

Transition to Democracy in Nepal Negotiations Behind Constitution Making, 1990

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Introduction

Democracy in Nepal first attained in 1951, through an armed revolution against the autocratic Rana Regime, was short lived. By a coup d'etat in 1960, the late King Mahendra dismantled the parliamentary democracy and introduced the partyless Panchayat system. After 30 years of the Panchayat Raj, the movement for the restoration of democracy was launched jointly by the Nepali Congress (NC) and the United Left Front (ULF)¹ in February-April 1990. The mass movement terminated successfully in its objective to restore the multiparty system. The lifting of the ban on political parties on April 8, 1990, however, opened up new conflicts between the King and the movement leaders on several issues, with its focal and culminating point in constitution making.

Did the dawn of the multiparty democracy mean the end of the Panchayat System? Would the King continue to enjoy his traditional prerogative to grant the constitution in the changed context? What would be the nature and content of the new constitution? During the negotiations held on each of these issues, the palace and its allies made every possible effort to minimize change in order to sustain most of the King's traditional power, position and privileges. On the other side, notwithstanding the democratic movement's initial simple objective of legalizing party politics in the country, the parties involved in democracy movement made four successive upward revisions in its goals during the period between April 8 and November 9, 1990. First, legalization of political parties; second, abolition of all Panchayat institutions; third, formation of a constitution drafting committee on the recommendation of the prime minister against the traditional prerogative of the King; and, last, constitutional monarchy.

This paper tends to analyse negotiations held between the King and the movement leaders on the following political issues: removal of the ban on political parties; dissolution of the Panchayat institutions; formation of a constitution drafting commission; drafting of the constitution; revision of the draft constitution by the cabinet; counter-draft constitution submitted by the palace; and finalization of the constitution. The paper focuses upon the goal set by the contending parties, bargaining techniques and strategies applied to assert their own points against the others, development that influenced the negotiations, skill and style of the negotiators, reconciliation of differences, accommodation of each others views, compromise, etc. This paper is mainly based on primary information obtained through interviews with a cross section of leaders who were involved directly in one or other major issues (see Appendix I).

One Agenda Three Perspectives

The mass movement was formally started on February 18, 1990. At the moment when the popular struggle was gaining a revolutionary character², King Birendra abandoned the suppressive line, and sought for dialogue to resolve the political problem in the country. The agenda was obviously the two-point demand of the mass movement: multiparty system and interim government. But the King, on his part, proposed political reform within the Panchayat structure, while the NC pursued the goal of freedom for political parties. Besides, the ULF sought for the dissolution of the Panchayat institutions along with the restoration of the multiparty system.

King: for Political Reform: By a proclamation on April 6, 1990, King Birendra put forward a three-point proposal for starting negotiation. First, Marich Man Shrestha's cabinet was replaced by a four-man Council of Minister headed by Lokendra Bahadur Chand. The movement leaders were offered for accommodation in the new government. Second, the agenda was 'political reform'. The proposed reformation was confined to the Panchayat structure. the proclamation harked back to the national referendum of 1980 which had endorsed Panchayat system. Besides, the same proclamation issued a notification to convene the session of the Rastriya Panchayat (national legislature). Third, The Chand government was deputed to hold talks with the movement leaders. The prime minister following instruction invited Devendra Raj Pandey on April 6 and Padma Ratna Tuladhar on April 7 to his office where he requested them to convince Ganesh Man Singh (commander of mass movement and supreme leader of the NC) and the ULF leaders for sincere dialogue to resolve the political crisis in the country.

Devendra Raj Pandey said that Ganesh Man Singh rejected outright the prime minister's offer for negotiation with the words "I refuse to meet even with the King without the announcement of the multiparty system." Hundreds of thousands of people marched on the street to display their fury against the royal proclamation on the morning of April 6. The palace was put in an unenviable position by the loss of the lives of scores of demonstrators in front of the palace in the afternoon from indiscriminate firing by the police and the army personnel. The hope of tackling the situation at the government level and through the proposal for reform within the Panchayat framework was soon proved miscalculation. Minister Pashupati Shamsheer Rana and that the King and the Chand government, therefore, changed the strategy straight away on the night of same day, April 6. Accordingly, the agenda shifted from the King's earlier proposal for political reform to the demand of the popular movement for the multiparty system. Instead of the Chand government, the King himself would talk with the representatives of the movement. The cabinet members shared the responsibility of contacting and consulting with each senior leader of the NC and the ULF separately, Minister Rana said that he found the president of the NC, Krishna Prasad Bhattarai, and some of the ULF leaders- i.e. Man Mohan Adhikari, Radha Krishna Mainali, especially- responsive in his meeting with each of them on April 7, 1990.

NC: For Freedom of Political Parties: On April 7, 1990, the NC troika - Ganesh Man Singh, Krishna Prasad Bhattarai and Girija Prasad Koirala- met during the curfew after they received the signal that the demand for the multiparty system could be fulfilled. They had two alternatives. First, they had to satisfy the major demand of

the mass movement- the multiparty system- and then they had to respond to the King's offer for talk. Second, the magnitude of the mass movement had spurred additional demands. It was thus quite natural that the target of the people exceeded the previously settled two-point demand. But the NC faced a dilemma. What would happen if the King refused to meet the additional demands? Two possibilities were inevitable. The movement would be radicalized violently. The King, on his part, might impose martial law. In such a foreseeable scenario, the NC might lose its grip on the popular movement.

In all anxiety, the NC avoided taking the risk of putting up additional demands. Its troika's meeting on April 7 therefore unilaterally decided without consulting with the ULF to talk with the King for the announcement of the multiparty system. Their fear-psyche acted all the while when they changed the line on the next day. April 8, in favour for putting additional demands in response to the pressure by the ULF leaders. In response to the ULF leader's demand for dissolving the Rastriya Panchayat, an eyewitness, Padma Ratna Tuladhar said, the NC president Bhattarai tried to dissuade them, "What will be left to struggle for in the future if we gain all at one stroke?" Tuladhar said that Ganesh Man Singh later accepted the ULF's demand, after the ULF leaders relentlessly insisted, with the words "This issue can be put up before the King".

ULF: For Dissolution of Panchayat Institutions: "The end of the Panchayat system", the ULF put it up as the agenda for talk during minister Rana's visit to the ULF meeting place on April 8, 1990. This happened under typical circumstances. First, the ULF meeting was going on at loggerheads. One of the participants of the meeting, Padma Ratna Tuladhar described that the moderate section of the Front, like the Amatya, the Verma and the Manandhar groups urged participation in talks with the King on the point of the multiparty system. The radical wing, such as the Marxist-Leninist (ML) and the Fourth Convention urged "the end of the Panchayat system" as the agenda for negotiation. But the problem was that the ULF could make a decision only in unanimity, Second, before the ULF meeting came to any conclusion, its leaders were informed of the NC's decision to meet with the King to put up the demand for multiparty system. This influenced the ULF to take its own decision. Minister Rana - who read the demand of the ULF to end the Panchayat system as indication of the communist willingness to continue the movement - said that the communist leaders came in line to participate in the negotiations only after Ganesh Man Singh threatened to alienate them if they refused to enter into dialogue. Ganesh Man Singh conceded this, "I suggested the communist leader to accept the offer for talks since the main demand of the mass movement - the multiparty system - was going to be fulfilled."

Judging from the prevailing circumstances there was a risk of alienation of the radical wing of the ULF from the NC and even from the moderate sections of the Front by seeking an alternative to dialogue. Ultimately, the ULF meeting decided to enter into dialogue on the condition of achieving the multiparty system.³ However, the representatives selected by the ULF for this job were instructed to put pressure on the NC, at least, to raise the demand for dissolution of the Rastriya Panchayat before the King. The ULF representative succeeded in convincing the Congress leaders on this point.

The movement side strengthened its position vertically. The King was forced to change the content from its 'political reform' within the Panchayat structure into multiparty democracy. And, the NC and the ULF agreed to put up an additional demand for dissolving the Rastriya Panchayat. The establishment also adroitly made the situation favourable horizontally. The Chand government capitalized on the curfew for around 55 hours (April 6-8, 1990) controlling the communication channels. It managed to meet both the NC and ULF leaders separately only after the individual consultation of ministers with the movement leaders had already progressed. After the NC agreed to meet the King and the Nepal Television recorded the interview of the NC president, the government arranged for a joint meeting between the NC and the ULF leaders in afternoon before they visited the palace in the evening of April 8. The NC was in hurry for talks and the late decision of the ULF helped to the establishment in its plan to bring the movement leaders to the negotiation table⁴ without allowing them time for a thorough working out of the details.

Two participants in the April 8 negotiations - minister Pashupati S. Rana and the ULF president, Sahana Pradhan - said that King Birendra fully exploiting the lack of preparation of his opponents brought additional issues beyond the multiparty system like constitution reform commission, the interim government etc. to seek commitment of the movement leaders in favour of primacy of the erstwhile establishment in post-agreement politics. The representatives of the movement took a defensive position vis-a-vis the King's proposal. However, Sahana Pradhan claimed that the representatives of the movement suggested the King to constitute a new government and dissolve the Panchayat institutions, but the King hedged. Neither the movement side nor the establishment was in a position to assert their respective points. The former had the disadvantage of the lack of good preparation. The King dreaded to think of the consequences if the talk failed. So both sides felt comfortable buying time to review the situation later with an understanding that their differences would be amicably resolved through negotiations in coming days. But the enthusiasm for the announcement of the multiparty system came as an anti-climax, both in content and level. By a royal notification on April 8, the word 'partyless' was deleted from the Panchayat constitution.

Abolition of Panchayat System

The April 8th understanding for subsequent negotiation actualized on April 15, 1990 between the Chand government and the representatives of the NC and the ULF.⁵ The ensure minimal change in the absolute power of the King in the changed context after the restoration of the multiparty system, the palace sought for the protection of panchas and the Panchayat institutions. But the people and the movement leaders exerted pressure for maximum change.

Palace and Government: Protection of Panchayat Institutions: In the first interview, after the removal of the ban on political parties, on April 10, Prime Minister Chand claimed his government be the 'interim government', diminishing the spirit of popular movement in which "objections had been raised against the working style of His Majesty's Government under the Panchayat itself".⁶ Showing pleasure in sitting for talks again soon, he boasted, "the Panchayat would continue to fulfill its role and adjust to the new situation."⁷ This suggested that the palace and the panchas were searching for a way to settle the problem reminiscent of the 1951 experience. By

the armed revolution in 1950/51 the Rana Regime was overthrown but the last Rana Prime minister Mohan Shamsher was retained as the prime minister in the post-revolution Rana-Congress coalition government.

The Panchayat establishment wished to defuse the political crisis with a minimum loss. But the King and the Chand government conceived that the situation, which emerged in the demonstration of the people's power on April 6 followed by the movement leader's quest for rapid and radical change, demanded more than they wanted to give up. But on April 8, the representatives of the movement gave a sense of relief to the Panchayat establishment. Minister Pashupati S. Rana said the Panchayat camp read the euphoria of the representatives of the mass movement that spilled over shortly after the agreement to lift the ban on political parties as a hope to resuscitate the Panchayat machinery in the changed political context. But the NC and the ULF changed their line soon after their representatives left the palace on the night of April 8, Minister Rana said that not only did the movement leader refuse outright the Chand government's offer for their accommodation in the cabinet, they increased their demands during the informal consultations with the Congress and the Communist leaders. Though the palace and the panchas contended the new demands before the movement leaders, they relinquished their earlier hope of propping the Panchayat institutions. The people were aggressively poised for sweeping change. "King Birendra could not overlook the situation," said a dispatch of Mark Tully's BBC broadcast, otherwise, "the time is ripe for another revolution that will be against the monarchy".⁸ Since the King and the Chand government were bewildered by the fluidity of the situation unfavourable to them, persuasions for formal negotiations dragged on for a few days.

People: Total Political Change: For the people, the triumph of democracy mingled with acrimony that the notification of the deletion of 'partyless' from the Panchayat constitution did not represent what the change meant for them. Greeting the reconciliatory remark of Girija Prasad Koirala, general secretary of the NC, that movements outcome was 'a victory of the people as well as of the King and the panchas' with an uproar at the mass meeting on April 9, the people showed their wish that they wanted to understand the dawn of multiparty democracy as the demise of the Panchayat system. In fact, the popular expectation of and articulation for radical change followed from their pivotal role in the mass movement which gained a revolutionary character at the later moments. Almost all the leaders who addressed the meeting took the position that the achievement of freedom of parties was just a prelude to full-fledged democracy. The assurance of the leaders for the continuation of struggle spearheaded the popular demand for the abolition of the Panchayat system in its entirety. The movement leaders thus had to reset their goals beyond the previously settled two-point demand.

Leaders: Reset the Goal: The NC and the ULF upheld the popular voice for more change. On the night of April 9, after the April 8 agreement, Ganesh Man Singh issued a statement, "It is wrong to say that the NC regards the pro-democracy movement as having been completed.. the struggle will continue.. until democracy is restored... Since the term partyless has been deleted from the constitution, the present Panchayat constitution has become an anachronism and its operators have lost political legitimacy."⁹ In the ULF meeting, held the next morning after the April 8 agreement, Lila Mani Pokharel (Fourth Convention), Shyam Koju (Rohit group), and

Padma Ratna Tuladhar (independent-left) criticized that the agreement was made at a point less achievable than the circumstances offered.¹⁰ The ML - the most influential member of the ULF - reacted to the April 8 agreement as "feeble, weak and inauspicious".¹¹

The primary focus of the movement leaders was initially directed at replacing the Chand cabinet with another consisting of the representatives of the NC, the ULF and the panchas headed by the King. But by the evening of April 11, the demand transformed from the dissolution of the National Panchayat into the abolition of all Panchayat institutions. In order to push for new demands, the NC and the ULF jointly formulated an eight-point demand.¹² They had two advantages in moving their new demands. First, the purposeful non-participation of the commander of the mass movement Ganesh Man Singh in the April 8 agreement¹³ so that he could submit the eight-point demand to the King on April 13. Second, Ganesh Man Singh said that he offended the King by saying that "people moved ahead faster than the demands of the mass movement" when the King told him that "these are not demands of the mass movement." Ganesh Man Singh said further that the King instructed him to settle the issue of the eight-point demand through negotiation with the Chand government.

Negotiations held between the representatives of the multiparty side and the Chand government on April 15, continued for fourteen hours. The negotiators from the Panchayat side were already demoralized for two reasons. First, the initial hope for the survival of the Chand government was already sunk by an understanding reached between the King and Ganesh Man Singh to form a new government in the presence of the Prime Minister Chand on April 13. Second, as Pashupati S. Rana saw the King was bewildered, so he was unable to give clear guidance to the government; the government was also in disarray that it could not properly advise the King on how to tackle the situation.

The situation was favourable for the multiparty side in more than one way. In the negotiations held between the victorious movement leaders and vanquished panchas, the agenda also consisted of the eight-point demand put forth by the multiparty camp. The leadership was under pressure from the people and party workers to push the demand in a way that could not be subject for bargaining.¹⁴ Ganesh Man Singh said that the leaders for the negotiation were strictly instructed to be intransigent on the eight-point demand. The open location of the talk in the Academy hall allowed a crowd to form and exert overt pressure on the negotiations.

Nilamber Acharya, one of the negotiators from the multiparty side, said that the panchas initially tried to protect the Panchayat institutions. But they gave up their stand as the crowd frequently entered into the negotiation hall, and the multiparty negotiators threatened to break the discussions. Minister Pashupati S. Rana confirmed that after Prime Minister Chand contacted the King by telephone, the Panchayat side agreed to consent to all demands of the opposition except for the dissolution of the local Panchayat units. Nilamber Acharya said that the Panchayat side accepted all demands but refused to sign the document of the agreement. The multiparty side therefore declared the failure of the negotiations. Yet the April 15 negotiations concluded with a general agreement on the demands of the multiparty side. Minister Rana said that the Chand government advised the King that night to make an unilateral declaration of fulfilling all the demands as agreed.

On April 16, King Birendra proclaimed the dissolution of Rastriya Panchayat, Panchayat Policy and Evaluation Committee, class organization and also accepted the resignation of the Chand government. The entire Panchayat system was dismantled at one stroke. After consulting with Ganesh Man Singh, King Birendra accepted Singh's proposal to appoint the NC president, Krishna Prasad Bhattarai, as prime minister. Prime Minister Bhattarai then formed a coalition government including the representatives of the King, the NC, the ULF and the independents.

Constitution Commission

After the dissolution of the Panchayat institutions, no more options were left to the King for retaining his traditional power except one - exerting his prerogative in forming a constitution commission. But the success of the movement forces to install their primacy in the composition of the interim government had reset their target. The immediate target was directed against the King's prerogative to grant a new constitution.

Parties: Reset the Goal: The NC and the ULF had made upward revision on their goal relating to the constitution. Previously, as incorporated in the eight-point demand, they pressed for the repeal of all provisions of Panchayat constitution that contradicted the multiparty system and the formation of a constitution drafting commission with adequate representatives of the NC and the ULF. These demands did not challenge the prerogative of the King to grant a new constitution. But Ganesh Man Singh's meeting with the King after the proclamation dissolving the Panchayat institutions marked genesis of a new demand, constitutional monarchy. The press note issued by the NC in this context stated that during the meeting with the King, "Ganesh Man Singh repeatedly emphasised the great benefit the country would derive if His Majesty gracefully accepted the role of a constitutional monarch in a parliamentary democracy."¹⁵ The NC's central committee meeting on April 25-27, 1990 endorsed this new demand that "We want to make it clear that constitutional monarchy under parliamentary democracy is our declared policy."¹⁶ Though most of the communist parties propagated their ideological identity as republicans, the ULF's immediate objective was also to change the status of the King from that of an absolute monarch to a constitutional one. Its fourteen point programme prescribed that "A tradition requiring His Majesty to act on the advice of the Council of Ministers must be adopted immediately."¹⁷ The NC and the ULF wanted to see the formation of the constitution commission in accordance with the practices of constitutional monarchy through the recommendation of the Council of Ministers.

Government: Ambivalence: Prime Minister Bhattarai requested holding up of the announcement of the CRRC on May 11, 1990. Because "certain things have to be sorted out with His Majesty",¹⁸ he informed the press. The problem consisted of inadequate representation of the NC and the ULF, in the view of chairman of the CRRC Bishwa Nath Upadhyaya, Minister Keshar Jung Rayamajhi confirmed that the prime minister wanted to delay the announcement of the CRRC because he was under pressure from within and outside the cabinet to change some of the names on the list of members of the commission. The meeting of the NC general secretary, Girija Prasad Koirala, with the King on May 6 did not bring a solution. Then the prime minister evoked the communists. The ULF issued a statement on May 9, two days

before the announcement of the CRRC, that, "the proposed constitution commission be formed soon with equal representation of the NC and the ULF, along with adequate representation of legal and constitutional experts recommended by both sides."¹⁹ But the prime minister's indirect persuasion was unable to bear any fruit.

Prime minister Bhattarai briefed the press that, "His Majesty categorically said that it was this job to nominate the members of the commission."²⁰ Beside the assertion of the King's prerogative, there was additional ground for justification. According to the chairman of CRRC, Bishwa Nath Upadhyaya, "consultations and general agreement had taken place in the formation of the commission."²¹ The prime minister therefore shamefacedly condoned the formation of the CRRC. Moreover, Chairman Upadhyaya said that the prime minister assured him that he would tackle the situation (i.e. the people and the parties' resentment against the CRRC) when he conveyed his intention to resign.

In a volte face, prime minister Bhattarai bowed to popular feelings to discredit the CRRC. With his presence in the capacity of the president of the party, the May 12, 1990 emergency meeting of the NC demanded the reconstitution of the constitution commission in consultation with the interim government. Moreover, the prime minister publicly denied that he had been consulted before the announcement of the CRRC. The NC and the ULF capitalized this point. They denounced the commission with the logic that it had been formed contrary to the spirit of constitutional monarchy under the multiparty system; it was, therefore, "undemocratic and disgraceful." In support of the demand for dissolution of the commission, Bharat Mohan Adhikari and Daman Dhungana resigned from the commission. Nevertheless, the King appeared stubborn. He dissuaded chairman Upadhyaya from resigning, as said by chairman Upadhyaya. But after a widespread display of resentment by the public and parties against the commission, chairman Upadhyaya submitted his resignation on May 14. The King then had no option but to dissolve the commission and reconstitute a new commission.

Minister Devendra Raj Pandey and Nilamber Acharya said that the palace had put pressure for the inclusion of greater number of former panchas in the proposed reconstituted constitution commission. This was further confirmed by the offer of a position in the commission to a former panchayat stalwart, which was turned down.²² Against the pressure of the palace in camera to retain its greater say in the constitution-making process, the political parties radicalized their demands on the streets. The NC general secretary Girija Prasad Koirala demanded for an interim act as a pressure tactic. The ULF vocally carried this issue for quite long as a means to put less the palace's role in the constitution-making process. Besides, some dominant ULF partners, i.e. the ML and the Fourth Convention, raised the idea of final approval of the draft constitution by the elected government.²³ After long weeks of pulls and pressures between the palace on the one side and the NC and the ULF on the other, a nine member Constitution Recommendation Commission (CRC) - in which the combined representatives of the NC and the ULF was twice that of the King's nominees - was constituted on May 31, 1990 by the King but in accordance with the recommendation of the Council of Ministers.

Drafting the Constitution

Though the King was forced to give up his prerogative to form the constitution commission accordance to his own discretion, the palace's interest to retaining the King's sovereign power in the proposed new constitution remained intact. Some traditional forces were therefore reactivated, with the military on the forefront to suggest the CRC, "the retention of the King's sovereignty, army under the command of the King" and a "Hindu state."²⁴ The NC suggested the CRC to frame the constitution based on constitutional monarchy and parliamentary democracy. The dominant ULF partner (who had their representation on CRC) emphasized the consideration of their two-layer objectives in their recommendations to the CRC. First, in regard to the position of the King, they pushed too far too fast. Second, they sought for a provision by which constitutional monarchy and parliamentary democracy could be altered through amendments in the constitution.²⁵

The drafting of the constitution was begun against the background of the open manifestation of conflicting goals among the forces involved in this task. Many factors influenced the work of constitution drafting, but only three major factors would be highlighted here. The first was the nature and preparation of the negotiators on all the three sides. Second was the decision by a majority on all contentious issues, adopted as a modality by the CRC, which led the points of common interests of either two groupings among the representatives of the King, the NC and the ULF to prevail on each issue. Third, an understanding made in the CRC that a decision taken on each issue was not subject to reappraisal or reopening allowed the CRC to resist pressure from the outside to change the provisions that had already cleared the table.

For the preparation of the draft constitution, negotiations among the representatives of the King, the NC and the ULF revolved around three major issues: 1. the position of the King - powerless or vested with some powers? 2. fundamentals of the constitution - irrevocable or amendable? 3. government - strong or limited?

Position of the King: Consolidation of constitutional monarchy and the multiparty system was the term of reference for the CRC. A thin voice to define constitutional monarchy as vested with power in the King arose from Panchayat nostalgia. Some of the King's nominees in the CRC said that the King had instructed them and the conservative elements had put pressure on them to seek for retention of the King's residuary, prerogative and sovereign powers in the draft constitution. But, sources close to chairman Upadhyaya opined that he was not swayed by such pressure. Because of his position and also from the way he had been reelected in the reconstituted CRC, after the request not only from the King but also from the Congress and the communist leaders, he was morally bound to separate himself from a hard partisan line. His role as the chairman would have definitely influenced the King's nominees. One of them, Rama Nanda Prasad Singh, said that he had informed the King during his audience about his commitment to frame a democratic constitution. Another of the King's nominees, Pradyumna Lal Rajbhandari, was mostly absent because of his ill health. In the days he attended the CRC's meetings, a ULF member of the CRC, Nirmal Lama, observed, "he was in favour of drafting a democratic constitution."²⁶

The independent perception of the King's nominees - different from the interests of the palace - brought them closer to the NC on the question of the status of the monarchy. The NC tended to grant higher status and privileges to the royal family for the sake of consent of the King in his position as the head of the state. The representatives of the NC and the King therefore insisted upon the adoption of the "King in Parliament" as the principle of the constitution. The problem was the different approach taken by the ULF's representatives relating to the position of the monarchy. A ULF member of the CRC, Madhav Kumar Nepal, said that the ULF representatives proposed for 1. the reduction of the size and privileges of the royal family. 2. the exclusion of the King's name from the executive, legislative and judiciary, and 3. the provision to make the actions of the King and his family questionable in parliament. The ULF's suggestions for the reduction in the size of the royal family was reconciled, but the NC's representatives and the King's nominees opposed the ULF members for their other two points. In reaction, one ULF partner in the CRC, Nirmal Lama's Fourth Convention went on the extent of disclosing the secrecy of the CRC with a provocative statement that the "palace had hatched a conspiracy." Ultimately, the King and the NC representatives' joint persuasion for constitutional monarchy with higher status and privileges prevailed through majority voting.

Fundamentals of the Constitution: The early recommendation made by the NC and those left parties which had their representatives in the CRC were contradictory on this issue. The NC opted to make the basic features of the constitution irrevocable, while the left suggested the opposite. For the NC, the problem was the divided opinion among its representatives in the CRC on the issue of the fundamentals of the constitution, as observed by chairman Upadhyaya and member Madhav Nepal. During the debates, some urged for the perpetuity of constitutional monarchy and parliamentary democracy. But a two-member team constituted by one NC representative Mukunda Regmi, and the other ULF representative Madhav Nepal, recommended a provision by which even the fundamentals of the constitution could be changed. Mukunda Regmi (NC) admitted that it was his conscience, perhaps inculcated by his educational background and profession, which sought that the sovereignty of the people should not be limited, and which motivated him to go against the guidelines of the party while opting for the divergence of opinion among the NC representatives on this issue reflected a lack of proper consultation among themselves. In fact, the arrogance of the NC representatives - all of them reputed and well-known senior advocates - made them oblivious to the need for homework and proper coordination. Chairman Upadhyaya gave a further insight that he had timely informed prime minister Bhattarai about the problem among the NC representatives, and he went on to say that he had advised the prime minister to inform his party representatives on the guideline of the party. But the chairman said that he did not find any improvement in the presentations of the NC representatives in the CRC. Consequently, the position of the NC weakened in the negotiations over the drafting of the constitution.

The negotiations from the other side - the ULF representatives - spoke in one voice to make their points. The ULF prudently selected its representatives in the CRC from the leadership level, because the party leaders were deeply committed and more assertive in their political principles and objectives than mere professionals. Moreover, even chairman Upadhyaya admiringly accepted that the strength of the ULF representatives

in the CRC lay in their proper homework and perfect coordination in the work of drafting the constitution, notwithstanding that they belonged to different political parties. They therefore succeeded on insisting the provision of amendment in the fundamentals of the constitution. The King's nominees shared a common perception with the ULF members on the question of the fundamentals of the constitution, but their motivations differed. The ULF representatives took it as a gain in their quest for their anti-monarch and anti-bourgeois identity, while chairman Upadhyaya urged that "nothing was without alternative and immoral, everything was changeable." Ultimately the provision for amendment in the fundamentals of the constitution was duly passed unanimously.

Government : The issue of government was less debatable in the CRC, but it was more sensitive and controversial. The provision of 'Judicial Committee', 'Constitution Committee', and 'Defence Council' had curtailed executive prerogative. Moreover, the constitutional monarch was vested with the preventive power that the King, according to his discretion, may refuse to abide by the recommendation of the Council Ministers on the declaration of emergency and dissolution of parliament. The ULF representatives, who had attempted to push the monarchy too fast and too far, accepted and even advocated in vesting the King with preventive power.²⁷ Why was there such a paranoid attitude towards the executive branch of the government? Chairman Upadhyaya explained exactly how it was justified in the *Analytical Note of Draft Constitution* : "It is necessary to have a check over the executive to prevent a dictatorial tendency from abusing emergency power."²⁸ The leftists saw differently. All the three left members of the CRC remarked that they were certain that the NC would form the government after the elections. This obsession also worked to generate another controversial provision. Chairman Upadhyaya said that initially there were fourteen items in the list which were later reduced to four (peace and friendship, strategic and security, boundary, and natural resources) that a treaty or agreement concluded with foreign countries must be passed by a two-thirds majority of parliament. In justification of this provision, all the three ULF members referred back to the 1950 treaty, Koshi and Gandaki hydel project agreements with India.²⁹ Even the chairman was of the opinion that this provision provided a guarantee against the repeat of secret agreements like the 1965 agreement with India. After a mild debate, the report jointly prepared by Daman Dhungana (NC) and Nirmal Lama (ULF) containing the ratification by a two-thirds majority in parliament of treaties in the aforementioned four areas was passed unanimously. The ULF and the King's nominees in the CRC did not need to work hard to convince the NC representatives. By profession, all the three representatives of the NC were lawyers; and the lawyers and jurists are generally ardent advocates of limited government.

At the last moment, the CRC was forced into an impasse after inroads from outside. It obviously meant that the parties involved in the negotiation forced their representatives to review earlier agreements on some issues. In such a situation, the representatives usually lost their independence and they would change the line as instructed by their respective bosses.

A ULF member of the CRC, Madhav Nepal, said that the chairman changed his line after pressure from the palace. Chairman Upadhyaya conceded this in different language saying that he was obliged to draft the constitution so that it would be digestible to all the forces, including the King. He, therefore, urged 1. the dejure

sovereignty of the King, (2) the vesting of power to the King in an extraordinary situation, and (3) increasing the size and privileges of the royal family. But the NC and the ULF representatives got united to isolate the proposal of the chairman. However, chairman Upadhyaya said that the problem was resolved in the way that he got mandate for reconsideration on the question of the size and privileges of the royal family if the King insisted for it.

The NC sought changes on two points: the provision of amendment in the fundamentals of the constitution, and the provision of treaty ratification by a two-third majority in parliament. The King's nominees also changed their mind after they were informed that the palace was disappointed by the provision of an amendment on the fundamentals of the constitution. Consequently, against the earlier unanimous decision to make the basic features of the constitution amendable, the fundamentals of the constitution were framed as unamendable by a majority vote. But the ULF representatives refused to abide by the later decision, and they exerted counter pressure of abstaining from the CRC.

Hence, chairman Upadhyaya said that the problem was thrown into the courts of the NC and the ULF to find out an acceptable solution. Before the NC and the ULF sat together for this purpose, a meeting of the central committee of the ULF was held. An eyewitness, Padma Ratna Tuladhar, said that the ML and the Fourth Convention pleaded that, being communists, their ethic would not allow them to accept the proposal of perpetuating the monarchy and parliamentary democracy. The *Gorkhapatra* reported, "The representatives of the ULF maintained that they had no faith in multiparty democracy and constitutional monarchy but had joined the CRC as part of their strategy."³⁰ The possibility of deadlock or submission of more than one draft of the constitution appeared. But neither the NC nor the ULF was prepared to bear the cost of choosing either option. This factor brought both the NC and the ULF to settle the issue through a compromise. The early understanding made in the CRC - that the decision taken on any issue was not subject to being reopened - was ascribed to the ULF for its resistance against the pressure of the NC. Consequently the provision of treaty ratification by a two-thirds majority remained intact. The NC consented to the ULF's stand to retain the provision of amending the basic nature of the constitution. The ULF also agreed to the NC's proposal to make the procedure complex on the basis of a three quarters majority vote in the legislature and a national referendum. Chairman Upadhyaya as well as all members of the CRC were of the opinion that the CRC solved the problem in a compromise through a middle way, but also with ambiguity.³¹

Though the draft constitution was a product of compromise among the representatives of the King, the NC and the ULF, the popular spirit of change that had been manifest in the mass movement dictated even more. It transferred the sovereignty from the King to the people, and it guaranteed the fundamental and human rights of the citizen. The draft constitution granted a policy based on the democratic principles that the sovereign people choose their representatives, the party which enjoys majority in parliament forms the government and the executive is responsible to the legislature. It provided a bicameral legislature, representative government and independent judiciary.

Several limitations were imposed on the government. The draft constitution put the popular sovereignty in absolute terms as much as the absolute rights - even right to

suicide - because most of the provisions of the draft revolved around two fundamental principles: constitutional monarchy and parliamentary democracy. But at the same time, basic features of the constitution could be altered by amendments to the constitution.³²

Draft Constitution: Revision and Approval

A compromise had been made to enable the CRC to prepare a singly draft, but it did not clinch the dispute among the King, the NC and the ULF on some crucial provisions of the draft constitution. It simply shifted the stage for renegotiation from the CRC to the cabinet. King Birendra openly exhorted for the revision of the draft constitution on the occasion of the CRC' formal submission of the draft to him on September 1, 1990. Even before the draft was formally submitted, the NC leaders revitalized their quest for the change in two provisions - amendments of the basic features of the constitution and treaty ratification by two-thirds majority in parliament. The stubborn determination of the NC went to the extent that Ganesh Man Singh said, "The NC troika leaders once thought of throwing out the left minister from the cabinet."³³ But they soon dismissed this idea and followed the line of persuasion. Some ULF members, particularly the ML and the Fourth Convention, demanded for the immediate promulgation of the draft constitution without any changes. They took to the streets to exert pressure. But later they reluctantly consented to revise the draft constitution. The ML enlarged the volume of its discontent over provisions in the draft constitution from 6 to 29.³⁴ The ostensible strategy behind the bulk of their dissent was to ensure minimum change in the draft.

The change of stage and the actors on the constitution issue was favourable to the NC. In the CRC there was equal representatives of the NC, the ULF and the King, but the cabinet was headed and dominated by the NC. Again, out of the three ULF representatives in the CRC two had belonged to the hard line factions, but in the cabinet with three left ministers, two ULF minister were soft liners.

Furthermore, prime minister Bhattarai adroitly made a favourable position when constituting the three-minister (Keshar Jung Rayamajhi, Yog Prasad Upadhyaya and Nilambar Acharya) cabinet sub-committee for the recommendation of the final draft constitution before the cabinet. The cabinet sub-committee was constituted by equal representatives of the King, the NC and the ULF, in the manner of the composition of the CRC. The difference was that each of the parties had selected their own representatives to the CRC, while the members of the cabinet sub-committee were chosen by Bhattarai, the prime minister and the president of the NC. The prime minister selected the most moderate left minister, Nilambar Acharya, as the representative of the ULF in the cabinet sub-committee. Both he and his party - Manandhar group- took quite a soft line towards the NC.

While revising the draft constitution, the NC's prime target was the provision of amendment in the basic features of the constitution. The palace had also manifested its discontent over such a provision since the latter half of the drafting of the constitution by the CRC. There was therefore no problem from the King's nominee minister Keshar Jung Rayamajhi to revise the draft constitution in favour of making the fundamentals of the constitution unamendable. This line was also supported by the left minister Nilambar Acharya and his party. But some ULF members, particularly

the ML and the Fourth Convention, were against any change in the draft constitution. During the revision of the draft constitution, the position of the ULF was weakened by differences among its own members who held a position similar to that of the NC representatives during constitution drafting in the CRC. The NC was gaining strength from the warm embrace by some ULF partners of the NC's view³⁵ for the revision of the draft constitution to make the fundamentals of the constitution irrevocable. The manifestation of a split among the ULF members³⁶ strengthened the NC's stand. Minister Acharya said that ultimately the ML itself relented to make the fundamentals of the constitution irrevocable after prime minister Bhattarai met and convinced its two leaders, minister Jhala Nath Khanal and CRC member Madhav Nepal. The cabinet unanimously revised the draft constitution so that the basic features of the constitution embodied in the preamble were made unamendable.

The NC wanted to change the provision of treaty ratification by a two-third majority in parliament. But the equation was against the NC on this issue. Both the cabinet sub-committee members, ministers Acharya and Rayamajhi said that they refused the proposal of the other member, minister Yog Prasad Upadhyaya (NC), for the provision of ratification of all kinds of treaties by simple majority of the Lower House. They went on to say that they had however relented to minister Upadhyaya's proposal on two areas - peace and friendship, and natural resources - if the nature of treaty would not have extensive, severe and enduring effect upon the country.

On the basis of the recommendations made by the cabinet sub-committee, the interim government reportedly made over 20 changes in the draft constitution prepared by the CRC.³⁷ The most important changes were made in three provisions: the basic principles of the constitution embodied in the preamble were made unamendable; treaties or agreements of an ordinary nature relating to peace and friendship and natural resources were subject to ratification by a simple majority in the Lower House; and the Kingdom of Nepal was specifically identified as a 'Hindu state'.³⁸

The revision and approval of the draft constitution by the cabinet resolved the conflict between the NC and the ULF over the constitutional provisions. But did it consider the points of the King who had suggested the revision of the draft constitution incorporating the suggestions received from various conservative elements? The King's nominee minister Rayamajhi said and the left minister Acharya conceded that the cabinet had overlooked the volume of suggestions that prescribed the retention of many powers of the King - emergency, prerogative, residuary and sovereign. A negotiation between the palace and the cabinet was therefore anticipated to give the finishing touches to the constitution.

Palace's Draft Constitution.

On October 11, 1990, the cabinet submitted the constitution to the King for promulgation. But the King's intention to revise the constitution as per the suggestions of the conservative elements, which had been overlooked by the cabinet, was clearly manifest in the royal notification issued on the same day: "His Majesty would now study the draft in order to determine ... in what manner it had considered suggestions put before the cabinet for finalization."³⁹

Previously, the King's postponement of the submission of the draft constitution four times from August 31 to September 10, 1990, revealed his antipathy towards it. An intensification of erosion in the unity between the NC and the ULF⁴⁰ concurrently appeared, fortifying the palace's attempt to consolidate its position. The King pushed for the revision of the draft constitution accordingly before its formal submission. But he was convinced by the logic of the chairman of the CRC that, "any amendment or revision in the draft should be made at the political level itself."⁴¹ On the occasion of the CRC's submission of the draft constitution to the King on September 10, 1990, the King handed it over to the prime minister with the instruction that, "As demanded by constitutional organs, and political parties not represented in the commission, the prime minister should... consider the suggestions put forth by them."⁴² This was a clear direction of the King to revise the constitution in a different direction from that of the draft prepared by the CRC.

Ministers Keshar Jung Rayamajhi and Nilamber Acharya said that the cabinet received suggestions from the conservative elements - the army, the police, the heads of constitutional bodies, most of the new mushroom political parties, including both the National Democratic parties (NDP) formed by former Panchayat stalwarts. Both ministers said that the main content of the suggestions was to perpetuate the institution of monarchy, to retain the King's sovereignty, and to keep the King as the ultimate source of power. Minister Rayamajhi, who himself admitted that he had worked in consultation with the palace secretary, Rebati Raman Khanal, said that he fought in cabinet meetings to make the King the symbol of unity, independence as well as sovereignty of the country, and also to vest all residuary, emergency and prerogative powers in the King. But he said, and minister Acharya conceded, that the cabinet overlooked the suggestions of the conservative elements and also ignored the view of the King's nominee, minister Rayamajhi. But the palace did not capitulate. Rather, its activities went into high gear. On October 22, 1990, the *Gorkhapatra* reported that a copy of the constitution drafted by the palace had been submitted to the prime minister for consideration.

Against the constitution drafted by the CRC and approved by the cabinet, which clearly mentioned 'sovereignty vested with Nepal people', the palace draft constitution stated, 'sovereignty vested in the Nepali people, including His Majesty'. Though the phrase used relating to sovereignty was ambiguous, the following clause in the palace draft made the King sovereign. In the exercise of executive power, the constitution drafted by the CRC, ensured that the King would act according to the advice of the cabinet, using the binding phrase, "by and with the recommendation and consent of the Council of Ministers". But the palace draft put this in a different way - "with the assistance and consultation of the Council of Ministers". It meant that the King would not be bound to act only in accordance with the advice of the cabinet. Indeed, according to the palace draft, all executive, legislative and judiciary power would also emanate from the King and the residuary power would also be vested in him.⁴³ The sole objective of the palace draft constitution was to make monarchy superior to democracy.

The King simultaneously applied multiple strategies. The palace draft was moved from the highest level - the King himself. Aware of the fact that the popular forces were afraid of the loyalty of the army to the institution of the monarchy, the military was mobilized again. Ganesh Man Singh and Prime minister Bhattarai both said that

the chief of the army and several generals met each of them separately and suggested them to retain intact the power and position of the King. Hoping to capitalize on the strong concern of the NC to hold the elections on schedule, Ganesh Man Singh said that the chief election commissioner had informed him at that moment that the election might be postponed for one year if the constitution could not be promulgated in time. Intending to nullify the work of the CRC and the government with the charge that they worked on negative premises⁴⁴ both NDPs demanded immediate promulgation of the constitution after the release of the palace draft. Moreover, in order to give impetus to his move, King Birendra used the name of Prime Minister Bhattarai. The cover of the palace draft as reported mentioned that it had been prepared in consultation with the prime minister. "It has been circulated after continuous discussion and consultation" with the prime minister⁴⁵ was the press statement issued by the palace in its defense after the prime minister absolved himself from this incrimination.

PM's Negotiation Style

A person, who had formerly been involved in constitution making, said that in response to his query to the prime minister whether the palace draft was made in consultation with him, the prime minister explained, "I am not a legal expert. King Birendra read this draft in my presence. I made no objection. It is up to you to say whether I consented or not." But in the next morning the prime minister denied his involvement in the palace draft before all the three ULF representatives of the CRC. He, indeed, assured, "I would not give up my stand; I prefer to resign otherwise", as conveyed by Madhav Nepal. More interestingly, in response to the ULF leaders' request to publish the palace draft constitution, the prime minister said, "That is why I give it you."⁴⁶

The ambiguity of Prime Minister Bhattarai in showing two contrasting approaches revealed how he tackled the situation. Minister Nilamber Acharya observed that Prime Minister Kisuji, by his nature and character, avoided direct confrontation with the King. The avoidance of confrontation and his style of persuasion seemed idiosyncratic. He did not insist on his point, and even he would not directly reject the view of an opponent, but he plotted in such a way that his opponent was forced to change his mind and hence lose his stand. In his own words, the Prime Minister said, "The King thought that he could pressurize me, but I did not give in. I referred to my cabinet and the communists, saying that it was not for me to decide."⁴⁷

Besides, there were some things that he concealed. Minister Devendra Raj Pandey and chairman Bishwa Nath Upadhyaya gave an insight that the prime minister, in the meantime, emphasized making the precedent of popular supremacy through political process - election - rather than confronting the King on constitutional issues. This epitomized a capitulative tendency of the Prime Minister in which he had always opted for shrinking away from confrontation.⁴⁸

Yet, Prime Minister Bhattarai was amendable. He later realized his mistakes and corrected his stand accordingly, Minister Nilamber Acharya and Devendra Raj Pandey observed that the prime minister put the points he had concurred with the King in the cabinet meeting to ask the opinions of his colleagues. But it was the advantage of the coalition government that the cabinet suggested the prime minister to

correct and review his line, and the prime minister honestly followed the suggestion. Besides, there were the ULF, the NC, and the CRC, and above all, the later people that backed up the prime minister to renegotiate with confidence. The concern showed by the Nepal Aid Group against the palace draft which the Prime Minister had supposedly put before the King gave additional strength to the prime minister.⁴⁹ Mukunda Regmi told an interesting story of how Ganesh Man Singh had remarked the Prime Minister's way of dealing on the constitution issue: "If somebody gives a death warrant to Kisunji, Kisunji will say 'okay' but he will buy time saying that he has to polish his shoes and iron his dress. At that moment, if someone advises him against the death warrant, Kisunji has the skill to change his line in a way acceptable to the man who had brought the death warrant."

The NC and the ULF leaders denounced the palace draft constitution. The left took to the streets, but the prime minister prevented the NC from following this path in order to keep room for negotiation with the King open. The King also dreaded to think of prolonging an amorphous situation because the popular indignation against the palace draft had spread speedily. The palace abandoned its hope of retaining more power which had arisen with the conflict between the NC and the ULF but died when they patched up later. Its initial hope of manipulating the prime minister was also relinquished. But King Birendra seemed embarrassed by the volatile and unpredictable dealing of the prime minister. In the eye of the King, the prime minister was unreliable. To give a finishing touch to the constitution, the King therefore met the NC's troika on October 24. Ganesh Man Singh said that the meeting concluded with an agreement on major issues, and that some peripheral issues were under consideration.⁵⁰ Prime Minister Bhattarai said that he had the mandate of the cabinet to consider some grievances of the King, keeping intact the major provision of the constitution as approved by the cabinet.⁵¹

The cabinet refinalized the constitution, incorporating some of the palace's points. Accordingly, the King was vested with some powers that he could exercise on his own discretion, especially regarding the business of the royal family and the succession to the throne. The King's insistence on his role regarding the army was also reconciled. The institution of the monarchy and some of its symbols were put in perpetuity.

The cycle of negotiations on the constitution was completed in four rounds: drafting by the CRC, approval by the cabinet, revision by the palace with a different draft constitution, and refinalization of the draft by the cabinet. Most of the provisions as drafted by the CRC were retained, but some substantial changes were made during the course of the negotiations and renegotiations (see Appendix 2)

Future Projection

On November 9, 1990, different from general expectation that the King would promulgate the constitution by reading its preamble, King Birendra appeared in Nepal Television (live broadcast) with a strained face and read a piece of paper prepared by the palace. His displeasure over the inauguration of the new democratic constitution epitomized the fact that the institution of monarchy in Nepal had never reconciled itself with democracy on its own conviction. Let alone late King Mahendra, who had dismantled parliamentary democracy in 1960. Even late King Tribhuvan, who was

decorated as the 'father of the nation' because of his contribution to the anti-Rana revolution in 1950, laid the foundation of royal absolutism⁵² through an amendment to the 'Interim Act 1951' in 1954. After the restoration of democracy through the mass movement in 1990, King Birendra had openly made every possible effort to retain his position as the benevolent monarch and not a constitutional figurehead. Perhaps this is the reason, why the fear of the palace persists in the psyche of the Nepalese people. However, two factors limited the King from going against the constitution. First, different from the 1959 constitution, which vested the King with ultimate power, including the disposing off with the constitution itself, the present constitution makes it preamble. Second, the humiliating defeat of the old forces in the 1991 elections and the emergence of two major movement forces - the NC as the ruling party and the United Marxist - Leninist (UML)⁵³ as the major opposition party - has further limited the King from regaining power on his own initiative.

Some ULF members, particularly the ML, led the quest for making monarchy and parliamentary democracy alterable during the constitution making. But it changed its line later. The first central committee meeting held by the ML after the enactment of the new constitution, endorsed the multiparty system in its goal of New People's Democracy.⁵⁴ Its slow and steady moderation towards liberalization culminated in the Fifth Convention of the UML, held in January 1993, when it passed the line of *Janatako Bahudaliya Janabad* (Pluristic People's Democracy) by overwhelming majority. Notwithstanding this, the UML still carries some semantic ethos of communism - class struggle, leadership of the proletariat, etc. But the components of liberalism in its programme of Pluralistic People's Democracy is reflected in its commitment to the guarantee of human and fundamental rights of the citizen, peaceful competition among political parties, periodic elections, rule of the majority, and the rule of the law.⁵⁵ Now the UML appears as a contestant of power politics rather than a force committed to alter the present political system.

As stated above, the constitutional provision for the perpetuation of its basic character and the ideological modification of the major opposition party, the UML, in conformity to the basic principles of the constitution are two factors that ensure the stability and sustainability of the constitution. But there are many problems for the smooth functioning of the constitution. The modification in the ideology of the UML has often come into conflict with the actions and behaviour of its leaders and workers. Besides, in the implementation of the constitution, only an effective government can protect and promote the spirit of the constitution. Otherwise, there is possibility of manipulation of the constitutional provisions by the political forces exploiting weak government.

While disregarding the doctrine of 'strong government', the constitution makers worked on the premise that a sort of reconciliation between the Congress and Communists is imperative for the stability and survival of democracy in Nepal. The proposition of 'limited government' can work well in a state or condition where the relations between the government and the opposition are dominated by a friendly competitive system. But an inimical competitive system has prevailed in the NC-UML relations in Nepal. The Tanakpur issue - a treaty made between Nepal and India during Prime Minister Girija Prasad Koirala's visit to India in December 1991 - is a testimony to this. In handling the Tanakpur crisis, the NC government went to the extent of airing the idea of a mid-term poll if the Tanakpur issue was not passed by

the parliament. This was a manifestation of scepticism regarding the UML, which capitalized the issues for its political benefit. The possible alliance between the palace and the major opposition party, supposedly in a case like the Tanakpur issue, may put the government in virtually a defunct position. Because the constitution has placed the government in such a position that it needs cooperation of the major opposition party to take major decisions as well as the help of the King to manage any major crisis through extraordinary measure. Be it the present Congress government or the government of any party in the future, the constraint over the executive will be conceived as an obstacle for the emergence of an effective government hobbled by impact of inimical ruling opposition relations as at the present.

The history of Nepalese politics stands witness that the palace regains power exploiting the extreme confrontation among popular forces. This has passed into the psyche of Nepali elites. Both the NC and the UML leaders have perceived the King as still powerful, and both want to use him against the other. An example was the prime minister's recent statement that he would request the King's help to call for a mid-term poll to defuse the Tanakpur crisis. In counter, the leader of the major opposition party also followed the same path, saying that he would request the King to reject the prime minister's plan. The palace has always capitalized such crisis. For instance, at the time the UML demanded the resignation of Prime Minister Koiralal as a move to start talks with the Congress party on the Tanakpur problem, King Birendra quietly formed the *Raj Parisad*, nominating many former panchas including Marich Man Singh Shrestha, the ex-prime minister who had led the suppressive line during mass movement of 1990. Is it under the discretion of the King to nominate members to the *Raj Parisad*? Article 35 (2) of the constitution states, "except those which are specifically mentioned as to be exercised exclusively by him or at his discretion or on the recommendation of any institution or official, the powers of His Majesty shall be exercised by and with the advice and consent of Council of Ministers." There are only two clauses - Article 28 (2) (succession to the throne) and Article 121 (employees of royal palace) - that specifically fall under the King's discretionary power. Viewed from this provision, the *Raj Parisad* was constituted through the manipulation of the non-mention of the "advice and consent of Council of Ministers" in the provision covering the nomination of its members. There are many other provisions, including the declaration of emergency, where the need of advice and consent of the Council of Ministers are not specifically mentioned, but are covered by Article 35 (2) of the constitution. Besides, there is also no mention of 'recommendation' of any person or institution in the appointment of envoys and ambassadors, whereas it is clearly mentioned regarding all other appointments. Concurrent to infighting among heavyweights of the NC in distribution of rewards to their own favoured persons, many people who had served as obedient boys of the royal palace in the Panchayati days appointed as ambassadors. This tendency has gradually spread in appointments to other sensitive posts irrespective of the mention of the provision of specific recommendations either by the prime minister or the Constitutional Council or the Defense Council or the Judicial Council.

Whither is the 1990 constitution heading? The possibility of moving the constitution along the right path seems bleak unless the political leaders of both the ruling and the opposition parties radically change their respective perceptions, roles and relationships.

Notes

Appendix 1

Interviews with the Actors of Constitution Making

Name	Involvement	Date
Ganesh Man Singh	Commander of the mass movement and Supreme Leader of the NC	December 11, 1992
Sahana Pradhan	Chairman of the ULF; interim government minister	November 20, 1992
Biswa Nath Upadhyaya	Chairman of the CRC	November 29, 1992
Pashupat S. Rana	Minister in the Chand cabinet; participant in the April 8 and April 15 negotiation	December 8, 1992
Devendra Raj Pandey	Human Right Activist; interim government minister	November 15, 1992
Padma Ratna Tuladhar	Central Member of ULF	November 2, 1992
Madhav Nepal	ULF representative to CRC	November 16, 1992
Mukunda Regmi	NC representative to CRC	November 17, 1992
Ramananda P. Singh	King's representative to CRC	December 10, 1992
Nilamber Acharya	Participant in the April 15 negotiation; interim government minister (ULF)	October 10, 1992
Keshar J. Rayamajhi	Interim government minister (King's nominee)	November 17, 1992

Appendix 2

Contentious Issues in Negotiations: Sustained and Change

	A	B	C	D
Issues	Draft of CRC	Approved by cabinet	Palace Draft	Final
Above the Preamble	-	-	<i>Swasti Shree...</i> (King as incarnation of God)	same as 'C'
National anthem	valid till the law does not change	same as 'A'	cannot change	same as 'C'
Nepal	Hindu constitutional monarchical kingdom	Hindu, constitutional monarchical kingdom	same as 'B'	same as 'B' and 'C'
Constitution promulgated by His Majesty	on the advice and with the approval of Council of Ministers	same as 'A'	in accordance with the constitutional laws, customs, usage and tradition of Nepal	same as 'A' and 'B'
Sovereignty vested in	Nepali people	same as 'A'	Nepali people, including His Majesty	same as 'A' and 'B'

His Majesty: symbol of	Nepalese nation and unity of the people	same as 'A'	Nepalese sovereignty, national integration and unity	same as 'A' and 'B'
His Majesty	-	-	has right to consult, encourage and warn the Council of Ministers	may offer suggestion s, encourage ment and alert the Council of Ministers
Executive power be	vested in His Majesty and Council of Ministers that shall be exercised by and with the advice and consent of Council of Ministers	same as 'A'	emanated from His Majesty that shall be exercised by and with advice and assistance of council of ministers	same as 'A' and 'B'
Legislature	constitutes His Majesty and by-cameral houses	same as 'A'	be emanated from His Majesty	same as 'A' and 'B'
Judicial	be exercised in accordance with the provision of this constitution	same as 'A'	be emanated from His Majesty that should be exercised according to constitution	same as 'A' and 'B'
Residery power	-	-	vested on King	-
Emergency be exercised	by the King on the recommendati on of the Council of Ministers	by His Majesty (on advice and consent of Council of Ministers)	by His Majesty	same as 'B'
Army operation	on the recommendati on of DC	same as 'A'	on the consultation of DC	same as 'A' and 'B'
Appointment of army chief	-	by the King with the recommendati on of PM	by the King with consultation of DC	same as 'B'
CC, consist by	PM, CJ,	same as 'A'	PM; CJ, chairman	same as 'A'

	chairman of UH, Speaker, Opposition leader		of SCRP	and 'B'
Fundamentals of the constitution	can be changed through amendment	unamendable	same as 'B'	same as 'B' and 'C'
Treaty ratification (on peace and friendship, boundary, security and natural resources)	by two third majority of joint session of both Houses	same as 'A', but also by simple majority of Lower House on peace and friendship and natural resources if no grave consequences)	same as 'B'	same as 'B' and 'C'
Council of Ministers transition	should be taken as constituted pursuant to this constitution	same as 'A'	King may sustain or change	same as 'A' and 'B'

- DC - Defence Council
CC - Constitutional Council
CJ - Chief Justice
SCRP - Standing Committee of Raj Parishad
UH - Upper House (National Council)

¹ The ULF consisted of seven left parties: Marxist-Leninist (ML), Marxist, Fourth Convention, Rohit, Verma, Manandhar and Amatya.

² The democracy movement ran up towards a revolutionary resolution, with republican slogans at the last moment. Let alone students and professionals who openly involved themselves from the days the movement started, the government corporation employees and civil servants and people in general took to streets from the beginning of April. In Patan and Kirtipur, adjoining the capital, the people from each household, including housewives and children, took to regular marching on streets brandishing various kitchen utensils and agricultural tools. On April 6, lakhs and lakhs of people spontaneously demonstrated in Kathmandu and other parts of the country.

³ The Nepal Communist Party (Manandhar) leader Bishnu Bahadur Manandhar said that the ULF meeting on April 8 gave a mandate to its representatives to make compromise with the King at least on the point of announcement of the multiparty system; the leader accredited for this job was instructed to make efforts for maximum gain if possible. The Fourth convention leader, Lila Mani Pokharel viewed radically that the ULF meeting on April 8 framed the following points for agreement: (a) to lift ban on political parties, (b) to dissolve Panchayat Policy and Evaluation Committee, Class organizations and all tiers of Panchayat units, at least the Rastriya Panchayat, (c) to replace the Chand cabinet with an all party interim government. See interviews with Bishnu Bahadur Manandhar and Lila Mani Pokharel, *Mulyankan*, March-April, 1992, pp. 29-37.

⁴ Participants in the April 8 negotiation were King Birendra, Prime Minister Lokendra Bahadur Chand, minister Pashupati S. Rana, Achyut Raj Regmi and Nayan Bahadur Swarn from the establishment side and Krishna Prasad Bhattarai and Girija Prasad Koirala (NC president and

-
- general secretary respectively) and Sahana Pradhan and Radha Krishna Mainali (the chairman and a member of the central committee of the ULF respectively) from the movement side.
- ⁵ Negotiations held on April 15 between the Panchayat camp - represented by Prime Minister Chand, ministers Rana and Regmi, panchas Padma Sundar Lawati and Keshar Bahadur Bista - and the movement side - represented by Yog Prasad Upadhyaya and Daman Nath Dhungana (NC), and Nilambar Acharya and Krishna Raj Verma (ULF).
- ⁶ *Rising Nepal*, April 11, 1990.
- ⁷ *Ibid.*
- ⁸ BBC, Hindi Programme, in the evening of April 14, 1990.
- ⁹ *Naya Nepal*, April 12, 1990.
- ¹⁰ "Interview with Lila Mani Pokharel", *Mulyanka*, *op.cit.* 3, p. 37.
- ¹¹ *Nepali Awaj*, June 15, 1990.
- ¹² The eight-point demand consisted of the following : (1) dissolution of the Chand government and the Rastriya Panchayat, (2) annulment of the articles and the clauses of the constitution which ran counter to the present changing context of the multiparty system, (3) dissolution of Panchayat units from the district to village levels, (4) nationalization of the property of Panchayat units and class organizations, (5) release of all political prisoners, (6) granting honour and financial assistance to martyred families, (7) formation of a CRC having proper representatives of the NC and the ULF, and (8) impartial investigations of recent violence in the mass movement and punishment of guilty persons.
- ¹³ Ganesh Man Singh said he refused to participate in the April 8 negotiations for two reasons. First, he was abiding by his stand for 'no meeting' with the King before the announcement of the multiparty system. Second, he wanted to preserve himself as the last foil if the negotiations could not bring the desired results.
- ¹⁴ The soft tuning remark of Ganesh Man Singh towards the panchas after his meeting with the King on April 13, as broadcast by Nepal Television, did not coincide with the revolutionary mood of the people. This was manifest on April 14 gathering of a crowd - mostly professionals and party workers who were just released from prison - in Ganesh Man Singh's residence where the meeting between the NC and the ULF leaders was being held inside to frame the strategies for negotiations to the next day. At that meeting, Devendra Raj Pandey said that he pleaded for perceiving the situation as poise for power transformation rather than power sharing. In sum, both the NC and the unnegotiable. As a result, the meeting decided for non-participation by seniormost leaders in the negotiations of April 15.
- ¹⁵ *Text of the press note of the NC*, April 17, 1990.
- ¹⁶ *Text of Political Resolution Passed by the NC's Central Committee Meeting*, April 25-27, 1990.
- ¹⁷ *Daily Diary*, May 9, 1990.
- ¹⁸ *Gorkhapatra*, May 5, 1990.
- ¹⁹ *Gorkhapatra*, May 10, 1990.
- ²⁰ *Rising Nepal*, May 12, 1990.
- ²¹ *Rising Nepal*, May 13, 1990.
- ²² Pashupati S. Rana was of the view that the panchas should not be involved in constitution making for two reasons. First, the panchas as the defeated force could not dictate the nature and content of the constitution. Second, they solely would be blamed for any defect in the constitution.
- ²³ Statement of Madan Bhandari, Spokesman of the ML, June 1, 1990; *Press Note of the Fourth Convention*, June 9, 1990.
- ²⁴ See Interviews with all members of the CRC, *Kanun*, June 1991, pp. 317-358.
- ²⁵ See *Text of Recommendations of the ML and the Marxist to the CRC* (June 1990). The Fourth Convention showed its antipathy to monarchy and democracy by refusing to make suggestions to the CRC.
- ²⁶ "Interviews with Nirmal Lama", *Kanun*, *op.cit.* 24, p. 343.
- ²⁷ *Nepalko Prajatantrik Sambidhan 2047* (Democratic Constitution of Nepal 1990) separately prepared by the ULF representatives of the CRC because of the possibility that the CRC might have been unable to make a single draft because of conflicting stands taken by the representatives of the King, the NC and the ULF on some of the substantial issues. This left-made separate draft vested the King with preventive powers, pp. 25, 64.
- ²⁸ *Analytical Note of Draft Constitution*, 1990, p. 75; *Kanun op. cit.* 24, p. 315.
- ²⁹ See Interview with Madhav Nepal, Nirmal Lama, Bharat Mohan Adhikari, *Kanun*, *Op.cit.* 24, pp. 340-358.
- ³⁰ *Gorkhapatra*, September 1, 1990.

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- ³¹ One of the senior persons of the CRC said that the conflict regarding the preparation of a single draft constitution was managed applying the theory of ambiguity. The theory of ambiguity meant, he said, "Any law or constitution should not make it clear if its articles and provisions invite difficulties putting them in unambiguity. It should, therefore, be put ambiguously, because the future course of political development would interpret them according to the situation." Here are some of ambiguous clauses on major issues of draft constitution. (1) In *Analytical Note of the Draft Constitution*, the objective was stated as to consolidate constitutional monarchy and multiparty democracy. Analytical Note did not define the basic features of the constitution. (2) The draft constitution mentioned the King as constitutional monarch, but the constitutional monarch here did not mean 'rubber stamp' because it enjoyed preventive power to refuse the recommendation of the government on the subject of dissolving the parliament, and declaring emergency. (3) it put the identity of the country in these words: "Hindu Constitutional Monarchical Kingdom". It neither made Nepal a Hindu nor a secular state. (4) It provided a Defence Council consisting of five members having a majority of popular representatives. But the King was vested with the right to mobilize the army.
- ³² See *Text of the Draft of the Constitution* (September 1990), prepared by the CRC.
- ³³ The idea of throwing out the left ministers spilled over into the NC's leaders' statement denouncing the communist stand. Insisting on the NC's determination to change the draft constitution making fundamentals of the constitution unamendable, the party general secretary Girija Prasad Koirala said, "If the ULF does not accept this stand, it must quit the Council of Ministers and take to the street." (*Samaj*, October 2, 1990). Ganesh Man Singh also spoke in same spirit, "If they (ULF's leaders) wish to do so, we have our own path, and they too should close their own path" (*Samaj*, October 6, 1990).
- ³⁴ The ULF representatives in the CRC registered notes of dissent on six broader issues. That was broken down into 29 to make them colossal by the ML. The content of both the 6 points and the 29 points of dissent cover mainly three areas - (1) reducing the size and privileges of the royal family, (2) excluding the name and sign of the King from all the active state institution including the army, (3) making the institution of the monarchy and its symbols changeable through constitutional means. See, *Daily Dairy*, October 8, 1990.
- ³⁵ Two member groups of the ULF, Manandhar and Verma, did not recommend for a provision to change the basic nature of the constitution to the CRC. Besides, Padma Ratna Tuladhar informed that in the ULF meeting on this issue, only two out of seven, the ML and the Fourth Convention, insisted on a provision that the fundamentals of the constitution should be subject to change by amendment. Krishna Raj Verma (Verma group) and Man Mohan Adhikari (Marxist) came out openly to denounce the demand for the promulgation of the draft constitution without change. Verma advocated in favour of making the basic principles of the constitution inviolate (*Gorkhapatra*, September 6, 1990), and Adhikari said he had no objection to revising the draft this way. He highlighted the need to revise the draft so that treaties could be ratified by just a simple majority in the parliament (*Rising Nepal*, October 11, 1990).
- ³⁶ The split among the ULF members was seen from the very beginning on diverse points. The first was perspective that three of the ULF partners - Verma, Manandhar and Amatya groups - shared a perception more in common to that of the NC than the radical wings of the ULF. In contrast to the ML and the Fourth Convention's insistence on bringing an end to the Panchayat system as agenda of dialogue on April 8, they suggested to go for talks on the point of achieving the multiparty system. These three groups, including the Marxist, acclaimed the announcement of the removal of the ban on political parties as a historic achievement. The rest of the ULF members perceived it as a lesser achievement. Nilamber Acharya disclosed that even the proposal of demanding an interim act was not at first endorsed in the ULF meeting. He viewed that the ML and the Fourth Convention had subsequently manipulated the passage of the agenda of the interim act at the moment when most of the senior leaders of his party and some other parties were outside the capital. Unlike the ML, the Marxist and the Tulsilal groups, the Verma and Manandhar groups did not recommend the CRC to make the fundamentals of the constitution amendable. The Fourth Convention and the Rohit groups demonstrated their disbelief in monarchy and democracy by refusing to give any suggestions to the CRC. In a great debate over whether constitutional monarchy and parliamentary democracy be made perpetuate or changeable, the communist parties were polarized. The moderate left took side with the NC's stand on making the constitutional monarchy and parliamentary democracy unalterable. The hardliner Maoists, allied with the United National People's Movement (UNPM), backed the ML in its quest for a provision in the constitution by which monarchy and parliamentary democracy could be changed. The second factor behind the split among the ULF partners was

realignment. The Fourth Convention was working to return the hardliner Maoist camp through the Unity Coordination Committee formed in June, 1990, by some of the UNPM members. The Verma, the Manandhar and the Amatya groups had also worked out for their unification, possibly with the Marxist and the Rohit groups also. The third and the most important reason behind disintegration in the ULF was power sharing. The ULF was allocated three seats in both the interim government and the RC, but all the seven members aspired for a change in both or at least in one. The ULF changed its modus operandi - the decision through unanimity in favour of election for selecting its representatives in the interim government and the CRC. The Marxist and the ML secured marks in both the interim government and the CRC; the Fourth Convention for the CRC and the Manandhar group in the interim government. The Verma, the Rohit and the Amatya groups were overlooked.

³⁷ *Nepal Press Digest*, 34: 42, October 15, 1990.

³⁸ See *Text of the Constitution*, Revised and Approved by the Cabinet, October 1990.

³⁹ *Rising Nepal*, October 12, 1990.

⁴⁰ The NC - ULF alliance had begun to erode with the revival of mutual suspicion between the NC and the radical wings of the ULF. The left regarded the NC with suspicion from the day the NC unilaterally decided to talk with the King on April 8, oblivious to the need of preconsultation with its movement partner, the ULF. The ULF suspicion of the NC was aggravated by a conflict over the nature of transformation. The ULF opted for radical transformation of power from the King to the people through the enactment of an interim act. The NC opposed the demand for an interim act as it found the King responsive to its reconciliation overtures. The left interpreted the revival of the NC's reconciliation policy with the King as a nexus directed against the communists. The NC also did not treat the left as a viable long-term ally. It also suspected the ambiguity of the communists' position. Were they propagating for their declared objective of *naulo janbad* or working to strengthen liberal democracy? the NC-ULF conflict deepened over the issue of the constitution. The former was determined to make constitutional monarchy and parliamentary democracy unchangeable; the radical left presented its own counter proposal; nonetheless all subsequently relented to the NC's stand. However, the possibility of regaining of strength by the traditional forces, and its repercussions to the constitution, on the bedrock of total disruption in the NC-ULF alliance, forced both the NC and ULF to maintain a sort of unity throughout the constitution-making period.

⁴¹ *Gorkhapatra*, September 7, 1990.

⁴² *Rising Nepal*, September 11, 1990.

⁴³ *Text of the Palace draft Constitution*, October, 1990.

⁴⁴ Concurrent to the release of the palace draft constitution, the president of the NDP (Thapa group), Surya Bahadur Thapa, issued a statement on October 21, 1990: "The constitutional provisions being made on the basis of negative belief would promote a lack of confidence in the relations between the institutions of the crown, the executive, the legislature and the judiciary" (*Rising Nepal*, October 22, 1990). By a statement "the central office of the NDP (Chand) wondered how the undemocratic step taken in the process of framing a democratic constitution could help to consolidate democracy." It indeed harked back, "The agreement signed on April 8 between the forces of the movement and the palace must be presented before the people. According to our information removal of the term "partyless" from the constitution and lifting of the ban on political parties were the main terms of the agreement" (*Gorkhapatra*, October 18, 1990).

⁴⁵ *Gorkhapatra*, October 23, 1990.

⁴⁶ *Kanun*, op.cit. 24, p. 344.

⁴⁷ William Raeper and Marten Hoftun, *Spring Awakening*, 1992, Viking, Penguin Publication

⁴⁸ Krishna Prasad Bhattarai constantly displayed his non-confrontationist nature from very beginning. Anxious over the possibility of sabotage in the dialogue with the King to fulfill the demand for the multiparty system, he advised the communist leaders to hold back the new demand of dissolving Rastriya Panchayat. He condoned the announcement of the CRRC on May 11, notwithstanding that he himself had accepted that the process was wrong. When the draft constitution framed by the CRC was in the court of the cabinet for revision, he shrank away arguing, "If we add or omit one thing, the left would seek ten times, the King may add double that of the left. So whatever we have to do, it should be done in the parliament after the election." (*Bimarsha Weekly*, September 21, 1990). His thinking to make a precedent of popular supremacy after the elections through jumping away from confronting with the King over the constitution was the culminating point. However, he corrected himself in all phases throughout the transition period.

⁴⁹ Finance Minister Devendra Raj Pandey said how international support was mobilized against the palace draft constitution. He said that he had received a fax in Paris, where he was on a visit to

attend the meeting of Nepal Aid Group, of the *Gorkhapatra's* reporting of the palace draft. He circulated the fax with a remark that the palace was trying to sabotage the making of a democratic constitution. Each donor country of the Nepal Aid Group showed its concern against the palace draft constitution. He sent all the concerned statements to the prime minister through fax. He later found that Prime Minister Bhattarai had shown the fax to the King.

⁵⁰ *Gorkhapatra*, October 30, 1990.

⁵¹ *Rising Nepal*, October 23, 1990.

⁵² Anirudha Gupta, *Politics in Nepal*, 1964, Allied Publishers Pvt. Ltd, India, p. 85.

⁵³ The UML was formed in January, 1991, after the unification of the ML and the Marxist party.

⁵⁴ *Bartaman Paristhiti Ra Partiko Daitwo* (Present Situation and the Party's responsibility), November 1990, Central Office of the ML.

⁵⁵ See, *Nepali Kranti ko Karyakram: Janatako Bahudaliya Janbad* (Programme for Revolution in Nepal: Plurastic People's Democracy); *Political Resolution*, passed by the Fifth Convention of the UML, January 1993, Central Office of the UML.