

Role of the Government in the Constitution-drafting Process

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The constitution-writing process of Nepal has taken a backseat to the internal disputes of the parties. The first meeting of the Constituent Assembly was held only on May 28, 2008 even though the CA election had taken place on April 10, 2008. The three major political parties amended the Interim Constitution 2007 in order to proceed with the majority system on May 28, 2008, despite the Interim Constitution's provision of constitution-making based on all party consensus.

The majority and minority system became constitutional provisions due to the major political parties UCPN (M), Nepali Congress (NC) and CPN (UML) not being able to reach a consensus on the issues of government's leadership, first president of the Federal Democratic Republic of Nepal, and not on the issues of the constitution-writing process, and that ended the continued consensus politics in place since the 12-Point Agreement. After the fourth amendment of the Interim Constitution 2007, UCPN (M) Chairperson Pushpa Kamal Dahal "Prachanda" became the prime minister on the majority basis and Nepali Congress's leader Dr. Ram Baran Yadav was elected the first President of the Federal Democratic Republic of Nepal on July 21, 2008 defeating UCPN (M) candidate Ram Raja Prasad Singh.

Prachanda-led coalition government remained in power for nine months with support of the CPN (UML), MJF and some other political parties while Nepali Congress was the main opposition. On May 3, 2009, Prime Minister Pushpa Kamal Dahal decided to sack the then Chief of the Army Staff (CoAS) Rukmangad Katuwal without consultation with others political parties, and decided to appoint Kul Bahadur Khadka to this post. Since then a constitutional dispute emerged between the President and the Prime Minister. When Dr Ram Baran Yadav, the President and the Supreme Commander of Nepal Army, commanded Katuwal to continue on his post, then Prime Minister Prachanda was compelled to resign from the government as even the coalition partners expressed their opposition to Prachanda's sacking of the CoAS, and he was forced to resign and seek power from the streets.

The relation between the UCPN (M) and CPN (UML) that had been smooth till then turned sour after it transpired that CPN (UML) leader Madhav Kumar Nepal would become the prime minister. Previously, the UCPN (M) had played a decisive role to make Madhav Kumar Nepal as the Chair of the Constitutional Committee despite his defeat in the CA election from two constituencies from Kathmandu and Rautahat. But after Madhav Kumar Nepal became the prime minister resigning the post of the Chairperson in the Constitutional Committee, then the UCPN (M) started a protest movement accusing the President of becoming active in the re-instating of the Chief of Army Staff's case, and terming Madhav Kumar Nepal's becoming prime minister an insult to democracy as a candidate having lost from two constituencies in the CA election.

The UCPN (M) demanded constitutional supremacy, resignation of Madhav Kumar Nepal from the post of the prime minister, and national government under the UCPN (M) leadership, and Maoist leaders have publicly spoken in various occasions that without fulfilment of these conditions, a new constitution is impossible. When asserting that the constitution is impossible without his party's leadership in the government, Dr Baburam Bhattarai said, "If the constitution is to be written in time, the government should be formed under our party's leadership".

The constitution-drafting process is becoming more unpredictable as the three major political parties are engaged in a game of power-centric politics, and as their role becomes increasingly ineffective on the decision making on the governance system, federalism, Maoist combatant management and basis for inclusiveness. They have not been able to rise above the power- and government-centric politics, and the CA meetings are postponed as it has not received any "business". Lately, the constitution-building process has been seriously influenced through the political parties' competition of government formation under their own leadership.

As the CA deadline for completing the draft of the constitution nears, the UCPN (M), the largest political party in the CA, is saying that constitution-drafting process cannot proceed without a Maoist-led government. It clearly reflects that the government is their first priority rather than the constitution-drafting process. Thus, the UCPN (M)-led protest movement all over the country is focused more on the government formation under their

leadership rather than on drafting of the constitution on time. Therefore, the constitution-drafting process has been a victim of the power game of the major three political parties.

Despite the opportunity to head the CA and the government, CPN (UML), the third largest political party, has not been able to utilise the opportunity due to internal rifts within the Party, and while the UCPN (M) is saying that without their leadership on the government constitution-drafting process is impossible, CPN (UML) is not in a mood to quit the government leadership. The Constituent Assembly and the constitution-drafting process has been a hostage to the power politics of the two largest communist parties of the country.

In the CA Regulations 2008, political parties proposed that the CA members should be free from party "whip" but since the very beginning of the committees meetings, party "whips" has been issues indirectly. Thus even on the issue of greater national interests, most of the CA members cannot articulate their opinion going outside their own political party line. But since the March 23, 2010 decision to make whips applicable to the CA members, they have been limited to presenting their party line instead of their own individual concerns. Thus, the CA is being sucked into a whirlpool of uncertainty due to the three major political parties' focus on the leadership of the government rather than on the constitution-drafting process.