). The word ‘Dalit’ is one such instance of deconstruction or reconstruction(to be more accurate), specifically of the word “Untouchable”. It derives from Sanskrit and etymologically means “broken into pieces” or “crushed”(Dadawala 2016, p.11). The 19th-century writing of Jotirao Govindarao Phule, Dr B.R Ambedkar as well as the Dalit Panthers, a political group formed in 1972 in Maharashtra, India first employed the term (Ghose 2003, p. 85). The aspiration behind it was to designate a dignified and non-derogatory term to refer to the people or communities that were placed outside of the Varna system and were referred to as Avarnas (Untouchables). Phule first used this term in the context of atrocities of the people that were historically suppressed and excluded from societies including the Shudras who were placed at the very bottom of the Varna System. Whereas Dr Ambedkar used the term as a substitute to the term ‘Harijan’ (meaning
children of god -suggested by Gandhi in reference to the untouchables) which was considered patronizing (ibid, p.86). It is hence, paramount to clarify that the term Dalit itself is not a caste or a caste indicative term but a socio-economic category of people excluded from the original Varna system. Dr B.R Ambedkar played a huge role in regards to Dalit emancipation particularly the affirmative action programs through quota provisions, policies of inclusion and anti-discrimination laws in India. An in-depth discussion on his contribution for the Dalit struggles in beyond the scope of this paper but is hereby acknowledged nonetheless. In what follows, I will now examine how caste, untouchability and the notion of Dalit traversed and now disseminates in the context of Nepal.

5.2 Caste in the context of Nepal

According to Macdonell, a considerable number of castes today are known to have tribal origin, others have formed by a cross and such is a case of Nepal (Macdonell 1914, p. 233), an extension of castes which was formed as a result of mixed marriages between Brahmin immigrants and the Mongolian Women. Prior to its unification in 1768 by King Prithivi Narayan Shah, Nepal was divided into several petty kingdoms with no differentiation between law, religion and customs. The only system governing these little kingdoms were the Hindu religious texts which had made its way into Nepal through migration as a reactionary effect of the Muslim conquest of India (Gurung 2010, p. 3).

The earliest inroad of Hinduism is believed to be around the 5th century A.D in Nepal. The oldest surviving manuscripts that were written in Devanagari (script for both Nepali and Hindi language) of the Rigveda Witzel states, were also discovered in Nepal circa 1040 A.D (Witzel 1997, p. 264). The Vedas were transcribed, translated and were religiously used in Nepal. However, it wasn’t until late 13th-century a categorised system of caste first started to be introduced in different parts of Nepal (ibid, p.3). In 13th century Kathmandu (now the capital of Nepal) the Lichavvis introduced an extensive system of 64 castes among Newars, other kingdoms soon followed. The recognition of law and hence justice became synonymous to the
Vedas. Although post-unification of Nepal, King Prithivi Narayan Shah made several attempts to set provisions for trials and appellate courts to shift the responsibility of justice, the caste system had already advanced therefore the Hindu religious texts continued to prevail as the law of peoples (Thapa 2010, p. 921). The Brahman orthodoxy (referred to as Bahunbad in Nepali context) consequently infiltrated the law of the state until the whole system was governed by Hindu religious texts and local customs (ibid, p. 922).

The following figure 2 illustrates the hierarchical order that was established by the 1854 code, which places Dalit at the bottom of the social structure but not outside of it. The Tagadhari (sacred thread wearers) refers to the high caste that includes the twice-born castes like Brahmans (referred as Bahuns in Nepali context) and Chettris who are respectful and holy. The Matwali (liquor drinking) includes indigenous people. Pani nachalne (water touched by whom is not accepted) who are regarded as impure whose physical touch to the Tagadhari and Matwali is not permitted, and contact with whom require a purification ritual as they fall in the low caste. Finally the Acchut (untouchable) within the fourfold are strictly prohibited to have physical contact with the top three castes and were subjected to legal punishment as extreme as death by stoning or other forms of death penalty in accordance to the national code of 1854 (Bishwakarma 2019, p.16).
Figure 2: Caste Hierarchy in Nepal (1854 National Code)


Nepal today is home to 103 ethnic groups and 17 official languages. The religious, linguistic, cultural diversity and caste-plurality are important cultural heritages of Nepal. It is also home to 28.09 million people, 12.8 percent of whom are Dalits (Census 2011). Although this number is often contested by researchers. Caste is at the very crux of everyday life of every single Nepali, meaning an individual’s caste identity in Nepal starts with birth and remains culminated in their surnames for the rest of their lives. A person’s caste can be confirmed by looking at their names. In cities where greater anonymity is affordable, asking for one’s surname or “full name” continues to be a proxy to confirm one’s caste. Prejudice in this sense, is the norm of Nepali society. Usual, expected and accepted. In what follows i will now pay closer attention to the history of constitutional provisions, legislations and policy reforms that were developed to eliminate caste-based discrimination from Nepali society, both before (which are close to none) and after the signing of CPA in 2006.
5.3 History of Policies and Provisions in regard to caste based discrimination in Nepal.

5.3.1 Constitutional Provision

Although the constitutional history of Nepal can be traced back to 1948, any constitution promulgated prior to 1990 had no meaningful provisions for elimination of caste based discrimination (Bhattachan 2009, p.6). The people’s movement in 1990 reinstated democracy in Nepal. Article 4 of the 1990’s constitution for the first time ensured that any form of discrimination based on caste was punishable by law. However, it also contradicted itself in Article 19 by prohibiting change of religion, which continued to confine Dalits in Hinduism and its structure of caste (ibid, p.6).

To imply or even suggest Nepal was aspiring in any meaningful way to be an inclusive state prior to yet another people’s movement that ended in 2006, subsequently with the signing of a Comprehensive Peace Agreement (CPA) would be misleading. This becomes evident if we look at the parliamentary system adopted after the restoration of democracy in 1990. Nepal was a constitutional monarchy at this time. It barely had any Dalits represented as members of the National Assembly (none elected in the House of Representative). In the twelve years history of the parliament starting 1950-1957, 1957-1960, 1960-1990, 1990-2002 only one Dalit was elected as a member of the House of Representatives, and 8 were nominated as the members of the National Assembly, none was a woman. Bhattachan further points out that since then, “Dalit Upliftment and Protection Bill of 2002 ”, “National Dalit Commission Act of 2003”, “Reservation Act Bill of 2005”, “Caste Based Untouchability Crime Act of 2006” are some of the examples of many failed efforts to uplift the status of the Dalits (ibid, p.7).

In 2006, a ten-year long conflict formally ended with the signing of CPA between the Government of Nepal (GON) and the then Communist Party of Nepal (Maoists). This laid a
foundation that formed the Interim Constitution (IC) in 2007, which replaced the Constitution of the Kingdom of Nepal, 1990, and promised political reforms including full democracy, inclusion, republican form of government, federalism, and secularism as mandated by the People’s Movement of 2006 (Bhattachan 2009, p.20). As committed in Article 35 (14) of the Interim Constitution (IC) “to pursue a policy making special provisions on the basis of positive discrimination”, several policy reforms like the affirmative action in Nepal’s civil service and political parties as a part of a wider social inclusion agenda was put in place (Drucza 2017, p.161).

Constitution of Nepal (CON) 2015 is the present governing constitution of the state. It contains a comprehensive list of fundamental rights and provisions for the effective protection of Dalits and other marginalized groups that are in line with the UDHR, ICCPR, ICESCR and other international human rights instruments (CERD/C/NPL/17-23 2017, p.4). The constitution also recognises ‘the right against untouchability and caste based discrimination’ and ‘the rights of Dalits’ as fundamental rights’; all forms of discriminatory treatment on the ground of caste is outlawed and entails compensations that are provisioned by law for the victims. Institutional safeguards such as independent judiciary are also recognised (ibid, p.5).

Nepal was globally applauded for the considerable state restructuring process of this scale with the promulgation of the new constitution in 2015. It formed a three tier government, completed elections at all levels followed by the elections in 2017 with a leftist majority government in the country. The Following Table 1 provides a “timeline” with a list of some of the inclusive provisions made after the signing of CPA as adapted in Drucza (2017).

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3 Repealed by the constitution of 2015
Table 1: Historical Inclusive provisions Made after the CPA (2006)

<table>
<thead>
<tr>
<th>Initiative and Date</th>
<th>Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amendment to the Citizenship Act November 2006</td>
<td>Provision of citizenship by descent from both the father and the mother. Easy access to citizenship for Madheshi/Terai people with one parent born in India.</td>
</tr>
<tr>
<td>Interim Constitution 2007</td>
<td>Recognition of traditionally marginalized groups. Rights to non-discrimination and equal social recognition to Dalits.</td>
</tr>
<tr>
<td>Interim Constitution Amendment March 2007</td>
<td>Provision of proportional representation in state affairs to all marginalized and excluded groups and regions.</td>
</tr>
<tr>
<td>Constituent Assembly member Election Act 2007</td>
<td>Adoption of a mixed electoral system with both. First Past the Post (FPTP) and proportional representation system.</td>
</tr>
<tr>
<td>Amendment in Civil Service Act 2007</td>
<td>Provision of reservation quota in civil service.</td>
</tr>
<tr>
<td>Ratification of ILO 169 2007</td>
<td>Ensured the rights of Janajati with regard to culture, land, natural resources, education, traditional justice, recruitment and employment conditions, etc.</td>
</tr>
<tr>
<td>Ordinance on social inclusion 2009</td>
<td>Made public services more inclusive</td>
</tr>
</tbody>
</table>

Source: (Drucza 2017, p.170)
5.3.2 Policies

On June 3, 2007, the Interim Constitution of Nepal also nominated 16 members to the National Dalit Commission (NDC) as a Nepali constitutional body that provides safeguards against the exploitation of Dalits. This was later stipulated in the 2015 Constitution of Nepal. NDC’s primary function is to formulate, review, evaluate, and monitor “national policies and programs in matters related with ending caste based discrimination, untouchability, suppression and to enhance Dalit’s status and development and to forward a recommendation to the government of Nepal for implementation” (CON 2015, Art. 256). Nepal’s periodic planning process led by the National Planning Commission (NPC) also came into the picture as an apex advisory body of the Government of Nepal that formulates these national policies and programs that is set to address caste-based discrimination in Nepal.

Periodic planning has taken place in Nepal since the late 1950s. However, only some of them were fully implemented given the political instability of the state, none of which had anti-discrimination policies as a part of its objectives up until the Ninth Five Year Plan (1997-2002). Periodic plans are reflective documents that provide a broader framework to what a state plans for its better future. From 1956 up until now, 15 periodic plans have been planned, implemented, and reviewed, each with a specific objective. The Ministry of Federal Affairs and Local Development (MoFALD) specifically monitors the dalits and Indigenous issues and works closely with GESI policy (2009) that works under the Federal Affairs Division of the Ministry (CERD/C/NPL/17-23 2017, p.5).

Besides the aforementioned constitutional provisions and national policies, there exists a plethora of national policies, acceptance of international human rights norms, national human rights

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4 The first commission for Dalits was set up in 1923.
5 The National statistical organization of Nepal, the Central Bureau of Statistics (CBS) functions as a specialised entity of the NPC.
6 NPC released its current i.e the 15th five year on 3rd March 2020 (NPC releases 15th five-year plan, 2020)
7 The national periodic plans are vital documents where the policies regarding caste-based discrimination are formulated, i will elaborate its relevance in chapter 6.
institutions, government institutions through which the state of Nepal addresses caste based discrimination that exists in the country today. To list them all is truly outside the scope of paper. Affirmative action or reservations, as they are called in Nepal has also emerged as a key policy to correct historical discrimination and injustice. The most central part of which is to remain to reshape the socio-demographics of the bureaucracy.\textsuperscript{8} The adoption of the policy of reservation has been highly appreciated by the Dalit community which in itself is a strong argument for continuation. In what follows I will now, pay a closer look at national policies and legislations that address these issues in order to examine what ‘problem’ is represented in these policies.

6. Analysis

In what follows, I will analyze the policies that address caste based discrimination in Nepal and further supplement the analysis with relevant material. Questions 1, 2 and 5 are originally developed in this chapter whereas 3,4 and 6 are expansions of their account made in the previous chapter. The set of six questions will be analysed respectively in the advised format nonetheless. Finally a summary is collectively drawn in the conclusion.

6.1 What's the ‘problem’ represented to be in policies that address caste based discrimination in Nepal?

The first question posed by Carol Bacchi in ‘what is the ‘problem’ represented to be? is a clarification exercise that builds on the premise that, since all policies are problematizing activities, they contain implicit problem representation. The main goal of the first question therefore, is to identify implied problem representations in specific policies or policy proposals (Bacchi 2009, pp.3-4).

\textsuperscript{8} I will revisit this in depth in chapter 6.
The signing of (CPA)\(^9\) in 2006 centered much around its grand vision of building a ‘\textit{naya (new)}\) Nepal. The preamble of which expresses a strong “determination to carry out a progressive restructuring of the state to resolve existing class-based, ethnic, regional and gender problems” (CPA 2006, p.1). The 2007 interim constitution reiterates this by committing that Nepal will become an inclusive, multi-ethnic and equitable state. Social inclusion therefore became analogous with the vision of building a ‘new’ Nepal (Interim Constitution of Nepal 2007, p.1). Many policies and programs, implemented thereafter to serve this vision hence incorporates and reflects this socially inclusive state building agenda. My initial task here is thus, to question: when the government of Nepal proposed this socially inclusive state, what was the ‘problem’ represented?

The Ninth Five Year Plan (1997-2002 and the Tenth Five-Year Plan and (2002-2007) are credited for highlighting Nepal’s intentions in regard to caste based discrimination for the first time. The Ninth Five-Year Plan for example was adopted with an aim of poverty reduction (HMG 1997, pp 3-8), but also happens to be the first one of its kind\(^10\) that officially confessed the marginalisation of excluded groups in the national policy system in accordance with the Local Self Governance Act of 1999. It still serves as one of the vital documents that lays out participation of excluded groups in local development. Although, the Ninth Five Year Plan was formulated prior to the signing of the CPA in 2006, its implications are important to this study as the consecutive Tenth Five-Year Plan is a continuation of the same objectives which was formulated after the signing of CPA (2006). Despite being an extensive document both of these documents address social exclusion as the \textit{only} one of the key aspects of poverty and not as an issue of itself. The Ninth Plan explicitly records ‘poverty’ as its \textit{only} objective in its opening statement (HMG 2002, p.1).

\(^9\) The CPA of 2006 included a twelve-point agreement reached between the seven political parties and the CPN (Maoist); the eight-point understanding; the twenty-five point code of conduct agreed between Nepal Government and the CPN (Maoist); the decision made in the meeting held between senior leaders of the seven political parties and the CPN (Maoist) held on Nov. 8, 2006, as well as all agreements, understandings code of conducts reached between Nepal Government and CPN (Maoist); and correspondence of similar intent sent to the United Nations (CPA 2006, p.1)

\(^10\) Nepal officially began the periodic planning process in 1956 (HMG,1956).
The Tenth plan (said continuation) has a separate chapter (Ch.28) that addresses Dalits and neglected communities (HMG 2002, pp. 549-556). The plan also highlights the primary role of the state in the empowerment of Dalits. But as it is a continuation of the previous plan it has ‘poverty alleviation’ as its main objective. According to a World Bank Report this is further highlighted in one of its strategy papers, called Nepal's Poverty Reduction Strategy Paper (PRSP). It is depicted as one of the most serious and comprehensive government statements in regard to exclusion till date. However, the PRSP, only mentions caste specifically when it discusses strategies for Dalit inclusion, and reverts to the term “deprived communities” elsewhere. It proposes “the need for affirmative action to address structural inequality” (WorldBank 2009, p.50).

Similarly, the Three year Interim Plan (2007-2010) also known as TIP 2007, claims to have inclusion at its core but addresses it as an aspect of socio-economic development. Its chapter on social Inclusion highlights the plight of minority and indigenous groups and pledges of “building an inclusive" Nepal (GON 2008, pp-74-93). The document goes on to elaborate on adopting multiple strategies that mainstreams excluded groups in various parts of development processes and outcomes. But, the entire plan yet again has poverty reduction at its core, which it portrays through the narrative of social inclusion. Yet another one of these documents, The Interim Plan (2010-2013) or TIP 2010 further strengthens the concept of inclusion by including gender into its approaches. This approach of Gender Equality and Social Inclusion (GESI) has an extensive group specific sections for Women, Dalits and Persons with Disability (PWD). It is elaborated with detailed plans laid out for each group ( GON 2013, pp 260-290). Furthermore, the 13th Three Year Plan (2013-2016) or TIP 2013 strengthens TIP 2010 by adopting access, inclusion and equity and pledged inclusion of Women, backward and deprived communities and Dalits in state affairs. Both of these documents are, however, overwhelmingly ambiguous as they fail to adequately address the issue of diversity and intersectionality within Nepali society. All of these aforementioned documents that formulate national policies on caste-based discrimination evidently identify exclusion as a ‘development problem’ and has ‘poverty-alleviation’ as the solution to the ‘problem’. The hesitation to use the term ‘Dalit’ which is often replaced by
euphemisms such as “oppressed”, “depressed”, backward” “deprived” and “disadvantaged” shows the unwillingness to recognise caste discrimination as a part of the problem formulation.

6.2 Assumptions that underpin this representation of the ‘problem’.

Question 2 begins by asking which presuppositions or assumptions underlie an identified problem representation i.e the background ‘knowledge’ that is taken for granted. The task is to identify the conceptual premises or logics that underpin the problem representation by examining the epistemological and ontological assumptions (Bacchi 2009, p.5). Bachhi clarifies that the assumptions that are to be identified here aren't the ones held by the policy makers but the ones that are lodged within the problem representation (ibid, p.5).

6.2.1 The Dyad of social inclusion/exclusion

It is of utmost importance to reiterate that the entire process of federal restructuring of Nepal post CPA wasn't just meant to decentralise the then existing power but an important step towards a wider agenda of inclusion. The goal was to encompass institutional reforms that guarantee ethnic proportional representation and recognition of Nepal’s ethnic and cultural diversity. Major parties at play like the Nepali Congress (NC) and the Communist Party of Nepal (Unified Marxist-Leninist), UML, hailed the said inclusive federal restructuring and actively participated in drafting a federal model in constituent assembly. The overarching themes of assumptions in the policy discourse of caste based discrimination is thus divergent in two important aspects: 
(a) redistribution of power and resources and 
(b) recognition of Dalits in the sociopolitical context of ‘New Nepal’.

The discourse on caste based discrimination in Nepal post CPA 2006 hence is found to be widely adressing redistribution through inclusion and recognition through exclusion as binaries where redistribution is valued more than recognition as the problem represented is concerned with development. This is also precisely where the key concepts of affirmative action, reservation and

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11 “Conceptual logic”: meaning that must be in place for a particular problem representation to make sense (Bacchi 2009, p.5)
quota (to assist redistribution) emerge as a solution that continue to subsist as they were constructed to tackle the said ‘problem’ of development through ‘poverty- alleviation’. All of which together continue to shape the societal understanding/knowledge of the ‘problem’ in national policies post CPA 2006 to the promulgation of CON 2015 representing caste based discrimination as a problem of ‘development’. These presuppositions are also evident outside the policy texts but still voice the state’s position on the matter, for example in the statements made on behalf of the state by its prominent actors. They are generally reiterated key words that recur in local texts of all kinds.

In 2011, Dr. Baburam Bhattari, the then Prime Minister of Nepal, and one of the ‘architects’ of the decade-long Maoists insurgency in Nepal in his address to the 66th Session of the United Nations General Assembly in September of 2011 can be found propounding the narrative of ‘exclusion as a problem of development’. In his opening remarks, Dr. Bhattarai on one hand is found paraphrasing what he calls ‘poignant words’ expressed by the Chairman of UML and the then Prime-Minister, Com. Prachanda who refers to Dalits as “so-called untouchables” highlighting the plight of millions of exploited masses of Nepal as those who are aspiring for liberation from all forms of oppression and exploitation (GAdebate 2011, p.2). Whilst on the other hand, he immediately proposes that the “historically structured process of development and underdevelopment of these exploited masses needs to be structurally addressed” thus these issues and concerns will remain on a high priority list that will thoroughly incorporate the UN development agenda (ibid, p.4).

In another instance when 31 one parliamentarians from India, Pakistan and Bangladesh gathered for a meeting of the Asian Parliamentarians’ Forum on Dalit Concerns on 25th November 2014 in Kathmandu, the former Prime Minister and the then Chair of Constitutional Political Dialogue and Consensus Committee of the Constituent Assembly, Dr. Bhattarai reiterated that the Interim Constitution of 2007 ensured the Dalit participation in the state organs through the principles of inclusiveness and proportional representation (IDSN 2014, p. 3). This was followed
by acknowledging that the “governments in our part of the world have, in legal terms, recognized and protected the rights of the Dalits by according titles such as Scheduled castes and Scheduled tribes etc” (ibid, p.4) and that one of the greater achievements of the constitution that was then being drafted would have provision as special rights to Dalits as compensation to past injustices; although no such words were accorded to Dalits in Nepal later in the constitution. These nuanced presuppositions consequently produced key concepts (reservation, quota in this case) which I will examine more closely in Question 5 when I discuss the effects produced by these preconceptions.

6.3 A genealogical account: How has this representation of the ‘problem’ come about?

Previously on chapter (5) specifically, where the discussion on the origin of caste and caste in the context of Nepal is conducted function as a backdrop to this question. Primarily, because question 3 has two interconnected objectives. One reflects on the specific non-specific discursive practices that contribute to the formation of identified problem representation. The second is to analyse how the competing problem representations exist both over time and across space, and therefore develop quite differently (Bacchi 2009, p.10). The chapter on the origin of caste and caste in the context of Nepal serves as a background to the second objective of this question. To conduct the analysis in question 3 Bacchi draws on Foucault’s genealogical theory. Often understood as the exploration of the creation or the genesis of a substance that is being discussed, it is important to clarify that Foucault’s genealogy is not only about the origin story. Ofcourse he is interested in the ‘origin’ but not as something that encapsulates the ultimate meaning, but in the sense of a previous given ‘reality of substance’ (Hook 2005, p. 13). The task therefore is to locate a precontext, to plot a particular historical ‘surface of emergence’, Foucault advises to look for a kind of knowledge of details and varied accumulation of varying knowledge of various circumstances that underlies the said knowledge or knowledges (Foucault cited in Hook 2005, p.14). The purpose of question 3 therefore is to, as Bacchi points out, “highlight the conditions

12 Dr. Bhattarai fails to mention that no such nomenclature is being considered in the case of Nepal to be included in the constitution that was in the process of being drafted at that time.
that allow a particular problem representation to take shape and to assume dominance” (Bacchi 2009, p.11). To answer this I will pay a closer look at where the key concepts that we discussed in the previous question emerges.\textsuperscript{13}

Firstly it is important to note that following its metamorphosis since its origin the caste system in Nepal today, even though it is based on the original \textit{Varna} system of the \textit{Manusmriti}, doesn’t replicate the model according to Dor Bahadur Bista, a well known Nepalese anthropologist in his book \textit{Fatalism and Development: Nepal’s Struggle for Modernization} (Bista 1991, p. 42). The caste hierarchy was, instead legally enforced by the promulgation of \textit{Muluki Ain} (National code) in 1854, that incorporated within itself the fourfold caste structure that continues to exist today. It is therefore important to note that unlike the caste categories in India (where it originated) that continues to subsit predominantly in the hindu religion, in the case of Nepal, along with its deep roots in religion, number of historical and legal markers were responsible for restructuring of the state and are largely also responsible for continuation of the practice of caste- based discrimination (Bhattachan et al. 2009, p.2). Secondly, because the word Dalit is used synomonomous to caste based discrimination in Nepal it is important to locate when the terminology first emerges. The term was first introduced in Nepal by Dr Ambedkar during his visit to Nepal in 1956 and was later used in the name of the first Organization in Nepal to address untouchable issues called the \textit{Rashtriya Dalit Jana Vikash Parishad} (National Council for Development of Dalit) in 1967 (Giri 2012, p.74). The first ever National Council ever established for the empowerment of Dalits has ‘development’ in its name.

Nepal’s Dalits are also defined as a priority group in development interventions as well as reports on human development yet again portraying the problem as a ‘development’ problem. Instead of addressing the structural discrimination the underdevelopment of these “priority groups” are conveniently used to maintain the narrative of ‘development’ as a problem. Nepal’s Human Development Reports are engrossed in this narrative and all of them continue to maintain it. The first Human Development Report in 1998 was grounded in a political economy

\footnote{The key concepts of affirmative action, reservation and quota will be discussed in depth in question 5 as the effects of the problem representation in question.}
perspective and a series of actions were recommended to reorient society. The 2001 report was focused on poverty reduction and governance and calls for enhancing local government and encourages the promotion of empowerment of marginalized groups. The 2004 Report examined poverty from empowerment, and finally the last published 2009 Report focuses on persistent inequality in human development as the cause and the effect of exclusion (GON & UNDP 2014, p.5). Genealogies that are reflected in these reports is helpful in understanding how a ‘problem’ takes a particular shape.

6.4 Addressing the silences in ‘problem’ representation.

The objective of Question 4 according to Bacchi is to reflect and consider the issues and perspectives silenced in identified problem representation (Bacchi 2009, p.13). The task here is to contemplate alternative ways to think about ‘problem’ that is neglected because the ‘problem’ is represented in a certain way. The analysis conducted in Question 2 and evidence of the continuity of problem representation in various important milestones of the country shown in Question 3 hence functions as a point of references.

6.4.1 Redistribution without Recognition

The most recent incident that sent a global shockwave and brought to light how Nepali government has systematically failed to confront the abhorrent realities of caste based discrimination in Nepal was reported on May of this year. According to a Human Rights Watch report, on May 23, 2020, a 12-old Dalit girl was found hanging from a tree, a day after community leaders in one of the districts of Nepal ordered a 25-year old man of a different caste who had raped her to marry her as a “punishment” (Nepal: Ensure Justice for Caste-Based Killings, 2020). The same day five Dalit men were killed in another district that involved a dispute over inter-caste marriage. Both incidents involved allegations against elected local government representatives (ibid 2020). Despite constitutional guarantees and empowerment provisions, impunity for caste based discrimination remains rampant. The biggest deficit in addressing the problem is in honesty.
Taking notes of Fraser's theory of justice, her integrated theory of redistribution and recognition is very helpful to understand the silences in ‘problem’ representation in policies of Nepal that address caste based discrimination. The claims for social justice in Nepal mirrors Fraser's general observation on social justice and is visibly divided into the claims of redistribution of resources and claims for the recognition of cultural differences. Whilst much progress has been made in the redistribution front, a meaningful recognition of the cultural difference that exists in Nepal is sorely neglected. The result is, as Fraser warns, the evident decoupling of the cultural politics of difference from the social politics of equality that the last 3 questions have attempted to highlight (Fraser 2003, p.1). Fraser also rightly points out that justice requires both redistribution and recognition and that neither alone is sufficient (ibid, p.1).

There is no doubt affirmative policies in Nepal, has successfully addressed many issues that were concealed before the signing of the CPA, but a truly meaningful policy reforms is futile without acknowledging the deprivation, rightlessness and misrecognition that is conspicuously evident in the case of every caste group that faces discrimination based on caste, work and descent in Nepal. Cultural norms in Nepal have always produced and continue to produce various unfair outcomes, which is why redistribution alone is not enough as injustice occurs at the structure level which requires recognition of social group difference and identity.

Fraser further points out that ‘whilst redistribution produces political and economic changes that result in greater economic equality, recognition is vital to redress the harm of disrespect (Fraser cited in Bishwakarma 2019, p.138). Recognition is about the very element of ‘dignity’ that is built in the fundamental principle expounded in the Universal Declaration of Human Rights. Not only that, Dalit of Nepal are also not a homogenous group but are segmented in 26 separate sub-castes as identified (many remain unidentified) by National Dalit Commision, and have a hierarchial caste relationship with each other (Bishwakarma 2019, p.40). According to an independent report published by World Bank in 2009, the official category of Dalits in Nepal
however, continue to be be presented in two broad groups of Hill Dalit and Terai\textsuperscript{14} Dalit, even though the research including the ones that are conducted by various NGO and INGO show that Dalits have no geographical centre or traditional homeland (WorldBank 2009, p.58). The same report also claims that no exercise has been conducted to produce a universally accepted list of “who is and who is not Dalit” (ibid, p.59). These categories just like the binaries have a functional purpose and give particular meaning to the problem representations. In this case, these categories when the ‘problem’ is represented as the problem of development silences the ‘development pattern’ which greatly varies by sub-caste group that the very policies fail to recognise. The analysis performed in Question 2 is in sync with this pattern of simplifying complex experiences.

6.5 Effects produced by this representation of the ‘problem’.

Question 5 is a continuation of the critical analysis previous questions have started. Starting from presumptions the analysis so far has attempted to show how problem representations create binaries, key concepts and categories. The task now is to interrogate how these problem representations function to benefit some and harm others and what can be done about this (Bacchi 2009, p.15). In order to perform this assessment a direct attention to the effects of problem representations is required, which can be achieved by questioning the premise of an evidence based policy as the WPR approach (as mentioned before) is not about the problem solving approach but more of a problem questioning assessment. Bachhi advises to identify three interconnected and overlapping effects i.e discursive, subjectification and lived effects (ibid, p.16).

\textsuperscript{14} Nepal is divided into 3 geographical terrains Hill, Terai and Mountain
6.5.1 Discursive subjectification and lived effects of Reservation

Discourses on social inclusion, as I have also previously mentioned, became very intense post Maoist’s ‘People’s War’ that ended with the signing of the CPA in 2006. In response to which the Government of Nepal introduced a reservation policy in 2007. This was an amendment of the 1993 Civil Service Act which I previously listed in Table.1. This particular Act allocated 45% of total seats to disadvantaged groups and the remaining 55% goes to open competition. Out of 33% are allocated for women, 27% for Indegenious groups, 22% for people from Terai, 9% for Dalits, 5 % for people with disabilities and 4% for people that come from backward regions (GoN 2007, p.3). Furthermore, the act also emphasizes poverty as a primary criterion for the eligibility for reservation (ibid, p.4). The discursive effect (benefits some/harms others) in this case in my opinion is created primarily with the following few factors (amongst many) listed below and tends to harm each group in some way or the other as well as prevents equal benefit sharing.

1. All the disadvantaged groups are put into a single homogenous category.
2. There is an overlap in groups and even duplication in some groups for example Dalits are already divided into two categories i.e Hill Dalits and Terai Dalits. The provision has 22% seats allocated for people from Terai (these include everyone including the Dalits from this region) and a separate 9% for Dalits, which can create tension between Hill Dalits and Terai Dalits.
3. There is also the lack of authentic and reliable data of the actual population of Dalits and indigenous groups which has been time and time again brought to light by various anthropologists, scholars and researchers (Shahi 2017, p.100).  
4. Without a comprehensive assessment of all dimensions of exclusion and an extensive categorization of reservation as a tool of inclusion, a possibility that the policy may

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15 According to the Central Bureau of Statistics of 2012, Dalits comprise 14 percent of the population. This is contested to be over 20%. (Shahi 2017, p.100)
continue to be under the domination of a limited privileged group even within the excluded groups is large.

5. The civil service Act also lacks specification on matters such as how many times a person can utilize the system in their career. One can easily misuse the system to get promoted in upper position.

The subjectification approach assesses the divisive aspect of the effect of problem representation as subjectification often sets groups of people in opposition to each other. The implementation of the reservation is solely based on caste and ethnic categories and therefore creates inequalities within reservation groups. Article 21 (Right to social Justice) of the IC 2007 along with the article 33 D (1) under the chapter obligations, directive principle and policies of the state, ensures proportional representation to state organs and entitlement for reservation of Seven disadvantaged groups which include the Indigenous population and Madhesis (People from Terai region) as well as the Khas-Arya (the ruling class of Nepal) (IC 2007, pp. 12-15). The present constitution under its article 18 (3) further identifies Khas- Arya’s as one of five ‘distinct’ groups whose development will be aided with special arrangements i.e under reservation quotas. This kind of subjectifications only nurtures the historic wrongdoings as Khas-Arya is not a backward community instead have always been the dominant group, their language is the official Nepali language and are in the forefront in political, economical, social and educational parts of society.

The ‘development’ of all citizen’s narrative, along with the legislations and constitutional provisions like this not only sets groups in opposition but cleverly maintains the hegemony and dominance of the one group over others. This very preservation of the hegemony and the dominance is what creates the lived effect of this problem representation. According to Goodwin, the lived effect of a problem representation is the material impact which limits one's access to resources but also causes material and emotional distress (Goodwin 2012, p.33). The lived effects of the reservation policies in Nepal in this sense therefore can be argued as the ripple effect of the discursive subjectification that causes both material and emotional distress to the caste affected groups.
6.6 Where does the ‘problem’ disseminate, how could it be disrupted?

Now for the final task according to Bacchi, “The goal of Question 6 in a WPR approach is to pay attention to both the means through which some problem representations become dominant, and to the possibility of challenging problem representations that are judged to be harmful”. (Bacchi 2009, p.19). The task therefore builds on question 3, where this study analysed the ‘surface of emergence’ of problem representation and moves forward by thinking about the means through which it reaches the target audience and achieves legitimacy (ibid, p.19).

6.6.1 Challenging the ‘poverty alleviation’ and ‘development’ strategies for inclusion.

There is no question that the policy reforms post the signing of CPA in 2006 brought some improvement for the marginalized communities especially in their education and health indicators, their socio-economic condition has not improved greatly and that there is great disparity in policy and practice. Poverty in Dalits (collectively) are still higher than any other group i.e 41 in 100 Dalits live below the poverty line (Sunam and Shrestha, 2019, p.287). The following Table (2) demonstrates a comparison of poverty levels during 1995-2010 categorized by the ethnic group.\(^\text{16}\) It is important to note the categorization used in this statistics as they are different from the categories used in the policy plan and reports that are mentioned in the early parts of the analysis. The category of people from the Hills here are divided into 3 groups and same is the case for the people from Terai. The category of ‘janjati’ in table (2) is the indigenous population of Nepal which also have ‘untouchables’ within its population. Furthermore, the category of the ‘other’, comprises amongst other unidentified castes, also the Dalits who are through religious conversion fighting their own historic construction of caste in

\(^{16}\text{These datas were first translated into english by the Central Department of Sociology/Anthropology at Tribhuvan University Nepal (2014) in accordance to the ones published originally in Nepali by Central Bureau of Statistics (2012) and are sourced from Drucza (2016).}\)
order to regain their self-worth and dignity (Pariyar 2012, p.1). These inconsistent
categorizations of ethnic groups directly affect their eligibility to access quotas that the
reservation ensures which the paper already highlighted in the previous section. Furthermore,
regardless of the discrepancies on the categories of the ethnic group Table (2) shows different
poverty levels and poverty reduction over time, and how certain groups have faster poverty
reduction and have maintained the pace over time.

Table 2: Comparison of poverty levels during 1995-2010 categorized by the ethnic group

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>Hill Brahman/Chhetri</td>
<td>35</td>
<td>18.8</td>
<td>17.7</td>
<td>-46.3</td>
<td>-5.9</td>
</tr>
<tr>
<td>Hill Janajati</td>
<td>42.2</td>
<td>35</td>
<td>23.7</td>
<td>-17.1</td>
<td>-32.3</td>
</tr>
<tr>
<td>Hill Dalit</td>
<td>58.2</td>
<td>44.9</td>
<td>42.4</td>
<td>-22.8</td>
<td>-5.6</td>
</tr>
<tr>
<td>Terai Hill/ Middle caste</td>
<td>28.3</td>
<td>24.5</td>
<td>29.2</td>
<td>-13.4</td>
<td>-19.2</td>
</tr>
<tr>
<td>Terai Janajati</td>
<td>53.4</td>
<td>35.2</td>
<td>26.6</td>
<td>-34.1</td>
<td>-24.4</td>
</tr>
<tr>
<td>Terai Dalit</td>
<td>-</td>
<td>49.2</td>
<td>40.2</td>
<td>-</td>
<td>-18.3</td>
</tr>
<tr>
<td>Muslim</td>
<td>44.3</td>
<td>41.3</td>
<td>22.1</td>
<td>-6.7</td>
<td>-46.5</td>
</tr>
<tr>
<td>Other</td>
<td>43.2</td>
<td>49.8</td>
<td>11.1</td>
<td>15.5</td>
<td>-77.7</td>
</tr>
<tr>
<td>All Nepal</td>
<td>41.8</td>
<td>30.8</td>
<td>25.2</td>
<td>-26.1</td>
<td>-18.2</td>
</tr>
</tbody>
</table>

Source: CDSA 2014, as cited in (Drucza 2016, p. 176)

An observation of census data on the basis of caste/ethnicity is useful in questioning where these
particular problem representations have led and are likely to lead. Problem representations
according to Bacchi are held to produce “deleterious consequences” and need to be rethought
(Bacchi 2009, p.43). In order to do so their current status as the ‘truth’ must be questioned. The
Population Monograph of Nepal 2014 Volume II, an analytical report of the census 2011 which
presents an in-depth analysis on social demography and population projections in Nepal prepared
by eminent professionals working in this field provide many important insights. Yogendra B
Gurung uses 2011 census data to understand “who is where ” in the development process inorder
to explore policy insights for the inclusive development agenda of the government of Nepal
(Gurung 2014, p.111). His report shows that caste/ethnic groups have been increasing over the
census period and the data required to do comparisons over the years are missing as there is no such government agency or institution or policy in Nepal which can identify and study communities and groups of the current population. Gurung refers to the Anthropological Survey of India as an exemplery institution, which under the Ministry of Culture handles the population data required to conduct a meaningful comparison of groups over time (Gurung 2014, p. 148). His findings further shows a mismatch in reporting, recording and coding, as well as an unreliable procedure in the census operation process (ibid, p. 151). The statistics discussed here provide us with evidence to question, dispute and disrupt ‘development’ and ‘poverty alleviation’ as representation of problem in policies that are created to address caste based discrimination in Nepal.

7. Conclusion

This study underwent an interrogation of existing national policies that address caste based discrimination in Nepal from a ‘problem’ questioning perspective rather than ‘problem solving’ perspective. In doing so, although in a very small way, this study has contributed towards a better understanding of the problem formulations and the shortcomings of policies that address caste based discrimination in Nepal as solely a problem of poverty and development. Fraser’s theory of justice aided the contemplation required to critically interrogate the problem representation in policies that address caste discrimination in Nepal. The finding of this study reveal that the policies formulated to address caste based discrimination in Nepal is deeply marred by the politics of misrecognition, which not only maintains the structural discrimination of castes but also ironically fails to alleviate the economic exploitation of the very group it aspires to uplift.
7.1 Further research and recommendations

The findings of this study also reveal the urgency for anthropological surveys that study communities and culture in Nepal. An attention to the criterias of eligibility for reservation specifically the language criterion is omitted in this analysis. However, during my time working with this study, it was apparent that a study of this criterion would contribute greatly in understanding how the periodic efforts of inclusion have failed to address the diverse languages spoken amongst various groups in Nepal.
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