

# Jumbo Constitutional Committee

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At the time of formation of the committees, it was agreed that about 48 members would be appointed in thematic and procedural committees and 15 members in the constitutional committee. The committees were meant to accommodate members with legal background but owing to the objection from small and fringe parties this could not happen. As a result, the members in the Committee increased to 61. This met with the objection from Muslim community again. And then on June 10, 2008 Baban Singh and Sadarul Hak (independent CA members) were nominated and thus the membership reached 63. On the same day, when the Committee member from CPN (UML) Sushil Chandra Amatya resigned, former general secretary of CPN (UML) Madhav Kumar Nepal was nominated in his place.

## **Jumbo Team**

The Constituent Assembly endorsed the policy of South African model for constitution writing. So it formed different committees. South Africa had drafted the constitution with feedback from different committees under the Constituent Assembly. Committees were formed for constitution writing even in India. The Constituent Assembly of Nepal also formed ten thematic committees, one constitutional committee (it has been assigned the responsibility of the thematic committees too) and three procedural committees to work and expedite the constitution-writing process.

With the latest expansion, the Committee became larger than the sixty-member former National Assembly. Because of this size, the activities of the Committee were, at times, chaotic, mismanaged and uncontrolled. More than listening to others' opinion seriously and reflecting on them, the members were inclined to revel in their own self- and political interest. No one was spared from this malady. Like other thematic committee members, even the Constitutional Committee members fell prey to this. Disclosing the early secret consensus among the big parties to make small committees, Coordinator of the Committee for Studying Concept Paper and Preliminary Draft Report Agni Prasad Kharel said, "Though initially it was agreed to make a fifteen-member committee, it could not happen because of the opposition from the small and fringe parties".

Whatever the case, the Constitutional Committee is the mother committee to collect the preliminary drafts prepared by the thematic committees, to accommodate issues left out by them and to fix the subjects under its jurisdiction such as preamble, constitution amendment, political party, definition and other miscellaneous factors. The main responsibility to document the constitution drafts lies with the Constitutional Committee. But because of the large size of the Committee, lack of members with know-how of constitutional process and apathy on the part of the main leaders of the political parties, the regular functioning and even the internal timetable have badly suffered.

The Constitutional Committee formed a task force with Nilambar Acharya, Agni Prasad Kharel, Khimlal Devkota, Nilam Varma and Rukmini Chaudhary (Tharu) on December 22, 2008 to identify its (Constitutional Committee's) terms of reference, internal-working process, timetable making and necessary special service to recommend suggestions. The task force had the following

subcommittees: 1) Preamble subcommittee, coordinator Khimlal Devkota and eight other members 2) Name subcommittee, coordinator Sapana Pradhan Malla and eight other members 3) Constitution subcommittee, coordinator Nilam Varma and nine other members 4) Political party and miscellaneous subcommittee, coordinator Laxmanlal Kandel and eight other members. By forming a 19-member draft subcommittee on September 1, 2009, the Constitutional Committee continued its work.

The Constitutional Committee suffered double jeopardy. Firstly, the thematic committees did not submit their reports in time, and secondly, the Committee itself remained without a chairperson for three months after Madhav Kumar Nepal was inducted as the country's prime minister. This contributed to further delay in constitution writing.

### **Indication of Chairman's Election**

With consensus built on a power-sharing deal between UCPN (M), Nepali Congress, CPN (UML), Madhesi Janadhikar Forum (MJF), Tarai Madhes Loktantrik Party (TMLP), twelve chairpersons out of 14 committees were selected unanimously. Election had to be held only in the Constitutional Committee and the Capacity Building and Source Management Committee.

Bishwendra Paswan of Dalit Janajati Party had stood against UML former general secretary Madhav Kumar Nepal in the Constitutional Committee election. In the election held on January 13, 2009 Bishwendra Paswan garnered seven votes while Madhav Kumar Nepal won 42 votes and thus became the chairperson of the Constitutional Committee. Two members belonging to the TMLP had remained neutral in that election. Thus though the chairpersons in most other committees were elected unanimously, the election for the chair of the Constitutional Committee can be taken for sowing the seeds of delayed constitution-writing process, lack of consensus and tradition of deciding on crucial issues by votes rather than by consensus. This tradition got reflected in almost all thematic committees in the later times. There has not been any consensus in the 66-member Committee. How can one expect consensus in 601-member jumbo Assembly?

### **Disobedience to the Committee**

The parties did not seem to take the request call of the Committee for the concept paper of the respective parties regarding the constitution. Despite the repeated calls from the Committee Chairperson, some parties refused to send their concept paper to the Committee in written form. However, the chairpersons of those parties attended the meeting and gave their opinion on the fundamental values, norms, principles, the overall structure of the constitution and ideas to be included in the terms of reference of the Constitutional Committee. In March 2009, the Constitutional Committee made a written appeal to all the parties represented in the Constituent Assembly. Subsequently, National People's Front, Nepal Workers and Peasants' Party, Communist Party of Nepal (United), Madhesi Janadhikar Forum (MJF), Communist Party of Nepal (UML), Communist Party of Nepal (ML), Rastriya Prajatantra Party (RPP) and Rastriya Prajatantra Party-Nepal (RPP-Nepal) submitted their concept papers for the would-be constitution on February 26, 2009.

When the Committee repeated its call on March 13, 2009 again, the UCPN (M) Chairperson Pushpa Kamal Dahal "Prachanda" came to the Committee himself and presented the concept of his party for the constitution. But he failed to submit the concept in the written form. He spoke for the directly elected executive president in the future political system. Then on March 26, Rastriya Janashakti Party submitted its concept paper. On March 31, the then Nepali Congress president Girija Prasad Koirala presented his party's concept by coming in to the committee himself. Koirala put his opinion on the fundamental principles of the constitution like this: "Nepal should be made into federal democratic republic that follows multiparty democratic government system based on

pluralism and thus should set the principles and foundation of constitution making". He emphasised on national unity and integrity, people's sovereignty, constitutional supremacy, president as the head of the nation, elected prime minister from the parliament as the chief of the executive, human rights, fundamental rights and civic and political freedom, individual freedom, right to property, secularism and religious freedom, social justice and reservation system.

On April 1, CPN (UML) Chairperson Jhala Nath Khanal expressed his party's stand for parliamentary system with directly elected executive prime minister. The same day, party supremos from Rastriya Janamukti Party (National People's Liberation Party), CPN (United), Nepal Janata Party (Nepal People's Party), Federal Democratic National Forum-Nepal, Sadbhawana Party, Socialist Democratic People's Party-Nepal, Chure Bhawar Rastriya Ekata Party (Chure Bhawar National United Party), Dalit Janajati Party, Nepal Pariwar Dal, Nepa: Rastriya Party (Nepa: National Party) and Samajbadi Prajatantrik Janata Party-Nepal (Socialist Democratic People's Party-Nepal) submitted their concept papers to the Committee. On April 2, TMLP President Mahantha Thakur gave his party's official take in the Committee. Nepal Sadbhawana Party (Anandadevi) did not submit its concept paper. Nepali Congress President Girija Prasad Koirala reached the Committee meeting only once on March 31 to give the official stand of his party in the constitution. He did not even come to the Committees' last election meeting held on December 25, 2009. He passed away without attending any other committee meetings.

Likewise, UCPN (M) Chairperson Pushpa Kamal Dahal, CPN (UML) Chairperson Jhala Nath Khanal, MJF President Upendra Yadav, MJF (Democratic) President Bijaya Kumar Gachhedhar and TMLP chief Mahantha Thakur, who are also the members of the Constitutional Committee, did not play meaningful roles in the Committee. On December 25, 2009, Dahal and Khanal had shown up until the election programme of the Committee in meeting room no. 411. But at the time of casting ballot, they walked out of the room.

### **Coterie of the Big Party Leaders**

UCPN (M) Chairperson Pushpa Kamal Dahal, CPN (UML) Chairperson Jhala Nath Khanal, MJF President Upendra Yadav, MJF (Democratic) chief Bijaya Kumar Gachhedhar, TMLP President Mahantha Thakur and Rastriya Janashakti Party president Chitra Bahadur KC are the members in the Constitutional Committee. Likewise, Congress President Koirala was also a member in the committee.

Similarly, Nepal Federation of Indigenous Nationalities chief Pasang Sherpa, vice-chairperson duo from Nepali Congress Ram Chandra Paudel and Prakash Man Singh, Nepali Congress general secretaries Kul Bahadur Gurung and Bimalendra Nidhi, UCPN(M) vice-chairpersons Dr Baburam Bhattarai and Narayankaji Shrestha, CPN (ML) general secretary Chandra Prakash Mainali, RJP assistant chairman Dr Prakash Chandra Lohani, CPN(UML) senior leader and Prime Minister Madhav Kumar Nepal, RPP leader and former prime minister Lokendra Bahadur Chand, TMLP general secretary Hridayesh Tripathy, Socialist Democratic People's Party president and Minister of Law Prem Bahadur Singh are the members in the Committee. Despite this high-level representation, the Committee could not prepare the concept papers and drafts in time. The main cause of this is the chief leaders of the parties because their concentration was more on capturing state power and their own party activities than on the Constitutional Committee and constitution making.

Because of this utter indifference on the part of the big party leaders, the main timetable of the Constituent Assembly and the internal timetable of the Constitutional Committee have been affected. Though the Committee had not categorically fixed the internal timetable, a general routine was prepared.

## **Transfers and Delays**

Looking back at the Constitutional Committee voting held on December 25, 2009, it is hard to believe that constitution will ever be drafted on time. What happened that day has further complicated the problems than giving a way out to solve them. The CA members disputed over every word and acted discourteously towards each other. This shows that the constitution is hard to come on time. CA member from Dalit Janajati Party Bishwendra Paswan had shouted "boycott! boycott!" after his proposal was not approved. He shouted while the election was taking place. He violated the regulation and the Constitutional Committee Chairperson had to let him go out after having the closed door opened. Similarly, as the election was going on, the CA members obstructed the proceedings time and again by questioning about the election procedure. In one case, when UCPN (M) Vice-chairman Dr. Baburam Bhattarai asked who gave the right to the Secretariat to submit the reports without the consensus among political parties, the Constitutional Committee Chairperson Nilambar Acharya replied amidst the election that it was done according to the month-long discussion in the committees. He further said the report had not come from the sky.

### **Transfers in the Constitutional Committee**

The members in the Committee experienced difficulty in working also because of the change of the Committee members from time to time. Nominated members in the Constitutional Committee; former Chief Justice Bishwanath Upadhyaya refused to take oath of the Constitutional Committee. Then on Jan 13, 2009, Achyut Raj Pandey got appointed in his place. But Pandey was not put in the Constitutional Committee. Rather he was made a member of the Public Opinion Collection and Coordination Committee. The members of the Constitutional Committee had taken their oath of office on Jan 10, 2009. The Constituent Assembly Regulations states that members from the other committees can do without taking oath of office but members from the Constitutional Committee must take oath of office because the work of the Constitutional Committee is usually secret. However, this provision of optional oath taking had given rise to the feeling of superiority and inferiority among the Committee members. It had been rumoured that the members of the Constitutional Committee started boasting of being "big" within the Singh Durbar premises.

Nepali Congress Vice-chairman Ram Chandra Paudel was transferred to the Constitutional Committee from the Committee for State Restructuring and Distribution of State Power. Likewise, Maoist vice-chairman Dr Baburam Bhattarai was transferred to the Constitutional Committee from the Committee on Natural Resources, Financial Rights and Revenue Sharing. Dharmasila Chapagain of UCPN (M) was also transferred from the same Committee. Renu Chand (Bhatta) was transferred to the Constitutional Committee from the Committee on Fundamental Rights and Directive Principles. On January 10, four CA members were transferred from the Constitutional Committee and placed in other committees. Those "unlucky" CA members included Dina Nath Sharma, Amrita Thapa Magar and Satya Pahadi from UCPN (M), and Radha Gyawali from UML. Sharma and Thapa were transferred to the Committee on Natural Resources, Financial Rights and Revenue Sharing, and Pahadi was placed in the Committee on Fundamental Rights and Directive Principles. Amrita Thapa, however, got the position of chairperson in the Committee on Natural Resources, Financial Rights and Revenue Sharing. Gyawali was not placed even in the thematic committees. She was assigned in the Capacity Building and Source Management Committee. CA members would mock those in the procedural committees as members without work as in the Ministry of General Administration.