

Locating Constitutional Identity In Nepal

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Abstract

Nepal has an ethno-linguistic diversity due to presence of one hundred languages groups, 64 indigenous community as well as sixty four caste groups. Due to this diversity, Nepal has faced many difficulties to define and recognize its citizens. This diversity has been shaped through the cross national characteristics of Nepal. Actually, Nepal is a land locked country and it is surrounded by two big power country of the region India and China. However, Nepali citizens had recognized through the Muluki Ain in 1854 by the Rana oligarchy. This regulation had differentiated the Nepali people between citizens and non-citizens in history. By the promulgation of Muluki Ain inequality had legalized and Hindu caste hierarchy become as a state ideology of Nepal. Afterwards, there was no any evidence of formal legal status in which Nepali citizen could be recognized. But the question of constitutional identity emerged since 1950 onwards. Thereafter, the idea of constitutional identity got its due place in Nepali. But, the discourse of constitutional identity has limited space due to elite nature of democratic movement till 1990. However, the demands of inclusive state got the main agenda in the democratic movement in 1990. Finally, the constitutional identity had become more inclusive through the promulgation of the constitution of 2015. Therefore, the aim of paper is to explore the constitutional identity of Nepal. However, the first part of the paper will examine the theoretical explanation of constitutional identity. The

other part of the paper will make an argument towards the constitutional history of Nepal and its main features.

Key Words:- Democracy, Constitutionalism and Secularism.

Introduction

Debating Constitutional Identity:-

The constitutional identity of the state derives from its history, culture and society. The making of constitutional identity is a diological process in which it also reflects the aspirations of nation-state. The identity of the constitution also depends upon political development and its interpretation by the court and legislature as well as other public or private domains. On the other, some of the constitutional theorists claim that the identity of the constitution can not be studied in objective manner. Because the identity has an ideological position in which it dominates during the formation of a state. According to Laurance Tribe “the very identity of constitution are the body of textual and historical materials from which norms are to be extracted”. While all of the states have its own constitutional identity. American constitution guarantee the republican form of government and federal system. It is the core value of American constitution. Like American constitutional identity Turkey had adopted the secular forms of state. These are purely textual identity of the constitution. If any core values of the constitution would have changed in text then it will spoil the identity of the state. Sometimes constitutional identity is static in nature. Thus the textual forms prohibits to change any value in constitution. Actually, the makers of the constitution had inspired through its present thus they restrict the future government for changing the core value of the constitution. Therefore, constitutional identity adopts through the historical experiences and dialogical methods. It has been discovered through the intellectual interventions. It determines the commitments of the pasts as well as the aspirations of the future. But, it does not mean that constitutional identity cannot be changed. It can be changed though the particular historical narratives of the past by its politics. It is politics of the particular state which decides the constitutional identity. According to Beau Breslin “the question of how a regime alters constitutional identity it’s depends upon particular historical narratives”. But some of the state has unique constitutional identity and the citizens of the state

make proud feel on the identity such as South African citizens have similar feelings regarding their constitutional fundamental rights. They claim that these provisions are their own historical experiences.

Although, constitutional identity has been inspired through modernity. But, it vary from state to state. Thus it is not universal concept. Constitutional identity is not only product of historical experiences but also it covers the political development in a specific state. There are three elements in a constitutional identity such as origins, concepts and its aspirations in which it can be identified. The conceptual clarity of the constitutional identity comes from its concepts. Sometimes constitutional identity contradicts with the concepts. Hanna Pitkin's stated that "To understand what a constitution is, one must look not to some crystalline core or essence of unambiguous meaning but precisely at the ambiguities, the specific oppositions that this specific concept helps us to hold in tension". There are two ways to identify the contradictions within the constitutional identity. Firstly, to examine its internal document in which it fulfil or not fulfil the aspirations of common people. Secondly, the social conditions of the state in which it operates. Sometimes these contradictions questions the stability of the constitutional identity. On the other, the makers of constitutional identity tries to balance the interest of various social as well cultural groups. Because, it is the major documents which stabilize the existence of the state. Thus, the existence of the state depends upon the constitutional identity. In a modern time, people and their existence is the core of any constitutional documents.

While, theoretically constitution comes through the social contracts. But, in large it has class interest of the ruling power. Mostly, Marxist school differs from the liberal school of thought that the constitution of capitalist state is bourgeois in nature. Because, it operates in system which fulfil the interests of capitalist class. Therefore, constitutional identity has ideological debates too. Therefore, these contradictions force state to change the identity of constitution. Like American constitution in the beginning have some contradictions therefore it change its identity. On the other hand the constitutional identity negotiates with contradictory interests of the different segments of the society. Andras Sajo argues that "The text itself has only limited potential for forging identity. A legally binding document is but a first step on the long and winding road from a political design for collective

identity to a socially embedded institution that actually fosters such identity". The text of the document is partially describes the identity. But, the language, the interpretation and the commitment of the makers have also contribution to establish the identity of the constitution. Later on it is the practices of the constitution which establish the constitutional identity.

During the formation of constitutional identity, makers of the constitution have intention to build a harmonious society. Thus they learn from the past experiences. They also properly addressed the existing problems of the present. Lastly, they have to fulfil the aspiration of the future generation too. It is not easy to make an inclusive identity of a constitution without addressing the interest of different segments of the society. Again, Hanna Pitkin is illuminating: "How we are able to constitute ourselves is profoundly tied to how we are already constituted by our own distinctive history". The framers of the constitution does not establish its identity with narrow senses. But, broadly include the harmonious principle of society such as the constitutional identity of India is secular by which it addressed the Hindu-Muslim conflict. Whereas, American constitution abolish the slavery. Therefore, constitutional identity is a way in which a state define itself. In shortly, constitutional identity defines through its preamble. Through the preamble framers of the constitution defines the aspiration of future. According to Mark Tushnet "for the expressivity, preambles to constitutions are exceptionally informative in conveying the underlying meaning of the collective enterprise that is the constitution". However, the future of the constitutional identity inspired through its past. As Indian constitution reaffirmed the limitations of legislative body for changing its core identity. The Indian judiciary sated that constitution is a holy book, thus the legislative body has limited power to change its identity. Thus, constitutional identity is a heritage by which state transforms the social and political aspects of citizens. Constitutional identity can be identified through its continuity and changes. The continuity reflects the historical development of the state. Whereas, changes comes through its political development. It is the politics of the certain class which change the identity of the constitution.

While constitutional identity is a diological process between its core commitments and external environment. There are some relationship between law and culture in which law regulates the culture. In the words of Robert. C. Post "Constitutional law and culture are locked in a dialectical relationship, so that law

arises from forms and in turn regulates culture". Thus, constitutional identity accommodate some aspirational aspect which is not suitable in a prevailing social condition. Like in Indian cases, the social condition was feudal in nature but the framers of the constitutional identity discovered through the eyes modernity. On the other hand the constitutional identity uses the traditional symbol for balancing the contradictions of the society such as use of Ashoka chakra in Indian constitution. Thus, one of the author says "the Ashokan example shows how continuity in the construction of a constitutional identity can draw upon alternative (and even dissenting) sources within one tradition, and then re-constitute them to serve at times as a reproach to other strands (and their societal manifestations) within the same tradition". Therefore, constitutional theorist mostly interested in exploring the constitutional identity of a state which has been reflected in core commitments of the constitution.

FIRST CONSTITUTION OF NEPAL, 1948 :-

The constitution of 1948 was the first constitution of modern Nepal. There was wider provisions of fundamental rights in this constitution such as article 4 mentions that it guaranteed freedom and equality in Nepal. Now Nepali citizen had entitled to freedom of speech, of press, of association and worship etc. The constitution in the beginning promise the right to equality in the eye of law. These provisions can be reasonable restricted to the subject of public order and morality. Some of the scholar forces that the Nepali state was not ready to adopt these modern provisions. Because it is still ruled by feudal lordship which was not interested in people's welfare. According to Peter Murray "The constitution is obviously eyewash to disarm criticism from progressives while retaining powers firmly in the hands of the Rana family".

After all the limitations, this constitution was a major step to change the feudal system of Nepal. This constitution did control the autocratic rules of Prime Minister Rana. It was the wave of democratic movement which inspired the Nepali people for demanding their rights. On the other, the ruling class of Nepal divided in the name of purification such as Rana 'A' 'B' and Rana 'C'. These classes joined with Nepali Congress which was founded by B.P. Koirala. Not only political party were trying to abolish the Rana autocratic rule but also king had supported this democratic movement. Lastly, an interim

government had been formed in Nepal and promulgated a new constitution by ending the autocratic rule of Rana family.

THE INTERIM CONSTITUTION OF NEPAL, 1951:-

The interim constitution adopted in accordance with Delhi agreement. The king made a historical declaration by exercising his power on 30th March, 1951. According to interim constitution the people of Nepal governed through the constitutional monarchical system. The constitution would be framed through the elected representative. The aim of the constitution was to legitimize the new political order. In this new political order king had restored his political supremacy. It has been advocated to form a democratic government in which king was the constitutional head of the state. Actually, it was first written constitution in Nepal. The constitution had total six parts including preamble, one schedule and seventy three articles. Unfortunately, it failed to sustain for a long time. After eight years this constitution had collapsed. But, during this period of time the total six amendments took place. In this constitution there was a provision to establish a secretariat. As a result a central secretariat was established in the name Singha Darbar. It is still symbol of modern Nepali bureaucratic institutions. There were other constitutional bodies have been established such as public service commission, election commission, national council and planning commission etc.

However, the interim constitution has been inspired through the Indian democratic constitution and Gandhian principles. But, Nepal had limited resources to implement the welfare measure of people. Therefore, the constitution had only directive principles. The article two to twenty dealt with these principles like the rights of the people and local self - government. Directive principle of state policy was the foundation of welfare state. As article 4 of the constitution mentioned that "the state shall strive to promote the welfare of people by protecting their social, political as well as economic rights". On the other article 5 had mentioned to set up a local self-government in Nepal. Apart from that there were provisions of rights such as right to work, right to education and public assistance etc. The constitution properly addressed the right to equality in article 13 which said "equality before law or equal protection of law". The most important article was 16 which guarantee the freedom of Nepali people. This freedom includes right to free speech and expression, right to assemblies, to form an association, to

movement, and to practice the trade and business. By adopting these provisions Nepal was moving to form a modern nation-state. After all Nepal was not able to adopt the modern aspects of democratic institutions. However, constitutions provided the constitutional parliamentary monarchical system. The king was only the symbol of unification in Nepal.

THE CONSTITUTION OF THE KINGDOM OF NEPAL, 1959:-

This constitution replaced the interim constitution of Nepal. In this constitution the sovereign power was vested in king which was called as a father of nations. The constitution followed the Hindu kingdom established by the Prithvi Narayan Shah. In the preamble constitution promised the establishment of democratic government by protecting the rights of the people. The preamble did mention that the king was the sources of all power by promulgated in the name of Maharajadhiraj. The aim of constitution was establish a peace and prosperous country by unifying the whole Nepal. The constitution had listed a number of fundamental rights which was mentioned in article 7 of the constitution. First time in the history of Nepal given the right to religion by emphasizing in article 5 which dealt “every citizen had the right to profess and practices their religion which is handed down from ancient times”. But the constitution had restricted the right to conversion. The constitution also assured the human rights of the people by providing them some safe guard mechanism against the arbitrary use of power by the state machinery. Whereas, the article 4 of the constitution ensured the right to equality before the law and equal protection of the law. It also made the provision for the abolishment of discrimination on the grounds of religion, sex, caste and tribe. For protecting the fundamental right the constitution also made the provision of right to remedies under the article 9 of the document. But the implementation of these rights were absolutely depends upon the will power of king.

While, strengthening the democratic process the constitution made the provision for legislative and judiciary. It also set up some of the commission like selection commission, the constituency delimitation commission and the auditor general etc. In this way monarchy provide a platform to exercise of democratic rights to its people. But, the major limitation of the constitution was the discretionary power of king. Because, the functioning of the constitution was still under the eyes and nose of the king. However, constitution had taken some of the

steps towards democratizing the state institution. It had given the real power to the king and he was the symbol of unification. Because, the political leadership in Nepal was not able to provide the political role for strengthening the state institution. But, Nepal was not ready to adopt these new political development for two reasons the constitution had given all the power to king on the other political leadership was still at the immature stage. Thus, the conflict between political leaders and the king were going on which led to Nepali politics in another political crisis. The crisis was fuelled by the decision of the king when he dismissed the elected government by banning all the political activity. The Prime Minister B. P. Koirala put into the jail. In this way the king wrote the death warrant of the new constitution by exercising its discretionary power. The king had framed many charges against the elected government. The king also claimed that the parliamentary form of government was failed to provide the peace and stability in this country. It was not solve the common problems of Nepali citizens. According to the king the parliamentary form of government was not suited in Nepali political culture. Thus there were need to alternate the other forms of governing system in Nepal. The king Mahendra emphasized that he will not allow the government to ruin the history and the tradition of Nepal in the name of parliamentary democracy. During the two years from 1960 to 1962 the king ruled without any constitutional mechanism. Later on he explored the 'Panchayat Democracy' in Nepal which was promulgated on 16th December 1962.

THE PANCHAYAT CONSTITUTION OF 1962:-

This constitution was guided though the basic democracy system of Nepal. While the king Mahendra enforced that "it was rooted in our soil and suited our condition and it bears the stamp of genius of the Nepalese race". He also stated that this system provided the basic development of the Nepali people and will strengthen the nations by achieving the peace and stability. This constitution declared Nepal as monarchical Hindu state in which state sovereignty vested in the king. The king was the symbol of Aryan culture as well as Hindu religion. In the preamble the constitution did mention that the party less and panchayat democracy will decentralize the governing system of Nepal. The article 2 of the constitution dealt with the nature of the state in which it declared as Hindu Kingdom of Nepal. It also dealt with the national symbols of the state like national language, national flag and national anthem. There

were special provision of defining the citizen of the country in this constitution. The part III of the constitution had given fundamental rights to its citizen. This part of the constitution also ensured the right to equality. But, the constitution had properly provision of reasonable restriction regarding the curtail of fundamental rights. The constitution also dealt with some duties of citizen. The Part IV of the constitution dealt with the directive principle of the state policy with name of objective and principles of state policy. Apart from that the constitution also dealt with the composition and the functioning of executive in Nepal.

However the panchayat system in Nepal had strengthen the political position of the king. Thus, all the sources of the law vested in the power of king. The king was control the legislative, executive and judicial body of the state. The uniqueness of the constitution marked through its four tier of panchayat system. The king had power to declare emergency at any time when he felt that political situation goes against the interest of Nepal. Thus, this constitution changed the parliamentary form of government to absolute monarchical state. It had restricted the development western model of democratic system in Nepal. The actual decentralization did not take place at the grass root level. Because, it was created a feudal sense of political culture in Nepal. Thus, the aim of the constitution was not fulfilled. There was not check and balance system in which corrupt practices can be controlled. It had created more dissatisfaction among the all section of society as well as political community. After the passed away of king Mahendra this panchayat system was difficult to sustain in Nepal. As a result mass protest started against this system during the new king Birendra period.

THE CONSTITUTION OF THE KINGDOM OF NEPAL, 1990:-

When the king Mahendra passed away, Birendra become a new king of Nepal. He was more liberal than his previous successor. On the other the panchayat democracy failed to fulfil the aspirations of Nepali people. There was more discontents against the Nepali kingdom at the ground level. While, some political leaders had started to organize and coordinated for people movement. The emergence of new intellectual class in Nepal had fuelled the crisis. Because, they were inspired through the western education as well as democratic form of government. The regional disparity had deepen during the panchayat democracy. This discontents led

to a new political discourse in Nepal in which Nepali people wanted to parliamentary form of government. They also wanted to control the absolute power of the king by their elected representatives. The political party like Nepali congress and United Left Front joined their hands for demanding the multiparty system and parliamentary form of government. Under the pressure of domestic discontents the king had announced that "the Nepali politics has been changed now. He made the promise that he will respect the popular will and the aspirations of Nepali people".

However, the negotiation had started among the representatives of the king and other political parties of the Nepal. After the negotiations the king had decided to dissolve the existing system of Nepal. A new government has been formed under the Krishna Prasad Bhattarai which has been assisted by the several ministers. This new interim government stated that the new constitution will fulfil the aspiration of Nepali people by the establishment of democratic norms. It will also made the provision for controlling the arbitrary power of the king. There will be more freedom in the constitution. On the other the king formed a commission to relook and recommend the changes of 1962 constitution. But, the political parties were dissatisfied with the commission. Because, they wanted to their representation for reviewing the past constitutions. Thereafter, the king dissolved this commission and made a new commission for comparative study of the previous constitution of Nepal as well as other countries. The commission represented by the pressure groups such as left party, Nepali congress and the King. They have their own interest like Nepali congress wanted to parliamentary form of government and multi-party system. Whereas, the king without taking any responsibility had desired to continue the existing system. On the other, the left party wanted to completely radical constitution in which proletariat have given to more rights. At the end they were ready to come under the common agenda by some negotiations. Finally, the new constitution had promulgated on 9th November, 1990.

The first parts of the constitution dealt with the identity of the state in which it stated that "Nepal is a multi-ethnic, multi-lingual, democratic, independent, indivisible, sovereign Hindu and the constitutional monarchical kingdom". It also enforces that the constitution is the law of land in Nepal. Basically it resolved the issue of language in Nepal by granting the recognition of other Nepali languages. But, Nepali language

had still the status of official as well as national language. The second part have the provisions of citizenship and the third part in detail dealt with the fundamental rights. The most of the provisions of fundamental rights were taken from Indian constitution. There were twelve article under this part dealt with these rights such as right to freedom, right to equality, right against prevention of detention, right to religion and right to culture etc. The article 18 of the constitution has given entitled to its citizen that they have right to promote and preserve their language, culture and script. Whereas, the article 19 has two clause. One clause stated that “every person shall have the freedom to profess and practice his own religion but to convert the religion has been prohibited”. The second clause has given the right to religious organization in which it manage and protect its religious places and trusts.

Besides these rights the constitution had provided the institutional as well as organizational mechanism to strengthen the parliamentary democracy in Nepal. After the long struggle the constitution had dissolved the panchayat democracy and it assured the composition and functioning of the political parties. It had given the check and balance system by reducing the absolute power of the king. It had shifted the sovereignty status of the king and provided it to the people. It also increased the numbers of elective representatives in legislature. It did also recognized the cultural rights of the marginalized sections of the society. But, it had some limitations such as the king had the rights to influence the democratic system of Nepal. The demands of left party was unfulfilled. This constitution failed resolved the major issues of regional disparity.

NEW REPUBLIC NEW CONSTITUTION:-

The constitution of 1990 failed to achieve its goal because of unstable, ineffective, centralized and upper-caste dominated government. On the other, the communist party of Nepal started a movement against the established system which was called as a people’s war. Because of that the demands of communist party were not fulfilled. The communist party of Nepal wanted to a republican form of government in which the theological identity of the state should be demolished. Thus, an arms led revolution launched against the system under the People’s Liberation of Army. Nepal entered in a conflict zone by this revolution. Whereas, the king Birendra and his family was assassinated on 1st of June, 2001. The Gyanendra became

a new king of the Nepal who was younger brother of Late Birendra. But, the king Gyanendra was power hungry and he usurped power by royal coup in which he did claim that the political party failed to establish peace and stability in Nepal. Then, he declared state of emergency in Nepal. In the emergency period most of the political leaders were detained and arrested in their house by the military of Nepal. The autocratic decision of the king had provided an opportunity to parliamentary parties to unite against the king. Thus, the political leadership of Nepal made a cordial relationship with communist rebels against monarchy. To strengthen their movement the seven party alliance and the Maoist had agreed on twelve point understanding. There were three commitments such as elections for constituent assembly, multi-party political system and peaceful protest against monarchy at the mass level. But, the main objective of the movement was to establish absolute democracy by the demolition of monarchy. The movement led by the seven party alliance and the maoist was called as a Jana Andolan-II.

The Jana Andolan-II was different from the past movement because it has been participated by all the sections of society in most of the region in Nepal. The importance of movement was remarked through the scholar that "most powerful anti-establishment struggles in the history of Nepal". There were also two main reasons remarkable by the scholars in which first time it established the republic state and the militant was transformed into main stream political party. As a result an agreement of peace process had signed between the government and the communist party of Nepal (M). On the month of November, 2001 the seven party alliance and the communist party of Nepal (M) signed comprehensive peace agreement in which the Maoist become a part of government. In this way, the arms revolution ended. Under this agreement the major commitment was to form a constituent assembly through the election process. Thus, it was the different from past constitution making process. The previous constitution of Nepal prepared by the expert or ruling elites. But, first time in the history of constitution formation had adopted the participatory approach. Before the election of constituent assembly, an interim constitution had adopted. This interim constitution had been prepared by the interim constitution drafting committee. The main task of the drafting committee had to collect public opinion. There were more than ten members in this drafting committee such as one Supreme

Court judge and ten another lawyers under the guidance of one of the member of 1990 constitution drafting committee. After the submission of the committee report, the interim constitution was promulgated on 15th January, 2007. The interim constitution had three pillars republicanism, peaceful politics and inclusive democracy. But, the interim constitution failed to resolve the issue of regional disparity in the constitution. Thereafter, the Madhesi were started protest against the interim constitution. As a result the demands of Madhesi incorporated in the interim constitution by two amendments.

The First constituent assembly election was held under the interim constitution for the fulfilment of the aspiration of Nepali people. The total number of constituent assembly were six hundreds one which were divided into three different procedure. 240 were elected through the first past post system. 335 were elected under the proportional representation system and remaining 26 members were nominated by the council of ministers. There were total 9,648 candidates whose had contested the election for 249 constituent assembly through the first past post system. In this election, CPN (M) emerged as the largest party by getting the 220 seats. Whereas, Nepali congress had won the 110 seats and the communist party of Nepal (UML) got the third positions with 110 seats. The other regional parties had also got the respective numbers in their regions. The first constituent assembly did fail to promulgate a new constitution in spite of that it extended four times. But, it resolve the many issues during its terms except than the restructuring of the state. The achievements of the first constituent assembly cannot be ignored. Though, it resolved the contentious issue of inclusiveness and representation, several agreements made on the other contentious issues and the most of the thematic committee had submitted its reports to this assembly. However, it failed to promulgate a new constitution within the given time. Therefore, the protest had started protest and rallies across the country. Lastly, the first constituent assembly expired on May, 2012.

Whereas, Prime Minister of Nepal Baburam Bhattarai dissolved the constituent assembly by following that the new constituent assembly formed through another election. But, the supreme court of Nepal declared that the decision of prime minister is unconstitutional. Because, the interim constitution of Nepal, 2007 did not allow for two election. Now, Nepal entered into a

constitutional crisis. On the other, the political parties were trying to resolve this crisis by signing an eleven point agreement. After the agreement of eleven point an interim election council formed as a care taker government under the leadership of the chief justice of Nepal. On November, 2013 the interim election council announced the date for another elections. The result of Second constituent assembly was different from first. The Nepali Congress emerged as the largest political parties by securing 196 seats. The Communist Party of Nepal (UML) won 175. Maoist had won just 80 seats. After the election of constituent assembly-II Sushil Koiralat, the leader of Nepali Congress become a new prime minister of Nepal. On the other the four major parties agreed on some issues by making a deal such as to form the committee for the establishment of peace process and constitution drafting; to promulgate the constitution in one year. The constituent assembly-II adopted almost all the agreements of first constituent assembly. But, the disputes regarding the future structures of the state had to resolve. The different interest of different political parties on these issues become the main problem for promulgating of new constitution. As a result, the deadline of the promulgation of constitution ended.

Apart from the political consensus the constitution making process obstructed by the two major earthquakes on April, 2015. These earthquakes brought the major loss for Nepali people. Now, the political parties had felt many pressure from inside as well as outside of the people in which how they regain the trust of people. In this circumstances, the four major political parties made a sixteen point agreement for promulgation of constitution as soon as possible. The process for the constitution drafting started under the sixteen point agreement. After the completion of the preliminary draft of the constitution, it give to the constituent assembly II for incorporating the other suggestions. The suggestions of the people incorporated in the constitution bill. Then, it moved for the discussion and voting by the chairperson of the house. On 16th September, 2020 the constitution bill passed out by the two-thirds of the constituent assembly members. The Madhesi party boycotted themselves from the voting procedures. While, Rashtriya Prajatantrik Party-Nepal voted against the constitutional bill 2015. At the end, Nepali president Ram Baran Yadav promulgated the constitution of Nepal on 20th September, 2015.

To questioning the identity of state was not a new phenomenon in Nepal it started since democratic movement in the decade of 1950. But, it was failed demolish the Hindu monarchical identity due to popular legitimacy of the king. On the other this popularity of the king was delegitimizing through the democratic movement in the past. Since, 1990 the questions of identity fuelled through the emergence of new political parties as well as political leadership. The new political leadership thought that the stability of democratic state could not be achieved without the demolition of Hindu kingdom identity of Nepal. Finally, the secular movement of Nepal achieved it through the promulgation of the constitution of 2015. This new constitution is different from the past constitution in terms of its contents and the process of formation. The past constitution followed the top-down approach in which it excluded the masses in its formation. The past constitution formation had the monopoly of ruling class in which they wanted to monopoly of the power. While, this new constitution had prepare through the political representation of all the sections of the society by their elected members. The drafting of constitution had got the outline for the preparation of constitution from grassroots.

While, constitution of 2015 in Nepal prepared by the two constituent assembly and the members of the assembly were elected in the name constitution formation. It led to the participation and the views of different interest group. Apart from these interest groups the constitution drafting committee had consulted with experts and stake holders in which their suggestions and views incorporated. It is the first constitution in history of Nepal which was prepared through the consensus and social inclusion. The previous constitution of Nepal failed to achieve peace and stability because it ignored the desire and aspirations of marginalized sections of the society. Whereas, Nepal has multi-cultural society which has its own diversity. Thus, the consensus and consultation is only way for ensuring the peace and stability in Nepal.

However, Nepal was known for known as only Hindu state in which state was identified through the supremacy of the king, Nepali language and Hindu way of governing system as well as cultural ethos. These were four basic pillars of the Hindu kingdom. For restructuring the state there was needed to abolish these characteristics of the state. By the declaration of secular state, the constitution of 2015 departed from its past. For strengthening the secular democracy, new constitution

had made the provisions for representation and protection of the rights to the minority as well as Dalit and tribal community of Nepal. In order to the protection and promotion of unity in diversity the preamble of the constitution had recognized the diversity by stated that “Nepal is a multi-caste, multi-lingual and multi-cultural state”. It has also made the promise that the state will not discriminate any citizen on the ground of caste, class and religion. In the beginning of constitution the preamble express that “ending all forms of discriminations and oppression created by feudal, autocratic and centralized system”. The constitution determines that it will create an egalitarian society by including the proportional representation of the marginalized section of the society. The constitutional provisions of secularism reflects on its Article 3 in which it defines nations as “multi-lingual, multi-cultural and multi-religious characteristics”. The symbolic representation of the secular nation comes through its national anthem as “Nepala Bahul Jati, Bhasha, Sanskriti Chan bishala Agrabami rashtira hamaro”. It was the first time in constitutional history of Nepal that define the secular nature of Nepali nation. Apart from the preamble, the constitution has provision for defining the identity of the state. According to article 4 “Nepal is an independent, indivisible, sovereign, secular and republican state”. By providing the secular identity of the state the constitution demolish the past characteristics of Hindu kingdom in Nepal. It was the king and his governing system that legitimized the Hindu status of the state from its beginning. Thus, the movement of secularism has main agenda to demolish its monarchical status. Actually, the Hindu kingdom of Nepal was elite in its character because of caste hierarchy. It was the caste hierarchy which decided the status of individual. Thus, the caste characteristic of the state imposed its own language by the declaration of Nepali language as an official language of state. As a result, the culture and language of the lower caste had deprived since long time. But, the new constitution recognized the other language too. Article 6 of the constitution express that “all the mother tongues spoken in Nepal shall be the national language”. A secular state advocates the idea of equality and liberty. Equality and liberty are interdependent to each other because none of the person can enjoy its liberty without the equal status. These rights of equality and liberty got the proper place in the constitution of 2015 as an essential parts of fundamental rights. Article 23 talk about right to equality as “all citizens shall be equal before the law”. It ended the discriminatory nature of Hindu kingdom by

providing the equal status of the people. Constitution made a promise that state shall not be discriminate on the grounds of religion, caste, gender and race etc. For getting the goal of equality the constitution has provision to right of equal opportunity. Under the philosophy of right to equal opportunity constitution has given the special provision for marginalized section of society. It also made the provision for abolish the untouchability under the article 29 of the constitution.

However, freedom religion is one of the essential criteria of secular state. The mainstream discourse of secularism moving around the relationship between state and religion. But, secular scholars have different ideas regarding these relationship. Most of the South Asian scholars agree that the strict separation between state and religion is neither possible nor practical in this region. Thus the constitution of Nepal has follow the South Asian forms of secularism. It has given the right to freedom of religion by the imposition of some condition. It means that state can interfere in religion if it is needed. Generally, freedom of religion have four elements such as profess, practice, preservation and propagation. The article 31 of the constitution stated that “each person shall be free to profess, practice and preserve his/her religion according to their faith”. While, the freedom of religion also given to religious trusts by providing it right to maintain and manage its places. But, the constitution does not allow the conversion from one religion to another under this freedom. The constitution has some provision for restriction of this right in the name of morality, public health and public law and order. The questions of restriction led to another debates regarding the real secularism in Nepal. But, it will be depend upon the future practices of secularism in Nepal. Under the secular state the constitution of Nepal not only given freedom to individual and trusts but also provided the cultural freedom to its community. The article 37 of the constitution have three provisions regarding the cultural rights such as right to language, right to participate in the cultural life and each community have right to preserve and promote its language, script and heritage etc.

For strengthening the secularism in Nepal, constitution also ensures the proper representation through the special provision. The political parties of Nepal has mandatory to select the candidate for election of House of Representatives by ensuring the proportional representation of marginalized

section of the society such as Janjati, Dalii, Madhesi and Muslim etc. Similarly, the political parties has to follow the procedure for selecting the candidature in legislative election under the provision of this constitution. The constitution has provision for a separate organizational mechanism under its article 254 and 256 in which it will ensure the social justice. Article enforces that there will be a national dalit commission and its major function will be monitor the implementation of special provision of constitution for dalit community. On the other, there will be a national inclusion commission and it reviews the policy of government regarding the upliftment of indigenous as well as socially and culturally backward community.

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