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Nepal: Constitution Making: Slim Chance of adhering to the Deadline of January 22: Update No. 303

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By Dr. S.Chandrasekharan.

It looks almost certain that the self-imposed deadline of 22nd January to get the new constitution ready cannot be adhered to.

It was in April 2008 that elections were held to have an interim constituent assembly to formulate a new constitution. Despite many extensions, the task could not be completed. Another election took place in November 2013, once again for another constituent assembly (called CA II) to complete the constitution making. According to the calendar made by the Assembly, the contentious issues should have been resolved and a draft was to have been placed before the CAII by October 10 and even here the deadline was extended more than once.

October 10 passed and the squabble continued. Finally this week, the committee formed to resolve the contentious issues called the CPDCC chaired by Baburam Bhattarai of UCPN (M) having 71 members gave a kind of a descriptive report without resolving any of the contentious issues placed before them or even taking a stand on such issues. The contentious issues remained contentious after many months of discussions! The Chairman in using his "prudence" had reported weakly - I repeat-" Although attempts for consensus are at the final stage, consensus is yet to be forged and the panel has not been able to prepare a questionnaire . . . the committee needs more time for discussions." Deadlines have had no respect in the past and will not be so in future too.

This shows utter helplessness of Bhattarai, the chairman of the CPDCC (Constitutional Political Dialogue and Consensus Committee). For this he has to blame only his Party Chief Dahal who had been found to be opportunistic at every turn and not allowing any forward move in finalising the constitution. At one point recently as part of a deal, the three parties consisting of the Nepali Congress, the UML and the

UCPN (M) agreed on 23rd November to forward the joint proposal given by the NC and the UML to the Assembly for discussions. But the very next day Dahal reneged and said that the constituent parties of his Alliance had opposed the proposal!

The contention of these minor parties was that this could be the “beginning point of voting in the Assembly of all outstanding issues.” The point is -so what? How long are the Maoists are going to continue to obstruct the completion of the draft of the new constitution? Where consensus cannot be forged what is the alternative? To say repeatedly that the proposals are against the 12 point agreement reached between them does not make sense now in the changed situation.

The proposal placed by of the two main stream parties on 3rd November had many drawbacks, particularly on the configuration of provinces (PI. See my last update 302). But this could have been discussed in the Assembly and perhaps after discussions some solution could have been found. But to keep the proposal pending at the committee level at the CPDCC indefinitely was not the right thing to do. At one point Bhattarai had deferred the convening of the meeting “until further notice.”

What finally worked was a memorandum signed by 43 of the 71 members of the CPDCC to forward the proposal given by the Nepali Congress, the UML and some others to the Constituent Assembly. This was done after an assurance obtained from the Speaker Nembang by the opposing parties that there will be no “voting” on the proposals!

One of the writers in the media tried to justify the delay in constitution making by saying that in Nepal “the constitution is difficult to formulate with multiple actors with diverging or even conflicting ideologies, interests and constituencies involved” in the writing. But have the issues been discussed threadbare in the Constituent Assembly?

There appears to be four areas of protracted dispute. These relate to

1. The judiciary
2. Electoral System
3. The Form of government
4. Restructuring of the State.

The first three disputes are not insurmountable. But it is the last one that has been delaying the writing of the constitution. It is not the number or the name of various states within the constitution that is intractable but only the configuration of various provinces.

We see a series of articles by various well-meaning analysts in the media extolling the virtues of having only geographical divisions of four or five provinces with each province structured vertically with a slice of the plains, the hills and the Himalayas. This was similar to the development regions of the Panchayat days that did not work. Historically the interests of the marginalised people in the country- the

janajathis and the Madhesis had been ignored and the division into vertical divisions on a similar pattern does not appeal to them even now.

In a moment of exasperation, K.P.Oli Chairman of the UML even suggested that one could do with an “updated” current constitution but this ignores the very purpose for which the new constitution had to be drafted!

The question is what next? What would the Speaker do with the report given by the CPDCC that has made no recommendation. It is said that the report will not be returned to the CPDCC for further discussion. The proposals cannot be put to vote as he had already given an assurance to that effect. A new CPDCC could be formed but this would only prolong the agony! Efforts to form a “unity government” with representatives of the Madhesi and other marginalised groups were of no avail and were rejected by the MJF (D) of Gachhadaar.

The alternative to voting in the assembly would be to go for a referendum on specific issues of dispute and this may finally be only on the configuration of the provinces.

Better would be, for the present, to discuss the contentious issues in the assembly and try to arrive at a consensus. The self imposed dead line of January 22nd 2015 need not be adhered to either.

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