

Necessity of Constitution Assembly in Nepal

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At present, Nepal is undergoing a complex transition due to the most dilemmatic situation of Constitution in the history. The country has faced the failure of the British-style multiparty, parliamentary monarchial system. And the main hot issue for today's Nepalese politics is – the Constituent Assembly. The questions about constituent assembly like – what is it? Why and how should it be performed? - are revolving around the political sphere of our country. These issues have been a matter of common interest for the Maoists, all political parties, parliamentarians and common people

Constituent Assembly is the assembly of elected representatives of people from all over the nation for making new constitution. The Constituent Assembly is a process of reinventing values governance with consensus opinion of all members of the given society through constitution. Even the communist ideology accepts and appreciates Constituent Assembly as a progressive instrument of transferring power of the state from elites and minority to people. Politically, it is a process of eliminating a power of feudal elites, and enabling people to be masters of their destiny. Sociologically, it is a process of identifying the core value of the society. The truth that shouldn't be underestimated is that there is difference between the constitution made by the ruler (some nominated people) and the constitution made by people (through their representative) with their full consent. In the constitution made by the ruler, the rulers are mostly concentrated on safeguarding their interests in it. But when the citizens of the nation are involved during the process of constitution formation then they can decide the best for them as they know better of what kind of law is appropriate for them. Among the various processes, Constituent Assembly is believed to be the most important medium of making constitution and it is not an end itself, it is only a means. A very common principle is that the state exists for the people, but not people for the state. This principle is the core expression of a democratic nation. In democracy, there is a rule of people, by the people and for the people; it is thought that the constitution made by the people is only to be the democratic one. And the medium through which the constitution will be made by the people's participation is only the constituent assembly and its significance in context to Nepal is tremendous.

The Constituent Assembly is not new phenomena of discussion in Nepal. It has been raised in Nepal since 2007 B.S. and is still an important political agenda without being concluded. The first declaration of the Constituent Assembly in the Nepalese history was made by the Rana premier Mohan Shumsher while addressing the nation on 24th Poush, 2007 B.S. He declared to form a Constituent Assembly through adult franchise all over Nepal. Likewise, King Tribhuvan had proclaimed about Constituent Assembly on 7th Falgun, 2007 B.S. soon after the success of the Revolution. According to the Royal Proclamation of 2007 the country would be ruled in accordance with the Republican Constitution drafted by the Constituent Assembly elected by the people. Accordingly, the Interim government of the Ranas and Nepali Congress drafted Interim Constitution 2007 for a provisional period till the Constitution was formed through the Constituent Assembly. But the elections were not held as per the royal declaration. Later, after the death of King Tribhuvan, his son King Mahendra

began a direct rule and thus, he dismissed the election of Constituent Assembly with the declaration of parliamentary election on 24th Shrawan, 2012 B.S. Many contemporary political parties protested and demanded for Constituent Assembly until the king Mahendra declared to hold general elections on 7th Falgun, 2015 B.S. Consequently, Nepali Congress won the parliamentary election with majority and formed the government. But King took benefit at that period because of political instability among political parties by dissolving the government in 2017 B.S. He imposed an autocratic party-less Panchayat system with active monarchy by making constitution of 2019 B.S. After that, people revolted against the Panchayat system for their fundamental rights as a mass revolution of 2046 B.S and demanded that new constitution should be made through the Constituent Assembly. But the allies of Nepali Congress and United Left Front didn't give importance to that issue. As a result, the king promulgated the Constitution of the Kingdom of Nepal at the recommendation of a Commission formed through the mutual agreement between United Left Front, Nepali Congress and the King. Similarly, the Nepalese people once again have revolted against the autocratic monarchical ruling system of king Gyanendra from the period of 2062-12-24 to 2063-01-11 B.S. and have got wonderful success for the inclusive and democratic ruling system by the representative of people. The main agenda during the period of mass revolution-2 was Constituent Assembly.

The unitary structure of Nepal founded by king Prithvi Narayan Shah by demolishing the scattered autonomous and republican states through power during his expansion campaign in the name of unification was just an autocratic system. It fostered the policy of "One language and one dress" which lent supremacy only to the hilly Brahmins and Kshatriyas, few tribes Hindu religion, Nepali language and hilly dress in practice, no matter how much we talk about equality, democracy and who leads a government. Nepal is a nation comprising population with diversity of ethnicity, language, religion, culture and race. This reality was fully ignored by the constitution drafters in past. The 1990 Constitution of Nepal has failed to recognize the necessity of socio-economic rights as basic rights as well. Some of its concept was only in the forms of State's directive principles, but they are not justifiable. This failure of recognition of socio-economic rights as fundamental rights has pushed the marginalized community in further deplorable condition of backwardness and allowed the handful elites to monopolize on economic resources. The basic spirit of the constitution was thus apparently exclusive, not inclusive. It neither gave place for minorities nor believed in the secularism. This social and economic disparity resulted in the declaration of armed rebellion against the government by the ultra-leftist of Nepal, CPN-Maoist in 1996. Later on, not only the Maoist but also the people of different groups and communities realized about their rights and rebelled against the government.

The 1990 Constitution of Nepal, first time in the history provided that 'sovereign right of Nepal lies on people'. But in reality, Nepalese never could be the source of state power and fully sovereign. It copied the British style system of constitutional monarchy and multiparty democracy but failed to adopt the principle of democracy and parliamentary supremacy. Today the nation is in the favour of election of the Constitution Assembly for the new constitution and the major agenda of to be fixed for the nation are: to change in the state structure for a complete democratic system, to make people the whole major source of state power and fully sovereign to secure equality, impartiality and social justice for Madhesis, tribals, dalits and women, to establish the rule of law, to facilitate the access of people of all communities to state power, means and resources without any discrimination, to establish the fundamental human rights. These values need to be considered and encapsulated in the constitution with pragmatic address as per the core values of Nepalese society.

Constituent Assembly is right to take decision on ruling system of state by representatives of people and to make constitution in accordance with those decisions. The Constituent Assembly is considered as the most progressive development for transformation of the liberal democracy into people's control. It is the power of people to select those making constitution and declares in the name of "WE THE PEOPLE" and it only can awaken a feeling in the sovereign people that the state belongs to them. In fact, the issue of the Constituent Assembly is not completely new in Nepal. It had already become the major agenda of the contemporary politics ever since the revolution of 2007 B.S. Therefore, the agenda of the Constituent Assembly is not a fundamental issue raised by the Maoists. This should be taken as a common agenda of all the groups fighting today for establishing complete democratic political system in the country. All the five constitutions of Nepal have so far been promulgated by the king so; its stability isn't manifested to all people's voice. They have not only failed to serve the nation state but have intensified the conflict among groups and seriously hindered the sense of belongingness. Therefore, the Constituent Assembly is necessary to transform the conflict by accommodating the concerns of all and to ensure that the new constitution framework will guarantee freedom and democracy with the platform for inclusion of diversity of cultural, racial, gender, religious, professional identities in the process of making new constitution.

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