

Nepal and Its Constitutional Crisis

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Introduction

Nepal witnessed large scale civil unrest in its Terai belt and protests in the capital Kathmandu in the month of Sept-Oct 2015. The protests still continue due to the stalemate between the Madhesi parties and the Government on the issue of federalism. The Joint Democratic Madhesi Front, the main group of the Madhesi parties, however decided to continue their nearly three-month agitation, amid a severe shortage of fuel in the landlocked country.¹ Most Nepalese are convinced that this blockade and Nepal's economic squeeze is with the tacit approval of the Indian Government. The prolonged Terai unrest and subsequent disruption in trade have created losses estimated at US \$1 billion to the Country, the Federation of Nepalese Chambers of Commerce and Industry has said on 03 Oct 2015.² The reason for this unrest is the passing of the new Nepalese constitution by their constituent assembly (CA) in September this year. But the Country which seemed to have been badly polarised in the midst of the constitutional crisis has found itself a reason to unite and the uniting factor has been "India".

Nepal has deep societal divisions which are primarily on account of the geography of the Country. The Country is divided into three distinct regions: the high mountains in the North, the hills and the valleys in the middle and the foothills and plains in the South. Ethnically the people inhabiting these areas are different and ideally they should have found separate identities based on this geographical division. Yet, Nepal has five developmental regions which are divided vertically rather than horizontally. Which means each division has a mix of people from high mountains valleys and plains. In this kind of model low caste Janajati Nepalese citizens who reside in the middle or the southern portion continue to have the same status in all five regions and high caste

Khas-Chhetri / Brahmin continue to enjoy the high privileges. The new constitution has retained the same model; thus the low caste communities have felt let down. This has led to the current crisis between the Government of Nepal and the Madhesis who now represent the low castes. The socially marginalised groups, like the Madhesis, who live mostly in the Terai area, Janajatis (indigenous people), and women have strong objection to the provisions of the constitution. They feel left out.³

Nepal's Journey to the New Constitution

Nepal was a monarchy from 1768 to 2008. The monarchy governed by its own constitution which was imposed to rule the Country. The constitution changed six times prior to the last one, yet in each case it represented the interests of the monarchy rather than the common man. This led to the Maoists taking on the government in a ten year long civil war (1996-2006). The royal massacre in 2001 was the beginning of the end for the monarchy in Nepal. Sustained violence and pressure from Maoists did not allow the new king, Gyanendra to rule in peace. In spite of imposing emergency and harsh measures to curb civil liberties, the ten year civil war took its toll on the monarchy, and it had to succumb to the popular wishes of the people. On 24 Apr 2006, after the Loktantra Andolan movement, the king agreed to give up absolute power and to reinstate the dissolved House of Representatives. On 21 Nov 2006, the Civil War ended with the signing of the Comprehensive Peace Accord. On 15 Jan 2007, the King was suspended from exercising his duties by the newly formed interim legislature. Finally, on 28 May 2008, the kingdom was officially abolished by the CA and Federal Democratic Republic of Nepal was declared.⁴

In 2008 a CA was elected dominated by the Maoists. It was entrusted with the responsibility of drafting a new constitution, the seventh one, to fulfil the aspirations of the free Nepalese people. This CA had a mandate of two years in which they were to draft the new constitution. They failed to fulfil the mandate due to lack of consensus on multiple issues. The assembly was consequentially dissolved and fresh elections held in Nov 2013. The CA2 had the burden of drafting a constitution which would fulfil the aspirations of all parties, castes, regions and all sections of society. Due to extensive criticism that political parties received in the aftermath of 25 Apr 2015 earthquake, the main political parties galvanised the Nepalese CA and passed the long pending draft new constitution. Nepal became a Federal, Democratic, Secular, Republic on 20 Sep 2015.

Issues of Discontent

The new constitution met with strong objections from various sections of Nepalese society. The proportional representation in the new CA was an issue; one grievance is that a smaller percentage of the parliament will now be elected by proportional representation - 45 per cent, compared with 58 per cent under the previous post-war interim constitution.⁵ Second, the citizenship issue had the women groups of Nepal up in arms. If a Nepali woman marries a foreign man, their children cannot become Nepali unless the man first takes Nepali citizenship; whereas if the father is Nepali, his children can also be Nepali regardless of the wife's nationality.⁶ But amongst all, the issue of federal division of Nepal met with the loudest protests. The first draft had recommended six development regions which was strongly opposed by the Madhesis and the Tharus. However, the final draft which was passed by the parliament has seven developmental regions haphazardly carved out of earlier six divisions. This has become the main reason why southern Nepal is in civil unrest. The Madhesis and the Tharus have not accepted this hurriedly worked out compromise.

The discontent amongst the local population has its roots in the way the four major parties hurriedly went about the passage of the new constitution in the parliament. There are many who argue that there were vested interests of the high caste politicians in important governmental positions to keep their community's and party's interests paramount while drafting the new constitution. According to some, the biggest let down were the Maoist leaders on whom the under privileged and the lower castes had pinned their hopes of undoing the centuries of wrongs. But the

Maoists were party to the draft and its passage leaving the underprivileged class hopelessly abandoned. The gravity of the protests in the South is probably a reflection of this betrayal. It would be incorrect to state that everyone is unhappy. In fact, there are large sections of population in Nepal who seem very happy with the passage of the constitution. Very many Nepalis are simply relieved that the country has a new constitution after seven years of wrangling. “Now that we have a constitution let us hope there will be rule of law,” wrote one woman on Facebook.⁷ And they feel let down that their closest neighbour has not welcomed the new constitution, when all the major countries have shown their approval in respect of the passage of the new constitution.

Why is India the New Villain and China the New Hero?

In the aftermath of declaration of the constitution, Nepal seemed divided on sectarian lines: the high castes vs the low castes and janjatis. Things would have settled down by now, had matters not flared up at the Indo-Nepal border. The Madheshi groups who were protesting at the border towns blocked the no-man’s zone and stopped supply vehicles to move into Nepal. Crucial in this blockade was the halting of the supply of fuel tankers at the Indo-Nepal border. The Nepalese stocks of fuel ran dry and a crisis like situation developed in the hinterlands. The shortage of petrol, diesel and kerosene affected all. This drew wide range criticism of India and the blockade. The Indian Government’s denial of causing the blockade was not convincing enough for the ordinary Nepali citizen, who suffered on account of acute shortages of essential supplies that included medicines. Doctors in the Nepalese capital, Kathmandu, say hospitals are running out of medicines because of the blockade.⁸

Nepal has an anti-India sentiment running across the country. Being a landlocked state, Nepal is very sensitive to blockades. China meanwhile, has taken full advantage of India’s foreign policy debacle and, since the crisis, has signed numerous pacts with Nepal starting from supply of oil to opening up multiple border points; amongst them, a historic oil trade deal with China on Wednesday (28 Oct 2015), ending a four-decade supply monopoly of the Indian Oil Corporation.⁹ Nepal and China have also agreed to operationalise seven other border trade points effectively, besides making customs offices in earthquake-affected areas - Rasuwa and Tatopani, functional. Nepal has been bringing fuel gifted by the Chinese government through the Rasuwa route for the past few days. According to the statement, China has given a high priority to operating the Khasa-Tatopani route as per Nepal’s request.¹⁰

It will be interesting to analyse the feasibility of large scale trade from Tibetan Autonomous Region (TAR) into Nepal. The 25 Apr 2015 earthquakes in Nepal have badly damaged all the arterial roads. To the North, the Himalayan Mountains are a formidable barrier to trade with China.¹¹ It would require extensive work for both countries to make the supply route through China a substitute to the supplies received through India. Today, out of the eight possible trade routes only one is operational - the Rasuwagadhi- Kerung route. Nepal and China formally announced the reopening of Rasuwagadhi customs on 15 Oct 2015, according to officials. China has already repaired the 22 kms road that links the customs point with the Chinese town of Kerung. Rasuwagadhi is the second largest trade route with China after Tatopani, which is still shut as Chinese authorities are yet to open their customs and immigration offices, stating that Khasa bazaar is unsafe.¹²

The Chinese and Nepalese are working hard to get the main trade route of Tatopani operational as they are hoping to restore supply of fuel through this route to ease out the very grave fuel crisis. Any student of TAR region would understand the difficulties in opening and sustaining roads in very high altitude mountainous terrain. It requires colossal effort and modern technology to keep the supply routes open throughout the year, and if China was to invest in it, then it would be at a cost for Nepal. The reality of this situation is: Nepal will find it extremely difficult to substitute China with India as the main entry point for its supplies. This is on account of relative difficulty of sustaining the desired volume of trade to materialise through Tibet; yet, the Nepalese Government and citizens are in no mood to relent and their resolve grows with each passing day. Social media is full of hate India posts and appeals to all including the Government not to bend to India’s strong arm tactics. Is India guilty?

What Is India’s Stance?

In the current crisis India has maintained that there is no blockade or attempt by the Indian Government to stop the flow of fuel into Nepal. Indian Foreign Minister, Mrs Sushma Swaraj has defended India in the UN. Swaraj had a bilateral meeting with Nepal Foreign Minister Mahendra Pandey where she said that the allegation that India had imposed a blockade was “totally false”. “We can only take goods up to the border and beyond the border it is the responsibility of the Nepalese side to ensure that there is adequate safety and security for the trucks to enter that side,” Swaraj said. She said that 4,310 trucks are waiting at the border but cannot proceed into Nepal due to the disturbed security situation. She added that Indian transporters had voiced complaints about the difficulty they were facing in movement within Nepal and the security fears due to the prevailing unrest.¹³

India has been advising Nepal through its Ambassador Shri Ranjit Rae and the Foreign Secretary Shri S Jaishankar about the necessity to have an inclusive and comprehensive constitution which would address the needs of all classes. That the advice went mostly unheeded is obvious. Yet, there is a popular argument even in India that the Modi Government got the Nepal situation wrong. Someone in the party or the MEA has seriously miscalculated the way this crisis would evolve. What in effect the situation has developed into is that it has galvanised all the main political parties in Nepal, even those who initially opposed the Government on the drawbacks of the constitution to throw aside their differences and show a united front to fight India’s anti-Nepal stance. Why the Government took such an extreme stand, which might appear damaging to India’s core interests in Nepal, can only be a matter of conjecture. Some of the possible arguments are: to ensure that Nepal tows India’s line, the RSS and BJP’s combined desire to make it a Hindu Rashtra, to counter China’s growing influence in Nepal; which some say is reflected in the new constitution, or the Madhesi influence in the Bihar elections. No matter what the argument, the civil strife in Nepal has been blamed on India.

It may be unfair to hold India accountable to all the ills that ail Nepal. It is not in India’s interest to allow matters

to deteriorate beyond a certain point. In view of the fuel crisis, China's pact to supply oil to Nepal is a great setback for India. India cannot allow the state of affairs in Nepal to slide because such a downward spiral would harm India's long term interests and potentially pave a way for China to make deeper forays into Nepal. India must act now in a tough yet, fair manner to impress upon the leadership in Nepal to contain the current unrest by bringing the disgruntled parties to the discussion table. India also must keep the Nepalese sentiments in mind. Outright condemnation of the new constitution is not in order. Professor SD Muni, writes that "to jump into such a polarisation by taking sides is neither a prudent policy nor effective diplomacy. India's effort should have been to nudge both sides of the polarised debate through quiet and sustained diplomacy so that an amicable resolution could be found."¹⁴

Conclusion

The current crisis in Nepal is a deep rooted ethnic and sectarian mistrust within the Nepalese society. The new constitution was supposed to have addressed this problem yet, the expectations were belied. If one takes into account the history and the journey undertaken by Nepal to reach here, it would be hard to deny that the new constitution is a big achievement for Nepalese polity. India must also celebrate in Nepal's success to convey a sense of good neighbourly relations. The ethnic strife of the Madhesis, Tharus and the indigenous Janajatis cannot be condoned indefinitely. Their sustained strike is damaging India's long term interests and pushing Nepal more in the fold of its northern neighbour. It would thus be prudent that they be advised to work out their differences within the framework of the new constitution with the Government of the day. There are deep divisions as to how federalism should be implemented in Nepal. It is time for India to take a lead and be seen to be just and fair in helping Nepal reach an amicable solution.

An Update as on 31 Dec 2015

On 20 Dec 2015, the Nepalese Government decided to resolve the crisis by amending the new Constitution to address two key demands of the Madhesis; namely, 'proportional representation' and 'constituency limitation'; and it also agreed to set-up a political mechanism to recommend solution for demarcation of provinces within three months of its formation. However, the protesting United Madhesi Democratic Front have not agreed to the Government proposals and want the question of demarcation of provinces addressed on priority. Hence, the stand-off continues. The Government of India have made appropriate diplomatic moves to bring the parties together without appearing to interfere in the internal affairs of another country.

As per the latest reports China has agreed to give a further grant (second such grant since Oct 2014) of fuel worth RMB 10 million which will amount to about 1.4 million litres.¹⁵

Editor

Endnotes

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