

Fundamental Duties for the First Time

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Published date: 8 June 2010

<http://asd.org.np/en/transition/constitution/rights/60-fundamental-duties-for-the-first-time>

Though discussions continued for 15 months on fundamental rights and directive principles, the parties could not strike consensus on many issues. The parties had disagreements over issues regarding political parties, land reform, autonomy with right to self-determination, prior-rights over land and natural resources, retrospective law, name of the House, citizenship, military training, capital punishment, education and role of youths and others. The Committee incorporated the issues of consensus into the draft report and those of the contentious proposals were put under the category of differing opinions. The Committee prepared a 570-page draft report and submitted it to the Constituent Assembly on November 8, 2009.

Other committees too had voices of disagreements over the key issues. And as a necessary solution, the issues were put to voting before preparing the reports. Similarly in the absence of consensus, differing opinions started to flood the Committee on Fundamental Rights and Directive Principles too. Worse still, the report of the Committee on Fundamental Rights and Directive Principles was even burnt in the streets under the leadership of a CA member himself. On November 22, 2009, as the discussions were continuing inside the Constituent Assembly hall, the Committee report was burning under the leadership of CA member Pasang Sherpa. Surprisingly or coincidentally, the Committee Chairperson Binda Pandey and Pasang Sherpa belong to the same political party, Nepal Communist Party (UML). Sherpa is also the chairperson of Nepal Indigenous People's Federation. Sherpa led the protest alleging that the Committee report did not include the rights of the indigenous community and Janajatis. Nepal Indigenous People's Federation is a leading group in opposing the Committee report of the CA from the streets.

Single Federal Citizenship

The Committee on Fundamental Rights and Directive Principles has proposed the provision of single federal citizenship. It holds that this provision is proposed to avoid any complication regarding the citizenship in future, to ensure all Nepalis equal duties and responsibilities as citizens of the country, and for administrative proximity. The Committee is also of the opinion that in the citizenship issued by the federal government, provincial identity of the citizenship bearer should also be stated.

According to the Committee, the following persons can become citizens of Nepal: persons who have citizenship at the commencement of the present constitution, persons that have got Nepali citizenship by the time the constitution is promulgated, a person whose mother or father was a citizen of Nepal at birth, a person born in Nepal of Nepali citizen married to a foreign national and living permanently in Nepal, and the person that has got foreign citizenship on the basis of his father or mother but if his parents then are both Nepalis.

The Committee has also introduced the citizenship by descent, naturalised citizenship, citizenship of regional annexation (if any region or locality is annexed into Nepal, the inhabitants living into that territory will become citizens of Nepal subject to the provisions of the existing laws of the country), citizenship by descent with gender recognition and honorary citizenship. The proposal states that the federal government can confer citizenship to an internationally recognised

individual but such individual cannot exercise political rights. If one discards the Nepali citizenship voluntarily and receives foreign citizenship, Nepali citizenship will be automatically annulled.

Rights, Rights Everywhere!

The Committee has proposed 31 fundamental rights in the report. The rights include the right to live with dignity, right to freedom, right to equality, right to mass media, right to justice, rights for criminal victims, right against preventive detention, and right against torture. Also in the list are rights against racial discrimination and untouchability, right to property, right to religious freedom, right to information, right to secrecy, right to environment, and right against exploitation, right to education, right to language and culture, right to employment, right to labour, right to health, right to food, right to shelter, women's rights are others. Besides these, rights regarding children, rights of Dalit communities, right to family, right to social justice, right to social security, right to consume, right against exile, and right to implementation of fundamental rights and constitutional remedies are proposed by the Committee.

The Committee has proposed a right that is different from the ones included in the Constitution of 1990 and Interim Constitution 2007. The proposed draft mentions that every Nepali has right to live with dignity. Under this is suggested a right of a Nepali to live with his physical body and all organs and with his identity, self-respect and dignity. The Committee argues that in the absence of the right to live with self-respect and dignity, all other rights are meaningless. Therefore this right has been guaranteed. The new rights introduced by the Committee are rights of the criminals, right to food, shelter, consumption, and family.

Fundamental Duties and Directive Principles of the State

Under citizen's duty under the right to fundamental duties, every citizen should be faithful to his nation, should defend and protect nationality, sovereignty of state and integrity of the country, should keep national secrets, should abide by the law and constitution of the country, should serve compulsorily for the nation when the nation demands, and should pay tax according to the law. Similarly, to respect labour, to respect father, mother, children, elderly people, women, helpless and disabled people or community are other fundamental duties. To protect public and national property, to exercise one's rights and freedom without infringing on the rights of other people, community or citizen, and to protect and promote natural, cultural and historical heritage, and to work for environment conservation are also fundamental duties.

The Committee holds that the rights and duties complement each other and, therefore, a citizen's observation of his or her duty facilitates another citizen to enjoy and exercise her or his rights. And then the citizen finds some basis to exercise her or his fundamental rights. Also, the awareness of her or his duty makes the citizen disciplined, dignified, moral and righteous and more dutiful and faithful to the nation. This is the justification of the Committee to make provision of the fundamental duties in the draft report.

As for the directive principles, policies and accountability towards the state, the draft states that "the political objective of the state will be to establish the federal democratic republic system

by keeping the country's sovereignty, independence and integrity with utmost priority, by protecting every citizen's life, property, freedom and equality, by maintaining the just rule in all aspects of national life by following the principle of rule of law, fundamental rights and human rights and values, inclusiveness, participation, and social justice and thereby establishing the welfare state, by establishing the smooth relation among the federal units through the principles of mutual cooperation and federalism and thus ensuring people's participation in proportional basis in decentralisation and self-governance and by guaranteeing the system where people can reap the

benefits of democracy". The report of the Committee states that the policies regarding the national defence and national unity, policy regarding the politics and government, policy regarding social and cultural transformation, economic and business policy, development policies and others will be the policies of the state.

Heaps of Different Opinions

The CA members in the Committee on Fundamental Rights and Directive Principles expressed their disagreement not only as part of party ideology but also individually. UCPN (M) expressed its dissent in the issue of freedom of registering of political parties. Their proposal states to add in the draft that "the political parties that go for anti-national activity, work as stooge of the foreign powers, conspire against the nation, stands for regression or forms mechanism or organisations for these purposes should be banned, and the law to this end can be formulated". The Committee report has it that for the sake of scientific land reform while confiscating land to distribute it to the landless peasants and squatters or while the state creates any other right for public good, compensation should be granted according to the law.

The UCPN (M) put its dissent in this regard. They proposed to include "in implementing revolutionary land reform, limitation on possession of land will be set and those that have more land than specified in the limit will be distributed to squatters, landless, poor peasants, and a scientific plan will be made and put into operation to ensure growth of production and productivity". The Committee proposed under the right to social justice that "the indigenous community and Janajatis should be granted the rights, with priority, to empower them to promote, protect, and develop their language, identity, and culture with special opportunities of gains". The Maoists proposed to add phrases like "self-governance and autonomy with the right to self-determination" for indigenous and Janajati community.

Likewise, the Committee report also states that "the Madhesi community will get rights to equal distribution of social, cultural, and economic opportunities and gains, and the challenged and backward community within the Madhesi community will have the rights to acquire special opportunity and gains for their promotion, protection, empowerment and development". But the UCPN (M) proposed to add "Madhesi community will have right to self-determination, autonomy and self-governance".

As for the fundamental duties, the UCPN (M) has proposed to add "the indigenous and local community will have prior right over land and natural resources". Also, the party has insisted on including the provision of military training. In the section in the directive principle, the Party has proposed to include "military training to the youths for the protection of nation's sovereignty, self-rule, and integrity should be provided; also to be granted are right to self-determination, autonomy with ethnic governance including the prior rights over land and natural resources."

As for the right to property, the Nepali Congress held that except for the purpose of scientific land reform, the state cannot impose limitation on property of citizen. It submitted its dissent to this end. For the Nepali Congress, right to manage, monitor and control over issues like scientific land reform, land management, growth of production and productivity of land, modernisation and commercialisation of agriculture, environmental conservation, and urban development and managed settlement should be conferred on the provincial unit. It also holds that every citizen has the right to freedom from starvation and malnutrition.

With regard to the fundamental duties, the Nepali Congress is opposed to the lines "to serve compulsorily when the nation demands" and roots for "to serve at the time of national crisis and disaster". It argues that compulsory training should be given to the citizens on peace and conduct.

As to the Committee draft of “the political objective of the state will be to establish federal democratic republic state”, the Nepali Congress has offered its suggestion to add “federal democratic republic based on the principle of pluralism and multiparty competition”.

Interestingly the CA members from Nepal Communist Party (UML), to which the Committee Chairperson Binda Pandey belongs, also have expressed dissents over the Committee’s draft report. The Clause 4 of Article 5 of the Fundamental Rights holds that nobody will be subject to punishment unless he has done something that is against the existing laws and nobody will be subject to punishment for more years than is specified in the existing laws in practice at the time of committing the crime. The UML members have suggested adding “this clause will not hinder to make retrospective law and punish the culprits in crimes against humanity, war crimes, and crimes relating to ethnic cleansing, genocide, etc”.

Likewise, Clause 11 of Article 27 of the Fundamental Rights states that the families of the martyrs of all past people’s movements, (like People’s war and Madhes Movement), families of the disappeared, lame and wounded during the movements will be given space for inclusion in all of the state mechanisms, special benefits and allowances in government and public services. Also, they will be given right to relief and pension besides gaining special privilege in education, health, social security, employment and shelter. But UML wishes to put instead “the families of those who died in all movements and struggles for democracy, the fighters of democracy, victims of conflict, and the displaced, lame and disabled and wounded all will be provided justice and relief, education, health, employment, shelter, and social security with due respect and priority for them”. The Committee members that belong to UML but put different opinions are Urmila Devi Shah, Ushakala Rai, Dharmaraj Niroula, Dhirendra Bahadur Shrestha, Pradeep Gyawali, Ramprit Paswan, and Lalmani Chaudhary.

The CA member of Nepal Sadbhawana Party Rajendra Mahato expressed his different opinion with regard to the system of single federal citizenship. He opined that provincial government should issue single citizenship on behalf of the federal central government. Leela Nyaichyai of Nepal Workers and Peasants Party proposed so that “separate citizenship provision is ensured in Nepal both at provincial and federal level.” The Committee report has stated that for a person to be appointed or elected in the positions of the head of the state of the country, vice-presidents, head of the provincial or federal legislature, executive, judiciary, constitutional body and security agencies, he or she should be Nepali citizen by descent. Nyaichyai recommends removing this condition and suggests writing “to be elected or appointed in the high-level positions in the political, constitutional, administrative bodies of Nepal, the person should be Nepali citizen that has got the citizenship by descent”. Likewise, other CA members like Bhupendra Chaudhary, Chandrika Prasad Yadav, Gagan Thapa, Tilak Bahadur Thapa Magar, Dal Kumari Sunuwar, Angdawa Sherpa, Urmila Thapa, Ushakala Rai, Sunil Babu Panta, Arbind Shah and Ganesh Tiwari Nepali have put different opinions.

Suggestions of Their Own Kind

The Committee had received suggestions and recommendations from a team of the Constituent Assembly, experts, and the concerned organisations in writing. The Himalayan Conservation and Development Association, Humla, had suggested that the inhabitants of Karnali should be granted special privilege in terms of education, health, and employment and such provisions should be recognised by the courts too. The Community Forest Consumers Federation, Nuwakot, demanded a clear policy in management and consumption of forests. Nepal Hindu Literature Council, Birgunj, demanded that Nepali should be made the medium of instruction in the textbooks of higher education, and Hindi and other languages should be given due space. Nepal Trade Union Federation suggested the formation of National Labour Commission to ensure the rights of labour and peasants

class and solve the problems they face. Nepal Human Rights Organisation requested ending the culture of impunity and establishing constitutional supremacy and thus improve human rights situations.

All Nepal Squatters Union, Sunsari, suggested that “the squatters should be guaranteed water, jungle and land” in the new constitution. Nepal Gold Workers (Sonah) Union demanded guaranteeing the rights of the Sonah caste, enlisting them in the constitution, and allowing them free fishing and panning for gold in the river banks. United British Gurkha Ex-Army Union demanded that the Gurkhas living in Britain should be able to retain their Nepali citizenship and also demanded that the government of Nepal should do the needful to pressurise the British government to give the Nepali soldiers salary and pension in parity with their British counterparts. Gurudwara Shree Gurunanak Satsanga, Nepalgunj, demanded that the rights of the Sikh community should be guaranteed and their religion and culture be protected and promoted. Youth Buddhist Union, Pokhara, suggested writing clearly that “Nepal is a secular country”. Nepal Doctors Union demanded professional rights of the doctors and providing every citizen the basic free health service. Kamlari Emancipation Common Front, Dang, demanded abolishing Kamlari system, guaranteeing special rights of the Kamlaris over water, land, and forest and suggested forming a Kamlari Commission.

Constitution Experts Group demanded that all citizens should live in an exploitation-free society and live with dignity. Non-Resident Nepali Association suggested that the country had to focus on regional integrity, save and protect sovereignty and multiparty democracy. Nepal Democratic Party Nepal, Panchthar, claimed that Prithvi Narayan Shah should be viewed as symbol of national unity, there should be only one army in the country and also demanded the constitutional monarchical democracy. Makawanpur HIV Infected Union, Hetauda, suggested that the government guarantee the human rights for the HIV infected.

The Committee also had got suggestions and recommendations to discourage the tendency of building private houses and manage affordable government housing. Other suggestions were for declaring red light area, referendum over the sensitive issues, introducing English from the beginning of primary education, iron tablets for the pregnant, prohibition on embryo identification, and free education to the children of the labourers.

Most Meetings of All

Of the thirteen committees of the Constituent Assembly, this Committee held the highest number of meetings. By the time the Committee gave final touch to the report, the Committee and subcommittees had held altogether 197 meetings. Discussions had continued for 478 hours 30 minutes. The Committee had begun its work on December 16, 2008. In the initial meetings, the Committee discussed about the functions to be carried out. And to prepare the details of work for the Committee, the Committee decided to recommend names to form subcommittees in the next meeting. It formed a subcommittee to make a timetable. The Committee had decided to take help from Nepali Missions to take suggestions from the Nepalis living abroad. The Committee had also selected experts and discussed.

To organise and manage the proceedings, the Committee had formed six subcommittees. They were Fundamental Rights and Duties Identification Subcommittee, Prohibition on Fundamentals Rights Subcommittee, Liability of State Subcommittee, Directive Principle and Policy Subcommittee, Citizenship Subcommittee, Sex and Gender Subcommittee, and Social Justice, Inclusion, and Special Protection Subcommittee. In addition, Residual Rights and Inter-coordination Subcommittee and Concept Paper and Draft Report Subcommittee were also formed. For concept paper drafting, two task forces, related to fundamental rights and directive principles, were formed. The Committee also discussed about the questionnaires prepared to collect opinions and suggestion. After the reports submitted by subcommittees and task forces were discussed, the decision proceedings were geared up. The Concept Paper Preliminary Draft and Descriptive Report Subcommittee submitted its report to the Committee at the meeting of November 4, 2009. Of other reports, reports on citizenship, fundamental rights, fundamental duties, directive principle of the state, and policy and accountability were passed in the meeting. And the Committee decided to submit the draft report to the CA chairman.

Conclusion:

The political philosophy of the respective political parties was the root of discontent and dissents in most of the issues. This was the main reason behind the inability to reach a consensus. The UCPN(M) insisted that the parties that go against the nation and stand for regression should be outlawed. The Nepali Congress and UML sternly objected to this. The NC and UML held that with this proposal in operation, the Maoists intended to outlaw all other parties that hold different philosophy from theirs.

The UCPN(M) nod to multiparty system but denial of pluralism gave rise to the doubt of the NC and UML over them. The UCPN(M) put forward the provision of military training for the citizens. The UML, NC and other parties viewed this with cynicism and began to doubt the UCPN(M)'s intention. The NC and UML agreed to formulate retroactive law to address crimes against humanity. But the UCPN(M) disagreed. The Nepal Workers and Peasants Party rooted for capital punishment to those who have committed the most serious offence. Despite the differences of the parties over many issues, the Committee on Fundamental Rights and Directive Principles prepared the report finally.

The report talks about the citizenship in the federal system and fundamental rights and duties. The committee has introduced many more fundamental rights than mentioned in all of the past constitutions. Citizens are not just granted rights but they are also made to realise their duties. The Committee holds that claiming of rights but ignoring duties should end for once and all.