

Failed Attempts at Consensus

Bhuwan KC/Tilak Pathak

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The political parties put diverse opinions over the two issues, “form of government” and “election systems”. Moreover, the CA members belonging to the same party put different opinions at different times. For example, the UCPN (M) CA members, at first, spoke for the governmental system that allowed executive power to a directly elected president. They later argued that the members of the parliament should hold the power and have the rights to elect the prime minister. This was also the very agenda that UCPN (M) had campaigned for during the CA elections. However, the UCPN (M) changed its stand later as they opted for a form of government where the president could be elected and dismissed by the majority of the legislature. The UCPN (M) changed its views again. They opted for the direct election of the president and said there should be no “prime ministerial” system.

When President Ram Baran Yadav nullified the UCPN (M)-led government decision to sack Rukmangad Katuwal from the post of the Chief of the Nepal Army, the party reached a decision that there should be no prime ministerial system at all. The UCPN (M), apparently, understood that the prime minister and the president with equal power can bring complications in national politics.

The UCPN (M) could not stick to a single principle with regard to the election system too. In the beginning, it proposed that members for the Lower House must be elected on the basis of the size of the population. Similarly, members for the Upper House must be elected on the basis of equal representation from all states/provinces. Later, the UCPN (M) began to advocate for a “Multi-member Proportional Representation Election System”.

On the other hand, the NC advocated for a constitutional president and parliament-elected prime minister. The NC CA members stood for a mixed election system.

The CA members belonging to UML spoke for the constitutional president elected by the Council of the Parliament and an executive prime minister directly elected by the people. However, UML changed its view later.

Few hours before the Committee decided to hold a voting to finalise these issues, the NC and CA members reached a consensus. Moreover, the UML proposed that there should be no “no-confidence motion” against the prime minister for at least one year of his or her tenure to enhance a culture of political stability in the nation. The UML further urged for the provision that requires parties registering a “no-confidence motion” must also propose an alternative prime ministerial candidate. The NC subscribed to this proposition. Therefore, the UML stood for a prime ministerial system elected by the legislative parliament. Likewise, the NC also endorsed the UML proposal of “Proportional Representation Electoral System with Compensation”.

Tarai Madhes Loktantrik Party (TMLP) opted for the presidential system elected from the parliament. TMLP said that the party is “open” on this issue.

Voting Ultimately

The Committee for Determining Form of Government worked for fourteen months. It had to finalise several agendas by holding elections. The UCPN (M) voted for the executive presidential system and the “Multi-member Direct Proportional Representational Electoral System”. The NC and UML voted for constitutional president, executive prime minister and “Mixed Proportional Representational Election System”. The TMLP stood for a presidential system elected from the legislative and “Mixed Electoral System”.

Out of 42 CA members in the Committee for Determining Form of Government only 38 turned up on the day of voting.

Voting took place on each proposal submitted by the NC, Maoists, UML, and TMLP, and none of the proposals could garner majority votes. Only 18 members of the Committee supported the proposal put by the UCPN (M) whereas 20 of them voted against it. Similarly, only 16 members of the Committee voted for the proposal forwarded by the NC and UML whereas 21 of them voted against it. Finally, only 3 members of the Committee voted for the proposal submitted by TMLP, whereas 31 of them voted against it, and remaining members remained neutral. Thus no single proposal could garner majority votes. Therefore, the Committee found it impossible to decide on the official proposal. The UCPN (M) CA members argued that the proposal that managed to garner larger votes should be taken as the official proposal by the Committee. On the contrary, the NC and UML CA members argued that since no proposal could garner a clear majority, none of them could be considered as the official proposal and remained adamant on this claim.

The Committee went through some moments of critical crisis too. One particular incident must be mentioned here. As the Chair of the Committee, Shambhu Hajara Dusadh was about to read out the decision that the Committee had reached, NC CA member and Minister for Energy Dr Prakash Sharan Mahat snatched the paper off from the Chair’s hand. The UCPN (M) CA members condemned this behaviour of the Minister. The meeting ended without any conclusion. The UCPN (M) CA members demanded the Minister apologise to the Committee. At the end, an all-party taskforce was formed in consultation with the CA Speaker Subash Nemwang to settle the dispute. The Committee remained dysfunctional for a month. But only when the Energy Minister Dr Mahat admitted that he had no intention to humiliate the Chair of the Committee did the next meeting take place. The dispute got settled only when it was decided to include all the proposals submitted by the parties to be included in the report of the Committee.

Some members of the Committee, especially those representing UML, though had supported the proposal submitted by the NC earlier changed their stand by the time the Committee was about to submit its report to the Speaker of the CA. Four CA members from UML, Pradhyumna Prasad Chauhan, Ratna Gurung, Sonam Chhejung Lama and Hasina Miyan withdrew their earlier consent.

They expressed their support for the governmental system where the prime minister gets directed elected from the people. Since they had already cast their votes earlier, this latter stand of theirs was invalid. Finally, the Committee submitted all four proposals to the CA on 21 January 2010.

System of One's Own

The UCPN (M) proposed a form of governmental system that allowed executive rights to the president. The president as envisioned by the UCPN (M) could rule the country through and in consultation with the council of ministers under the existing laws and the constitution of the nation. The president, according to the UCPN (M), should be the head of the state as well as the government. He or she should also be the supreme chief of the army and symbol of the Nepali nationalism and national unity. He or she should remain guided to create optimum welfare and prosperity of the Nepali people. He or she should be accountable to Nepal, Nepali people, federal legislature, and the party he or she belongs to. The election for the president must be held once in five years through adult franchise. And finally, no single person can become president for more than two terms.

The governmental system proposed by the UCPN (M) has the following rights and privileges for the president:

- a. The president will approve the bills, will have the rights to pardon the convicts after punishment is dispensed on him or her from different judicial and semi-judicial system, and the administrative officials.
- b. He or she can reduce the period of such a sentence.
- c. He or she will have the rights to award titles, honours and prizes on behalf of the nation.
- d. He or she will also receive foreign diplomats and representatives of different nations, receive the credentials of the ambassadors, and can present the certificate of honour.
- e. He or she should consult the council of ministers while running administration of the country on a daily basis, in assigning the responsibilities to the ministers, in drafting functional regulations.
- f. The president also needs to get approval from the council of ministers while nominating and appointing officials; mobilisation of the army; declaring war, peace, and emergency; presenting policy, plan, program and budget in the legislature; and issuing ordinances.
- g. The president can appoint officials and members in the executive authority, ambassadors, special envoys, chief justices and judges, and governors.
- h. He or she can strengthen foreign relationship, sign all treaties and agreements on behalf of the nation, present annual policies and plans, programmes and budget and announce immediate programmes. But while doing so, he or she has to get approval from the legislative parliament.
- i. At least a two-third majority from the executive body of the party that the president belongs to can register the proposal in the legislative to call the president back. Provided that at least ten percent of the voters across the nation, as per the latest voters list, with their signature submit a call back file against the president in the Election Commission, the president must resign.

- j. In case the president indulges in bad conducts or commits serious violation of the constitution, one-fourth of the total members of the legislature can file impeachment motion against him or her at the legislature. If the proposal is endorsed by a two-third majority of the legislature, the president will be dismissed from his or her post with immediate effect.

In contrast, the NC and UML proposed a governmental system that provides the president a constitutional and the prime minister an executive role. Both NC and UML agreed that the president should be the head of the state, and chief of the army. He or she will perform his or her duties and responsibilities according to the law of the land. The president should remain as the symbol of the Nepali nationalism, Nepali people and national unity. His or her chief duty will be to follow and protect the constitution and work for the optimum welfare and prosperity of Nepal and Nepali people. The Electorate Council formed out of the members from both Houses of the federal legislature and members from the provincial legislatures should have the rights to elect the president.

According to the governmental system envisioned by the NC and UML, the president has the constitutional rights to call and end the House session in the federal legislature. He or she too holds the responsibilities to approve bills passed by the federal legislature. He or she can appoint officials according to the existing laws of the land, receive certificate of honour from the foreign ambassadors and diplomatic representatives, and give away prizes, honours and medals on behalf of the nation. He or she can also acquit those convicted by judicial, semi-judicial, administrative bodies and officials across the country. The president while exercising his or her rights needs to take approval and consent from the council of ministers.

The governmental system envisioned by the NC and UML provides executive authority to the president and the council of ministers. It states that the cabinet is entitled to direct, control and run the government system on a daily basis. Except for the functions specific to the president according to the constitution, all federal executive functions of Nepal will be performed in the name of the Government of Nepal. The president can appoint the leader of the parliamentary party that has secured the majority in the Lower House of the legislature as the prime minister whereas the prime minister has the right to appoint ministers.

According to the governmental system advocated by NC and UML, a no-confidence motion against the prime minister can be registered by at least one-fourth members of the Lower House of the federal legislature. And this no-confidence motion needs to be approved by a two-third majority of the members of the Lower House. With a view to promote a culture of political stability, the NC and UML have proposed that a “no-confidence motion” cannot be registered against the prime minister until the completion of one year of his or her tenure. And if the “no-confidence motion” against the prime minister fails to garner support of the majority, no such proposal can be registered for another year. When such a motion is registered, the outline of the alternative government with the prospective prime minister should also be offered. If no party gets a clear majority in the Lower House of the legislature, the president has the right to appoint the person who manages to draw

support from two or more than two parties and is entrusted by a two-third majority of the Lower House of the legislature as the prime minister.

The TMLP came with the idea that the president should be both the head of the state and the government. As the head of the state and the government, the president can approve the bill or send it back to the House for reconsideration. He or she can call and end the session of both Houses of the legislature. He or she can appoint officials and members according to the laws of the land, and can call for a national referendum.

In addition, the President should hold constitutional rights to appoint ambassadors and diplomatic representatives, and can excuse and acquit the convicts sentenced by different judicial, semi-judicial and administrative bodies of the country. He or she can confer prizes, honours, titles, medals, etc., on behalf of the nation. Thus executive rights lie with the president. He or she can direct and check the government in assistance from the members of the cabinet. All executive functions of the federal Nepal need to be issued in the name of the Government of Nepal.

According to the government system envisioned by the TMLP, a two-third majority of the members of the Lower House of federal legislature can choose the president. And in the cabinet there will be the president, vice-president, and other ministers. The president can be relieved from his or her position if he or she resigns, dies, or if the proposal of impeachment is passed by a two-third majority of the Lower House, or violates the constitution.

Differences over Election System

The parties differed widely over the election system that the country should follow in the future. The UCPN(M) opined that the election for the Lower House of the federal legislature should be held on the basis of "Multiple-member Direct Proportional Election System", i.e., more than one candidate can be elected from a single constituency. The principle of proportional inclusiveness must be the criteria for selecting candidates. The number of seats for the candidates should be fixed on the basis of population size, geography, economic and social feature of the constituency. The voters in the constituency should have the rights to cast ballot according to the number of candidates.

As for the provincial legislature, the UCPN (M) proposed for a provision that secures ninety percent of the members elected on the basis of "Multiple-member Direct Proportional Election System" as well as allows a single candidate to contest elections from more than one constituency. Moreover, as part of the constitutional requirement, a party should nominate their candidates on the principle of proportional inclusiveness. Similarly, the number of candidates in the provincial legislature should be decided on the basis of population size, geography, economic and social features and realities of the constituency. The chief of the province on the recommendations of the party and experts should have the rights to nominate the remaining ten percent of the members of legislature. But while doing so he or she must nominate House members from marginalised, minority and isolated communities on the basis of the number of votes that individual party obtains in the election.

The NC and UML proposed that the members of the Lower House in the federal legislature should be elected according to the principle of “Mixed Member Proportional Election System”. They further state that the fifty percent of the total House members must represent women, indigenous, Dalit, Madhes and other class and communities as a matter of provision. And the number of candidates that a particular constituency can have should be fixed on the principle of proportional inclusion. Moreover, the NC and UML argue that in the election system of this type, the whole nation should be taken as a single “constituency”. Proportional representation of women, indigenous, Dalit, Madhesi and other communities should be based on an index system, i.e., total votes that the party draws in an election. The party that has won through the index system must gain at least three percent threshold votes from the total votes.

The NC and UML proposed that there should be 45 members, nominated from the provincial legislatures on equal basis, in the Upper House of the federal legislature. Such nomination must ensure a just representation of women, indigenous people, Dalit and Madhesi and other communities in the House. There should be a provision of nominating five members in the Upper House of the legislature from experts, especially those from minority and marginalised communities. And, this right should remain with the president. But while doing so the president must get recommendations from the prime minister.

The TMLP proposed that the Lower House of the federal legislature should ensure a proportional inclusion from women, indigenous people, Dalits, Madhesi and other marginalised and minority communities. The election for the Upper House of the legislature, the TMLP opines, too, should be conducted on the basis of proportional representation system. There should be a provision of granting three percent of total votes to the party that has been elected through the proportional representation system.

The Committee has defined issues that could not get settled through consensus as “different opinions” in its draft.

Consensus Issues

The report of the Committee reveals that though the parties differed mostly over the issue of “form of central government and election system”, they agreed on the process and modalities for provincial and local elections. They reached the consensus that conforming to the existing constitution and law of the land, executive rights of each province will inhere in the provincial council of ministers. In case of a state of emergency and state of no central government being in operation, the chief of the province can exercise the executive rights provided that the provincial executive body remains dysfunctional or non-existent. The parties also agreed that conforming to the existing law and constitution of the land, the responsibilities to direct, monitor, run and control the rule of the land also lie in the council of ministers of the province.

The preliminary draft report of the Committee states:

- a. In each province, the province-chief should work as the representative of the central government.
- b. The President, in consultation with the chief minister of the province, can appoint the province-chief.
- c. The province-chief can call and end the session of the provincial legislature.
- d. He or she can approve bills passed by the legislature, and can appoint provincial officials, and give away prizes, medals, honours, certificate of recognition and so on.
- e. He or she is entitled to lessen or excuse the punishments on the convicts given out the judicial and semi-judicial authorities of the province.
- f. The chief minister holds executive power in the province. He or she can form and expand the cabinet.
- g. The cabinet should consist of deputy chief minister, ministers and state ministers too. But the number of the ministers should not exceed 20% of the total members in the provincial legislature.
- h. The Head of the province has right to appoint the chief minister.
- i. The chief minister should be a member of the legislature and someone proposed and supported by all the parties in the legislature. Provided that he or she is unable to garner support from all the parties, the candidate for the chief minister can be chosen from the party that has majority in the legislature. Provided that no single party has majority in the legislature then the candidate for the chief minister should be chosen from consensus of two or more than two parties. If none of the members manages to draw a consensus, then the head of the province can appoint the leader of the largest party in the legislature as the chief minister. In such cases, the chief minister must manage to draw a vote of confidence from the provincial legislature within thirty days of his or her appointment.

The report of the Committee further states that as per the constitution and law, every executive right inheres in the executive of the local government. The executive body of the local government should consist of 5 to 10 members from metropolis, 5 to 9 members from sub-metropolis and municipality and 5 to 7 members from villages.

The parties agreed that if disputes arise between the central or federal government and one or more than one provincial governments over the issue of exercising executive power, the president or the prime minister can form a committee to solve out it. The parties also agreed to form a mechanism that helps the state services such as judiciary and civil service, parliamentary, health, and education services, and Nepal Army, Armed Police Force and Nepal Police and corporation services.

Meetings and Manners

The Committee started its works with discussion from small and minor to central issues. It was believed that consensus achieved on local and provincial issues will help the Committee to garner consensus on central issues. Therefore, the form of the government and election system for the local level was discussed in the beginning. Then the discussion on provincial government and

election system took over. Though there were differences over provincial and local issues, the parties somehow managed to forge a consensus over the issue. But the parties had difficulty in forging consensus with regard to provincial legislature. Likewise, there was virtually no consensus over the issue of the chief minister as the UCPN (M) spoke for consensus while the NC and UML stressed for majority as the basis for electing the chief minister.

The Committee could not garner consensus over issues such as “form of government” and “election system” that Nepal must follow in the days to come. Discussions were held longer on “form of government” than on “election system”. But the UCPN (M), UML and NC never reached a consensus over these issues. Most of the time, the parties repeated the same arguments in the discussion sessions. The members of the Committee were committed more to their party ideology than on the culture of forging a consensus over crucial issues. The Committee even launched informal discussion with the second-tier leaders of the parties to garner consensus over the issues. But these discussions too were no different than the formal ones. The leaders remained inclined to their party stand. In the meeting held on 30 December 2006, UML CA member, Bishnu Paudel said, “there are lesser chances of gaining consensus over the issues, and time is running out. Now we should follow process”. Pampha Bhusal, UCPN (M) CA member, also held the same opinion. Pushpa Bhusal, NC CA member, stressed that the meeting of the CA should be given the right to decide over such issues.

This lack of consensus finally made the Committee follow the methodology of holding voting over issues. The NC and UML seemed more concerned about whether votes would be cast in their favour or not. Probably because of this concern, the Energy Minister Prakash Sharan Mahat was seen busy calling the CA members from his party until the last minute on the day of election (1st December 2006). Shyam Sunder Gupta of Sadbhawana Party came to the Committee for the first time at Mahat’s request. No proposal could get a majority in the election. That is why the Committee had to include all the proposals in its final report.

In the meetings of the Committee, one could see polarisation. The UCPN (M) CA members stood at one end while the NC and UML members stood on the opposite. During the discussion sessions, the NC and UML CA members were seen spending time and emerging in refuting and criticising the proposals of the UCPN (M) more than presenting their own stand and convincing the other members of the Committee. Similarly, the TMLP had its own stand. Its presentation in the Committee on the form of government was fair. It put the party’s vision clearly and well. The CA members representing small parties could not present their stands well.

The Committee met 55 times and discussions were held for 246 hours 50 minutes.

Conclusion

Most of the CA members in the Committee for Determining Form of Government stuck to their party lines. They were less motivated to reach a consensus and more keen on listening to what other parties had to say, and how they could be refuted and criticised. Almost all of them engaged in one-upmanship. The NC and UML CA members were bent on casting suspicions on the intention of the UCPN (M). They were keen on finding faults and refuting the agendas of the UCPN (M). Though

the Committee members appeared enthusiastic over discussion sessions in the beginning, their participation in the latter days somehow lost the original vigour. They seemed to believe that consensus is a thing necessary among the top leaders first. But the leaders of the major parties could not reach a consensus over several issues, and as a result problems got bigger. Since there was no consensus among the top leadership, the Committee discussions were almost fruitless. In fact, the fruitless discussion of the Committee for Determining Form of Government is evidence of political uncertainty of this country.