

# **CIVIL SOCIETY AND ITS PLACE IN THE CONSTITUTION OF NEPAL**

*Kapilmani Dahal*

Department of Political Science, Prithvi Narayan Campus, Tribhuvan  
University, Pokhara, Nepal

## **Abstract**

Civil society is a non-political sphere and a voluntary organization made from individuals. It lies as an intermediary layer between individuals and families on the one hand and state institutions on the other hand. Civil society has been becoming a hot matter in the system. Its place is not same everywhere. Some developed countries have been provide democratic atmosphere to develop it and have been ignoring it. Constitution as fundamental law of the land is a major tool providing space for civil society. In the context of Nepal civil society organizations, persons, movements or other forms of civil societies have been politicizing and they are ignoring their own values and status, which may be harmful to the effective functioning of democracy. In another context of Nepal books and articles have been written, researches are also conducted but the relation and place of civil society to constitutional provisions has not been mentioned yet. So this study has been made to link civil society to constitution of Nepal. Finally it drew conclusion that Constitution of Nepal is implementing and it has addressed some place for civil society but unfortunately some limitations made on constitution and politization of civil society has made civil society a believeless variables in Nepal. To draw the conclusion in this study descriptive analytical and content analysis methods has been used and information has been taken from secondary method.

**Keywords:** Civil society, constitution, constitutionalism, rule of law, good governance

## **Introduction**

Civil society is an organization formed out of the members of a society who have civic knowledge, civic education and civic virtue. Civics' participation in the political system is supposed inevitable and it becomes possible where the citizens have civility. Generally, people think civil society, civility, citizen, citizenry in same sense but they are all quite different. A member of a society becomes a citizen on the basis of birth or descentance but cannot be necessarily the members of civil society. Members of civil society can automatically be citizens of concerning country. So to turn a citizen to a member of civil society, civility is thought to be the basic requirement. So even the constitution is an agreement reached between the people and the rulers as a whole. In totality, the constitution which has not provided sufficient place for civil society cannot be run for a long time. Place for Civil society's participation in the constitution is a prerequisite for democracy- the people's participative system. Assimilation of civil society in the constitution is needed to preserve not only democratic system but also to preserve their socio- cultural, economical, regional and other identical interests.

Provision of freedom of association is basic foundation forming civil society. Unions, associations, organizations, institutions and all networks can be included within the boundaries of civil society. In the case of assimilation of civil society some people can engage themselves for the welfare of society and community. Civil society can perform their effective work in the decision making and implementing the democratic process. Civil society teaches citizens on participation of people on democratic system. It can easily check on the performance of political parties and make them responsible to people. Civil society checks and controls the action of government that is contrary to the interest of the people. Civil society preserves democracy when there

are sufficient constitutional provisions but inactiveness of civil society hampers the democracy and people's rising aspirations.

Constitution arranges the rules distributing the major parts of the sovereign power and in the state of presence of civil society it influences the government positively on distribution of constitutional powers. Constitution arranges the relation of citizens and state but it cannot be operated without the presence of civil society. Constitution is a system of fundamental political institutions and such institutions can be influenced by civil society. Constitutions may have various characteristics but such a constitution which has not provided sufficient provisions for civil society's participation can't address the needs of the people. Civil society in a democratic system is thought to be as machinery helping converting people's input to output of government. Appointment of members of civil society in the constitutional bodies and their performance makes accountable government and governments intervene on people's interests. However, there is deep relationship between the constitution and civil society. In the presence of civil society, constitution can be operated as ends as well as means in the nation.

## **Objectives and Methodology**

This study has focused on civil society and its place in newly promulgated constitution of Nepal. So in this study two major objectives have been determined. Firstly, to show the brief description or background of origin of civil society and secondly to show the constitutional provisions relating to civil society in Nepal. Research methodology as the process and way of resolving problem in the course of study here, secondary data and information have been used. Library sources have been taken as storehouse of knowledge and bank of information needed for it. Various books, journals, reports, research articles, websites have

been used to get information. Qualitative information has been taken from the related theories. Constitution of Nepal has been taken as an important content to do the analysis and show the scenario of civil society in Nepal.

## **Understanding Civil Society**

It has been acknowledged that the role of civil society or non-state actors is critical in counterbalancing the state, representing various groups of people and voicing their needs and problems. The ‘schools of democracy’, as Alexis de Tocqueville has famously referred to the civil society organizations, indeed, have a great potential to promote democracy and contribute to development. The concept of Civil Society has been a subject of hot discussion and controversy over the past centuries. The term has been formulated and reformulated by nearly all the significant western thinkers and political philosophers, and was perceived in different ways during different periods in history.

The history of the concept of Civil Society can be traced back to the ancient Greek and Roman times where it was conceived as a commonwealth, and the term was synonymous with ‘political community’ which was bound by rules limiting individual rights, as well as by civility - requiring mutual respect for others’ rights. Aristotle, for example, saw civil society [politiké koinonia] as the society, the polis, which contained and dominated all others (Keane 1988). Thus, the concept of civil society is historically constructed.

During the Enlightenment period, the concept of the Civil Society became a debated subject. The early modern theorists like Locke, Hobbes and Kant wrote on Civil Society as of a multilayered associational sphere, which, being private, however, is based on the notions of equality before the law and the right to free association. Civil Society and the state (polis) were still used as

interchangeable terms, and to be a member of civil society meant to be a citizen- a member of the state- having certain rights and responsibilities, abiding by certain laws and not engaging in acts which were harmful to other citizens (Keane, 1988).

Unlike the early modernists, the classical political economists of the 18th century (Adam Ferguson, Adam Smith) saw society characterized by production, economic exchange, and division of labor and dominance of private needs. Even though they treated Civil Society and economy as nearly the same, they were the first to separate the ‘civil’ from ‘political’. By the late eighteenth century the civil society seized to be seen as the nature of the state and was thought of as a means against potential abuse of the power by political majorities. Thus, it was recognized that the most efficient way of opposing the corrupting influences of the power was to encourage the creation of citizens’ associations (Harbeson et al, 1994).

Alexis de Tocqueville drew attention to the state despotism inherent to the democratic rule. He was concerned by the “tyranny of majority” and the contradictions existing in the democratic principles of freedom and equality; according to de Tocqueville, civil organizations, representing the “independent eye of society” and being made up of “a plurality of interacting, self-organized and constantly vigilant civil associations, whose functions were to nurture basic rights, to advocate popular claims, and to educate citizens in the democratic arts of tolerance and accommodation” should constantly oversee and check the state and its functions, or, in other words, “hold back the tyranny of the state” (Harbeson et al, 1994).

German philosopher Hegel was more skeptical of civil society, considering it to be conflictive and unstable, because of the individuals pursuing their private interests and thereby

creating tension. He argued that “civil society” cannot remain “civil” unless it is controlled by the state, i.e. subjected to ‘the higher surveillance’ of the state. In Hegel’s view the state can legitimately intervene in the *Bürgerliche Gesellschaft* (civil society) and its affairs to remedy injustices or inequalities within the latter or to protect some universal interest of the population (Keane 1988).

Marx, who is considered to be one of the main antagonists of the civil society, saw it as a bourgeois society and an arena of class conflict. In his opinion, civil society was an illusion, since the apparent freedom it gives to individuals merely conceals the underlying realities of class exploitation. Another civil society theorist, Antonio Gramsci used Marxist categories, but came to different conclusions: his view was that there were two major superstructures- political society and civil society; the former embodies force, the latter manufactures consent (Keane 1988).

For Gramsci, civil society encompassed all the ideological - cultural (and not material or commercial) relations and spiritual life, and represented a space where groups compete for hegemony (ibid.). Civil Society and its definition has been the subject of political and philosophical debate for many centuries. Up to present, there is no single, all-inclusive definition of the term, and many authors note that definition depends on the purpose for which the term is used or on the task at hand (Eberly 2002). Most commonly the term refers to the sphere of public, which are beyond the control of the state, or the sphere in-between a person and the state. Civil Society is a sphere of social interaction between economy and the state, composed above all of the intimate sphere (especially the family), the sphere of associations (especially voluntary associations), social movements, and forms of public communication.

“Civil society consists of those mediating institutions (families, friends, neighbors, communities, churches, civic organizations and informal institutions) that intervene between the individual and the state and serve both as a corrective to both excessive individualism and to an overweening state.” (Eberly 2002: 95). “Civil Society is the wide array of non-governmental and not-for-profit organizations that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations. Civil Society Organizations refer to community groups, non-governmental organizations (NGOs), labor unions, indigenous groups, charitable organizations, faith based organizations, professional associations, and foundations” (<http://web.worldbank.org> ).

These definitions add to each other, providing a comprehensive description of the term, and stress the main elements of this complex concept – civil society is a domain of action, interaction and association, different from the state and the family, and called to further common interests and balance the power of state. It can be argued that the stronger the civil society is, the more capacity it will have to influence the processes taking place within the government, thereby promoting democracy and good governance. Vigorous civil society is considered to be a critical factor for a responsive and effective government (Putnam, 1992).

Civil society is the aggregate of non- governmental organizations and institutions that manifest interest and will of citizens ([www. Dictionary.com](http://www.Dictionary.com) ). Civil society includes the family and private sphere referred to as third sector of society, distinct from movements and business ([www.civisoc.org](http://www.civisoc.org)). Civil society is used in the two senses: one as aggregate of non-governmental

and second as individual or organizations in the society which are independent of government ([www.Dictionary.com](http://www.Dictionary.com) ). Sometimes the term civil society is used in the more general sense “the elements such as freedom of speech, an independent judiciary, etc. that make up a democratic society” (Collins English Dictionary, 2012:3). Now-a-days latest analyses suggest that civil society is a neoliberal ideology legitimizing anti-democratic attack of economic elites on institutions of the welfare state through the development of these sectors as its substitute.

In totality, in modern history time Hegel considered civil society as a separate realm, a system of needs that is the (stage of) difference which intervenes between the family and the state (Hegel, 1991). For it had emerged at the particular period of capitalism and served its interests: individual rights and private property. Hegel termed civil society as civilian society regulated by civil code. Alexis de Tocqueville and Karl Marx also followed that way of thinking. UNO defines civil society as the third sector of society along with government and business. It comprises civil society organizations and non-government organizations. UN recognizes the importance of partnership with civil society, because it addresses the organization’s ideals and helps support its work ([www.Un.org](http://www.Un.org)).

Civil society is seen as important foundation of society maintaining good governance, through democratization and democratic consolidation. Resurgence of interest in civil society has changed the old attributes attached to the concept and relocated it to the status of being a key area for the possible democratization of the world that we live with this update function, the concept is now increasingly used to define the space of social activity and societal organizations that directly or indirectly support, promote or struggle for democracy,

democratization and democratic consolidation (Gruel, 2002:93). Civil society refers to a part in the society which is beyond the boundaries of both family and state and has an existence on its own (Shills, 1991:4).

Civil society is guard against the powerful state (Kane, 1998:39) and source of civic education (Bossard, 2003:75). Civil society within the framework of pluralism and civic education are actors or agents of good governance. Such as civil society can play role to limit and control the power of the state, to expose the corrupt conduct of public officials and lobby for good governance, to promote political participation, to develop values of democratic life and to educate people.

Pagoulatos and Kastritis (2013) contribute on-Theorizing and Assessing Civil Society: A Review of Approach. According to their contribution; coterminous with government, bourgeois society and capitalist economy, civil society as pluralistic sphere of democratic and civic values, active citizenship “third sphere”, and voluntary non-profit sector are the major theoretical approaches of civil society.

Civics imparts the knowledge about democracy, freedom and individual rights. From the knowledge about civics, people learn about the structures, functions and problems of government at the local, state, national and international levels. People can know economic, political and social institutions by civic knowledge. Civic education is needed for maintaining and strengthening of good governance by civil society. Citizens know the civic duty and civic rights via civic education. A common assumption of US participatory democracy is that every citizen recognizes and understands his/her civic duty (Engelhardt and Steinbrink, 2001: 3). Civic education in a democracy is education in self-government. Domestic self government means that citizens are

actively involved in their own governance. They do not just passively accept the dictums of other or acquiesce to the demand of others

Civic education is needed for civil society. Relevancy of civil society's establish are of various reasons. Civic education includes rights of the individual, rules of laws, individual freedoms, and societal dilemmas, responsibilities of the individual, cultural pluralism, responsibilities of the government and building a civil society which are the common phenomena of democracy. Civic education seeks to reinforce values such as liberty, equality, justice and the common good which are the basic components of the democratic system (Quigley and Bahmular, 1991:3).

In summing up, human beings have always come together for a common cause and objectives. This compassionate nature of human kind is expressed in associational life of diverse character and objectives. These acts of collective and associational life institutionally constitute civil society. Civil society has various roles and functions maintaining good governance. There are international principles protecting civil society. They are very important. They protect civil society organizations from the application of the legal barriers. Civil society is an essential part of a democracy that promotes its concepts and values and actively integrates people into the participation process. By taking part in civic engagement people actually learn that they can give and influence and can make a difference by working together.

## **Constitution**

Constitution is supreme in nature. It is called the highest law, supreme law of nation or the fundamental law of the land. It is political document, guide line of polity or the blue print of governing the nation. It is the legal weapon driving the nation's

politics or a compass directing the nation's politics. It is also an ends as well as a means for the political modernization. Constitution covers the significant place in the sphere of comparative politics. It directly or indirectly affects the exercise of sovereign power of the state. So constitution is not only subject matter of law but also the subject matter of political science. So obviously, constitution is a branch of science or science of the state. According to Strong, constitution is the branch of social science (Strong, 1966:364). It is true because constitution is always drawn according to the aspiration of the society to direct it. It can be explained on the basis of different theories.

Political modernization is newly emerged theory in political science and it is also related to sociology, economics and other discipline of social science. But there is separate connotation and value in political science. So, mainly political modernization can be supposed as a subject matter of politics but in another sense, due to supposing politics and law as twin, it is subject of law also because modern constitutions aimed to meet the modernization. Thus modernization can be met only by means of constitution.

Dicey (1948) mentions constitution directly or indirectly affects the exercise of sovereign power of the state (Dicey, 1948:23). Strong, (1966) focuses power of government and rights of governed while defining the constitution he writes constitution may be said to be a collection of principles according to which the power of the government, the rights of governed and the relation between the two are adjusted (Strong, 1966:11). Wheare, 1956 taking constitution as the political affairs focuses- the word constitution is commonly used in at least two senses in an ordinary discussion of political affairs. First of all, it is used to describe the whole system of government of a country, the collection of rules which establish and regulate or govern

the government. These rules are partly legal in the sense that the court of law will recognize and apply them, and partly non-legal or extra-legal taking the form of usages, understandings, customs or conventions which courts don't recognize as law but which are not less effective in regulating the government than the rules of law strictly called. In most countries of the world the system of government is composed of this mixture of legal and non-legal rules as the constitution (Wheare, 1956:1).

Constitutions are made to address the fundamental needs of the people in the society. Johari 1976 links constitution to governing rules and powers. He believes constitution as means of society and writes- the political constitution is interested chiefly in the institutions which the state builds up for its peace and progress without which the state couldn't maintain itself, any more than society could maintain itself without the state (Johari, 1976:272). According to Jennings 1976, constitution means the documents in which are set out the rules governing the composition, power and methods of operations of main institutions of government and their relation to the citizens (Jennings, 1976:33-34). It is legal document where the separation of powers among the organs of government is mentioned clearly. It determines the fundamental rights of people and their remedy in case of its violations. Democratic constitutions for the establishment of political modernization must include the values of democracy and places of civil society there on.

Constitution is an aggregate of fundamental principles or established precedents that collectively constitute the legal basis of a polity organization or other type of entity, and commonly determine how that entity is to be governed (The New Oxford American Dictionary, 2005:2051). When these principles are written down into single document or set of legal documents,

those documents may be said to embody a codified constitution. Some constitutions such as the constitution of the United Kingdom is un-codified but written in numerous fundamental Acts of legislature, a court cases or treaties. What is sometime called the enlightened constitution model was developed by philosophers of the age of enlightenment such as Thomas Hobbes, Jean Jacques Rousseau and John Locke. The model proposed that the constitutional governments should be stable, adaptable, accountable, and open and should represent the people that support democracy (Encyclopedia Britannica, 2013).

Most country, the term constitution refers to a set of rules and principles that define the nature and extent of government. Most constitution seek to regulate the relationship between institutions of the state in a basic sense the relationship between the legislative and judiciary, but also the relationship of institutions with in those branches. Most constitutions also attempt to define the relationship between individuals and the state and to establish the broad rights of individual citizens. Constitution is pivotal law and the system of fundamental principles according to which a nation, state, corporation or the like is governed always.

Constitution reflects the general will of people as termed by Rousseau. It is not only political document but also the proof of contract concluded between governments to people or people to people. Mainly, it gives emphasis on rules regarding the organizations, powers and functions of political system, supremacy of constitution, constitutional bodies, organs of government and their powers and function, etc. constitution defines the basic features of state and relationship between the citizens and state. Generally, it is the document of the constitutional law of the nation. All the components of state regulates as per arrangement of the constitution.

Power of government, rights of governed and the relation between two are adjusted in the constitution. It is also an organ of state that prescribes their modes of creation, their mutual relations, and their spheres of action and fundamental place of each of them in relation to state. Constitution includes the body of rules or laws written or unwritten which determine the organization of government, the distribution of powers to the various organs of government and the general principles on which these powers are to be exercised.

Constitution has its' varied importance. Constitution reflects the sovereign will of the people. It secures the aims, objectives, values, norms, goals which people want to see secure. It contains the provisions and guarantee of fundamental rights of people, organization of government, mainly executive, legislative and judiciary and their powers and functions and their relationship. In case of federalism, constitution lays down the division of powers between various tiers of government. Constitution itself mentions its own lifetime including the provision of amendment of constitution. Election system, political, civil, economical, cultural rights of people is adjusted in the constitution. Independence of judiciary and rule of law and other rights of people, values of democratic system is preserved by constitution ([www. Preserve article.com](http://www.Preserve article.com)). Democratic constitution can only consolidate and strengthen the concept of good governance. Features of democratic constitutions are similar to elements of good government.

Constitutional government requires a belief in the rule of law, constitutional supremacy, and commitment to the idea of popular sovereignty, protect of the rights of the minority, assure order and stability in society but also have enough flexibility to change with the times and accommodate social change. The

vast majority of contemporary constitutions describe the basic principles of the state, the structures and processes of government and the fundamental rights of citizens in a higher law that cannot be unilaterally changed by ordinary legislative acts. This higher law is usually referred to as a constitution (IDEA, 2017:2).

Constitution has various functions. Constitution can:

1. Declare and define the boundaries of the political community.
2. Constitution can declare and define the nature and authority of the political community.
3. Constitution can express the identity and values of a national community.
4. Constitution can declare and define the rights and duties of citizens.
5. Constitution can establish and regulate the political institutions of the community.
6. Constitution can divide or share power between different layers of government or sub-state Community.
7. Constitution can declare the official religious identity of the state and demarcate relationships between sacred and secular authorities.
8. Constitution can commit states to particular social, economic or developmental goals (IDEA, 2017:2-3).

Commonly, the Constitution is the document of constitutional law. Constitutional law is branch of public law. It is applied directly between persons and the nation state. It is local law as well as national law also.

### **Place of Civil Society in the Constitution of Nepal**

This constitution is the first federal democratic republican

constitution. This was constructed by the collective efforts of people outside and inside the constituent assembly. This is the participative constitution. This constitution was made on the context of universally institutionalizing the concept of the supremacy of constitution and constitutionalism. The core of this constitution is democratic socialism-oriented political system. At the time of constructing and promulgating the constitution, 532 CA members participated in the voting process. Among them 115 were from Brahmin, 124 from Kshetri, 6 from Dasanami, 20 from indigenous nationalities, 67 from Madheshi, 29 from Tharu, 14 from Muslim, 38 from Dalit and 19 from back warded communities of the CA members.

The constitution of Nepal has its own salient features. This constitution is fundamentally different from the previous constitutions; Some of the basic features of constitution of Nepal are: federal democratic republican system of governance, sovereign and state both power vested in the people, seven provincial federal structure of state, three tiers of government, parliamentary system, periodical election, adult franchise, prime minister as the head of the government, bicameral legislature, neither flexible nor rigid, the constitution amendment provision or two third majority of members of parliament can amend the constitution, mixed electoral system, fixed numbers of members of the council of ministers in the centre and provincial government, unilateral parliament in the province and provision of local level parliament, division of power: the three tiers of government, unified judicial system, Nepal as the secular state, use of state of emergency power by federal government, etc.

This constitution is the product of civil society's movement in 2062/063 BS. So the reflection of the civilian movement can be seen in the constitution and the constitution has made some

provisions relating to civil society directly or indirectly. The preamble of the constitution starts 'we the sovereign people of Nepal'. It indicates that civil society can affect the proper implementation of the constitution. On the another hand the provision of vesting the sovereign power as well as the state power in the people respects the presence of civil society in the state. The constitution has accepted the norms and values of democracy as unity in diversity, tolerance, solidarity, equality and equity, social justice, equitable society, participatory system, full freedom of press, fundamental rights and their effective way of guarantee, human rights, independent judiciary, rule of law, periodic election and civic liberties are directly related to the roles that the civil society can play in the state.

Constitution as the fundamental law (article, 1), sovereignty and state authority of Nepal vested in the Nepalese people (article, 2), Nepal as an independent, sovereign, inclusive, democratic socialism-oriented federal democratic oriented state (article, 4), basic features of national interest of Nepal as sovereign state (article, 5) are the civil society related provisions managed under part 1 the preliminary of the constitution.

The citizenry, citizen and civil society are not the same but all are correlated. A citizen of the nation cannot be the member of civil society but member of civil society can be the citizen of the nation. It is clear that a member of civil society can be the citizen but a citizen cannot be the member of civil society if they do not have the civic knowledge. So the provision made for the citizenship in the constitution is related to the term civil society.

The constitution has included the very important integral organ of constitution the fundamental rights in part 3 under the provision of fundamental rights and duties. There is provision of life with dignity (article, 16). The constitution included right

to freedom and under it, the constitution provides freedom of opinion and expression, freedom of assemble peaceably and without arms, freedom to form unions and associations (article 17 (a, b, d) except some exceptions i.e. against sovereignty, territorial integrity, nationality and independence of Nepal or the harmonious relations between the federal units or the people of various castes, tribes, religions or communities or incite caste-based discrimination or untouchability or on any act of disrespect of labor, defamation, contempt of court, incitement to an offence or on any act which may be contrary to public decency or morality are directly related to the presence of civil society in the state. Such as right to equality (article, 18) treats all citizens to be equal before law. No person shall be denied the equal opportunity of law.

It also seems the prerequisite for civil society to raise the voice for the equality of the people in the state. Right to communication (article, 19) which is correlated to freedom of opinion and expression is the very important provision made for civil society in the constitution because no member of civil society can raise the voice in the society without this provision. The constitution reads- no publication and broadcasting or dissemination or printing of any news item, editorial, feature article or other reading, audio and audio-visual material through any means whatsoever including electronic publication, broadcasting and printing shall be censored except some limitations as mentioned before. The constitution also reads- no radio, television, on-line or other form of digital or electronic equipment, press or other means of communication publishing, broadcasting or printing any news item, feature, editorial, article, information or other material shall be closed or seized by the reason of publication, broadcasting or printing of such material through any audio, audio-visual or electronic equipment (article, 19(2)).

It is very important for the function of civil society to educate and make the people aware of facts that may happen to them. There is a provision in the constitution about limiting this right to communication. Mentioning in the constitution that no means of communication including the press, electronic broadcasting and telephone shall be interrupted except in accordance with law, has made us doubt that if government made law for restricting the right to communication then civil society is not allowed to raise any voice in the society but taking the assistance of other provisions made in the constitution making effective implementation of constitution and making the supremacy of constitution, supreme court can ultraviolet the inconsistent provisions made by government as well as parliament and civil society can act properly. Right to demand and receive information on any matter of his or her interest or of public interest (article, 27) and the privacy of any person, his or her residence, property, document, data correspondence and matters relating to his or her character shall, except in accordance with law, be inviolable (article 28) which are interrelated to provisions right to freedom of expression of opinion and thought and right to communication for the effective presence of civil society in the state. The arrangement relating to right to constitutional remedy has been made in the article 46 of the constitution. According to the constitutional provision constitutional remedy can be obtained applying the provisions made under article 133 and 144 of the constitution which is significant to the provision of civil society.

The constitution has arranged some provisions regarding some constitutional organs and commissions. Constitutional organs and commissions are thought to be the integral part of the constitution. To the effective implementation of constitution, some constitutional organs or commissions need to be put

independent or out of interference from the government. For it the constitution has also managed some independent constitutional bodies as: Commissions for the investigation of abuse of authority, public service commission, election commission, national human rights commission, national natural resources and fiscal commission are the independent constitutional bodies arranged under the constitution. These bodies need to operate some apolitical members. For it, constitution has made some arrangements for the appointment of members who are in some way related to civil society.

About the commission for the investigation of abuse of authority the constitution in part 21 mentions that- there shall be a commission for the investigation of abuse of authority of Nepal, consisting of the chief commissioner and four other commissioners. The chief commissioners shall be act as the chairperson of the commission for the investigation of abuse of authority (article, 238). It further mentions the qualification for the appointment and mentions that- A person shall be eligible to be appointed as the chief commissioners or a commissioner of the commission for the investigation of abuse of authority if he or she possesses the following qualifications:

- (a) Holding a bachelor's degree from a recognized university,
- (b) Not being a member of any political party at the time of appointment,
- (c) Having gained at least twenty years of experiences in the field of either accounting, revenue, engineering, law, development or research and being a distinguished person,
- (d) Having attained the age of forty five years, and
- (e) Being of high moral character (article, 238(6)). The provision indicates the member of civil society can be

appointed as chief commissioner and commissioner of commission for the abuse of authority and investigation. The word civil society has not been mentioned in the provision but the aforementioned qualification indicates indirectly the member of civil society can be a chief commissioner and commissioner of this constitutional organ. All the eligibility mentioned in the constitution are related to the qualification of member of civil society. At least bachelor's degree is relevant to civic knowledge, not being member of political party is relevant to apolitical character of civil society, at least gained forty five years old is relevant for maturity, fairness, independent, impartial, and obtaining the affective, evaluative and cognitive knowledge and at last being of high moral character is relevant to morality, social maturity and breadth. Thus it can be generalized that only the member of civil society is eligible for the appointment of chief commissioner and commissioner of commission for the abuse of authority and investigation.

Almost the same provisions have been made in part 22, under Auditor General. Article 240 (6) (b), (c), (d) are the same as article 238 (6) b, c, and d. but educational qualification is different. Qualification as having served in the special class of the Government of Nepal or having at least twenty years of experiences in audit related work, after having obtained a bachelor's degree in management, commerce or accounting from a recognized university or having passed a chartered accountancy examination is different for technical constitutional bodies. So the auditor general also can be appointed from field of civil society although the term civil society has not been in the constitution but qualification clearly indicates the auditor general as the member of civil society.

There is provision of public service commission in part 23 articles 242-244 in the constitution. According to the provision, there shall be a public service commission of Nepal consisting of the chairperson and other four members (article, 242). Among the members of commission, at least fifty percent of the total number of members of the public service commission shall be appointed from amongst the persons who have worked for twenty or more in any government service, and the rest of the members shall be appointed from amongst the investigation teaching or any other significant work in the field of science, technology, art, literature, law, public administration, sociology or other sphere of national life (article, 242(3)). Here any significant work, person who holds reputation and sphere of national life indicates the member of civil society can be appointed in the commission. Educational qualification is slightly different from the commission mentioned above. Other than holding a master's degree from a recognized university, the remaining is the same under the eligibility of the members. So the eligibility of chairperson and other members indicates indirectly that they can be selected from field of civil society.

According to the constitutional provision managed under part 24, election commission can be formed consisting of chief commissioner and other four commissioners. Qualifications for the eligibility determined in the constitution are holding bachelor's degree from a recognized university, not being a member of any political party at the time of appointment, having attained the age of forty five years, and being of high moral character (article, 245(6)) indicates that they are to be from members of civil society.

National Human Rights Commission is another important constitutional body managed in the constitution under part

25 in article 248-249. Constitution mentions- there shall be a National Human Rights Commission of Nepal, consisting of a chairperson and four other members (article, 248). The constitution further mentions- a person shall be eligible to be appointed as the chairperson or a member of the National Human Rights Commission if he or she possesses the following qualifications:

- (a) In the case of chairperson, being a retired chief justice or retired judge of the supreme court and having rendered outstanding contribution to the protection and promotion of human rights or being a renowned person having been active for at least twenty years in and rendered outstanding contribution to the protection and promotion of human rights or to various fields of national life,
- (b) In the case of a member, being a person involved in the field of the protection and promotion of human rights or rights and interest of the child or being a renowned person having been active for at least twenty years in and rendered outstanding contribution to various fields of national life,
- (c) Holding a bachelor's degree from a recognized university,
- (d) Having attained the age of forty five years,
- (e) Not being a member of any political party at the time of appointment,
- (f) Being of high moral character (article, 248(6)) indicates that the member of civil society can be appointed as chief or members of commission. Naturally human rights commission seeks member of civil society as chief and other members from reputed persons from national life.

National Natural Resources and Fiscal Commission (part -26) article 250-251 is another constitutional body made in the

constitution. According to the constitutional provision –there shall be a National Natural Resources and Fiscal Commission of Nepal, consisting of a maximum of five members including a chairperson (article 250). The constitution reads- a person shall be eligible to be appointed as the chairperson or a member of the National Natural Resources and Fiscal commission if he or she possesses the following qualifications:

- (a) Having gained experience upon being active for at least twenty years in the field of natural resources or fiscal management, economics, law, management, after holding a bachelor's degree in the relevant subject from a recognized university,
- (b) Not being a member of any political party at the time of appointment,
- (c) Having attained the age of forty five years,
- (d) Being of high moral character (article 250(6)) is directly related to the basic characteristics of civil society. So the chairperson and members of commission can be appointed from related fields of civil society whether the term civil society be mentioned or not in the constitution. At last the constitution has provided some place for civil society but the provision of impeachment against the chief and members of constitutional bodies has made the place of civil society ineffective.

There are provisions relating to other commissions in part 27 of the constitution. National Women Commission, National Dalit Commission, National Inclusion Commission, Indigenous Nationalities commission, Madhesi Commission, Tharu Commission, and Tharu Commission are newly made but to be reviewed commissions. Their chair persons and members also can be appointed from the concerning fields of civil society.

Constitutional bodies were arranged on previous constitutions also but before 2047 BS the concept and functions of civil society were not developed effectively. After the restoration of democracy in 2047 BS in Nepal civil society is developing gradually and affecting the political system.

## **Conclusion**

Nowadays the term civil society has been popular but it has also been a subject of controversy in politics. Civil society is citizen's society who has civic knowledge, civic education and civic virtue. Civics' participation plays important role in the maintaining of rule of law and constitutionalism. Generally, the terms civil society, civility, citizen, citizenry etc. are understood on the same sense but they are all quite different. Generally, to turn citizen to member of civil society, civility is thought to be a basic requirement. So on constitution is agreement concluded between people and ruler as a whole. In totality, the constitution which has not provided sufficient place for civil society cannot be run for a long time. Place for Civil society's participation in the constitution is a basic prerequisite for democracy- the people's participative system. Assimilation of civil society in the constitution is needed to preserve not only democratic system but also to preserve their socio- cultural, economical, and regional and other identical interests.

Provisions freedom of association is basic foundation forming civil society. Unions, associations, organizations, institutions and all networks can be included within the boundaries of civil society. In the case of assimilation of civil society people can be engaged for the welfare of society and community. Civil society can perform their effective work in the decision making and implementing process of government. Civil society teaches citizens on participation of people on democratic system. It

can easily check on the performance of political parties and make them responsible to people. Civil society checks and controls the action of government contrary to the interest of the people. Civil society preserves the democracy but insufficient constitutional provisions hampers the democracy and people's rising aspirations.

Constitution as a compass directing the nation's politics arranges the rules distributing sovereign power and civil society influences government positively on distribution of constitutional powers. Constitution arranges the relation of citizens and the state but it cannot be operated without the presence of civil society. Constitution is system of fundamental political institutions and it can be influenced by civil society. Without the provisions for civil society's participation, the constitution cannot operate properly so as to address the needs of the people. Civil society in democratic system is thought to be the machinery helping on converting people's input to output of government. Constitution of Nepal has provided various places for civil society but some limits set in the constitution can be made ineffective by the civil society. Appointment of members of civil society in the constitutional bodies and their performance makes the government accountable but provisions of impeachment has made it ineffective. In totality, there is deep relationship between constitution and civil society and in the presence of civil society constitution can be operated as an ends as well as means in the nation.

### **References**

- Boussard, Caroline (2003). *Crafting Democracy: Civil Society in Post Transition Honduras*. Lund: Lund University.
- Collins English Dictionary* (2012). Complete and Unabridged 11<sup>th</sup> Edition.

- Constitution of Nepal* (2072). Government of Nepal: Nepal Law Books Management Committee.
- Dicey, A.V. (1948). *Law of Constitution*, London: George Allen and Unwins.
- Eberly, Don E. (Ed.) (2002). *The Essential Civil Society Reader; Classic Essays in American Civil Society Debate*: Rowman and Littlefield Publishers, Inc.
- Encyclopedia Britannica* (2013). Constitutions (Politics and Law).
- Engelhardt, Leath T. and John E. Steinbrink (2001). *Teaching Students about their Civic Obligation Jury Duty*, p. 3, Online [<http://proquest.com/pqd web/Ts.>].
- Gennings, Sir Iver (1976). *The law and Constitution*, London: ELBS
- Grugel, Jean (2002). *Democratization: A Critical Introduction*. New York: Palgrave.
- Harbeson, J., Rothchild, D., Chazan, N. (Eds.) (1994). *Civil Society and the State in Africa*, Lynne Rienner Publishers, Inc.
- Hegel, G. F. W. (1991). *Elements of the Philosophy of Right*, edited by Allen W. Wood :(Cambridge University Press, 184.
- Institutional Institute for Democracy and Electoral Assistance (IDEA)* (2017). Second Edition [www.idea.int](http://www.idea.int) what is constitution.
- Johari, J.C. (1998). *Comparative Politics*, Delhi: sterling Publication
- Keane, J. (Ed) (1988). *Civil Society and the State; New European Perspectives*: University of Westminster Press

- Kothari, Uma and Minogue, Martin (Eds.) (2002). *Development Theory and Practice; Critical Perspectives*, Palgrave: Basingstoke.
- Pagoulatos, George and Panayota Kastritis (2013). *Theorizing and Assessing Civil Society: A Review of Approach*, eiti Standard Protocol: Life Long Learning.
- Putnam, R. (1993). *Making Democracy Work: Civic Traditions in Modern Italy*. Princeton: Princeton University Press.
- Quigley, C.N. and Bahmueller, C. F. (Ed.) (1991). *Civitas: A Framework for Civic Education Calabasas*. (CA: Centre for Civic Education,), p. 3 (See also Online [<http://www.civiced.org/civitasexec.html>])
- Shils, E. (1997). *Civility and Civil Society: Good Manners between Persons and Concern for the Common Good in Public Affairs, in the Virtue of Civility*. Selected Essays on Liberalism, Tradition, and Civil Society, Edited by S. Grosby. Indianapolis: Liberty Fund, p. 63-102.
- Strong, C.F. (1966). *Modern Political Constitutions*, London: Sindwick and Jackson: ELBS
- The New Oxford American Dictionary* Second Edition (2005): Oxford University Press, ISBN 0-19-517077-6
- Wheare, K.C (1956). *Modern Constitutions*, London: Oxford
- <http://www.civisoc.org>
- <http://www.cn.org>
- <http://www.dictionary.com>
- <http://www.un.org>
- <http://www.unescap.org>, [www.southasianright.org](http://www.southasianright.org)
- <http://www.worldbank.org>