

Design Of Democracy - Nepal

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The design of democracy in Nepal, in a broad sense, in the form of the 1990 Constitution, has not been able to achieve much not due to the defects in the constitution alone but due to the shortcomings on the part of the major actors namely the political parties and politicians to effectively administer the country. This essay tries to describe democracy at the design level with respect to four domains of public -political life namely state institutional domain, party political domain, non-party political domain and economic social and cultural domain.

State Institutional Domain

Within the state institutional domain we have issues like citizenship, basic rights freedoms and remedies, the role of executive, the supremacy of civilian governance over armed forces, role of the legislature, the judiciary, the hindrances that come in the constitutional mechanism of democracy, procedures for amending the constitution, local governance under strong unitary government, opportunity in civil service, peoples' access to information and participation in policy making and the corruption control mechanism.

To begin with the whole constitutional principles of citizenship are classified under two broad provisions. The first is citizenship at the commencement of the 1990 constitution which includes arrangements set out in the constitution of Nepal of 1962 and Nepal Citizen Act of 1964. The second is the acquisition of citizenship after the commencement of 1990 constitution. These two provisions are contained in the Constitution in Article 8 and Article 9 respectively. Controversies related to the citizenship issues in Nepal are reflected in the Nepal Citizenship case, deprivation of millions of people of Terai origin called Madheshi of Nepalese citizenship and the Nepal Citizenship Bill 2000.

With regard to basic rights freedoms and remedies, the Constitution of Nepal guarantees basic human rights to every citizen of Nepal as declared in the Preamble. The Constitution confers various rights and freedom to citizens of Nepal as given in part 3 of the Constitution. The proper enforcement of the fundamental rights of Nepali citizens is the responsibility of the Supreme Court.

The executive power of the Kingdom is vested jointly in the King and the Council of Ministers. The King has to exercise all powers upon the recommendation of the Council of Ministers which has constitutional responsibility to direct, control and to regulate the whole administration of the country in accordance with the law. The constitution establishes a parliamentary form of government and envisages the supremacy of civilian government over armed forces thus minimizing the traditional control and influence of King over the army.

The Parliament of the national legislature is bicameral consisting of House of Representatives (HOR) and the National Assembly. HOR holds more power and control in law making process in comparison to Nation Assembly. The assent of King is always necessary for every Bill passed by both houses of parliament and the King may use veto power over any bill except for finance bill. There are provisions for overthrowing the government by majority votes of the HOR members wherein one fourth members of HOR can table no-confidence motion against the Prime Minister.

All courts and judicial institutions of Nepal other than military courts fall under the Supreme Court. All judges of Supreme Court and other courts are appointed by the King on the recommendation of a five member Judicial Council. The judges of Supreme Court can be removed by an address of impeachment by an address of impeachment by the HOR duly passed by at least two third majority of the total members. The judges of subordinate courts are removed by the King on the recommendation of the Judicial Council. There is restriction by Constitution to discuss in Parliament any matter which is under consideration in any court of Nepal and about anything done by a judge in course of performance of his/her duties except on a resolution of impeachment.

King Gyanendra's step in dismissing elected Prime Minister Sher Bhadr Deuba is seen as inconsistent with the spirit of the Constitution and poses a hindrance to the constitutional mechanism of democracy. Furthermore, institutions like Constitutional Council, Judicial Council and national defense Council which have been formed to check the possible abuse of power of the government, in actual practice, have created several power centers thereby weakening the position of the Prime Minister.

With regards to amendments to the constitution, the parliament cannot alter any provisions of the constitution that is opposed to the spirit of the Constitution which puts forth the basic structure of the

Constitution thus expressly adopting the doctrine of basic structure as developed by Indian courts to govern the process of Constitutional amendments.

Nepal has always been a unitary form of government based on the position that strong central government can safeguard the unity and integrity of the nation. However, instances of decentralization of power at local levels in Nepal have been seen at various stages in history guided by the rationale of successive regimes.

Public Service Commission has been constituted in Nepal to select and promote suitable candidates for civil service posts excluding the military and police services. Under the Constitutional provisions for reservation and organized pressures from underprivileged communities, the government has recently allocated some percentage of reservations of posts in civil services for women, Dalits and indigenous citizens.

While the Constitution guarantees every citizen the right to demand and receive information on any matter of public importance, no one can compel any authority to provide information on any matter about which secrecy is to be maintained under the law. In absence of detailed laws on the right to information, the court has down some rules regarding citizens' access to government document. The government tried to enact the right to information law in 1992 but it had to withdraw the Bill in view of strong opposition both inside and outside the parliament. Similarly, the constitution mandates wider participation of people in the governance, however, there are no mandatory provisions to consult people at large.

Several laws against corruption have been enacted in the advent of democracy since 1951 which includes Corruption Prevention act of 1954 replaced by Prevention of Corruption by Civil Servants and Public Authorities Act of 1957 which in turn was replaced by The Prevention of Corruption Act of 1961. The 1961 law was repealed in 2002 by Corruption Act of 2002. Commission for Investigation Of Abuse of Authority (CIAA) has been created by the 1990 constitution to control abuse of authority and corruption. The Supreme Court decision has empowered the CIAA to initiate investigations on charges of corruption even against the Prime Minister and the Ministers.

Party Political Domain

The party political domain entails a discussion on the political parties and politics, the freedom to form and operate political parties and representation via free and fair election.

The major political parties in Nepal were formed with the sole objective of the overthrowing the dictatorial regime of Rana oligarchy and to establish democracy in the country. The armed revolution of 1950 saw the establishment of democracy in the country for the first time. The ban on political parties was removed and all parties constituted inside and outside Nepal got freedom to organize their activities with the first General elections being held in 1959. The Royal take over of the state power in 1960 saw the dismissing of elected government with dissolution of parliament and a ban on political parties. Ten years after the 1980 referendum which favoured timely reforms within the Panchayat System over multi-party democracy in the country, peoples' movement led by Nepali Congress and United Left restored multiparty democracy and the new constitution was enacted to institutionalize constitutional monarchy and multiparty democracy in the country. Since then, three General Elections have been held in 1991, 1994 and 1999. Since 1994 elections, when the people's verdict was in favour of hung parliament, there has been a decline of parliamentary institutions in Nepal and mainstream political parties have been losing their mass support and popularity. The sole purpose of coalition politics became the need to share power among coalition partners and such attitudes exposed them to unholy alliances and corrupt malpractices. The democratic set up in Nepal faced another setback in Oct 2002 when King Gyanendra removed Prime Minister Sher Bhadur Deuba on grounds of his incompetence to holds elections as scheduled.

The 1990 Constitution is very specific on the rights and freedom of political organizations. All provisions relating to formation and operation of political parties are laid down in Chapter 17 of the Constitution. Reasonable restriction upon this freedom may be imposed by law if any activity undermines the sovereignty and integrity of the country or which jeopardizes the harmonious relations subsisting among people of various castes, tribes or communities or which instigate violence or violate public morality.

Various constitutional and legal provisions are designed to ensure free and fair elections. The constitution has created the Election Commission which is an independent body to conduct, supervise, direct and control the election to the Parliament and local bodies. Party parliamentary Committee formed in 1997

investigates malpractices in past parliamentary and local elections. Legal provisions are made to ensure representation of all social sections including minorities and marginalized sections. This is however limited to the local government only institutionalized under the Local Government Act of 1998. In order to prevent subordination to dominant interest groups, the law prohibits political parties to take aid and donation from foreign governments and organization. In addition to this, provisions have been introduced to ensure financial transparency in political parties about their sources of income and election expenditures.

Non- Party Political Domain

The design at the non-party political domain in Nepal comprises the civil society organizations, the trade unions and professional organization and the Nepalese media.

Since the restoration of democracy in 1990, the number of civil society organizations have increased a thousand fold with more than 15000 NGOs registered with the Social Welfare Council (SWC) till 2003. The SWC, a government body under the Social Welfare Act, coordinates monitors, evaluates facilitates and promotes NGO activities. The Societies Registration Act of 1977 is intended as the official legal space for NGO registration. The Civil society Organizations encompasses many types of organizations established for many different purposes.

Trade Union movement in Nepal is historically associated with the democratic movement against the despotic rule of the Ranas. Nepal Drivers Association was the first workers union formed by truck and bus drivers in 1950 after which other associations followed suit. However, it was only in 1992 when the Trade Union Act was enacted which provided rights to form, register and operate Trade Unions for protection and promotion of professional and occupational rights of the workers of enterprises. Trade Unions in Nepal are mostly associated with one or another political party. People are allowed to freely form professional organizations in order to protect their interests and rights. However, they are not closely associated to any political party.

The 1990 constitution provided for the first time in the constitutional history of Nepal, guarantee against censorship, against closure or seizure of printing press or cancellation of registration of publication for printing news items, articles or other reading material. However, preemptive censorship under certain circumstances is permissible under the law. National Communication Policy introduced in 1992, promotes independent, prominent and accountable press. However, the ground realities are different. The press has been divided according to its political allegiance. The state has ownership over print, radio and electronic media. A private press cannot buy even foreign news except through the only news agency in Nepal National New Agency or through the government. The government controlled press disseminates mostly the news and views of the government or the party in power.

Social, Economic and Cultural Domain

On the Social, Economic and Cultural domain, Nepal is a home for various caste and ethnic groups where such groups are not equally accentuated in the society. The 1990 Constitution for the first time recognized the cultural diversity of Nepal and declared Nepal as multi-ethnic and multi-lingual kingdom. While recognizing all languages as national language, the Constitution declares Nepali language as the language of the nation and the official language of the country. Among the thirty six castes in Nepal, three caste groups namely Bahun, Chetri and Newar have always remained economically and politically dominant and privileged occupying the fertile and commercially and politically important Kathmandu valley since ages. This has led to marginalization of other social cultural groups like Dalits, Madhesis and Janjatis. This disparity and suppression since long gears have geared these groups to demand their due rights forcefully.

The above discussion on the design of democracy at the four levels shows that parliamentary democracy in Nepal is still a fragile experiment. The major political parties have mostly limited their role to legitimizing power rather than making government accountable and open to public influence. The design of democracy in Nepal though one of the best in her known history has not been able to meet the requirement of justice to respect every Nepali's claim to form, entertain and articulate his/her own interest.