

## **Highlights of Constitution of Nepal (2072)**

Nepal, a combination of 125 ethnic groups and speakers of 123 languages, has crossed a chapter of transitional period by promulgating the new constitution on September 20, 2015. The unofficial blockade imposed by India who is unhappy with the constitution has been reported even in international media. Constitution of Nepal is more inclusive and democratic than the Constitutions of India or the USA, if we compare the three.

### **Salient features of the Constitution**

- Article 267 request compulsory representation of Madhesi and other marginalized communities in Nepal Army.
- As per article 283, while choosing the personnel for the constitutional bodies, the principle of inclusiveness should be followed.
- As per article 269, there is compulsory provision of formation of political parties as per the principle of inclusiveness.
- Article 282 has the provision of inclusiveness while appointing ambassadors.
- Article 285 (2) guarantees proportional inclusive representation in all government services on the basis of community population.
- The Constitution of Nepal was finalized with the participation of 90 per cent of the members of the Constituent Assembly, which consists of 31 parties and two independent members. The Constitution also enjoyed the support of 86 per cent CA members. Out of 598 CA members, 532 voted in the process and it received 507 votes of support and 25 of opposition. 90 per cent of the CA members were in favor of the constitution making process. Even the Indian constitution did not enjoy this much of support at the time of the promulgation. Only 67 per cent of the Indian CA members had supported Indian Constitution.
- Out of 94 CA members of Madhesi origin, 67 were in favor and 27 were in opposition of the constitution making process. Of 40 dalit CA members, only one was against it while of 120 Janjati CA members, only one opposed the process.
- Four CA members of Khas-Arya origin, who were representing the Madhesi parties as proportional members, abstained from voting.
- Regarding the propaganda of non-participation of Madhesi, Jantatis and Tharu communities, at the time of voting for the constitution, 120 Janjati representatives, 67 Madhesi representatives, 21 Tharu representatives and

14 Muslim representatives participated in the process. The parties calling itself Madhes-based had won only 11 out of 116 seats of Tarai Madhes.

- The constitution has a provision of federal structure of seven states.
- The constitution ensures 33 per cent political representation of women. Article 55 (5) of the constitution ensures that special, protected or autonomous regions can be created for the socio-cultural protection or economic development of different ethnic groups, communities and areas.
- Article 26 of the Constitution of Nepal ensures every person to follow, practice and protect the religion as per their belief.
- Women marrying Nepali men, especially the Indian women marrying men in Tarai region, can get naturalized citizenship as soon as they come to Nepal. The provision is taken in favor of such women as per the Interim Constitution 2007.
- As per the article 155 (2) of the Interim Constitution 2007, only the people with citizenship by descent or birth were eligible for the positions of constitutional bodies which was endorsed by the Madhes-centered parties. The provision barring the naturalized citizens from holding positions as president, prime minister or speaker is not an injustice to the Madhesis living in Tarai Madhes for generations. Stronger countries like India and the USA have provisions allowing only those with citizenship by birth or descent to assume such high posts.
- Article 14 of the constitution has a unique provision of providing non-residential Nepali citizenship allowing them to enjoy economic, social and cultural rights.
- Article 25 (2) of the constitution clearly mentions that open and proportional inclusive principle being adopted for all federal government services like in the Interim Constitution.
- Article 274 of the Constitution talks about provision of amendment. According to it, except for the country's sovereignty, geographical integrity, independence and sovereignty vested on the people, everything is amendable and changeable. Any shortcoming in the constitution can be amendment in any country. Indian constitution, promulgated on its entirety on January 26, 1950 had enacted The Constitution (First Amendment) Act on June 18, 1951.
- The Constitution ensures 33 percent women participation in federal and 40 per cent in provincial agencies and ensured high level positions for dalits. In India, it is only 11 per cent until now.
- Some of India's constitutional provisions and Citizenship Act 1955's provisions allow naturalized citizenship for only that woman who lives in

India for five years after getting married to an Indian national and who renounces the citizenship of her country of origin. This law also only allows naturalized citizenship to only those from Pakistan and other commonwealth countries while regarding citizens of other countries, the constitution mentions that the parliament can make law.

- In the Constitution of the USA, anybody to be the Presidential candidate, that person should have been born in the USA and should have lived in the country for sometimes. A person cannot be the senator until after seven years after acquiring US citizenship. Article 2 of the US Constitution states that only the natural born citizen can be the President.
- The constitution guarantees 33 women presence. There is a progressive and binding provision of either of President or Vice-President and Speaker and Deputy-Speaker being woman. At local level, 40 per cent participation of women is a constitutional provision. In the Upper house, equal representation of the states ensuring total proportional system including three women, one dalit and one person with disability or eight including one from minority group is guaranteed. As per this provision, 80 out of 165 constituencies for FPTP are in Tarai Madhes.
- Article 86 (2) of the Constitution ensures representation of three women, one dalit and one person with disability. The provision on fixing the number of seats as proportional to the size of the population is directly lifted from article 81 and 327 of the Indian Constitution.