Justice in a wrong way……

22 November 2014

When the Second National Conference of Judges’ was kicked off on 17th November, a lot was expected. Modernization of the Judiciary, addressing the public aspiration was on high priority. It was expected that this conference will end up the monopoly of traditional judicial system and will come up with the manifesto of a new judicial era in Nepal.

Judiciary had a very hard time in last years’ after Nepal got declared as a Federal Republic. Series of alternation were done, along with the change of five Chief Justices. These resulted a state of fluctuation and loosen the pillars of the judiciary. A huge internal conflict took place when the residing chief justice Khil Raj Regmi got appointed as the executive head of the nation. Of course it’s a matter of debate that whether the Chief Justice’s appointment as the executive head was valid or not. But so ironically, the issue parted the whole judiciary in opposite poles. Questions raised on the credibility and impartiality of judiciary, when judges of Supreme Court were appointed. All the candidates were in circle of suspicion. In a whole, the Judiciary of Nepal remained at the center of controversies in last few years.

It was highly expected that this conference will cover all the controversies and will form firm frame of the judiciary. Unfortunately the expectations contradicted when the 38 point declaration got issued by the judges of the conference. The declaration, instead of showing the solutions, gave a sense more complicated judiciary. Some points of the declaration have serious contradiction with International values and norms. The Nepal Bar Association (NBA) taking a very quick response released a press note showing its serious concern and defied the declaration. As per the statement of the NBA, some points included in there, were against the United Nations Guidelines on the Independence of Judiciary 1985, Beijing Declaration on the Independence of the Judiciary 1997, and also the Interim Constitution of Nepal 2007.

The attendees at the conference agreed upon a consensus of allowing the retired justices to be appointed in political and constitutional bodies. This decision is clearly against the international norms and it also stands inconsistent with the article 106 of the Interim Constitution of Nepal. The article clearly says that, ‘No person who has once held the office of Chief Justice or a Judge of the Supreme Court shall be eligible for appointment to any government office than the work concerning judicial inquiry, or to legal of judicial investigation of researches.’ The probability of getting a political appointment after the retirement, can raise a sense of appease among the judges. The judges may get influenced by the lure of the party or the government. This may create a serious threat on the independence of judiciary.

Similarly the agreement on not allowing lawyers to be appointed as the judges at the district as well as the apex court is also against the spirit of Interim Constitution. The argument is contrary to the voice of NBA to amend the laws to ensure the appointment of the lawyers to the post of
district court judges. Article 109(2) of the Interim Constitution legitimizes the lawyer’s eligibility for the post of judge at district court. The agreement raises an unnecessary question on the competency of the lawyers. It’s very necessary to have a wide discussion on the motive behind this agreement.

Article 113(1e) of the Interim Constitution clearly gives a way for to the NBA to represent it in the Judicial Council. But the recent agreement done by the judges in the conference prohibits the stay of NBA representative in the Judicial Council. In the incognito name of restructuring Judicial Council, the declaration seems so prejudiced towards the NBA. The statement of given by the NBA regards this agreement as arbitrary.

We interviewed Tika Ram Bhattrai, the vice-president of NBA, and asked for his as well the organizations view on the steps taken by the judges. He stated that although the declaration is not legally binding, this is something what gives a wrong impression of the Nepalese judiciary to the world outside. He cleared that NBA is that legal body which assist the judiciary to take a rational decisions. The NBA is a helping hand of the judiciary, which also stands against the court if necessary. This raises the question on the courts, if it is trying to get away from the one who sometimes stands against it if necessary.

The constitution regards the courts and the judges to be its guardian. The sole responsibility to uphold the constitution and make all others to uphold it falls upon the judiciary. The declaration stands inconsistent with much constitutional spirit and is contrary to many international practices. If it’s the judiciary which goes beyond the constitutional ambit, than who else will stand to save the constitution. The conference which came across the controversies, was supposed to redeem controversies. The hope from the conference will fall down, if it also gets engulfed in the controversies.

“कानुन साधन मात्र हो, साध्य होइन | कानुन रूपी साधनको साध्य न्याय हो |”

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