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## Contestation movements and the emergence of eco-social contracts in India and Nepal

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WORKING PAPER 2024-03

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# **Contestation Movements and the Emergence of Eco-Social Contracts in India and Nepal**

*Alina Saba and Gabriele Koehler*

May 2024

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## **Abstract**

In the past two decades, there have been considerable political changes in India and Nepal, starting in 2004 and 2007 respectively. In India, a broad coalition of progressive parties formed a new government. In Nepal, a 10-year armed civil conflict ended in 2006, and new forms of governance were introduced in a multi-layered peace process. In both countries, a “social turn” could be observed, which the authors define as a move toward progressive, rights-based policy making. The introduction of new legislation around political rights, socioeconomic justice and inclusion, and protection of the environment can be understood as an emerging eco-social contract.

However, the relatively progressive, eco-social phase of the 2000-noughts has now weakened. In the case of Nepal, contestation around an eco-social contract continues despite some concessions garnered from the ruling elite; in India, the eco-social contract is under attack altogether.

The paper highlights socioeconomic and policy similarities between India and Nepal and presents the different roles and demands of civil society movements in each country. It concludes that reform—political, legislative and legal—and behavioural change are prerequisites for inclusive eco-social contracts, but the former will not fructify without pressure and contestation from civil society movements. The paper puts forward some recommendations as to how to promote this, drawing on the India and Nepal trajectories.

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## Acronyms

AIPP	Asia Indigenous Peoples Pact
ANHAD	Act Now for Harmony and Democracy
BDA	Biological Diversity Act
BJP	Bharatiya Janata Party
CAA	Citizenship Amendment Act
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CIPRED	Center for Indigenous Peoples' Research and Development
CPN-UML	Communist Party of Nepal (Unified Marxist-Leninist)
CSO	Civil society organization
FCA	Forest Conservation Act
FRA	Foreign Contribution Regulation Act
FPIC	Free, prior and informed consent
GDP	Gross Domestic Product
GFOD	Global Forum of Communities Discriminated on Work and Descent
ILO	International Labour Organization
INC	Indian National Congress
LAHURNIP	Lawyers' Association for Human Rights of Nepalese Indigenous Peoples
LGBTQI	Lesbian, Gay, Bisexual, Trans, Queer, Intersex
NCDHR	National Campaign on Dalit Human Rights
NEFIN	Nepal Federation of Indigenous Nationalities
NIWF	National Indigenous Women's Federation
NIWF-Forum	National Indigenous Women Forum
SCs	Scheduled castes
SDGs	Sustainable Development Goals
STs	Scheduled tribes
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UPA	United Progressive Alliance

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# 1. Introduction

This paper is an enquiry into recent political processes in India and Nepal and how they support (or obstruct) eco-social transformation in the two countries.<sup>1</sup> In India, a newly elected progressive coalition formed a government in 2004; in Nepal, a decade-long civil war that claimed 15,000 lives ended in 2006, and new forms of governance were introduced in a multi-levelled peace process led by a People's Movement (*jana andolan*). In both countries, we observe a series of major policy changes. We explore to what extent these political processes can be understood within the context of social turns and emerging eco-social contracts given the declared intention of both new governments to move toward social justice, social inclusion and respect for the environment.

These developments marked a departure from preceding phases of governance and can be understood as a social turn. In both countries, the new governments reacted to concerns regarding stark social and economic cleavages and devoted much-needed attention to social development and the role of social policy. We interpret this social turn as a move toward rights-based policy making, in line with a global development paradigm fostered by progressive governments, civil society organizations (CSOs) and multilateral donors beginning in the 1990s.<sup>2</sup>

The processes in India and Nepal have seen citizens—or their representatives—claiming rights from their respective governments. These struggles have taken many forms in both countries, from Dalit and Indigenous and informal sector movements for dignity and social justice addressing entrenched economic and social inequalities to ecological movements defending their environments. The coincidence and coalescence of such movements suggest that UNRISD's concept of an eco-social contract,<sup>3</sup> understood as an implicit or explicit societal agreement for justice, equal rights and sustainability,<sup>4</sup> can serve as an analytical framework despite political and civil society actors not explicitly using the term.

While notable progress has been made in both countries, this relatively progressive phase that continued into the 2010s has now slowed, and in some cases, reversed. The Covid-19 pandemic affected India and Nepal heavily where governments responded with draconian lockdowns, further exacerbating economic and social disparities. In the case of Nepal, protests for social rights and environmental policies continue as majoritarian elites push back against the government. In India, efforts to create a new eco-social contract, which commenced in an organized fashion when the United Progressive Alliance formed the government in 2004, are now being reversed altogether.

The paper is organized into three sections. First, it tracks India and Nepal's political trajectories presenting the governments' policy decisions related to social inclusion and ecological concerns against a background of persistent impunity regarding class-, caste-, gender-, indigeneity- and faith-directed oppression and violence. It attempts to situate these policy decisions within the framework of emerging eco-social contracts.

Second, the paper analyses current progressive rights-based alliances which are challenging exclusionary practices and formulating demands for economic, social, political and ecological

<sup>1</sup> In terms of methodology, the paper is based on one of the author's NGO experience in Nepal, complemented by a desk review of policy documents and media reports.

<sup>2</sup> For this understanding, see Leisering 2019; Kühner and Nakray 2017; Koehler, Kühner and Neff 2021. UNRISD describes the social turn as a gradual shift in ideas and policies which reasserted social issues in development agendas around and after the UN Social Summit convened in Copenhagen in 1995, see UNRISD (2016:34).

<sup>3</sup> The vision of the eco-social contract is of a tacit, de facto or even overt agreement based on the principles of human rights for all, gender justice, and protection of ecological processes and the diversity of lifeforms, and builds on a transformation toward economically and socially just societies (UNRISD 2021).

<sup>4</sup> UNRISD 2016, 2021, 2022.



justice. Examples in India include: the movement against discrimination based on work or descent (or caste) (GCAP 2020) and the CSO, Wada Na Todo Abhiyan (Keep Your Promises Campaign) (wadanatodo.net), both of which address overlapping intersectional marginalizations; rights-based campaigns, such as the right to information or to basic social protection; and major ecological movements, such as against hydropower dams, industrial encroachments and biodiversity loss.<sup>5</sup>

Examples in Nepal include: movements of the Madhesi people;<sup>6</sup> the Indigenous peoples-led identity and environmental justice movement; and organizations led by Indigenous groups, including the National Federation of Indigenous Peoples, the National Indigenous Women's Federation (NIWF), the National Indigenous Women Forum (NIWF-Forum), the Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) and the Dalit rights movement (Samata Foundation). These alliances will be analysed in terms of their genesis and composition, their political commitments, and their advocacy and mobilization strategies.

The paper concludes with an outlook on necessary steps for the emergence of inclusive eco-social contracts in India and Nepal, and beyond.

## 2. The Social Turn, Civil Society Contestation and Recent Developments Toward an Eco-Social Contract

In both India and Nepal, oppression based on class, caste, ethnicity, indigeneity, faith, language and—overarching all of these—gender identity (Desai 2016; Koehler and Namala 2020) continue to undermine the rights promised in the respective constitutions to “secure for all the citizens justice, economic, social and political” (Government of India 2015; Government of Nepal 2007). Contrary to this commitment, cleavages have worsened over the past decade and are being reinforced by economic inequities and power hierarchies. In both countries, communities that do not comply with the norms and rules of the ruling elites experience marginalization, oppression and societal exclusion.

In India, the current government under the Bharatiya Janata Party (BJP) is turning to authoritarianism, curtailing the rights and freedoms of marginalized groups and codifying ethnicity- and faith-based exclusions with a view of building a “Hindutva” nation riven with structural, systemic violence and social exclusion (Sen 2021; Civicus 2023a). The social turn is being derailed, and the original ethos of the Indian constitution of 1950 as a social contract between the newly independent government and citizens has been usurped, as will be shown in this paper.<sup>7</sup>

Conversely, in Nepal, the political system is moving, at least notionally, to end discrimination and inequality based on caste, ethnicity, faith and gender identity, and the country has been proclaimed a secular state. There are also pronouncements to attune policy making to climate and environmental commitments (Siwakoti 2023). However, this process has been bumpy, with the decentralization (federalization) process rife with conflicts, often violent, regarding the equal representation of Indigenous communities at different levels of government. In 2024, the economic and political power of the dominant ethnic groups appears to be re-entrenching. Nevertheless, in Nepal, the social turn of the post-conflict years has not been overturned, and

<sup>5</sup> Desai 2016; Kothari and Joy 2017; Roy 2019; Shiva 1988.

<sup>6</sup> The Madhesh is the mostly low-lying region along Nepal's border with India. The people, Madhesi, are a regionally excluded group with their own class and caste hierarchies of so-called “high” Hindu Madhesis, Dalits, Muslims and Indigenous Madhesis. According to the 2011 Census, they accounted for 19 percent of the total population of Nepal.

<sup>7</sup> When the Indian Constitution was negotiated, environmental and climate change concerns did not play a central role.

policy making can be understood as a continued, even if challenged, move toward an eco-social contract between various communities and the federal government.

## 2.1 India's recent socioeconomic trajectory

Indian society is deeply fractured (Ambedkar 2011; Drèze and Sen 2013:213ff; Roy 2014; Sen 2021; Wada Na Todo Abhiyan 2023). As Jean Drèze and Amartya Sen (2013) put it: “India ... has a unique cocktail of lethal divisions and disparities”. Even though the Constitution and post-independence governments adopted affirmative action and social justice legislation in support of women, Scheduled Castes (SC),<sup>8</sup> Scheduled Tribes (ST)<sup>9</sup> and other oppressed communities, the caste hierarchy and the domination of the “upper castes” on governance, politics and institutions has held sway. As a result, 75 years after independence, income and wealth distribution remains highly skewed. For example, as of 2022, the richest 10 percent of India's population hold 77 percent of total national wealth. Similarly, 73 percent of wealth generated in 2017 went to the richest 1 percent, while the wealth of 670 million Indians, who comprise the poorest half of the country's population, increased by a mere 1 percent (Oxfam 2021). Regarding climate justice, the “ecological footprint of the richest one per cent of Indians is over seventeen times that of the poorest 40 per cent” (Shrivastava and Kothari 2012, cited in Hande et al. 2017:84). In addition, civic space, such as the autonomy of CSOs as well as media freedom, while guaranteed in the Constitution, is under threat (Civicus 2022; Civicus 2023a).

The United Progressive Alliance (UPA), a 15-party coalition government led by the Indian National Congress (INC), formed the government from 2004 to 2014. They were concerned with the rising inequality in the country. Building on a long tradition of government policy decisions at the ministry level, so-called “missions”, the UPA coalition government introduced a range of new policies to address economic, social and political rights. These policy pronouncements followed a rights-based logic<sup>10</sup> and can be understood as a “social turn”. At the same time, the UPA continued the previous neoliberal government's focus on GDP growth as the easiest solution to overcoming the cleavages.

The policies encompassed environmental dimensions as well, such as in the Mahatma Gandhi National Rural Employment Guarantee Act (Chopra 2014; UNRISD 2016). Explicitly on the issue of environmental protection, the UPA government introduced a set of climate change-related policies (“missions”) covering, for example, enhanced energy efficiency and sustainable agriculture.<sup>11</sup> To enforce these policies, a National Green Tribunal was established in 2010 to oversee cases concerning environmental protection and the conservation of forests and other natural ecosystems and resources (Government of India n.d.; Desai 2016:18). Many of these policies and missions were at least moderately successful (Ghosh 2014; Desai 2016). One could cast this period as an emerging eco-social contract.

<sup>8</sup> Scheduled Caste (SC) communities, also referred to as Dalit communities, fall at the constructed “bottom” of the caste system hierarchy, and of society. Historically considered “untouchable” and polluting communities, they were prohibited from accessing social interactions and participating with other so-called “touchable” castes. Prevented from accessing education, livelihood or occupations outside the caste norms, they continue to be in the worst socioeconomic situation to this day.

<sup>9</sup> Scheduled Tribe (ST) communities are Indigenous communities who are considered outside the Indian social hierarchy. They have distinct languages, culture and practices, and have long lived isolated from mainstream society. The social indicators, as for the Scheduled Castes, are at the lowest levels. See Wada Na Todo Abhiyan (2023) for detailed social exclusion indicators.

<sup>10</sup> These include inter alia, in chronological sequence: the Right to Information (RTI) Act (2005); the Protection of Women from Domestic Violence Act (2005); the Commissions for Protection of Child Rights Act (2005); the Mahatma Gandhi National Rural Employment Guarantee (MGNREGA) Act (2006); The Scheduled Tribe and Other Forest Dwellers (recognition of forest rights) Act (2006); The Unorganised Workers Social Security Act (2008); The Right of Children to Free and Compulsory Education Act (2009); the Protection of Children from Sexual Offences Act (2012); the Sexual Harassment of Women at Workplace (prevention, prohibition, redressal) Act (2013); the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (2013); the National Food Security Act 2013; and the Companies Act (2013).

<sup>11</sup> Adopted legislation include, inter alia, a National Water Mission, efforts addressing the Himalayan ecosystem and a “Green India” policy (Government of the UPA 2012:foreword).

However, this social policy orientation did an about-face when the National Democratic Alliance government, under the leadership of BJP, won national elections and formed a new coalition government in 2014. It introduced a series of discriminatory laws, taking a distinct and deliberate turn away from the more inclusive policy direction pursued since independence. Governance under the new regime is dedicated to rebuilding the “glory of ancient India”, expressly oriented to Hindu nationalism (“Hindutva”), and seeks to present the culture and practices of ancient India as having the solutions to national and global problems. It uses the phrase of the “world as one single family”—a lofty idea which never gained ground in India given the caste hierarchy. In fact, the more recent Citizenship Amendment Act (CAA) and the newly introduced National Register of Citizens are antithetical to the “one single family” ideology. The CAA, which focuses on preventing the entry of Muslim refugees from neighbouring countries into India and disenfranchising people living in India without recognized documentation, will create large groups of “stateless” people from among vulnerable communities, including Scheduled Tribes (particularly vulnerable tribes), nomadic communities and other vulnerable groups such as LGBTQI communities, the urban poor, migrants and others (Wada na Todo Abhiyan n.d.).

The violence against Muslim and Christian communities, including physical violence, lynching, murder and destruction of institutions, has been on the rise since 2014 (Human Rights Council 2022). The so-called upper-caste Hindus increasingly control the cultural symbols, festivals and food habits of minorities and marginalized groups in attempts to eliminate their traditions. The Foreign Contribution Regulation Act (FCRA) refuses or obstructs the renewal of the licenses of civil society organizations which they require to receive international funding. This is designed to constrict their activities, programmes and networking, and undermine their capacity to support vulnerable and marginalized communities.

Independent governance and judiciary institutions are being compromised, consolidating the ruling party's hold on power. Important institutions like the Supreme Court, Election Commission and investigation bodies are instrumentalized to promote the interests of the government, undermining their constitutional oversight roles and responsibilities. One also observes that mainstream media ally their reporting with government views and assessments. Posts in important institutions like the Information Commission are left vacant and appointments controlled to induce the Commissioners to align with government lines (Drishti 2021). Many human rights defenders have been arrested and alleged illegal immigrants forced into detention centres (Singaravelu 2020).

In parallel, the earlier environmental and climate commitments introduced by the UPA government are being dismantled. The BJP government is weakening existing provisions and issuing new legislation or applying “sloppy criteria” (Jha 2023) when approving investments under the excuse of facilitating business. One recent example is the Biological Diversity Amendment Bill of 2021 which now allows the commercialization of biological resources and decriminalizes what had been offences under the original act (Jha 2023), “effectively emasculating regulatory powers contained in the parent laws, namely, the Biological Diversity Act (BDA) 2002 and the Forest Conservation Act (FCA) 1980” (Saldanha 2023).

This unravelling by Narendra Modi's government of the eco-social contract that was emerging under the previous government calls for an explanation. The well-recognized challenges of poor political will and administrative neglect, or even deliberate discrimination in the implementation of constitutional rights and reversal of previous progressive policies, stem from the continued hold of the dominant, powerful elites over the economy, society and government (Sen 2021). The norms and values of equality or “fraternity”—the notion of economic, social and political justice—embedded in the Indian Constitution have not been carried through, leading to a capture of the government and creation of new institutions by the dominant elites. The economic

liberalization process of the 1990s and following years favoured the interests of the dominant castes and communities and further exacerbated the degree of economic, social and political exclusion of other groups from fair opportunities. Consequent measures to secure and deepen the constitutional values were not explored; arguably, the continued elite hold on power facilitated the rise of right-wing majoritarianism and rule (Iqbal 2021). Some examples include the ease with which the Supreme Court de facto promoted right-wing interests in its orders to evict forest dwellers (Sethi 2019) or the dilution of the Scheduled Castes and the Scheduled Tribes Prevention of Atrocities Act (Sethi 2019). Such acts reflect allegiance to the majoritarian caste interests and a surprisingly uninhibited stepping away from the principles of an eco-social contract.

## 2.2 Nepal's recent political and social trajectory

Nepal is a society deeply riven by caste, gender, economic and faith-based inequalities, which are exacerbated in more remote or inaccessible areas of the country, notably for Indigenous communities (Lawoti 2010; Siwakoti 2023; Human Rights Council 2021). As a result of structural inequalities in access to employment, land, capital or social assistance, Nepal, like India (see section 2.1), has extremely high income and wealth inequalities. The richest quintile owns 56 percent of all wealth (Khanal et al. 2019:20). Further, land—a strategic asset for livelihoods—is extremely concentrated: the richest 7 percent of households own 31 percent of agricultural land, while the poorest 20 percent own just 3 percent (Khanal et al. 2019:22). Inequalities are also reflected in social indicators. According to the National Statistical Office, literacy rates in 2020 averaged 72 percent, with 84 percent among men and 70 percent among women, but data on literacy disaggregated by caste, indigeneity or faith are no longer available.<sup>12</sup> Social protection coverage remains low and patchy, despite considerable reform efforts in the first years after the end of the armed conflict in 2006 (Khatiwada and Koehler 2014; ILO n.d.).

Given the dire economic and societal cleavages (Lawoti 2010:7–11), a movement which called itself Maoist developed a set of 40 demands, presented in 1996, for necessary political, economic and social reforms. These included demands for a secular state, abolition of the caste system, Indigenous rights, gender equality, land reform, and minimum wage and social transfer provisions (Adams 1998; Lawoti 2010:19). The monarchy and government did not accept these demands and a violent armed conflict erupted, with brutalities on both sides (Lawoti 2010:15,19f.; Dixit 2006). The conflict between the royalist army and the Maoist insurgents waged from 1996 until 2006. In total, 15,000 people—combatants as well as civilians—lost their lives (Lawoti 2010). In 2006, in a grassroots People's Movement—the *jana andolan*—thousands of citizens took to the streets of Kathmandu demanding an end to the hostilities (Sijapati 2009). In response to this massive public pressure, the parties in the conflict, the then government on behalf of the monarchy and the Communist Party of Nepal (Maoist) negotiated an agreement: the Comprehensive Peace Accord (Comprehensive Peace Accord 2006). It agreed to a “progressive restructuring of the state to resolve existing class-based, ethnic, regional and gender problems”, to convene an interim parliament, and to call elections. The parties also agreed on an Interim Constitution which abolished the monarchy (Interim Constitution of Nepal 2007; Uprety n.d.:1). The new Constitution offered “several transformational guarantees” with a “drastic shift in the rights domain” (Siwakoti 2023:1).

After the 2007 elections, the new government of a now secular Nepal took office. It acknowledged that poverty, inequality and social exclusion (Lawoti 2010; Khatiwada and Koehler 2014) had been the root causes of the decade-long civil conflict, and therefore introduced

<sup>12</sup> Data from a census conducted in the early 2000s showed an overall literacy rate of 54 percent, and only 33 percent for Dalits and 40–50 percent for Indigenous groups (Khatiwada and Koehler 2014:130). The census conducted in 2021 thus shows a significant improvement in the overall literacy rate. However, data are now only disaggregated by the newly instituted geographical districts (provinces) (see website of the National Statistical Office 2021), thus obscuring persistent socioeconomic caste, ethnic and class cleavages. See Subba et. al. (2014:iii) and, for example, UNDP (2020).

massive political changes. It fought for a move from a unitary government system based on the majoritarian groups, to a decentralized—federated—system of local governments, considered more amenable to recognizing, addressing and representing ethnic and oppressed caste interests and concerns.

However, it was not merely focused on regime change. Building on a considerable history of social policy action in Nepal (Koehler 2021), the successive post-conflict governments introduced a series of socioeconomic policies aimed at promoting social inclusion and addressing income poverty, notably in the area of access to health services and in the form of social transfers addressing caste- and income-disadvantaged children, single women, pensioners and people living with a disability or in remote areas (Khatiwada and Koehler 2014:136ff). Tax concessions with positive discrimination elements, such as tax rebates for the employment of women, Dalits and people living with a disability, were also adopted (Chakravarty and Shakya 2021). These reforms were adopted with relative ease, as the end of the conflict freed up fiscal resources from the military to be redirected toward social expenditures (Bonnerjee 2014).

Political governance reform was more demanding. The constitution drafting process (2007–2015) was rife with violent conflict and contentious debates, mainly over the topic of restructuring the state to a federal model (Siwakoti 2023). After a series of violent protests of the Madhesi movement, Nepal was declared a federal state in the Interim Constitution, four months after its initial adoption in 2007. The concept of a right to social justice was introduced for the first time in this Interim Constitution, ensuring inclusion on the principle of “proportional representation” of marginalized groups in state structures, specifically, Dalit, women, Indigenous ethnic groups, Madhesi communities,<sup>13</sup> and poor farmers and labourers (Article 21, Interim Constitution of Nepal 2007). These provisions then paved the way for amendments to the Nepal Civil Service Act and the Nepal Army and Police Acts to include quotas for marginalized groups (Dalit, women, Indigenous peoples and Madhesi communities, among others).

The aim of transforming Nepal into a federal state arose from the movements of Dalits, Indigenous peoples and Madheshi groups. Federalism was viewed as a tool to attain equal rights as citizens and overcome exclusion by acknowledging identities, ensuring their voice and transparent political representation, giving language rights and access to government office and institutions, as well as providing equitable access to government resources (Tamang 2014). The identity issue was central because marginalized groups saw decentralization as a means to redress historical subjugation, for instance, by naming provinces reflecting their identity (Lawoti 2019).

In response to these demands, the Interim Constitution of Nepal (2007) eliminated the centralized and unitary form of government, and instead adopted federalism with a view of bringing an end to discrimination based on class, caste, gender, religion, language, culture and region (Article 138.1) (Hachethu 2014; Saba and Koehler 2023).

In contrast to the marginalized groups’ demand for ethnicity-based federalism, the traditional political parties—Nepali Congress and the Communist Party of Nepal (Unified Marxist-Leninist) (CPN-UML), with the majority of the leaders of both parties belonging to the Hill Hindu or so-called “high” caste—argued that any federalist model needed to be realistic in terms of evenly developing the nation’s economy and infrastructure for administrative ease and accessibility as well as acknowledge challenges in the distribution of natural resources (Saba 2018). These traditionalist political parties, in addition to some groups in the media, the administration and the judiciary, and some civil society groups, considered the identity or inclusion agenda as creating competition and animosities among communities, threatening societal stability. They saw the identity/inclusion agenda as an “external agenda weakening of Nepali sovereignty and as

<sup>13</sup> The Madheshi have often been left out by the hegemonic and monolithic nation-building process of the upper-caste Hindu communities of the hill areas.

nationally divisive” (Thapa and Ramsbotham 2017:7) or as “a disruption to national unity” (Lama 2020:16). This debate was so polarizing that it led to the dissolution of Parliament in 2012. Elections in 2013 enabled the reconvening of the constituent assembly.

After several years of intensive debates in the re-constituted Parliament and strong contestation from many civil society movements, Parliament succeeded in promulgating the new Constitution of Nepal in 2015. Key provisions which can be read in terms of an eco-social contract framework include the agreements on gender equality, the rights of all marginalized communities, demands of the 1996 Maoist programme and the right to a clean environment (Government of Nepal 2015; Siwakota 2023).<sup>14</sup> However, grievances remained. The Madhesi community, for example, objected to the issues of federalism, notably how the electoral constituencies were delineated along ethnic lines (Khanal et al. 2019).<sup>15</sup>

Another contentious provision in the 2015 Constitution was the recognition of those “Khas Aryas”,<sup>16</sup> who are economically poor (“indigent”), as a marginalized group. This entailed a right to affirmative action measures, such as quotas in the elections at both federal and provincial parliamentary levels (Government of Nepal 2015). However, Khas Arya is a generic reference to so-called “high” Hindu castes—Bahuns and Chhetris—who constitute 31 percent of the total population of Nepal and occupy 10 of the highest public offices; of which, all are men except the president (Lawoti 2019; Hachhethu 2017:59). The explicit definition in the Constitution of 2015 of the Khas Aryas community as marginalized as a whole—not merely those who are economically disadvantaged—thus dilutes the idea of social inclusion by disadvantaging, in terms of weighted representation, those groups that are truly marginalized in terms of class or caste (Jha 2017:66; Saba 2018; Saba and Koehler 2022). This clause reveals the challenges of addressing historical discrimination and domination based on caste, ethnicity or faith in Nepal without taking an intersectional approach that considers status related to income/assets, economic class and de facto political power.

Other problematic topics refer to the subsequent implementation of this new Constitution. There have been many reports in recent years of restrictions on human rights, on the freedom of expression and freedom of the press, and on access to justice, in particular with regard to families who were subjected to violence and torture during the civil war, all of which were constitutional rights.<sup>17</sup> Regarding gender and intersectional equality, for example, the Election Commission of Nepal mandated 40.4 percent representation of women in the local election of 2017, such that there had to be at least one female candidate for the mayor and deputy mayor/chair and vice chairperson posts. Similarly, at the ward level,<sup>18</sup> one out of two seats reserved for women among a five-member committee was mandated for Dalit women. Due to this inclusion policy, the first local-level election, 20 years after the civil war, saw the rise of locally elected women and Dalit leaders overall. However, most of the elected candidates for the highest roles, such as mayors (for municipalities) and chairpersons (for rural municipalities), were male: out of 753 chairpersons and mayors elected, only 18 (2.4 percent) were women, of whom 12 percent were Khas Arya identity, while the rest were Madhesi and Indigenous nationalities. Deputy roles of chairpersons and mayors were largely filled by women, coming in at 92 and 94 percent respectively (Pokharel and

<sup>14</sup> Clustered by thematic areas, these are: the right against exploitation (Article 29); the rights of women to participate in all bodies of the state on the principle of proportional representation (Article 38.4); the rights of Dalits, which ensures participation of Dalits in all bodies of the state on the basis of the principle of proportional inclusion (Article 40.1); the right to social justice, and specifically the rights of excluded marginalized groups, including women, Indigenous nationalities, Madhesi communities, Muslim communities, persons with disabilities, gender and sexual minorities, poor farmers, and labourers, to participate in state bodies on the basis of proportional inclusion (Article 42.1); the establishment of a National Inclusion Commission (Article 258); the right to a clean environment (Article 30); and the right to information (Article 27).

<sup>15</sup> When the 2015 Constitution was finalized, there were celebrations in the capital, Kathmandu, while 40 people were killed in the lowlands during the week leading up to its adoption (Al Jazeera 2015).

<sup>16</sup> The Provision under 84. (2) and 176. (6) of the Constitution of Nepal (2015) has an explicit explanation for Khas Arya as “For the purpose of this provision, Khas Arya means Chhetri, Brahmin, Thakuri and Sannyasi (Dasnami) community”.

<sup>17</sup> Human Rights Commission 2021; Civicus 2022; Civicus 2023b; Dixit 2023; Saba and Koehler 2023.

<sup>18</sup> The ward level is the smallest unit of local government in Nepal. There are 6,743 wards in total.

Pradhan 2020). Forty-seven percent of posts were filled by Dalit women, elected mostly as Ward Committee members (Pashwan 2017). Dalit people constituted only 1 percent of mayors, with 50 percent of positions filled by so-called “high” Hindu caste Khas Aryas (Chhetris and Brahmins); 18.6 percent Madhesi; and 11.6 percent Indigenous nationalities (Pokharel and Pradhan 2020). Thus, in terms of intersectional representation, barriers for inclusion in political office remain. Male candidates are favoured over women in decision-making spaces and the diversity of Nepali women is not reflected. Khas Arya women fill most of the highest decision-making roles instead of a proportional representation of Indigenous, Madhesi and Dalit women. Dalit women’s representation was made possible only because of the explicit mandate; the representation of other marginalized women remains nominal.

The outcomes from the first local elections held after decades in the newly established provinces show that the progressive steps taken in the new Constitution do not necessarily translate into greater equality. The election results also show that inclusive policies are implemented only when explicitly mandated for a particular and defined group. Consequently, civil society is demanding the recognition of “Indigenous women” as a distinct category within the Constitution, separate from Dalit women and Madhesi women. It is not to be conflated with women in general, because that dilutes the multiple forms of discrimination Indigenous women face (CEDAW 2018).

Nevertheless, it can be argued that in Nepal, despite setbacks, dilution and obstacles, a more inclusive (Sunam and Shrestha 2019; Saba and Koehler 2023) (eco)social contract is evolving, and that this is primarily due to the persistent contestation—both peaceful and violent—of various communities and identity groups and civil society.

### **3. The Role of Rights-Based Movements for Eco-Social Contract Approaches in India and Nepal**

As the above trajectories reveal, civil society has played a significant and driving role in India and Nepal, pushing for what can be understood as a new eco-social contract between citizens and the government, one that addresses social and economic exclusion and is more sustainable in environmental terms. In the following section, we present some of these movements.<sup>19</sup>

#### **3.1 India**

India has a decades-long history of protest and a “vibrancy of democratic practice and social movements” (Drèze and Sen 2013:274). Struggles against the caste system have seen the Dalit community and women in the informal sector in the forefront (Chopra 2014). The initial struggles focused on the concept of caste hierarchy and untouchability, humiliation, indignity, violence, and the lack of job security and social protection. However, they have since expanded to also address societal inclusion more broadly—economic inclusion, including in the private sector, decent employment and the effective implementation of government provisions (Thorat and Newman 2010).

Contestations around the protection of nature have roots that reach back to the 1960s, such as protests against the Narmada Sardar Sarovar Dam, one of the largest in the country (Roy 2019) and, later, hydropower dam projects (Desai 2016:48). Other movements protested the Mithi Viridi nuclear power plant (Desai 2016:17), expansive industrial zones in West Bengal or Gujarat (Desai 2014:17) and biodiversity theft (Shiva 1988). For example, local farmers protested Tata Motors when they were displaced by Tata’s planned car factory in Singur, West Bengal in 2006. They

<sup>19</sup> One of the paper’s authors has been involved in some of these movements.



were successful in so far as Tata moved the plant to Gujarat, but the farmers recently lost the court case they had filed against Tata (ENS Economic Bureau 2023).

The protests and struggles against caste-based discrimination and for land and ecological rights draw their strength from the active agency and leadership of members of different affected communities (Desai 2014; Kothari and Joy 2017; Wada Na Todo Abhiyan 2023). For example, members of these communities have stood up against violence and atrocities, inter alia with reference to their rights under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. An important campaign in this regard is the National Campaign on Dalit Human Rights (NCDHR).

NCDHR, a coalition of Dalit human rights activists and academics, began work in 1998 with an aim to put an end to caste-based discrimination and spread awareness of Dalit rights and issues. Interventions included promoting community access to justice against discrimination and violence, tracking and monitoring special budgets mandated by the state for Dalit and Tribal development, and promoting Dalit women's rights. NCDHR has effectively raised the issue of caste-based discrimination into the United National Framework of Human Rights as "discrimination based on work and descent". NCDHR is further promoting global coalitions of similarly discriminated communities (see, for example, the Global Forum of Communities Discriminated on Work and Descent (GFOD)). The nationwide protests of Dalit communities (NDTV 2018) that broke out in 2018 in response to a Supreme Court's order to dilute the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act testifies to the continued salience of this issue.

Similarly, the Shaheen Bagh Protest, based in a little-known locality in the Delhi region, has become a symbol of citizen action by women and resilience against unjust laws and authoritarianism. Hundreds of thousands of women, particularly Muslim women and supported by students, organized a peaceful sit-in from December 2019 to March 2020 in Shaheen Bagh against the Citizen Amendment Act and National Register of Citizens, which threatened the citizenship and inclusion of Muslim and other marginalized communities. Women organized their own sit-ins across the country in the states of Bihar, Uttar Pradesh, Maharashtra, Karnataka and many more. The movement is notable for its dispersed leadership, the pronounced agency of women, and the support it garnered from other movements and communities. It is inspirational in its agency and impact.

In a counter-movement to the majoritarian trends, the CSO Act Now for Harmony and Democracy (ANHAD) documented analyses from a number of thought leaders and activists on "reimagining India", sharing the challenges they perceived and strategies for building the "India we want and can imagine" (Bhardwaj 2021). Similarly, a group of national and international human rights-based CSOs and experts convened as the Peoples' 20 in parallel to the G20 Summit which India chaired in 2023 and which projected its Hindutva ideology as mainstream (Kumar and Kahle 2023; Peoples' 20 2023).

CSOs have also come together as a platform—Wada Na Todo Abhiyan (Keep your promises campaign)—to promote governance accountability at the national and global levels through annual reports on the performance of the union government and the progress on meeting global commitments such as the Millennium and Sustainable Development Goals (Wada Na Todo Abhiyan 2022, 2023). The platform proactively uses the "leave no one behind" principle of the Sustainable Development Goals (SDGs) to highlight the status of vulnerable sections of society under the campaign "100 Hotspots: Vulnerable Communities and SDGs in India" (Civil Society Initiative 2021; Wada Na Todo Abhiyan 2020). The campaign collaborates with regional and global civil society forums and campaigns to protect and promote human rights and equality. For instance, in 2023, the Wada Na Todo Abhiyan platform issued a review of the Modi government,



showing how the government introduced wholesale changes in environment and conservation legislation, and their rules of implementation during its second legislature (2019–2023). The government set up a high-level committee that recommended amendments to six major laws governing the environment, biodiversity, forestry and pollution control, covering all previous judgments, so as to ensure the ease of doing business (Jha 2023; Saldanha 2023). The report, written in great haste, recommended “to rely on utmost good faith in the investors to self-govern, keeping in mind the environment and associated socioeconomic and ecological rights”. As a consequence, the 2022 forest conservation rules exempted the statutory requirement of prior consent of the people-based forest rights committees which had been provided for in the Act in 2006. Under the Forest Conservation Amendment Act (2023), over 28 percent of India’s forest cover would lose its protection as recorded forest areas. However, after massive condemnation by civil society, the government agreed not to implement the amendments (Saldanha 2023; Jha 2023).

Great courage and leadership are also exhibited by students and young people in raising their issues and standing up for democratic values. Many of them have suffered the brunt of government repression, being jailed for voicing their opinions. Natasha Narwal and Devangana Kalita from the Break the Cages movement were arrested in May 2020 on charges of supporting the CAA protests (Sharma 2021). They were released after 13 months in June 2021. Umar Khalid, a student leader from Jawaharlal Nehru University, is serving 15 months in jail on charges of plotting communal violence in Northeast Delhi. Activists, including Sudha Bhardwaj, Sudhir Dhawale, Vernon Gonsalves, Gautam Navlakha and Anand Teltumbde, were among the 16 arrested in the Bhima Koregaon case; the late Father Stan Swamy (Front Line Defenders 2021) died in jail. Sudha Bhardwaj and Vernon Gonsalves were later released on bail (Free Them All Net 2022).

### 3.2 Nepal

Nepal had experienced an extreme form of contestation in the violent civil conflict of 1996–2006. As mentioned above, the conflict had been triggered by massive economic and social inequalities, and notably called for land reform and for caste and gender justice. In the post-conflict period, social protests have been multi-pronged. Today, civil society is more effective and united in Nepal than in many other countries, and despite some regression compared to the very ambitious Interim Constitution of 2007, many elements of an emerging eco-social contract have remained, as witnessed both by the provisions in the 2015 Constitution’s articles and by many policy decisions. For example, in 2007, Nepal became one of the first countries globally to anchor official recognition of the third gender, as individuals can choose between three genders on their identification document (Sharma 2015).

Civil society groups in Nepal have taken political opportunities presented by various political movements and governance changes to advocate for the rights of marginalized communities. The role of rights-based organizations and civil society was instrumental along with the contribution of political parties in establishing inclusive policies. The social justice movements of Dalit, Indigenous Nationalities and Madhesi continue to challenge the state for the implementation of inclusive policies.

In 2020, a nationwide independent #DalitRightsMovement was started to protest the killing of Navaraj BK, a Dalit teenage boy, and five of his friends by a mob of villagers over an inter-caste marriage. The social movement that grew out of this gruesome crime continues to advocate against the impunity regarding the murder of Dalits. The movement has garnered support from people of all walks of life, including Dalit rights organizations that are calling for an end to all forms of discrimination and violence based on caste, and creating an environment for Dalits to enjoy their freedom and rights.

The Samata Foundation, a Dalit human rights organization, has established a national network of Dalit human rights defenders who work on monitoring and documenting cases of Dalit human rights violations nationally. It launched a nation-wide discourse both through television programmes and social media on issues related to social justice and Dalit rights. For example, the television talkshow programme, *Jaat Ko Prasna?* (Question of Caste?), which was broadcasted on national television and had 24 episodes, informed the public about caste-based discrimination in Nepal, even during the challenging times of the Covid-19 pandemic.

The Nepal Federation of Indigenous Nationalities (NEFIN), an umbrella organization of 59 Indigenous Nationalities of Nepal, has been collectively advocating for the rights of Indigenous peoples since the early 1990s. It played a key role during the People's Movement of 2006 and in the constitution drafting and revision processes from 2007–2018 by encouraging the government to ratify international treaties such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the ILO Convention on Indigenous and Tribal Peoples (Convention No. 169) in 2007. NEFIN was a key institutional force during that period, mobilizing Indigenous peoples nationally and at the local level for demonstrations and strikes. Currently, it is advocating for environmental and climate rights through its national project, the NEFIN Climate Change Partnership Programme, by engaging with the government's climate programme in line with the Paris Climate Agreement. NEFIN also continues to engage in international policy making at the United Nations and in the regional network of Indigenous peoples through the Asia Indigenous Peoples Pact (AIPP).

The street protests of the Indigenous movement in Nepal have slowed in the last few years, and there is growing pessimism among Indigenous groups (Chhantyal and Rai 2020:6). This may be due to increased weariness, heightened polarization between Indigenous and non-Indigenous communities, as well as some degree of co-optation by political parties (Saba 2018; Saba and Koehler 2023). Instead, the movement has taken to other forms of protest. Thus, Indigenous peoples have mobilized against various neoliberal development projects implemented aggressively by central and local governments in Nepal, especially in collaboration with multilateral development banks, in the hydropower sector as well as projects related to electricity transmission lines and road expansion (Bhattachan 2019:369). LAHURNIP works on free, prior and informed consent (FPIC) and the rights of Indigenous peoples against development projects which have harmed or displaced Indigenous peoples from their homes, locations and livelihoods. In 2021, Indigenous peoples of Nepal won a rare victory against the European Bank-funded high voltage transmission line project for violating their FPIC rights (IWGIA 2021). Since 2016, the Newa Indigenous peoples of Kathmandu valley, with support from LAHURNIP, have continuously organized protests against road expansion projects in urban areas displacing and destroying the homes of native Indigenous groups without FPIC and proper compensation. In April 2023, the Tsum Nubri Rural Municipality of the remote Gorkha district officially adopted the Shagya Act.<sup>20</sup> Passage of the Act will enable the local Indigenous communities to formally implement their Indigenous governance system to govern local natural resources, forest and biodiversity based on Indigenous knowledge (Rights and Resources Initiative 2023). The adoption of the Shagya Act was a result of continuous advocacy by the environmental organization, Center for Indigenous Peoples' Research and Development (CIPRED) and a decentralized form of governance through federalism in Nepal.

Regarding gender justice, there have been many movements (Hewitt 2018). NIWF and NIWF-Forum, national level Indigenous women's rights organizations, advocate for the social, cultural, political and economic rights of Indigenous women both within the Indigenous community and beyond their own community. They have been strongly advocating for intersectional feminism in

<sup>20</sup> Shagya is a practice of Indigenous groups to protect their surrounding natural resources, biodiversity and their cultures.

the Nepalese women's movement to recognize women as a heterogeneous group and address the multiple forms of violence Indigenous women face compared to other women. As Saba and Hewitt (2019:1) put it:

Problems continue to persist with the implementation of constitutional gender provisions and gender-sensitive and gender-responsive legislation, policies and acts, including intersectional recognition of the myriad of concerns that affect women based on ethnicity, caste, religion, language, indigeneity, marital status, geographical location, ability, and access to health and education. Discrimination faced by Nepali women goes beyond the gender binary and patriarchal structure, but is coupled with other intersectional barriers including a deeply entrenched caste system.

In 2018, a consortium of Indigenous women's organizations, including NIWF and NIWF-Forum, submitted a shadow report on the "Situation of the Rights of Indigenous Women of Nepal" (NIWF and NIWF-Forum 2018), bringing attention to the social exclusion and invisibility of Indigenous women in the Constitution, laws, policies, plans, programmes and budget and calling on the state to recognize Indigenous women and Indigenous women with disabilities as distinct legal entities (CEDAW 2018). Following the submission, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) made 15 recommendations to Nepal relating to Indigenous women, observing the lack of recognition of Indigenous women in the Constitution, and recommended amending the Constitution in line with UNDRIP. This is a historic success of the Indigenous women's movement in the international human rights space.

Given the shared concerns about exclusion, discrimination and environmental destruction between the different advocacy groups described above, contestation in Nepal can be seen as a move toward an eco-social contract.

## **4. Summary and Outlook: Building on Experiences in India and Nepal**

In both countries, we observe progress and success. Much of such progress is owed to decades of pressure, action, proposals and pushback against repression, contestation and, in Nepal, an armed conflict. These contestations introduced a series of major political and societal reforms, such as the many rights-based social policy acts adopted in India under the UPA government (see footnotes 10 and 11), and the fundamental political reforms in post-conflict Nepal (see footnote 15). Agreements were reached between governing elites and the majority of society. While framing the discussion in terms of an eco-social contract discourse (UNRISD 2021, 2022:315ff), we remind that, while this is not the terminology adopted by the social movements in India and Nepal, its normative direction nevertheless strikes a chord.

At the same time, the above discussion also demonstrates the challenges of social change in general, and for any lasting, progressive agreements. We conclude on two levels of reflection, drawing on our empirical analysis: regarding the *challenges*, communities marginalized on the basis of class, caste, ethnicity, faith, location and gender, along with their civil society representatives, remain structurally oppressed and often persecuted. The political and socioeconomic trajectories of both India and Nepal illustrate the vulnerabilities of just governance. In India, despite a constitution which ensued from decades of an independence movement, and is devoted to "justice – social, economic and political" (Preamble, Constitution of India 1950), such overarching commitments are being hollowed out. An emerging social contract is being

undermined by an authoritarian government pursuing its own goals which are antithetical to the intent of the country's founding principles. In Nepal, decades later than India's independence movement, an armed conflict eventually resulted in a new Constitution, embracing the "right to live with dignity" (Fundamental Principles, Constitution of Nepal 2015), but its implementation has been fraught and difficult.

In sum, authoritarian, racist, patriarchal and classist government and police actions continue—a trend that is also visible in other countries in South Asia and globally. Therefore, it is crucial that, at the *level of aspirations*, societal, economic and political inclusion and justice remain at the centre of demands. Transformations are needed at all levels. Picking up from the discussion of India and Nepal's recent trajectories, we can glean some generic pointers that speak to the eco-social contract principles introduced by UNRISD (2021, 2022:315ff).

At the *government level*, regulatory reform must be deepened and strengthened. Legislation must ensure genuine intersectionality in affirmative action legislation and its implementation, so as to realize and consolidate social inclusion (Siwakoti 2023). Politically, tokenism needs to be tackled. In India and Nepal, this is the practice of nominally electing representatives of disadvantaged groups, but in reality high jacking their authority by relegating them to secondary places in decision making processes. At the *political party level*, cemented groupings and traditions need to be overcome, such as the entrenched patriarchy observed in India and Nepal (Krämer 2021). Politicians newer to the scene and/or younger persons need to have space to take political power. In turn, their political decisions and choices must reflect and be controlled by independent progressive civil society and democratic institutions.

In the *economic domain*, fiscal policy reform is urgent. Societal inclusion requires progressive fiscal policy for three intertwined reasons: (i) to support adequate social policy expenditures; (ii) to enforce much-needed income and wealth redistribution (Chakravarty 2021; Bonnerjee 2014);<sup>21</sup> and (iii) to enable environmental action (UNRISD 2022:307ff).

Land rights need to be ensured (Kurian and Singh 2020). Access to decent work must rectify the enormous cleavages between the formal and the informal economy and close the gaping gender-, caste-, ethnicity- and faith-driven employment and wage gaps. This calls for fundamental labour law reforms, as a basis for unions, workers and citizens in general, to claim their rights. With respect to our country cases, India ratified the ILO Minimum Age Convention (Convention No. 138) and the Worst Forms of Child Labour Convention (ILO Convention No. 182) in 2017, but has yet to ratify other fundamental ILO conventions, specifically the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98). Nepal ratified most of the fundamental ILO labour conventions far earlier than India but is still missing the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87).

At the *interpersonal level*, the identity of people from marginalized communities needs to be valorized. Progressive intersectionality must bring the causes of all marginalized groups together. This requires public messaging, education and radical shifts in employment policies.

*Norms and ideals*, too, need to be transformed in every society. As a possible model, civil society in India has adopted the concept of the "5 Rs" to promote societal inclusion: marginalized and excluded communities and individuals demand recognition, respect and representation, and there must be access to reparation and reclamation. This approach moves beyond patronage and

<sup>21</sup> Chakravarty (2021) has analysed how India continued its conservative fiscal policy, even during the pandemic. The government was unwilling to enlarge the fiscal deficit, and on the revenue generation side, a cut in corporate tax rates in September 2019 resulted in reduced corporate tax revenue while increasing consumption taxation, thus heightening inequality, including gender inequality.

charity and is an inherently human rights-based approach (Koehler and Namala 2020:340ff). For India, this could trigger a move away from Hindutva ideology, and for Nepal, a coming-together of the different identity groups.

However, affirmative action codices, legislation and judicial reforms, behaviour or norm change, or even societal contracts do not on their own lead to genuine economic, political, social and ecological inclusion (Saba and Koehler 2022; Siwakoti 2023). Rights must be vigorously claimed, backed and reinforced by civil society pressure (Drèze and Sen 2013; Piketty 2020; UNRISD 2022). Activism is the driver. As one legal expert put it: “Legislative changes come off the back of movements” (Her Forum 2021). In short, progressive, rights-based civil society activism and contestation remain key for building new, inclusive eco-social contracts for social justice, as the examples of India and Nepal have demonstrated.

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