

Chapter 7

Postscript

Developments after 2002

1. End of Monarchy: Election for Constituent Assembly

After 4 October 2002, Gyanendra appointed three Prime Ministers, the last was Sher Bahadur Deuba. However, on the 1st of February 2005 he discontinued the practice of administering the kingdom through his nominated Prime Ministers. Dismissing Deuba Ministry, he brought the kingdom under his direct control. From then onwards, Mahat writes, “The country ... [was] entrapped in a triangular political struggle—between the Maoist waging a violent war, an executive monarchy, and the political parties fighting to restore the constitutional process” (343). Responding to the King’s action, if the Maoists blockaded “major highways linking the country’s 75 districts, as well as international links to India and China” (Pant 5), the seven parties alliance which consisted of the Jana Morcha Nepal, Nepal Sadbhavana Party, the Nepali Congress, the UML, Nepali Congress (Democratic), NCP (NWPP) and the United Left Front¹ organised joint rallies. However, the King did not yield. So, in November 2005 the Seven Party Alliance entered into a “12-point memorandum of understanding” with the Maoist. The understanding, which was reached in New Delhi, “proposed a peaceful transition through an elected constituent assembly” and a “formula for a united movement for democracy” (Pant 9). In it, the Maoist affirmed their commitment to multiparty democracy (E-Kantipur 2006 Nov. 19). It proposed the formation of a new Government acceptable to all sections of the society, the holding of negotiations between the Government and the Maoist and the creation of a Constituent Assembly (Rising Nepal, “Yechuri ... Maoist” 2006 Apr. 28). To end the King’s direct rule the eight parties decided on a tactics which included peaceful movement of the Seven Party Alliance complemented with the Maoists’ violent

¹ See, p.499 for causes behind its formation.

movement (K. C 341). Hence, from the 6th of April 2006, the Seven Party Alliance in collusion with the Maoist launched their movement. Within weeks, the movement turned violent compounded with the Maoist's blockade of the major road links that led to Kathmandu (Rising Nepal, "Seven Parties' Agitation Turns ... Violent" 2006 Apr. 11). With the passage of time, Pant says, "All political forces including the civil society and professional organisations ... galvanized the people", which "resulted in massive ... demonstrations ... throughout Nepal" (9). On the 14th of April, King Gyanendra, in his new year message to the nation, extended his invitation to the agitating parties to come to the table to activate multi-party democracy as envisaged by the 1990 Constitution (Rising Nepal, "Political Parties Called ... in Dialogue" 2006 Apr. 15). The following days witnessed the arrival of Special Envoy of Indian Prime Minister, Shyam Saran, and of Karan Singh in Kathmandu. After their departure on the 20th of April, King Gyanendra's proclamation to the nation asked the Seven Party Alliance to recommend a name for the post of the Prime Minister for the formation of a Council of Ministers. He made it clear that he was transferring the Executive powers, which was in his safekeeping, to the people as per Art. 35 of the 1990 Constitution (Rising Nepal, "His Majesty Asks ... Parties to Form Government" 2006 Apr. 22). On the 24th, he reinstated the House of Representative which had been dissolved on May 22, 2002. The session of the reinstated House was slated on the 28th of April 2006. Following the announcement, the Seven Party Alliance recommended the name of Girija Prasad Koirala to head the all-Party Government (Rising Nepal, "Koirala ... to Head ... Govt." 2006 Apr. 26). When the House met on the 28th, Koirala tabled the proposal to hold election for the Constituent Assembly. The proposal was readily approved (Rising Nepal, "Koirala ... Proposal for Constituent Assembly" 2006 Apr. 29). The 16 June, Eight-point agreement between the SPA and the Maoist reiterated the resolve of the parties to honestly implement the 12-point agreement. It resolved to restructure the State "to resolve the class based, racial, regional and gender-based problems" of the nation through the "Constituent Assembly Elections" (Kantipuronline June 16). However, for such election the Maoist

insisted on the creation of an Interim Constitution. Hence, an Interim Constitution Drafting Committee was formed in the same month (UNDP 8). The Committee amended the 1990 Constitution to create the Interim Constitution of Nepal. The process began on the 13th of April 2007 and by December 2007 the Constitution had already undergone three amendments. At the end of December 2007, the Constitution provided for a single House—the House of Representatives and the process for creating a Constituent Assembly. Meanwhile, the Government of Nepal and the CPN (Maoist) had signed a “Comprehensive Peace Accord” in November 22, 2006. The Accord provided the process for managing the Armies, both the Nepali and the Maoist. It declared the commitment of the two parties to respect the provisions of Universal Declaration of Human Rights, 1948 while reiterating their desire to create “an inclusive, democratic and progressive ... state” (Nepaltimes.com 4). According to the Accord, the Interim Constitution was expected to form the “interim legislature-parliament”, which in turn was expected to hold the election for the Constituent Assembly by May-June 2007 (Nepaltimes.com 3). The Constituent Assembly so formed was to have three sets of representatives. The first set, 240 of them was to be elected from the administrative districts considered as constituencies (Art. 63:a). The second set of 335 were to be elected “on the basis of ... proportional electoral system”, where the voters were to vote for the parties and where the whole country was considered a single constituency (Nepal Rajpatra 52). The third set of 26 members were to be nominated by the Council of Ministers from among the prominent members of the society. However, the Constitution made it clear that while selecting the 240 representatives the parties were to ensure the representation of the various sections of the society on the basis of their proportion in the society. Besides, they were enjoined to nominate at least one-third of such members from the fairer sex (Art.63:5). Conforming to these provisions of the Interim Constitution, the first election for the formation of the Constituent Assembly was held on the 10th of April 2008. There were 54 parties in the fray. In it, the NCP (Maoist)’s manifesto promised to implement a twenty-point programme. These programmes promised the nation that

they would protect her “independence and geographical integrity”, institutionalise a “federal structure”, a “republic” and a “pro-people democratic arrangement” (NCP (Maoist), Sambidhansabha Nirvachankalagi Ne. Ka. Pa (Maobadi) Ko Pratibadhatta-Patra 7). The other programmes were just a repetition of their often stated stand on fundamental rights, secular State, the problem of citizenship etcetera. However, they maintained that out of the many programmes “the most important condition for the creation of new Nepal was the implementation of federalism” (11). It was to be created on the basis of people settled in a “common geographical area” having a “common economic structure” and using a “common language” who could be considered as “a nationality” (12). As a complement to this political structure the Maoist proposed an “economic structure free from feudal and tout bureaucratic control”. They promised to work for the establishment of “a self reliant economy geared towards socialism” (15). These two programmes constituted the core of their recipe for ending the age-old regional and ethnic discrimination prevalent in the country. When the results of the election was declared, the position of the three major parties under the first past the post election system were as follows: NCP (Maoist), 120; Nepali Congress, 37 and NCP (UML), 33 (Nirvachan Ayog 16). Their corresponding win in the proportional system² were as follows: NCP (Maoist), 100; Nepali Congress, 73 and NCP (UML), 70 (265–71). Besides, the House of Representatives was composed of a host of regional parties and other Communist factions. It was expected to draft the Constitution of Nepal within a period of four years and if need be its life could be extended by another six months (Art. 64).

² This system allows each party to send as many candidates which correspond to its share of percentage votes that it polls in the First past the post election. For example, the total candidates to be sent to the Parliament as per the proportional system was 335, see,.. Nirvachan Ayog 2 Since, the NCP (Maoist) polled “30.52%” (Nirvachan Ayog 16) of the total votes cast in the first past the post system, they sent $(335 \times 30) \div 100 = 100$ candidates. Besides, the rules for sending the closed list (after sending names the parties cannot change them after 7days) of names are as follows: the list must have 50% women, 31.2% Madhesis, 13% Dalit, 37.8% Janajati, 30.2% others and 4% representatives from underdeveloped areas.

However, even after functioning for the stipulated period and for the extended six months the Constituent Assembly could not come out with the New Constitution of Nepal. Explaining the most important factor, which hindered the process of framing the Constitution, the NCP (UML) manifesto of 2013 said,

The CPN (UML) stood for the model of federalism that would honour all identities, transfer power to local communities and institutionalize democracy from below. The Maoist party advocated for a single-ethnic model and provoked every caste and ethnic community. Nepali Congress followed the view of federalism with provinces based on geography, excluding the question of identity. The Madhes-based parties were in favour of ‘One Madhes, one Province’. Thus, there was an inscrutable difference in understanding and expectation of federalism ... [which] became the main cause for the failure of the CA (NCP (UML) 16).

As a result of the failure, the nation went to polls in November 2013. There were 121 parties in the fray and when the result under the first past the post system became public Nepali Congress secured 105; NCP (UML), 91; UCPN (Maoist), 26 seats³. Their corresponding scores in the proportional system were 91, 84 and 54 respectively. The present Constituent Assembly cum Legislative Assembly is

³ Their debacle in the poll was perhaps due to the fragmentation of the party in June 2012. See, NCP (Maoist), Press Bigyapti 1 A major section, which claimed to represent ‘revolutionary trend’ within the Party, came out to hold their inaugural session in June 16–18, 2012. Under the leadership of Mohan Bikram Baidhya, C. P Gajurel and Ram Bahadur Thapa (Badal), the session brought together the leaders of Akhil Nepal Rastriya Dalit Mukti Morcha, Madhesi Mukti Morcha, Akhil Nepal Mahila Sangh (revolutionary) and Akhil Nepal Adhivasi Janajati Mahasangh to announce the formation of NCP (Maoist). Describing the essence of the Political Proposal passed on the occasion, the Press release blamed the inability of the Party leadership of the UCPN and the machination of foreign reactionaries for the failure of the Constituent Assembly. It observed that the enemy of Nepalese people were still “the feudal forces, tout bureaucratic capitalists and the Indian expansionist” and appealed the people “to raise their voices against the forces for preserving the independence of the nation”. Besides, it criticised “Prachandapath for having destroyed collegiate leadership while opening the door to opportunism” (NCP (Maoist), Press Bigyapti 3). In sum, the faction blamed the imperialist—mainly India—and the role of Pushpa Kamal Dahal and Baburam for the instability that prevailed in the nation. It held its Congress in VS 2069 Falgun 1[12 February 2013] to formally announce the formation of NCP (Maoist).

expected to frame the much-awaited Constitution of Nepal within four years. However, till date, the Constituent Assembly is trying to thrash out differences over three major issues, viz., the federal structure, whether ten states or eight; election system, where the contention is over the appropriate mix between first past the post system and the proportional system and the form of governance, whether directly elected President or Parliament-elected Prime Minister with various proposal for sharing powers between them (Himalayan Times 2014 Sept. 29). The bone of contention is, therefore, over issues, which are concerned with the founding of a constitutional arrangement best suited in a deeply divided Nepalese society. The trend suggests a move towards a consociational democratic arrangement for ensuring stability, which has so far eluded the nation in its quest for fast-paced economic development.