

Role of Civil Society Organization in Law Making Process



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Abstract

Law making is the major role for the governance to activate the rules and regulations for the nation and the citizens be disciplined and also to nominate any action legal, ethical or illegal, unethical. Any form of law is an address of the need for it. Law making, primarily is functioned by the law makers, i.e., parliament members. While at the law-making process, the civil society organization could play the vital role in providing views of the people. While, with varying formation of such civil society organizations (CSOs), they always peak at the advocacy they believe in. As the civil society organizations voice to up-lift the people, they too should be provided with access for their participatory approach in the law-making processes at all the levels of governance. Seemingly, there is the need of abiding law for their (CSO's) participation increment in the law-making process. The role of parliamentarians shall be raising their own encompassing capacity, to listen the unified voice from the civil society organizations, up directly, for the involvement of the civil society organizations in the law-making process. Though, listening voice rarely means flowing with it, rather the parliament is sovereign in its decision among the best. Law making is always in varying form as per the belief of a nation. Here the concern is limited towards the law-making process of any democratic nation following political and legal constitutionalism and that too highlighting the distinguished action of civil society organization.

Law Making Process

Nepal constitutionally, holds the separation of power to the legislative and executive body as well to the judiciary. Thematically, the role provided to legislative body is to make and amend law when necessary; which is executed by the executive body and the judiciary examines the law practically. The policy framed by the State or its agency/instrumentality and/or its implementation is contrary to public interest or is violative of the constitutional principles, it is the duty of the court to exercise its

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jurisdiction in larger public interest and reject the stock plea of the State that the scope of judicial review should not be exceeded beyond the recognized parameters.¹ However, in practice, the executive body has been engaging in every step of bill proceedings in Nepal. One aspect, to its justification can be that executive body knows where the exact need for the execution lies. The zero-level draft Bill needs to prepare from concerned Ministry, and is sent to Ministry of Law Justice and Parliamentary Affairs for preliminary consent and the concerned Ministry then sends it to the Cabinet for Preliminary consent.² However, this view can only be justified for the technical support to the legislative body but, cannot be justified for it torts the democratic values, neither it can be justifiable for the power check and balance except for generation of ordinance that has to be agreed upon by the parliamentarians within fixed time frame. Similarly, as we primarily follow the common legal system, precedence and judicial decisions too are the sources of law, that come out of the judiciary. Thus, in Nepal, formulation of law is not completely bind too legislative and the practice of law formulation through the executive and the judiciary too is legal and maintains power check and balance.

The formal law-making process has its own fixed rules and procedures. Constitution, that formulated by the procedure-politico by the sovereign power and the way similar for other acts, rules, regulations, directives by one way or other seek the role of public interest that are to be governed by the one. Any form of law is an address of the need for it. While the major role of the peoples' representatives (i.e. parliament) is: law making, monitoring the function of executives, approving and supervising of revenue and expenditure so that the government is accountable towards the citizens.³ Political manifesto at the election, to fulfill the international commitment to enact the national policy need for contingency management, laws generated obligations itself, and the assumptions or behavioral need to conduct the needed functionaries of states etc. and the assessment of need of any desired bill shall be the initial stage of law-making process. After having theoretical approval from the cabinet, initial draft, consultation with the stakeholders, re-organization of the initial draft, minute examinations, proofing, having passed by cabinet, bill registration at the parliament secretariat, discussion upon bill as per the process determined by the rule of proceedings, amendment, bill passing and approval, all are under this process. While in all these processes the role of legislature members remains authoritatively key determinants.

¹Khurshid Salman.,Sharma Daksha.(2018) *Spectrum Politics Unveiling the Defence*, p122. Rupa Publications India. New Delhi

²Khadka, Arjun Bhadur. (2020) *An Overview of Legislative Drafting in Nepal*. (2020) Federal Parliament Secretariat, Kathmandu, Nepal, p99.

³ Bhattarai Shyamkumar.(2073). *Nepalko Sambaidhanik Tatha Prasasanik Kanun*,p130.Sopan Press Pvt.Ltd, Kathmandu

Civil Society Organization

Any form of voluntary group combined with people, having same or similar interest to be fulfilled, mostly advocacy group, not for profit are civil society organization. Since 1990 it has become widely popular to define civil society as a community of NGOs; this is clearly the narrowest understanding of the term (Nodia 2005,6). However, in many cases usage of the phrase civil society will include organizations that belong to political, economic society (and NGOs) as they influence law making more than just civil society groups.

The Constitution of Nepal ensures the prevalence of such organizations in the right to freedom provision, provided their conduction doesn't undermine the sovereignty, territorial integrity, nationality and independence of Nepal or the harmonious relations between the Federal Units or the people of various castes, tribes, religions or communities or incite caste based discrimination or untouchability or disrespect of labour, defamation, contempt of court, incitement to an offence or cause public decency or morality. Most often these groups are registered at the District Administration Office and are governed by their own memorandum, aligning with the ground set by the Constitution, National Directive Act, Social Welfare Council Act, Associations Registration Act and other relevant acts. Some of these organizations are united, organized and later activate themselves with their goal-oriented action, whereas, some voluntary workers function without being organized and later coordinate to form an organized version with the people of similar faith. However, whatever the organization formation comes up, the organization is always peak at the advocacy it believes in!

Legislative Body and Civil Society Organization

In any democratic nation, formation of the legislative body is through the implication of an adult franchise that at the periodic election for a peoples' competitive multiparty system. The legislative body should ensure that a non-discriminatory method is adopted for distribution and alienation, which would necessarily result in protection of national/public interest⁴. To extend even, the legislative body is from the people, by the people and for the people. The aphorism of the writer is towards believing the legislative body also represents a civil society organization. However, there may be views regarding this aspect of the writer as folly, as the civil society organizations are based on advocacy and encompass their role as to lobbying the issues to the parliament. The aforementioned views are not wrong though aren't totally correct too, as adult franchise provides all the eligible nationals to select their own legislative members, and only those are elected who

⁴Khurshid Salman., Sharma Daksha. (2018) *Spectrum Politics Unveiling the Defence*, p162. Rupa Publications India. New Delhi

could justify the motif for their selection through the capacity of their advocacy. Legislature is thus the unified whole of the advocacy groups. Comparing another attribute of any civil society organizations with constituency members, it can be found that members of the legislature too are voluntarily organized with not-for-profit motif and totally for the benefic approach to the sovereign citizen.

Similarly, even the members of legislative body are assignee themselves, thus they exactly know the need of time and need of the people they are representatives of. Moreover, they are in the advocacy position that they can be united to make the executive body draft the law or can introduce their own version of non-governmental bill, in the house. Logically, it can be proved that the legislative bodies are a supreme form that represents civil society organizations.

Involvement of Institutions in the Law-Making Process in Nepal

Now to talk about the law making and the participation of legislative body in the form of civil society's representation, the legislative body exactly knows the need and voice of time, it is the representation from the gross. Legislative drafting is always made for public good. The process of legislation is thus also a foundation of social change.⁵The change as such expected shall be functional through the words, the words that are to be minutely explored to prevent anomaly or any loop hole to play in, for to protect and promote civil right at the maximum. Thus, the need of exact expression in precise conception shall be mandatory. Here, it can be agreed upon that all the legislature members shall not necessarily be informed about the technical aspect. Legislative drafting is an extremely onerous and highly skilled task and only those who have essayed it can appreciate how hard it often is to express exactly in words what is clearly in mind.⁶

While at law making process, the civil society organizations, can have vital role at the need assessment phase of the law formation. In this phase these organizations are more liable to inform the legislature and law drafting bodies convincing them with the need and advantages of such law. As these civil society organizations abridge government and people, they accumulate the wants and need of citizens to the legislature and law drafting authorities. However, their collection and accumulation of the need should come out of the voice of people and not on their own vested interest.

⁵Khadka, Arjun Bahadur.(2020) *An Overview of Legislative Drafting in Nepal*. (2020) Federal Parliament Secretariat, Kathmandu, Nepal, p31.

⁶Khadka, Arjun Bahadur.(2020) *An Overview of Legislative Drafting in Nepal*. (2020) Federal Parliament Secretariat, Kathmandu, Nepal, p31.

Likewise, the concerned institution that draft bill initially, also need the input for the draft bill. These institutions too garner the information for the rational of the bill. And this is the phase where civil society organizations can play role. Along the line, the draft bill is ready to get input from the stakeholders. Civil society organizations are to play their active role at this stage. Their voluntary actions are to be seen at the proliferation of the draft bill in the public, make the draft law easily understandable to the public, collection of public remarks on the draft bill, organize talk between the government authorities and the public about the draft, and even more provide feedback to the related stakeholders about it. As the initial draft gets surmounted by the public remarks as well as that of the related stakeholders, the concerned authority, as per the applicability of the pre-dominant law, refine the draft to form a tentative bill. After fulfilling some techno-procedure, the bill is ready to be submitted at the cabinet. Now, after the discussion at the bill committee in the cabinet, the bill, with the approval of the cabinet sums up all the major procedures necessary before the registration at the parliament.

After this, the process of the bill begins in the Parliament. The Parliament holds the bill guided by some parliamentary procedure for the bill to enter maturity and for the distribution purpose, sufficiently distributed to each legislative member at the parliament. Following the rule (House Manual of Procedure), the bill enters as the agenda for discussion in the house, the minister of the respective ministry presents the substantive aspect of it there. Among the approaches: in house discussion, committee discussion, or to get peoples feedback on the bill, one alternate is chosen at the house. This selection is made according to the urgency, the need of the bill and the applicability in financial and other approaches too are taken in consideration. And at all the three approaches to the views on bill, the inputs from the civil society organizations can be implied. Here, the discussion is related mostly to parliamentary committee.

Though not mandatory, but in practice, civil society organizations come as a delegation to the respective parliamentary committee for the input in the bill or sometimes as an invitee to the discussion at the parliamentary committee. In these both cases civil society gets another space to contribute on the bill. These civil society organizations here address with the pros and cons of the bill to the mini parliament. They speak up their voice. However, the parliamentary committee is itself with ascendancy either to decide about including or excluding the views from civil society organizations. Moreover, talking about the non-government bill, that has significantly different drafting process, can be drafted expected revenue and security related bills by any of the member of the parliament in sighting the need of the bill for the nation, which if the government has been duly on the process of such the bill shall seek for any information through the Parliament Secretariat from the related authority. The view of the writer here is, the position that might be handled by the civil society organization is in providing the

supplementary information formally or informally on the multidimensional aspects of the bill to be. Thus, strictly keeping the spectrum of civil society organization bound to the abridging force, that abridges government and the public, is their high function of advocacy, in the overall law-making process.

The composer of this text is in the belief that a political party with voluntary assignment of upgrading status of people is at most a civil society organization. Though there is a view only the legislative members of the opposition party could be called civil society organization. The relationship between state and civil society can be characterized as "oppositional" (confrontational) as well as cooperative depending on the period.⁷ As there is practical implication that the legislative members that are allies of the government couldn't be oppositional to protrude voice as functional as civil society organization.

Advocacy- A Step to Development

Civil society organizations are one among the three state parties as recognized since one among the national plan of Nepal. The Government regulates rules and regulations, stewards the implementation of them and scrutinize other actors of governance too. Private Sector mostly incorporates with business motif and a few too remember their corporate-social responsibility. Civil society organizations seek to serve as an abridging factor between citizens and the government. They are voice of the voiceless. Major inclination towards holistic development of any society, they are inclined to, civil society organizations help to yield development regarding hardware and software components of society. Human development is fundamentally important and only human, an ultimate component of society knows the actual necessities to work on. It is thereby seen that any civil society organization works to empower people to recognize their ability within. However, and whatever they function for the remarkable progress, always remain advocacy group with no handling of authoritative power still enforced with power of enabling citizens. As these organizations are powerful for their advocacy, they make people aware to and also convince them for the actions needed to reach a progressive society. In competitive politics, parties often lose sight of the larger picture and take positions that come back to haunt them another day. Howls of 'hypocrisy' go up each time much to the chagrin and surprise of the incumbent⁸. This is the place where

⁷ Gogsadze, George. (2011). Civil society participation in the parliamentary law-making process in Georgia [Unpublished master's thesis]. Central European University, Hungary.

⁸ Khurshid Salman., Sharma Daksha. (2018) *Spectrum Politics Unveiling the Defence*, p162. Rupa Publications India. New Delhi

civil society organizations play to make governance accountable and work for advocacy in maintaining the rule of law.

Way Forward

Governance, in Nepal functions at three layers (Government, Private Sector and Civil Societies) and at three levels (Federal System of Governance). The mentioned three layers are functional in all the levels of governance. Law making is a pioneering function of all these tiers. As the civil society organizations voice for the upliftment of the people, they too should be able to make their participatory approach in the law-making processes at all the levels. Seemingly, there is the need to hear the voices of CSO's in law making process formally. The role of parliamentarians shall be incorporating the involvement of the civil society organizations in the law-making process as recognizing and sorting the vested interest of such organizations either donor driven or with real motif for people that as long as not harming the constitutional values and respect to the people. Thus, employing the supreme sovereignty of parliamentarians as law-makers.

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