



Constitution Implementation: Expectations and Reality

Institute for Strategic and Socio-economic Research



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Abstract

After a decade of implementing the 2015 Constitution, various discourse on the effectiveness, inclusivity, and the possibility of amendments has been pressing issues today. In view of this, the Constitution Watch Group and the Institute for Strategic and Socio-Economic Research (ISSR) jointly organized a high-level interaction program on Sept. 23, 2024, at Malla Hotel, Kathmandu. The event brought together key political leaders, constitutional experts and policy makers.

The program delved into the challenges of implementing the constitution, roles of federal and provincial government and the ongoing political instability affecting development and governance. The discussion was focused around the need to distinguish between issues stemming from poor implementation and those asking for a just constitutional amendment. Key figures including former Chief Justice Kalyan Shrestha, former Prime Minister Pushpa Kamal Dahal, and other senior leaders from major political parties offered diverse yet insightful perspectives.

Themes such as proportional representation, federal authority, bureaucratic reform, fiscal decentralization, and public trust in the constitution were critically examined. Despite divergent viewpoints, a shared recognition emerged: Nepal must first prioritize effective implementation, foster legal accountability, and build political consensus before initiating amendments. The insights drawn from this interaction provide a valuable foundation for informed national dialogue on the future of Nepal's constitution and democratic governance.

Acknowledgement

On behalf of the Institute for Strategic and Socio-Economic Research (ISSR), I extend my sincere gratitude to all distinguished participants, speakers, and stakeholders who contributed to the success of the national interaction on constitutional amendments and implementation, held on September 23, 2024, in Kathmandu.

We are especially honored by the presence of our chief guest, Rt. Hon. Mr. Pushpa Kamal Dahal, former Prime Minister of Nepal, whose reflections and remarks added depth to our understanding of the political and constitutional dynamics of the country. I would also like to express my heartfelt appreciation to Hon. Mr. Kalyan Shrestha, former Chief Justice of Nepal and Chair of the program, for his principled leadership and thoughtful framing of the constitutional discourse.

Special thanks go to the Constitution Watch Group for co-hosting this timely and significant event, and to all political leaders—across the spectrum—who voiced their diverse yet constructive perspectives. Your participation has reinforced the importance of democratic dialogue in addressing national challenges.

We also acknowledge the efforts of our research, coordination, and media teams, whose dedication ensured the event's smooth execution. As Nepal moves forward in strengthening its federal democratic republic, ISSR remains committed to facilitating evidence-based discourse and collaborative engagement for policy innovation and reform.



Naresh Shrestha
Director, ISSR

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Introduction

An interaction was organized by Constitution Watch Group and Institute for Strategic and Socio-Economic Research (ISSR) at Hotel Yellow Pagoda in Kathmandu on September 23, 2024.

Nepal is at a critical juncture where constitutional amendments could lead to a more stable and prosperous future. The cooperation among key political parties and insights from global experiences highlight the necessity of these reforms.

By tackling existing challenges and ensuring proportional, inclusive representation, Nepal can enhance its federalism and democracy, ultimately meeting the aspirations of its citizens.

The current coalition government in Nepal, led by the Nepali Congress (NC) and the CPN-UML, is facing uncertainty regarding their seven-point agreement, which emphasizes constitutional amendments.

In the last week of July 2024, the ruling parties reached an accord to collaborate in safeguarding national interests, combating corruption, enhancing governance, accelerating development activities, and ensuring political stability in response to public demand.

The two parties agreed to explore constitutional reforms or amendments aimed at stabilizing provincial governance, which could be a constructive avenue for ensuring effective governance and fostering a more inclusive political landscape.

However, the alliances and agreements among these key parties are unstable and likely to shift, posing a risk to political stability. Even though discussions are underway about creating a national consensus government and revising the constitution, but the feasibility and potential effects of such efforts are still uncertain.

The parties, ironically, are struggling to define the specific amendments needed and which articles should be addressed, leaving their opponents increasingly perplexed as they have entrenched themselves in their respective stances regarding the proposed amendments. While the ruling coalition is actively advocating for change, opposition parties appear to favor maintaining the status quo. This agreement between the two major parties was intended as a step toward tackling the country's urgent issues.

A challenge arises with changes in the central government, which often leads to instability in provincial administrations, disrupting development efforts even when local governments remain stable.

However, local development has not progressed as anticipated. Although some initiatives are underway at the local level, instability at the central level is adversely impacting the provinces and causing considerable disruption.

To address this, the parties need to focus on stabilizing the provinces by leveraging other institutions to implement the necessary constitutional reforms or amendments. This issue warrants further discussion.

Even some NC leaders have described the seven-point consensus on constitutional amendments as "abstract and vague." The ruling coalition recognizes the need to address existing shortcomings and complexities, but instability seems to be on the rise.

Mr. Kalyan Shrestha, Chairperson

(Hon. Former Chief Justice)

The former Chief Justice, Mr. Kalyan Shrestha highlighted that after 9 years of implementing the Nepalese Constitution, it is time to reflect the expectations and reality of the constitution implementation. During the promulgation of the constitution, what were the assurances and commitments given to the public; What are the achievements and challenges faced during the implementation period; What are the possible strategies to address the challenges; To what extent



are the people satisfied with the constitution; Can it bring positive change regarding the nation's economy with effective capital investment and high productivity; Has the constitution been able to address basic needs such as good health and education to the public; Is bureaucracy practiced as per the constitution; if not then who is accountable; What are the indicators to measure the changes brought by the constitution; Why hasn't laws being created regarding province government; Does the constitution need amendments; If yes, then what sections of the constitution needs amendments? He mentioned that it is time to evaluate the indicators after almost a decade of implementing the constitution.

Mr. Dipak Shah

(Vice Chairman, Janamat Party)

Mr. Dipak Shah, Vice Chairman of the Janamat Party, shared his insights on the nine-year experience of implementing Nepal's Constitution. He highlighted several key issues, including the underutilization of Nepal's natural resources. He further mentioned the challenges that arose during the constitution's promulgation in 2072, particularly due to disputes among sections of the population. At the time, the ruling parties insisted the constitution was perfect and did not require any amendments, but ironically, the same parties now seek to introduce changes.

Mr. Shah stated Dr. Ambedkar's philosophy that a constitution should be practiced for at least a decade. This will help to understand the implementation and practices for a time being before considering any amendments. However, he mentioned there are challenges, highlighting the Citizenship Act, which ensures the right of every Nepali citizen to obtain citizenship, but the implementation of this clause remains problematic.

Mr. Shah further emphasized that Nepal cannot achieve social transformation without an industrial and economic revolution. He noted that while the public has expressed satisfaction with projects initiated by the provincial government, severe political instability has led to the underutilization of the allocated budget. Lastly, he advocated for reform in the bureaucracy, suggesting that the government adopt a "hire/fire" approach to enhance accountability and efficiency.

Mr. Rabindra Mishra

(Vice Chairman, Rastriya Prajatantra Party)



Mr. Rabindra Mishra, Vice Chairman of Rastriya Prajatantra Party (Ra.Pra.Pa), voiced his critique of the current Nepalese constitution, which he referred to as "Prachanda's constitution." He argued that despite other political parties claiming involvement in its promulgation, they have largely remained in the sideline, with Prachanda at the center.

Mr. Mishra reflected on the Panchayat era, pointing out that the development budget during that time was significantly larger compared to the present,

where as today much of the budget is consumed by bureaucracy. He believes the current constitution has become a "political sunk cost fallacy," making amendments impossible. Instead of attempting further amendments, Mr. Mishra advocated for a complete overhaul of the constitution to address pressing issues such as the retention of human resources.

In conclusion, Mr. Mishra emphasized that long-term development and good governance cannot be sustained without a role for the monarchy in Nepal. He argued that the monarchy, political parties, and citizens must work together. Additionally, he called for a comprehensive evaluation of the limitations present in the constitution from the Panchayat era to the current one, warning that without such reforms, politicians will continue to benefit at the expense of the citizens.

Mr. Lal Babu Raut

(Former Chief Minister, Madhesh Province, Janata Samajbadi Party)



During the discussion on the implementation of the constitution, Mr. Raut emphasized that the current constitution addresses a number of critical issues, including republicanism, federalism, inclusiveness, secularism, fundamental rights, and gender rights. He mentioned that this constitution was not established without significant effort; it came into being through the dedication and sacrifices of many Nepalese. Mr. Raut further highlighted how previous constitutions failed to address many of these issues.

In addition to these constitutional achievements, Mr. Raut discussed the ongoing challenges related to the lack of authority granted to province government regarding police force. As the first Chief Minister of Madhesh Pradesh, he played a pivotal role in promulgating both the Federal Police Act and the Civil Service Act during his tenure. He noted with concern that despite the promulgation of the Federal Police

Act in 2076, in the presence of the then-president, the act has yet to be implemented. One of the key issues is that the police force remains under the control of the central government, limiting the federal government's authority and effectiveness in maintaining peace and security within its regions.

Mr. Raut raised questions about the underlying reasons preventing the implementation of the Federal Police Act, pointing out that this delay has restricted the reach of federal authorities in addressing security issues at the regional level. Without full access to and control over the police force, the federal government's ability to maintain peace and stability in province remains hindered, creating an urgent need to resolve this impasse.

Mr. Santosh Pariyar

(Rastriya Swatantra Party)

Mr. Santosh Aryal stated “Our journey of constitution achievement was hard, so it should be preserved”. He also said “there’s constitution but is the society following the constitution? and do people trust on constitution”. As per him country requires honest leaders and productive employees but we are lacking on both. So, there’s a high chance of disasters if it is not corrected properly. He believes political leaders should take responsibilities.

He believes in necessary amendment in constitution for the betterment of people and society. It should be modified with the concerns of caste and social sub classes.



Mr. Surendra Pandey

(Former Minister, UML)

Mr. Pandey highlighted that Article 273 (1) of the constitution states, "This Constitution shall not be amended in a way that contravenes with the self-rule of Nepal, sovereignty, territorial integrity, and sovereignty vested in the people." However, besides these core principles, other aspects of the constitution remain amendable. He contrasted this with previous constitutions, which were unamendable, emphasizing that this flexibility in the current constitution marks a significant improvement.

Mr. Pandey further mentioned that the formation of the constitution prioritized inclusiveness, a feature that previous constitutions lacked. Therefore, we should not focus solely on prosperity. Instead, we

should evaluate the outcomes related to the constitution's inclusiveness. Given the current data in various sector, there has been significant improvement in inclusiveness.

In addition to these points, Mr. Pandey argued that VAT, income tax, customs tax, and excise duties should all be centralized and distributed evenly across the nation to ensure a fair and balanced fiscal system. This centralization, he believes, is necessary for creating an equitable and functional tax structure.

Mr. Pandey also acknowledged that while there are many issues that need to be amended in the constitution, the process must involve agreement among key stakeholders on both the procedures and the specific issues of amendment.



Mr. NP Saud

Former Minister, Nepali Congress



Reflection on the implementation of the constitution over the past decade is essential. Evaluating and analyzing the indicators of expectations will provide a clearer understanding of our current situation. This understanding will support in necessary amendment and modification of the constitution effectively. Mr. Saud emphasized that the country's budget has been allocated less to development compared to various other expenses, notably the costs associated with bureaucracy. He pointed out that with proper

training, the current workforce of 80,000 to 90,000 bureaucratic employees could be reduced to about 20,000 to 25,000, significantly lowering government expenditures.

This heavy burden of high spending has placed a strain on the populace, underscoring the need to prioritize increasing the development budget. Furthermore, Mr. Saud noted that the instability of the central government has adversely affected the stability of the federal government. In contrast, local-level governments have been performing better, which raises the need for discussions regarding stabilizing the federal government for the long term.

He also mentioned that while acts regarding motions of no confidence and votes of confidence were revised to enhance government stability, these reforms require further discussion and refinement. Inclusiveness, which is a positive indicator of our constitution, should not lead to nepotism. Therefore, joint efforts must be made to stabilize the government effectively.

In his discourse, Mr. Saud referenced the differing perspectives of King Mahendra and B.P. Koirala on development. King Mahendra advocated for development through bureaucracy and administration, whereas B.P. Koirala believed that true progress could only be achieved through political representation

and the active involvement of the people in the development process. This historical contrast highlights the ongoing debate about the best approach to governance and development in Nepal.

Comments and Queries

Bimala KC

Former Member of Parliament

Bimala KC, a former MP, asserted that federalism in Nepal has not been implemented as envisioned in the Constitution, characterizing it as a centralized model. The current federalism is a centralized type of federalism. The budget allocation in the three-tier government is not allocated in the right manner. The budget formation and allocation should be amended to change the current situation of the country. Many politicians have mentioned issues regarding proportionate election. Yes, there are issues regarding it but removing it completely isn't the solution rather discussion should be made on how to improve it. Criticizing Mr. Surendra Pandey's point on our constitution focusing on inclusiveness and not in prosperity, Ms. KC highlighted that the constitution mentions prosperity as a key factor and that inclusiveness is only a means to achieve prosperity.

Mekha Lal Shrestha

Former Member of Parliament, Gandaki Province, Nepali Congress

The province level government hasn't been able to bring any policies regarding development in the region. It lacks budget and authority regarding various issues. It is necessary to provide the rights given to province government according to the constitution. Many issues regarding land ownership, bureaucracy, security etc. needs amendment in the constitution.

Chief Guest, Mr. Pushpa Kamal Dahal

Former Prime Minister, CPN, Maoist Center

Mr. Dahal, former Prime Minister stated that currently issues regarding constitution, its amendments and modifications has been existing as an agenda in the political platform. There are various confusions in the public regarding the amendments and modification. This program chaired by former Chief Justice, Mr. Kalyan has supported to bring a clearer and common understanding of the mentioned issues to the public.

Mr. Dahal highlighted the political

instability despite his effort of maintaining a stable government. He further criticized Mr. Mishra's comment on constitution. He mentioned that the constitution was designed for peace in the nation and



takes responsibility and accountability for it. However, he stated it was not solely made by him, and there was the involvement of almost all political parties. Mr. Dahal ensured that the constitution is inclusive, progressive and flexible for amendments if necessary. However, the constitution has not been fully implemented. Discussion regarding how has the constitution being implemented, or not being implemented and the reasons behind it should be conducted rather than amendments. He mentioned the challenges faced regarding the federal civil service act to pass in the parliament. He also mentioned the challenges faced regarding police adjustment act which will provide access to police and security for the province government. To his dismay, he stated how political parties including bureaucracy does not have a positive mindset towards the constitution. For every dissatisfaction, issues and problems, they blame the constitution. Constitution amendment is not the major agenda rather there are other issues and agenda of the political parties. Therefore, he concluded that the constitution needs to be fully implemented and protected.

Conclusion

The discussions during this event underscored the complexities and challenges surrounding the implementation of Nepal's Constitution. While leaders expressed diverse perspectives on the Constitution's effectiveness and areas requiring reform, a shared commitment to enhancing governance, inclusiveness, and development emerged as a common theme.

As Nepal continues to navigate the intricate landscape of constitutional governance, the collective insights from political leaders and stakeholders will be crucial in shaping the future trajectory of the nation.

Concluding the event, former Chief Justice Kalyan Shrestha reiterated the importance of effectively implementing the Constitution before considering any review while highlighting the challenges in constitutional implementation and federalism that hinder people's ability to enjoy their rights.

He insisted that proper implementation must come first and noted contradictions within the federalism framework that raise public doubts and emphasized the need to redefine inclusiveness, which was originally intended to uplift marginalized groups but has been exploited by some.

He called for equitable treatment in the legal system and a culture of lawfulness to uphold the Rule of Law while asserting that any constitutional review should be based on consensus, warning against a win-lose approach to amendments.