

The Form of Government: Crucial Issues Facing the CA

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After the CA elections, debates and discussions were started in Nepal regarding the model of governance system. The political parties, intellectuals, journalists, and civil society have made their opinions public on the governance system. A number of people are still advocating the Westminster model of parliamentary governance system, but a number of other are arguing Westminster can no longer address people's aspirations and there is a need to shift to the model of directly elected executive president. Those advocating a middle path are in favour of directly elected prime minister and an elected president through the provincial legislative-parliaments. A small number of people opinions are in favour of a consensual model. Therefore, the Committee for Determining the Form of the Government has responsibility to determine the future governance system. However, this Committee has not even been able to complete a draft proposal.

The Committee for Determining the Form of the Government was the 10th to present its concept paper and preliminary draft report out of the ten thematic committees in the CA. Prior to this, other nine thematic committees had submitted their drafts in the full meeting of the CA. On January 18, 2010, Committee chairperson Shambhu Hajara Dushad submitted the report to the CA chairperson for discussion in a full meeting of the CA on the 13th January. The draft is accepted for discussion in the full meeting after 48 hours of submission in the CA. Then, from January 24, 2010 onwards, CA members expressed their opinions on the draft report of this Committee.

The main priority under the Committee's responsibility and jurisdiction was to determine the forthcoming governance system of the state. In addition, the responsibility of the Committee included deciding on the electoral system, structure of various levels of governments in the federal system, interrelationship between the federal states, province, and local governance, and identify the method and mechanism to resolve the possible obstacles in the federalism.

For that purpose, the Committee formed two sub-committees; the draft preparation sub-committee under the coordination of Krishna Prasad Sapkota was assigned to decide the nature of governance system and structure, structure of executive organs in various levels, division of authority as well as interrelationship between various levels of the government. Another sub-committee under the coordination of Naresh Bhandari was assigned to decide on the electoral system, public service commission and procedures and bases of good governance. (The meeting of April 9, 2009, was postponed due to lack of enough members to fulfil the quorum). The Committee also formed task force for consensus building.

The Committee could not prepare its draft report even after 77 rounds of meeting. The Committee remained undecided and was stuck in a dilemma even after voting between the Committee members was not able to get a clear majority. At the end, the compromise was reached to include

all the proposals by also forwarding the receiving votes. Then, the full meeting of the Assembly discussed on that report.

The Minister and Committee Chair not on speaking terms

On December 1, 2009, the Committee organised a voting to decide the official report of the Committee on the governance system. The directly elected presidential system and multiple-member direct proportional electoral system proposed by the UCPN Maoist, and Nepali Congress- and UML-proposed mixed electoral system and majority elected prime minister from the parliament and elected president by the legislative-parliament failed to get a clear majority in the Committee election. Then the CA members were divided in two camps; one camp insisted that the proposal receiving maximum votes should be the official one, and the second proposed that in the absence of a clear majority there could no official one, then the dispute started in the Committee. During the dispute, Dr Prakash Sharan Mahat, Energy Minister, snatched the proposal from the hand of the Committee chair Shambhu Hajara Dushad while he was about to read it. Then, the meeting was postponed.

The Committee meeting could not take place for two months, and even communication between minister Mahat, a member of the Committee, and the Committee Chair came to a halt. It was expressed informally by the Chairperson that the Minister would not even receive his calls. The meeting was not held when the CA members of UCPN (Maoist) took a stand on Minister Mahat's apology as a pre-condition for sitting in the meeting. Finally, the door was open for preparation of a draft report by making compromise on including all the proposals in the draft report and Minister Mahat also gave his statement that he had no intention of overstepping the jurisdiction of the committee, but he had simply opposed the move of the Chair as it was introduced all of a sudden without prior notice.

In the CA Regulation, it is clearly mentioned that in the case of failure to reach a consensus, the majority of CA members can decide on any theme. However, there is nothing mentioned in case of proposals not getting a majority during the voting. The dispute emerged in the Committee for the Determining the Form of the Government due to no proposal getting a clear majority. Although during the election in the Committee for Determining the Base of Cultural and Social Solidarity for words referring to the "people's war" or "armed conflict" for the decade-long Maoist insurgency, this issue did not come up. The proposal receiving the maximum votes was included as official in the report of the Committee, and all other proposals were included as the different opinions.

Voting and its consequence

During voting of this Committee, UCPN (Maoist) had garnered 18 votes in favour of presidential governance system with executive rights out of the 42 members, which was not a majority. The UCPN (Maoist) submitted a proposal locating the president as the symbol of nationality and Nepali people as well as head of the state, head of the government, and the supreme commander of Nepal Army. Moreover, their logic is that the president with a duty of protecting and implementing the constitution has to be accountable towards the Nepali people, federal legislative-parliament and own political party.

Though it seems appropriate that the president is a symbol of unity with responsibility towards the Nepali people and federal legislative-parliament; however, the president's loyalty to own political party is questionable on the grounds of neutrality on governance as well as in the administration. Such type of presidency will be all powerful and against the theory of balance of power. Therefore, in a country like Nepal with its unique geopolitical setup and diversity in language, caste, culture, a powerful president may not be suitable in terms of theory of inclusiveness.

The UCPN (Maoist) proposal has the provision of recalling the president by the party with a provision that two-third members of the central executive committee can submit the withdrawal proposal against the president in the legislature-parliament. In addition, 10% of registered voters from the last election can submit a proposal to recall the president.

The cabinet should be formed on the consensus of all the parties represented in parliament because if all the power is concentrated in the hands of the winner, there will be unhealthy competition for power and the country will always be heading towards conflict. However, the president will not be bound to include in the council of ministers those parties that have received less than 5% votes in the election. The UCPN (Maoist) has forwarded a multiple-member direct proportional electoral system.

the Nepali Congress- and UML-proposed directly elected prime minister through the legislature-parliament and ceremonial president also could not get a majority even with 16 CA members from both parties in the committee and it could not be registered as the official draft of the committee. They fear that all executive powers with one person can give rise to tyrants and instead proposed that the executive powers should like with the president and the council of ministers as per the constitution and other laws. They have proposed to limit the number of ministers in the council of ministers 25 and also that one-fourth members of the lower house have the rights to register a motion of no-confidence on the prime minister; however, such proposal cannot be submitted within one year of the prime minister selection and another year of failed no-confidence motion. They prefer the mixed electoral system.

The Committee has registered proposal of the Terai Madhes Loktantrik Party, which proposes an executive president and had received only three votes and a different opinion of NC leader Pradip Giri who has advocated directly elected prime minister and a constitutional/ceremonial president elected from the parliament. If Giri had not submitted his different opinion in the draft committee, there would not have been any different opinion. Thus, it could be said that this draft report is a pile of different opinions.

There will be provincial chief who will be appointed through the consultation by the president with the chief minister of the province. The committee has proposed three levels of government: federation at the centre, province in middle, and the local government at the local level. However, the local government can use its authority in coordination with provincial and federal government. In addition, the Committee has mentioned the interrelation between various levels of government, good governance, formation of public service, and electoral system of provinces and local bodies.

The UCPN (Maoist) has proposed that 90 percent of the members in the provincial legislature-parliament should be through multiple-member direct and proportional electoral system and the other 10 percent from minorities including marginalized, endangered community as well as people who have made significant contributions to the nation. However, Nepali Congress and UML have advocated for mixed proportional electoral system in the case of provincial legislature-parliament. The three CA members from Madhes have demanded bicameral legislature-parliament in the provinces as well. According to them, the electoral system of lower house should be on the first-past-the-post electoral system based on inclusive philosophy and the electoral system of the upper house should be based on the votes garnered by the party in the lower house.