

Overshadowed by Party Politics

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Among the fourteen committees that the CA had formed, the Constitutional Committee is the most important one in terms of the responsibilities and important jobs that it was assigned. This particular Committee is responsible for drafting the constitution on the basis of the reports submitted by the thematic committees. It is also responsible for preparing drafts over issues which do not belong to any other committees.

This Committee was formed on December 15, 2009. Kul Bahadur Gurung, the senior-most member of the CA, worked as the chair of the Committee till January 13, 2010, the day Madhav Kumar Nepal got elected as the Chair of the Committee. Altogether eleven meetings were held under Gurung's chairmanship. The Committee under the chairmanship of Nepal functioned effectively until May 23, 2009, the day the Maoist-led government resigned and Madhav Kumar Nepal got elected as the Prime Minister of the country.

The Committee did not have its chair for five consecutive months; as a result, it did not function at a time when all other thematic committees were actively busy on discussing and preparing reports over constitutional and political issues. Finally, Nilambar Acharya, CA member from the NC, got elected as its chair.

It formed several sub-committees to execute its responsibilities on time. It finalised several issues which did not garner consensus through holding elections. Altogether elections on 98 issues were held, and it submitted its report along with opposing views put forward by different political parties on January 4, 2010. It has stated that the new constitution must be termed as the Constitution of Nepal 2067.

Sovereignty and Peoples' Polity

The report prepared and submitted by the Committee contains clauses such as "Honouring the sovereignty of Nepali citizens, freedom, sovereignty, unity, integrity and glorious and prestigious history of Nepal, the historical movements such as the Armed Struggle, the April 2006 Uprising and the Madhes Movement held to restore democracy, peace, human rights and progressive changes, the ordeal and sacrifice that the people of this nation have shown for such changes and the martyrs.....". Its preamble further states, "With commitment to a competitive and people-based proportional and inclusive democratic polity that guarantees freedom and rights of citizens, human rights, voting rights, regular election, press freedom; able, inclusive and free judiciary; law and order, democratic values and ethics, democratic republic form of state polity dedicated to create foundations for socialism through eradicating all forms of feudalism to fulfil people's expectation for a long-lasting peaceful, prosperous and developed Nepal, we promulgate this constitution through this Constituent Assembly....".

The report of the Committee further states that Nepal as a nation is a mosaic of people belonging to all races, castes, languages, religions, and cultures motivated to maintain a sovereign nation and other values and principles mentioned in the preamble of the new constitution.

Provision for Amendment

The Committee in its report states that amendments that harm the constitutional values as stated in its preamble should not be permitted. Whereas issues and acts other than mentioned above are subjects for amendments and must follow the legislative procedures as mentioned in the new constitution of the nation.

Freedom to Register Political Parties

The Committee in its report states that it is a matter of constitutional rights for individuals to register their party. But such a party must conduct intra-party elections on a regular basis and remain committed to the constitutional values and ethics, must not organise any events or propagate ideologies and agendas that are detrimental to the sovereignty and unity of the nation and people.

Other Proposals

The Committee in its report states that the head of the state on the recommendation of the council of ministers can call for the state of emergency throughout the nation or in certain areas of the country in case of internal war, foreign invasion, armed struggle, extreme economic disparity, natural disaster and epidemics among others. The head of the state on the recommendation from the council of ministers can nominate diplomats and ambassadors and can pardon criminals convicted by judicial, semi-judicial, administrative bodies and officials across the country.

The Committee in its report states that all forms of existing judiciary must remain active until the new constitution comes into effect. Moreover, the officials working in the existing judiciary are subjects for reappointment as the new constitution comes into practice. The Committee approves the existing national flag, logo and anthem.

Votes of Difference

Almost all the parties have put forward various opposing voices over the final report submitted by the Committee.

UCPN(M) CA members commented that the Committee in its preamble must include clause such as “struggle to end imperialism and foreign encroachment”, “workers and farmers as history makers”, “restructuring of the state to end every kind of discrimination from untouchability to regional disparity” and ‘People’s War’ instead of ‘Armed Struggle’”. The UCPN (M) CA members claimed that the existing national flag must be replaced with another one since it does not reflect the current political euphoria of the nation.

The NC CA members commented that the constitution in its preamble must use the term “inclusive” instead of “proportional inclusive” in the clause that provides the president the rights to appoint diplomats and ambassadors, and must define Nepal as a “federal democratic” instead of a nation “heading towards socialism”.

UML CA members commented that the constitution instead of defining Nepal as a ‘Republic Multinational Nation’ heading towards “inclusive socialism” must use “Democratic Republic Nation” heading towards “inclusive socialism”. Similarly, they proposed that the Head of the State should appoint ambassadors and diplomats on an “inclusive basis”, not on “proportional inclusive” one.

CA members belonging to the three parties, RPP-Nepal, RPP, Chure Bhawar and Rastriya Janashakti expressed their opinion that before stating Nepal as a “secular” and “republic” nation in the new constitution, there should be referendum over such issues.

CA members belonging to Rastriya Janamukti Party expressed their opinion that the new constitution must include term such as “end to feudalism, autocracy, centralism, unipolar and patriarchy” in its preamble, and they also claimed that the existing national flag does not represent the reality of the new nation, thus should be replaced by another one.

CA members belonging to the Nepal Communist Party (United) expressed their opinion that any treaties that are detrimental to the economy, stability and natural resources of Nepal must be decided through a referendum, and also argued that the existing national flag must be replaced with another one that can reflect aspiration of the new times.

CA members belonging to Nepal Workers and Peasants Party expressed their opinion that instead of “Historic Armed Struggle”, “People’s Peaceful 2006 Uprising” and “Madhes Movement”, the new constitution should just state “all kinds of struggles made to establish democracy” in its preamble, and the new constitution should be named as the Constitution of Republic Nepal heading towards Socialism 2067.

CA members belonging to Rastriya Janamorcha and Nepal Communist Party (Marxist-Leninist) expressed their opinion that the new constitution must not include “Madhes Movement” in its preamble.

CA members belonging to the following parties, Sanghiya Loktantrik Rastriya Manch (Federal Democratic National Forum), Dalit Janajati Party, Nepa Rastriya Party, Janamukti Party, Loktantrik Samajbadi Dal and independent CA members expressed their opinion that the new constitution must also mention Limbuwan, Tharuhat and Janajati movements along with the three major movements that the constitution mentions in its preamble.

Several women CA members belonging to different parties have expressed their opinion to include the term “women’s rights” along with “human rights” as the fundamental part of the new constitution in its preamble.

Conclusion

The Constitutional Committee held great many discussion sessions with persons and institutions related to judiciary as well as leaders of political parties though it could not make any major achievements. It could not convince its members on certain common premises of the new constitution. Major political leaders though members of the Committee remained glued to their political ideology and spent their energy either in prolonging the government or protesting against it. The CA members belonging to the UCPN (M) failed to convince about their commitment to democracy to their fellow members, especially those belonging to the NC and UML; as a result, misunderstanding among the three major parties directly hampered the constitution-writing process. However, the Committee should keep on organising discussion over the issues that have not drawn a consensus.