

Recent Constitutional Developments in Nepal

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Abstract

Regional disparities do exist in every part of the world. The question remains how effective we addressed it. The recent promulgation of Nepali Constitution had opened the Pandora box. Though Nepal is the oldest Nation state in South Asia, the Political Institutions are very much new to it. The Monarchy which ruled Nepal for 250 years had kept all the institutions in its iron grip. With both its neighbors, India and China intervening in its domestic affairs regularly, Nepal is left out with very little room for an independent policy. It takes time for the growth of institutions and achieving some strength. This paper examines the recent constitutional developments in Nepal and studies how it had addressed the questions of existing social, political and economic inequalities.

Keywords: Nepal, Constitution, Republic, Secular, Constituent Assembly, Madhesis

Introduction

Nepal's new constitution was passed by its Constituent Assembly on September 16, 2015. The successful vote to adopt the constitution ended a seven year long legislative process. Of the 598 members of the constituent members, 507 members voted in favor of the new Constitution. 25 members of Rastriya Prajatantra Party-Nepal, a right wing political party which supports the institution of Monarchy had voted against it as the new constitution will permanently abolish the Monarchy, while 66 members abstained from voting citing various reasons¹. Though some small parties of Tharu and Madhesi ethnic community protested the new Constitution, it came into force on 20th September, 2015 fulfilling the 65 years quest.

In 2008 a Constituent assembly was elected with tenure of four years. However it failed to deliver the one. The parties could not come to an agreement on some issues like the form of government and modalities of federalism. Though the first constituent assembly failed to deliver a constitution², it was successful in setting up an agenda for a new Nepal. Declaring Monarchical Nepal into a Federal Democratic Republic, declaring Nepal as a Secular state, integrating ex-Maoist combatants in Nepali army, bringing the Maoists into the periphery of the ballot box, some sort of representation to the Women, Dalit's, Indigenous and Backward people in the constituent assembly are some of the major achievements of this constituent assembly. This is popularly known as the First Constituent Assembly.

As of 2013 there are 132 registered political parties of which 122 parties contested the 2013 constituent assembly election³ and the so called Second Constituent Assembly was elected. An Independent Government led by Chief Justice Khil Raj Regmi was formed to hold the election to the Constituent Assembly, as the political parties failed to form a Government. Elections were held on November 19, 2013. Over 61.21 and 63.29 per cent people had participated in the 2008 constituent assemble election under the First-Past The Post and Proportional Representation respectively. In comparison to that, the voters turn out stood at 78.34 and 79.82 per cent respectively in the 2013 Constituent Assembly election⁴. This time the political parties succeeded to rectify the past mistakes. A 16-Point Understanding was forged between three major political parties the Nepali Congress, the CPN (UML), the CPN (M), and the Madhesi Janadhikar Forum (Democratic) led by Bijay Kumar Gachhadar which represents the interests of the so called Indian Nepalese, on June 8, 2015 to ensure a smooth sail of the constitution to the shore unlike the previous one in 2012⁵. However the MJF (D) had to quit the alliance as its point of view was not entertained in the last phases of constitutional making. None of the members of major Madhesh based parties had signed the new Constitution. The new constitution had provided a Legislative – Parliament with 165 members. The parliamentary constituencies have been demarcated in such a way that the people from the hill area would get 100 seats, despite the fact that they are less than half the total population of Nepal. The people of Terai, who constitute more than half of the population, had to settle down with only 65 seats. Nepal is now widely polarized between those who support the Constitution and those who oppose it. While China had welcomed the new Constitution, India had showed its displeasure for not giving the Terai people their due share⁶. Thus this exercise of constitutional making took eight years with six governments falling. The journey of the second constituent assembly ended successfully with the promulgation of the new constitution on September 20, 2015.

Historical Evolution of Nepal

Nepal, officially the Federal Democratic Republic of Nepali is a landlocked nation in South Asia with a population of 2.6 crores. It is the South Asia's oldest Nation state. Its geography is a mixture of the mighty Himalayas and the most fertile Gangetic plains. It has only two neighbors, China on its north and India on its south and west. As Nepal is surrounded by two nuclear giants China – the Dragon and India – the Elephant, it have a little room for maneuvering when it comes to managing its foreign affairs. Nepal was never colonized but was treated as a buffer state between British India and Imperial China. While India remains an active actor in the affairs of Kathmandu, the mountain barrier between Nepal and China forced Beijing to be a distant observer of Kathmandu's affairs. However with modern methods of communication in place and with its soft power, China is increasing its role⁷.

The Capital and the largest city is Kathmandu. Nepali is the official language. It has more than 100 languages. Its society has much stratification in the name of Caste, Low land and High land, Nepali and Non-Nepali speakers. Eight of the top ten highest peaks in the world are located in Nepal. Gautama Buddha, the founder of Buddhism was born at Lumbini in

southern Nepal. Nepal hosts the permanent secretariat of SAARC at Kathmandu, of which it is a founding member. It is always been dependent on its neighbors for importing essential goods, especially India, with which it shares more than 1800 kms of its border. It is India that had brokered the 2006 Peace Deal between the Maoists and Seven Party Alliance⁸. Though the relation between the two countries is good on paper, Nepal is facing the heat with India regularly involving in its internal affairs.

Recent Constitutional Developments

The new Constitution includes the principles of Republicanism, Federalism, Secularism, which are very much new to Nepal.

From Monarchial to a Republic

Nepal remained a Monarchial Hindu Unitary state since its inception in 1768 AD⁹. Though the interim constitution of 2007 ended the monarchy and made Nepal a Republic, it is this new Constitution that had permanently ended the chances of the monarchial revival. Thus the 240 year long Shah Dynasty rule came to an end.

From Theocratic to a Secular State

Along with its Monarchy, the Theocratic state also continued to exist. With the inception of the new Constitution, the Theocratic state is ceased. The country with a Hindu population of eighty percent will now be a Secular state with special definition of the term: "Respecting pre-historic traditions and religious and cultural freedoms". The cow was made the national animal. Though the constitution established moderate secularism, it is a big blow to the regressive forces which wanted to bring back the Monarchy in the name of religion¹⁰.

From Unitary to a Federation

Another important aspect of the new Constitution is that Nepal, which was a unitary state for a long time was made a federation by carving out seven provinces, with a clear list of legislative powers divided between the Central, Provincial and the Local Governments. The names of the Provinces are to be decided by their respective Provincial Assemblies. This long old demand of establishing Provinces with autonomy, by the Tharu and Madhesi groups was addressed. The demand for a new constitution was first raised by Maoist rebels during the 2006 Peace Accord. The Maoists were the first to carry forward the demand for the establishment of federation by the Madhesis. Later this idea of federalism is accepted by many of the mainstream political parties. The Tharu and Madhesi groups argue that the provinces should be demarked based on the concentration of their ethnic population. All the three major political parties, the Nepali Congress (NC), Communist Party of Nepal (Unified Marxist-Leninist) and the Communist Party of Nepal (Maoist) opposed this idea. These three parties have 451 members in the Constituent Assembly¹¹.

From Exclusive to Inclusive

Though the demands of Madhesi groups are not totally fulfilled, the new constitution exhibit some sort of inclusiveness. The Madhesi community had demanded that the constituencies of the Legislative-Parliament be divided on the population basis alone which would give them a greater representation than ever. However this proposal was turned down by all the three major political parties, the Nepali Congress, the CPN (UML) and the CPN (M), stating that the representation must be based both on the population and geography/area.

The new constitution has a long list of Fundamental Rights. The National Human Rights Commission is established. Meeting the popular demand of most of the marginalized, some other Constitutional commissions are also been established. They are the Women Commission, the Dalit Commission, the Janajati Commission, the Madhesi Commission, the Tharu Commission, the Muslim Commission, National Inclusive Commission and Language Commission.

The Plight of Madhesis, Nepali Dalits and Women

The Central and the Eastern parts of Terai were gifted by the East India Company to Nepal after the Sugauli Treaty of 1816 and the Sepoy Mutiny in 1857¹². Thus the people of the Indian side were made part of Nepal without their wish. They are the Madhesis and Tharus. They are accused for being looked as “more Indian and less Nepali”. The hill elites always doubt the loyalty of the Madhesis towards Nepal. All the major political parties usually field hill elites as their candidates in the Terai region during the elections. Despite the overwhelming size of population of the Madhesis and Tharus in Terai region, they could only get 65¹³ seats in the 601 member constituent assembly. As many as 13 Madhesi based parties contested the 2013 election. The votes got divided between them and resulted in low representation. This can be only solved by increasing their representation in the next Parliament and stressing on the necessary amendments. For this all they have to do is that all the Madhesi parties must forge an alliance and fight together.

The Dalits who constitute 13.8 % of the population¹⁴ according to the 2001 census are represented by 49 members in the constituent assembly. This is the highest number that the Dalit community has ever attained. This situation does offer them a chance for them to make a real impact on the deliberations of the constituent assembly. By doing so they succeeded in establishing a National Dalit Commission. But there is a long way to go. Lastly the Dalits of Nepal should be prepared to accept Dr Ambedkar’s message of ‘Struggle and more struggle’ for coming out of their plight.

According to article 11(5) and 11(7) of the new Nepali constitution, Nepali women cannot pass down citizenship right to their children without declaring the citizenship status of the man who fathers the child. This article violates the Convention on the elimination of all forms of discrimination against women and the Universal Declaration of Human Rights. It is

a thunderstorm on gender equality, when the world is heading towards gender equality. This has to be corrected in the coming amendments.

Conclusion

Nepal is now being saved from being a laboratory to experiment the constitution making as the political parties and their leadership had showed maturity. Rest of the issues could be solved through the amendment process. The constitution is not a scripture written in a stone. It is an amendable document. By and large the new constitution has incorporated the views varying from Far-Right to the Far-Left. The new constitution is flexible. Major portion of it except the sovereignty can be amended by a two thirds majority.

Lastly it must be kept in mind the words of Dr Ambedkar, the Chairperson of the Drafting committee of the Indian Constitution on 29th November 1949 while submitting the constitution. "I feel, however good a constitution may be, it is sure to turn out bad because those who are called to work it, happens to be a bad lot. However bad a constitution may be, it may turn out to be good if those who are called to work it, happens to be a good lot. The working of the constitution does not depend wholly upon the nature of the constitution"¹⁵. Obviously the success of the constitution depends on its effective implementation. Finally, this is a Rights based constitution written by politicians rather than jurists, and it is full of promises¹⁶.

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