

A Narrative of Politics and Constitutional Development in Nepal

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1. Introduction

Today Nepal is passing through a critical phase of politico-constitutional transformation. If it succeeds to resolve the ten-year old conflict, sets itself free from 238 years' feudal rule and establish a viable democratic political set-up, it will be an epoch-making event. Homegrown solution of a homegrown problem and involving the UN as a facilitator for peace-building process is really a unique achievement in its own capacity. It will really be an example for countries engulfed in a prolonged conflict

The aim of this paper is to investigate the recent political developments and highlight the path-setting features of the proposed interim constitution in Nepal. However, before doing so, a peep into the past political and constitutional developments will also be dealt with.

2. Political Development in Retrospect

2.1. The Vicious Circle

The fifty six years' democratic struggle in Nepal is virtually the history of struggle for empowering the people. Before the royal palace massacre, I expressed fear that Nepal might enter into a vicious circle of democracy and dictatorship. My apprehension was that Nepal had 104 years of Rana autocracy (1946-1950) with a short-lived democracy of ten years (1951-1960). It was again pushed back to 30 years of Royal autocracy (1960-1990) in the name of Pachayati rule, which was rejected by the peoples' movement jointly called by the Nepali Congress (NC) and the United Left Front Nepal (ULFN) in 1990. The installation of democracy no doubt had a sound beginning but started faltering after few years. A serious difference cropped up in NC, ruling party with centrist overtones, between the groups in government and the groups in the organization. The king utilized this situation and

started to exercise power, which was not constitutionally bestowed on him. On the other hand, the Communist Party of Nepal-Unified Marxist and Leninist (hereafter UML), a moderate but powerful opposition, could not manage its internal differences, and was divided into two factions. The Communist Party of Nepal-Maoist (CPN-M), an extreme left party, had already started its so-called people's war. At this critical juncture, I visualized that if this situation continued further, there was every possibility of another bout of autocracy. In October 2002, this apprehension came true.

If we trace the history of democratic struggle in Nepal, we find that the democratic forces trusted the king and tried to accommodate with him in the name of constitutional monarchy. But every time they wanted to make monarchy an honorable institution, it breached the contract and imposed autocratic rule. It was the peoples' initiative and the revolution of 1951, which restored king Tribhuvan, grandfather of the present king, his crown and throne. On that historic occasion, he promised to constitute an elected constituent assembly and promulgate a democratic constitution¹. But he gradually retreated from his promise and declared in 1954 that the sovereignty of Nepal resided in him and his executive, legislative and judicial authority was unchallengeable. His heir, king Mahendra outright rejected the idea of constituent assembly and promulgated a new constitution of his choice. But the irony of the situation was that he could not even tolerate the elected government under his constitution gifted by him. The over-ambitious monarch ousted the elected government of B.P. Koirala, dissolved parliament and established an autocratic rule. The first elected government was not allowed even to prove its worth. B.P. Koirala persistently advocated constitutional monarchy to convince the king that unity between monarchy and people was necessary for nation-building. On 14 December 1960, one day before the ill-fated December royal coup, a meeting was held between the king and the premier. The king, pretending their divergent temperaments, proposed to B.P. to retreat and give way to him to rule. B. P. Koirala instead put an interesting concept of nation-building before the king. He expressed that the king represented the traditional state power, while he represented peoples' power. The process of nation-building in Nepal was so arduous and difficult that, without the cooperation of either of them, the goal could not be achieved.² But the king did what he had

thought to do. Following the royal coup, he introduced the obscurantist Panchayati rule that lasted thirty years until 1990. King Mahendra promised to compensate democracy by development but at the end of the day, there was neither democracy nor development.

The democratic and left political parties launched a joint peaceful peoples' movement, which succeeded to reestablish democracy in 1990. A tripartite agreement was sorted out between the king, the NC and the ULFN that brought back the derailed democracy on track. The Constitution of the Kingdom of Nepal 1990 not only established multi-party democracy and constitutional monarchy but also introduced parliamentary system of governance and rule of law. This constitution for the first time made the Nepali people sovereign. Three consecutive general elections were held and even peaceful transfer of power between political parties was made as per the peoples' mandate. It seemed that the rule of the political game was settled. But, as the scenario unfolded, the King was not content with the new settlement. Similarly, the radical left too had some mission to be fulfilled. Organized in the name of United Peoples' Front Nepal (UPFN), third force in the first parliament, the CPN-M boycotted the second general election, put forward a forty-point demand before the government through UPFN and began its People's War in February 1996. In the beginning, no one took this turn of event seriously.

A couple of other factors helped ignite the situation. One was the visionless behavior of the mainstream political parties. Instead of visualizing the gravity of situation and taking appropriate measures, they quarreled for their petty interests. Not only inter-party but also intra-party fighting became the rule of the day. In the later part, they even exploited the insurgency to sidetrack their political rivals. People were fed up with the behavior of their leaders. The second one was the mysterious palace massacre of June 2001. The entire family of king Birendra, even the probable contenders of the throne and political rivals of prince Gyanendra, were massacred. Therefore, as per the law of succession, Gyanendra succeeded the throne. The new king was not like his brother. He openly expressed that he would not be like his elder brother. He said he would like to be seen as well as heard. His role model was not his brother but his father, Mahendra.

When he ascended the throne, he followed 'Mahendra path', an obscurantist path carved by his late father Manendra. Due to

the Maoist insurgency, the country was in deep trouble. The ruling Nepali Congress too was divided into two hostile camps. The king definitely cashed on this situation for his ulterior motives. He encouraged the prime minister to dissolve the House of Representatives and to seek fresh mandate. But the situation was not conducive for general elections. Ultimately prime minister Sher Bahadur Deuba was compelled to recommend the king to postpone the election at least for one year. The king ill-interpreted the constitutional provision of article 127, dissolved the Deuba government by blaming Deuba as incompetent prime minister, and took powers in his own hands in October 2002.

The king's step created a serious political and constitutional crisis. The democratic system established in 1990 previously came under attack from both the left and the right. The mainstream political parties were marginalized and old time Panchayati guards were recruited. When his soft ploy did not work, the king on February 1, 2005 declared emergency, banned political activities, curbed the press, and started to rule directly forming a cabinet under his own chairmanship. He claimed that who should have known what he was planning knew and those who should not simply did not.³

He was hinting to the fact that he had informed the powers who were supposed to know his move. His indication was, of course, towards the United States. The king tried to convince the international and regional power centers that it was done under compulsion and he would fight the Maoist 'terrorists' and restore democracy within three years. But within months, his grand design was exposed every where. Every one knew that the king was trying to strengthen his autocratic rule and mainstream political parties were his real target. He had usurped the state power under the pretext of conflict and, therefore, the continuation of conflict was the surest device for the king to stay in power.

2.2 The Changed Context

The Maoist insurgency had gained momentum during heydays of the mainstream political parties and when they were in power. So they were the target of the Maoist attack. Some critics even charged that the palace was behind the insurgents. But when king Gyanendra usurped power and kicked the mainstream parties to the streets, new equation of power evolved. The real contradiction of the Maoists was with the monarchy. Now when a new sort of contradiction erupted between the

political parties and the king, the Maoists changed their stand and offered the parties to join hand and fight their common enemy jointly.

But before considering the offer of the Maoists, the seven-mainstream political parties formed an alliance and developed six-point common understanding and commitments.⁴ Afterwards, the Seven-Party Alliance (SPA) forged a twelve-point understanding with the Maoists on November 22, 2005. This changed the chemistry of the conflict. This historic understanding raised the hope in the people and confidence in the cadres of the SPA. The international community had some misgivings regarding the intentions of the rebels. But in due course, such misgivings were properly addressed by the SPA. The king's ploy to conduct local election was foiled by the joint-effort of the SPA and the rebels. Finally, the SPA announced indefinite strike and peaceful demonstration from April 6, 2006. Various professional groups and civil society joined it. This peaceful movement was not only actively supported by the Maoists but also participated in by their unarmed cadres. The 19-day peoples' movement was historic in every sense of the term. All schools and colleges, factories and business installations, means of transport and government offices were closed. Twenty five people laid their lives, more than five thousand demonstrators were injured, and more than six million people came out on the street for protest in a single day.⁵ King Gyanendra's miscalculations brought him at the verge of his collapse. He tried to mend fences by proposing the SPA to form government on 21st April. But the move was too little, too late. Finally, he succumbed to the mass uprising. On 24 April 2006, he declared that he was ready to surrender all his political power before the SPA and they could implement their roadmap as they desired⁶. In his proclamation, he accepted the fact that the source of state power is Nepali people and the sovereignty and state power reside in them.

This time, not only the Maoists but also the civil society and the youth belonging to the SPA openly advocated democratic republic. The entire agitating people were in favor of a republican state. Any constitutional or ceremonial role to be granted to the King was taken as regressive step. The fifty-six years of democratic struggle in Nepal shows that monarchy and democracy cannot go together. Whenever monarchy is engulfed in trouble, it compromises and when it gets breathing space, it conspires. History has taught us that the greatest

destabilizing force for democracy in Nepal is monarchy.

Although B.P. Koirala had not been able to convince the king during his lifetime his theory of nation-building, he developed and theorized it as the policy of 'national reconciliation'. It was a blending of democracy and constitutional monarchy. Being a staunch follower of B.P. Koirala's teachings, NC continued to follow this concept till 2005. It was only after the royal takeover of February 1, NC, through its national convention, revised this policy and pursued monarchy- neutral democracy.

Another mainstream left party, the UML by virtue of its political ideology, was republican. But after the popular movement of 1990, it had also slowly changed its stand and started to pursue the policy of constitutional monarchy. That means it too was ready to provide some distinct role for monarchy. But the royal takeover of February 1 compelled this party to switch over to its previous notion of democratic republic.

2.3 The Maoist Rebellion

Ten years' Maoist rebellion has changed the political landscape of Nepal. Although taking arms to settle political agenda cannot be justified, the issues they have raised cannot be overlooked. Within years, they developed themselves as a national force to reckon with. Beginning with few firearms, cadres and meager resources from remote rural areas of mid-western districts of Rolpa and Rukum, the armed struggle of the CPN (Maoist) became a national phenomenon. On the question of political development, the Maoists hold a radical view. They are in favor of socio-economic transformation of the society and restructuring of the state. Their minimum agenda is the overthrow of 238- year- old monarchy and establishment of a democratic republic. Their governing principles are national and regional autonomies for all oppressed nationalities, Madhesis, and oppressed regions with the right of self- determination.⁷

The Maoists are of the view that issues such as national security, foreign policy, international trade, fiscal and monetary matters, big industries and macro-level hydro power should be tackled by the central government and the rest should be handed over to the elected regional authorities.⁸ The interesting fact is that they have practiced this concept of regional autonomies in their liberated areas. For this, they have

proposed to divide the country into nine regions. They are in favor of building the nation from within. They advocate the gender, linguistic and other rights of the people.⁹

2.4 Contribution of April Uprising

The epoch-making April uprising has turned the table in favor of common people. The peoples' movement of 1990 had simply pressurized the king to forge a compromise with the agitating political parties, but this revolution compelled the king to surrender. Now the fate of monarchy is at the people's mercy. In the forthcoming election for constituent assembly, if the people of Nepal will vote for republic, monarchy will be wiped out from the political map of Nepal.

Some domestic and international political forces are in favour of ceremonial monarchy. But people are against it. As we know, the political culture is not what is happening in the world of politics but what the people think about these happenings.¹⁰ People were not reconciled with the findings of Upadhyay Commission [Commission headed by the Supreme Court Chief Justice, Keshav Prasad Upadhyaya] regarding the ghastly palace massacre. Therefore, they were hesitant to accept the legitimacy of king Gyanendra's power to rule. But encouraged by the stage-managed people's gathering during his well-televised regional tours and also by the ill-advice of his court advisors, the king staged a coup. It simply made the common people more suspicious. Therefore, when the SPA and the Maoists entered into the twelve-point understanding and called for a peaceful movement, people responded immediately. They took out demonstrations spontaneously questioning the legitimacy of Gyanendra's right to rule.

2. Present Political Scenario

After the April revolution, the political scenario has undergone a rapid change. The House of Representatives has been reinstated. The SPA, headed by NC supremo, Girija Prasad Koirala, is in power. Having a series of talks with the CPN-M, an important break through has been made in the peace process. Among them, November 9 understanding and comprehensive peace accord are of vital importance.

On 9 November 2006, the SPA and the CPN (Maoist) jointly made some far-reaching decisions, which were later endorsed by the government of the SPA. The important features of this decision are:

- Establishment of democratic governance based on multi-party political competition, civil liberty, human rights, unhindered press freedom and rule of law.
- Free and fair election of Constituent Assembly (CA) in fearless environment within mid-June, 2007. Election of members of the CA will be held on mixed proportional system.
- The issue of whether or not to retain monarchy would be decided by the first meeting of Constituent Assembly by a simple majority. Till then the king would have no state power.
- Declaration of Interim Constitution, formation of Interim Legislature and Interim Cabinet by including the Maoists.
- The present centralized and unitary structure of the state would be dismantled and would be restructured so as to make it inclusive, democratic and progressive.¹¹

SPA, CPN (Maoist) and Nepal government evolved a tight and ambitious timetable for the settlement of issues relating to the conflict. As per the schedule, the government and the Maoists signed a comprehensive peace accord on 21 November 2006, which formally ended the eleven-year long conflict and bloodletting.¹² Implementing the agreement is a real challenge to both the SPA and the CPN (Maoist). Feudalism, democratic republic and federalism are the issues yet to be settled.

The abolition of feudalism has political, military and economic connotations. Politically, it is the end of monarchy; militarily, democratization of Nepali Army and professionalization of people's army; and economically, end of feudal land relation, implementation of revolutionary land reform and building economy based on social justice. The House of Representatives and mutual agreement between the SPA and the Maoists have it that the king would have no more state power during the interim period and the fate of monarchy will be finalized by the first meeting of the CA by simple majority. The critical mass considers this formula as a double-edged sword. If we gauge the mood of the people and the voice they raised during the historic movement, the incoming CA will be undoubtedly filled with pro-republican representatives. Therefore, it will within hours vote for republic. But the situation is not so clear. The reason behind this doubt is that NC and NC (Democratic), the two liberal partners of the SPA, have not yet formally opened their card. Moreover, PM Koirala

is sometimes talking about giving space to the king, though his own position goes on changing.

Similar is the case of federalism. The November 9 agreement specifies to dismantle the present central and unitary structure of the state to be restructured for inclusion of all people, democratically and progressively in order to put to an end to discrimination based on class, race, language, gender, culture and region. It is widely believed that the above paraphrase was coined in order to avoid using the term 'federalism'. Now federalism has been accepted by the eight parties including the Maoists.

3. Constitutional Development in Retrospect

3.1 Past Experience

Nepal has a poor track record of constitutional development. In the short span of about 70 years, it has passed through five constitutional experiments and the sixth one has been recently adopted only to be replaced by the seventh one. Among the five previous constitutional experiments, The Government of Nepal Act, 1948 was a vain effort of liberal Rana Prime Minister Padma Shumsher to protect the Rana regime from the wrath of democratic fighters by introducing incremental changes in the political set-up. But the pressure of conservative faction was so high that he had to resign soon before the ink of the document had dried throwing the constitution into waste paper basket.

After regaining his throne, king Tribhuvan promulgated The Interim Constitution of Nepal, 1951. It was only a temporary arrangement as the king promised during his historic proclamation of 18th February 1951 to have an elected CA for drafting a democratic constitution. But he never bothered to fulfill the promise. King Mahendra put his entire effort to avoid conducting the election of CA. He rather preferred a constitution of his own choice. The Constitution of the Kingdom of Nepal, 1959 was an outcome of an uneasy compromise between the king and the major political parties. The king's highhandedness was very much reflective in the constitution but B.P. Koirala defended it as it was the optimum gain in the given critical times.¹³

But this gain could not last long. The first ever elected government of B.P. Koirala was dissolved within eighteen months without giving it a fair trial to prove its worth. Mahendra, the most ambitious among

the kings, not only ousted the government but also withdrew the constitution. The Constitution of Nepal, 1962, Mahendra's second constitution, was most reactionary in the history of Nepal. It outlawed the political parties, confiscated the political rights of citizens and an authoritarian regime of the king was imposed in the name of Panchayat system. It more or less resembled the constitution of Padma Shumsher. Some parts of it were nothing but the carbon copy of the Rana document. The national guidance system of Sukarno's Indonesia, the panchayat system of rural India, the so-called grassroots democracy from the basic democracy of Ayub's Pakistan and class organization system of Tito's Yugoslavia were cut and pasted in Mahendra's so-called democratic constitution.

During the thirty years of its practice, some minor changes were made to accommodate the grievances of the different factions of the king's cadres. But when the hitherto banned political parties launched massive protest rallies in 1990, panchas, king's political cadres and disciples could not stand to shield the king from the people's wrath. Ultimately, king Birendra used the army to curb the people's movement but he was compelled to forge a compromise with the leaders of the movement. The Constitution of the Kingdom of Nepal was the outcome of this compromise.

Yet, this constitution was more democratic than its predecessors. It introduced multi-party parliamentary democracy, established constitutional monarchy, and guaranteed a wide-range of fundamental rights including political rights to the citizens of Nepal. Above all, it declared that the sovereignty of Nepal would be vested with the Nepalese people. At the outset, it seemed that the rule of the political game was settled amicably. Actually, it was a big illusion. Monarchy had not really reconciled to the new set-up. Therefore, it started exercising extra-constitutional powers by exploiting the differences between the leaders of the ruling party. Birendra's strategy was rather incremental. On the other hand, CPN (Maoist) emerged as an ultra left party based on Maoism. The party started a protracted peoples' war in February 1996. The mainstream political parties too were short of good track record. NC failed to mend fences between the party and its government. UML, the main opposition party, was equally unable to manage its internal differences. The political wrangling was bitterly prolonged. It cost the positive sides of the constitution.

CPN (Maoist) on the other hand, openly challenged the constitutional system calling for either military solution or political accommodation. The royal move of October 2002 and the royal coup of February 2005 were blatant violation of the constitutional provisions though the king tried to establish that it was taken to protect the existing constitutional system. He always turned down a political solution requested by the mainstream leaders calling it unconstitutional. The irony was that his every move was not only a simple distortion but also a serious violation of the constitution. Finally, the mainstream political parties concluded that solution to the problem could be found only after king Gyanendra's political ambition was curbed. The demand of the rebels was manageable in the sense that they agreed to abide by the result of a free and fair election to CA. Finally, the SPA and the Maoists forged an understanding to launch a nationwide agitation. The agitation turned into a mass movement, popularly known as April revolution.

3.2 The Interim Constitution of Nepal, 2007

The Interim Constitution of 2007 is an outcome of a political compromise between the SPA and the CPN (Maoist). A drastic departure from the past constitutional practices, the constitution promulgated by the reinstated House of Representatives and adopted by the interim legislature has the following features:

- People - the source of the constitution;
- Establishment of competitive multi-party, inclusive democratic political system;
- Fate of kingship to be decided by the first meeting of the elected Constituent Assembly by simple majority;
- Emphasis on political consensus in managing the affairs of the state,
- Relation between army and king severed, king no more the supreme commander of Nepalese army;
- Constitution - the gate-way to democratic republic;
- Commitment to the restructuring of the state;
- End of king's role in the affairs of the state;
- Cabinet with full executive powers;
- Prime Minister having the role of head of state as well as head of government,
- Commitment for conducting the election of Constituent Assembly;
- Provision of wide range of fundamental rights;

- Provisions of state responsibility;
- Adoption of mixed electoral system.

The greatest departure in this constitution lies in its making. All the previous five Constitutions were proclaimed by either Shree 5 or Shree 3. This constitution was finalized by the SPA and the Maoists, declared and adopted by HOR and interim legislature respectively. The source of this constitution is the will of the people. This constitution does not recognize his majesty any more. Monarchy is on the margin. It gets mention only in the transitional arrangement section. Article 159:1 categorically states that the king will have no role in the affairs of the state. As the first meeting of CA will have power to decide the fate of the institution of monarchy by simple majority¹⁴, it seems that Nepal would soon go republic.

Inclusive democracy, state restructuring and electoral reforms are other issues, which this constitution has addressed. The mixed electoral system has replaced the traditional winner-take-all system. The new electoral system encourages inclusion and participation of the minorities in the political system. Nepali polity is getting consociational system instead of competitive system. Formation of a high level state restructuring commission has been proposed to end the centralized and unitary structure through progressive restructuring so that discrimination based on class, race, language, gender, culture, religion and region will be eliminated. The modus operandi of the government will be political consensus and collaboration between the major political actors. The conduct of Government of Nepal will be based on the spirit of the joint people's movement, political consensus and collaborative culture.¹⁵

A powerful prime minister will be elected on the basis of political consensus and he is bound to form cabinet on this basis only. In the faction-ridden politics of Nepal, to strike a balance between SPA and the CPN (M) and to reach consensus is quite difficult. This is the real limitation on the power of the prime minister. The constitution has defined the term, political consensus, too. According to Article 38, it refers to the consensus reached between the SPA and the CPN (Maoist) on 8 November 2006. It means the prime minister cannot function arbitrarily.

Some critics have serious reservations regarding the provisions of judiciary. They opine that, under the present constitutional arrangement,

the judiciary cannot function independently. Their objection is concerned with the appointment of Chief Justice by prime minister and with the composition of Judicial Council. Actually, this is not the correct measuring rod for the independent functioning of the judiciary. In the constitution of 1990 too, Chief Justice was appointed by the king who was also part of the executive. Again, this arrangement is transitional because no one is in a position to confer this power to the king.

The interim constitution has severed the traditional relation between the king and the army. Now the king is no more the supreme commander of Nepal army. The power of control, mobilization and management of Nepal army is vested with the cabinet.

4. Conclusion

As transition is always zigzag, some hiccups are bound to come while transforming conflict to peace recovery. In case of Nepal, the way the SPA and the CPN (Maoist) are working together shows that there is every chance of success. The problem is basically homegrown and the actors have tried to develop a perfect homemade solution. The United Nations has been involved just to keep peace and help build it. If this formula works, Nepal will set up an example for countries in conflict. For this achievement, credit must be given to the rebels for their will to settle the issue peacefully and to the SPA for their determination to shake hands with the rebels for peace and democracy.

Endnotes

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- ² Surya Thapa, *Nepalma Rajatantra Ra Dalharu Bichko Sangharsha (Conflict Between Monarchy and Political Parties in Nepal)*, Kathmandu: Nava Yug Prakashan, Nepal, 2062
- ³ *Time*, April 20, 2005
- ⁴ *Op. Cit.*, Thapa
- ⁵ *Kantipur*, April 23, 2006
- ⁶ *The Kathmandu Post*, April 25, 2006
- ⁷ *Negotiating Agenda 2003*
- ⁸ Sitaram Tamang, (ed.), *Nepal Ko Sandrbha ma Rajyako Punha*

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- ⁹ International Crisis Group, "Nepal's Maoists: Their Aims, Structure and Strategy," *Asia Report No.104*, 2005
- ¹⁰ Krishna Pokharel, *Modern Political Analysis and Political Research*, Kathmandu: M.K. Publishers, 2005
- ¹¹ *Kathmandu Post*, November 10, 2006
- ¹² *Kathmandu Post*, November 22, 2006
- ¹³ *Op. cit.*, Thapa
- ¹⁴ HMG, *Interim Constitution of Nepal, Article 159:3*, Kathmandu: HMG
- ¹⁵ HMG, *Interim Constitution of Nepal, Article. 43*, Kathmandu: HMG

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