

# The Rising Nepal: Constitution of Nepal 2015

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## Abstract

Nepal has achieved a great success by drafting and promulgating the new constitution. The Constitution of Nepal has come into effect on September 20, 2015 by replacing the interim constitution of 2007.

Due to the failure of the First Constituent Assembly it led to the drafting of the New Constitution of Nepal by the Second Constituent Assembly. The drafting of the constitution was assigned upon First Constituent Assembly but it fails to produce a constitution in its prescribed period. With the proclamation of the new constitution, the state has set the new path for economic and social transformation which the states and its citizens were waiting for long. It has ended the extended political transition and marked the era of peace, stability and economic prosperity.<sup>1</sup>

## History of Nepal's Six Constitutions

The Nepal had six Constitutions, the constitution of 1948, 1951, 1990 and interim constitution of 2007.

### 1. The Government of Nepal Act 1948

In 1948 the first Constitution of Nepal was made, and it was titled as "Government of Nepal Act 1948". In that period the country was ruled by the king and it was led that the country was under the control, then prime minister, from Rana Dynasty. The prime minister has total control over the affairs of the state. The 1948 document was introduced and it enacted on 1<sup>st</sup> April 1948. The Constitution had contained with 68 articles. The power was solely rested with Prime Minister to Select a bicameral legislature members or to amend the decision made by them.

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<sup>1</sup> Constitution of Nepal-Wikipedia the free encyclopaedia  
<http://en.m.wikipedia.org> ,13.03.2016,12:00pm.

## **2. The Interim Government of Nepal Act 1951**

This Act was declared after the Revolution of 1951 that the extent of Rana period. This document enhanced the authority of the king and introduced the significant amendments such as creation of the Supreme Court and the insertion of fundamental rights and socio economic goals to be persisting by the nation.

## **3. The Constitution of Kingdom of Nepal 1959**

In 1959 parliamentary elections were conducted by the king Mahendra Bir Bikram Shah. He established other constitution just before elections.

## **4. The Constitution of Nepal 1962**

King Mahendra established the Panchayat Constitution which had the provision of forming local assemblies. However, the king had the sole power in this system. Democracy was limited and no one could form political parties.

## **5. The Constitution of Kingdom of Nepal 1990**

A revolt in 1990 pressurized Birendra Bir Bikram Shah to promulgate a new constitution and to switch to constitutional monarchy. Now, the king didn't have the sole power like before. A multiparty system with parliamentary system of Government was formed.

## **6. The Interim Constitution of Nepal 2007**

The Interim Constitution which was adopted on January 15, 2007 announced the abolition of monarchy. But it was implemented only on May 27, 2008 after the first meeting of Constituent Assembly.<sup>2</sup>

### **Making Process of Constitution: Nepal Constituent Assembly<sup>3</sup>**

The provisional constitution contained a Constituent Assembly, who was given a charged for writing a Nepal's permanent constitution. The first constituent assembly was elected in 2008 to form the new constitution but due to the disagreements and

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<sup>2</sup> <http://kathmandupost.ekantipur.com/news/2015-09-24> visited on 3/13/2016 at 01:26 pm

<sup>3</sup> Ibid 1

differences between the political parties it could not be produced within a allotted time. Under the term of provisional constitution, the new constitution was set to be declared by April 28, 2010. But it was delayed by a year because of opposition. On May 25, 2011, the Supreme Court of Nepal ruled that 2010 delay of the constitution was not right. Since May 29, 2011 the constituent assembly often extended the interim constitution.

On May 28, 2012, the constituent assembly was deliquescing as it failed to finish the constitution within a given time.

The state got the new constituent assembly by an election held on November 19, 2013, the second constituent assembly and political leaders take oath to frame a new constitution within a year. The new assembly precisely committed that the new constitution would be proclaimed on January 22, 2015. However, due to continued misunderstandings, differences on important issues including governed system, judicial system and other issues of the state. It could not be finalised and proclaimed in time, but the new route of second constituent assembly ended successfully with the proclamation of the new constitution on September 20, 2015.

### **Basic features of the Constitution**

The constitution of Nepal is in a written form. Some of the primary ingredients of the Constitution include the following:

- The Constitution states that Nepal is a federal State and it has divided the nation into seven states and constitution does not recognise any unitary structure.
- Constitution has established a bicameral parliamentary system created with two houses at the centre and unicameral parliamentary system in each state.
- The Constitution of Nepal has given a full freedom to the press and also made provision s for the independent and impartial judiciary.
- The Constitution has not adopted any religion as the official religion of the state. It embodies the principle of secularism and confers the liberty upon the people to practice any religion of their own choice.
- Nepal has been regarded as the multiparty democratic system.

- According to the constitution of Nepal all the executive rights of the country are vested in the council of ministers.
- President of Nepal has been given the position of the ceremonial head.
- The new constitution has also brought to the end of monarchy. The president of Nepal would be referred as head of state and the Prime Minister will be appointed by the Constituent Assembly and it will hold the enormous executive powers.
- The Principle of proportional inclusion and participation was introduced which is significant step in attaining economic equality and social justice.
- Full right including civil, human, fundamental and voting rights has been conferred upon the people of the state.<sup>4</sup>

### **Highlights of the Constitution of Nepal 2015**

- The constitution of Nepal has been made flexible, so that it can be easily amended by the majority votes of two-third members of parliament.
- The imperative step has been taken to maintain the stable government as they were not disposed a power of the prime minister to render the Constituent Assembly.
- The number of states and the boundaries of the state can be altered according to the provisions of the constitution. The power of fixing the boundary of state has been conferred upon the special commission.
- Nepal has adopted a mixed election system. It comprises of two Constituent Assembly Representative and National Assembly. Representative Assembly shall consist of 165 directly elected member and 110 proportionate members; whereas national assembly shall consist of 56 members

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<sup>4</sup> SnehaSuman, The Constitution of Nepal, <http://www.legalservicesindia.com/article/article/the-constitution-of-nepal-1952-1.html> visited on 13/03/2016 at 01:00pm

elected from seven states and 3 members shall be appointed by the President.

- Prime Minister shall be regarded as the executive of the state and President shall be jointly elected by Federal Constitution member.
- There are total 550 members in Parliament.
- High Courts shall be instituted in each state and the district Court shall be instituted in every district headquarters. The Supreme Court will be instituted in the Central State.
- The constitution of Nepal had a unique feature as it laid down under its Article 14 which provides some rights given to the non-residential citizens like economic rights, social rights and cultural rights.
- Article 274 of the Constitution state that everything except country's sovereignty, geographical integrity independence and sovereignty vested on people are amendable.
- The constitution also provides 33 per cent political representation to the women.
- Nepal has abolished death penalty and it has become a second country in the Southeast Asia after Bhutan.<sup>5</sup>

### **Controversy over 2015 Constitution**

The formulation of the new constitution was shortly followed by the controversy. It was stated that after the implementation of constitution there was blockage of all check posts at Nepal-India Border. Many activists from human rights assembly and few indigenous bodies in low land Nepal started accusing and protesting against the contents of the constitution for being the gender specific biased expressly in concern to citizenship provisions. They imposed allegation upon new constitution for making it rigid on part of women to pass citizenship to their children as related to men.

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<sup>5</sup> Ibid 14.

In addition, other communities started revolt against the new constitution. Madhesi and indigenous population views that the constitution was not successful in addressing the needs of marginalized societies and supports the situation of the ruling groups. They are resisting mainly over the federal picture of new states as proposed in the constitution fearing existing differentiation could affect their political representation. A Human Rights activist has condemned the Nepal government as well as the agitator for the contravention of human rights during the revolt.

Addition to all this controversy, there was another issue which took place in the country. The country laid down the Nepalese Citizenship rules to protect the state from being overpowered by Indian immigration and which India claims be partial against Madhesis of Indian Origin, the Constitution which was framed and the final constitution that passed were different on this issue.<sup>6</sup>

## **Conclusion**

Nepal finally has a constitution which on the whole is progressive. Like any other constitution it has loopholes. Though it seems to be a strong constitution and has been well received by the people of Nepal .the several provisions contained in the constitution make it distinct from the constitution of India for example – The Constitution of India does not give any political representation to women whereas the Nepal’s Constitution contains 33per cent political representation to women. Another example – The Constitution of Nepal has abolished the death penalty but in India it is still there.

The achievement of any Country’s constitution depends on its effective application. The political parties should remain united for the effective application of new constitution as they were during its formulation. They should act quickly to resolve the crisis so that the Constitution will help to serve best interests of the people of Nepal.




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<sup>6</sup> Constitution of Nepal-Wikipedia the free encyclopaedia  
<http://en.m.wikipedia.org> ,13.03.2016,12:00pm