

Victimizing the constitution

CONFLICT & RIGHTS



By **BIPIN ADHIKARI**

George Bernard Shaw, an all-time celebrity in English literature, says: "Life does not cease to be funny when people die any more than it ceases to be serious when people laugh."

The context here is a strange violent-conflict afoot in Nepal, which has neither ceased to be serious to, the parties concerned because more than 12,000 people have already died due to this, nor has ceased to be funny because it is doing exactly the opposite of what it intended to do.

The Communist Party of Nepal (Maoist), which demands formation of an interim government, elections for a constituent assembly, and drafting of a new constitution, and the illegitimate government, which has been an all-time liability to the nation, both want to write off the 1990 Constitution for no fault of its own.

Prachanda, the Maoists' chief, declared his intention long back, and Tulsi Giri, who is counted as the number 2 in the king's cabinet, briefed the people about it only after the eighth month of the seizure of the state power by the king.

What is so bad in the Constitution for both these parties to the ongoing conflict is nevertheless clear. They do not want any restraints on their power. The hurdle for both of them is the 1990 Constitution, which declared for the first time in Nepal's written history that the people

of this country are sovereign, assured that fundamental human rights are guaranteed to all, created an independent judiciary, and enforced a parliamentary system of government-based on adult franchise.

The first group took arms lacking the numerical strength to win the parliamentary elections to achieve a totalitarian communist system from the position of power.

And the second entered into the scenario because the first group was able to give it an opportunity to assume unbridled power as a response to the bloody insurgency. For both of them, the only way out was to dispense with the present Constitution, which came on the way of their ambitions. The explanation sounds surreal because truth is stranger than fiction.

Surprisingly, most of the mainstream political forces, which were crucial for the enactment and promulgation of the present Constitution in 1990, too, have lost their fantasy with it. They never explained why this Constitution cannot be reformed the way most of the living constitutions of the world were reformed and modernized to suit the changing requirements of the time.

Unfortunately, by opting for election for a constituent assembly, and drafting a new Constitution, this lot, particularly the Nepali Congress NC and the UML, not only surrendered their constitutional commitment, but also betrayed the legitimate constitutional process of change. The loyal opposition became frantically disloyal, and instead chose to lend hands to the Maoists in order to speed up an openly anti-democratic insurrection. It is difficult to overstate how radical this

view is, and how out of line it is with the sustainable process of change.

The Nepali Congress, in particular, has become a funny case in point. This oldest democratic party did not hesitate to give a deadly blow to its long established policy of national reconciliation in order to defeat what B P Koirala described as threats to the independence of the nation and its political sovereignty.

The NC ignored that the challenge before the democrats is not only to take the responsibility of restoring democracy but also safeguarding the nation, which is being pushed to a bargaining table to negotiate its nationhood.

While the democrats in the Congress, and those in the seven party alliances, do not care that there are other dangers to democracy more than monarchy, the king has also belittled the reality that there are dangers to monarchy more serious than parliamentary democracy, the political parties and the Maoists. No efforts were made to reform their weaknesses to reconcile with the King, and work out a moderate strategy that should have enabled the Maoists to join the mainstream minimizing their disastrous potential to a great extent.

The dilemma of the isolated king, who wields power to an unhealthy extent cornering the legitimate political forces, is self-evident. He probably knows where the fault-lines are, but his authoritarian patterns come on his way. Knowing how to swing a golf club is one thing, but doing it correctly every time is another. The risk factor is crucial because the king had no opportunity to grow with representative institutions. His first mistake was the event of

October 4, 2002 that symbolized his impatience with democratic process. The second mistake was the occurrence of February 1, 2005, a serious distrust for the representative political system, which helped tarnish his democratic image seriously.

The country remains unattended in this critical juncture of its life. In fact, a king who does not hesitate to point out about the use of massive foreign money to achieve unwanted activities in the capital needs to know precisely how to counter the whole situation. He needs the strength of the whole country, of the institution of democracy and of ordinary people, in building the nation. An isolated king is not only a risk to the independence of the country but also its sovereign capacity.

Much to the bewilderment of all, in this critical period, how can the common people believe that the country and its Constitution are safe in the hands of the king, whose half of the ministers are either of dubious character or said to be on the foreign pay roll? Is it not enough to know that while the King still talks about democracy his ministers talk about scrapping the Constitution, and devising a new model of democracy that suits the genius of Nepali people?

Why is this Constitution being victimized if democracy is the mission of this country? Funny or serious, if all political institutions in the country are overwhelmingly penetrated and moved by forces antithetical to human rights, democratic Nepal and its sovereign interests, is the ongoing conflict really a manifestation of an impulse towards political reform, or is it something else?

(The writer is a lawyer)