

Committee for Determining the Structure of Constitutional Bodies

Proposal to Double the Existing Constitutional Bodies

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Legislative, executive and judiciary are chief organs of the government. According to the theory of power separation, check and balance between these organs is necessary. In democratic and constitutional system, each body can exercise its power within the boundaries set by the constitution and allows other organs to perform its work freely without interfering in others' jurisdiction and without being interfered. To prevent the abuse of the state power, and to consolidate the rule of law, besides legislative, executive and judiciary, other constitutional organs are also envisioned in a constitution.

Such bodies are necessary in a country, the report of the Committee for Determining the Structure of Constitutional Bodies has said, to guarantee exercise of democratic norms and values, equal opportunity to participation in state mechanisms, guarantee of civil, economic, social and cultural justice, and guarantee of public accountability of the government toward its people. This is not to say, however, that Nepal has not exercised the system of constitutional bodies in the past.

The Constitution of Nepal 1990 had made the provisions of Commission for Investigation of Abuse of Authority (CIAA), Public Service Commission, Election Commission, and Auditor General. But the Interim Constitution of Nepal 2007 has added National Human Rights Commission as a constitutional body. During and after the People's Movement 2006, various groups, class and regions have raised demands for their rights. Taking in to account such demands and needs, the Committee for Determining the Structure of Constitutional Bodies has proposed constituting six more bodies than that of the past in its report.

The new commissions that the Committee has proposed include Women's Commission, Dalit Commission, Indigenous Community Commission, Muslim Commission, Madhesi Commission, and Commission on Protection of the Rights of Minorities, Marginalised Communities, Disabled and Backward Class and Region. To bring a person holding any public position to book if s/he commits misappropriation of funds, illegal work or corruption, the Constitution of 1990 had constituted Commission for Investigation of Abuse of Authority. To control corruption, the CIAA has taken many measures in this period. But corruption in the country has not lessened, it is growing. The CIAA has been charged of having been made ineffective and being unable to function effectively itself. The officials of the CIAA themselves claim that their advice and suggestions are not heeded and executed by the government.

The Constituent Assembly report has proposed the need of a Commission for Investigation of Abuse of Authority to make the officials holding public positions more accountable toward people, and to work as an agency to lead their activities for the people's good. The report holds that such a commission is needed for the state. Such a commission investigates whether the officials under constitutional and law authorities are misusing and abusing the authority that they are given and thus causing harm and miseries to the people and then takes timely action. Such a body, as the report states, is independent and unbiased. Likewise, the Committee recommends auditing public property and, in case of excessive and unlawful expenses drawing, attention of the legislature-

parliament. To this end, the Committee recommends constitutional protection to the Auditing Commission and keeping it independent.

Of all the constitutional bodies in operation from 1990 to this day, only the Public Service Commission (PSC) has been seen to work successfully and effectively. It is in the leading position in performing work fairly. The Committee for Determining the Structure of Constitutional Bodies recommended the Public Service Commission to make the civil service more result oriented. The Committee also prescribes developing this commission as a fair and independent authority so that it could select competent members in civil service and recommends putting the PSC under the constitutional body. Democratic institutions are empowered and enriched by fair and free elections. Fair election is one of the fundamentals of democracy. Therefore, the Committee report says, the Election Commission should be recognised as a constitutional body. Since the beginning of the constitutional exercise, constitutional practices like preparing voters list, monitoring, regulating, controlling, and holding an election have been realised through an independent election commission. Therefore, the Committee has acknowledged the Election Commission as a body to conduct free and fair election in the new constitution.

The role of the Human Rights Commission has multiplied in the transitional political situation and especially after the United Communist Party of Nepal-Maoists (UCPN-M) joined the mainstream politics by renouncing armed rebellion. Though the Commission has studied about the human rights violations and submitted its report to the government for bringing human rights violators to book, the human rights violators have been walking scot-free. No action has been taken against them. The human rights abusers are escaping also because of the decision made on the basis of political expediency. In this regard the report of the Committee has made the rational and effectiveness of the commission clear in these words: It is the responsibility of the state to protect basic human rights of every citizen. If an independent and autonomous constitutional commission is constituted by following the global principles of human rights, international law and the treaties and agreements of the UN regarding human rights, the government officials of various positions who breach human rights of a person or a community can be brought to justice, and the protection and guarantee of the human rights can be ensured. Effective performance in the field of human rights protection can then be hoped.

The Commission on Women is actively working in the field of protecting women's rights and fighting for their cause. The Committee proposes to make the Commission a constitutional body in the new constitution. The report of the Committee asserts that constitution of Federal Women's Commission is necessary to bring and assimilate women into the mainstream of development by protecting and enhancing their rights, by ensuring overall development and growth of women and by guaranteeing sexual and gender justice to them. Also to protect the rights of Dalits and to bring them into the mainstream effectively, to ensure overall development of Dalits and to ensure justice to them, a constitutional provision of Federal Dalits Commission is desirable. The Committee is committed to this provision.

As for the need for the institution of the Commission on Indigenous and Janajati Community the report says, "It is necessary to make constitutional arrangement of Federal Indigenous and Janajati Community Commission to bring the indigenous community and Janajatis into the mainstream of development, to protect their rights, to ensure their overall development and to guarantee justice to them".

To protect the rights of disabled, minority and marginalised community, backward class and region, to bring and adjust them into the mainstream development, to ensure their overall development and to guarantee justice to them, the Committee has held that it is necessary to form a commission

on Protection of the Rights of Minorities, Marginalised Communities, Disabled and Backward Class and Region. Similarly, the Committee report says, to protect the rights of Madhesi Community, to bring and adjust them into the mainstream development, to ensure their overall development and to guarantee social justice to them, constitution of a Federal Madhesi Commission is desirable.

The Committee report says: to protect the rights of Muslim community, to bring them into the mainstream development, to ensure their overall development and to guarantee social justice to them, constitution of a Federal Muslim Commission is desirable. Principles of inclusiveness and proportional representation should be taken into account while appointing official in the constitutional commissions. The Committee proposed to make arrangement of constitutional bodies in the provinces as well.

Only Two Different Opinions

CA members Meena Pun of Rastriya Janamorcha (National People's Front) and Bhanubhakta Joshi of UML had put different opinions regarding the Committee report. Pun objected to using the word "federal" before the names of the constitutional bodies in the preliminary draft report and the concept paper. Her proposal says, "Our party National People's Front is opposed to the country going into federal system. The preliminary draft reports and the concept paper prepared by this Committee mentions that the constitutional commissions are federal in structure. I submit my different opinions against the use of the word federal". Joshi suggested the term National Federal Commission instead of Federal Commission as used in the Committee report on the structure of any constitutional body.

Proposal of the Parties

Thirteen political parties had submitted their proposals about the constitutional commissions to the Committee. Many parties proposed recognising the Commission for Investigation of Abuse of Authority, the Public Service Commission, the Election Commission, and the National Human Rights Commission as constitutional commissions. The Nepalis Congress suggested the Committee to constitute the Commission for Investigation of Abuse of Authority and Corruption, the Public Service Commission, the Election Commission, and the Auditor General. Madhesi Janadhikar Forum (MJF) proposed to make arrangement of Federal Public Service Commission in the centre and Provincial Public Service Commission for the province. MJF prescribes an end to the provision of Commission for Investigation of Abuse of Authority. The main responsibility of controlling corruption and abuse of authority, MJF argued, is that of the government. It suggested forming an independent separate and effective authority accountable to the government for corruption control.

The Sadbhawana Party suggested putting the Commission for Investigation of Abuse of Authority, the Public Service Commission, the Election Commission, the Human Rights Commission, the Police Service Commission, the Auditor General, Inclusiveness Commission, the Labour Commission under the structure of constitutional bodies. The Party also proposed to form commissions on minority, Dalits, indigenous community, marginalised Muslims, women, Madhesi, and backward class. The Communist Party of Nepal (ML) suggested forming the Commission for Investigation of Abuse of Authority, the Public Service Commission, the Election Commission, the National Human Rights Commission, the Auditor General, and the Inter-province Relation Management Commissions. Communist Party of Nepal (United) proposed the Commission for Investigation of Abuse of Authority, the Public Service Commission, the Election Commission, the National Human Rights Commission, the Auditor General, the National Land Commission, the National Dalit Commission, and the National Women's Commission. It also proposed to form Indigenous and Janajati Language and Culture Commission, Natural Resources and Heritage Commissions, Minority, Gender, Disabled, Commission and Muslim and Religious Minority Commissions.

The Nepal Workers and Peasants Party proposed to recognise the Commission for Investigation of Abuse of Authority, the Public Service Commission, the Election Commission, the National Human Rights Commission, the Auditor General, the Peasants, Labour and Women Commission, and the Attorney General. The Chure Bhawar National United Party-Nepal and the Socialist Democratic People's Party-Nepal suggested the Commission for Investigation of Abuse of Authority, the Public Service Commission, the Election Commission, the National Human Rights Commission, the National Auditing Commission, and the Commission on Provincial Affairs. The Nepal Democratic Socialist Party suggested making indigenous community, disabled, women, children, youths and unemployed youths, Muslim, land rights, and justice system commissions as constitutional commissions. It also proposed commissions on sex and gender and backward class. Nepal Pariwar Dal had proposed to form the Commission for Investigation of Abuse of Authority, the Public Service Commission, the Election Commission, the National Human Rights Commission, the National Auditing Commission, the Inter-province Affair Commission, the Youths, Women and Children Commission, the Dalit Commission, the Cross-religion and Cross-cultural harmony Commission.

The Committee for Determining the Structure of Constitutional Bodies met 54 times. Over 191 hours were spent in discussion about the constitutional bodies in the meetings. It was indeed a challenge to decide which of the proposed and recommended commissions to be recognised as constitutional and which not. To recognise a body as constitutional, mainly its need and long-term base and goals have to be taken into consideration.

Conclusion

Formation of commissions and their recognition as constitutional bodies alone is not a big thing in itself. Important thing is their accountability, fairness at work and their implementation. A constitutional body must concentrate on accountability and impartiality. Government and other concerned authority should also implement the serious suggestions offered by the commissions. If the commissions are not fair, and if their recommendations are not heeded and implemented by the government authorities, the name of the commissions diminishes. A body should not be formed simply on demand and given constitutional credence. Their rational, usefulness, and long-term need should be taken into account. Barring a few exceptions, the appointment process in Nepal has been continuing on the basis of the political calculations. This could give rise to converting those that have worked in close proximity and in favour of one's political parties as officials to the commissions as a reward for their political loyalty. Though there is special modality for appointment in a constitutional body, there is a culture of appointing officials in the commissions on the basis of political power-sharing. If this tendency is not discouraged and officials are not selected on the basis of their experiences and competence, all commissions might forget their roles as constitutional commissions and may remain just commissions.