

A Historical Glimpse of Constitutional Amendment in Nepal

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1. Introduction

Nepal has almost seven decades long experience of constitutional history. Nepal has dealt with the written constitution since 1948 and has experienced already six constitutions in this period of time. At present, Nepal is practicing seventh constitution which was promulgated by the Constituent Assembly for the first time in the history of Nepal. While overlooking towards the historical development of constitutional amendment in Nepal, we can find some of the previous constitutions of Nepal which were not able to incorporate the provisions relating to the constitutional amendment. Similarly, Nepal is becoming resonance day by day regarding the incorporation of the provisions relating to the constitutional amendment. We can discuss the constitutional arrangement regarding the constitutional amendment in different previous constitutions in the following ways.

2. The Government of Nepal Act, 2004 B.S. (1948 A.D.)

The then Prime Minister Shree 3 Maharaja¹ Padma Shumsher Jung Bahadur Rana was compelled to address the mounting national and international pressure. He made a public declaration (speech) in the name of Nepalese people on the date of 13th Magh 2004 (26th January, 1948A.D.). The main purpose of the Declaration was to promulgate the Government of Nepal Act, 2004 B.S. (1948). The then Prime Minister Shree 3 Maharaj Padma Shumsher Rana stated “our deep interest to make Nepal strong in comparison

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¹ During the Rana Regime, the Prime Minister was called “Shree3”.

with other leading countries of the world through economic, social, political every reformation this constitution is promulgated.”² The Government of Nepal Act, 2004 (1948) had come into existence in the regime of Prime Minister Padma Samsher J.B. Rana. It has been considered as the first written constitution of Nepal consisted of 6 parts, 68

Article 1 and schedule stated, although it has been used to say ‘the Government of Nepal Act, 2004 for this Constitution. But the original name of this constitution in Nepali is “Nepal Sarkar Baidhanik Kanoon, 2004.” Indeed, the literal meaning of “Nepal Sarkar Baidhanik Kanoon” in Nepali is the ‘Nepal Government Constitutional Act 2004’. Article 2 of this constitution announced the date of commencement of the Nepal Government Constitutional Act 2004. The Article 2 of this constitution stated “This law shall commence on 1 Baisakh 2005 B.S. (13th April, 1948 A.D.)”³ This constitution was promulgated at the end of the Rana regime. It can say that one of the motives behind the declaration of this Constitutional Act was to calm down the spirit of the movement. Likewise, it had aimed to make longer the Rana dynasty in the country. Because this constitution had not brought any change in the Rana regime. Neither there were made any changes in the privileges of the Prime Ministers nor limited the rights of the Prime Minister.⁴

Although the constitution had spoken for the establishment of multi party democracy against the family rule of the Ranas. The constitution declared the sovereignty of Nepal was vested in the then Rana regime. Similarly the executive power was vested in the Rana Prime Minister.⁵ Indeed this constitution was not able to deal with a lot of constitutional characters. There were not any provisions relating to the fundamental rights of the people, separation of power, rule of law etc. as well as no concept of implied limitation or basic structure of the constitution. This Constitution had not spent a single word for the amendment provision. It was the will of Shree 3 Maharaj who could make changes in the constitution easily. Therefore, this constitution is studied as so called constitution of Nepal. In fact, this constitution has never come into force in the practical life. It has merely been limited in the book.

² TOP BAHADUR SIGNH, CONSTITUTIONAL HISTORY OF NEPAL AN CONSTITUTIONAL DOCUMENTS (1st ed), 124, (2066 B.S.).

³ THE NEPAL SARKAR BAIDHANIK KANOON, (GOVERNMENT OF NEPAL ACT), Art. 2, (2004).

⁴ AMIR RATNA SHRESTHA, CONSTITUTIONAL LAW OF NEPAL, FREEDERAL(2nd ed), (2054).

⁵ THE NEPAL SARKAR BAIDHANIK KANOON, (GOVERNMENT OF NEPAL ACT), Art. 6, (2004).

3. The Interim Government Act of Nepal, 2007 B.S. (1951 A.D.)

The then Prime Minister Mohan Samsher was not satisfied upon the growing desire of people for democracy and freedom. Nepalese people had been raising their voice regarding the changes in the system since before the promulgation of the Nepal Sarkar Baidhanik Kanoon, 2004 (The Government of Nepal Constitutional Act, 1948). Eventhough Prime Minister Mohan Samsher's lukewarm attitude towards the implementation of Nepal Sarkar Baidhanik Kanoon, 2004 (The Government of Nepal Constitutional Act, 1948) created suspicion among the common people, the political parties and leaders about his real motive. The revolution of 2007 B.S. (1951 A.D.) against the autocratic family Rana regime made end the 104 years long Rana regime and set up democracy in Nepal. A tripartite agreement between the King, the Ranas and the Nepali Congress was made for the establishment of new political system in the country. As the result of the revolution, The Interim Government Act of Nepal, 2007 came into existence. The Interim Government of Nepal, 2007 was divided into 7 parts and 74 Articles. It had composed the constitutional provision that the executive power should vested in the King and Council of Ministers by making end the prerogative rights of Ranas.

The Interim Government Act of Nepal, 1951 has been considered as the Second constitution of Nepal. As above stated, The Interim Government Act of Nepal, 2007 B.S. (1951 A.D.) was promulgated after the overthrow of the Rana autocracy in 2007 BS (1951 AD). This constitution had come into force since 29th of Chaitra 2007 B.S. (11th April, 1951 A.D.).⁶ The constitution had for the first time of the constitutional history of Nepal declared for the formation of Constituent Assembly. The Preamble of the constitution stated that "hereafter our people shall be administered in accordance with a democratic constitution to be framed by the constituent Assembly elected by the people. Until such constitution is framed a council of Ministers composed of popular representatives having the people's confidence shall be constituted to aid and advise our administration."⁷ Likewise, this constitutional provision seems that it had aimed to constitute the political system of King in Council.

Because of the interim nature of the constitution, it was very flexible in nature. It had not mentioned the provision of amendment of the constitution. Although this constitution was amended six times during its eight years of existence.

⁶ INTERIM GOVERNMENT OF NEPAL ACT, Art. 1(2), (2007 (1951).

⁷ INTERIM GOVERNMENT OF NEPAL ACT, Preamble, (1951).

The second, fifth and sixth amendments were made by the King on the advice of the Council of Ministers and rest were made by ordinary powers.⁸ Probably, because of lack of proper constitutional provisions relating to the constitutional amendment, the constitution was amended haphazardly.

As above mentioned, the Preamble of the Interim Government Act of Nepal 1951 stated that “Whereas it is necessary till such time, as the constitution is not framed and promulgated, the administration of the country should function according to the constitution and certain rules and principles.” But the 4th amendment of the Interim Government Act of Nepal, 2007, which was made in 2nd Jestha 2015 BS (15th may 1958 AD) had altered the constitution in such a way that it eliminated the main objective of the constitution for which it was promulgated. The amendment excluded the constitutional provision of Constitutional Assembly. In this way the king underestimated the role of Council of ministers. He became success to make the council of ministers as his rubber stamp. As a result, the King slowly became more powerful and he alone exercised the constituent power. Indeed, this constitution had provided the ground for the King to intervene the political system and prevail his power. The King could amend and repeal the constitution in his will.

4. The Constitution of the Kingdom of Nepal, 2015 B.S.(1959 A.D.)

The Constitution of the Kingdom of Nepal which was promulgated on 1st of the Falgun 2015 B.S.(12th February, 1959A.D.) is considered as the third constitution of Nepal. Actually the name of this constitution was only ‘The Constitution of the Kingdom of Nepal’, but it has been saying that the ‘Constitution of the Kingdom of Nepal, 2015’.

The Constitution was a more democratic constitution in comparison with previous two constitutions. This constitution was the first constitution which had adopted multiparty parliamentary system. The constitution had incorporated some special characteristics, such as the system of formation of government through the election of Parliament on the basis of adult franchise⁹, executive power vested on the King and the Council of Ministers, bicameral parliament, constitutional monarchy which embraced the King was also a part of the Parliament (King in Parliament), King’s emergency power, Supreme court, independent judiciary, election commission etc. But

⁸ Dr. Krishna Belbase, *Constitutional Failure: a Case Study of Nepal*, NEPAL LAW REVIEW, 103 Vol. 36, (2011).

⁹ THE CONSTITUTION OF THE KINGDOM OF NEPAL, Art. 22, (2015).

late King Mahendra Bir Bikram Shah Dev wiped out the Parliamentary system by exercising the Article 55 of the constitution and promulgated the new constitution with partyless Panchayat system in 2019, after four years of its existence.

The Constitution had provided the provisions relating to the constitutional amendment for the first time in the constitutional history of Nepal. Article 53 of the Constitution of the Kingdom of Nepal, 1959 was related to the constitutional amendment. Parliament may amend or repeal any of the provisions of this Constitution by a Bill passed by both Houses of parliament and assented to by His Majesty and to which the Royal Seal is affixed.¹⁰ The procedures for amendment of the constitution were provided in the clauses A, B and C of Article 53(1). Clause A of the Article 53(1) of the constitution clarified the limitation of the amendment. According to the Clause A of the Article 'A Bill to amend the Constitution shall be so described and shall contain no provisions other than those relating to the amendment of the Constitution.'

The constitution had mentioned the provision relating the required number of the House of Representatives and the Senate for the amendment of the constitution. The Bill shall be deemed not to have passed the House of Representatives and the Senate unless it was supported on its final reading in each House by not less than two- thirds of all the members thereof.¹¹ Similarly the Article had provided the constitutional provision about the certification of the amendment of the constitution. The Bill shall when presented for the Royal Assent of His Majesty have endorsed on it a certificate by the Speaker of the House of Representatives and the President of the Senate that the provisions of this clause have been - complied with.¹²

Clause D of the Article is important in the sense that it had clearly declared the role of the King regarding the amendment of the constitution. The Clause had provided the prerogative rights to the King. The King was given the discretionary power whether the amendment in constitution shall be granted or not. Granting or withholding His assent, His Majesty shall act in His discretion.¹³ In the same way, according to the Article 53(2) a certificate of

¹⁰ THE CONSTITUTION OF KINGDOM OF NEPAL, Article 53 (1), (2015).

¹¹ Ibid, Art. 53 (1) (B).

¹² Ibid, Art. 53 (1) (C).

¹³ Ibid, Art. 53 (1) (D).

the Speaker and the President under clause (1) shall be conclusive for all purposes and shall not be questioned in any court.¹⁴

According to the Clause D of the Article 53(1) and Sub Article 2 of the Article 53, it is clear that this constitution had provided the discretionary power to the King. The King could amend any of the Articles of this constitution in his interest. There was not any system of check and balance on the King's action. It seemed that the King used the amendment provision to strengthen his dynasty. Because the constitution had clearly stated that the act of constitutional amendment was not subject to judicial review. Indeed the constitution itself was not strong. Article 77 had provided full authority to make the constitution whatever the King wanted under the provision 'Power to remove difficulties'. The provision of constitutional amendment was meaningless in the context of the Article 77(1). If any difficulty arises in bringing this constitution into force His Majesty may make such order as he deems necessary to remove that difficulty; and such order may direct that the provisions of this constitution shall, during such period as may be specified in the order, have effect subject to such adaptation whether by way of modifications, additions, or omissions as he may deemed to be necessary or expedient.¹⁵ It can be said that the provisions related to the constitutional amendment provided by the Article 53 of the constitution was *over shaded* by the Article 77(1) in the name of "*Power to remove difficulties.*" The constitution could not exist more than three years. The constitution was suspended on 1st Poush 2017 B.S. (15th December 1960 A.D.) by power seeker King Mahendra.

4. The Constitution of Nepal, 2019 B.S. (1962 A.D.)

The Constitution of Nepal, 2019 B.S.(1962 A.D.) is known as the fourth constitution of Nepal. The constitution was promulgated on the 1st Poush, 2019 BS (16th December, 1962 A.D.). The constitution was divided into 20 parts, 97 Articles and 2 schedules. The constitution had established Single party system in the name of 'Panchayat System' replacing the multiparty and constitutional monarchy which was guaranteed by the previous constitution. Late King Mahendra had promulgated the constitution considering himself as the source of the constitution in the basis of customs and traditions.

¹⁴ Ibid, Art. 53(2).

¹⁵ Ibid, Art. 77(1).

For the first time in the constitutional history of Nepal this constitution had declared itself as the fundamental law of the land.¹⁶ Regarding the incorporation of the provision relating to the amendment of the constitution, this constitution had provided completely narrower provision. Article 82 of the constitution had provided the provisions relating to the constitutional amendment. According to the Article the King was entitled to amend the constitution as per His need. His Majesty might proclaim the amendment of this constitution through royal declaration.¹⁷ Article 82(2) provided the procedure to the King for amendment of the constitution. It stated that His Majesty should exercise the power specified in sub clause (1) only after the consulting the special committee specified in sub clause (3) and only when it is consented to by a majority of at least two thirds of the total membership of that committee.¹⁸ But practically the King could amend the constitution by his declaration without any consent of that so called committee. Therefore , the king used the power to amend the constitution haphazardly as he wanted. This constitution was historic in the sense that it had introduced party less *autocratic Panchayat system*. The King was empowered above than the constitution.

There were made three times amendments in the Constitution. Late King Mahendra amended the constitution on 14th of Magh, 2023 B.S. (27th January, 1967) and late King Birendra amended on 26th Mangsir, 2034 (11th December, 1977) and 1st Poush 2037(15th December,1980). Among those three amendments the first and second amendments made the constitution more vindictive and third amendment had excluded some of the vindictive provisions of the constitution. The third amendment of the constitution was mentionable in the sense, the amendment had initiated to make the Panchayat Policy and Investigation Committee as the constitutional body of the nation. Late King Birendra had strengthened the autocratic nature of political system through the amendment. Eventually, this initiation had become meaningless. The constitution was not able to address the emerging interests of the Nepalese people. The provision of constitutional amendment was exercised merely for the sake of the King and royal dynasty, not for the sake of the Nepalese people at large and the constitution failed to exist. Only an existence of this constitution was the vindication of the failure of constitutionalism.

¹⁶ THE CONSTITUTION OF NEPAL, Article 1, (1962).

¹⁷ Ibid, Art. 82(1).

¹⁸ Ibid, Art. 82(2).

As above mentioned, this constitution was amended three times, but none of them had incorporated the characters of democratic constitution. Thus, the failure of the Panchayat constitution can be attributed to number of factors but its main failing was its inability to cope with political opposition. Finally, the constitution was thrown away by the popular peoples' movement in 2046 BS and restored multi party democratic system in the country.

5. The Constitution of the Kingdom of Nepal, 1990 (2047 B.S.)

The constitution of the Kingdom of Nepal was promulgated on 23rd Kartik, 2047(9th November, 1990) after the successful peoples' movement, launched in 2046 BS (1989 AD). The opposition political forces had continuously struggled for thirty years against the Panchayat system for the establishment of multiparty democratic political system in different ways. The opposition forces, the Nepali Congress and the Leftist forces made unified effort to make success the peoples' movement in 2046(1989). Many people sacrificed themselves in this massive movement for the establishment of multi party democracy in the country. The movement was concluded successfully. As result, late King Birendra was compelled to declare the end of partyless autocratic Panchayati system and proclaimed multi party democratic political system. The success of the movement also paved the way for making of a new democratic political system. There was formed a nine members 'Commission for Constitution Counsel' to draft a new constitution by collecting different suggestions from the people. As per the recommendation of the commission for constitution counsel, late King Birendra Bir Bikram Shah had Promulgated the Constitution of the Kingdom of Nepal, 2047, (1990 A.D.) on the date of 23rd of Kartik 2047 (9th November, 1990 A.D.). There was made a consensus between the King and agitating political forces. This constitution was the result of the agreement among three political forces of the country. They were- the King, Nepali Congress and United Left Front.

The constitution was divided into 23 parts, 133 Articles and 3 schedules. The constitution had tried to address wide range of democratic values. It had incorporated the provisions for fundamental rights, sovereignty inherent in people, constitutional monarchy, multi party democracy, adult franchise, independent judiciary as well as embraced the principle of the rule of law. The constitution incorporated basic principles of a liberal democratic constitution. Therefore, it can be said that this constitution was more democratic than previous constitutions.

Article 116 of the constitution of the Kingdom of Nepal, 1990 had provided the provision related to the constitutional amendment. Article 116(1) stated that “ A Bill to amend or repeal any Article of this Constitution, without prejudicing the spirit of the Preamble of this Constitution, may be introduced in either House of Parliament: Provided that this Article shall not be subject to amendment.” If there has been considered the basic structure as the spirit of the preamble, the protection of fundamental human rights, sovereign rights vested on the people, adult franchise, parliamentary governance system, constitutional monarchy, multiparty democracy, independent judiciary and rule of law were considered as basic structure.

Similarly the Sub Article 2 and 3 of the Article 116 prescribed the procedure for the amendment of the constitution. The Sub Article 2 had arranged the provision relating to the requirement of the number of the members of Parliament to pass the Bill. If each house, with two thirds of its total membership attending, passes a Bill introduced pursuant to Clause (1) by majority of at least two-thirds of the members present, the Bill shall submitted to His Majesty for assent; and His Majesty may, within thirty days from the date of submission, either grant assent to such Bill or send the Bill back for reconsideration with His message to the House where the Bill originated.¹⁹

Likewise, in other hand the Sub Article 3 had written the role of His Majesty to grant assent the Bill relating to the amendment. A Bill sent back by His Majesty pursuant to Clause (2) above shall be reconsidered by both Houses of Parliament; and if both the Houses, upon following the procedures referred to in Clause (2), resubmit the Bill in its original or an amended form to His Majesty for assent, His Majesty shall grant the assent to such Bill within thirty days of such submission.²⁰ At the end era of this constitution the amendment process was completely meaningless. The then King *Gyanendra* had suspended the constitutional spirit and the principle of constitutionalism and he himself declared as above than the constitution. But the result was very much bitter for himself. The people of Nepal condemned him deficiently and not only the King, but whole about 250 years long royal dynasty was also overthrown by the great peoples movement of 2002 (2062/063 B.S.).

6. The Interim Constitution of Nepal, 2063 B.S. (2007 A.D.)

The Interim constitution of Nepal, 2063 B.S. (2003 A.D.) was the great achievement of the historical peoples' peaceful revolution of 2062-2063 B.S.

¹⁹ THE CONSTITUTION OF KINGDOM OF NEPAL, Art. 116(2), (1990).

²⁰ Ibid, Art. 116(3).

(2002 AD), successfully launched by the Nepalese People. After the successful completion of the massive revolution of 2002, the Royal Dynasty (Monarch) was thrown away and established Nepal as a democratic republic country for the first time in the history of Nepal. As the result, on the date of Magh 1st 2063 BS (January 15th 2007) the Interim Constitution of Nepal 2063 BS (2003 AD) was proclaimed by the House of Representatives and ratified by the Interim Legislation in the name of Nepalese people.

The preamble of the Interim Constitution stated that ' We, the sovereignty and state authority inherent people of Nepal, Respecting the people's mandate expressed in favor of democracy, peace, prosperity, forerunner, and socio-economic change, through historical struggles and people's movements launched by the people of Nepal at various times since before 2007 (1951) to till the date; ...hereby declare this Interim Constitution of Nepal 2063 BS (2007 AD).²¹ The Preamble of the Interim Constitution had clearly designed its scope and time frame. Nepalese people were entitled to make the constitution by themselves through Constituent Assembly.

The Interim Constitution was come into existence through a political consensus for the certain time period i.e. until a new constitution is promulgated by the constituent Assembly. Hereby declare, with a view to institutionalizing the achievements made through the revolutions and movements till now, the promulgation of this Interim Constitution of Nepal 2063 (2007), which has been made through a political consensus and to be in force until a new constitution is framed by the Constituent Assembly.²² The constitution was divided into 25 parts, 167 Articles and 4 schedules. This constitution had established Nepal as a secular and republican state and it provided the unicameral legislation parliament, election to the constituent assembly, recognition of human rights commission as a constitutional organ, originally the appointment of the Commander-in- Chief by the Prime Minister, provision related to the structure of the state and local self governance and transitional system of the state so on.

Article 148 of the Interim constitution of Nepal, 2063(2007) was related to the provisions of amendment of the constitution. A Bill to amend or repeal any Article of this constitution may be introduced in the legislature-parliament.²³ Similarly Sub Article 2 of this Article mentioned the procedures

²¹ THE INTERIM CONSTITUTION OF NEPAL, Preamble, (2063).

²² Ibid

²³ Ibid, Art. 148 (1).

for the amendment of the constitution. The sub Article talked about the required number of legislators to pass the by the Legislature-Parliament. If a Bill introduced pursuant to clause (1) is approved by at least two thirds of all the members of the legislature-parliament, the Bill shall be deemed to have been passed.²⁴

It had provided the narrower provisions for the amendment of the constitution because of its interim nature. As per the constitutional provision the Legislature-Parliament had amended the constitution for twelve times during its existence. The 1st amendment in the constitution had taken place on 14th March 2007. Likewise 2nd amendment was done on 13th June 2007. During the constitutional practice, this constitution was amended on 28th December 2007 for the 3rd time. Similarly 4th amendment had taken place on 29th May 2008. On the date of July 13, 2008 the constitution was amended for the 5th time. The 6th amendment in this constitution had taken place on 15 December 2008. On 31st January 2010 the 7th amendment had made. Likewise there was 8th amendment in this constitution on the date of 28th May 2010. On 28 May 2011 9th was done. Similarly the 10th amendment of the constitution had taken place on 31st August 2011. Likewise 11th amendment had done on the date of 30th November 2011 and finally, the 12th amendment of the constitution had taken place on 20th May 2012.

The 4th amendment was important in the sense that it had abolished the Monarchy from the country. Politically, this amendment made historical change in the political history of Nepal. The amendment had inserted 'declaring Nepal as a federal democratic republic state upon duly abolishing the monarchy.' Similarly the amendment had repealed the constitutional provision of the Article 4 of the interim constitution. It redefined, Nepal is an independent, indivisible, sovereign, secular, inclusive and federal, democratic republican state.²⁵ The Interim Constitution of Nepal 2063 B.S (2007) had played important role to deal with political environment during the transitional political system. It has successfully contributed to address different political, cultural, linguistic, ethnic and geographical aspects during its existence.

7. The Constitution of Nepal

The Constitution of Nepal was promulgated on the date of 3rd Asoj 2072 B.S. (20th September, 2015 A.D.) by the Constituent Assemble for the first time

²⁴ Ibid Art. 148 (2)

²⁵ Ibid, Art. 4(1).

in the history of Nepal. There was held the constituent assembly election in 2064 for the first time to make constitution but the first Constituent Assembly was not able to promulgate constitution and again there was held another Constituent Assembly election in 2070. The Constituent Assembly made hundreds of efforts to make a new constitution as the Nepalese people showed their interest through the peoples peaceful revolution of 2062/063. The Constitution of Nepal is able to establish Nepal as a Federal Inclusive Democratic Republic country for the first time in the history of Nepal.

The constitution has established the principle of sovereignty, autonomy and self-rule in the constitution. we the people of Nepal, internalizing the people's sovereign right and right to autonomy and self-rule, while maintaining freedom, sovereignty, territorial integrity, national unity, independency and dignity of Nepal do hereby pass and promulgate this constitution, through the Constituent Assembly, in order to fulfill the aspirations for sustainable peace, good governance, development and prosperity through the federal democratic republican system of governance.²⁶ Likewise, the Constitution of Nepal has determined to build prosperous country. Being committed to socialism based on democratic norms and values including the people's competitive multiparty democratic system of government, civil liberties, fundamental rights, human rights, adult franchise, periodic elections, full freedom of the press and independent, impartial and competent judiciary and concept of the rule of law, and build a prosperous nation.²⁷

The constitution is divided into 35 parts, 308 Articles and 9 schedules. Part 31 of the Constitution of Nepal is related to the amendment of the constitution. Article 274(1) has mentioned the provision of restriction to amend the constitution. No amendment shall be made to this Constitution in manner to be prejudicial to the sovereignty, territorial integrity, independence of Nepal and sovereignty vested in the people.²⁸ Whereas the importance and existence of this Sub Article (1), the Sub Article (2) of Article 274 has clearly denoted that the above mentioned Sub Article (1) shall not be amended.²⁹ Similarly, the Sub Article (2) of the Article 274 has provided the provision relating to amendment of the constitution. Subject to Clause (1) and other Articles of this Constitution, a Bill to amend or repeal any Article of this

²⁶ THE CONSTITUTION OF NEPAL, Preamble. (2015 A.D)

²⁷ Ibid, Preamble.

²⁸ Ibid, Art. 274(1)

²⁹ Ibid, Art. 274 (2).

Constitution may be introduced in either House of the Federal Parliament.³⁰ The Sub Article (3) of the Article 274 has provided the provision relating to the procedure for the amendment of the constitution. A Bill introduced pursuant to Sub Article (2) shall be publicly published for information to the general public within thirty days of its introduction in the concerned House.³¹

Sub Articles (4), (5), (6) and (7) are related to the procedure regarding the alteration in the border of any State or matters set forth in the Schedule 6 of the constitution. If a Bill introduced pursuant to clause(2) is related with the alteration in the borders of any state or matters set forth in Schedule-6, the speaker or the Chairperson of the concerned House must send that Bill to the State Assembly for its consent, within thirty days after its introduction in the Federal Parliament.³² Sub Articles (9) and (10) of the Article 274 has provided the role of the President in the process of amendment of the constitution. Sub Article (9) of the Article 274 has clearly mentioned the compulsory role of the president for assent on the amendment. According to the Sub Article a Bill passed under Sub Article (8) shall be presented to the President for assent. When the Bill is introduced to the President for assent, the President shall give assent to a Bill presented under clause (9), within fifteen days from the date of its receipt, and the Constitution shall get amended from the date of assent.³³

In this way Nepal has experienced different constitutions. Each of them tried to up hold the political philosophy of the existing time. It can be easily delineated from the study of the history of Nepal that how Nepal has been developing her political philosophy as per the pace of international phenomena and the development of time and consciousness of the domestic people. It can also be said that Nepal has been trying to constitute a constitutional framework which can address the desire of the Nepalese people since long time.

8. Processes adopted for promulgating the constitution

Definitely, different processes have been practicing to make constitution in the world. Nepal also has been witnessed different processes during the development of constitutional history of Nepal. The processes for the promulgation of the constitutions may be dependent upon the prevailing

³⁰ Ibid, Art. 274 (2).

³¹ Ibid, Art. 274 (3).

³² Ibid, Art. 274 (4)

³³ Ibid, Art. 274 (10).

circumstances. The existing circumstance determines the process for the promulgation of the constitution. The Nepalese perspectives regarding the processes adopted for the promulgation have not been similar since the promulgation of the first constitution. Different processes have been experienced for the promulgation of the constitutions in Nepal.

Indeed, there has been rising debate regarding the promulgation of the Nepal Government Constitutional Act, 2004 BS (1948 AD), which is considered as the first constitution of Nepal. The constitution was promulgated by the then Prime Minister Shree 3 Padma Samsher Jung Bahadur Rana. The main debate was regarding the authority for the promulgation of that constitution. There was the King Shree 5 Tribhuvan Bir Bikram Sahadev. He was considered as the ultimate source of the state power. But the then Prime Minister Shree 3 Padma Samsher Jung Bahadur Rana had promulgated the Nepal Government Constitutional Act, 2004 BS (1948 AD) with the backing of authoritative Rana family regime by underestimating the King's role for the promulgation of the constitution. Actually Padma Shumsher J. B. Rana was not entitled to promulgate the constitution. He proclaimed the constitution with the power of the autocratic family Rana regime but still, there is not satisfactory answer about from where the then Prime Minister had acquired the authority to promulgate the constitution. The sovereign rights to promulgate the constitution was entitled only to the King. As well as the people also had not provided the rights to promulgate the constitution to the Prime Minister. Rather it can be said that the constitution was promulgated on the basis of 'Panjapatra', which was domesticated by creating bloodshed incident. Therefore, the source of the first constitution was not constitutional itself.

It can be said that the sovereign power of the state was abducted by the Rana autocratic family rule since the bloodshed incident of Nepalese history, which has been known as 'Kotparva' (court massacre), of 1903 BS. After the 'Kotparva' (court massacre), the autocratic Rana family rule domesticated the political power from Shah dynasty. After domestication of the political power from the Shah dynasty, the Rana dynasty made the Shah King as the puppet of autocratic family Rana regime for near about hundred years. The nature of promulgation of the interim Government Constitution of Nepal, 2007 BS (1951 AD) was different than the previous one. The constitution was promulgated by late King Shree 5 Tribhuvan Bir Bikram Shah on 17th Chaitra 2007. This constitution is considered as the second constitution of Nepal.

Before the proclamation of the second constitution, on the date of 6th Falgun 2007, on behalf of Rana regime, Hari Bahadur Shrestha had formally handed over the sovereign rights, which were vested in the Rana Prime Minister to late King Tribhuvan by providing “Lalpeti” (there was a key of small box in which Panjapatra and Lalmohar were kept in the Lalpeti) to the King.

The process of declaration of the third constitution of Nepal was different than previous. On the date of 1st Falgun 2015 the late King Mahendra declared the Constitution of the Kingdom of Nepal, 2015. Late King Mahendra himself claimed that the state authority and engulfed royal prerogative rights were inherited with him in according to the traditions and customs and he promulgated the constitution by exercising that prerogative rights. It is also used to say that this constitution was a royal gift to the people. It has been heard that Sir Ivor Jennings had provided mentionable contribution to make this constitution.

The fourth constitution of our country, the Constitution of Nepal, 2019 was promulgated by late King Mahendra on the date of 1st Poush 2019 by curtailing the rights which were provided by the previous constitution including adult franchise, multi party political system and so on. This constitution was the second constitution that late King Mahendra had proclaimed. The King again perceived himself as the source of the constitution in accordance with the traditions and customs. Likewise, the Constitution of the Kingdom of Nepal, 2047 was the fruitful outcome of the peoples massive movement of 2046. The King alone was not entitled to promulgate the constitution this time. There was tri-party consensus among the King, the Nepali Congress and the United Left Front (ULF) to promulgate the Constitution of the Kingdom of Nepal 2047. For the first time in the political history of Nepal, the role and participation of the agitating political forces had also taken part to make the constitution for the nation. There was formed a nine member Commission for Constitution Counsel. This constitution was promulgated in the recommendation of Commission for Constitution Counsel.

Numerous constitutional experts have been used to said that one of the causes behind the failure of the Constitution of the Kingdom of Nepal, 2047 was the lack of adequate sincerity with the concerned stakeholders of the constitution. Each and every part of the polity was irresponsible. The constitution was encroached by both the peaceful and violent means. The constitution could not exist in proper way. Consequently, after the 15 years

of its existence Nepalese people demanded new and participatory democratic political system through the peoples' peaceful movement of 2062/063. After the successful movement of 2062/063 there was restoration of the House of Representatives and in the mean time, the House of Representatives promulgated the Interim Constitution of Nepal 2063 BS (2003 AD) on the date of Magh 1st 2063 BS (January 15th 2007). The existence of the Interim constitution ended along with the declaration of the Constitution of Nepal.

Likewise, the Present constitution, the Constitution of Nepal is promulgated by the Constituent Assembly. The constitution was promulgated after six years of exercise. The first Constituent Assembly was not able to promulgate the constitution and the second Constituent Assembly which was formed by the second Constituent Assembly election held in 2070 B.S. (2013 A.D.) had promulgated the Constitution of Nepal on the date of 3rd Asoj 2072 B.S. (20th September, 2015 A.D.) after one and half year long exercise.

9. Establishment of Models and Political Philosophy along with the promulgation of the constitutions

Nepal has been also experienced various models of promulgation of constitutions which have been prevailing in the world since long time. All the constitutions have been carried out distinct political philosophy. Formation of Constituent Assembly, referendum, Constitutional Commission, constitutional convention, ratification by the Legislature, declaration by the Head of the State and promulgation by the ruler who hold the political power are generally accepted models to make a constitution in the present world. All the countries, which have written constitution, have been followed any of these models to make their constitution. Interestingly, Nepal herself has experienced all of the above mentioned modalities during the constitutional development in the country. Generally, these models are depend upon the dominant political philosophy of the particular time.

10. Conclusion

In this regard, the first written constitution of Nepal, the Nepal Government Constitutional Act, 2004 BS (1948 AD) was promulgated by Rana ruler Padma Shamsher who hold the political power at that time. The constitution was promulgated to provide constitutionality to the barbaric behavior of the autocratic family Rana regime. The Act had stand for the political philosophy of the autocratic family Rana rule in the country. Similarly, The Interim Government Constitution of Nepal, 2007 BS (1951 AD), which has been

considered as the Second constitution of Nepal was promulgated by Late King Tribhuvan Bir Bikram Sahadev. Late King Tribhuvan was designated as the Head of the state. The constitution had carried democratic values. So, it can be said the constitution was of more democratic modality than the previous constitution.

Likewise, the third constitution, the Constitution of the Kingdom of Nepal, promulgated on 2015 BS (1959 AD) was promulgated by Late King Mahendra. the constitution had ensured different constitutional rights including adult franchise, periodical election of parliament. The constitution emphasized to the modality of the parliamentary multiparty political system. Similarly, the fourth constitution, The constitution of Nepal, 2019 BS (1962 AD) was also promulgated by Late King Mahendra by violating political rights provided by the previous constitution. Late King Mahendra had tried to establish his political philosophy which has been known as autocratic 'Panchayat' system through this constitution. The constitution had carried out the political philosophy of party less autocratic 'Panchayat' system.

Similarly, the fifth constitution of Nepal, the Constitution of the Kingdom of Nepal 2047 was promulgated on 23rd Kartik 2047 BS (1991 AD). The model adopted for the promulgation of the constitution was completely different than previous constitutions. It can be said that the Constitution of the Kingdom of Nepal, 2047 was the outcome of the tri-party agreement among the King, the Nepali Congress and United Left Front (ULF). Late King Birendra had constituted a nine member commission for constitution counsel. On the date of 23rd Kartik 2047, on basis of the consultation and consent the Cabinet, Late King Birendra had promulgated the Constitution of the Kingdom of Nepal, 2047 drafted by the Commission for Constitution Counsel.

No doubt, the constitution had carried out multi party democratic model of political system. The constitution had adapted the Nepalese people are the source of state authority, protection of basic human rights of the people, adult franchise, independent and competent judiciary, rule of law etc. The Interim Constitution of Nepal 2063 has been considered as the sixth constitution of Nepal. The main basis of the Interim Constitution was the successful peaceful peoples' revolution of 2062/063 B.S. The Interim Constitution 2063 had guaranteed the sovereignty and state authority is inherent with the people and established Nepal as a democratic republic

country for the first time in the history of Nepal. The latest constitution, the Constitution of Nepal was promulgated by the Constituent Assemble for the first time in the history of Nepal. It has established Nepal as a federal inclusive democratic republican state. Similarly the constitution has committed to socialism based on democratic norms and values including the people's competitive multiparty democratic system of government, civil liberties, fundamental rights, human rights, adult franchise, periodic elections, full freedom of the press and independent, impartial and competent judiciary and concept of the rule of law and build a prosperous nation.

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