

Nepal's Transition to Democracy and the 2015 Constitution

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By

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I hereby declare that the dissertation entitled “**Nepal’s Transition to Democracy and the 2015 Constitution**” submitted to **Sikkim University** in partial fulfillment of the requirements for the degree of **Master of Philosophy** is my original work. This dissertation has not been submitted for any other degree of this university or any other university.

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This is to certify that the dissertation entitled “**Nepal’s Transition to Democracy and the 2015 Constitution**” submitted to **Sikkim University** for the award of the degree of **Master of Philosophy** in International Relations, embodies the result of bona fide research work carried out by Premulla Lepcha under my guidance and supervision. No part of the dissertation is submitted for any other degrees, diploma, associate- ship and fellowship. All the assistance and help received during the course of investigation have been deeply acknowledged by her.

Ph. Newton Singh

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“Nepal’s Transition to Democracy and the 2015 Constitution”

Submitted by Premulla Lepcha under the supervision of Ph. Newton Singh of the Department of International Relations, School of Social Sciences, Sikkim University, Gangtok 737102, INDIA

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CHAPTER I

Nepal's Transition to Democracy

1.1 Democracy and Democratisation

Democracy is understood as a “freely competitive system and also a process marked by the responsiveness of the government towards its people” (Bajpayee, 1995). There is no common definition for the term democracy. According to David Held, there are three types of democratic models (a) the direct or participatory (b) liberal or representative and (c) a model based on one party domination. In the present world political system, the liberal interpretation of democracy appears to be the most popular ideology. The understanding of liberal democracy encompasses the ideals of representation of the people, accountability of the political leaders and the responsiveness of the government. However due to varying socio-political conditions of each state, democracy seems to have been shaped by historical and social characteristics of the societies in which it is applied.

In representative democracy people govern themselves by regular elections through which their leaders are periodically determined and policies governing them are made. Not so long ago governments were called democratic but excluded the franchise of all slaves, women, and free males into did not meet certain property or literacy requirements. Now it is considered perverse to call democratic any country which restricts the franchise, as for example, the South Africa apartheid regime that limited voting for minority whites. Inclusion of all adults of particular age irrespective of gender, cast or race expanded democracy with the acceptance. The acceptance of certain so-called democratic rights, particularly the right to vote, the right to have one's vote count equally, the right to run for the highest office, and the right to organize political groups or parties. And finally, there is above the state a law to which all authorities adhere, that provides the framework for democratic rule, and that protects democratic rights. Democracy, therefore, now generally means that people rule themselves through periodic elections of their leaders in which nearly all adults can participate, for which offices they are eligible, and under the rule of law.

The role of political culture is also important in the stability of democracy. Many democratic theorists have accepted that democracy requires a political culture of negotiation, compromise and accommodation. Where this culture is absent, democracy, even if created through revolution by the people themselves, cannot succeed (Lynn, 1991). However, as one considers such democracies as Japan, France, Germany, or India, their pre-democratic cultures were most conducive to authoritarian rule of some kind. It is only with the development of democracy that their political cultures gradually became democratic. Whether political democracy or democratic culture came first is clearly a chicken and egg question, but whether it comes before or after democracy is created, it is widely recognized as essential to democratic stability.

Of all arguments for democracy, however, the most popular are the utilitarian ones. “Democracy creates the greatest happiness of the greatest number” by Jeremy Bentham, it promotes economic and personal development; public policy is most effective because of its incremental nature and the feedback of democratic elections; people are freer and minorities better protected; equality is promoted and enhanced; it enables gradual and incremental revolutionary change.

But especially important here is the argument that democracy institutionalizes a means of nonviolent conflict resolution, the willingness to negotiate, compromise, and debate, rather than fight. Moreover, the ballot rather than the bullet is the very democratic ideal of voting to resolve differences and choose leaders. It is what by democracy means according to Rummel (Rummel, 2002).

Empirical research supports this argument. Especially well established is the finding that democracies do not make war on each other. Moreover, the more democracy the less likely violent rebellion, revolution, civil war, bloody riots, anti-government terrorism, and such. Finally, democratic leaders generally do not kill their own people through genocide, massacres, extra-judicial executions, and other forms of mass murder.

1.2 Democratization

Democratization is the transition to a more democratic political regime. It also refers to substantive political changes moving in a democratic direction. It may be the transition from an authoritarian regime to a full democracy, a transition from an authoritarian political system to a semi-democracy or transition from a semi-authoritarian political system to a democratic political system (Thapa,1999). The outcome may be consolidated (as it was for example in the United Kingdom) or democratization may face frequent reversals (as it has faced for example in Argentina). Different patterns of democratization are often used to explain other political phenomena, such as whether a country goes to a war or whether its economy grows. Democratization itself is influenced by various factors, including economic development, history, and civil society (Kantha, 2010). The ideal result from democratization is to ensure that the people have the right to vote and have a voice in their political system.

In most of the western countries the idea democracy and democratic institution developed through evolution over time. The growth of idea like liberalism, individualism and industrial capitalism have contributed in the development of democracy in different ways in a gradual process. In South Asia idea of democracy came with the colonial masters and transition to democracy where mostly from colonial masters to the nationalist elites and in some case it was from authoritarian regime to democratic political system (Thapa, 1999).

Colonization, especially by Great Britain, has provided an incubation period for democracy in a number of countries, which with independence became fully fledged and stable democracies. Canada, New Zealand, and Australia are good examples. India is also an example, although its democracy has come under severe strain, and its survival is all the more remarkable given regional, religious, linguistic, and ethnic centrifugal forces (Rummel, 2002).

In some of the developing countries one can see transition to democracy from colonial master to the nationalist elites, where the condition were better as compare to transition from authoritarian regime to democracy. When the transfer of power took place, certain essential infrastructure to run the democratic system was already

available in transition from colonial master to nationalist elites (Thapa, 1990). In the colonial states the foundation of democratic idea was laid down by the colonial master, therefore it is a western liberal democratic system. During the course of nationalist movements, the local political leaders and citizens of the nation becomes familiar of the democratic system and create the conditions for the growth of political organisation, which help in the sustenance of democracy in nation. It also helps to develop confidence among citizens' especially political elites or leader and to develop political institution which plays an important role in democratic system.

The process of democratization may also be carried out by the governing elite themselves, as has often happened in South America, and indeed, one will find authoritarian leaders that claim their rule is required to create the conditions for democracy (Rummel, 2002). However, this top-down process has more often ended in an unstable democracy, unless it has been responsive to revolutionary pressure and pro democratic violence from those below

The transition of authoritarian states to democratic political system has not been easy and smooth. Not only shift in governmental system has been complex process but the other big challenges are the institutionalization and sustenance of democracy (Phadnis, 1990). According to him the sustenance of democracy depends on various factors such as leadership role, forming of party, popular consciousness and awareness, prevailing political condition, social equality and distribution of justice. Further he stated that democracy cannot be institutionalised in the absence of these factors. Therefore transition to democracy from authoritarian regimes to democratic state are different, complex and difficult because condition for the development of democratic environment in authoritarian regimes are not favourable as the authority or traditional politics remains stronger in order to sustain.

Lynn and Schmitter advanced four modes of transition: pact, imposition, reform and revolution. The level of accommodation between the old and new elite separated one mode from another. Pact resulted from compromise, imposition was unilaterally carried out by incumbents, and reform was orchestrated by mass mobilisation and compromise without violence. Revolution resulted from a complex break with the past and the defeat of the incumbent elites (Lynn, 1991). Muck and Leff defined transitions as "uniquely fluid processes defined by the identity of regime challengers

and their strategies in challenging the old regime.” They basically talk about five modes of transition:

- a. Reforms from bellow: are driven by pressure from the outside by broad opposition movements from reform; however the incumbent elites still remain powerful enough to define the parameters of participation. This mode leads to “restricted democracy.”
- b. Reforms through transaction is a “more complicated protracted” process. Although it heralds less restricted democracy, the old elite retain lingering power, which they use to impose rules that are not “optimal for democratization”. It also leaves the antiauthoritarian coalition in disarray. Executive and legislative bodies are prone to clash in this mode: both governability and democratic consolidation become problematic.
- c. Reforms through extrication lead to “unrestricted democracy”. The opposition control this mode of transition by defeating the old elites. Yet old elites due to their reduced but continuing power and influence (withhold) “lingering power” allowing for a certain degree of continuity with the old regime. This modality is considered favourable to a steady progress towards democratization.
- d. Reforms through rupture process is a complete turnaround the “most unproblematic type of transition.” Overtaken by the opposition, the process leads to unrestricted elections. Under this mode, the transition is fast and easy but consolidation coalition disintegrates as a result of electoral completion. Lacking agreement on resolution of constitutional issues, consolidation is eluded by stalemates and standoffs.
- e. Reforms through revolution from above are a pre-emptive set of reforms initiated by the reforms minded ruling elite; the process is controlled and creates division and lack of trust among the opposition leaders and group.

Bold claims were made about the path dependency of regimes following these modes of transitions. Lynn and Schmitter called “transition from above” or pacts, where the traditional rulers “retain at least part of their power” as the most likely to lead to some form of political democracy. They unequivocally asserted that revolution was likely to lead to “patterns of fair competition, unrestricted contestation, tolerance for rotation in power and free associability (Lynn and Schmitter, 1991).

When we look into the theory of transition to democracy by Dankwart Rustow he has divided the transition to democracy theory basically into four stages (1) National unity--the people must agree that they are a political entity, at least enough that there is no recessionary movement. (2) There must be a family feud--some debate that has the people split into strongly opposing camps. (3) There must be a decision to resolve the debate by means of democratic institutions (even if this decision is only a side effect of the resolution). (4) "Habituation": over time, the people will get used to this pattern and come to value democracy itself (Rustow, 1970).

Therefore the theory of transition to democracy by Rustow can be matched with transition of Nepal's democracy. Rustow first stage is 'nation unity' formation of sense of nationhood. In Nepal's case there was the nation unity as is manifested in Nepal's politics of 1950s there was unification of political parties and the king to fight against the Rana regime in Nepal. Rana the authoritarian regime tried to suppress the voice of political elites but failed to do so. After unification, conflict and debate followed. There was debate between the Rana the authoritarian ruler and the king and political parties. Subsequently, the authoritarian ruler was overthrown and a certain system established in Nepal which marked as Nepal's first democratic experiences.

However, Nepal again in 1962 with the proclamation of new constitution by Mahendra became the monarchy state; it was called the 'Return to Autocracy' (Parakh, 2015). Again there was unification of nation to fight against authority, people from all the section of society participated and there was People's Movement (Jan Andolan I) and once again democracy was restored in Nepal. This was not the end of Nepal's transition to democracy as there was again 'Return to Autocracy II' and followed by People's Movement in Nepal and again restoration of democracy in 2007 (Parakh, 2015). . After 2007 Nepalis undergoing through the consolidation of democracy, however challenges remain in terms of making it more accommodative and more representative of Nepal's diverse situation.

1.3 Birth of Democracy in Nepal

Nepal is a country in the South Asia where the transition to democracy from authoritarian or traditional rules took long process, with multiples challenges. It was way back in 1950s that a stage was set for the dawn of democracy in this Himalayan kingdom. The democracy was introduced after the abolition of Rana Dynasty. India provided the ground for the exiled Nepalese to plan and launch a movement against Rana (Upreti, 2008). The Indian Nationalist Movements provided inputs to the process of political socialization of the emerging Nepali democratic political elite (Thapa, 1999). The Indian political leadership become ideal for the growth of ideological and institutional postulates of democracy in Nepal. At the time when the Ranas prevented the formation of political and social organizations in Nepal, the Nepali National Congress was formed in exile in India in 1946. In January 1947 some minor political and student organizations on the initiative of B. P. Koirala joined the Nepali Rashtriya Congress (Nepali National Congress) (Kraemer, 1999). Other important parties formed in the exile in the late forties were the Nepali Prajatantrik Congress (Nepali Democratic Congress) and the Nepal Communist Party. Therefore, the 1950 marked an important period in Nepal's democratic transition.

1.4 Nepal Politics in 1950's

First democratic movement in Nepal was struggling to over throw an absolute Rana regime and establish the constitutional monarchy. In 1948, Rana Mohan Shamsher introduced the first written constitution of Nepal. 'The Government of Nepal Act, 1948' was effective from 1 April 1948 (2015, Post Report, Kathmandu)¹. The powers were solely owned by the Rana Prime Minister to select bicameral legislature members. The Rana Prime Minister therefore became more autocratic and outlawed the Nepal Congress and the Nepal Democratic Party. These parties came together with an object of over throwing the Rana but did not succeed in fulfilling their aims because the leaders were arrested by the Rana government. By 1950, many anti-Rana

¹ Kathmandu Post, "Here is Things You Need to Know about 7 Constitution of Nepal." September 2015: <http://kathmandupost.ekantipur.com/news/2015-09-24/here-are-things-you-need-to-know-about-the-7-constitution-of-Nepal.html>

organisations once again came together and the Nepal Congress started an armed struggle against the government. During the time India had recognised the Rana regime in Nepal and had concluded the Treaty of Peace and Friendship in 1950 (2015, Parakh). India's approach was that Nepal have to take the middle path, therefore mediated three segments of the Nepali politics the Rana, the popular leaders and the king. The agreements were signed in Delhi in February 1951 and as a result, a coalition government of Rana and Nepali Congress was formed and restored the status of the monarch and this coalition government had the responsibility of facilitating full democratic system in the country. However writers like Kantha in his work *Nepal's Protracted Democratization in Terms of Modes of Transition* argues that the Delhi agreement seemed to have created an anomalous situation by tipping the agreement in favour of Nepal's nascent democratic forces under Indian influence, making the traditional elites resent the agreement as an imposition by India. He further stated that, this factor underlines the critical role of external actors in the geopolitically vulnerable states, an element that needs greater recognition and analysis, as it is largely ignored, especially in the early transition studies. Kantha called this period 1950-55 as a "special relations" between India and Nepal because of excessive Indian meddling in all aspects of Nepali politics and administration.

1.5 Interim Government of Nepal Act, 1951

With the return of king to the Kathmandu valley the capital of Nepal, a new Constitution of Nepal was formed with the help of Indian experts, 'Interim Government of Nepal Act, 1951'. This constitution ratified the end of the authority of Prime Ministership of Rana and it also restored the power of the king, as the constitution asserted king's executive, legislative and judicial powers. The king exercised his executive authority through and was aided and advised by the council of ministers, which he appointed and which served at his pleasure. The prospect of democracy in the county received a set-back by the sudden death of the then king Tribhuvan, who was not only fully committed to democratic values but had also been the front leader of the democratic movement in the country. Successor of king Tribhuvan king Mahendra had different views, he believed in the royal absolutism therefore he did everything possible to throttle democracy (Jha, 2001). First he

delayed the process of switching over to democracy and simultaneously reasserted and established the absolute authority of the monarch. He did all this by accenting the conflicts and dissension in the political parties which were more concerned with being in power rather than in the conduct of politics in a principle way. Nevertheless the party politics had generated large inspiration among the huge sections of the people for a democratic system and monarch could not afford to ignore it. Therefore king ultimately agreed to grant a constitution, hold an election and allowed formation of a government of the people representation under his sovereign authority.

1.6 First Democratic Experiences

In February, 1959 king Mahendra Bir Bikram Shah proclaimed 'Royal Constitution of 1959' replacing the Interim Act of 1951, this constitution declared Nepal as constitutional monarchy state. The first election was held in Nepal's history on 18 February, 1959. This was the first ever democratic experience in the history of Nepal. The principles of democratic governance were brought out by some political parties within the governmental framework (Upreti, 2008). In between 1947 to 1954, the Nepali Congress, the Communist Party and Gorkhparishad were the predominant Political parties. The elections of 1959 established the dominant position of Nepal Congress receiving wide support from the large rural peasantry and the small non aristocratic urban residents and won 74 of the 109 parliamentary seats. B. P. Koirala became the first democratically elected Prime Minister of Nepal. But there was a turn in Nepal's politics as the king did not allow this government to continue for long and in December 1960 all on a sudden dismissed it, all the political leaders were arrested, political parties were banned and the constitution was also abolished. This phase of Nepal politics was transition from democracy to absolute monarchy (Pradhan, 2015). The king argued that parliamentary democracy was alien to the Nepalese tradition and was fundamentally unsuited for the development of the country. The king levelled serious charges against the government and started a campaign to discredit parliamentary democracy itself among the people of Nepal. The absence of modern institutions paved the way for the king to autocratic governance. In fact a large number of politician selfishly seeking power were also league with the king to put the country under king rule (Thapa, 1999). A shrewd politician as the king himself was,

he knew the days of old monarchy was over and was also convinced people that they have to play an active role in establishment of the government.

1.7 Return to Autocracy I and Introduction of Panchayati System

The new constitution of Nepal 'Constitution of Nepal 1962' consolidated the king's power in governance, political parties were completely banned and there was limited democracy. This was called return to Autocracy I (Parakh, 2015). There was establishment of Panchayat System in Nepal also known as 'guided democracy' by many writers. Although the constitution provided for unicameral legislature, this had no power. The constitution consolidated the king's power in governance. It was monarchy in a new garb in tune with the demand of the time (Jha, 2001). It is also believed that the king had learned the lesson from some other countries. Like the basic democracy in Pakistan introduced by the military dictator Ayub Khan, guided democracy of Sukarno in Indonesia and model democracy in Egypt by Nasser. This system was essentially undemocratic couched in impressive democrat paraphernalia. The main features of Panchayat system were party less character of the polity, supremacy of the monarchy and its guidance and control at all levels of the Panchayat organisation.

The new constitution of December 16, 1962, created a four-tier Panchayat System. According to Jha, at the local level, there were 4,000 village assemblies (*gaun sabha*) electing nine members of the village Panchayat, who in turn elected a mayor (*sabhapati*). Each village Panchayat sent a member to sit on one of seventy-five district (*zilla*) Panchayat, representing from forty to seventy villages; one-third of the members of these assemblies were chosen by the town Panchayat (Upreti, 2008). Members of the district Panchayat elected representatives to fourteen zone assemblies (*anchal sabha*) functioning as electoral colleges for the National Panchayat, or Rashtriya Panchayat, in Kathmandu. In addition, there were class organizations at village, district, and zonal levels for peasants, youth, women, elders, laborers, and ex-soldiers, who elected their own representatives to assemblies (Parakh, 2015). The National Panchayat of about ninety members could not criticize the royal government, debate the principles of party less democracy, introduce budgetary bills without royal approval, or enact bills without approval of the king. Mahendra was supreme

commander of the armed forces, appointed (and had the power to remove) members of the Supreme Court, appointed the Public Service Commission to oversee the civil service, and could change any judicial decision or amend the constitution at any time. To many of the unlettered citizens of the country, the king was a spiritual force as well, representing the god Vishnu upholding dharma on earth (Upreti, 2008). Within a span of ten years, the king had, in effect, reclaimed the unlimited power exercised by Prithvi Narayan Shah in the eighteenth century.

The first elections to the National Panchayat took place in March and April 1963. Although political parties officially were banned and the major opposition parties publicly refused to participate, about one-third of the members of the legislative were associated with the Nepali Congress. Support of the king by the army and the government bureaucracy prevented opposition to his rule from developing within the Panchayat System. Real power came from the king's secretariat, and in the countryside influence rested in the offices of zonal commissioners and their official staffs or the parallel system of development officers (Shah, 1982). The Nepali Congress leadership made increasingly conciliatory statements and began to announce its faith in democratic ideals under the leadership of the king. In 1968 the king began to release political prisoners, including B.P. Koirala, who was freed on October 30. At this point, a three-way split developed in the Nepali Congress. B.P. Koirala went to India, where he headed a wing committed to democratic revolution and violent overthrow of the Panchayat System (Singh, 2001). He was a symbol for youth but powerless politically. Subarna Shamsheer's wing continued to advocate local cooperation with the king outside the Panchayat System. A third wing tried to work within the Panchayat System in the expectation that it would evolve into a democratic system. The disunity of the political opposition left King Mahendra to do as he wished.

The Panchayat system despite reforms in it remained undemocratic and did not fulfil popular aspiration. On the whole it was for the legitimization of the royal authority (Upreti, 2008). It failed to realizing popular aspirations. Hence there was widespread dissatisfaction against it. The opposition to the regime grew as education and political awareness raised the level of discontent and expanded avenues for mobilization and expression of political discontent. This period consisted of what

Bermeo calls the “critical moment between the crisis of the old order and the consolidation of the new one (Bermeo, 1992).

The constitution of 1962 was therefore amended in 1967 and 1975 for further accommodation of democratic sentiments of the people. Moreover this political system in Nepal was in fact found more favourable and suitable to a monarchical system than the democratic one (Parmand, 1988). King Mahendra effectively resisted all efforts by some sections to have multiparty democracy and made the new system stable enough to last even after his life time.

The death of Mahendra in January 1972 and the accession of Birendra Bir Bikram Shah Dev allowed the possibility of turmoil. The new king was associated with young, educated, administrative experts who were dedicated to economic development, but not to sharing power with political parties (Shah, 1990). That month, 100 armed men attacked an eastern Tarai village and killed a constable in a revolutionary action supposedly linked to the policies of B.P. Koirala. In June 1973, terrorists hijacked a Royal Nepal Airlines airplane to India and escaped with 30 million Indian rupees (approximately US\$4.6 million). Other armed attacks and assassination attempts occurred into 1974. These isolated incidents had relatively little impact on a government that the army and the bureaucracy supported and that monopolized the allocation of all resources to local development projects (Jha, 2001).

In 1975 the king appointed a seven-member Reform Commission to investigate making changes in the Panchayat System, but during that year Indian Prime minister Indira Gandhi declared a state of emergency in her country, jailing members of the opposition and curtailing democracy there (Gautam, 2008). In this climate, the recommendations of the Reform Commission in Nepal led to a 1975 constitutional amendment that made cosmetic changes in the Panchayat System but only increased its rigidity. According to Gautam the changes included the establishment of five development regions to promote planning and the increase in membership of the National Panchayat from 90 to 134 persons. The king was to nominate 20 percent of its members.

However in May 1979, amidst increasing incidents of confrontation between the protestors and security forces, the king announced his intention to hold a national referendum subjecting the prevailing system of restricted, party less democracy to popular vote, allowing people to opt if they chose for an alternative multiparty system (Parmand, 1988). Therefore in May 1980 King Birendra announced the amendments of the constitution according to the popular demand, amendments included direct elections for national assembly members, appointment of the Prime Minister on the recommendation of the legislature and collective responsibilities of the cabinet to the legislature.

In the aftermath of the referendum, two general elections were held in 1981 and 1986. These elections drew participation of candidates with clear affiliation to political parties, even though technically parties remained banned (Kantha, 2010). In the 1981 election a faction of the Nepal Congress won four seats. A communist faction also participated but failed to win any seat (Shah, 1982). All the influential communist groups boycotted the elections (Baral, 1983). In the 1986 election the Nepal Congress participated at the local level. Some leftist complied with the altered electoral system and hence got elected into the Rashtriya Panchayati (Singh, 2001). But there was hardly any change in the reformed Panchayati system. The king's role was retained with the view to a greater democratisation of the system as a whole however, the politics was still precisely palace oriented (Shah, 1990). Thus with the gradual decay of the Panchayati system, there emerged an atmosphere of people's unrest in Nepal.

1.8 Political Development in the 1990s

It was in 1990 the youth of the country raised the revolt. The people and the politician supported them from the background. The year 1990 has its own importance in Nepal history as it saw all the political and civil coming together in a massive Jan Andolan to demand a return to parliamentary democracy and for the king to come under the purview of the constitution of the country. A movement for the restoration of democracy in Nepal was announced by alliance on 10 January 1990 which was popularly known as Jan Andolan or People's Movement in Nepal (Dasgupta, 2010).

On April 6, a massive demonstration occurred in Kathmandu and the crowd later started marching towards the nearby places resulting in a confrontation with security forces causing scores of deaths (Kantha, 2010). Finally on 16 April 1990 the king, who was under the huge pressure had to dissolve the National Panchayat system, and had to succumb and agree for full fledged democracy. At last the process of democratisation on the one hand and the people's unrest on the other led to the reintroduction of the multi party system. The king yielded to the opposition demanded for an unrestricted democracy and the shift of sovereign power from the king to the people. The role of the masses in this transition was more critical than before. Dozens of people were reported killed by the security forces before the king surrendered his power. A new constitution was drafted and promulgated on November 1990.

1.9 The 1990 Constitution

'Constitution of Kingdom of Nepal, 1990' was promulgated on 9 November 1990. The framing and promulgation of this constitution was first major step in the process of institutionalisation of democratic order in the country. A multiparty system with parliamentary system of government was formed. This was democratic experience of Nepal. The functioning the multi party system since 1990 had resulted a shift in the power balance leading to political instability in Nepal. The democratic processes with parliamentary procedures reflect more of a liberal democratic model political development in Nepal. The constitution declared Nepal multi ethnic, multi linguistic, democratic, independent, sovereign, Hindu Constitutional Monarchy (Singh, 2001). It also provided for bicameral legislature, the House of Representative and Upper House, based on direct and indirect elections respectively

First election under the new constitution was held on 12 May 1991; Girija Prasad Koirala of Nepal Congress forms the majority government. Early election was held in November 1994, for the first time communist leader of Communist Part of Nepal Man Mohan Adikhari became the Prime Minister of Nepal (Dasgupta, 2010). Another election was held in 1995 and the National Congress formed the coalition government with National Democratic Party and Nepal Sadhbhavana Party, Sher Bahadur Deuba became the Prime Minister of Nepal.

1.10 Emergence of Maoists

On major problem of Nepali politics since the democracy came into operation 1990 was instability of government which led to the questioned governability of the democratic regime. The new party was emerged the Communist Party of Nepal (Maoists) in 1994 which gone through a number of radical transformations, shifting from a guerrilla warfare unit to a key democratising force within Nepali politics (Sunam and Goutam, 2013). The Maoists original aim was to benefit the poor and marginalised sectors of Nepali society by uprooting the monarchy and feudalism.

During this period state control has been exercised by a tripartite interim government, a single-party government of the Nepali Congress, a minority government of UML and a present Nepali Congress-RPP-Sadhbhavana coalition. According to the Maoists, instead of making progress, the situation of the country and the people was going downhill was evident from the fact that Nepal has slid to being the second poorest country in the world; people living below the absolute poverty line has gone up to 71 per cent; the number of unemployed has reached more than 10 per cent while the number of people who are semi-employed or in disguised employment has crossed 60 per cent; the country is on the verge of bankruptcy due to rising foreign loans and deficit trade; economic and cultural encroachment within the country by foreign, and especially Indian, expansionists is increasing by the day; the gap between the rich and the poor and between towns and villages is growing wider (Kantha, 2010). On other hand he further stated that, parliamentary parties that have formed the government by various means have shown that they are more interested in remaining in power with the blessings of foreign imperialist and expansionist masters than in the welfare of the country and the people. This is clear from their blindly adopting so-called privatisation and liberalisation to fulfil the interests of all imperialists and from the recent 'national consensus' reached in handing over the rights over Nepal's water resources to Indian expansionists (Kantha, 2010). Since 6 April, 1992, the United People's Front has been involved in various struggles to fulfil relevant demands related to nationalism, democracy and livelihood, either by itself or with others. But rather than fulfil those demands, the governments formed at different times have violently suppressed the agitators and

taken the lives of hundreds; the most recent example of this is the armed police operation in Rolpa a few months back. In this context, the Maoists presented to the coalition government demands related to nationalism, democracy and livelihood (Thapa, 2003). The Communist Party of Nepal- Maoist in 1996 submits the forty point's demands to the government within ultimatum to launch war if the demands are not fulfilled (Ali and Subba, 2010). According to the Thapa in his work, *Understanding the Maoists Movement of Nepal*, the forty points were related to nationalism, democracy and livelihood and the points were as follows:

Concerning nationality

1. All discriminatory treaties, including the 1950 Nepali-India Treaty, should be abrogated.
2. The so-called Integrated Mahakali Treaty concluded on 29 January, 1996 should be repealed immediately, as it is designed to conceal the disastrous Tanakpur Treaty and allows Indian imperialist monopoly over Nepal's water resources.
3. The open border between Nepal and India should be regulated, controlled and systematised. All vehicles with Indian licence plated should be banned from Nepal.
4. The Gurkha/Gorkha Recruitment Centres should be closed. Nepali citizens should be provided dignified employment in the country.
5. Nepali workers should be given priority in different sector, a 'work permit' system should be strictly implemented in foreign workers are required in the country.
6. The domination o foreign capital in Nepali industries, business and finance should be stopped.
7. An appropriate customs policy should be devised and implemented so that economic development helps the nation become self reliant.
8. The invasion of colonial and imperialist culture should be banned. Vulgar Hindi films, videos and magazines should be immediately outlawed.
9. The invasion of colonial and imperial elements in the name of the NGOs and INGOs should be stopped.

Concerning people's democracy

10. A new constitution should be drafted by representatives elected for the establishment of people's democratic system.
11. All special privileges of the king and the royal family should be abolished.
12. The army, the police and the bureaucracy should be completely under people's control.
13. All repressive acts, including the Security Act, should be replaced.
14. Everyone arrested extra-judicially for political reasons or revenge in Rukum, Rolpa, Jajarkot, Gorkha, Kabhrc, and Sindhupalchowk. Sindhuli, Dhanusa, Ramechhap, and so on, should be immediately released. All false cases should be immediately withdrawn.
15. The operation of armed police, repression and state-sponsored terror should be immediately stopped.
16. The whereabouts of citizens who disappeared in police custody at different times, namely Dilip Chaudhary, Bhuwan Magar, Prabhakar Subedi and others should be investigated and those responsible brought to justice. The families of victims should be duly compensated.
17. All those killed during the People's Movement should be declared martyrs. The families of the martyrs and those injured and deformed should be duly compensated and the murderers brought to justice.
18. Nepal should be declared a secular nation.
19. Patriarchal exploitation and discrimination against women should be stopped. Daughters should be allowed access to paternal property.
20. All racial exploitation and suppression should be stopped. Where ethnic communities are in the majority, they should be allowed to form their own autonomous governments.
21. Discrimination against downtrodden and backward people should be stopped. The system of untouchability should be eliminated.
22. All languages and dialects should be given equal opportunities to prosper. The right to education in the mother tongue up to higher levels should be guaranteed.
23. The right to expression and freedom of press and publication should be guaranteed. The government mass media should be completely autonomous.

24. Academic and professional freedom of scholars, writers, artists and cultural workers should be guaranteed.
25. Regional discrimination between the hills and the tarai should be eliminated. Backward areas should be given regional autonomy. Rural and urban areas should be treated at par.
26. Local bodies should be empowered and appropriately equipped.

Concerning livelihood

27. Land should be belonging to 'tenants'. Land under the control of the feudal system should be confiscated and distributed to the landless and the homeless.
28. The property of the middle and comprador capitalists should be confiscated and nationalised. Capital lying unproductive should be invested to promote industrialisation.
29. Employment should be guaranteed for all. Until such time as employment can be arranged, an unemployment allowance should be provided.
30. A minimum wage for workers in industries, agriculture and so on should be fixed and strictly implemented.
31. The homeless should be rehabilitated. No one should be 'relocated' until alternative infrastructure is guaranteed.
32. Poor farmers should be exempt from loan repayment. Loans taken by small farmers from the Agricultural Development Bank should be written off. Appropriate provision should be made to provide loans for small farmers.
33. Fertilisers and seeds should be easily available and at a cheap rate. Farmers should be provided with appropriate prices and markets for their produce.
34. People in flood and drought affected areas should be provided with appropriate relief materials.
35. Free and scientific health services and education should be available to all. The commercialisation of education should be stopped.
36. Inflation should be checked. Wages should be increased proportionate to inflation. Essential goods should be cheaply and easily available to everyone.
37. Drinking water, roads and electricity should be provided to all villagers.
38. Domestic and cottage industries should be protected and promoted.

39. Corruption, smuggling, black marketing, bribery and the practices of middlemen and so on should be eliminated.
40. Orphans, the disabled, the elderly and children should be duly honoured and protected.

As the demands were not fulfilled, internal conflicts started. As an outcome there was fall of National Congress government in 1997. Lokendra Bahadur Chand formed coalition government with Nepal Democratic Party, Communist Party of Nepal and Nepal Sadhbhavana Party. In the same year Chand government was replaced by Surya Bhadur Thapa faction of Nepal Democratic Party in coalition with National Congress and Nepal Sadhbhavana Party. Again in 1998, another coalition government was formed Nepal Sadhbhavana Party and Communist Party of Nepal headed by Girija Prashad Koirala formed to hold election of 1999 under the Constitution of 1990. Krishna Prashad Bhattarai became the Prime Minister of Nepal in 2000. After the proclamation of 1990 Constitution, Nepal had eight governments till 2000 with different political parties and Prime Ministers. Reported of widespread corruption lowered public trust in the democratic leaders and elites disunity thus became a critical element in the weakening of the democratic regime (Kantha, 2010).

One of the major problems since the democracy came into operation in 1990 has been that of instable government. It has led to political instability and questioned governability of the democratic regime. It is stated that democracy will not be valued by the people unless it deals effectively with social and economic issues and achieves a medium of order and justice (Sangh, 2001). The Nepali Congress government tried to frame out a populist programme which included a number of schemes such as free education for all up to secondary level, establishment of health centres in villages, providing communication facilities, etc. But those remained in the paper only. Actually before it was implemented the government started facing the problems, there was leadership clashes, inter party disputes brought party and government against each other. People of Nepal had looked forward that democratic government will look after all the socio economic problems of the country, which government failed to fulfil the expectation. The social unrest and dissatisfaction among the people began to grow as the result king had to take charge to restore the peace in the nation (Singh, 2001).

Another major issue in Nepal issue was its constitution itself. The constitution defined Nepal as 'a multi ethnic, democratic, independent, sovereign Hindu and Constitutional Monarchical Kingdom'. Many celebrated as this was the beginning of recognition of Nepal's cultural diversity, others were disappointed because the term 'Hindu' was retained and they had hoped for more wide range of changes (Parakh, 2015). The main weakness of the constitution was seen to be that the country was declared a Hindu Kingdom which failed to recognise the cultural and regional plurality on the ground. Due to various problems mentioned above Nepal's politics as unrest and king took charge over the nation politics suspending the constitution of 1990.

In 2001, the Royal Massacre on 1 June, the king family was killed. The massacre of king Birendra and his family was not only a matter of nation concern but it also had implications for the politics of the country. The murder of king revived the trend of violence (Jha, 2001). It appears that the institution of monarchy might not enjoy the same religious and social sanctity as earlier in future. The G.P. Koirala government was accused by the opposition for not taking concrete steps to investigate the royal murder. The Maoist activities increased after the royal murder (Upreti, 2008). It can be said that this incident added to the instability and fluidity in Nepali politics. Prince Gyanendra became the king of Nepal. During the time Maoist walk out of the peace process with attack in army, therefore there was declaration of emergency. King removed the Prime Minister Krishna and Chand was made Prime Minister.

In November 2001, the beleaguered Nepali Congress government led by Sher Bahadur Deuba agreed to declare a national emergency after it failed to negotiation a peace deal with the Maoist and after Nepal's military leaders refused to fight the insurgency without such a declaration (Rummel, 2002). When emergency was declared it sharply divided Nepal's political parties and emboldened the new king to consolidate his power. In October 2002 and February 2005 the king hired and fired Prime Minister at will. In February 2005 he took direct control of government, his move was interpreted as another coup against democratic government, a replay of what his father had done in December 1960.

1.11 Return to Autocracy II

From 2002 to 2006 it was called 'Return to Autocracy II' (Parakh, 2015). King Gyanendra ascended to the throne, took complete control by taking over of executive power bestowed on Parliament. This was a period of uncertainty marked by the dissolution of Parliament and suspension of basic rights like election etc. Power was once again in the hand of king, which leads to countrywide revolution for democracy (Loktantra Andolan). The political parties remained highly divided in their response to the king on till November 2005 when a historic agreement was reached to launch a joint struggle against the king's move. Alarmed by the growing power of the Maoist insurgency external power had paid little attention to the demands of political parties until they realised that the king's despotic regime had no chance of defeating the insurgency either (Kantha, 2010). All political forces including civil society and professional organisations came together, this resulted in massive demonstrations and rallies across Nepal against king rule.

This resulted in a triangular contest between the monarchy, the mainstream parties which united under the banner of Seven Party Alliance (SPA) and the Maoists. In this agreement, the Seven Party Alliance and the Maoist Party agree to the principles by which the conflict in Nepal will be resolved. These principles include the need to implement past agreements, manage the armed factions including the Maoist and Nepali armies and to constitute an interim constitution and institutions pending the establishment of a new constitution and government institutions. The parties also agree that the monarchy will no longer have any role on state administration (UN Department of Political Affairs, 2006)². In other way during the Jan Andolan II Maoists who had waged an armed struggle for creation of republic for past ten years all of sudden decided to change track from insurgency and joined the mainstream democratic politics and create a new state in collaboration with other political parties. The shift in the Maoist position started taking place from 2003, when they realised that capturing the Nepalese state through arm struggle was not possible.

In November 2005 Nepal's Seven Party Alliance (SPA) and the insurgent Maoist, with the blessing of India, reached a twelve-point letter of understanding in New

² United Nations Department of Political Affairs, "Nepal. " 2008: www.un.org/undpa/asia-pacific/nepal

Delhi (Kantha, 2010). The Maoists pledged to join the other political parties in their campaign to restore Nepal's stalled democratic process. In return, the SPA leaders accepted the long standing Maoists demands for Constituent Assembly elections. Under this agreement the two sides also committed themselves to end autocratic monarchy and establish absolute democracy with the force of agitation, forming an all party government with complete authority, holding elections to a Constituent Assembly (Kathmandu Post, 2005)³. The agreement basically contained three key commitments: first, the Seven Party Alliance (SPA) endorsed the Maoist's fundamental demands for elections to the Constituent Assembly, second, the Maoists reciprocated with an assurance that they accepted a multiparty, competitive political system, the prime concern of SPA, and third, both the SPA and Maoists agreed to launch a peaceful mass movement against the monarchy (Prasad, 2012). The agreement called for joining forces for full democracy respect for the gamut of bourgeois democratic rights as well as ethnic groups, women and residents of disadvantaged regions. 'Full democracy' hinted at a republican order but the agreement was not daring enough to explicitly declare it as such in fact the agreement called only for 'an end to active monarchy' (Mashra, 2015). However understanding also included provision for including the Maoists in the interim government and a commitment on the part of the Maoists to respect the democratic process and return the properties they had illegally sized. This was the first commitment on the part of the Nepal Maoists to join the democratic mainstream. Thus the Maoists and the seven major political parties bridged their ideological differences in putting up a joint front to oppose the monarchy by demanding elections to the Constituent Assembly and drafting of constitution. It was this understanding between Maoists and SPA that led to the mass movement known as Jan Andolan II.

1.12 Jan Andolan II

People from every walk of life joined the movements, not only politicians, journalists, doctors, writers, but also the general apolitical section of people such as

³ Kathmandu Post, "Here are Things You Need to Know About 7 Constitution of Nepal." September 2015: <http://kathmandupost.ekantipur.com/news/2015-09-24/here-are-things-you-need-to-know-about-the-7-constitution-of-Nepal.html>

farmers, labours, rickshaw pullers, etc participated in the movement. This ordinary people joined the movement because they hoped if movement will be successfully then the conflict which has been troubling then since decade will end. In rural area people were victimized by both the security forces and the Maoists during the people's war. They were forced to provide food and shelters to both the sides and victimised by each side for helping their enemies. The security forces killed, raped, arrested and tortured the villagers with the blame of feeding and sheltering the Maoists in the other had Maoists also killed, extorted, kidnapped and compelled the people to leave their home for same reason (Pyakurel, 2008). On the other side people of urban areas had relatively low impact as compared to the villagers but they especially faced problem and huge loss in the business due to frequent and indefinite type of blockades, bands, etc during Maoist conflict.

The other reason of the wide participation in the movement was the popular discontent caused by the repeated failure of the king's direct rule. In fact the king's coup also helped to bring some positive outcomes to make Jan Andolan II a success.

- The king's repressive actions against all the political forces helped to understand the king ultimate interest. The political parties realised to have a united front to fight not only for restoration of democracy in the nation and also for their existence. The all party meeting and the formation of SPA in May 8, 2005 was one of the outcomes of king's coup. Otherwise there would have no unity but competition to deal with the king to be in the power.
- The unity between the SPA and the Maoist is another outcome of the king takeover.
- The king coup helped people realize the importance of freedom and democracy. Earlier they were quite critical and reluctant about democracy, political parties, etc. However they knew the importance of freedom and democracy only after the king seized and censored all the means of communication, like telephone, mobile, print and electronic media including the movement of people.

- Before king use to blame political parties as corrupt, self cantered, etc which people thought it was so. But in king coup people found more corrupt culprit persons in the king's cabinet and advisory boards.

The people's uprising of April 2006 has been a unique landmark in Nepal's political evolution. Its aim and objective was as similar to that of Jan Andolan I of 1990, all the shades of political persuasions came together dissolving their political difference in search of a democratic political order. Therefore this public uprising was termed as Jan Andolan II which has been a unique political event not only in Nepal but entire South Asia. The manifestation of people's power was unprecedented when an estimated 12 to 15 million unarmed people marched in the streets throughout the kingdom over a period of nineteen days to end monarchy and establish an inclusive democracy (Muni, 2010). Also twelve point agreements between SPA and the Maoists leaders marked the beginning of the end of monarchy because the king had no role in this new partnership. The Delhi understanding became the basis of the most sweeping regime transformation marking a complete break from past (Kantha, 2010). In April 2006, king declared 'the power to be returned to the people' and recalled the house of representation (Parakh, 2015).

King was then forced to issue another Proclamation on 24 April 2005 under which Nepal's House of Representatives, dissolved arbitrarily by the king in May 2002 was reinstated and executive power was handed over to the Seven Party Alliance accepting their road map to peace, stability and democracy. The king also expressed condolence to all those who lost their lives during the people's movement (Muni, 2010). The end of the people's movement set the stage for the reconstruction of a new Nepalese state.

1.13 The 2007 Constitution

The new constitution was adopted on 15 January 2007 'Interim Constitution of Nepal, 2007'. The constitution announced the abolition of monarchy. It was implemented only on 27 May 2008, after the first meeting of the constituent assembly. According to the constitutional provision, a consensus government was to

be formed until the final constitution was agreed upon and promulgated. A 330 member interim parliament was established that included representatives from the Maoists.

In 2007 constitution was amended further, first on April 2007, second on June 2007 and third on December 2007. These amendment included provisions that would allow for the removal of the prime minister and ensured the Nepal has to be republic. It was also planned that the Constituent Assembly would write the final constitution. However the election for Constituent Assembly did not take place in 2007. The successful Constituent Assembly election in April 2008 and the declaration of the republic in May 2008 are two other major achievements of the post April 2006 period. The elimination of the monarchy from the basic political dynamics of Nepal has removed a principle hurdle in Nepal's democratization process. Nepal's transition process has also broadened participation from different ethnic and minority groups, including women and traditionally marginalized Madhesi, Dalits and indigenous groups, thereby significantly increasing the number of stakeholders in the political process (Kantha, 2010).

Nepal's electoral area, as evidenced by the Constituent Assembly (CA) election resulted has become even more competitive. While the Maoists emerged as the largest party in the CA with 220 seats it could only form a coalition with the support of other parties. Although the electoral performance of the hitherto two leading parties of the Seven Party Alliance, the Nepali Congress and Communist Party of Nepal- Unified Marxist Leninist (CPA-UML), was dismal they still command considerable political leverage as the second and the thirds largest parties. The Tarai based parties, the Madhesi People's Rights Forum (MPRF) and the Tarai Madhesi Loktantrik Party (TNLP) emerged as the fourth and fifth largest parties in the Constituent Assembly. Unlike the Maoists sweep of the hilly regions, the Tarai parties presented as effective challenge to the Maoists as well as to other parties in the Tarai. The process of Nepal's transition has been hampered by various factors, leaving the prospects for consolidation of democracy highly uncertain. The CA elections had made the SPA parties and the Maoists preoccupied with their electoral prospects. Since the CA elections, cooperation between the major political parties, especially between the Maoists and others has been difficult, leading to stalemate, confrontation and political instability.

Constituent Assembly is basically an assembly of people's representative elected by people for drafting constitution as primary works.

- a. The CA is an assembly of people's representative elected by people through direct (first past the post FTP) election and proportional election and members nominated by the decision of the cabinet for drafting constitution.
- b. As per provision of the interim constitution of Nepal 2007, Article 63, there are 601 members in the constituent assembly. Among them, there are 240 members elected through the proportional election system and 26 nominated members in the constituent assembly.
- c. The main objective of the formation of the constituent assembly is to draft the constitution and ratify it by addressing the people's spirits for maintaining the long term peace in the country.

1.14 Emergence of Ethnic Polarisation

The general election took place in April 2008. The Maoists won the larger number of seats in Constituent Assembly (CA). The regionalist ethnicity uprising for a federal state which had taken place preceding the election along the southern Plains (Terai Madhesi) contributed to the political electoral rise of Madhesi-ethnic parties.

After the government of Nepal signed a peace agreement with the Communist Party of Nepal-Maoist in 2006 to end a 10 year civil war, local and international observer were surprised to see new fighting erupt in the Terai region of southern Nepal. The violence, however, was initiated not by either party to the civil war but by groups targeting both the state and the Maoists, polarizing citizens along ethnic issues largely unaddressed during the civil war. . In 2007, the three largest of these groups, the Madhesi Janadhikar Forum (MJF), Terai Madhesh Loktrantrik Party (TMLP), and Sadhbhavana Party (SP), joined forces to create a coalition called the United Democratic Madhesi Front (UDMF) (Wood, 2008). The UDMF's stated goal is to transform the Terai into a single autonomous province of Madhes. To accomplish this, the UDMF has redefined the identity of those people living in the Terai and those outside of it, in turn exacerbating ethnic division and violence at the grassroots

level. This narrative has benefited the UDMF by binding otherwise disparate ethnic groups together, constructing a history of the Terai that makes it their exclusive political domain, polarizing society into a 'Madhesi vs. Pahadis (Kathmandu valley)' dichotomy that scapegoats elite ethnicities for local problems, and dissociating Madhesi political leaders from their Maoist past (Yhome, 2007).

Which Madhesi issue was not actually of Madhesis ("people of the plains") vis-i-vis Pahadis ("people of the hills") as some tend to vie This misinterpretation of the Madhesi issue commits a serious mistake by making it a community-based issue that could have grave implications for the country. The Madhesi issue did not suddenly emerge in January 2007 (Wood, 2008). A long history of a sense of discrimination is at the root of the Madhesi struggle. The issue relates to 2008 movement was against the state's "discriminatory" politics. It is a fight for recognition of rights – political, cultural as well as economic – and a struggle for equal representation and opportunity. This forms the core ingredient of the Madhesi issue (Yhome, 2007).

The UDMF uses political violence to draw attention to the plight of those from the Madhesi ethnic group, signing two peace agreements over the past year with political Leaders in Kathmandu to push reform and articulate their grievances. However, implementation of the agreements is complex and problematic. Nepal's government is in a difficult spot: it committed to UDMF directives that, if implemented in their entirety, will likely increase conflict within the Terai while simultaneously fracturing the state and weakening Nepal's fragile institutions. In order to reduce the risk for future armed conflict, seven factors should be addressed:

1. Successfully sell a compromise that is not 'one Madhes' to Madhesi supporters. Kathmandu needs to guarantee protection of Madhesis within a framework of federal autonomy that does not exacerbate tensions among others of Nepal's 100+ ethnic groups.
2. Encourage the UDMF to move beyond a single-issue party. UDMF leaders currently use Terai-centric lenses for almost all political decisions; incorporating them into stakeholder positions for Nepal as a whole would help break through this mentality.
3. Integrate Madhesis into the Nepal Army. Madhesis are currently represented at anemic levels in the armed forces. However, including battalions of

untrained Madhesis would expand an already bloated Army, further militarizing Nepali society. A quota system should be created for Army enlistment, incorporating a sunset date for later review.

4. Integrate Madhesis in the civic bureaucracy. The foreign service, civil service, and police are also all under-represented by Madhesis. Again, implementing quota systems sends a signal to Madhesis that the centre is serious about correcting past mistakes, without forcing unqualified people into easily corruptible high-ranking positions.
5. Address the Madhesi desire for vengeance and retribution against Pahadis.
6. Increased Madhesi political participation at the centre, representation in pan-Nepal organizations, and involvement in international programs would illustrate that discriminatory policies of the past 40 years were misguided but correctable non-violently.
7. Address security issues in the Terai. The Terai is engulfed in a perfect storm of limited state capacity, a porous international border, easy access to weapons, financial incentives for criminality, and violent actors. National and international actors should jointly work to increase local police capacity in the hardest-hit districts.
8. Incorporate Tharu Concerns. Tharu minority communities are substantial, also live in the Terai, and are against Madhesi autonomy. Shutting them out of the negotiation process will exacerbate inter-ethnic conflict in the Terai in the short-term.

1.15 Background and History

The Terai is often interchangeably called ‘Madhes’, but the terms differ in their original usage. The ‘Terai’ refers to the fertile strip of low-lying land sandwiched between the Himalayan foothills and the Indo-Gangetic alluvial plain, running from west to east throughout southern Nepal, and stretching to India and Bhutan. The Terai incorporates 20 of Nepal’s 75 districts, includes close to half the population of Nepal’s 26 million citizens, and houses well over half of Nepal’s agriculture and industry sector outputs. The origin of the word ‘Madhes’ is contested, but believed to originate from ‘medhya-desh’, a geographic marker distinguishing the plains from the hill region (or parbat, from which is derived Pahadi, meaning hill-dweller) of modern Nepal. A Madhesi, therefore, originally meant only an inhabitant of this

region. Politicians in southern Nepal have used the term ‘Madhes’ to distinguish local issues since at least 1947. However, the attempt to gain votes on a Madhes identity did not develop until after Nepal’s period of direct royal rule from 1960-1990 (the Panchayat era). During this period, the state attempted to assimilate the 100-plus ethnicities of Nepal into a pan-Nepali identity through language, schooling, and legal directives. These policies codified the cultures of upper caste Pahadis, legalizing systematic discrimination and under-representation in the government of any in Nepal who did not have this lineage. This policy was enforced rigorously; discussion of ethnic difference or inequality was a jailable offence until 1991. Further, a government-sponsored resettlement program in the mid-1980s financed migration of Pahadis to the Terai in an attempt to solidify control over the valuable agricultural and industrial region. Architects of the program viewed Terai citizens as ‘conquered people’ or illegal Indian migrants with no land rights.

There was a sharp rise in ethnic movements in the hills regions, not the least because the CPN-M had politically and militarily carved out several ‘ethnic states’ during the latter years of the people’s war although there were several additional reasons for the rise of the ethnic movement (Mishra, 2012). The CA during its first sitting in 2008, declared Nepal a federal democratic republic and the king become a lay citizen (Mishra, 2015). As the Constituent Assembly election which took place in April 2008 had started to work on the draft constitution which was scheduled to be promulgated before the tenure of the Constituent Assembly expired on May 2010. However the constitution making process did not move smoothly because the major political parties were unable to reach to consensus. Therefore the CA failed to formulate a constitution within the stipulated two year.

1.16 Challenges of Constituent Assembly I

There are many reasons leading to failure of CA-I delivering the constitution. A constitution-writing process is slow and gradual and is a huge responsibility, especially when Nepal lacks both adequate human resources and infrastructure. The monarchy which symbolised Nepali unity and Nepali nationalism no more commands the respect of the political parties and the people as is evident from Jana Andolan II

onwards, which restored multiparty democracy in Nepal. The course of Jana Andolan-II decided the monarchy's abolition (Pradhan, 2015). The leaders of different political parties which had taken active participation in Jan Andolan II by mobilising popular sentiments often absented themselves from CA-I by deputing middle rank party leaders. The political parties had opened membership to marginalised groups in their sister wings which created problems as all political parties had such affiliates. The civil society too had political affiliates and the international donors were accused of funding civil society to weaken political parties which remained in the control of the upper caste Brahmins (Pradhan, 2015). The parties and the civil society themselves needed to go through democratisation and reforms to ensure inclusivity and accountability.

The political parties were accused of running print media and controlling the people's minds by biased editorials (Adhikari, 2013). Further Adhikari stated that the Maoists who had been successful in capturing power through democracy and due process were not able to focus on contentious constitutional issues as they tried to mould the concept of constitutionalism through their approach to people's war. Their difficulty in accepting the Madhesi demands despite supporting them led to widespread violence in the Tarai resulting in displacement of hill communities and Madhesi people. The Madhesi groups carried out violent attacks on the Maoists cadre and vice versa (Pradhan, 2015). The very basis of the peace process was the 12 points understanding between the Maoists and SPA. The 12 points understanding transformed the prevailing conflict of the state versus Maoists into that of monarchy versus democracy (Adhikari, 2012).

The CA which was elected on 2008 was tasked with writing a new constitution however its deadline was extended many times, with the last one set for 27 May 2012. First time it was extended on January 2009. Despite all the efforts the constitution making process faced major obstacles as the predominant political parties could not find a common ground on many issues including federalism, the modality of government, the management of arms, etc. In March 2010 the Constitutional Committee adjourned its proceedings until further notice, unable to complete the first draft which was due on 5 March. But still Constituent Committee failed to deliver the final constitution on May 2010; therefore term was again extended till 28 May 2011. The failure to form consensus government resulted in the failure of the Constituent

Assembly to complete its task on time and other reason is the ideological gap between the Maoist who had argued for people's constitution and other political parties were in favour of fully democratic constitution. The tenure of this Constituent Assembly was once again extended for second time from May to August 2011. Its deadline was extended for many times with the last one set for 27 May 2012.

In the lead up to the deadline there were several violent protests by a verity of ethnic groups outside the Parliament of Nepal. Rallies were banned in the area and around the PM's office with riot police guarding against protests and the Nepali Army on high alert in case the situation could not be controlled. Prime Minister Baburam Bhattarai called for new election on 22 November after the deadline passed with a possibility of the state of emergency. A member of his party, post Bahadur Bogati announced that "it is not possible to promulgate the constitution within the deadline now. That possibility is out 100 percent." On the deadline day there were larger protests as talks between the Communist Party of Nepal (Maoists), Nepali Congress, Communist Party of Nepal (unified Marxist Leninist) and the Madhesi Front was ongoing. The talk broke down after the incumbent CPA demands for 10 to 14 new provinces largely along ethnic groups lines, which was supported by several small Madhesi parties calling for autonomy, which was opposed by the Nepali Congress and the CPN (UML). CNP (Maoists) member Narayankaji Shrestha said that "a constitution is not possible without federal states recognising the identity of ethnic groups." The opponents of the proposal said the move could lead to tensions amongst different castes. Ram Sharma Mahat of the Nepali Congress said that the CPN (Maoists) "want to kill the assembly not make the constitution" in order to stay in power. At a cabinet session that night CPN (UML) general secretary and Deputy Prime Minister Ishwor Pokharel said that "unconstitutional, neither is it based on political consensus". However the Madhesi leader Laxman Lal Karna said that "in the afternoon, the Nepali Congress and the CPN (UML) had said there was no chance of a deal. Let us go for polls. We have done the democratic things" (2012, Jha). The CPN (Maoists) Barsha Man Pun announced the election saying that "we had no other alternative, we apologise for not being able to prepare the constitution" (Sharma, 2012).

1.17 The Constituent Assembly 2013

Final Constituent Assembly election was held in Nepal on 19 November 2013. The vote was repeatedly delayed, having previously been planned for 22 November 2012 following the dissolution of the first Constituent Assembly on 27 May 2012, but it was put off by the election commission (Parashar, 2012). The Nepali Congress emerged as the largest party in the second Nepalese Constituent Assembly winning 196 seats of the 575 elected seats. As the result of the election, the UCPN (Maoists) leader protested the conduction of the election, alleging fraud and threatening to withdraw from the Constituent Assembly. However domestic and international pressure mounted and various political leaders from Nepali Congress and CPN (UML) urged unified Maoists to accept the people's verdict and get involved in the process of a peaceful CA (Campbell, 2013). On 25 December 2013, the UCPA (Maoists) offered unconditional support to the Nepali Congress to form next government following the four point deal between the Nepali Congress, CPN (UML), UCPN (Maoists) and Madhesi parties that agreed to form a parliamentary body to investigate election irregularities (Ekantipur, 2013). In respond to the allegations of fraud levelled by the Maoists and the smaller parties, Chief Election Commissioner Nilkantha Upreti affirmed the elections were "concluded in a free, fair, impartial and credible manner" and urged voters not to believe in such misleading publicity about the fairness of the elections.

Constituent Assembly which was elected on 19 November 2013, the second Nepalese Constituent Assembly were pledged to draft a new constitution within a year. The new assembly expressly committed that the new committed that the new constitution would be promulgated on 22 January 2015. However due to continued differences on key issues including system of governance, judicial system and federation issues like number, name and areas of the states to be carved, the constitution could not be finalised and promulgated in time.

Finally the Constitution Drafting Committee Chairman Krishna Prasad Sitaula submitted the draft of the constitution on 30 June 2015 and deliberation on the draft constitution started on 2 July and completed on 7 July. President of Nepal Ram Baran Yadav announced the promulgation of new Constitution on 20 September 2015 replacing the 'Interim Constitution of 2007'. 'The Constitution of Nepal 2015' is the

constitution with 308 Articles, 35 Parts and 9 Schedules is the seventh constitution o in the history of Nepal since 1948. The Constitution stated Nepal as a federal democratic republican and secular nation.

CHAPTER II

Salient Features of the Constitution of Nepal 2015

Constitution of Nepal 2015 was proclaimed on 20 September 2015 replacing Interim Constitution of Nepal 2007. The 2015 Constitution is the seventh constitution in the history of Nepal (Amit, 2015). The first constitution of Nepal was the Government of Nepal Act, 1948 introduced by Rana, wherein powers were solely owned by Rana. Its second constitution was Interim Government of Nepal, 1951, which ended the long Rana regime in Nepal. The third constitution the Royal Constitution of 1959, introduced Nepal's first democratic experience. This constitution was replaced by Constitution of Nepal 1962, the fourth constitution, with this there was establishment of Panchayati System with limited democracy in Nepal. This was called returned to Autocracy I (2015, Parakh). The Panchayat System was also known as 'guided democracy' by many writers. Nepal's fourth constitution was the longest working constitution in the history of Nepal from 1962 to 1990. Later on can a new Constitution of Kingdom of Nepal, 1990, was proclaimed in November 1990 under which a multiparty system with parliamentary system of government was formed. This was second democratic experience of Nepal. From 2002 to 2006, it was called 'Return to Autocracy II' (2015.Parakh). King Gyanendra ascended to the throne, took complete control by taking over of executive power bestowed on Parliament by enforcing martial law as a respond to its various domestic problems. Due to mass public demand for democracy, protest against the king's rule and unrest, a new constitution was adopted on January 2007, Interim Constitution of Nepal, 2007 Nepal's sixth constitution. According to the constitutional provision, a consensus government was to be formed until the final constitution was agreed upon and promulgated. The first Constituent Assembly (CA) election was held in April 2008, but this CA failed to draft constitution therefore second CA election was held on November 2013 under Nepal's 2007 constitution. Second CA was successful in drafting the constitution. President of Nepal Ram Baran Yadav announced the promulgation of new Constitution on 20 September 2015 replacing the 'Interim Constitution of

2007'. The constitution was called Constitution of Nepal, 2015 according to Part 35, Article 307 (1) of Nepal constitution 2015¹.

Constitution of Nepal, 2015 is the constitution with 308 Articles, 35 Parts and 9 Schedules and is the seventh constitution in the history of Nepal since 1948.

2.1 Salient Features of Constitution of Nepal 2015

2.1.1 Sovereignty

Under the constitution of Nepal 2015 the sovereignty of Nepal is vested in the people of Nepal. The preamble of the Constitution says, “We, the people of Nepal, in exercise of the sovereignty powers inherent in us.” The Constitution “embrace (s) the sovereign Rights of the people by maintaining country’s independence, sovereignty, geographical integrity, national unity, freedom and dignity” (Para 2, Preamble of the Constitution)². There is emphasis on the word ‘sovereignty’ and ‘independence’. The words sovereignty has been mentioned many times in the Constitution. Although repeated mention of words- ‘sovereign’, ‘integrity’ and ‘independence’ is common in many Constitutions of the world, but in case of Nepal, it can be seen in the backdrop of insecurity perceived in the context of its geographical location and recent democratic movement (Kumar, 2015).

2.1.2 Secularism

The word ‘secularism’ is retained in the Constitution, Article 4, Part I states “Nepal is an independent, indivisible, sovereignty, secular, inclusive, democratic, socialism-oriented federal democratic republican state.” Here the Constitution also clarifies the meaning of the word secular. Secular means “protection of religion and cultural being practiced since ancient times and religious and cultural freedom” (Article 4, Part I). This is further extended in Part III of the Constitution

¹ Nepal Law Society, International IDEA and UNDP, “Nepal’s Constitution of 2015,” July 2016: <https://www.constituteproject.org>Nepal-2015.pdf>

² Constituent Assembly Secretariat Singh Durbar, “Constitution of Nepal 2015,” : www.icnl.org>files>Nepal>Nepalconst>nep155698b.pdf

in Fundamental Rights and Duties, Article 26 (1) “Each person shall be free to profess, practice and preserve his/her religion according to his/her faith.” The demand for a Hindu nation was rejected by majority of the members of the Constituent Assembly (CA) (Kumar, 2015). In 1962, the Panchayat Constitution formally declared Nepal a Hindu Kingdom and at the same time discarded the logic of caste hierarchy to ensure equality of all citizens. Nepal was declared ‘secular’ under the Interim Constitution, which was promulgated in 2007.

2.1.3 Language

Article 6 of the Constitution ‘Language of the Nation’ stated that “all the mother tongues spoken in Nepal shall be the national language”. Article 7 (1) further stated that the Nepali languages written in Devanagari Script will be the business language of the nation. In addition to the Nepali language, the Provinces were the Rights to select one or more languages/s by majority of people of that province as the language for official business (Article 7, 2). According to the Article 7 (3), other matters concerning languages shall be as decided by the Government of Nepal on the recommendation of the Language Commission.

2.1.4 Citizenship

Part 2 of Nepal constitution 2015 contains articles 10 to 15 on the subject of citizenship³.

- i. Article 10 (1) states, “No Nepali Citizen will be denied to acquire citizenship”. Article 10 (2) talks about the provision of single federal citizenship with provincial identity.
- ii. A person, who has acquired the Nepali citizenship by descent before the commencement of the Constitution 2015 (Article 11, 2-a) or any person, whose father or mother was a citizen of Nepal at the birth of such a person (Article 11, 2-

³ Constituent Assembly Secretariat Singh Durbar, “Constitution of Nepal 2015,” : www.icnl.org/files/Nepal/Nepalconst/nep155698b.pdf

- b) and has his/her permanent domicile in Nepal will be deemed to be the citizen of Nepal.
- iii. Interestingly every child found in Nepal, the whereabouts of whose paternity or maternity is not known, would be a citizen of Nepal by descent until the mother or father is traced (Article 11,4) .
- iv. Article 11 (5) states that a person born to Nepal citizen mother, whose father has not been traced, having domicile in Nepal shall be deemed Nepali citizen by descent.
- There is a word ‘naturalized citizenship’ in this section of the Constitution, in case his/her father is proved to be foreign citizen the citizenship in this situation citizenship of the person is converted into naturalized citizenship as provided for by the federal law.
- v. Key Constitutional posts are reserved for citizens by descent.
- vi. A foreign woman, after marriage to a Nepali citizen will only be able to acquire naturalized citizenship of Nepal (Article 11, 6). Further, in the case of a person born to a Nepali women citizen married to foreign citizen will not be able get citizenship by descent (Article 11, 7).
- vii. Article 14, which described the provision of granting Non- Resident Nepali Citizenship to Nepalis, does not favour the Madhesis. The Article states, “the person, who has acquired the citizenship of a foreign country and is residing in a country other than SAARC country and who or whose father and mother, grandfather and grandmother was a citizen of Nepal by descent or birth and later on acquired the citizenship of a foreign country, may be conferred with the non-residential citizenship of Nepal, entitling him/her to the economic, social and cultural Rights as provided for in a Federal law”. The Madhesis could have benefited if SAARC countries were included in the list (Kumar, 2015).

2.1.5 Fundamental Rights and Duties

Part 3 of the Constitution 2015 contains numbers of fundamental rights and duties⁴. Those are as follows:

⁴ Nepal Gazette, “The Constitution of Nepal,” September 2015 : www.wipo.int/edocs/lexdocs/laws/np029en.pdf

1. Right to live with dignity (Article 16). Further in Article 16, 2 stated that, “no law shall be made for capital punishment”.
2. Right to Freedom (Article 17). Various kind of freedom have been discussed here like:
 - a. Freedom of opinion and expression
 - b. Freedom to assemble peacefully and without arms
 - c. Freedom to form political party
 - d. Freedom to form union and association
 - e. Freedom to move and reside in any part of Nepal and
 - f. Freedom to engage in any occupation or be engaged in employment, establish and operate industry, trade and business in any part of Nepal.
3. Right to equality (Article 18). There shall be no discrimination in the application of general laws on the grounds of origin, religion, race, caste, tribe, sex, physical conditions, disability, health condition, matrimonial status, pregnancy, economic condition, language or geographical region, ideology or any other such ground (Article 18, 2). Further, it is also stated that there shall not be any gender discrimination regarding remuneration for the same work and social security (Article 18, 4). No discrimination regarding the right to parental property with regard to all the family members, according to Article 18, 5.
4. Right to communication, “no means of communication, including the press, electronic broadcasting and telephone shall be obstructed except in accordance with law” (Article 19, 3).
5. Right to Justice (Article 20).
6. Right to victim of crime (Article 21).
7. Right against torture (Article 22). No person in detention shall be subjected to physical or mental torture, or be treated in a cruel, inhuman and degrading manner (Article 22, 1).
8. Right against preventive detention (Article 23).

9. Right against untouchability and discrimination (Article 24). According to this article, no person shall be treated with any kind of untouchability or discrimination on any private or public place on grounds of caste, ethnicity, origin, community, occupation or physical condition (Article 24, 1). All forms of untouchability and discrimination contrary to this provision shall be punished by law as a serious social crime and the victim of such an act shall have the right to compensation as provided for by law.

10. Right to property (Article 25).

11. Right to religious freedom (Article 26). Nepal was the Hindu state before the proclamation of 2007 Constitution and it was followed by 2015 Constitution

12. Right to information (Article 27) of Nepal 2015 Constitution stated that the every citizen shall have the right to seek information on any matters of concern to her/him or the public.

13. Right to privacy (Article 28), according to this right one can have privacy in relation, residence, property, documents, records, statistics and correspondence.

14. Right against exploitation (Article 29), every person shall have the right against exploitation on the bases of religion, custom, tradition, culture, practices or any other bases. Article 29 (2) stated that, “no person shall be subjected to human trafficking or bonded labour and such an act shall be punishable by law”. Further it also assured no person shall be subjected to forced labour (Article 29, 4).

15. Right regarding clean environment (Article 30), according to this right every person have right to live in healthy and clean environment. In Article 30, 2 stated that the victim of environmental pollution and degradation shall have right to be compensated by the pollution as provided by law.

16. Right education (Article 31), every citizen have right to access to basic education. The government provides free education till secondary and it is free and compulsory for every citizen.

17. Right to language and culture (Article 32) stated that, “each community living in Nepal shall have the right to preserve and promote its languages, script, cultural civilisation and heritage”.

18. Right to employment (Article 33) every citizen had to right to select employment.

19. Right regarding labour (Article 34), every labour had the right to form trade union, participate in it and organize collective bargaining.

20. Right to health care (Article 35), this right covers basic health care services from the state, each person have right to inform about his/her health condition with regard to health care service, equal access to health care and have the right to access to clean water and hygiene.

21. Right to food (Article 36), each citizen shall have right to food.

22. Right to housing (Article 37).

23. Right of women (Article 38) stated that there shall not be any physical, mental, sexual or psychological or any other kind of violence against women or any kind of oppression based on religious, social and cultural tradition. Further in Article 38 (1) it is stated that “every women shall have equal right to lineage without any gender discrimination.” Women are also granted equal right in property and family affairs.

24. Right of children (Article 39). Children are given right to his/her identity with the family name and birth registration, right to education, health care, sports and overall personality development from family and state. According to Article 39, no child shall be employed in factories, mines, or in any other hazardous work and no child shall be subjected to child marriage, illegal trafficking, kidnapping or being held hostage.

25. Right of Dalits (Article 40) stated that Dalits community shall have the right to use, preserve and develop their traditional occupation, knowledge, skill and

technology. The state shall give priority to modern profession of Dalits in relation to their traditional occupation, by providing them with necessary skill and resources.

26. Right of senior citizens (Article 41), states that senior citizens have right to special protection and social security from the states.⁵

27. Right to social justice (Article 42), this right are basically for socially backward women, all the minority groups, economically backward classes and people with physical impairment for their development and growth, all this categories shall have the right to employment in state structure on the bases of the principle of inclusion.

28. Right to social security (Article 43), according to this Article economically poor, physically incapacitated and helpless person, help single women, person with physical impairment, children, person who cannot look after themselves and the citizens who belong to communities that are on the verge of extinction, shall have right to social security.

29. Right of consumers (Article 44), each consumer shall have the right to quality foodstuffs and services.

30. Right against exile (Article 45).

31. Right to constitutional remedy (Article 46), there shall be right to constitutional remedy to the Article 133 or 144 in course of implementation of right granted in this part.

Article 48 of the constitution mentions about the duties of the citizens and the duties are as follows

a. Protect nationality, sovereignty and integrity of Nepal by pledging allegiance to the nation.

⁵ Constituent Assembly Secretariat Singh Durbar, "Constitution of Nepal 2015," : www.icnl.org/files/Nepal/Nepalconst/nep155698b.pdf

- b. Abide by the constitution and law.
- c. Compulsorily enlist when the state needs the service.
- d. To protect and conserve public property.

2.1.6 The Federal Executive

Part 7 Of 2015 Constitution describes about the federal executive and the power. Article 74, stated that “the form of government of Nepal shall be a multi- party, competitive, federal democratic republican parliamentary system based on plurality.” According to Article 75 (1)⁶ the executive power of Nepal will rest with the Council of Ministers, while the President will be the head of the state. Article 76 (9) states, “the President shall, on the recommendation of the Prime Minister, from a Council of Ministers consisting of members not exceeding twenty-five in number from among the members of the Federal Parliament on the basis of the principle of inclusion.” The Prime Minister and Ministers will be collectively responsible to the Federal Parliament, while a Minister will be responsible to the Prime Minister and the Federal Parliament (Article 76, 10). The executive power of the Province will be vested in the Council of Ministers of the Province. Every Province will have a Provincial Head. As the representative of the Federal government, the Provincial Head will be appointed by the President.

2.1.7 The Federal Parliament

According to Part 8, Article 83, the country will have Federal Parliament consisting of two House of Representatives and the National Assembly. The House of Representative will have 275 members out of it 165 will be elected directly, while 110 members shall be elected from proportional representation electoral system. Every Nepali citizen, who has attained the age of eighteen years or above, is entitled to vote. Any Nepali citizen, who is entitled to vote in the election, has

⁶ Nepal Law Society, International IDEA and UNDP, “Nepal’s Constitution of 2015,” July 2016: <https://www.constituteproject.org/Nepal-2015.pdf>

attained twenty five years of age for the House of Representatives and thirty five years of age for the National Assembly. Person shall has not punished by the criminal offence involving moral turpitude, is not ineligible under any law and is not holding any office of profit, will be eligible to become a member of the Federal Parliament (Article 87).

As per Article 84 (1: a) and Article 286 (5) and (6) of the 2015 Constitution, the electoral constituency will be based on geography and population. This is alteration on Interim Constitution (Article 63) that does not favour the Madhesi (Kumar, 2015). Article 63 (3) of the Interim Constitution provided “the basis of the equality of the population, geographical congeniality and specificity and on the basis of the percentage of the population in Madhes, in accordance with the mixed electoral system, as provided in the law.”

2.1. 8 the Judiciary

Part 11 of the 2015 Constitution of Nepal describes about the judiciary. Article 126 states about the power relating to justice in Nepal, power shall be exercised by courts and other judicial institutions in accordance with the provisions of 2015 Constitution, other laws and recognised principles of justice. There will be three courts Supreme Court, High Court and District Court in Nepal. Article 128 (2)⁷ states the Supreme Court will have the final power to interpret the Constitution and law. In addition to the Chief Justice, the Supreme Court of Nepal will have a maximum of 20 other Justices in Supreme Court. In case the number of the Justices is inadequate because of the increase of number of cases at Supreme Court, a maximum of ten temporary Justice may be appointed for certain period (Article 129, 1). According to the Article 133 (2) the Supreme Court shall, for the enforcement of the fundamental rights conferred by this Constitution, for the enforcement of any other legal right for which other remedy has been provided or for which remedy even though provided appears to be inadequate or ineffective or

⁷ Constituent Assembly Secretariat Singh Durbar, “Constitution of Nepal 2015,” : www.icnl.org/files/Nepal/Nepalconst/nep155698b.pdf

for the settlement of any constitutional or legal question involved in any dispute of public interest or concern, have the extraordinary power to issue necessary and appropriate orders to enforce such rights or settle the dispute.

There shall be High Court in every province, they can initiate a contempt of court case and punish according to the law and in addition to the Chief Judge, every High Court shall have judge in the number as provided in the Federal law (Article 139).

According to Article 148, there shall be a District Court in every district and the local level judicial institutions established according to the provincial law shall remain under the District Court. Further it is stated that the District Court may inspect, supervise and issue necessary instructions to its subordinate judicial institution.

2.1.9 Provincial Assembly

Part 14, Article 175, stated that, “there shall be a unicameral legislature in a province which shall be called the Provincial Assembly.” Further in Article 176 states, “sixty percent of the members of the Provincial Assembly will be elected through first-past-the-post election system, while 40 percent will be elected through proportional representation system.” Every Nepali citizen, who has attained the age of 18 years and has domicile in a province is eligible to cast the vote in the elections.

2.1.10 Local Executive

The local executive power shall, subject to Constitution and other laws, be vested in the Village executive or Town executive (Article 214: 1) Part 17 of the Nepal 2015 Constitution. According to Article 215, there shall be a Head of Village executive in every Village Council, the Village executive shall be formed under his/her chairpersonship. The term of the local executive members is for five years. There shall be Judicial Committee under the Deputy Head of the Village Executive in every Village Council and under Deputy Mayor of the Municipality in every

Municipality (Article 217: 1). Head of every village executive and Mayor of every Municipal executive within the district are the members of District Assembly. District Assembly are formed for the coordination and essential management among the Village Municipalities and within the District according to Article 220.

2.1.11 Local Legislative

Part 18, Article 222, states about the formation of the Village Assembly in each Village Council⁸. Assembly comprise of executive Head, a Deputy Head and four members elected from every Wards of the village council. In the same way, there shall be one Municipal Assembly in each Municipality. Municipal Assembly comprise of the Mayor and Deputy Mayor, ward Chairperson and four members elected from every Wards of the Municipal council (Article 223)⁹. The terms for the both of the members are for five years. These Assemblies can make necessary laws (Article 226).

2.1.12 Relationship between the Federal, Provinces and Local levels

The relations among the Federation, Provinces and the Local level will be based on the principles of cooperation, coexistence and coordination (Article 232: 1) (Amit, 2015). The government of Nepal many issue necessary directives to the Provinces regarding the matters of national importance and the respective Province will abide by such directives (Article 232: 2). Further all the Provinces shall cooperate in implementing the legal provision or judicial and administrative decision or order of each other, exchange information and Province shall provide equal protection, treatment and benefits to resident of other Provinces according with its own laws (Article 233, of the constitution). There is provision for Inter-Provincial Council to settle political disputes between the Federation and Provinces and among the Provinces. The Prime Minister will be the Chairperson of the Council. The Federal

⁸ Nepal Law Society, International IDEA and UNDP, “Nepal’s Constitution of 2015,” July 2016: <https://www.constituteproject.org>Nepal-2015.pdf>

⁹ Constituent Assembly Secretariat Singh Durbar, “Constitution of Nepal 2015,” : www.icnl.org>files>Nepal>Nepalconst>nep155698b.pdf

government has right to formulate necessary laws to maintain coordination between the Federation, Provinces and local bodies. Article 236 states, “No obstruction of any kind or levying of taxes or discrimination shall be made in the export and import of goods or services from one Province or local level to another Province or local level and in the transportation of any goods or services through the territory of any province or local level to another province or local level of Nepal.”

2.2 Some of the important commissions are:

2.2.1 Public Commission

According to the Article 242, there shall be a Public Commission of Nepal consisting of a Chairperson and four other members and they are appointed by the President on the recommendation of the Constitutional Council¹⁰. The term of office of the Chairperson and other members of the Public Service Commission shall be six years from the date of appointment (Article 242: 4). Article 242 (7), the person who possesses the following qualifications is eligible to be appointed as the Chairperson and member of the Public Service Commission:

- a. Holds a post-graduate degree from a recognized university,
- b. Is not a member of any political party immediately before appointment,
- c. Has attained the age of forty five years, and
- d. Possesses high moral character.

Functions, duties and power of the Public Service Commission are mentioned in Article 243 and they are as follows:

- a. To conduct examination for the selection of suitable candidates to be appointed to Civil Services positions.
- b. To conduct the written examinations for the recruitment in the Nepali Army, Nepali Police or Armed Police Force or federal government services or corporate bodies.

¹⁰ Constituent Assembly Secretariat Singh Durbar, “Constitution of Nepal 2015,” : [www.icnl.org>files>Nepal>Nepalconst>nep155698b.pdf](http://www.icnl.org/files/Nepal/Nepalconst/nep155698b.pdf)

- c. Consultation with the Public Service Commission shall be made on matters concerning general principles to be followed while promoting a person holding a position of Nepali Army, Nepali Police, Armed Police Force, and of other federal government service.
- d. Consultation with the Public Service Commission shall be made on matters concerning general principles to be followed while formulating laws concerning terms and conditions of services of any corporate body including promotion and departmental actions.
- e. No permanent appointment shall be made in a position which entitles to pension from Nepal government except on the recommendation of the Public Service Commission.

Article 244, there shall be Provincial Service Commission in every Province and their duties, functions, and powers are determined as provided for in the Provincial law.

2.2.2 Election Commission

According to the Article 245, there shall be an Election Commission in Nepal consisting of a Chief Election Commissioner and four Election Commissioners. The Chief Election Commissioner act as the Chairperson of the Election Commission. The President with the recommendation of the Constitutional Council appoints the Chief Election Commissioner and the Election Commissioners for the term of six years from the date of appointment. The Election Commission shall, subject to this Constitution and other laws, conduct, supervise, direct and control the election of the President, the Vice-President, and Federal Parliament, Provincial assemblies, local bodies. The Election Commission shall be responsible for preparing the voters' list for the purpose of election (Article 246: 1). The Election Commission also hold referendum on subject of national importance as per the Constitution and Federal laws. The Election Commission ay delegate any of its functions, duties and powers to the Chief Election Commission, Election Commissioner or any employee of the Government of Nepal to be exercised and followed in compliance with the conditions specified (Article 246: 4).

2.2.3 National Human Rights Commission

Article 248, Part 25, states that there shall be a Human Rights Commission in Nepal consisting of the Chairperson and four other members, appointed by the President on the recommendation of the Constitutional Council. The term of the office will be six years from the date of appointed. The remuneration and other conditions of services of the Chairperson and the Members of the National Human Rights Commission shall be as determined by the law (Article 248: 7). A person who has been the Chairperson or a Member of the National Human Rights Commission shall not be eligible for appointment in any other government service. Article 249, states about the functions and duties of the Commission:

- a. To ensure the respect, protection and promotion of human rights and effective implementation.
- b. Conduct inquiries into and investigations of, and recommendation for action against the perpetrator of, instances of violation or abetment of violation the human rights of any person or group of person.
- c. Work jointly and in a coordinated manner with civil society to enhance awareness of human rights.
- d. Review existing laws relating to human rights on a periodic basis and to recommend to the Government of Nepal necessary reforms and amendment thereto.
- e. Exercise same powers as the court in requiring any person to appear before the Commission for the recording their statement and information or examining them, receiving and examining evidence and ordering the production of any physical proof.
- f. In case the Commission has received the information from any source that a serious incident of violation of Human Rights has occurred or is likely to occur, it may enter a person's residence or office, conduct a search and seize any documents and evidence relating to human rights violations therein.

The National Human Rights Commission may delegate any of its functions, duties and powers to the Chairperson, any member or any employee of the Government of Nepal to be exercised and followed in compliance with the conditions specified.

Other functions, duties and powers and procedural of the National Human Rights Commission shall be as specified by Federal law (Article 249: 5).

2.2.4 National Natural Resources and Fiscal Commission

Part 26, Article 250, states that, there shall be a National Resources and Fiscal Commission in Nepal consisting of a Chairperson and members not exceeding five in number. On the recommendation of the Constitutional Council, the President appoints Chairperson and members and the tenure of office shall be for six years from the date of appointment. A person who has already served as the Chairperson or a member of the National Natural Resources and Fiscal Commission shall not be eligible to be appointed in other government position/service (Article 250: 8).

The functions, duties and powers of the National Natural Resources and Fiscal Commission shall be as followed (Article, 251):

- a. Determine extensive grounds and measures, regarding the distribution of revenue from the federal consolidated fund to the federal, provincial and local level governments according to the constitution and law.
- b. Making recommendations, according to law, on distribution of the equalization grants to provincial and local governments form the federal consolidated fund.
- c. Conducting research and studied with regards to making a basic for distribution of conditional grants to provincial and local governments in compliance with national policy and program and standards and state of infrastructure.
- d. Determine extensive grounds and measures regarding the distribution of revenue between provincial and local government from the provincial consolidated fund.
- e. Making recommendations about the internal loans the federal, provincial and local governments may take, by analyzing the macroeconomic indices.
- f. Making recommendations regarding the measures of reforms on responsibilities of expenditures and revenues generation for the federal, provincial and local government.

- g. Reviewing the basic of revenue distribution between the federal and provincial governments, and making recommendations for reforms.
- h. Determine base for computing the share of investment and return for federal, provincial and local governments while exploiting natural resources and make necessary recommendations.
- i. Making recommendations about coordination and mitigation of disputes likely to arise regarding distribution of natural resources between the federation and provinces between the provinces, between a province and local level entity, or between local level entities.

The National Nature Resources and Fiscal Commission shall make recommendations to the Nepal Government, by conducting necessary research into with regards to environmental impact assessment linked for by Federal law (Article 251: 2).

2.3 Other Commissions

Part 27 of the Nepali Constitution 2015 have stated about many other Commissions and their functions, duties and powers.

.3.1 National Women Commission

Article 252 states that, there shall be a National Women Commission in Nepal consisting of a Chairperson and four other members, appointed by the President in recommendation of the Constituent Council and the term is for six years from the date of the appointment. The eligibility criteria are a women has made a significant contribution for the rights, interest of women or gender justice, holds bachelor's degree from a recognised university, has attain the age of forty-five, person should not be involved or should not be member of any political parties immediately before the appointment and possesses high moral character (Article 252: 6).

Functions, duties and powers of the National Women Commission are as follows (Article 253)¹¹:

¹¹ Nepal Law Society, International IDEA and UNDP, "Nepal's Constitution of 2015," July 2016: <https://www.constituteproject.org>Nepal-2015.pdf>

- a. To formulate policies and programs regarding women welfare for the Government of Nepal and forward them to the Government for implementation.
- b. To review status related to women's welfare.
- c. To monitor, review and evaluate policies and programs implemented by the state to bring women into the mainstream of national development.
- d. To carry out research and studies regarding gender equality, women empowerment, other legal provisions concerning women.
- e. To monitor the government regarding report to be submitted by the Government of Nepal in matters related to international covenant and treaties to which Nepal is a party.
- f. To forward a recommendation to concerned authority to lodge a petition in the court, in accordance with the law, in matters related with gender violence and women deprived of women rights due to social malpractices.

Other functions, duties and powers of the National Women Commission shall be as specified in Federal law.

2.3.2 National Dalits Commission

Article 255 (1)¹² states that, “there shall be a National Dalits Commission in Nepal consisting of Chairperson and four other members. As the other Commission's member are appointed by the President in recommendation of Constituent Council, in the same way the members of National Dalits Commission are also appointed by the President in recommendation of constituent Council for the tenure of six years from the date of appointment. Article 255 (6), describes the eligibility criteria for the member of the commission, a person has to be from Dalits community who has significant contribution towards the welfare of the community, human rights and in the legal fields for the last ten years, in case of chairperson person has to have bachelor's degree from any recognised university in human rights, social justice, sociology or law, person has to attained the age of forty-five years, who has not

¹² Constituent Assembly Secretariat Singh Durbar, “Constitution of Nepal 2015,” : [www.icnl.org>files>Nepal>Nepalconst>nep155698b.pdf](http://www.icnl.org/files/Nepal/Nepalconst/nep155698b.pdf)

been a member of any political parties immediately before the appointment and who possesses high moral character.

According to the Article 256 functions, duties and power of the National Dalits Commission are as follows:

- a. To carry out research and studies regarding Dalits community of Nepal so as to identify legal and institutional reforms to be made and make a recommendation to the Government of Nepal.
- b. To formulate national policies and programs in matters related with ending caste discrimination, untouchability, suppression and to enhance Dalits status and development.
- c. To monitor whether the special provisions and laws related with Dalits welfare have been implemented or not.
- d. To review or monitor the Government of Nepal so as to ensure that the Government submits the report as a signatory to the international treaties and agreements, as provisioned by those treaties.
- e. To monitor, review and evaluate the policies and programs implemented by the state to bring Dalits community into mainstream of the national development.
- f. To recommend to respective agencies on filing petitions in court according to the law, against any person or organisation if it deemed necessary on subjects of discriminations on caste and untouchability or victim of social malpractices.

2.3.3 Nation Inclusion Commission

Article 258 (1)¹³ states that, “there shall be a National Inclusion Commission in Nepal consisting of Chairperson and as many as four other members.” Members of this commission are too appointed by the President on the recommendation of Constituent Council and tenure is also for six years from the date of appointment. There are certain qualification requirement for appointment are who has significant contribution for ten years in the fields of social inclusion and in promoting the rights and interests and development of person disability, marginalized, minority

¹³ Constituent Assembly Secretariat Singh Durbar, “Constitution of Nepal 2015,” : www.icnl.org/files/Nepal/Nepalconst/nep155698b.pdf

and backward communities, human rights. In case of Chairperson a person has to have bachelor's degree, members has to be forty-five years and above and finally they should not be a member of any political parties immediately before the appointment.

Article 259, functions, duties and powers of National Inclusion Commission as are follows:

- a. To carry out research and studies for protecting rights and welfare of Khash Arya, backward class, disable person, senior citizens, labourers, peasants, marginalized and minority communities.
- b. To review the policies of the Government of Nepal for inclusion of the person and their implementation and to forward necessary recommendation to the government for reform.
- c. To conduct study about the rightful representation of the persons and to forward a recommendation to Government of Nepal to review the provision to ensure their representation.
- d. To study whether protection, empowerment and development of the persons is satisfactory and to forward a recommendation to Government of Nepal regarding the policies to be adopted for the future.
- e. To recommend the Government regarding policies and programs to be implemented for development and prosperity of backward regions.
- f. To recommend for timely revision in the laws related to minorities and marginalized communities.
- g. To monitor the situation of implementation of rights and interests of minorities and marginalized communities and to make recommendations for revision based on reports of periodic census and human development indices.

2.3.4 Adibasi Janajati Commission

Article 261 states that, "there shall be Adibasi Janajati Commission in Nepal consisting of Chairperson and as many as four other members." In the same way like of other commission's the members, the member are appointed by the President on the recommendation of the Constituent Council and the term of office

is six years from the date of appointment. The qualifications, condition of vacancy, remuneration and conditions of service of the Chairperson and members of Adibasi Janajati Commission and other provisions related to functions, duties and power of such Commission shall be according to the Federal law.

2.3.5 Madhesi Commission

Article 262 states that, “there shall be Madhesi Commission in Nepal consisting of Chairperson and as many as four other members.” In the same way like of other commission’s the members, the member are appointed by the President on the recommendation of the Constituent Council and the term of office is six years from the date of appointment. The qualifications, condition of vacancy, remuneration and conditions of service of the Chairperson and members of Madhesi Commission and other provisions related to functions, duties and power of such Commission shall be according to the Federal law.

2.3.6 Tharu Commission

Article 263 states that, “there shall be Tharu Commission in Nepal consisting of Chairperson and as many as four other members.” In the same way like of other commission’s the members, the member are appointed by the President on the recommendation of the Constituent Council and the term of office is six years from the date of appointment. The qualifications, condition of vacancy, remuneration and conditions of service of the Chairperson and members of Tharu Commission and other provisions related to functions, duties and power of such Commission shall be according to the Federal law.

2.3.7 Muslim Commission

Article 264 states that, “there shall be Muslim Commission in Nepal consisting of Chairperson and as many as four other members.” In the same way like of other

commission's the members, the member are appointed by the President on the recommendation of the Constituent Council and the term of office is six years from the date of appointment. The qualifications, condition of vacancy, remuneration and conditions of service of the Chairperson and members of Muslim Commission and other provisions related to functions, duties and power of such Commission shall be according to the Federal law.

2.4 Emergency Power

The President may declare emergency in case a grave emergency arise linked to sovereignty or territorial integrity of Nepal or the security problem in any part of the country¹⁴. Article 273 (1) states, "In case a grave emergency arises in relation to the sovereignty or territorial integrity of Nepal or the security of any part thereof, whether by war, external attack, armed revolt, extreme economic breakdown, natural calamity or epidemic outbreak, the President may, by Proclamation or Order, declare a state of emergency to be enforced in Nepal or any specified part thereof."

2.5 Amendment of the Constitution

The Nepal's Constitution of 2015 is the flexible it can be amended by two-third majority of Parliament members. But, there are some exceptions. Article 274 (1) states, "This Constitution shall not be amended in a way that contravenes with self-rule of Nepal, sovereignty, territorial integrity and sovereignty vested in people." The bill related to altering the boundaries of a province need to from consensus in the respective Provincial Assembly within thirty days from the time the bill is presented in the Federal Legislature (Article 274: 4)¹⁵. Further Article 275 (5) asserts, "The Assembly shall have to get the consensus Bill endorsed or rejected through majority of the Provincial Assembly and Forward the information regarding the same to the Federal Legislature, within three months."

¹⁴ Constituent Assembly Secretariat Singh Durbar, "Constitution of Nepal 2015," : [www.icnl.org>files>Nepal>Nepalconst>nep155698b.pdf](http://www.icnl.org/files/Nepal/Nepalconst>nep155698b.pdf)

¹⁵ Nepal Law Society, International IDEA and UNDP, "Nepal's Constitution of 2015," July 2016: <https://www.constituteproject.org>Nepal-2015.pdf>

2.6 Short Title, Commencement and Repeal

Part 35, Article 307 (1) had the titled to the Constitution of Nepal, it is stated that, “This Constitution shall be called Constitution of Nepal, 2015.” According to the Article 307 (2), the Constitution came into force from 20th day of the 9th month of the year 2015. The Interim Constitution of Nepal 2007 is hereby repealed (Article 308: 1).

Constitution of Nepal, 2015 have nine schedules¹⁶ they are as follows:

Schedule 1: Method of making the National Flag of Nepal.

Schedule 2: National Anthem of Nepal.

Schedule 3: Coat of Arms of Nepal.

Schedule 4: Provinces and Districts within Provinces.

Schedule 5: List of Federal Power/Jurisdiction.

Schedule 6: List of Provincial Power/Jurisdiction.

Schedule 7: List of Concurrent, Power/ Jurisdiction.

Schedule 8: List of Power/Jurisdiction for Local Level.

Schedule 9: List of concurrent Power/Jurisdiction for Federation, Province and Local Level.

Nepal, on 20 September 2015, promulgated a new Constitution which was immediately followed by the mass protest and violence in the Southern Nepal. A key issue was Federalism. In the country’s new federal structure, Nepal has seven provinces. Madhesi, Tharus and Dalits felt that their demand on federalism did not get proper attention, this issue will be further discusses in another chapter.

¹⁶ Constituent Assembly Secretariat Singh Durbar, “Constitution of Nepal 2015,” : www.icnl.org/files/Nepal/Nepalconst/nep155698b.pdf

CHAPTER II

Salient Features of the Constitution of Nepal 2015

Constitution of Nepal 2015 was proclaimed on 20 September 2015 replacing Interim Constitution of Nepal 2007. The 2015 Constitution is the seventh constitution in the history of Nepal (Amit, 2015). The first constitution of Nepal was the Government of Nepal Act, 1948 introduced by Rana, wherein powers were solely owned by Rana. Its second constitution was Interim Government of Nepal, 1951, which ended the long Rana regime in Nepal. The third constitution the Royal Constitution of 1959, introduced Nepal's first democratic experience. This constitution was replaced by Constitution of Nepal 1962, the fourth constitution, with this there was establishment of Panchayati System with limited democracy in Nepal. This was called returned to Autocracy I (2015, Parakh). The Panchayat System was also known as 'guided democracy' by many writers. Nepal's fourth constitution was the longest working constitution in the history of Nepal from 1962 to 1990. Later on can a new Constitution of Kingdom of Nepal, 1990, was proclaimed in November 1990 under which a multiparty system with parliamentary system of government was formed. This was second democratic experience of Nepal. From 2002 to 2006, it was called 'Return to Autocracy II' (2015.Parakh). King Gyanendra ascended to the throne, took complete control by taking over of executive power bestowed on Parliament by enforcing martial law as a respond to its various domestic problems. Due to mass public demand for democracy, protest against the king's rule and unrest, a new constitution was adopted on January 2007, Interim Constitution of Nepal, 2007 Nepal's sixth constitution. According to the constitutional provision, a consensus government was to be formed until the final constitution was agreed upon and promulgated. The first Constituent Assembly (CA) election was held in April 2008, but this CA failed to draft constitution therefore second CA election was held on November 2013 under Nepal's 2007 constitution. Second CA was successful in drafting the constitution. President of Nepal Ram Baran Yadav announced the promulgation of new Constitution on 20 September 2015 replacing the 'Interim Constitution of

2007'. The constitution was called Constitution of Nepal, 2015 according to Part 35, Article 307 (1) of Nepal constitution 2015¹.

Constitution of Nepal, 2015 is the constitution with 308 Articles, 35 Parts and 9 Schedules and is the seventh constitution in the history of Nepal since 1948.

2.1 Salient Features of Constitution of Nepal 2015

2.1.1 Sovereignty

Under the constitution of Nepal 2015 the sovereignty of Nepal is vested in the people of Nepal. The preamble of the Constitution says, “We, the people of Nepal, in exercise of the sovereignty powers inherent in us.” The Constitution “embrace (s) the sovereign Rights of the people by maintaining country’s independence, sovereignty, geographical integrity, national unity, freedom and dignity” (Para 2, Preamble of the Constitution)². There is emphasis on the word ‘sovereignty’ and ‘independence’. The words sovereignty has been mentioned many times in the Constitution. Although repeated mention of words- ‘sovereign’, ‘integrity’ and ‘independence’ is common in many Constitutions of the world, but in case of Nepal, it can be seen in the backdrop of insecurity perceived in the context of its geographical location and recent democratic movement (Kumar, 2015).

2.1.2 Secularism

The word ‘secularism’ is retained in the Constitution, Article 4, Part I states “Nepal is an independent, indivisible, sovereignty, secular, inclusive, democratic, socialism-oriented federal democratic republican state.” Here the Constitution also clarifies the meaning of the word secular. Secular means “protection of religion and cultural being practiced since ancient times and religious and cultural freedom” (Article 4, Part I). This is further extended in Part III of the Constitution

¹ Nepal Law Society, International IDEA and UNDP, “Nepal’s Constitution of 2015,” July 2016: <https://www.constituteproject.org>Nepal-2015.pdf>

² Constituent Assembly Secretariat Singh Durbar, “Constitution of Nepal 2015,” : www.icnl.org>files>Nepal>Nepalconst>nep155698b.pdf

in Fundamental Rights and Duties, Article 26 (1) “Each person shall be free to profess, practice and preserve his/her religion according to his/her faith.” The demand for a Hindu nation was rejected by majority of the members of the Constituent Assembly (CA) (Kumar, 2015). In 1962, the Panchayat Constitution formally declared Nepal a Hindu Kingdom and at the same time discarded the logic of caste hierarchy to ensure equality of all citizens. Nepal was declared ‘secular’ under the Interim Constitution, which was promulgated in 2007.

2.1.3 Language

Article 6 of the Constitution ‘Language of the Nation’ stated that “all the mother tongues spoken in Nepal shall be the national language”. Article 7 (1) further stated that the Nepali languages written in Devanagari Script will be the business language of the nation. In addition to the Nepali language, the Provinces were the Rights to select one or more languages/s by majority of people of that province as the language for official business (Article 7, 2). According to the Article 7 (3), other matters concerning languages shall be as decided by the Government of Nepal on the recommendation of the Language Commission.

2.1.4 Citizenship

Part 2 of Nepal constitution 2015 contains articles 10 to 15 on the subject of citizenship³.

- i. Article 10 (1) states, “No Nepali Citizen will be denied to acquire citizenship”. Article 10 (2) talks about the provision of single federal citizenship with provincial identity.
- ii. A person, who has acquired the Nepali citizenship by descent before the commencement of the Constitution 2015 (Article 11, 2-a) or any person, whose father or mother was a citizen of Nepal at the birth of such a person (Article 11, 2-

³ Constituent Assembly Secretariat Singh Durbar, “Constitution of Nepal 2015,” : www.icnl.org/files/Nepal/Nepalconst/nep155698b.pdf

- b) and has his/her permanent domicile in Nepal will be deemed to be the citizen of Nepal.
- iii. Interestingly every child found in Nepal, the whereabouts of whose paternity or maternity is not known, would be a citizen of Nepal by descent until the mother or father is traced (Article 11,4) .
- iv. Article 11 (5) states that a person born to Nepal citizen mother, whose father has not been traced, having domicile in Nepal shall be deemed Nepali citizen by descent.
- There is a word ‘naturalized citizenship’ in this section of the Constitution, in case his/her father is proved to be foreign citizen the citizenship in this situation citizenship of the person is converted into naturalized citizenship as provided for by the federal law.
- v. Key Constitutional posts are reserved for citizens by descent.
- vi. A foreign woman, after marriage to a Nepali citizen will only be able to acquire naturalized citizenship of Nepal (Article 11, 6). Further, in the case of a person born to a Nepali women citizen married to foreign citizen will not be able get citizenship by descent (Article 11, 7).
- vii. Article 14, which described the provision of granting Non- Resident Nepali Citizenship to Nepalis, does not favour the Madhesis. The Article states, “the person, who has acquired the citizenship of a foreign country and is residing in a country other than SAARC country and who or whose father and mother, grandfather and grandmother was a citizen of Nepal by descent or birth and later on acquired the citizenship of a foreign country, may be conferred with the non-residential citizenship of Nepal, entitling him/her to the economic, social and cultural Rights as provided for in a Federal law”. The Madhesis could have benefited if SAARC countries were included in the list (Kumar, 2015).

2.1.5 Fundamental Rights and Duties

Part 3 of the Constitution 2015 contains numbers of fundamental rights and duties⁴. Those are as follows:

⁴ Nepal Gazette, “The Constitution of Nepal,” September 2015 : www.wipo.int/edocs/lexdocs/laws/np029en.pdf

1. Right to live with dignity (Article 16). Further in Article 16, 2 stated that, “no law shall be made for capital punishment”.
2. Right to Freedom (Article 17). Various kind of freedom have been discussed here like:
 - a. Freedom of opinion and expression
 - b. Freedom to assemble peacefully and without arms
 - c. Freedom to form political party
 - d. Freedom to form union and association
 - e. Freedom to move and reside in any part of Nepal and
 - f. Freedom to engage in any occupation or be engaged in employment, establish and operate industry, trade and business in any part of Nepal.
3. Right to equality (Article 18). There shall be no discrimination in the application of general laws on the grounds of origin, religion, race, caste, tribe, sex, physical conditions, disability, health condition, matrimonial status, pregnancy, economic condition, language or geographical region, ideology or any other such ground (Article 18, 2). Further, it is also stated that there shall not be any gender discrimination regarding remuneration for the same work and social security (Article 18, 4). No discrimination regarding the right to parental property with regard to all the family members, according to Article 18, 5.
4. Right to communication, “no means of communication, including the press, electronic broadcasting and telephone shall be obstructed except in accordance with law” (Article 19, 3).
5. Right to Justice (Article 20).
6. Right to victim of crime (Article 21).
7. Right against torture (Article 22). No person in detention shall be subjected to physical or mental torture, or be treated in a cruel, inhuman and degrading manner (Article 22, 1).
8. Right against preventive detention (Article 23).

9. Right against untouchability and discrimination (Article 24). According to this article, no person shall be treated with any kind of untouchability or discrimination on any private or public place on grounds of caste, ethnicity, origin, community, occupation or physical condition (Article 24, 1). All forms of untouchability and discrimination contrary to this provision shall be punished by law as a serious social crime and the victim of such an act shall have the right to compensation as provided for by law.

10. Right to property (Article 25).

11. Right to religious freedom (Article 26). Nepal was the Hindu state before the proclamation of 2007 Constitution and it was followed by 2015 Constitution

12. Right to information (Article 27) of Nepal 2015 Constitution stated that the every citizen shall have the right to seek information on any matters of concern to her/him or the public.

13. Right to privacy (Article 28), according to this right one can have privacy in relation, residence, property, documents, records, statistics and correspondence.

14. Right against exploitation (Article 29), every person shall have the right against exploitation on the bases of religion, custom, tradition, culture, practices or any other bases. Article 29 (2) stated that, “no person shall be subjected to human trafficking or bonded labour and such an act shall be punishable by law”. Further it also assured no person shall be subjected to forced labour (Article 29, 4).

15. Right regarding clean environment (Article 30), according to this right every person have right to live in healthy and clean environment. In Article 30, 2 stated that the victim of environmental pollution and degradation shall have right to be compensated by the pollution as provided by law.

16. Right education (Article 31), every citizen have right to access to basic education. The government provides free education till secondary and it is free and compulsory for every citizen.

17. Right to language and culture (Article 32) stated that, “each community living in Nepal shall have the right to preserve and promote its languages, script, cultural civilisation and heritage”.

18. Right to employment (Article 33) every citizen had to right to select employment.

19. Right regarding labour (Article 34), every labour had the right to form trade union, participate in it and organize collective bargaining.

20. Right to health care (Article 35), this right covers basic health care services from the state, each person have right to inform about his/her health condition with regard to health care service, equal access to health care and have the right to access to clean water and hygiene.

21. Right to food (Article 36), each citizen shall have right to food.

22. Right to housing (Article 37).

23. Right of women (Article 38) stated that there shall not be any physical, mental, sexual or psychological or any other kind of violence against women or any kind of oppression based on religious, social and cultural tradition. Further in Article 38 (1) it is stated that “every women shall have equal right to lineage without any gender discrimination.” Women are also granted equal right in property and family affairs.

24. Right of children (Article 39). Children are given right to his/her identity with the family name and birth registration, right to education, health care, sports and overall personality development from family and state. According to Article 39, no child shall be employed in factories, mines, or in any other hazardous work and no child shall be subjected to child marriage, illegal trafficking, kidnapping or being held hostage.

25. Right of Dalits (Article 40) stated that Dalits community shall have the right to use, preserve and develop their traditional occupation, knowledge, skill and

technology. The state shall give priority to modern profession of Dalits in relation to their traditional occupation, by providing them with necessary skill and resources.

26. Right of senior citizens (Article 41), states that senior citizens have right to special protection and social security from the states.⁵

27. Right to social justice (Article 42), this right are basically for socially backward women, all the minority groups, economically backward classes and people with physical impairment for their development and growth, all this categories shall have the right to employment in state structure on the bases of the principle of inclusion.

28. Right to social security (Article 43), according to this Article economically poor, physically incapacitated and helpless person, help single women, person with physical impairment, children, person who cannot look after themselves and the citizens who belong to communities that are on the verge of extinction, shall have right to social security.

29. Right of consumers (Article 44), each consumer shall have the right to quality foodstuffs and services.

30. Right against exile (Article 45).

31. Right to constitutional remedy (Article 46), there shall be right to constitutional remedy to the Article 133 or 144 in course of implementation of right granted in this part.

Article 48 of the constitution mentions about the duties of the citizens and the duties are as follows

a. Protect nationality, sovereignty and integrity of Nepal by pledging allegiance to the nation.

⁵ Constituent Assembly Secretariat Singh Durbar, "Constitution of Nepal 2015," : www.icnl.org/files/Nepal/Nepalconst/nep155698b.pdf

- b. Abide by the constitution and law.
- c. Compulsorily enlist when the state needs the service.
- d. To protect and conserve public property.

2.1.6 The Federal Executive

Part 7 Of 2015 Constitution describes about the federal executive and the power. Article 74, stated that “the form of government of Nepal shall be a multi- party, competitive, federal democratic republican parliamentary system based on plurality.” According to Article 75 (1)⁶ the executive power of Nepal will rest with the Council of Ministers, while the President will be the head of the state. Article 76 (9) states, “the President shall, on the recommendation of the Prime Minister, from a Council of Ministers consisting of members not exceeding twenty-five in number from among the members of the Federal Parliament on the basis of the principle of inclusion.” The Prime Minister and Ministers will be collectively responsible to the Federal Parliament, while a Minister will be responsible to the Prime Minister and the Federal Parliament (Article 76, 10). The executive power of the Province will be vested in the Council of Ministers of the Province. Every Province will have a Provincial Head. As the representative of the Federal government, the Provincial Head will be appointed by the President.

2.1.7 The Federal Parliament

According to Part 8, Article 83, the country will have Federal Parliament consisting of two House of Representatives and the National Assembly. The House of Representative will have 275 members out of it 165 will be elected directly, while 110 members shall be elected from proportional representation electoral system. Every Nepali citizen, who has attained the age of eighteen years or above, is entitled to vote. Any Nepali citizen, who is entitled to vote in the election, has

⁶ Nepal Law Society, International IDEA and UNDP, “Nepal’s Constitution of 2015,” July 2016: <https://www.constituteproject.org/Nepal-2015.pdf>

attained twenty five years of age for the House of Representatives and thirty five years of age for the National Assembly. Person shall has not punished by the criminal offence involving moral turpitude, is not ineligible under any law and is not holding any office of profit, will be eligible to become a member of the Federal Parliament (Article 87).

As per Article 84 (1: a) and Article 286 (5) and (6) of the 2015 Constitution, the electoral constituency will be based on geography and population. This is alteration on Interim Constitution (Article 63) that does not favour the Madhesis (Kumar, 2015). Article 63 (3) of the Interim Constitution provided “the basis of the equality of the population, geographical congeniality and specificity and on the basis of the percentage of the population in Madhes, in accordance with the mixed electoral system, as provided in the law.”

2.1. 8 the Judiciary

Part 11 of the 2015 Constitution of Nepal describes about the judiciary. Article 126 states about the power relating to justice in Nepal, power shall be exercised by courts and other judicial institutions in accordance with the provisions of 2015 Constitution, other laws and recognised principles of justice. There will be three courts Supreme Court, High Court and District Court in Nepal. Article 128 (2)⁷ states the Supreme Court will have the final power to interpret the Constitution and law. In addition to the Chief Justice, the Supreme Court of Nepal will have a maximum of 20 other Justices in Supreme Court. In case the number of the Justices is inadequate because of the increase of number of cases at Supreme Court, a maximum of ten temporary Justice may be appointed for certain period (Article 129, 1). According to the Article 133 (2) the Supreme Court shall, for the enforcement of the fundamental rights conferred by this Constitution, for the enforcement of any other legal right for which other remedy has been provided or for which remedy even though provided appears to be inadequate or ineffective or

⁷ Constituent Assembly Secretariat Singh Durbar, “Constitution of Nepal 2015,” : [www.icnl.org>files>Nepal>Nepalconst>nep155698b.pdf](http://www.icnl.org/files/Nepal/Nepalconst/nep155698b.pdf)

for the settlement of any constitutional or legal question involved in any dispute of public interest or concern, have the extraordinary power to issue necessary and appropriate orders to enforce such rights or settle the dispute.

There shall be High Court in every province, they can initiate a contempt of court case and punish according to the law and in addition to the Chief Judge, every High Court shall have judge in the number as provided in the Federal law (Article 139).

According to Article 148, there shall be a District Court in every district and the local level judicial institutions established according to the provincial law shall remain under the District Court. Further it is stated that the District Court may inspect, supervise and issue necessary instructions to its subordinate judicial institution.

2.1.9 Provincial Assembly

Part 14, Article 175, stated that, “there shall be a unicameral legislature in a province which shall be called the Provincial Assembly.” Further in Article 176 states, “sixty percent of the members of the Provincial Assembly will be elected through first-past-the-post election system, while 40 percent will be elected through proportional representation system.” Every Nepali citizen, who has attained the age of 18 years and has domicile in a province is eligible to cast the vote in the elections.

2.1.10 Local Executive

The local executive power shall, subject to Constitution and other laws, be vested in the Village executive or Town executive (Article 214: 1) Part 17 of the Nepal 2015 Constitution. According to Article 215, there shall be a Head of Village executive in every Village Council, the Village executive shall be formed under his/her chairpersonship. The term of the local executive members is for five years. There shall be Judicial Committee under the Deputy Head of the Village Executive in every Village Council and under Deputy Mayor of the Municipality in every

Municipality (Article 217: 1). Head of every village executive and Mayor of every Municipal executive within the district are the members of District Assembly. District Assembly are formed for the coordination and essential management among the Village Municipalities and within the District according to Article 220.

2.1.11 Local Legislative

Part 18, Article 222, states about the formation of the Village Assembly in each Village Council⁸. Assembly comprise of executive Head, a Deputy Head and four members elected from every Wards of the village council. In the same way, there shall be one Municipal Assembly in each Municipality. Municipal Assembly comprise of the Mayor and Deputy Mayor, ward Chairperson and four members elected from every Wards of the Municipal council (Article 223)⁹. The terms for the both of the members are for five years. These Assemblies can make necessary laws (Article 226).

2.1.12 Relationship between the Federal, Provinces and Local levels

The relations among the Federation, Provinces and the Local level will be based on the principles of cooperation, coexistence and coordination (Article 232: 1) (Amit, 2015). The government of Nepal many issue necessary directives to the Provinces regarding the matters of national importance and the respective Province will abide by such directives (Article 232: 2). Further all the Provinces shall cooperate in implementing the legal provision or judicial and administrative decision or order of each other, exchange information and Province shall provide equal protection, treatment and benefits to resident of other Provinces according with its own laws (Article 233, of the constitution). There is provision for Inter-Provincial Council to settle political disputes between the Federation and Provinces and among the Provinces. The Prime Minister will be the Chairperson of the Council. The Federal

⁸ Nepal Law Society, International IDEA and UNDP, “Nepal’s Constitution of 2015,” July 2016: <https://www.constituteproject.org>Nepal-2015.pdf>

⁹ Constituent Assembly Secretariat Singh Durbar, “Constitution of Nepal 2015,” : www.icnl.org>files>Nepal>Nepalconst>nep155698b.pdf

government has right to formulate necessary laws to maintain coordination between the Federation, Provinces and local bodies. Article 236 states, “No obstruction of any kind or levying of taxes or discrimination shall be made in the export and import of goods or services from one Province or local level to another Province or local level and in the transportation of any goods or services through the territory of any province or local level to another province or local level of Nepal.”

2.2 Some of the important commissions are:

2.2.1 Public Commission

According to the Article 242, there shall be a Public Commission of Nepal consisting of a Chairperson and four other members and they are appointed by the President on the recommendation of the Constitutional Council¹⁰. The term of office of the Chairperson and other members of the Public Service Commission shall be six years from the date of appointment (Article 242: 4). Article 242 (7), the person who possesses the following qualifications is eligible to be appointed as the Chairperson and member of the Public Service Commission:

- a. Holds a post-graduate degree from a recognized university,
- b. Is not a member of any political party immediately before appointment,
- c. Has attained the age of forty five years, and
- d. Possesses high moral character.

Functions, duties and power of the Public Service Commission are mentioned in Article 243 and they are as follows:

- a. To conduct examination for the selection of suitable candidates to be appointed to Civil Services positions.
- b. To conduct the written examinations for the recruitment in the Nepali Army, Nepali Police or Armed Police Force or federal government services or corporate bodies.

¹⁰ Constituent Assembly Secretariat Singh Durbar, “Constitution of Nepal 2015,” : [www.icnl.org>files>Nepal>Nepalconst>nep155698b.pdf](http://www.icnl.org/files/Nepal/Nepalconst/nep155698b.pdf)

- c. Consultation with the Public Service Commission shall be made on matters concerning general principles to be followed while promoting a person holding a position of Nepali Army, Nepali Police, Armed Police Force, and of other federal government service.
- d. Consultation with the Public Service Commission shall be made on matters concerning general principles to be followed while formulating laws concerning terms and conditions of services of any corporate body including promotion and departmental actions.
- e. No permanent appointment shall be made in a position which entitles to pension from Nepal government except on the recommendation of the Public Service Commission.

Article 244, there shall be Provincial Service Commission in every Province and their duties, functions, and powers are determined as provided for in the Provincial law.

2.2.2 Election Commission

According to the Article 245, there shall be an Election Commission in Nepal consisting of a Chief Election Commissioner and four Election Commissioners. The Chief Election Commissioner act as the Chairperson of the Election Commission. The President with the recommendation of the Constitutional Council appoints the Chief Election Commissioner and the Election Commissioners for the term of six years from the date of appointment. The Election Commission shall, subject to this Constitution and other laws, conduct, supervise, direct and control the election of the President, the Vice-President, and Federal Parliament, Provincial assemblies, local bodies. The Election Commission shall be responsible for preparing the voters' list for the purpose of election (Article 246: 1). The Election Commission also hold referendum on subject of national importance as per the Constitution and Federal laws. The Election Commission ay delegate any of its functions, duties and powers to the Chief Election Commission, Election Commissioner or any employee of the Government of Nepal to be exercised and followed in compliance with the conditions specified (Article 246: 4).

2.2.3 National Human Rights Commission

Article 248, Part 25, states that there shall be a Human Rights Commission in Nepal consisting of the Chairperson and four other members, appointed by the President on the recommendation of the Constitutional Council. The term of the office will be six years from the date of appointed. The remuneration and other conditions of services of the Chairperson and the Members of the National Human Rights Commission shall be as determined by the law (Article 248: 7). A person who has been the Chairperson or a Member of the National Human Rights Commission shall not be eligible for appointment in any other government service. Article 249, states about the functions and duties of the Commission:

- a. To ensure the respect, protection and promotion of human rights and effective implementation.
- b. Conduct inquiries into and investigations of, and recommendation for action against the perpetrator of, instances of violation or abetment of violation the human rights of any person or group of person.
- c. Work jointly and in a coordinated manner with civil society to enhance awareness of human rights.
- d. Review existing laws relating to human rights on a periodic basis and to recommend to the Government of Nepal necessary reforms and amendment thereto.
- e. Exercise same powers as the court in requiring any person to appear before the Commission for the recording their statement and information or examining them, receiving and examining evidence and ordering the production of any physical proof.
- f. In case the Commission has received the information from any source that a serious incident of violation of Human Rights has occurred or is likely to occur, it may enter a person's residence or office, conduct a search and seize any documents and evidence relating to human rights violations therein.

The National Human Rights Commission may delegate any of its functions, duties and powers to the Chairperson, any member or any employee of the Government of Nepal to be exercised and followed in compliance with the conditions specified.

Other functions, duties and powers and procedural of the National Human Rights Commission shall be as specified by Federal law (Article 249: 5).

2.2.4 National Natural Resources and Fiscal Commission

Part 26, Article 250, states that, there shall be a National Resources and Fiscal Commission in Nepal consisting of a Chairperson and members not exceeding five in number. On the recommendation of the Constitutional Council, the President appoints Chairperson and members and the tenure of office shall be for six years from the date of appointment. A person who has already served as the Chairperson or a member of the National Natural Resources and Fiscal Commission shall not be eligible to be appointed in other government position/service (Article 250: 8).

The functions, duties and powers of the National Natural Resources and Fiscal Commission shall be as followed (Article, 251):

- a. Determine extensive grounds and measures, regarding the distribution of revenue from the federal consolidated fund to the federal, provincial and local level governments according to the constitution and law.
- b. Making recommendations, according to law, on distribution of the equalization grants to provincial and local governments form the federal consolidated fund.
- c. Conducting research and studied with regards to making a basic for distribution of conditional grants to provincial and local governments in compliance with national policy and program and standards and state of infrastructure.
- d. Determine extensive grounds and measures regarding the distribution of revenue between provincial and local government from the provincial consolidated fund.
- e. Making recommendations about the internal loans the federal, provincial and local governments may take, by analyzing the macroeconomic indices.
- f. Making recommendations regarding the measures of reforms on responsibilities of expenditures and revenues generation for the federal, provincial and local government.

- g. Reviewing the basic of revenue distribution between the federal and provincial governments, and making recommendations for reforms.
- h. Determine base for computing the share of investment and return for federal, provincial and local governments while exploiting natural resources and make necessary recommendations.
- i. Making recommendations about coordination and mitigation of disputes likely to arise regarding distribution of natural resources between the federation and provinces between the provinces, between a province and local level entity, or between local level entities.

The National Nature Resources and Fiscal Commission shall make recommendations to the Nepal Government, by conducting necessary research into with regards to environmental impact assessment linked for by Federal law (Article 251: 2).

2.3 Other Commissions

Part 27 of the Nepali Constitution 2015 have stated about many other Commissions and their functions, duties and powers.

.3.1 National Women Commission

Article 252 states that, there shall be a National Women Commission in Nepal consisting of a Chairperson and four other members, appointed by the President in recommendation of the Constituent Council and the term is for six years from the date of the appointment. The eligibility criteria are a women has made a significant contribution for the rights, interest of women or gender justice, holds bachelor's degree from a recognised university, has attain the age of forty-five, person should not be involved or should not be member of any political parties immediately before the appointment and possesses high moral character (Article 252: 6).

Functions, duties and powers of the National Women Commission are as follows (Article 253)¹¹:

¹¹ Nepal Law Society, International IDEA and UNDP, "Nepal's Constitution of 2015," July 2016: <https://www.constituteproject.org>Nepal-2015.pdf>

- a. To formulate policies and programs regarding women welfare for the Government of Nepal and forward them to the Government for implementation.
- b. To review status related to women's welfare.
- c. To monitor, review and evaluate policies and programs implemented by the state to bring women into the mainstream of national development.
- d. To carry out research and studies regarding gender equality, women empowerment, other legal provisions concerning women.
- e. To monitor the government regarding report to be submitted by the Government of Nepal in matters related to international covenant and treaties to which Nepal is a party.
- f. To forward a recommendation to concerned authority to lodge a petition in the court, in accordance with the law, in matters related with gender violence and women deprived of women rights due to social malpractices.

Other functions, duties and powers of the National Women Commission shall be as specified in Federal law.

2.3.2 National Dalits Commission

Article 255 (1)¹² states that, “there shall be a National Dalits Commission in Nepal consisting of Chairperson and four other members. As the other Commission's member are appointed by the President in recommendation of Constituent Council, in the same way the members of National Dalits Commission are also appointed by the President in recommendation of constituent Council for the tenure of six years from the date of appointment. Article 255 (6), describes the eligibility criteria for the member of the commission, a person has to be from Dalits community who has significant contribution towards the welfare of the community, human rights and in the legal fields for the last ten years, in case of chairperson person has to have bachelor's degree from any recognised university in human rights, social justice, sociology or law, person has to attained the age of forty-five years, who has not

¹² Constituent Assembly Secretariat Singh Durbar, “Constitution of Nepal 2015,” : www.icnl.org/files/Nepal/Nepalconst/nep155698b.pdf

been a member of any political parties immediately before the appointment and who possesses high moral character.

According to the Article 256 functions, duties and power of the National Dalits Commission are as follows:

- a. To carry out research and studies regarding Dalits community of Nepal so as to identify legal and institutional reforms to be made and make a recommendation to the Government of Nepal.
- b. To formulate national policies and programs in matters related with ending caste discrimination, untouchability, suppression and to enhance Dalits status and development.
- c. To monitor whether the special provisions and laws related with Dalits welfare have been implemented or not.
- d. To review or monitor the Government of Nepal so as to ensure that the Government submits the report as a signatory to the international treaties and agreements, as provisioned by those treaties.
- e. To monitor, review and evaluate the policies and programs implemented by the state to bring Dalits community into mainstream of the national development.
- f. To recommend to respective agencies on filing petitions in court according to the law, against any person or organisation if it deemed necessary on subjects of discriminations on caste and untouchability or victim of social malpractices.

2.3.3 Nation Inclusion Commission

Article 258 (1)¹³ states that, “there shall be a National Inclusion Commission in Nepal consisting of Chairperson and as many as four other members.” Members of this commission are too appointed by the President on the recommendation of Constituent Council and tenure is also for six years from the date of appointment. There are certain qualification requirement for appointment are who has significant contribution for ten years in the fields of social inclusion and in promoting the rights and interests and development of person disability, marginalized, minority

¹³ Constituent Assembly Secretariat Singh Durbar, “Constitution of Nepal 2015,” : www.icnl.org/files/Nepal/Nepalconst/nep155698b.pdf

and backward communities, human rights. In case of Chairperson a person has to have bachelor's degree, members has to be forty-five years and above and finally they should not be a member of any political parties immediately before the appointment.

Article 259, functions, duties and powers of National Inclusion Commission as are follows:

- a. To carry out research and studies for protecting rights and welfare of Khash Arya, backward class, disable person, senior citizens, labourers, peasants, marginalized and minority communities.
- b. To review the policies of the Government of Nepal for inclusion of the person and their implementation and to forward necessary recommendation to the government for reform.
- c. To conduct study about the rightful representation of the persons and to forward a recommendation to Government of Nepal to review the provision to ensure their representation.
- d. To study whether protection, empowerment and development of the persons is satisfactory and to forward a recommendation to Government of Nepal regarding the policies to be adopted for the future.
- e. To recommend the Government regarding policies and programs to be implemented for development and prosperity of backward regions.
- f. To recommend for timely revision in the laws related to minorities and marginalized communities.
- g. To monitor the situation of implementation of rights and interests of minorities and marginalized communities and to make recommendations for revision based on reports of periodic census and human development indices.

2.3.4 Adibasi Janajati Commission

Article 261 states that, "there shall be Adibasi Janajati Commission in Nepal consisting of Chairperson and as many as four other members." In the same way like of other commission's the members, the member are appointed by the President on the recommendation of the Constituent Council and the term of office

is six years from the date of appointment. The qualifications, condition of vacancy, remuneration and conditions of service of the Chairperson and members of Adibasi Janajati Commission and other provisions related to functions, duties and power of such Commission shall be according to the Federal law.

2.3.5 Madhesi Commission

Article 262 states that, “there shall be Madhesi Commission in Nepal consisting of Chairperson and as many as four other members.” In the same way like of other commission’s the members, the member are appointed by the President on the recommendation of the Constituent Council and the term of office is six years from the date of appointment. The qualifications, condition of vacancy, remuneration and conditions of service of the Chairperson and members of Madhesi Commission and other provisions related to functions, duties and power of such Commission shall be according to the Federal law.

2.3.6 Tharu Commission

Article 263 states that, “there shall be Tharu Commission in Nepal consisting of Chairperson and as many as four other members.” In the same way like of other commission’s the members, the member are appointed by the President on the recommendation of the Constituent Council and the term of office is six years from the date of appointment. The qualifications, condition of vacancy, remuneration and conditions of service of the Chairperson and members of Tharu Commission and other provisions related to functions, duties and power of such Commission shall be according to the Federal law.

2.3.7 Muslim Commission

Article 264 states that, “there shall be Muslim Commission in Nepal consisting of Chairperson and as many as four other members.” In the same way like of other

commission's the members, the member are appointed by the President on the recommendation of the Constituent Council and the term of office is six years from the date of appointment. The qualifications, condition of vacancy, remuneration and conditions of service of the Chairperson and members of Muslim Commission and other provisions related to functions, duties and power of such Commission shall be according to the Federal law.

2.4 Emergency Power

The President may declare emergency in case a grave emergency arise linked to sovereignty or territorial integrity of Nepal or the security problem in any part of the country¹⁴. Article 273 (1) states, "In case a grave emergency arises in relation to the sovereignty or territorial integrity of Nepal or the security of any part thereof, whether by war, external attack, armed revolt, extreme economic breakdown, natural calamity or epidemic outbreak, the President may, by Proclamation or Order, declare a state of emergency to be enforced in Nepal or any specified part thereof."

2.5 Amendment of the Constitution

The Nepal's Constitution of 2015 is the flexible it can be amended by two-third majority of Parliament members. But, there are some exceptions. Article 274 (1) states, "This Constitution shall not be amended in a way that contravenes with self-rule of Nepal, sovereignty, territorial integrity and sovereignty vested in people." The bill related to altering the boundaries of a province need to from consensus in the respective Provincial Assembly within thirty days from the time the bill is presented in the Federal Legislature (Article 274: 4)¹⁵. Further Article 275 (5) asserts, "The Assembly shall have to get the consensus Bill endorsed or rejected through majority of the Provincial Assembly and Forward the information regarding the same to the Federal Legislature, within three months."

¹⁴ Constituent Assembly Secretariat Singh Durbar, "Constitution of Nepal 2015," : [www.icnl.org>files>Nepal>Nepalconst>nep155698b.pdf](http://www.icnl.org/files/Nepal/Nepalconst>nep155698b.pdf)

¹⁵ Nepal Law Society, International IDEA and UNDP, "Nepal's Constitution of 2015," July 2016: <https://www.constituteproject.org>Nepal-2015.pdf>

2.6 Short Title, Commencement and Repeal

Part 35, Article 307 (1) had the titled to the Constitution of Nepal, it is stated that, “This Constitution shall be called Constitution of Nepal, 2015.” According to the Article 307 (2), the Constitution came into force from 20th day of the 9th month of the year 2015. The Interim Constitution of Nepal 2007 is hereby repealed (Article 308: 1).

Constitution of Nepal, 2015 have nine schedules¹⁶ they are as follows:

Schedule 1: Method of making the National Flag of Nepal.

Schedule 2: National Anthem of Nepal.

Schedule 3: Coat of Arms of Nepal.

Schedule 4: Provinces and Districts within Provinces.

Schedule 5: List of Federal Power/Jurisdiction.

Schedule 6: List of Provincial Power/Jurisdiction.

Schedule 7: List of Concurrent, Power/ Jurisdiction.

Schedule 8: List of Power/Jurisdiction for Local Level.

Schedule 9: List of concurrent Power/Jurisdiction for Federation, Province and Local Level.

Nepal, on 20 September 2015, promulgated a new Constitution which was immediately followed by the mass protest and violence in the Southern Nepal. A key issue was Federalism. In the country’s new federal structure, Nepal has seven provinces. Madhesi, Tharus and Dalits felt that their demand on federalism did not get proper attention, this issue will be further discusses in another chapter.

¹⁶ Constituent Assembly Secretariat Singh Durbar, “Constitution of Nepal 2015,” : www.icnl.org/files/Nepal/Nepalconst/nep155698b.pdf

Conclusion

The title of the study is “Nepal’s Transition to Democracy and the Constitution of 2015” therefore the study is based on the Nepal’s historical journey of transition to democracy and constitutional history. It is equally important to understanding constitutional history of Nepal because it was change in constitution that brought the transition to Nepal politics from authoritarian regime to democracy. Nepal’s first written constitution was of 1948 ‘The Government of Nepal Act, 1948’, under the Rana regime and after that there has been frequent change in the constitution all together till date Nepal have seven. The first election was held in Nepal history on 1959, under the ‘Royal Constitution of 1959’. This study have covered Nepal history from 1940s with the formation of political parties to the new democratic, republic, secular Nepal with proclamation of 2015 constitution. After the long struggle and lose of thousand of life Nepal finally got it most awaited constitution. But it was followed by the protest movement protest against the constitution. This study therefore focuses mainly on the various challenges and problems of the 2015 constitution. Field study was conducted for the primary data collection and in depth interviews was done.

The theory of Transition to democracy has been adopted in this study. Democratisation is basically a mode of transition towards more democratic political systems, it is also transition from authoritarian regime to democracy. Dankwart A Rustow in his work “Transition to Democracy” has tried to explain about the four mode of transition (1) National unity--the people must agree that they are a political entity, at least enough that there is no recessionary movement. (2) There must be a family feud--some debate that has the people split into strongly opposing camps. (3) There must be a decision to resolve the debate by means of democratic institutions (even if this decision is only a side effect of the resolution). (4) "Habituation": over time, the people will get used to this pattern and come to value democracy itself (1970, Rustow).

Therefore the theory of transition to democracy by Rustow can be matched with transition of Nepal’s democracy. Rustow first stage is ‘nation unity’ formation of sense of nationhood. In Nepal’s case there was the nation unity as is manifested in Nepal’s politics of 1950s there was unification of political parties and the king to fight against the Rana regime in Nepal. Rana the authoritarian regime tried to suppress the

voice of political elites but failed to do so. After unification, conflict and debate followed. There was debate between the Rana the authoritarian ruler and the king and political parties. Subsequently, the authoritarian ruler was overthrown and a certain system established in Nepal which marked as Nepal's first democratic experiences. It was way back in 1950s that a stage was set for the dawn of democracy in Nepal. The democracy was introduced after the abolition of Rana Regime (Upreti, 2008). However, Nepal again in 1962 with the proclamation of new constitution by Mahendra became the monarchy state; it was called the 'Return to Autocracy'. Again there was unification of nation to fight against authority, people from all the section of society participated and there was People's Movement (Jan Andolan I) and once again democracy was restored in Nepal. This was not the end of Nepal's transition to democracy as there was again 'Return to Autocracy II' and followed by People's Movement in Nepal and again restoration of democracy in 2007. After 2007 Nepal is undergoing through the consolidation of democracy, however challenges remain in terms of making it more accommodative and more representative of Nepal's diverse situation.

The study is also based on the formation 2015 constitution of Nepal, the foundation stone of the constitution was the proclamation of 2007 constitution. 'Interim Constitution of Nepal, 2007' was adopted on 15 January 2007. The constitution announced the abolition of monarchy. It was implemented only on 27 May 2008, after the first meeting of the constituent assembly. Under the constitution of 2007 election was held in 2008 and Ram Baran Yadav became the first President of Nepal and Maoist leader Prachanda became the Prime Minister. On 2009 Prachanda resigned and Prime Minister ship was hold by the Communist leader Madhav Kumar, he quit on 2011 and Maoist Party took over again. Bahuram Bhattarai became the Prime Minister he dissolved the parliament in 2012, as it failed to complete the constitution after the latest extension. The new fresh election as held in November 2013 for constituent assembly to draft Nepal's new constitution within a year. The assembly expressly committed to promulgate constitution on 22 January 2015, however due to many issues the constitution could not be finalised in time therefore after extension it was promulgated on 20 September 2015 replacing the 'Interim Constitution of 2007'. 'The Constitution of Nepal 2015' stated Nepal as a federal democratic republican nation.

When we look into Nepal constitutional history, Nepal had witnessed seven constitutions in sixty five years, the constitutions of 1948, 1951, 1959, 1961, 1990, 2007 and 2015. The 2015 Constitution is first one that has been widely accepted. Nepal was a Hindu state for more than sixty years, this constitution made a remarkable transition to secular Nepal. It is also a first constitution to adopt federal polity from unitary system with seven provinces, distributing legislative and executive power between the legislative and provincial government. On the other hand the 2015 Constitution was opposed by various groups particularly from southern side. Various Human Rights Activists and some ethnic groups of Southern Nepal fear the constitution for working against them and for being discriminatory against the groups like Madhesis, Tharus, and Dalits and other. Some of the key problems and challenges of the 2015 Constitution they are the division of provinces, citizenship, language issue, reservation-representation and religion, as discussed in detail in chapter three and this is the main focus of the study.

During the field visit it was found that the major problem of the Nepal politics was also that people was less bothered about the political changes in the county. In the conversation, they highlighted about the instable nature of the government is the main problem, after the struggle and long protest movement they form government and the government fails to work smooth. Changing and instable nature of Nepali government, have fail to gain people trust. After the long struggle and fight against the monarch the most awaited constitution of 2015 was proclaimed but the constitution has failed to address many issues. Therefore the people are in dilemma that how long can the 2015 constitution going to sustain.

Despite the challenges, one has to remember the massive advances that have taken place in the Nepalese constitutional space over the past decade. Nepal has moved on from a constitutional monarchy to a republic, from a unitary system to a federal order and a secular character from a Hindu nation. In addition, there is a mixed electoral system, affirmative action, additional fundamental rights and a one third guarantee of women representation in the federal parliament. The current Constitution is flexible to amendments and therefore will continue to reflect the desires of the Nepali nation. However, it is necessary for all the parties to the current crisis to display restraint, maturity and flexibility to ensure that the dialogue now moves on to the proper implementation of this historic Charter.

The constitution is based on democratic principles, the rule of law, respect for human rights, judicial independence, separation of power and the checks and balances between the major organs of the state (i.e. the judiciary, the executive and the legislature). It includes provisions for inclusivity and proportional or equitable representation in governance of the country at all levels and access to the resources and services offered by the State. It has one of the most progressive provisions in terms of women's participation in power and the representation of the traditionally marginalised groups such as the Dalits of Nepal.

The new constitution also provides a long list of fundamental rights, including economic, social and cultural rights, with the possibility of progressive realization. These rights can be claimed at the provincial high court and district courts as part of the right to remedy. Further, after popular demands from marginalized communities, specific constitutional commissions (such as the Women Commission, Dalit Commission, Janajati Commission, Madhesi Commission, Tharu Commission and Muslim Commission) were created along with the National Human Rights Commission. These commissions have a mandate to receive complaints or recommend changes in the laws, policies, and practices of areas that discriminate against or deny rights to their respective communities. In terms of amendment, the constitution of 2015 is flexible, as a two-thirds majority can amend any issues except sovereignty.

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