

## HOW TO READ THE NEW CONSTITUTION OF NEPAL?

(Nava Yug: Nepalese students' Association  
Delhi, April 1991) Bipin Adhikari\*

"Debates on political matters have happened for centuries." the guide said when showing tourists the House of Parliament. "Anything settled yet?" a voice said from the rear.

From : Reverse side of Matchbox:  
England's Glory, by  
Bryant and May

Liberals throughout the world aspire to adhere to democracy although democracy is not the panacea for all the pressing problems we encounter today. The optimum utility of democracy is recognized in that it offers a right process to the people. It is true that the right process may on occasion yield a wrong result, but only the democracy can offer a provision for the correction of the error. This is the rationality that has been institutionalized by the new constitution of Nepal.

The Constitution of the Kingdom of Nepal 1990 is the greatest achievement of the mass movement during the last Summer which mirrors the substantive commitments of the Nepalese people towards democracy. Now, all governmental organs and institutions including the King owe their origin to the constitution and derive their powers from its provisions. These organs and institutions enjoy only such powers as are conferred on them and function within limits demarcated by the constitution. Parliament is given the power to amend the constitution, but the power to amend must be exercised within the bounds of the constitution. Besides conforming to the procedure laid down for this purpose, the power to amend should not be exercised so as to destroy or abrogate the basic feature of the constitution. The people of Nepal will continue to be governed under the constitution so long as it is acceptable to them and its provisions promote their aims and aspirations. Thus the monarch as well as the supreme law of the land recognize the sovereignty of the people.

The new constitution pledges to consolidate adult franchise, parliamentary system of government, constitutional monarchy and multi-party democracy. It guarantees various fundamental rights (subject to the

qualifications defined in the constitution itself) as inviolable. Equality, personal liberty and right to freedom operate as limitations on the exercise of power by government or parliament. To ensure that the fundamental rights are properly protected, the constitution has conferred on the supreme court the power to grant most effective remedies whenever such rights are violated. The right to approach the Supreme Court is itself a fundamental right.

The objective of the state is to promote the condition of welfare on the basis of the principle of "open society" by establishing a just system in all the aspects of the national life, including social, economic and political, while, at the same time, protecting the life, property and liberty of the general public. Apart from this the constitution enumerates some more directive principles of state policy which are declared as fundamental in the governance of the country.

What the constitution states in express terms, however, is not the only achievement of the last people's movement. What is more important than the constitution itself is the realization of the people in general that any form of conservatism in ideology is bad and that each ideal be subject to perpetual examination. Thus, the movement, *inter alia*, has proved that the patriarchal claim of the king, the proletarian romanticism of the leftist and "hate-the-communists" attitude of the congress men could not stand the test of time. These institutions, we all know, characterize their own normative existence. Conservatives in every form yearn for a structural society that will impart meaning to life, a manner of living that clearly labels the good and the bad, observe lucid standards of merit and announce unambiguously what counts as success or failure. In such an ordered society the camaraderie of the alienated will be replaced by a sense of belonging. In a liberal society, limit cannot be imposed on the creativity of thinking, working, doing and even aspiring.

Ultimate political or moral issues are agreed upon, although the guarantee of the freedom of speech and expression will enable the people in general to carefully identify and then rethink and restate if the constitutional

\* Mr. Adhikari is a student in the Faculty of Law (Final year), Delhi University.

values are to be defensible in time to come. Constitution is a calculus of popular desires that generally confirms our objectives and for many of us it has pointed to a concern for fair and democratic procedures that can give any outcome consensual legitimacy, while including safeguards for individual rights.

The concern of the constitution is not with collectivism but with individuality, the development of personality to which collective action is but a means. It does not be spoke the cause of absolute truth, of a belief in an objective moral order, of a relatively closed rather than an open society. It is tied to the principle of experimentalism, to the open ended negotiation of differences, whether of ideas or of policies. That is why the constitution sets up parliamentary form of government validating the existence of great political parties divided by broad issues of policy rather than sectional interest. Opposition parties are constitutionally sanctioned, hence the presence of the leader of a viable opposition speaking out against governmental policy without having to suffer the risk of punishment or reprisal. People know that history is a more mundane procession of trivial spasm and moderate reforms. A constitutionalist should not, therefore, think and talk in terms of total change as in the case of revolutionaries.

The constitution offers an advanced democracy, a status it shares with most of the Western European nations, Japan, the United States and a handful of countries such as Canada, New Zealand and India. Owing to our level of economic development, probably no general question will trouble our democracy more than the relationship of economic system to the liberty it wishes to secure, and the specific issue of the government's constitutional responsibilities for individual and social economic welfare is just as intractable. Besides, existing derangement in Nepalese society—poverty, communalism, alienation, crime, etc.—are bound to come up due to the new liberal order.

The liberal order envisaged in the constitution is not wedded to any particular economic order, but is able to countenance a wide assortment of property regulations. It is up to the majority to use its brain to balance the requirements of liberty and equality while also maintaining an awareness of the connection between freedom and mal-administration of power or resources. Consequently, the constitution must be read as permitting extensive discretion to the political branches to choose the economic and social welfare policies that seem appropriate and conducive to efficiency, economic prosperity, and individual well-being. Any improvement

in the economic conditions of the country postulates an increase in national wealth; a mere distribution of existing wealth would merely mean the distribution of poverty.

Solution of any political or socio-economic problem under the constitutional scheme has to be conducive to the demands of human nature. A society that seeks to achieve unity through diversity is more congenial to the demands of human nature than a society that strives for unity through uniformity. Liberal society not only thrives on variety but requires it for survival. It can, therefore, be managed by only such government whose principle and practices change and respect the character and strength of human nature. Madison said: "As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves." Thus "individuality" should not be made casualty in finding solution to any problem.

Our youth have, in fact, an inadequate comprehension of liberal democracy (I hope I am wrong). Although the constitution offers many demonstrable qualities, we will still have much trouble in defending it. The failure of many democracies in the third world proves that they were bound to absorb policies they did not know how to reject. The liberal society is a society of interest groups, with the consequences that there is no interest group for liberalism. Especially in a country like Nepal in which the intellectuals are under the deadly influence of political romanticism, it is difficult to defend liberalism because to defend it we have to recognize the enemy and thus to have defened onself against the enemy. Besides, it is characteristic of democracy in its present troubles to be more suspicious of friends than enemies. This is because many of the staunch supporters of the former establishment are now claiming to be the democrats of high-brow type. In addition to this, those radical dogmatists who took up the banner that "the constitution is a subterfuge" are making their way to recognized political parties.

The constitution guarantees the right of these conservatives to question every authority and by virtue of this fact they can experience a revival as they are presented with an opportunity to defend their transcendent absolute truth and contrast it with the surrounding turbulence. The constitution owing to its liberal sentiments will be the common enemy of all those revivalists because it threatens their notion of specifically ordered civilization.

A democratic society which does not like to degenerate is now and then pockmarked by the scars of conservative prejudice. But that, of course, is also the glory of our democratic constitution.

Norms of reconstruction are, no doubt, laid down by the constitution; but who says that our socio-political options are hereby closed for ever? Even now many of us think that the constitutional status given to the king, or the concept of property rights in the matter of land ownership, are a brutal blow to the souls of the martyrs who sacrificed their lives in the hope of complete democracy. Different conclusions over a single issue are not irrational. As we esteem human capacities for

reflective self-direction. So much so that many of us support a right to suicide and virtually unlimited rights to pornography and refuse to adopt any special presumptions in favour of family relationships. Admittedly, we cannot express the judgement that those who do enjoy pornography have worse character on that account. What I mean to suggest is that the constitution now provides us a forum and an opportunity to reach consensus over the issues we were least capable to think of, a few months ago. In other words, I just quote voltaire. "I disapprove of what you say, but will defend to death your right to say it." This is, of course, the methodology to read the constitution.

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**HOTEL  YAK & YETI**

**GPO BOX 1016, DURBAR MARG KATHMANDU NEPAL**

**TEL : 413999 CABLE : YAKNYETI TELEX : 2237/2683 YKNYTI NP FAX : 977-1-227782**