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CONSTITUTIONAL CRISIS IN NEPAL

The way politics situation in Nepal is unfolding, writing of a new constitution within the fixed timeframe appears to be a remote possibility. The Constituent Assembly (CA) in Nepal will complete its tenure on 28 May. Formed in 2008, its mandate was to frame the new constitution for Nepal. The Assembly has, in turn, also simultaneously acted as the Parliament of Nepal. As it was expected, the Assembly has not been able to draft the constitution. This has posed a serious constitutional challenge to Nepal such as: what would be the status of the CA after May 28? Will there be political consensus amongst 25 political parties in the CA to hastily draft the new constitution? Or would the CA members amend the new constitution and extend its tenure? Would Maoists agree to this under the present government or insist on formation of a national government? With intense political agitation and rigid political stands it seems near impossible for a political consensus to emerge unless there is some give and take and compromise reached.

The demand for CA is not new. Political parties had demanded a constitution written by a CA since 1950; however the demand became intense after the Maoists started people's war in 1996. The advocates of CA maintained that the 1990 constitution was given by the then King to its people. Instead it was proposed that a constitution written by a CA representing nationalities and their interests would serve the interests of the country. Hitherto politics in the country was seen as dominated by the dominant class and caste.

The political conflict assumed intensity upon King Gyanendra taking political power in his hands in February 2005. This in fact triggered the coming together of the Seven Parties Alliance (SPA) and the Maoists. As the events rapidly unfolded, the King unceremoniously stepped down and reinstated the dismissed Parliament under Prime Minister G.P. Koirala. In the November 2006 Comprehensive Peace Agreement (CPA), the Maoists agreed to ceasefire and the SPA agreed for a CA. Following this, election to the CA was held in April 2008. Formation of the CA was seen as a measure that would bring peace and stability. The CA had to write a new

constitution which had to deal with all the issues that were debated and discussed for inclusive democracy bringing the concerns of the ethnic nationalities (Janjatis), Dalits, Terai and women. The core issue was restructuring of the state as federal polity. The CA had to work within the framework provided by the interim constitution which was an amended constitution of 1990. The first session of the CA had already declared Nepal as a federal democratic republic.

The CA has 601 members from 25 political parties. Elections through first past the post for 240 seats and proportional representation for 335 seats brought in representatives from marginalized communities as well. In the election the Communist Party of Nepal (Maoists) had secured 220 seats; Nepali Congress with 110 seats and the Communist Party of Nepal (United Marxist Leninist) with 103 seats were the second and third largest party respectively. 26 were nominated. To deliver functional responsibilities the CA has 11 technical committees to discuss specialized issues which have to be brought in before the CA for final decision.

On principle this system looked perfect where the political and social aspirations of the people could be reflected. In reality it has become a Herculean task to have any kind of consensus on any of the issues. Firstly, with 25 parties in the CA it has diverse voices and opinions. It becomes difficult to have political consensus especially on issues that require two-thirds majority. Interestingly, the 22 parties' government could survive because of the politics of convenience and shared interest to remain in power.

Secondly, none had expected Maoists to gain in the elections and to form a government. Once in government, the Maoists alleged that the coalition partners were not supporting them wholeheartedly on issues that were earlier agreed upon in principle such as integration of the Maoist cadres living in cantonments with the Nepal Army. The other parties, on the other hand, alleged that the Maoists were trying to control the institutions in Nepal and moving towards their goal of one party rule. Maoist government's removal of General Katawal, the Army Chief, and non-extension of services of eight Brigadier Generals was seen by others as a move to promote their own sympathizers who would be amenable to integrate Maoist cadres within the Nepal Army. The Army Chief not only challenged the Prime Minister but also received support from the political parties and the President. Evidently everyone seemed to be worried about the growing Maoist influence in the government institutions.

Prime Minister Prachanda had resigned in May 2009 and since then they have been engaging in street politics raising issues of People's Liberation Army integration with the Nepal Army, and legitimacy of the Nepal government. By resigning the Maoists got the freedom to be in the legislature and simultaneously be on the streets. Albeit, people had been disappointed with Prachanda's failure to deliver goods while in government, a feat which is difficult to achieve in a short time period and rebuild the infrastructure that was destroyed during the conflict.

The trust deficit between the CA members has affected its working. On core issues there is no consensus such as army integration or federalism. Even though federalism has been included in the interim constitution there is no consensus between the political parties. It was hastily included in the interim constitution to appease the Maoists but none showed seriousness on this issue. Maoists want the federal units to be carved on an ethnic basis. In fact they had even declared 13 provinces and sub-provinces based on ethnicity but that was not acceptable to many from the janjati and the dalit groups. Some felt that the proposed boundaries did not do justice to their ethnic group; dalits felt that there is no possibility of creating a state for them and janjaties would become their new exploiters replacing the caste based domination of Brahmins and chettris. UML accepts the issue of federalism in principle but not on the basis of ethnicity, Rashtriya Janamorchha is opposed to the idea of federalism and considers that it will break the country.

It seems, with such deeply entrenched mistrust, it is nearly impossible to write permanent constitution for Nepal within the stipulated time period. This would in principle mean that the CA would have no life after May 28. This could be disastrous for Nepal. Interim Constitution provides a way out in article 64 which allows extension of the CA for another 6 months provided there is an emergency like situation. The present situation could be brought in under constitutional emergency. The government, however, would hesitate to declare an emergency. Another option available is to have political consensus on amending the constitution and extending the life of the CA. This would require consent from two-thirds majority. As a corollary, without the help of the Maoists, the government would just find it difficult to do it.

As the events have unfolded in recent weeks, present circumstances the Maoists would not agree to support extension of the CA under Madhav Nepal's government. They are adamant on formation of a national government led by them. The other parties have expressed willingness on national government but not likely under Prachanda. Similarly, the Maoists have not renounced violence that is a major cause of worry for other political parties. In the midst of such politics of distrust a compromise needs to be arrived at between the political actors if Nepal is to be saved from the path of anarchy and mayhem. Alternative could be riddled with ugly street protests. If dire predictions come true, this time they would be quite bloody as other political parties and interest groups have also armed themselves.

- **Sangeeta Thapliyal**