

Review Article

Constitution of Nepal and Political Development: Adaption and Challenges of Implication

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Abstract

The present constitution- promulgated by the Constitutional Assembly (CA) in September, 2015 is the seventh written document in the constitutional history of Nepal which has institutionalized Federal Democratic Republic achieved after the success of peoples' movement of 2006. It was made based on the principles of constitutionalism. The constitution of Nepal has addressed different issues for a modern state and is regarded as a progressive, people oriented constitution. It has also paved paths for further economic development. It has opened door for rights of the people, political stability, restructuring of the state, and sustainable peace and development of the state. However, there are many prospects as well as numerous challenges for its proper implementation. Some Madhes based parties (People of Terai) and ethnic minorities have criticized the constitution for being unable to address their pertinent issues fully. However, they have involved in the process of constitution implementation by participating in first local, provincial and federal level election held under new constitution. So the government needs to bring the Madhesh based parties and other groups into a peaceful consensus and should pave a path for implementation of this constitution. At the same time, implementation of federalism, election of local bodies, sustainable peace, political stability and development are among other challenges faced by this constitution.

Keywords: Constituent assembly, economic development, federal republic, rights.

Introduction

Nepal was ruled by different dynasties. Until the time of modern Nepal, it was ruled by Gopal, Kirant (750-001B.C), Lichchhavi (100-800 A.D.) and Malla (800-1768 A.D.) dynasties. From 1768 to 2006, Nepal was ruled by Shah Dynasty (Joshi & Rose, 2004). However, it was ruled by the Ranas from 1846 to 1951. After the democratic movement of 1951, democracy was established in Nepal. During the period between 1951 and 2008, there were different systems of governments: multiparty systems of one decade after the establishment of democracy in 1951, partyless *Panchayat* system of three decades from 1961 to 1990, multiparty system with constitutional monarchy after the restoration of democracy in 1990, direct rule of the then King Gyanendra from 2002 to 2006 and the republican system after the success of peoples' movement in 2006.

The democratic movement was more accelerated after the death sentence to the four great sons of Nepal. The democratic movement was led by Bisheswor Prasad Koirala, Pushpalal, Krishna Prasad Bhattarai, Manmohan Adhikari, Ganeshman Singh and many others. The movement was highly supported by the public and the then King Tribhuvan as well. So the political parties, the public and the king could finally overthrow the Rana rule from Nepal after the successful completion of the democratic movement in 1951. And, the process of constitutional development in Nepal has been supported, stimulated and accelerated by each of these democratic movements.

The main objective of this paper is to explore the constitution of Nepal in the background of different phases of political development, its adoption, and challenges of implementation. It has discussed onto the backgrounds of constitutional history of Nepal. Analysis of the constitution, constitutionalism and current issues forms the basis of this study.

Data and Methods

This paper makes a brief description and analysis of the constitution of Nepal. It makes the best use of data that were collected from secondary sources like different constitutions of Nepal, journals, books, etc. are reference for the purpose of this paper. This paper is basically historical, exploratory and analytical in nature.

Constitutional History

United States of America, after its independence in 1776, made its constitution in 1787 through constitution assembly which was later ratified by two third majorities in 1789. It was the first written – as well as shortest-constitution in the modern constitutional history of the world. The constitution of USA has aspirations to establish justice, to insure domestic tranquility, to provide for common defiance, to promote the general welfare, and to secure the blessings of liberty to its subjects and posterity (USA Constitution, 1971:13). Another important nation in the constitutional history of the world - England- has no written constitution but its constitutional development is based on- and stimulated by- Magnacarta (1215), bill of rights and the principal of constitutionalism (Bhagwan & Bhushan, 1986). The French revolution was established France's first constitution in 1791. Then constitutional development in France was evolved through different stages and finally constitution of fifth republic was established in 1958 which has been provided France with institutional stability (France, 1996:47). In a country like France, which has been experienced all possible form of government in the past two hundred years, the success of the Fifth Republic lies in the fact that it was formed through a succession of compromises, a mixed bag of unharmonious but effective of conventional practices (Meny, 1996:11). Like France, Nepal has practiced and experienced different kinds of constitution in its seven decade long constitutional history. Nepal has practiced more than six constitutions in its short constitutional history. Nepal's neighbor country China declared its first constitution in 1954. After two intervening versions enacted in 1975 and 1978, the current Constitution was declared in 1982.

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The 1982 constitution- in its preamble, states that China held Chinese revolution and the people's democratic dictatorship and promises to follow the socialist road, to steadily improve socialist institutions, to develop socialist democracy, to improve the socialist legal system and to work hard and self-reliantly to modernize industry, agriculture, national defense and science and technology step by step to turn China into a socialist country with a high level of culture and democracy (The Constitution of the People's Republic of China, 1982:7).

Present constitution of Nepal is the seventh written constitution of Nepal. It was made by the Constitutional Assembly (CA). It was made on the mandate of the peoples' movement of 2006. The first written constitution of Nepal is the government act 1947 made by Rana Prime Minister Padma Shamsheer. Revolution of 1951 had established democracy in Nepal. and then king Tribhuvan has announced the interim constitution 1951. He also announced that the new constitution would be made by constitutional assembly. But unfortunately king Mahendra himself announced the constitution kingdom of Nepal 1959 which followed Nepal's first general election making Bisheswor Prasad Koirala as the first elected Prime Minister of Nepal. But king Mahendra banned all political parties and arrested the elected Prime Minister after 18 months and announced party less Panchayet system. He announced the constitution of Nepal in 1961. Later, mass movement of 1990 restored democracy in Nepal and made the constitution of kingdom of Nepal 1990. However, King Gynendra's takeover of power disrupted the multi party democratic practice of Nepal. This caused people's movement in 2006 and as per its mandate, interim constitution 2006 was made declaring people as sovereign body (Dahal, 2014). Then the first constitution assembly election was held in Nepal in 2008. Again, second CA election was held in 2013 which finally made the new constitution of Nepal in 2015. This constitution announced Nepal as the federal democratic republic nation. Nepal became the youngest republic in the world. In this way, Nepal's seven decade long struggle for a constitutional development resulted present constitution of Nepal 2015.

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After the establishment of democracy in Nepal in 1951 through the revolution, the government of Nepal announced those four heroes like Sukraraj Sastri, Gangalal, Dharmabhakta Mathema and Dasrath Chanda as the great martyrs of the nation. It was also declared that new constitution of Nepal would be made through the Constitutional Assembly. But the then king Mahendra announced the Constitution of Kingdom of Nepal 1959 instead of conducting an election of Constitutional Assembly to draft a constitution. The first general election was held and Nepali Congress got two third majorities in the parliament. Bisheswor Prasad Koirala was elected as the first prime minister of Nepal. Unfortunately, after two years, the then king Mahendra abolished all political parties and started partyless *Panchayat* system. This *Panchayat* system lasted for 30 years. The joint mass movement led by Nepali Congress and United Left Front launched against the party less *Panchayat* system and democracy was restored in Nepal in 1990. The Constitution of Kingdom of Nepal 1990 was promulgated with provisions of multiparty democracy with the constitutional monarch (Constitution of the Kingdom of Nepal, 1990). General election was held and Nepali Congress got majority in the parliament. Parliamentary majority party leader Girija Prasad Koirala was elected as prime minister. However, there could neither be stable governments nor the governments could bring forth economic development as per the desire of the people of Nepal. Corruption spread massively. In the meantime, CPN (Maoist) led by Pushpa Kamal Dahal, “Prachanda”, started their armed revolution 1996. Earlier *Samyukt Janmorcha Nepal* (United People’s Front) had submitted forty point demands to the government. The points were related to the national issues and peoples’ rights. The government denied addressing the issues and Maoist insurgency started in the country. They claimed that they were forced to stage the revolution because after the restoration of democracy, political parties forgot people’s mandates, and the society is same to the life of the people.

Later in 2001, the royal massacre took place at the palace that ended the

lineage of King Birendra. Gyanendra became the king after the massacre and in no time dismissed the government led by Sher Bahadur Deuba as prime minister. The king took the executive power in his hand and started a direct rule. This enraged the political parties of that time. They refused the king's step and began to stage protests against the step taken by the king. They did not take part in the election of municipality conducted by the king. That election with a meager 19% vote casting, it was criticized both nationally and internationally because of the objection of the parties. Everywhere there were voices heard against the autocratic rule of the king. As the political courses developed, the seven parliamentary parties and revolting Communist Party of Nepal Maoist signed a 12 point agreement in Delhi in 2006. In that agreement, they agreed to stage the movement to get democracy in real sense by ending monarchy and to draft a new constitution from Constituent Assembly. On the basis of that agreement, they started a united movement for democracy. At first, they started a public disobedience for four days from 24 *Chaitra* but that movement continued for 19 days and ended successfully in April 2006 after the king restored the parliament that he had dissolved himself.

After that the Comprehensive Peace Accord was signed between the government and Maoists, Interim Constitution was formed and the election of CA was held. Unfortunately, the first CA could not finalize the constitution and it was dissolved. Again the election of second CA was held and this could successfully draft a new constitution of Nepal in September 2015 (Constitution of Nepal, 2015). Constitutional Assembly was the dream of Nepali people since 1951 and this dream was fulfilled with the promulgation of the Constitution of Nepal in 2015. With this constitution, the government and the people of Nepal foresee peace, prosperity, political stability, equality and economic development in the nation.

Adoption and Implications of New Constitution

Nepal is a multicultural, multilingual and multiethnic nation. There are 125 different castes/ethnic groups in Nepal (Central Bureau of Statistics, 2011). Thus, the CA was formed adopting principles of inclusive democracy. This is a most representative body ever formed in Nepal. The CA had 33 percent

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women representatives and a good number of Dalits (So-called low caste) and other disadvantaged groups. This level of inclusive representation is unprecedented and thus very significant in the political history of Nepal.

People from many different castes, ethnicity and backward groups are living together in Nepal. Such a communal harmony is often seen as a special feature of Nepali society. In order to maintain and further promote this harmonious situation in Nepal, and there by ensure peace, development and political stability, Nepal needs to address various issues of social inequalities along the line of gender, caste/ethnicity, religion, and so on.

Nepal is a country of diversity with different tribes, ethnicities, religious groups, linguistic groups and cultural communities. More than ever, peace and political stability have become the most necessary things in the contemporary Nepal. But the country could not bring about desired changes in social, economic and others sectors even after the restoration of democracy in 1990. When the King Gyanendra Shah took over the executive power, then eight political parties (with Maoist) reached the 12 points agreement that ultimately ended the autocratic rule. After the success of mass movement of 2006, CA election was held. The first Constitutional Assembly incorporated 25 political parties and there were 30 political parties in the Second CA. There were still several other small parties outside the CA whose supports and agreements were equally necessary in order to complete the new constitution in Nepal.

The new constitution of Nepal has provided for seven provinces and 165 election constituencies. The upper house has provided for 110 representatives. So the parliament will altogether have 275 members. When the CA was in the final process to enact the new constitution, some Madhesh based political parties were against it. But the major political parties - Nepali Congress, Communist Party of Nepal United Marxist – Leninist (CPN UML), United Communist Party of Nepal (CPN) Maoist, Madhesi Jana Adhikar Forum (Democratic) and other small parties - with more than 90 percent (CA members) were convinced to pass new constitution. It is only 10 percent Madhesi political parties who do not

accept it. The government of Nepal has tried to address their demand through the first amendment of the constitution of Nepal.

The major political parties have changed their position in second CA as compared to the first CA. In first CA election first position was occupied by Maoists but in the second CA, Nepali Congress was in the first position, CPN UML got second position and Moist got third position. In the present context, the CA has been changed into the parliament after making the constitution. But its structure is the same as of second CA. From the time of promulgation of the constitution and just after that, the Madhes based political parties have been in continuous struggle against the constitution and provisions for Madhes. Because of the Madhes movement, Nepal even faced a serious unannounced blockade (transit war) from India and the situation in Nepal was very appalling. The situation has little calmed down ever since the visit to India by then Nepali Prime Minister Khadga Prasad Oli. Political processes are underway to resolve all the issues related to Madhes and other dissatisfied groups. However, large majority of the general public, civil society and various linguistic and other groups has welcomed the constitution and wanted its implementation for peace, stability and economic development in the nation.

In Nepal there are multi-castes, multi-linguals, multi-cultural and diverse geographical specificities. In regard to the economic policy, the preamble of the constitution of Nepal has stated:

By ending discriminations relating to class, caste, region, language, religion and gender discrimination including all forms of racial untouchability, in order to protect and promote unity in diversity, social and cultural solidarity, tolerance and harmonious attitudes, we also express our determination to create an egalitarian society on the basis of the principles of proportional inclusion and participation, to ensure equitable economy, prosperity and social justice. (Constitution of Nepal, 2015)

The constitution of Nepal 2015 has incorporated the popularity will of the people; it has provided more rights than rest of the previous constitution

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and has provided duties for the first time in the constitutional history of Nepal. So, it is great achievement in the constitutional history of Nepal.

The constitution expresses commitment to create the bases of socialism by adopting democratic norms and values, including peoples' (Fedrel, 1998) competitive multi-party democratic governance system, civil liberty, fundamental rights, human rights, adult franchise, periodic elections, complete press freedom and an independent, impartial and competent judiciary, and the concept of rule of law (Constitution of Nepal, 2015).

The constitution of Nepal has several provisions for the economic prosperity of the nation, free market and international trade. With the base of this constitution and political stability in the nation, it is certain to provide significant economic changes in the nation. A new dimension is seen in Nepal with the recent promulgation of this constitution. The constitution is signed by more than 90% of the CA members. This is one among the highest proportions in the world to support the constitution. Majority of the political parties, general public, civil society and various groups in the nation have willingly supported the constitutions and provisions set therein for the social, political and economic enhancements of the nation. However, the Madhes based political parties are seen dissatisfied with some provisions in the constitution. The Madhes movement, which started just before the constitutional promulgation and continued thereafter, is still not fully settled down. The government of Nepal has been putting its efforts to resolve all these issues gradually. The constitution has already been amended for the first time. With this amendment, many issues related to the Madhes have resolved and the government is trying to resolve other genuine issues with the public consensus and logical dialogues. Not only the Madhes but there are also some other ethnic groups who have not been fully satisfied with the provisions in the constitution, the government is underway to resolve all the issues with the public mandates. As already discussed, Nepal is a multi-ethnic nation, and the social harmony that has been prevailing among the communities since centuries needs to be maintained for the years to come.

This is the specialty as well as an immense need for a country like Nepal. The social harmony can only promote the economic prosperity and socio-cultural diversities in the nation.

So, the government of Nepal has adapted a policy to solve every socio-cultural issues, that has been seen now or those that could arise in the future with the public consensus and mandates expressed by the citizens of the nation through election. This is how, the federal republic democracy can be institutionalized, peace process can be completed and the nation can march forward for political stability and economic development. However, there are different drawbacks in the constitution which need to be amended in the time being.

Conclusion

Nepal has entered into the new political era with the promulgation of the constitution of Nepal in 2015. Ultimately, the dream of Nepali people to draft their constitution through the CA has become a reality. It has now formally ended feudalistic, autocratic, centralized and unitary system of governance, and established a people centered democratic republic federal state. People of Nepal have become the ultimate sovereign power of the nation. The constitution has paved a path for many prospects ahead of the people of Nepal. However, many challenges remain ahead of this constitution. All the unresolved issues should be solved through political consensus and take the country ahead for developmental works. Nepalese need to develop democratic culture and develop leadership who are responsible for the welfare of the state and its entire people. That is what the spirit of the several democratic movements conducted by people in the political history of Nepal and it is the demands of the time as well. This study recommends that long lasting solution of the problem of the Madhes, efficiency in the functioning of elected bodies at all three levels of government, implementation of federalism and republic, proportionate development all around the nation and continuity of the existing social harmony are the major challenges of the government and constitution of Nepal.

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Now local election has already been held in Nepal. Provincial and federal elections are in the process of being held on the announced election date. Thus, Nepal has started second political dimension in the political and constitutional history of Nepal from the announcement to its implication. In the beginning of 21th century, Nepal has established as federal democratic republic nation of the world and ended the feudal system. It's a federal republic democratic nation and now it is upon the political parties, its leaders and people of Nepal to properly implement the constitution of Nepal, resolve the challenges and move ahead for everlasting peace, stability and economic development.

References

- Bhagwan, V. & Bhushan, V. (1986). *World constitutions*, New Delhi: Sterling Publishers Ltd.
- Central Bureau of Statistics (2011). *Census report*, Kathamandu: National Planning Commission, Central Bureau of Statistics.
- Constitution Kingdom of Nepal 1990* (1990). His Majesty the Government of Nepal, Nepal Kanun Kitab Babasta Samittee, Kathamandu.
- Constitution of Nepal* (2015). Nepal Government, Nepal. Kanun Kitab Babasta Samittee, Kathamandu.
- Dahal, G. (2014). Constitutional Assembly of Nepal: milestone for peace, development and political stability. *Journal of KMC of Interdisciplinary Studies*, 4, 70-77.
- Fifth Session of the Fifth National People's Congress (1983). *Constitution of China 1982*, Beijing: Foreign Language Press.
- Joshi B.L. & Rose, Leo F. (2004). *Democratic innovations in Nepal*, Kathamandu : Mandala Publication.
- Kanun Anushandhan Tatha Bikas Forum (Fedral) (1998). *Constitutional law of Nepal* (Edt.Upreti, V.) Kathamandu.

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Meny, Yves (1996) *The French Political system: La Documentation Francaise*.

Mises, Ludwig Von (1962) *Socialism: An Economic and Sociological Analysis*, New Haven Yale University Press,
https://mises.org/sites/default/files/Socialism%20An%20Economic%20and%20Sociological%20Analysis_3.pdf

The Constitution of the United States of America (1787). The declaration of Independence.

The Institutions of the Fifth Republic (1958). Ministry of Foreign Affairs.