

Constituent Assembly Election and Madhesh Turmoil

Nepal does not have a coherent experience in constitution-making ever since it got the first constitution in 1948. Since then, the constitutions were either promulgated by the grace of king or through compromise among the then dominant political actors, throwing aside the actual aspirations of the people. Ending this long uncertainty, Nepal received its interim constitution and a new parliament with the Maoist rebels in January 2007.

Consequently, the people, for the first time ever in the history of Nepal, are going to draft a new constitution themselves through the Constitutional Assembly. This is certainly a landmark victory for the people of Nepal that has granted Nepalese their sovereign power to address the people's aspirations and institutionalize the achievements of the popular movement.

What is the Issue?

It has been well acknowledged fact that even after the success of the 1990 people's movement (Janandolan I), the political parties chose to ignore the rights of the oppressed nationalities including the Madheshis, reflected by the discriminatory provisions in the 1990 Constitution of Nepal. Again, the CPN-Maoists had promised federal state in Madhesh, rights to self determination and many other assurances during their decade old revolution, and similar promises were held by the leaders of all other political parties following the 2006 April Revolution (Janandolan II). However, the interim constitution they promulgated reflected that their promises were merely to deceive Madheshis as it paid no attention to their representation in the decision-making body of the State – the ground that paved the way for the Madheshi movement (now called the Janandolan III).

Madheshis have been pressing for rights based constitution, which envisions constitution as a mechanism for entrenching and protecting individuals' rights. As bona fide citizens of Nepal, Madheshis are the rights-bearers who are justified to claim their rights for constitutional participation on the basis of the right that they hold as individuals and on the basis of collective rights of an ethnic group. Getting a constitutional foothold and constitutional recognition will not only give Madheshis a sense of 'inclusion' and 'self-esteem', but constitutionalizing rights will also help the government comprehend that Terai, which contains 49 % of Nepal's 26 million population, 23% land area and 20 of the 75 districts, belongs to Nepal as much as the Madheshis- it can't be one and not the other.

The issue therefore relates to a movement against the state's discriminatory politics, a fight for recognition of rights, and a struggle for equal representation and opportunity. The Madheshis are demanding nothing much but their rights of human worth and dignity, which they think can fairly be achieved by the right to self-determination; proportional representation in the constituent assembly; restructuring the constituencies based on population; federal system with regional autonomy; and elimination of all forms of discrimination practiced by the state mechanism.

Where do we stand?...

Thanks to the unity expressed by Nepalese around the globe, and thanks to the international support, the movement has been successful in maintaining its momentum sparking wide public attention and concerns about the lack of respect for equality of human beings and the violation of human rights through the plethora of racially discriminatory policies and practices.

...On the national front

- Madheshis could not pin their faith on the Prime Minister's first address to the nation on January 31st which was an attempt to mislead Madheshis by promising that the Constitution Assembly elections would address the Madheshi demands. On Feb 7, the Prime Minister had to address the nation again, in which he announced federal system of governance, increase electoral constituencies based on population growth and increase the number of seats to be held on the basis of proportional representation.
- The interim constitution was amended twice within the few months of its promulgation, but failed to accommodate the demands raised by the Madheshis. In the same tune, the government made some headway by inviting Upendra Yadav led MJF for talks, but with the stipulated pre-conditions, the five rounds of talks remained inconclusive. Nevertheless, as it is said, "Rome was not built in a day", thanks to the perseverance and firmness of the MJF, the sixth round of talk held with the government team led by Peace and Reconstruction Minister Ram Chandra Poudel on August 30 marked jubilation amongst the Madheshis. The Government-MJF ultimately reached 22-point agreement, which includes compensation to those killed during the Terai movement, guarantee of inclusion of Madheshis and other marginalized groups in the constituent assembly, autonomy to the states in the federal system to be designed by the constituent assembly, among others. The MJF similarly agreed to the constitutional provisions of mixed electoral system for the upcoming constituent assembly election and announced withdrawal of all the agitation programs, stating that his party can now concentrate on its election campaign. The MJF has gained positive credibility in due course of the movement and has been elevated as a powerful political force in the country.
- On the other front, the CPN (Maoist) has raised serious objection to the 22- point agreement between the Government and the MJF, stating that the agreement is a conspiracy inspired by the 'divide and rule' theory of the Government, and that it only added fuel to the Madhesh fire. Further, they have also called in for the postponement of CA polls, and have threatened to launch a nationwide agitation if their demands, including declaration of Nepal a republic and removal of Army from the royal palace, are not met before the CA polls.

As of security, the scenario is not that encouraging as more and more groups are emerging such as Janatantric Tarai Mukti Morcha (Goit), JTMM (Jwala Singh), JTMM (Bishfot Singh), Madheshi Mukti Morcha, Madheshi Tiger, Tarai Cobra Group, Madhesh Mukti Force, Tarai Tiger, Terai Army, AASK Group, Tharu Mukti Morcha, Chure Bhawnr Pradesh Ekta Samaj, Janajati Mahasangh, TM Don Group, Young Communist League etc., and many of them with militant characteristics are doing their best to strengthen their positions as new armed groups in Terai. In addition, the independent media in Terai faces hurdles in reporting, publication and distribution of newspapers. The situation is bad and getting worse.

...On the International front:

- In all the topsy-turvy, one thing that has remained most encouraging is the unity expressed by Madheshis around the globe. Following the movement, the media has been overwhelmed with news and views on Madheshi movement; there have been discussions and debates on the peaceful resolution of Madhesh issue; the Nepalese Diaspora have channeled possible resources, supports and encouragements to the victims and the survivors of the Janandolan III... In short, the number of Nepalese, including Madheshis and the concerned Pahadis who are working nationally and internationally, from micro to macro level, and through individual and organizational efforts trying to help Madheshis get their share of pie, is simply exemplary.

- There has been intense pressure from the UN Human Rights Organizations and other International bodies on the government to play an active role in combating prejudice against the Madheshis and to hand over their rights. They have been impartial and have voiced out against illegal detentions, police brutalities and against biased reports even at times when most of the civil societies and Nepali Human Rights organizations had acted indifferent.
- Nepal has already received supports and words of assistance from India, United States, European Union, United Nations and other countries to conduct the election on time, in free and fair manner and to get maximum, informed participation from the voters. They have emphasized that the legitimacy of the Nepal Government and the parties would be questioned if the election is deferred again.
- The United Nations Electoral Expert Monitoring Team (EEMT) has emphasized on the need to improve the security situation in the country and has stressed on the need for cooperation among political parties to create adequate election climate and to expect free and fair election.

What needs to be done?

It's no use crying over the spilt milk. The present priority should be the formation of an inclusive and representative assembly to draft a right based constitution as per the mandate of the movement. The government should mobilize the support of national and international communities including the United Nations, to ensure a timely, peaceful, free and fair CA election, the only available non-violent approach to help achieve lasting peace and consolidation of democracy in the country.

The electoral seats for CA election are 497, of which 240 would be elected directly, 240 by proportional election, and 17 would be nominated. Presuming that the election is held fairly under the mixed system, 164 Madheshi people would be represented including 38 women. For Madheshis, this could be an opportunity to collectively voice their opinions and democratically convince other CA members to address the issue of inclusion. Whereas, for the major political parties such as NC, UML, CPN-Maoists and NC (D), it might mean having to lose many seats in the CA election which they have been enjoying in the restored parliament.

The date for the CA election, which has already been postponed twice, is now fixed for 22 November. Nonetheless, owing to (i) the fear and insecurity of the political parties; (ii) the Maoists' insistence of taking part in the election only if they are guaranteed with some safe seats, or maneuvering to put off the November elections for CA till mid-April next year, or owing to (iii) the deteriorating law and order situation in the country, particularly the Terai region, there are doubts in the minds of many if at all it would be possible to hold the election at the stipulated time and secondly, if the election could be held in a free and fair manner.

The ambiguity amongst people is legitimate in the absence of a favorable election climate when the election date is just a few weeks away. If the government is determined about the election date, which seems to be true until now, the ruling political parties need to issue a joint public statement expressing their unified commitment for conducting a timely election. They also have an important task of concentrating on issues like security, management of cantonments and spreading themselves out to the villages and towns to interact with people about the CA polls, encourage them to participate in the historic exercise and discuss with them about their election manifestos so that people have a perception of the state of things and are able to make informed decisions.

Furthermore, since CA election is going to be held for the first time in the history of Nepal, and the fact that there is very low level of understanding among the people about the mixed electoral system, the Election Commission, as part of its preparation for the CA polls, should also focus equally on making people aware and sensitized about the concept, process, and modalities of the electoral system and the technicality involved in the voting process.

One of the important requisites for holding a free, fair, peaceful and impartial election is a reliable, conducive and credible security arrangement. However, the irony is that the Maoist-affiliated Young Communist League (YCL), who is widely involved in terrorizing people, is likely to provide security for the CA election owing to tremendous pressure from Maoists. Besides the YCL, the government aims to recruit 80,000 temporary security personnel to create a secured environment for the election, while neglecting about the same number of well trained, equipped, experienced and readily available national army. The security arrangement seems to be in need of reassessment to ensure maximum voter participation who feels free, secured and fearless to go to polling booths to cast their votes.

Last but not the least, the importance of peace journalism in the contemporary world, in particular at the time of internal conflict in Nepal need not be over-exaggerated. The Nepali media has been biased in tone, depiction and revelation while highlighting the unfolding events of the movement, many at times disregarding the Code of Conduct for Journalists. The reporters should understand that the decisions journalists make and the way conflicts are covered, or how they juxtapose and contextualize the conflict or what they choose to report or omit tends inescapably to contribute either towards the momentum of war or towards the momentum of peace. At this crucial juncture where Nepal is trying to get a face-lift, the media, being an important pillar of democracy, should play a crucial role in creating conducive atmosphere for polls by promoting favourable people's opinion and enabling them to participate in the CA process in an informed and active way by communicating clear, comprehensive and accurate information to people in all parts of the country, including Himal, Pahad, and the Terai.

Conclusion

The Madhesi movement has reminded us of the need to take a critical look at dealing with the problem of intolerance and ethnic prejudice that has for centuries plagued the nation. The structural discrimination can have solution only through systemic reform guided by the principalities of equality, integration, representation and redistribution. Madheshis should find a meaningful participation in the Constituent Assembly and in all other aspects of peace-building and democratic transition. The 'hegemonic control' of the age-old ideology of domination of one caste, one language, one culture, one color, one region, one religion... can and has to change to include and promote multi-ethnic, multilingual, and multi socio-cultural Nepal.

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Presented at the Nepalese Association in Southeast America (NASEA) and Association of Nepalese in Midwest America (ANMA) Joint Convention, September 1 to 3, 2007, Atlanta, Georgia, USA.