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# संविधानको मस्यौदाका अर्थतन्त्रका सवालहरू

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# संविधानको मस्यौदाका अर्थतन्त्रका सवालहरू

Rapporteurs report

14th July, 2015

The first draft of the constitution of Nepal (hereby referred to as draft) was released to the public by the Constituent Assembly last week. This draft was released to the public and the political parties have expressed hope of generating comments from the public to make necessary changes in order to finalize the draft. With hopes of engaging the public and the private sector, Samriddhi, the Prosperity foundation and Nepal Economic Forum (NEF) organized a roundtable discussion titled “Economic Concerns in the Draft Constitution” on 7/14/2015. This discussion hopes bring to light the importance having a sound economic stance along with the social and development related issues present in the constitution. A clear economic view is especially important because this constitution is being drafted in a time where much political debate is centered on Nepal’s graduation from Least Developed Country (LDC) status to a Developing Country.

Debates and discussions, starting from the period of civil unrest in the mid 1990s, revolve on issues related to human rights almost without fail. Yet, even with the close tie of private property ownership with human rights, the former is often ignored. Sujeev Sakya, who moderated the event, set the tone for the discussion by bringing to light the fact that this draft of the constitution seems to want to steer the nation away from the liberalization reform that was initiated in the early 1990s. The fact that the constitution defines Nepal as a “socialism-oriented” country without ever describing what it means and the repeated use of the word “regulation” in reference to the private sector justifies Sakya’s statement.

Dr. Hemant Dabadi, Senior fellow at Samriddhi, the Prosperity Foundation; Mr. Pashupati Murarka, president of Federation of Nepalese Chambers of Commerce (FNCCI); Manoj Kedia from Confederation of Nepalese Industries (CNI); Niranjana Shrestha from Nepal Young Entrepreneurs Federation (NYEF); Mr. Madan Dahal, professor at Tribhuvan University (TU); Dr. Rup Khadka, chairman of the High Level Tax System Review etc were some of the participants.

Of the deliberations that occurred at the event, the ones pointed out by moderator at the conclusion of the event were:

- The draft has an unclear, and even, contradictory economic vision and the desired direction to achieve growth is not clearly stated.
- A welfare model is prescribed without proper economic and political climate that is supportive of such commitments.

- The draft is pessimistic of the role the private sector can play in the country's growth in a time when evidence from around the world clearly highlight its positive influence.
- The draft proposes an inferior tax regime and inadequately addresses issues for the harmonization of state and national government roles.

It was found that the constitution is too long and includes many topics that could have been written in other acts and regulations. The fact that a constitution is the country's supreme law and only the most important necessary points that help create an environment free of conflict and doubt encourages and promotes efficiency between the various aspects of the nation seems to be missed. Hence, the draft reads as if it came to be merely as amalgamation of various groups' demands and not as a central law that helps shape other laws and guides a country truly towards prosperity. The statement, for instance, wherein Nepal is described as socialism-oriented and never once a market-oriented country completely undermines all the developments that have occurred in the past 25 years and the liberalization era that steered the country towards whatever improvements that have occurred. Such statements are testament that this draft has been prepared without paying heed to real world evidences and other tried and tested economic models that actually work. Along the same lines, the prescription of a welfare model, for a country that does not have an adequate market was touted as being an impulsive decision because a country can support a part of its citizenry with transfer payments only when the rest of the economy can contribute to their well being. Moreover, for a budding economy like Nepal, the constitution should have focused more on encouraging people's participation in the market rather than talk about alternatives and support for those who cannot do so. Nepal, as an economy is so underdeveloped that this model stands out for its unsustainability.

One of the most worrisome aspect of this draft is the pessimistic view it presents in relation to the private sector. Repeatedly, it has been argued that the private sector will be regulated. In comparison, the other arms of development as proposed by the draft, namely public sector and cooperative sector are promised to be promoted. First, this completely ignores the failures of the public sector enterprises and it wishes to promote a system (cooperative) that failed in many nations. Moreover, cooperatives are not defined and it leaves one in doubt about the models of cooperatives that will actually be promoted. Similarly, socialism is also not defined in the draft so it too makes one wonder about the model of socialism the country is going to follow. The draft also fails to assure the citizens that their private property will be protected from from

expropriation. Moreover, it fails even to assure citizens that their property will be adequately compensated for should expropriation occur.

It is not that the draft fails to accept the need for prosperity unfortunately its various parts readily contradict the preamble's call for a document supportive of prosperity. The fact that the draft addresses matters related to "backwardness" by offering it affirmative action instead of removing all barriers that create such conditions and that it wishes to maintain a stance on foreign aid lead the reader to conclude that these aspects are very closely related to Nepal and may even be essential components of it. Similarly, the draft is very inclined to talk about rights. It was agreed in the deliberations that instead of going into the detailed description of such rights, a proper overarching statement about the intention to protect all fundamental rights would have sufficed. It should be realized that rights are, in some way, a promise from the state to allow all peoples or a certain group or individual the freedom to do certain things, if there are too many promises, it may be hard to keep a few.

This constitution has finally taken form and structure and after more than 7 years of delays, it is finally in the hands of the public to view. This draft is very important because it represents a new Nepal, one that is moving away from unitary system to a decentralized federal system of governance. Yet, it was found that the document failed to take a clear stance on the jurisdictions of the state and the nation. The description of the tax system—which need not have been in the constitution, such as the endorsement of a progressive tax system, but is—is unclear and generates many doubts about efficacy. There are certain taxes such as income tax which both the state and central government collect and the draft is generally unclear about the basics of fiscal governance i.e. efficiency and autonomy. The document is not very clear about how states can raise finances and if it can declare bankruptcy or what mechanisms of revenue sharing will exist between state and the nation. The proposed regime increases the cost of doing business while simultaneously creating friction between state and the nation with its lack of focus on jurisdiction.