

## Constitutional Crisis in Nepal

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### Background:

Amidst violent protests against the new Nepali Constitution, especially in Terai region of Nepal, the National assembly finally passed the new constitution on the 20<sup>th</sup> of September 2015. The then president Mr. Ram Baran Yadav promulgated the charter of constitution intended to build a democratic Nepal. On this occasion Mr. Yadav said, “Our country is multi-ethnic, multi-lingual, multi-religious and multi-cultural ... this new document will safeguard the rights of all Nepali brothers and sisters<sup>1</sup>.” It took around seven years for Nepal’s political representatives to finalize the long awaited document that seeks to construct a modern democratic Nepal. The new constitution will replace the interim constitution which had been adopted by Nepal in 2007 post the abolition of monarchy in April 2006. After putting an interim constitution in place, the constituent assembly of the country was elected in 2008 to come up with a final draft of the constitution. This constituent assembly could not finalize its draft in the given time for various reasons. However, in 2013, a new constituent assembly was elected and finally the new constitution was drafted. An overwhelming majority of 507 out of 598 members of the Constituent Assembly has adopted the constitution. However, after promulgation of the constitution, agitating groups have intensified their protest against the new constitution and have been protesting for more than three months.

### Some Features of New Constitution of Nepal:

Some of the distinguishing features of newly promulgated Nepali Constitution are as follows:

- 1- The Constitution enshrines the principles of republicanism, federalism, secularism and inclusion.
- 2- The preamble of the Constitution also incorporates the principle of “socialism based on democratic values.”
- 3- It incorporates proportional representation to ensure that women, untouchables (Dalits), and marginalised groups like the Janjatis and the Madhes find representation in the national legislature and in the other institutions of the state.
- 4- The new legislature will have 275 seats in the parliament of which 165 will be filled by direct elections (first past the post) and 110 will be based on proportional votes.
- 5- It bestows fundamental rights and freedoms on its citizens and provides for specific constitutional commissions to take care of discrimination against women and marginalised groups.
- 6- The President would be the constitutional head of the state, elected by a collegium of central and provincial legislative bodies.
- 7- The head of the executive will be the Prime Minister elected by the parliament through a majority vote.
- 8- There would be an independent judiciary, nominated by a Judicial Commission.
- 9- In the interest of stability, neither the Prime Minister will be able to dissolve the parliament on his/her own nor will the parliament accept a no-confidence motion against a Prime Minister before the lapse of two years.

Source: Muni, 2015

<sup>1</sup> <http://www.thehindu.com/news/international/nepal-adopts-historic-constitution-amid-protests/article7671003.ec>

## Contentious Issues of Nepali Constitution:

Though Nepal's constitution has been passed by more than 90% of the members of the constituent assembly, it remains controversial. Some marginalized groups such as Madhes, Janjatis and women have accused the current political leadership for not addressing their aspirations. Moreover, these controversies have now taken the shape of violent protests. The protest against new constitution has already taken lives of many people. According to Muni (2015) there are six main agitating groups, namely the Madhes parties, the Janjati groups, women, monarchists Hindu fundamentalist and splintered extremist Maoist. "The differences of these agitating groups from those of the Constitution makers lie in five areas. These are, (i) the carving of federal provinces, (ii) proportional representation, (iii) citizenship rights, (iv) the identity of the Nepali State, and (v) its ideological parameters<sup>2</sup>." The main concerns of the agitating groups are as follows:

- 1- **Controversies on Federal Provinces:** Madhes parties from the beginning were asking for at least a 10 province structure with one single Madhes province. Later, they were ready to settle for two Madhes provinces. Tharu leaders have also supported this demand of Madhes parties. The final constitution document decided on seven provinces, but without the "accommodation of Tharu majority district (Kanchanpur and Kailali) in the western Terai province. The other Madhes parties have objected to three of the eastern-most districts (Sunsari, Morang and Jhapa) being kept out of eastern Terai province. Their objections are also related to the adding of the hill districts in the western Terai province. Their allegation is that carving out of the Terai province's boundaries have been dictated by narrow interests of a few dominant parties' leaders belonging to upper hill castes<sup>3</sup>."
- 2- **Controversies related to Proportional Representation and Nepali Identity:** The Janjati groups are opposing the reduction of the proportionate representation in parliament from 58% under the interim constitution to 45% under the new constitution. Women were also assured of 33% representation in the central legislature but the new constitution does not assure any such representation. Janjatis in Terai region have also been demanding for a province to address their cultural and political identities. However, the provinces in Terai region have been drawn in a manner that the upper hill caste will continue to dominate province politically.
- 3- **Citizenship related Controversies:** Women groups are protesting against norms of citizenship. According to new constitution, citizenship will not be granted merely on the basis of birth. This was done largely to keep out such children who are born of a Nepali mother and a foreign father. Children from such parents will not be entitled to top political and administrative positions. "There are also a number of Indians married to Nepali spouses who will have to go through complicated legal procedures for acquiring naturalised citizenship. There is fear among the Madhesis, who are affected most by such provisions, that a large number of such persons may remain stateless<sup>4</sup>."
- 4- **Ideological Controversies:** The monarchists groups in Nepal are demanding for the reinstatement of monarchy and the Hindu fundamentalists are demanding that Nepal be declared a Hindu state. Both these groups have joined hands to fight against the new constitution. "There are reports that these groups had received extensive moral and material support from India, particularly from the Hindutva section of ruling BJP. Some reports even suggest that former King Gyanendra claimed that he had assurances from the highest political quarters in India about the

<sup>2</sup> [http://www.epw.in/system/files/pdf/2015\\_50/40/Nepals\\_New\\_Constitution.pdf](http://www.epw.in/system/files/pdf/2015_50/40/Nepals_New_Constitution.pdf)

<sup>3</sup> [http://www.epw.in/system/files/pdf/2015\\_50/40/Nepals\\_New\\_Constitution.pdf](http://www.epw.in/system/files/pdf/2015_50/40/Nepals_New_Constitution.pdf)

<sup>4</sup> [http://www.epw.in/system/files/pdf/2015\\_50/40/Nepals\\_New\\_Constitution.pdf](http://www.epw.in/system/files/pdf/2015_50/40/Nepals_New_Constitution.pdf)

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revival of Nepal's monarchy<sup>5</sup>." These groups also wanted to remove the word 'secular' from Nepal's new constitution.

The breakaway Maoists are agitating against the constitution. They are unhappy with the way constitution has been drafted. Since they did not participate in the election, they were not part of constituent assembly; therefore, their demand has been that of holding an all party round table to write the constitution.

### Global Response:

Few groups in Nepal are unhappy about various provisions of the new constitution. Some of them have been protesting against the constitution even before the promulgation of the constitution in September 2015. Realizing that the dominant political parties in Nepal are not addressing issues of Madhesies (Indian origin people living in Terai area of Nepal and constituting a significant share in the nation's population), various political parties of Madhesi origin boycotted the constitution writing process. The promulgation of constituting in such circumstances lead to responses from global democracies. Some of such statements are as follows:

**Statement by USA:** The promulgation of the constitution is an important milestone in Nepal's democratic journey. The government must continue efforts to accommodate the views of all Nepalis and ensure that the constitution embraces measures consistent with globally accepted norms and principles, including gender equality, religious freedom, and the right to citizenship. We encourage all Nepalis to continue to engage in the democratic process through peaceful, nonviolent means. (September 22, 2015)<sup>6</sup>

**Statement by European Union:** The promulgation of Nepal's new Constitution will be an historic event marking the culmination of the Comprehensive Peace Agreement..... At the same time, after the unrest in several parts of the country, which has led to the loss of lives, the EU expects all parties to come together to address the outstanding concerns of the Nepalese citizens in an atmosphere of dialogue and compromise<sup>7</sup>. (September 18, 2015)

**Statement by China:** It is believed that the China is happy that their concern to avoid an identity-based federal structure have been taken care of. China formally congratulated Nepal and its citizen for promulgation of the new constitution. Unlike India, China largely remain muted on Nepal's domestic fight over various provisions of constitutions. However, after some in Nepal's Terai community began burning the Chinese flag during recent protests, Beijing has stepped in to make its preferences clear. Beijing has told "Nepal's Terai leadership ... that Beijing is not 'anti-Madhesi' and believes that for a stable Nepal, Madhesis have to be accommodated in a political settlement."<sup>8</sup>

### India's Response:

On the important event of the promulgation of Nepali Constitution, India neither welcomed nor congratulated Nepal and its citizens. In a press release of Ministry of External Affairs dated 21 September 2015, the government of India signaled

<sup>5</sup> [http://www.epw.in/system/files/pdf/2015\\_50/40/Nepals\\_New\\_Constitution.pdf](http://www.epw.in/system/files/pdf/2015_50/40/Nepals_New_Constitution.pdf)

<sup>6</sup> <http://nepal.usembassy.gov/pr-09-22-2015.html>

<sup>7</sup> [http://www.eeas.europa.eu/statements-eeas/2015/150918\\_01\\_en.htm](http://www.eeas.europa.eu/statements-eeas/2015/150918_01_en.htm)

<sup>8</sup> <http://www.hindustantimes.com/world/china-says-not-anti-madhesi-stable-nepal-not-possible-without-us/story-hjVEACT6ZyBHdWmHitmU5L.html>

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its unhappiness. The press release reads, “We have consistently argued that all sections of Nepal must reach a consensus on the political challenges confronting them. The issues facing Nepal are political in nature and cannot be resolved through force. We still hope that initiatives will be taken by Nepal’s leadership to effectively and credibly address the causes underlying the present state of confrontation<sup>9</sup>.”

According to Muni (2015), “the reasons for the Indian leadership’s frustration with the dominant parties in Nepal are that they have failed in delivering a truly inclusive constitution in conformity with the promise of the peoples’ movement of 2005–06 (Jan Andolan-II) which India had so actively supported.” The present government also took proactive initiative to strengthen Indo-Nepal relations. According to Muni, “many of the prominent Nepali leaders like Sher Bahadur Deuba of the NC, and Prachanda of the Maoists, were invited to India for consultations where all of them promised to take Madhes and other groups on board.” Indian government found that the new constitution not in the line with its prior discussions and deliberations with Nepal political leadership. According to a report published in Indian Express on 24<sup>th</sup> September, 2015 the government of India officially conveyed a list of amendments in Nepal’s constitution to Nepal’s leadership. According to the report the government of India sought following seven amendment in the constitution<sup>10</sup>.

1. Article 63 (3) of the Interim Constitution provided electoral constituencies based on population, geography and special characteristics, “and in the case of Madhes on the basis of percentage of population”. Under this provision, Madhes, with more than 50 per cent of the population, got 50 per cent of seats in Parliament. The latter phrase has been omitted in Article 84 of the new Constitution. “It needs to be re-inserted so that Madhes continue to have electoral constituencies in proportion to its population.
2. In Article 21 of the Interim Constitution, it was mentioned that various groups would have “the right to participate in state structures on the basis of principles of proportional inclusion”. In the new Constitution (Article 42), the word “proportional” has been dropped — Delhi wants it re-inserted.
3. Article 283 of the Constitution states that only citizens by descent will be entitled to hold the posts of President, Vice-President, Prime Minister, Chief Justice, Speaker of Parliament, Chairperson of National Assembly, Head of Province, Chief Minister, Speaker of Provincial Assembly and Chief of Security Bodies. This clause is seen as discriminatory for the large number of Madhesi who have acquired citizenship by birth or naturalisation. Government of India says this should be amended to include citizenship by birth or naturalisation.
4. Article 86 of the new Constitution states that National Assembly will comprise 8 members from each of 7 States and 3 nominated members. Madhesi parties want representation in National Assembly to be based on population of the Provinces. This, India says, should be done to address concerns.
5. Five disputed districts of Kanchanpur, Kailali, Sunsari, Jhapa and Morang: Based on the majority of the population, these districts or parts of them may be included in the neighbouring Madhes Provinces.
6. Article 154 of the Interim Constitution provided for delineation of electoral constituencies every 10 years. This has been increased to 20 years in Article 281 of the new Constitution. Echoing the Madhesi parties, India wants this restored to 10 years.

<sup>9</sup> [http://www.mea.gov.in/press-releases.htm?dtl/25825/Statement\\_on\\_the\\_situation\\_in\\_Nepal](http://www.mea.gov.in/press-releases.htm?dtl/25825/Statement_on_the_situation_in_Nepal)

<sup>10</sup> <http://indianexpress.com/article/world/neighbours/make-seven-changes-to-your-constitution-address-madhesi-concerns-india-to-nepal/>

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7. Article 11(6) states that a foreign woman married to a Nepali citizen may acquire naturalised citizenship of Nepal as provided for in a federal law. Madhesi parties want acquisition of naturalised citizenship to be automatic on application. This also finds favour with Delhi.

However, after the promulgation of what has now become a controversial constitution in September 2015, the Nepal political leadership not only ignored India's advice and concern but also blamed India for encouraging disturbance in Terai region of Nepal. A spokesperson of Ministry of Home, Nepal government accused India for trade blockade on border. In a TV interview, the spokesperson Mr. Laxmi Prasad Dakhhal said, "Demonstrations had been taking place in Nepal for months before the constitution was enshrined and trucks had been entering without major problems....Just after the constitution was put into effect, India stops the trucks at the border citing security issues. Our stand is this is a vengeance from India as they are not happy with Nepal's new constitution. This is a trade blockade, just not officially announced"<sup>11</sup>. However, the Indian government had strongly rubbished all such allegations by the Nepal Home Ministry. Later on 16<sup>th</sup> November, the newly elected Prime Minister of Nepal Mr. K.P. Oli also blamed India for trade blockade. He said, "The undeclared blockade by India and the resultant humanitarian crisis in the country had undermined historic ties between the two nations as well as the rights of a landlocked country under international law"<sup>12</sup>.

Demonstrating groups in Nepal have been seeking India's help in order to advocate their concerns. In a recent development, a delegation of Madhesi leaders on 6<sup>th</sup> December 2015, met India's External Affairs Minister Ms. Sushma Swaraj and many other Indian political leaders. According to Media reports, Ms. Swaraj assured support for 'Inclusive Nepal'. The government of India is also planning to send an all-party delegation to Nepal as a step to resolve current situation.

### Impacts of Nepal's Constitutional Crises in India:

The relation of India and Nepal has been more than that of a good neighbor. There has been social, cultural, economic exchange between both of these countries. In addition, this highly valued relation helped both countries in many ways. Therefore, the current situation weakening mutual trust is unfortunate for both Nepal and India. There is need to address following major issues which can bring back mutual trust.

- 1- **Anti India Sentiments in Nepal:** Due to current situation, the anti India sentiment in Nepal is increasing. People in various parts of Nepal have been protesting against India for alleged support for Madhesi agitators in Terai. This increasing mistrust between people of two countries can prove to be dangerous for the future.
- 2- **Trade and South Asian Diplomacy:** The Nepal government officially accused Indian government of trade blockade on border resulting in scarcity of petroleum products in Nepal. The Nepal government has been repeatedly saying that the trade blockade is unofficial from Indian side. However, the Indian government on many occasions has rubbished this allegation. Distrust between two governments has given opportunity to China and Bangladesh to replace India's trade relationship with Nepal. Due to trade blockade on Indo-Nepal border, the Nepal government has opened its market for Bangladesh and China. The current move of Nepal is a setback for India's previous efforts of strengthening trade and other relations with Nepal.
- 3- **Right Wing Fundamentalism:** India has been a supporter of democratic Nepal and it has played significant role in its democratic processes. However, in current nationwide protest against constitution, the people of Nepal

<sup>11</sup> <http://edition.cnn.com/2015/09/29/asia/nepal-india-fuel-crisis/>

<sup>12</sup> <http://indianexpress.com/article/world/neighbours/nepals-prime-minister-k-p-oli-slams-india-again-praises-china/#sthash.NK5bXY9r.dpuf>

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have been accusing Hindu right wing groups linked with BJP for supporting Hindu Right wing and Monarchist agitating groups of Nepal. Major anti-democratic demands of these two groups are to reinstating monarchy and making Nepal a Hindu state.

### **Conclusion:**

India has been an active supporter of democratic Nepal. It had supported the fight of Nepali Congress (NC) against the Rana autocracy of Nepal in 1949. Furthermore, India played a constructive role in “bringing the Maoist insurgent movement to mainstream politics in Nepal and ushering in a new era of democracy in the Himalayan country<sup>13</sup>”. However, people and media of Nepal, experts and Nepal’s democratic government have criticized the current diplomatic approach of India on the issue of controversial constitution of Nepal. Experts have argued that the new constitution has sharply polarized Nepal along ethnic and regional lines and India has jumped into this polarization by taking side of a particular section. Veteran expert on Nepal Prof. S.D. Muni argues that the Indian government failed to understand internal dynamics of Nepali political parties. He further argues, “India’s efforts should have been to nudge both sides of the polarized debate through quiet and sustained diplomacy so that an amicable resolution was found<sup>14</sup>.” Any turmoil in Nepal has potential to affect India. Therefore, not only Nepal but also India must proactively consider voices of various stakeholders.

### **Reference:**

Muni, S.D., 2015, ‘Nepal’s New Constitution: Towards Progress of Chaos?’, Economic and Political Weekly, Vol. L, No. 40, October 3, 2015

<sup>13</sup> <http://thediplomat.com/2015/09/nepal-tests-indias-much-touted-neighborhood-diplomacy/>

<sup>14</sup> <http://thewire.in/2015/09/23/indias-nepal-policy-needs-caution-not-grandstanding-11430/>