

A COMPARATIVE ANALYSIS OF CRUCIAL FEATURES OF THE CONSTITUTIONS OF NEPAL AND INDIA

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ABSTRACT

When comparing Nepal's 2015 Constitution to India's 1950 Constitution, the study considers critical issues such as citizenship, inclusion, fundamental rights, and judicial independence. Both constitutions are concerned with one another. To a socialist society founded on democratic principles and goals, as well as human competitiveness. Civil liberties, fundamental rights, and federalism are all components of a democratic multiparty system of governance. republic, secularism, adult voting, regular elections, unrestricted press freedom, and an independent press. The rule of law is predicated on independent, unbiased, and competent judges who are free to do as they like.

Keywords – Constitution, Rights, Liberty, Parliament.

INTRODUCTION

The Constitution is the country's primary political and legal document. It defines the framework of a country's government. Sovereignty can only be exercised if law is in place. Protecting citizens' rights is one of its primary responsibilities, along with sharing authority with the federal government. "A constitution is a set of rules that establishes the relationship between the government's power and the people it represents."ⁱ According to Strong, the constitution is a set of rules that spell out exactly what the federal government may and cannot do. It also educates us about the rights and privileges of the governed. Two interpretations of the constitution are used by Grimm to show his authority over the document. "This word is used to define a country's heart and how it relates to its political condition at the highest level of the organisation. Another way to think about the constitution is as a set of regulations that govern

the foundation and exercise of political authority.ⁱⁱ Due to its experimental and prescriptive nature, the constitution is closely associated with government. "A country is built by the hopes and dreams of its people, and the Constitution serves as a guide for that building," states the Constitution.ⁱⁱⁱ For the most part, the definition of fundamental political concepts, the way government works, and the means by which government institutions attain power are all spelled out in the constitution. Among other things, it addresses the fundamental rights and responsibilities of citizens. It is possible for a constitution to be written, unwritten, or even made up by the people.

The Constitution of the United States of America, drafted in 1787, is a significant milestone in the modern evolution of the constitutional system. People's rights in the United Kingdom were detailed in both written texts, which served as a model for other countries who lacked written constitutions like the United Kingdom's, the birthplace of democracy and human rights. Following the French Revolution in 1789, France drafted its first constitution in 1791. Government in this form dates back thousands of years. A constitution was drafted in 1954, followed by two others in 1975 and 1978. After a long process of deliberation, China's present constitution was adopted and promulgated in 1982.^{iv} Furthermore, from its inception in 1950, the Indian constitution has been amended 104 times. After the Interim Constitution was approved in 1993, South Africa made a constitutional amendment in 1996 to reflect the new government's priorities.^v Many of the Charter of Rights' essential elements, such as the right to a fair trial, are included. Presidential, parliamentary, hybrid, and federal are all types of current constitutions. There is a distinct difference between each of these categories (presidential plus parliamentary and socialist guided). Because of what they do, the government's ability to wield authority and power is impacted by them. People's views on the constitution-making process in Nepal have altered substantially. After the country was founded in 1768, Nepal's constitutional history states that the country's current state was established. Historically, this is how the legal system was established: Based on royal orders and Hindu scriptures that were prominent in the past. He requested that Surendra Bir Bikram Shah make the "Muluki Ain" (land legislation) official following a formal visit by then-Prime Minister Jung Bahadur Rana. After a long period of time, this was finished in 1854 (1910B.S.). At the time, it was a statement about how people saw Hindu law. Nepalese law enforcement officers relied on the Code of Criminal Procedure as a guide.

According to the Nepal Governance Act, the country's legislature would be divided into two chambers, one for each house. No "measure" was rejected despite the Prime Minister's capacity to choose the majority of both chambers' members and to reject any "measure." An interim constitution, known as the Interim Government of Nepal Act 1951, was enacted following the adoption of the Government of Nepal Act.^{vi} As a result, the king's power was reestablished. King Tribhuvan II wrote this constitution. In 1959, the Nepalese constitution was passed, which stated that parliamentary elections would be held in the country. While this was happening, Nepali Congress leader B.P. Koirala was in power under the monarchy of King Mahendra Bir Bikram Shah, who seized control of the constitution in 1960 and overthrew the elected government. After adopting a new constitution based on the Partyless Panchayat system in 1962, the King had no choice but to accept it. A democratic constitution and constitutional monarchy were eventually adopted, but not without his initial opposition. Maoist insurgents, an illegitimate democracy, and parliamentary political parties all convinced the populace that they were the best way to avoid the country's imbalances, injustices and corruption. During the Narayanhiti Massacre, King Gyanendra took control of the country. In the beginning, he targeted the Maoist insurgents and political parties one by one. Due to the King's backward policies, a coalition of political parties and Maoist organisations formed to resist his rule over the country. On the basis of seven principles, they made the monarch kneel before the people's authority. In the end, it was announced that Nepal's 2007 interim constitution will be put in place. The country will no longer be ruled by a monarchy as a result of this decision. A temporary constitution was in place at the time of the first and second elections for the constituent assembly. It took place in 2008 and 2013.^{vii}

A CHRONOLOGY OF CONSTITUTIONAL CHANGES IN NEPAL

- In 1768, Nepal became the first country in the world to have a formal constitution. "The legal system was established on royal decrees and fundamental Hindu texts," the author states.^{viii}
- As a codification of the existing Hindu law system in popular usage in 1854, King Surendra Bir Bikram Shah signed the Muluki Ain. Nepalese law enforcement officers relied on the Code of Criminal Procedure as a guide.^{ix}

- The Government of Nepal Act of 1948, also known as "Proclaimed by Padma Shamsher," is widely considered to be the country's first democratic law. When the Act was passed in 1872, it was intended to create a bicameral legislative body in the United States. Even if the relevant legislative body had passed a "measure," Prime Ministers could not constitute a majority in both chambers of parliament and veto it.
- Indian lawyers were enlisted by the King to assist in establishing administrative, legislative, and judicial control over Nepal. Known as the "Interim Government of Nepal Act 1951," this law established a temporary government in Nepal. Among the ideas embodied in the law are those of individual liberty, due process, and judicial independence, among others.
- On February 12, 1959, the Nepalese Constitution was signed into law, however it lasted only a few months. A "democratic dispensation" was declared in the constitution, although the King was given extensive latitude and emergency powers. This process was used within a week following constitutional enactment on February 18, 1959 to elect the first legislature. That's how the first legislature was selected. In Nepal, B.P. Koirala was voted as the country's first prime minister by the people. A new head of Nepal's main opposition party, the Nepali Congress, was sworn in when it won the election.
- On January 1, 1962, King Mahendra signed into law the 1962 Constitution. The Constitution of India established the National Rashtriya Panchayat, a national, unicameral legislative body. Although it lacked legislative power, it served as a model for later bodies that sought to legislate. It was only until a four-tiered structure was put in place that the five-panch system was introduced to the national level. The constitution of Nepal, which was first drafted in 1962, has undergone three rounds of revisions, the most recent in 1980.
- Voters across India were asked in May of 1980 if they preferred a multi-party democracy or the Panchayat system with minor improvements, such as giving more control to women, to remain in place for another 30 years. Panchayat reform received an overwhelming majority of the vote. For the first time, national legislators were elected by the people as a result of the 1980 amendment to the constitution.
- Popular demand for a multi-party system was loudly expressed during the Jan Aandolan movement of 1990. After the ban on political parties was lifted, King Birendra worked

to guarantee a seamless transition to democracy and the elimination of various Panchayat-level organisations. K.P. Bhattarai, a Nepali Congress politician, has been named interim leader. Constitutional reform will be carried out by a nine-member commission, as announced. The commission will include representatives from the Nepali Congress, the Communist Party, and the Royal Household. In November 1990, King Birendra published the Kingdom of Nepal Constitution, which was the country's first constitution.

- The Interim Constitution of Nepal was ratified on January 1, 2007. As the "compromise instrument" between Egypt's major political factions, the Interim Constitution replaced Egypt's monarchy with a republican one. However, executive power was delegated to a Council of Ministers headed by a Prime Minister, with the president serving as the ceremonial head of state. "Elections for a 601-member Constituent Assembly (CA) with the additional role of acting as Parliament until an interim Constitution could be formed" were mandated by the interim constitution.^x
- When the first Constituent Assembly convened on May 28, 2008, it lasted for four years. This two-year term was chosen because of an impending deadline for the Nepalese Constitution. In spite of numerous extensions, the CA failed to draught the Constitution. The CA's tenure expired on May 28, 2012, when the Supreme Court rejected four successive extensions.^{xi}
- Second Nepalese Constituent Assembly was formed after the first failed to pass a new constitution in 2013 Constituent Assembly elections.
- Nepal's new constitution, passed on September 20, 2015, took effect right away.^{xii}

The year 1950 marks a turning point in Nepal's contemporary history. A democratic government was formed throughout the country after the overthrow of the Rana dynasty. The Soviet Union's transition in 1950 benefited politics, society, and the economy alike. As a result, Nepal became better known around the world. Institutionalizing democracy became difficult following the change of government in 1950. Over the following seventy years, seven different constitutions were drafted. Economic and social progress has been hampered by these changes, as well as the volatility brought on by political upheaval. After the 1990s political developments, the government approved a constitution that laid the legal groundwork for parliamentary democracy in the country. This document's ratification was not without

controversy, either. In 1996, the Nepal Communist Party (Maoist) began a decade-long campaign of violence against the country's constitution and monarchy. More than 70,000 Nepalis were killed in the conflict, which has left the country in a state of internal displacement and political instability. A constitutional monarchy was in place in this country, but King Gyanendra Shah wanted full power over the realm. This led to a coalition of political parties opposing King Abdullah's 2005 decision to suspend the current government. Even the political parties that initially backed the Constitution of 1990 have begun to voice their displeasure with it. Seven political parties and Maoists reached an agreement in 2006 in this context. Following that, in 2006, a large-scale rebellion led by a variety of political parties against the King took place. Later, in 2007, the Madhesh movement led the government to adopt federalism. Preceding the election of the first Constituent Assembly, the events listed below took place: (CA). Despite the fact that the Maoist party won the election, the Constitutional Assembly (CA) was unable to draught a constitution within the timeframes it set for itself. These events sparked the election of a second CA in 2013, which began the process of revising the country's constitution. The following are the four foundational ideas of the first CA:

- In the beginning, Nepal will be a republic State.
- Nepal Shall be parliamentary democratic governance system,
- State reorganisation, among other things, will help the country transition from a unitary to a federal form of government.
- A practical application of proportionate representation is required. As a result, at its first meeting, Nepal's Constituent Assembly declared the country a republic.

Taking the country's monarchy, which had been in place for more than two centuries, down was the first step in the CA's revolution. What happened afterwards shows that republicanism was only defined as the end of the monarchy in those days. No one should be treated differently because of their birthplace because of the law. Laws are dominant in this society, and it should be observed. The process of drafting the constitution laid the groundwork for a second foundation: democratic government. Democracies in countries with written constitutions see democracy as a system of government based on accountability and transparency. Constitutional safeguards for people' rights, free press, regular elections, and an independent judiciary are among of its most distinctive aspects. The fourth principle concerns the representation and engagement of marginalised and backward elements of society in governance and in the

political, economic, social, and cultural spheres on the basis of the proportional representation principle approved during the constitution-writing process. The first CA, which was founded to achieve the aforementioned objectives, was unable to complete its constitution within its term. The Nepali Congress has overtaken the Maoists as the country's largest political party following the election of the country's second Constituent Assembly. Third and fourth place went to the Madheshi Party and the Maoist Party correspondingly. In less than two years, the second CA finished the process and the constitution was officially issued in September 2015. Despite the fact that there was a lot of debate, this constitution was enacted.^{xiii}

THE SIGNIFICANT SIMILARITIES AND CONTRASTS BETWEEN THE CONSTITUTIONS OF NEPAL AND INDIA

Nepal and India have a long history of cultural relations, which must be honoured. Since they live so close together, they've shared their religious beliefs as well as their language and culture for a long time. The unrestricted movement of individuals on both sides of the border has bolstered social and cultural ties between the two countries. India has played a key role in Nepali politics for a long time. Both Rana-ruled Nepal and British-ruled India earned their independence in the 1950s, Nepal in 1951 and India in 1947, respectively. They then began creating constitutions in these countries. It took the Constituent Assembly less than two and a half years to adopt a new constitution and declare itself an independent socialist secular democratic republic on January 26, 1950.^{xiv} Compared to other countries, Nepal's constitution-writing process has taken a long time. After starting in 1948, the project was finished in 2015. This is Nepal's eighth constitution, which was enacted in 2015 (2072). The country's first constitution had been finalised and adopted as of September 20, 2015, according to the president of Nepal, the CA that was elected particularly for this reason.^{xv} Though the constitutions of Nepal and India differ greatly, they are based on the same intellectual and social framework that incorporates socialism and liberalism in equal measure. The goal of this essay is to show how the two constitutions differ and how they are similar. The Indian Constitution is unique in a number of ways. Over a thousand pages long, the Indian constitution is the world's longest written constitution. Federalism and unitarianism coexist here, as does a

fine line between openness and rigidity. The Constitution was proclaimed on January 26, 1950, and since then, it has successfully steered India's course.^{xvi}

1. In terms of length, the Constitution that was written is the longest.

In most cases, Indian constitutional law and government are enshrined in a written instrument known as "the constitution." The Constituent Assembly deliberated on it for a long time before passing it into law. The text contains three hundred and ninety-four constitutional amendments, as well as 22 sections and 12 schedules. The Indian constitution is divided into two parts: federal and state. It is the longest suspended bridge in the world.

2. When the Constituent Assembly was established in 1946, it was tasked with creating the country's constitution. The group's first meeting was conducted in New York City on December 9, 1946. The group voted in 1947 to agree on this purpose. This resulted in a significant amount of work on the country's first constitution, which was completed on November 26, 1949, the first day of the month. On January 26, 1950, the 60th anniversary of the constitution's adoption, the constitution went into full effect.
3. The Indian Constitution's Preamble is a well-written document that describes the basic idea of the entire document. India is a sovereign socialist, secular, democratic republic and welfare state, and its constitution states that it is dedicated to promoting brotherhood, individual dignity, national unity, and stability through justice, liberty, and equality. This is stated in the constitution.^{xvii}
4. The People's Republic of China Declaration. Only in 1976 did the word "socialism" appear in the preamble to India's constitution. It had previously been omitted. It is one of India's most well-known features in today's world. Exploitation in any form is prohibited by the Indian constitution, which seeks to ensure that everyone in the country has the equal amount of money, resources, and riches. This will be accomplished in a variety of ways, including peacefully, constitutionally, and democratically.^{xviii}

Because Indian citizens have the same rights and opportunities as everyone else in the country, they are encouraged to participate in politics. They have the ability to pick who governs their country. It is up to the Indian government, which is elected in free and fair elections every few years. They are keeping a close eye on India's every move. People still wield a great deal of power. The Forty-second Amendment to India's Constitution declares the state to be secular and distinguishes it from religious ideology.

Because of the Constitution, everyone has the same religious freedom. This law was created to ensure that everyone has the legal right to religious freedom.^{xix}

5. The Indian constitution's preamble declares the country to be a republic. In a presidential administration, the president is elected by the people and serves a five-year term.
6. Article 1 specifies that India is a collection of states, therefore that's the first item to mention.
7. According to Article 1 of the Indian Constitution, the country is a union of states because the Indian federation was not founded through an agreement among the constituent entities. This means that the country cannot be divided.^{xx}
8. There must be a healthy balance of rigidity and flexibility. India's constitution is both hard and malleable. Some of its rules may take a long time to change, while others will be as simple as enacting legislation. It has laws that are both strict and flexible, according to Article 368 of the constitution.^{xxi}
9. Making certain that essential rights and obligations are inscribed into the Constitution Articles 12-35 of the Indian constitution provide significant rights to all citizens, regardless of faith. When it comes to Indians, they refer to it as the Bill of Rights, therefore.

The Constituent Assembly, a democratically elected body, was in responsibility of writing the constitutions for both Nepal and India. Despite their vastly different socioeconomic, cultural, and geographic backgrounds, all of the countries employed the same technique. For starters, Nepal employed this system since it possessed an independent court and utilised parliament in an innovative method. While certain Madhesi political groups with regional roots objected to the constitution's final draught or its content, the great majority of Nepalis from all walks of life welcomed its implementation. Only a few of these groups were Madhesi in origin (plain-based). The most crucial components of the new constitution for Madhesh-based parties are how constituencies are created based on geography and population, how the federal parliament is set up, and how new citizenship laws affect them.

The conflict between Madhesh-friendly organisations has thrown Nepal into disarray. Local and general elections were held in 2017 as a result of an agreement reached amongst Madhesh-based political organisations.

CONCLUSION

Nepal's constitution is unique in that it incorporates federalism, republicanism, secularism, and inclusion. For the first time in South Asia, if not the world, it asks for women to make up at least one-third of the legislature. Language laws are established in accordance with the charter by recognising any language given to the mother by the father as a national language. The Nepalese constitution protects fundamental rights in a step-by-step manner. The most essential rights are addressed in Articles 16–48 of the Constitution. They include the right to information and communication, the right to free legal assistance, the right to own property, the right to speak one's native language and culture, the right to a healthy environment, and the right to social security. When it comes to how the Nepalese constitution is divided into districts, both people and terrain have a role. The constitution also provides for amendments to be made to the document. The constitution is distinguished by two additional features.

It also features an independent and impartial court, as well as a method for drawing constituency borders that are fair to all. For a country's democracy, socioeconomic progress, and worldwide stature to be strong, it must have flawless justice, a free judiciary, and the rule of law. Indian judges are chosen in a free and fair manner, according to the constitution and facts. This shows that the country's judiciary is independent. Nepal's top court, like India's, might adopt a system in which judges are chosen by a group of people. This would attempt to reduce the ruling party's influence on the court.

Finally, there appear to be some liberal or democratic elements in the Indian constitution, such as how Supreme Court judges are chosen. The Nepalese Constitution of 2015, on the other hand, promises a slew of postmodern democratic ideas, such as inclusive democracy. India claims to be the most democratic country in the world, but Nepal's new constitution contains crucial lessons for India.

When this constitution was enacted, Nepal became the first country in Asia to recognise the rights of lesbian, gay, bisexual, and transgender people. It states that no citizen should be treated differently when general laws are enforced because of their religious views, race, caste, tribe, sexual orientation, handicap, condition of health, marriage status, pregnancy, or any combination of these factors (or any combination of these criteria). Gender-based and sexually

oriented minorities are among the groups that "nothing shall prevent the state from establishing special legislation to protect, empower, and progress."

In India, however, same-sex partnerships are prohibited and can result in "life imprisonment or imprisonment of either kind for a term not exceeding ten years, as well as a fine," according to Section 377 of the Penal Code. Section 377, a severe law, was affirmed by the Supreme Court in 2013. The legislature had to determine whether to preserve it or repeal it.

Despite the fact that the Nepali constitution states that "women would have equal ancestral rights free of gender discrimination," it also mentions that women have rights. Women of all religious groups in India do not have the same rights as they do in their home countries. India does not believe that women should be able to inherit money from their forefathers. Women have access to all government agencies, as well as health and education, employment, and social security. This is due to the fact that the Nepalese constitution states that women have the same rights as males. India has made some progress, but there is still a long way to go before women are completely represented in the country's public spaces. Nepal is the second country in South Asia after Bhutan to have abolished the death sentence. This is a significant shift for the country. In the past, the Supreme Court of India has sentenced many innocent persons to death. Since 1996, approximately 15 people have been executed for no apparent reason. These individuals were hanged. The new Nepalese constitution allows persons who have been affected by pollution or environmental damage to seek restitution from the person who caused it. Even though the Indian constitution does not state it, the Supreme Court of India believes that the "right to a clean environment" is part of the right to life. This is despite the fact that the right to a clean environment is not specifically expressed. When it comes to compensation for persons who have been damaged by pollution or other damage, the two countries have some distinctions. People who become ill as a result of pollution may or may not receive compensation from the government, but this is not usually the case. Those who have been harmed pay the price for the state's good fortune.

Furthermore, the constitution states that everyone has the right to attend school, but it also makes particular allowances for persons who are physically or psychologically unable to attend school. According to the law, citizens with disabilities and the destitute should be able to attend college for free. People who are not like everyone else in India do not have the same rights as everyone else. They are not entitled to free college or university education. People enrolled in

the government's free education programme can only attend school for free until they reach the first grade.

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