

Authors Affiliation

*Associate Professor, P.G.& Research Department of Political Science, Sree Narayana College, Kollam, Kerala. **Assistant Editor, South Asian Journal of Socio-Political Studies [SAJOSPS] Jayam,399-A,Vaidyasala Nagar,Asramom, Kollam, Kerala,691002.

Reprints Requests

M.R. Biju, Associate Professor, P.G.& Research Department of Political Science, Sree Narayana College, Kollam, Kerala.
E-mail: mrbijueditor@yahoo.com

India and Nepal: 'Neighbour First Policy' Under Strain

M.R. Biju, M.R.B. Anantha Padmanabha

Abstract

The current crisis in Nepal has political, cultural social and emotional dimensions too. But India should have responded with pre-cautions. It should be prepared to show more sympathy, concern and kindness towards a nation like Nepal. Nobody denies India's contribution to the overall economic, social and trade developments of Nepal. Along with India's assistants on several areas, it should also be prepared to understand the mindsets of Nepali people. If Government of India fails to ensure the warmth and intimacy of the Nepali common man, whatever economic contribution extended to the land lock country may not be acknowledged by them with an open mind. The Indian foreign policy operators should take urgent and timebound efforts to normalize Indo-Nepal relations for the sake of both the parties.

Keywords: Indo-Nepal Relations; Foreign Policy; Sovereignty; Secularism; Fundamental Rights; Federalism

After assuming the office of the Indian Prime Minister on 26th May, 2014 Narendra Modi and his external affairs team are keen in framing a unique foreign policy for India based on pragmatism. One of the key ideals of Modi's foreign policy objectives is to strengthen India's ties with neighbouring nations by following "neighbour first policy". But an objective analysis undoubtedly shows that the foreign policy initiatives are not yielding the desired results atleast in India's relations with Nepal. India also seems to have hit a wall in its relationship with Nepal. This seems especially true if one considers India's response to the adoption of the Himalayan republic's brand-new constitution. Not only did Kathmandu's ruling elites ignore New Delhi's advice while promulgating the new constitution; they also snubbed India by adopting the document despite objections from its "big brother" to the south. India's subsequent reaction with the new constitution has not gone down well with Nepali people and media. Instead of welcoming the new document passed by the majority of the elected members of the Nepali Constituent Assembly, Kathmandu's southern

neighbor's "concern" has been interpreted as direct interference in the nascent democracy. Keeping this background in view, an attempt has been made in this paper to evaluate India's ties with the Himalayan country in the context of the recent developments. The paper has been classified under four major heads. Part-One presents the significance of the current phase followed by Part-Two on India's ties with the landlocked country since its origin. Part-Three unfolds the constitutional developments in Nepal with special focus on the promulgation of the new constitution on 20th September, 2015 and concluding part focuses on India's over reaction and its subsequent effects and impacts on India-Nepal relations.

Part-I : Recent Unfortunate Developments

It is generally observed that, New Delhi appears to be playing a partisan game in its northern neighbor, thereby exposing itself to charges of inciting division in the predominantly Hindu state. This could potentially damage New Delhi's

reputation, both in Nepal and further abroad. Not long ago, India played a constructive role in bringing the Maoist insurgent movement to mainstream politics in Kathmandu and ushering in a new era of democracy in Nepal. When Modi visited Nepal last year he was given a rousing reception, cutting across ethnic and religious fault lines. Today, however, the Indian prime minister has become a polarizing figure. On social media, the hashtag #Back Off India has been trending for the last few days, with more than 20,000 tweets posted so far. Thousands of tweets are addressed directly to Modi's accounts, asking him very bluntly not to interfere in Nepal's internal affairs and respect its sovereignty. India runs the risk of being perceived as an ally of reactionary forces in Nepal if it does not tread cautiously. By its meddling in the constitution process, it has given the political elites in Kathmandu an opportunity to divert people's attention from the actual shortcomings of the constitutional document. There is little doubt that the Nepal episode has brought to question Modi's much touted "neighborhood first" policy.

It is unfortunate that India-Nepal relations have been dented because of domestic problems in the landlocked nation. There is no doubt that the people of Nepal have suffered because of the blockade on the border. Though it is alleged that India has blocked movement of goods, the fact is Indo-Nepal trade has become a victim of unrest in the Himalayan nation. It is the vested interests which are blaming India for the shortage of essential goods, particularly fuel. Nepal imports a large quantity of essential goods from or through India. True, in the 1980s, the Rajiv government had wrongly imposed a blockade with a view to teaching Kathmandu a lesson. This time, the situation is quite different.

India has not taken any decision that amounts to harassment of the people in Nepal. In fact, there was no decision to block movement of goods. However, it is the agitation of the Nepalese, living in the border areas, that has created the problem. Indian government cannot force the agitators to allow Indian or Nepali trucks to pass through the border because that would invite trouble. As it is, the people in the valley are agitated over the new Constitution. There is no denying that India is upset over the new Constitution which has not done justice to all sections of the people. It expected the Constituent Assembly to draft a document acceptable to all the people of Nepal.

One good sign is that goods have started moving across the border. It will take some time before normalcy in trade is restored. Unfortunately, some forces inimical to India have been unleashing a

propaganda war portraying India as the villain of the piece. It is nothing but malicious. On the contrary, it has been caught in the crossfire between two sections of the Nepalese. It wants a settlement that will do justice to all sections. The argument that only a small section of the Constituent Assembly opposed the new Constitution does not wash because it overlooks the aspirations of a significant section of the population. It is in Nepal's own interest that the logjam on the Constitution is ended and India-Nepal relations are normalised.

Prime Minister Narendra Modi, who is believed to understand the concept of a shared South Asian "commons", is seen as having missed a unique opportunity to unify the people of the region. The introduction of a new Constitution in Nepal presented a chance to alter the entrenched belief that the outcomes of India's special relationship with Nepal will always be unfair. Instead, weeks of suffering from the 'blockade' have led the Nepalese to drown in suspicion: may be India didn't like the new Constitution; it knew northern trade points were still damaged by the quake; it callously imposed a weeks-long blockade on their crippled country. Unfortunately for India, most Nepalis blame Prime Minister Modi, the public face of the Indian government in Nepal.

The relationship between India and Nepal is complex and the existing problem should be resolved at the earliest for the benefit and interest of both the parties. In this context, it has to be noted that, India increasingly needs Nepal to safeguard its vital interests. But Nepal depends on India far more. Nearly all of its fuel imports come from the Indian Oil Corporation. The Nepalese Rupee continues to be pegged to the Indian Rupee. India is Nepal's main trading partner, and the border is open. Nepalis have served in the Indian Army, and receive pensions in retirement. By some estimates, one seventh of the entire population of Nepal resides and works in India.

Despite this uneven interdependence, Indian diplomats have sought to cultivate the delicate impression that they are not viceroys. Even before the recent events, they strained to convey that India cared about the well-being of the people of Nepal, regardless of political uncertainties. They reiterate that they attach the greatest importance to the relationship between India and Nepal.

The people of Nepal are confused by the mixed messages. After eight years and two elections, they finally wrote a Constitution that they feel India coldly acknowledged. India then reacted indifferently, in their view, to the impending humanitarian crisis. Furthermore, they saw Prime Minister Modi's

invitation to the new Prime Minister of Nepal to visit New Delhi as a 'summons'. So they ask, does India care about the people of Nepal or is it concerned only about its interests? Is it ready to subject an entire population of more than 27 million to eat bitterness, right when it hurts most, to get what it wants? How retributive is India going to be when the ups and downs of neighbouring democratic processes lead to outcomes it may not like? (Nirupama Rao, Athul Pokharel : 2015).

Part-II : Milestones in the India-Nepal Relations

India and Nepal share a unique relationship of friendship and cooperation characterized by open borders and deep-rooted people-to-people contacts of kinship and culture. There has been along tradition of free movement of people across the borders. Nepal has an area of 147,181 Sq. Kms. and a population of 29 million. It shares a border of over 1850 Kms to the south with five Indian States - Sikkim, West Bengal, Bihar, Uttar Pradesh and Uttarakhand and in the north with the Tibet autonomous region of the People's Republic of China. In keeping with the tradition of regular high-level exchange of visits between India and Nepal, President, Dr. Ram Baran Yadav, First President of Nepal, paid an official visit to India from 27 January -5 February 2011. Other visits from Nepal to India in the recent years have been by Prime Minister Dr. Baburam Bhattarai (20-23 October 2011), Prime Minister Madhav Kumar Nepal (18-22 August 2009) and Prime Minister Pushpa Kamal Dahal 'Prachanda' (14-18 September, 2008). External Affairs Minister, Shri.S.M. Krishna visited Nepal from 15-17 January 2010 and again from 20-22 April 2011. Finance Minister Shri Pranab Mukherjee visited Nepal on 27 November 2011.

India-Nepal Treaty of Peace and Friendship

India-Nepal Treaty of Peace and Friendship of 1950 is the bedrock of the special relations that exist between India and Nepal. Under the provisions of the treaty, Nepalese citizen have enjoyed unparalleled advantages in India, availing the facilities and opportunities at par with Indian citizens. The Treaty has enabled Nepal to overcome the disadvantages of being a land-locked country. Overtime, many regimes in Nepal have raised the issue of revision of the treaty. India has maintained that it is willing to examine all bilateral arrangements with a view to further strengthening our relations. Specific suggestions from the Nepalese side have not been forthcoming.

The 12-Point Understanding

Beginning with the 12-Point Understanding reached between the Seven Party Alliance (SPA) and the Maoists in Delhi in November 2005. Government of India welcomed the roadmap laid down by the historic Comprehensive Peace Agreement of November 2006 towards political stabilization in Nepal through peaceful reconciliation and inclusive democratic processes, India has consistently responded with a sense of urgency to the needs of the people and Government of Nepal in ensuring the success of the peace process and institutionalization of multi-party democracy through the framing of a new Constitution by a duly elected Constituent Assembly.

Development Initiatives Undertaken by Government of India

India contributes to the development efforts of Government of Nepal (GoN) by undertaking various development projects in the areas of infrastructure, health, rural and community development, education, etc. The grant assistance extended to Nepal during 2009-10 under 'Aid to Nepal' budget was 161 crores. In addition, GOI has extended considerable economic assistance to the ongoing peace process in Nepal. The overall quantum of India's assistance to Nepal is approx. 3600 crores which includes the Small Development Projects scheme offered by the Embassy of India delivers development assistance at grass-roots level in sectors identified with the local population. It now covers over 370 projects with an outlay of approx. 402 crores. As part of India's effort to assist with capacity building and development of human Resources in Nepal, over 1500 scholarships are offered annually for Nepalese students to pursue various courses in India and Nepal.

India as the Largest Trade Partner

India continues to be Nepal's largest trade partner, source of foreign investment and tourist arrivals. Bilateral trade between India and Nepal has increased substantially since the signing of the Trade Treaty in 1996 and received further impetus after the signing of the revised Trade treaty in 2009 which has provisions that allow Nepal greater access to the Indian market. According to figures for the Nepalese fiscal year 2066 (July 2010), bilateral trade with India accounted stood at '16129.7 crores which accounted for for 58.7% of Nepalese total external trade. India and Nepal have a treaty of transit, which confers transit rights through each other's territory through

mutually agreed routes and modalities. The treaty was last renewed for seven years in March 2006. The two countries have concluded a Rail Services Agreement (RSA) and a revised Air Services Agreement (ASA) to enhance bilateral connectivity. A Motor Vehicles Agreement (MVA) for passenger vehicles is awaiting formal signature. India also remains Nepal's largest source of foreign investment and Indian investments in Nepal amount to '1586 crores with 462 FDI projects. India accounts for 44% of the total foreign investments in Nepal.

India's Leading Role in the Formation of Nepal Army

India had played a leading role in helping the Nepal Army (NA) in its modernization through provision of equipment and training. More than 180 training slots are provided every year for training of NA personnel in various Indian Army training institutions. The Chief of Army Staff of the Indian Army is given the honorary rank of a General in the Nepal Army and a reciprocal honour is conferred on the Chief of the Nepal Army. India has always been proud to have Nepalese as soldiers in her Forces and has made every effort to ensure that they are looked after and cared for in their twilight years. As of now, we have over 1.23 Lakh ex-servicemen residing in Nepal in 2010-11 the payments of pensions to the Indian ex-service men in Nepal amounted to '1100 crores. The Government of India has made every effort to ensure that these ex-servicemen, their families and dependents are looked after in the best possible manner. To ensure this, the Government of India has established "The Indian Ex-Servicemen Welfare Organisation in Nepal (IEWON)".

India's Contribution in the Field of Water Resources

There is vast potential for cooperation between India and Nepal in the field of water resources. Nepal has 43,000 MWs hydropower potential that is known to be technically feasible and economically viable. However, major projects have not taken-off due to considerations outside the realm of economics. Ironically, India is a net exporter of power to Nepal. Both countries have recognized the importance of co-operation in this field and decided to inject a new dynamism by establishing a three-tier bilateral mechanism at the Ministerial (Joint Ministerial Level Commission on Water Resources-JMCWR), Secretary (Joint Committee on Water Resources-JCWR) and technical (Joint Standing Technical Committee-JSTC) levels to oversee the entire gamut of cooperation in water related issues.

Areas of Co-operation on Security Concerns

Co-operation on issues of mutual security concerns relating to the open border has been a hallmark of our relations with Nepal. Nepalese side has assured at various levels that it would not allow its territory to be used for any activity against India. There are streamlined bilateral mechanisms to address all issues concerning security, including cross-border crime, and establishing effective communication links between and along the bordering districts to further facilitate the exchange of information. India has repeatedly stressed the need for strengthening the legal framework, in order to counter their common cross border security challenges. India has also provided liberal assistance to the security apparatus in Nepal in development of infrastructure, capacity building, equipment and training of human resources.

Joint Technical Committee (JTC)

A Joint Technical Committee (JTC) led by Surveyors General of India and Nepal has jointly prepared and initialed strip maps of 98% of the India-Nepal boundary (December 2007). These strip maps are awaiting authentication at Plenipotentiary level. Recently there were some politically motivated attempts in Nepal to portray the status of the boundary in an unfavorable light alleging instances of Indian encroachment, although the matter has not been formally taken up by the Government of Nepal. India has emphasized the necessity of early signature of the strip maps at plenipotentiary level so that work on installation of boundary pillars where they are missing and repairs where they are damaged could begin. Nepal has conveyed that they are building political consensus for the signing of the strip maps.

Part-III : Constitutional Developments in Nepal

Nepal's new Constitution was promulgated on 20 September 2015. The Constitution with 308 Articles, 35 parts and nine schedules is the seventh constitution in the history of Nepal since 1948. The new Constitution, adopted eight years after the enactment of the Interim Constitution, has failed to satisfy the Madhesi, Tharus and Janjatis who together comprise approximately 49 percent of Nepal's population. In this context, this report is an attempt to provide salient features of the Constitution, timeline of constitutional development, remarks by the Nepali leaders, reactions from international communities and India's response.

The Chronology of the Constitutional Development in Nepal

1. 1768: The history of constitutional development in Nepal goes back to 1768 when the Nepal state was formed.
2. 1854: Muluki Ain –the codification of traditional approach of Hindu laws in common practice – was promulgated by King Surendra Bir Bikram Shah in 1854.
3. 1948: The Government of Nepal Act, 1948, 'proclaimed by Padma Shamsher', was the first legal instrument to incorporate the democratic values.
4. 1951: The Interim Government of Nepal Act 1951, drafted with the help of legal experts from India, asserted the King's executive, legislative and judicial authorities.
5. 1959: The Constitution of the Kingdom of Nepal, proclaimed on 12 February 1959, did not last for more than two years. Despite the 'democratic dispensation', the Constitution granted unrestricted discretionary and emergency powers to the King. Within a week of promulgation of the Constitution on February 18, 1959, the first legislature was elected through adult franchise. B.P.Koirala became the First Democratically elected PM of Nepal.
6. 1962: The Proclamation of Constitution of 1962 by King Mahendra. The Constitution established a central unicameral legislative body –the National Rashtriya Panchayat.
7. 1980. A National Referendum was held in May 1980 to decide whether the people wanted to go back to multiparty democracy or retain the Panchayat system with reforms.
8. 1990: Strong popular uprising –Jan Aandolan – in demand for multi-party system. King Birendra lifted ban on political parties, allowed a peaceful democratic transition and abrogated various Panchayat bodies. An Interim government led by Nepali Congress leader, K.P. Bhattarai, was formed. A nine-member Constitution Reform Commission was announced with representatives from the Nepali Congress, Communist Party and Royal representatives. The Constitution of the Kingdom of Nepal 1990 was promulgated by King Birendra in November.
9. 2007: The Interim Constitution of Nepal was proclaimed in 2007. The Interim Constitution, known as the compromise document between the major political parties, replaced monarchy with a republic.
10. 2008: The first Constituent Assembly served from May 28, 2008 to May 28, 2012. The first CA's original tenure was two years with May 2010 deadline for drafting the Constitution of Nepal.
11. 2013: The second Nepalese Constituent Assembly was formed as a result of the 2013 Constituent Assembly elections after the failure of the first Constituent Assembly to pass new Constitution.
12. 2015: Nepal, on 20 September 2015, promulgated a new Constitution.

Salient Features of the New Constitution

Sovereignty

The sovereignty of Nepal is vested in the people of Nepal. The preamble of the Constitution says, "We, the people of Nepal, in exercise of the sovereign powers inherent in us." The Constitution "embrace(s) the sovereign Right of the people by maintaining country's independence, sovereignty, geographical integrity, national unity, freedom and dignity" (Para 2, Preamble of the Constitution). There is emphasis on the word 'sovereignty' and 'independence'. The words 'sovereignty' has been mentioned many times in the Constitution. Although repeated mention of words – 'sovereignty', 'sovereign', 'integrity' and 'independence' – is common in many Constitutions of the world, but, in the case of Nepal, it can be seen in the backdrop of insecurity perceived in the context of its geographical location and recent democratic movements.

Secularism

The word 'secularism' is retained in the Constitution. "Nepal is an independent, indivisible, sovereign, secular, inclusive, democratic, socialism-oriented federal democratic republican state" (Article 4, Part I). Here, the Constitution also clarifies the meaning of the word, secular. Secular means "protection of religion and culture being practiced since ancient times and religious and cultural freedom" (Article 4, Part I). Article 26 (1) states, "Each person shall be free to profess, practice and preserve his/her religion according to his/her faith." The demand for a Hindu nation was rejected by majority of the members of the Constituent Assembly (CA). In 1962, the Panchayat Constitution formally declared Nepal a Hindu Kingdom and, at the same time, discarded the logic of caste hierarchy to ensure equality of all citizens. Nepal was declared 'secular' after years of insurgency, under the Interim Constitution, which was promulgated in 2007.

Language

Article 6 of the Constitution states that the Language of the Nation will include all the mother tongues spoken in Nepal. Article 7 states that the Nepali language written in Devanagari script will be the business language in Nepal. In addition to the Nepali language, the Provinces will also have the Right to select one or more language/s spoken by majority of people of that province as the language for official business [Article 7(2)]. [Article 7(3)] states that the Government of Nepal will decide on the matter of language on the recommendation of the Language Commission. Nepali people speak over 100 different languages and dialects.

Citizenship

Citizenship – a. Article 10 (1) states, “No Nepali Citizen will be denied to acquire citizenship.” Article 10 (2) talked about the provision of single federal citizenship with provincial identity.

b. A person, who has acquired the Nepali citizenship by descent before the commencement of the Constitution 2015 (Article 11, 2- a) or any person, whose father or mother was a citizen of Nepal at the birth of such a person (Article 11, 2-b) and has his/her permanent domicile in Nepal, will be deemed to be a citizen of Nepal.

c. Interestingly, every child found in Nepal, the whereabouts of whose paternity or maternity is not known, would be a citizen of Nepal by descent until the mother or father is traced [Article 11(4)].

d. Article 11(5) states that a person born to a Nepali citizen mother, whose father has not been traced, having domicile in Nepal shall be deemed Nepali citizen by descent.

e. Key constitutional posts are reserved for citizens by descent.

f. A foreign woman, after marriage to a Nepali citizen, will only be able to acquire naturalized citizenship of Nepal [Article 11(6)]. Further, in the case of a person born to a Nepali woman citizen married to a foreign citizen will not be able to get citizenship by descent. This clause is discriminatory in relation to Madhesis [Article 11(7)].

g. Article 14, which describes the provision of granting Non-Resident Nepali Citizenship to Nepalis, does not favour the Madhesis. The Article states, “The person, who has acquired the citizenship of a foreign country and is residing in a country other than the SAARC country and who or whose father or mother, grandfather or grandmother was a citizen of Nepal by descent or birth and, later on, acquired

the citizenship of a foreign country, may be conferred with the non-residential citizenship of Nepal, entitling him/her to the economic, social and cultural Rights as provided for in a Federal law.” The Madhesis could have benefited if SAARC countries were included in the list.

h. The people of Terai region, particularly the Madhesis and Indian citizens living in the border areas of Bihar and Uttar Pradesh, where cross-border marriages are common and which are known for *Roti-Beti ka rishta*, will be the worst affected. Many believe that the fear of Indian “demographic aggression” in Nepal compelled Nepal’s law makers to modify the earlier clause of citizenship by descent. Here, Nepal and India differ; India considers social and cultural bonding as one of the key factors behind the unique and special relationships between the two countries, while Nepal considers it as a threat to its identity. In the long term, the changed rule might help Nepal to reduce Indian influence in Nepal.

i. An amendment proposal received by the CA for the provision of ‘citizenship based on descent and citizenship with sexual identity’ in Article 12 was rejected by a majority.

Fundamental Rights

Some new Fundamental Rights are included in this Constitution. Among these are the Right to live with dignity, Right to food (Interim Constitution 2007 had a clause for the Right to food sovereignty under the section on Right relating to employment and social security), Right of senior citizens, Right of victims of crime and consumer Rights. The Right to publication and broadcasting has been placed under the Right to communication. Article 19 (3) states “no means of communication, including the press, electronic broadcasting and telephone shall be obstructed except in accordance with law.” Under the Right to housing, each citizen has the Right to appropriate housing [Article 37(1)]. The consumers have the Right to quality foodstuffs and services [Article 44(1)]. Article 41 states that senior citizens have the Right to special protection and social security from the states.

The Federal Parliament

The country will have Federal Parliament consisting of two Houses –the House of Representatives and the National Assembly (Article 83). The House of Representative will have 275 members; out of it, 165 will be elected directly, while 110 members shall be elected from proportional representation electoral system. Every Nepali citizen,

who has attained the age of eighteen years or above, is entitled to vote. Any Nepali citizen, who is entitled to vote in the election; has attained twenty-five years of age for the House of Representatives and thirty-five years of age for the National Assembly; has not been punished for criminal offence involving moral turpitude; is not ineligible under any law; and is not holding any office of profit, will be eligible to become a member of the Federal Parliament (Article 87). As per Article 84 (1a) and Article 286 (5) and (6) of the new Constitution, the electoral constituency will be based on geography and population. This is an alteration of Interim Constitution (Article 63) that does not favour the Madhes. Article 63 (3) of the Interim Constitution provided "the basis of the equality of population, geographical congeniality and specificity, and on the basis of the percentage of the population in Madhes, in accordance with the mixed electoral system, as provided in the law."

Provincial Assembly

There is provision for unicameral legislature in a province. Article 176 states, "Sixty percent of the members of the Provincial Assembly will be elected through first-past-the-post election system, while 40 percent will be elected through proportional representation system." Every Nepali citizen, who has attained the age of 18 years and has domicile in a province, is eligible to cast his or her vote in the elections.

The Federal and Provincial Executive

The executive power of the country will rest with the Council of Ministers (Article 75), while the President will be the head of the state. Article 76 (9) states, "The President shall, on the recommendation of the Prime Minister, form a Council of Ministers consisting of members not exceeding twenty-five in number from among the members of the Federal Parliament on the basis of the principle of inclusion." The Prime Minister and Ministers will be collectively responsible to the Federal Parliament, while a Minister will be responsible to the Prime Minister and the Federal Parliament [Article 76(10)]. The executive power of the Province will be vested in the Council of Ministers of the Province. Every Province will have a Provincial Head. As the representative of the Federal government, the Provincial Head will be appointed by the President.

The Judiciary

There will be three courts –Supreme Court, High

Court and District Court –in Nepal. Article 128 (2) states that the Supreme Court will have the final power to interpret the Constitution and law. In addition to the Chief Justice, the Supreme Court of Nepal will have a maximum of 20 other Justices [Article 29 (1)]. A maximum of 10 Justices can be appointed for a certain period [Article 29 (1)]. Each province will have a High Court and each district will have a District Court.

Inter-Relationship between the Federation, Provinces and Local Levels

The relations among the Federation, Provinces and the Local level will be based on the principles of cooperation, coexistence and coordination [Article 232 (1)]. The Government of Nepal may issue necessary directives to the Provinces regarding the matters of national importance and the respective Province will abide by such directives [Article 232 (1)]. If any Province is indulging in any act that has serious effect on national security, the President has the right to suspend or dissolve the Council of Ministers of the Province and the Provincial Assembly [Article 232 (3)]. But the Act must be approved by majority of members of the Federal Parliament [Article 232 (4)]. There is provision for Inter-Provincial Council to settle political disputes between the Federation and Provinces and among the Provinces. The Prime Minister will be the Chairperson of the Council. The Federal government has the right to formulate necessary laws to maintain coordination between the Federation, Provinces and local bodies. Article 236 states, "No obstruction of any kind or levying of taxes or discrimination shall be made in the export and import of goods or services from one Province or local level to another Province or local level and in the transportation of any goods or services through the ICWA Issue Brief 7 territory of any province or local level to another province or local level of Nepal." Imposing no taxes on inter-province trade is good for augmenting India-Nepal trade.

Emergency Power

The President may declare emergency in case a grave emergency arises linked to sovereignty or territorial integrity of Nepal or the security problem in any part of the country. Article 273 (1) states, "In case a grave emergency arises in relation to the sovereignty or territorial integrity of Nepal or the security of any part thereof, whether by war, external attack, armed revolt, extreme economic breakdown, natural calamity or epidemic outbreak, the President may, by Proclamation or Order, declare a state of

emergency to be enforced in Nepal or any specified part thereof."

Amendment of the Constitution

This Constitution is flexible; it can be amended by two-thirds majority of Parliament members. But, there are some exceptions. Article 273 (1) states, " This Constitution shall not be amended in a way that contravenes with self-rule of Nepal, sovereignty, territorial integrity and sovereignty vested in people." The Bill related to altering the boundaries of a province need to form consensus in the respective Provincial Assembly within thirty days from the time the bill is presented in the Federal Legislature [Article 274 (4)]. Further, Article 275 asserts, "(The) Assembly shall have to get the consensus Bill endorsed or rejected through majority of the Provincial Assembly and forward the information regarding the same to the Federal Legislature, within three months.

Federalism: A Key Contentious Issue

In the Country's new federal structure, Nepal will have seven provinces. Madhesis, Tharus and Janjatis felt that their demand on federalism did not get proper attention in the second Constituent Assembly (CA). They want two separate states having domination of Madhesis and Tharus. The states should consist of plain region. The state with a mix of plains and hills is not acceptable to them. Madhesis and Tharus have been protesting against the seven province model ever since this model was embraced by major parties. (Amit Kumar, ICWA:2015).

Part-IV : India's Over Reaction

The adoption of Nepal's constitution has triggered alarm bells in India. According to media reports, a day after the constitution was promulgated; India expressed its displeasure about the content. New Delhi has reportedly asked Nepal to make as many as seven amendments to address the concerns of the Madhesis and Janjatis (minority groups in Nepal). These amendments, the report suggest, have been "conveyed to Nepal's leadership through official channels." In the last few months, these communities have strongly protested against provisions of the constitution which they fear will impinge on their cultural identities. Prominent among the concerns are provisions related to the reorganization of provinces. The Madhesis largely inhabit the plain regions that border India. The protest has reportedly claimed 40 lives so far and New Delhi fears that

violence may spill over to the Indian side if corrective measures are not taken.

The constitution was passed by a clear majority with 507 of the 598 constituent assembly members voting in favor. However, around 60 members from the Madhesis and Janjatis community boycotted the vote. India views the constitution as unrepresentative of a significant fraction of the population. New Delhi's response to the constitution has come as a surprise to many. As a democratic country itself, India has arguably overstepped the limits of suggestion and rather tried to impose its views on its much smaller neighbor. In various international forums, India has repeatedly advocated for a country's right to self-determination. Unfortunately, this seems not to apply to Nepal. The concerns that India has raised may well be real. The Madhesis and Janjatis may indeed be fearful of their future at the hands of the three big political parties in Nepal. As a friendly neighbor, it is certainly not unreasonable for India to suggest concerns. However, asking the country to made seven amendments to its constitution the day after it was promulgated goes well beyond suggestion. India must respect the will of the Nepali people and the democratic process through which the constitution was drafted and adopted. Responding to the media report, the Ministry of External Affairs has issued a statement stating, "The article is incorrect. Government of India has not handed over any list of specific Constitutional amendments or changes to the Government of Nepal... we continue to urge that issues on which there are differences should be resolved through dialogue in an atmosphere free from violence, and institutionalized in a manner that would enable broad-based ownership and acceptance." The media reports further maintained that it "has confirmed from its sources that these amendments/changes were communicated by New Delhi to Katmandu. It stands by the report." Indian Foreign Secretary S Jaishankar was sent on a diplomatic mission to ensure that India's concerns are amicably addressed. His visit was a failure. Immediately after Nepal adopted its constitution; India recalled its ambassador in Katmandu for a briefing. New Delhi has expressed its displeasure (and also here) without much impact. It is likely to perceive this as its weakening grip over the Himalayan state, notwithstanding its humanitarian aid in the wake of the recent earthquake and Prime Minister Narendra Modi's visiting the country twice. (Mukesh Rawat : 2015).

Concluding Observations

Efforts are on to normalize Indo-Nepal Relations. Certainly it will take sometime to attain normalcy on

political and trade aspects. In this context, it has to be underlined that India may praise itself as the "world's largest democracy" but there are important lessons it can take from the new constitution of Nepal. With the promulgation of this Constitution, Nepal has become the first Asian country to explicitly recognize the rights of the Lesbian, Gay, Bisexual and Transgender (LGBT) community. The provisions under Right to Equality clearly state that "no discrimination shall be made against any citizen in the application of general laws on grounds of religion, colour, caste, tribe, sex, sexual orientation, bodily condition, disability, status of health, marital status, pregnancy, financial status, origin, language or region, ideological conviction or any of these."

The Constitution further states that nothing shall prevent the state from the "making of special provisions by law for the protection, empowerment or advancement of [among others] gender-based and sexually oriented minorities." In contrast, same-sex relationship is a crime in India under Section 377 of the Penal Code, which awards punishment of "imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine." The Supreme Court in 2013 upheld Section 377 but left it to the wisdom of the parliament to decide whether to retain or repeal the draconian law. The central government recently informed parliament that it has no plans to repeal Section 377. The party in the past has welcomed the apex court verdict and also termed homosexuality as "anti-India."

Recognizing the rights of women, the constitution of Nepal explicitly states that "women shall have equal ancestral right without any gender-based discrimination." India has yet to introduce a similar right for women from all faiths. Moreover, ancestral property rights for women are not a fundamental right in India. Apart from this, the principles of positive discrimination and proportional inclusion have been employed in Nepal's constitution to give women the right to participate in all agencies of State mechanism and in health, education, employment and social security. While India has implemented positive discrimination in various fields, it has a long way to go to ensure proportional inclusion of women in state mechanism. Nepal also has become the second country after Bhutan in South Asia to abolish the death penalty. The Supreme Court of India in the past has accepted the fact that on various occasions innocent people have been executed. Since 1996, around 15 people have been erroneously given the death penalty. Two of them were hanged.

Under the new constitution, victims of

environmental pollution or degradation in Nepal now have the fundamental right to receive compensation from the polluter. In India the "right to a clean environment" is not explicitly mentioned in the constitution, but the Supreme Court has interpreted it be included under the right to life. However, unlike Nepal, the victims of environmental pollution or degradation in India are not entitled to any compensation as a fundamental right. The state may impose a penalty on polluters but this does not necessarily mean that the affected will be compensated. The state gets richer; the victims poorer. Similarly, while advocating for a fundamental right to education, the constitution makes special provisions for the empowerment of the differently-able citizens. It states, "Citizens with disability and economically poor conditions shall have the right to free higher education." On the other hand, in India no such provisions are available under fundamental rights for the differently able to access free higher education. Provisions for free education are limited only to the primary level. (Mukesh Rawat : 2015).

The current crisis in Nepal has political, cultural social and emotional dimensions too. But India should have responded with pre-cautions. It should be prepared to show more sympathy, concern and kindness towards a nation like Nepal. Nobody denies India's contribution to the overall economic, social and trade developments of Nepal. Along with India's assistants on several areas, it should also be prepared to understand the mindsets of Nepali people. If Government of India fails to ensure the warmthness and intimacy of the Nepali common man, whatever economic contribution extended to the land lock country may not be acknowledged by them with an open mind. The Indian foreign policy operators should take urgent and timebound efforts to normalize Indo-Nepal relations for the sake of both the parties.

References

1. M.R.Biju, India's Foreign Policy : Towards a New Millenium, National Publishing House, Jaipur, 2001.
2. M.R.Biju, New Horizons of India's Foreign Policy, Authors Press, New Delhi, 2007.
3. S.S.Bindra, India and Her Neighbours, Deep & Deep, New Delhi, 1984.
4. S.D.Muni, The Dynamics of Foreign Policy, New Delhi 1977.
5. R.K.Chatterjee, India's Land Borders : Problems and Challenges, New Delhi 1978.
6. M.S.Dabke's, Economic Ties between India and

- Nepal, Free Press Journal, 8 July, 1969.
7. K.Rangaswamy, Indo-Nepal Relations, The Hindu, 20 January, 1961.
 8. J.N.Dixit, India's Foreign Policy and Its Neighbours, Gyan, New Delhi, 2001.
 9. J.N.Dixit, India's Foreign Policy: Challenge of Terrorism, Gyan, New Delhi, 2002.
 10. J.N.Dixit, India and Regional Development, Gyan, New Delhi, 2004.
 11. www.mea.govt.in/portal/foreignrelations/nepalfebruary 2012.
 12. Amit Kumar, Nepal-Salient Features of the New Constitutions, ICWA, 1 October, 2015.
 13. Ankit Panda, Amid Political and Economic Challenges, Nepal Elects New Prime Minister, The Diplomat, October 13, 2015.
 14. Ankit Panda, Indias, China React to Nepal's Constitutional Crisis, The Diplomat, October 8, 2015.
 15. Hari Phuyal, Nepal's New Constitution : 65 years in the Making.
 16. Mukesh Rawat, Nepal's Constitution and Lessons for India, The Diplomat, October 7, 2015.
 17. Sanjay Kumar, Nepal Tests India's Much Touted Neighbourhood Diplomacy, The Diplomat, Sept.26, 2015.
 18. The New Indian Express, 5 October, 2015 Nirupama Rao and Arul Pokharel, It's time to be a good neighbor, The Hindu, 17 October, 2015.

Red Flower Publication Pvt. Ltd.

Presents its Book Publications for sale

- | | |
|--|---------------------|
| 1. Breast Cancer: Biology, Prevention and Treatment | Rs.395/\$100 |
| 2. Child Intelligence | Rs.150/\$50 |
| 3. Pediatric Companion | Rs.250/\$50 |

Order from

Red Flower Publication Pvt. Ltd.

48/41-42, DSIDC, Pocket-II, Mayur Vihar, Phase-I

Delhi - 110 091 (India)

Tel: 91-11-22754205, 45796900, Fax: 91-11-22754205

E-mail: redflowerpppl@gmail.com, redflowerpppl@vsnl.net

Website: www.rfppl.co.in