



## Nepal's Constitution

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# 1 Introduction

- After seven years of debate and discussion to iron out differences among various political parties, the Constituent Assembly (CA) of Nepal promulgated the new Constitution on September 20 in 2015.
- There was a grand celebration in and around Kathmandu immediately after the country's president signed the draft. However, more than half the population, especially the Janajatis, the people living in the Terai region, Dalits and women rights groups, opposed the new Constitution.

# 2 Highlights of Constitution

- It will be bicameral, with a House of Representatives-165 members of which will be elected by the first past the post system, and 110 by the system of proportional representation-a third of whose members shall be women, and a National assembly of 59 members. Either the chair or deputy chair of these Houses shall have to be women.
- A seven-member council will be headed by the prime minister. The chief of the army will be a member. The decision to include the COAS was taken very late.
- Nepal is an independent, indivisible, sovereign, secular, inclusive, democratic, socialism-oriented, federal, republican state.
- The constitution clarifies that '**secularism**' in this context means the preservation of dharma sanskriti (religion and culture) that has been in existence for generations (sanatan), as well as the freedom of religion and culture.
- The explanation of secularism was introduced in the wake of mass movements against the provision of secularism, and in favour of Nepal continuing to be a Hindu state.
- The sovereignty and authority of the state are vested in the Nepali people. Having multi-ethnic, multi-lingual, multi-religious, multi-cultural characteristics, with common aspirations of people living in diverse geographical regions, and committed to and united by a bond of allegiance to national independence, integrity, national interest and prosperity of Nepal, all the Nepali people collectively constitute the nation.
- According to the constitution, each person is free to profess, practise, and preserve his/her religion according to his/her faith, and distance himself/herself from any other religion.
- The ratification of any treaty that has a bearing on Nepal's peaceful and friendly relations with other countries, security and strategic interests, its boundaries and natural resources, shall need a two-thirds majority in Parliament.
- Executive powers shall vest in the cabinet. The President shall appoint as its head the leader of the largest party commanding a majority in the House of Representatives.
- The preamble envisages establishment of sustainable peace, good governance, development and prosperity in a federal democratic republic.
- However, under Article 274, nothing except the sovereignty, territorial integrity and independence of Nepal-with the Nepalese people as the source of that independence-is unalterable or unamendable.
- A future Parliament may, by a two-thirds majority, change in part or whole, the federal, secular character of the republic.
- It guarantees fundamental rights as well as the right to food, right to education and right to protection from environmental degradation.
- The constitution gives right of protection from human trafficking. The protection against human trafficking is symbolic and implies Nepal's current rulers are influenced by the powerful anti-trafficking movement that has taken roots in that country.

# 3 Constitutional Developments

- Previous constitutions of Nepal were enacted in 1948, 1951, 1959, 1962, 1990 and 2007 but finally in 2015 seventh constitution were formed.
- After the abolition of Nepal's monarchy, a constituent assembly formed to promulgate constitution but didn't last long.
- The Interim Constitution provides for a Constituent Assembly, which was charged with writing Nepal's permanent constitution.

- Under the terms of the Interim Constitution, the new constitution was to be promulgated by May 28, 2010, but the Constituent Assembly postponed the promulgation by a year because of disagreements.
- On May 25, 2011, the Supreme Court of Nepal ruled that the 2010 extension of the Interim Constitution was not right.
- Since May 29, 2011 the Constituent Assembly repeatedly extended the Interim Constitution.
- On May 28, 2012, the Constituent Assembly was dissolved after it failed to finish the constitution after the latest extension, ending four years of constitution drafting and leaving the country in a legal vacuum.
- New elections were held on November 19, 2013 to the Second Nepalese Constituent Assembly and political leaders pledged to draft a new constitution within a year. The new assembly expressly committed that the new constitution would be promulgated on January 22, 2015.



#### 4 Post-constitutional problems in Nepal

- However, due to continued differences on key issues including system of governance, judicial system and federation issues like number, name and areas of the states to be carved, the constitution could not be finalized and promulgated in time.
- The Madhes region, alternately called the Terai, is now home to half the country's population, although the Madhesis residing in the region are only one third of the total population.
- The region is subjected to economic discrimination as well. Madhes is the backbone of the national economy, containing more than 60 per cent of agricultural land and contributing over two thirds of the GDP.
- However, the development of Madhes has been ignored for decades. Citizenship Rights have been one of the major issues of concern for the Madhesis.
- The 1964 Citizenship Act and the 1990 Constitution imposed stringent criteria based on descent, which sought to disregard the claims of citizenship of the Madhesi people through naturalization.
- Those without citizenship cannot apply for government jobs, register births or marriages, get a passport, compete in elections, register a business, and obtain bank loans or access government social benefits.
- At a time when Nepal should be celebrating its most awaited Constitution, people in the southern plains (known as Madhesis) who constitute almost half the population, are revolting against it.
- The Constitution, aimed at establishing lasting peace, has instead triggered fresh conflicts as it is being shunned by the marginalised communities such as Madhesis, Tharus, Janajatis, Dalits and women.
- The Government of Nepal has mobilised the Army as well as the Armed Police Force and has declared a curfew in several parts of the southern plains as the conflict has escalated and resulted in the tragic death of more than 40 people.
- A last ditch effort by the Indian Prime Minister's special envoy S. Jaishankar failed to convince Nepal's major political parties to take measures to pacify the situation.

#### The major demands that are being raised by the Madhesis that have not been accommodated in the new Constitution are:

- Group the 20 districts of Madhes in two federal provinces. The present federal structure separates five Madhes districts (Kanchanpur, Kailali, Sunsari, Jhapa and Morang) from Madhesh provinces and merges them with other proposed neighbouring provinces.
- Delineate electoral constituencies based on population, geography and special characteristics which were accepted by the Interim Constitution after the Madhesh Movement of 2008.
- Incorporate the right to participate in state structures on the basis of principles of proportional inclusion, which was accepted by the Interim Constitution.

- Interim Constitution had provided for re-demarcation of electoral constituencies every 10 years, as per the census; the new constitution has increased it to 20 years. The Madhesi parties do not approve of this change.
- Citizenship should be passed on through the name of the mother as well. There should be no discrimination based on citizenship acquired by descent or naturalisation. The new Constitution states that only citizens by descent will be entitled to hold the posts of President, Vice-President, Prime Minister, Chief Justice, Speaker of Parliament, Chairperson of National Assembly, Head of Province, Chief Minister, Speaker of Provincial Assembly and Chief of Security Bodies.

## 5 Recent events: Amendment in Nepal Constitution and Madhesi blockade

- The three elements of the amendment are part of a deal between the Nepal government and its mainstream political parties, and the rebel Madhesi political formation of United Madhesi Democratic Front (UMDF), which has been agitating for the changes in the Constitution. The amendment process, however, did not include the main demand of the Madhesis for the creation of two separate Madhesi provinces on the plains of Nepal. The United Democratic Madhesi Front, a group of four political parties from Tarai, has rejected it.
- Nepal's Constitution was promulgated on September 20. Madhesis and Tharus, indigenous tribes of Nepal's Tarai region, had been protesting in the run up to the promulgation, and claimed the constitutional draft had eroded their political representation, compromised the architecture of inclusion, divided up their territory and carved out federal units which would deprive them of self-rule, and institutionalised discriminatory citizenship provisions. The government responded with force and killed over 40 protestors. The hill political elite went ahead with the statute. The Madhesi parties decided to change tactic – the protest shifted to the border and blocked supplies, generating pressure on Kathmandu. India only noted the Constitution and said its transporters, fearing insecurity, were unwilling to move in to Nepal. It urged the government to address the political problem. Notably, as soon as the blockade was imposed by Madhesis, and India let its displeasure be known, the killings dipped.
- The Nepal government called it an undeclared Indian blockade; it systematically raised the anti-Indian nationalism sentiment; it tried to cosy up to China and use it as an alternative source of supplies, but with little success. It also lobbied both internationally and with the Indian opposition against the government of India. The anti-Indianism was also a form of invitation to intervene; Nepal wanted India to let up the pressure and tell the Madhesis to give in. The evidence was not hard to find.
- The blockade eventually ended because a nexus of local officials and businessmen from both sides, who had been resentful and had lost out on enormous legitimate revenues and illegitimate earnings, decided to take matters in their own hands. The traders got tents of protestors burnt, cleared the barriers, and trucks moved along. A little over 150 Madhesi protestors tried to block the path, but they were outnumbered.

## 6 Indo-Nepal relations

- As close neighbours, India and Nepal share a unique relationship of friendship and cooperation characterized by open borders and deep-rooted people-to-people contacts of kinship and culture.
- There has been a long tradition of free movement of people across the borders.
- The India–Nepal Treaty of Peace and Friendship of 1950 forms the bedrock of the special relations that exist between India and Nepal.
- Under the provisions of this Treaty, the Nepalese citizens have enjoyed unparalleled advantages in India, availing facilities and opportunities at par with the Indian citizens.
- The Madhesi blockage has created a trust deficit among India and Nepal. Nepal government has termed it an Indian plot and raised the anti-Indianism nationalism sentiment.
- This Blockade has ended and Madhesi has not gained much either in Constitutional amendment or special packages.

## 7 India's response over the new Constitution

- India neither 'welcomed' nor 'congratulated' Nepal on this occasion. India's cold response indicated that Nepal's southern and most important neighbour was not happy with the way the Constitution was drafted.
- India has been following a 'hands-off' policy, i.e., not interfering in the Constitution drafting process and encouraging a 'Nepali grown model' to generate consensus, ever since the process was set in motion in May 2010.
- However, in the immediate aftermath of the finalisation of Nepal's Constitution and especially with the increase in violence and political asylum seekers entering Indian Territory, India has found itself embroiled in Nepal's domestic issues.
- Nepal's political leadership has ignored India's concerns and suggestions which have been periodically shared ever since Prime Minister Modi visited Nepal in August 2014.
- India has felt that it has been let down by Nepal's leadership.
- Apparently, top Nepalese leaders -including K. P. Oli, Prime Minister Sushil Koirala, P. K. Dahal (Prachanda) and Sher Bahadur Deuba-had, during private meetings with Modi and other senior Indian officials, assured them that the Constitution would be promulgated on the basis of consensus.
- In fact, India had all along hoped that Nepalese leaders would keep their promise. When that did not happen, it was but natural for the Indian government to feel betrayed.
- Although many Nepalese commentators linked India's reactions to its traditional support to the Madhesi cause over the years, the aversion of the present government to the word secularism in Nepal's constitution and its apprehensions about the spill-over effect of the Terai violence on the upcoming Bihar elections, the fact of the matter is that the Indian foreign office has been particularly worried about the growing 'united front' among the left political parties of Nepal-especially between the Maoists and the Communists-against India, backed by external powers opposed to Indian influence in Nepal.
- India's suspicions were further confirmed when the three-party alliance ignored India's suggestions about preparing a broad-based document by accommodating the demands of the marginalised groups.

### **Madhesi Problem a concern for India:**

- Given the fact that India shares an open border with Nepal, the consequences of violence and instability in the Terai would have consequences for India's security and may threaten the security of Indian businessmen and traders who are engaged in business in Nepal.
- Moreover, cross border ethnic linkages and familial ties makes India an interested party. While Nepali political leaders blame India and Indian 'interference' and try to arouse anti-Indianism, the same political leaders use New Delhi to further their political ambitions and do not hesitate to take New Delhi's help to entrench themselves in power.
- If Nepal does not want India's involvement, it needs to not only ensure that developments in the Terai do not have a spillover effect but also stop courting the Indian establishment to gain political power.

### **"Caution" is the need of the hour:**

- The present slump in India-Nepal relations could have been avoided had Nepalese leaders adopted caution and pragmatism in their approach.
- They should not have promised India that they would finalise the Constitution on the basis of 'Consensus' in the first place.
- Secondly, they could have clarified their position to India before taking the final step of proceeding with a majority decision to promulgate the Constitution, rather than decrying India's role after the promulgation of the Constitution.
- Moreover, in the face of prolonged protests, the leadership in Nepal has to find a way of bringing the dissenting voices on board, thrash out mutual differences, and initiate necessary revisions in the Constitution to satisfy the groups feeling marginalised by provisions in the constitution.
- On the Indian side, rather than moving swiftly from its policy of "hands off" to a state of "panic reaction", India has to proactively engage all concerned and ensure that the new Constitution is suitably amended to accommodate the demands of the marginalised groups in Nepal.

- After the Madhesi Blockade ended, India must remember that the fundamental problem persists: That Madhesi still do not feel politically or constitutionally integrated within Nepal's current mainstream structure. And it must keep reminding Kathmandu to address this, for as the last few months have shown, the problem can easily assume cross border ramifications. India has to engage with Nepal government, but this must be coupled with strong pressure.

## 8 Future Perspective

- The people of Nepal would be somewhat relieved that there has been a degree of closure to the Constitution-writing process. The recent earthquake had only worsened economic conditions and there was a sense of fatigue with the Constitution-writing process.
- The people required their polity to focus on governance in a stable Nepal.
- The lack of consensus in the run-up to the promulgation will remain a political sticking point in the restructuring process.
- The leaders of the three main political parties-the Nepali Congress, the Communist Party of Nepal (Unified Marxist-Leninist) and the Unified Communist Party of Nepal (Maoist)-have affirmed that the federal boundaries could be changed later.
- But it begs the question why even after seven years of deliberations the concerns of the Madhesi were not taken on board.
- Recent Constitutional amendment also didn't considered the demand of Madhesi. The Madhesi blockade also ended with a not so satisfied result for the Madhesi due to infighting. The Nepal government could do well to take the necessary constitutional steps to address the Madhesi concerns and to live up to these expectations on governance.

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