

**CURRENT DEVELOPMENTS**  
**CONSTITUTIONAL DEVELOPMENTS AND**  
**PROTECTION OF HUMAN RIGHTS**  
**IN NEPAL**

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**I. INTRODUCTION**

Nepal is an independent, indivisible, unitary, sovereign Kingdom of South Asia. The Himalayan kingdom of Nepal occupies a key position between the democratic Republic of India and China.<sup>1</sup> Nepal has for centuries been an independent sovereign State and only Hindu kingdom in the world. The bulk of the population is Hindu, however, there is a considerable number of religious sects such as Buddhist, Muslims and others exist.<sup>2</sup> These groups of people are scattered all over the country and have been divided into many sects and ethnic groups. Nepal is a constitutional monarchy with a parliamentary form of government. In 1990 the King, formerly an absolute monarch, legalized political parties and adopted a new Constitution.<sup>3</sup> The democratically elected Parliament consists of His Majesty the King, the House of Representatives<sup>4</sup> (lower house) and the National Council (upper house).<sup>5</sup> The Constitution provides for an independent judiciary; however, the courts generally are inefficient and susceptible to political pressure and corruption.<sup>6</sup>

The country is extremely poor, with an annual per capita gross domestic product of approximately \$242. Over 80 percent of its 23 million persons support themselves through subsistence agriculture.<sup>7</sup> The country is grouped into 75 districts and 5 development regions, namely: eastern, central, western, mid-western and far-western.<sup>8</sup>

**II. HISTORICAL BACKGROUND AND**  
**CONSTITUTIONAL DEVELOPMENTS**

The kingdom of Nepal's origin dates back from 1769 when the king of Gorkha, Prithvi Narayan Shah, Conquered the other princely States including the three States in Kathmandu valley.<sup>9</sup> The capital of the Gorkha king was moved from Gorkha to Katmandu.<sup>10</sup> Nepal never remained under colonial rule. Unfortunately, it was not foreign powers but their own rulers exploited and suppressed the people, first the Gorkha kings from 1769 to 1846 and then the Rana Prime Ministers from 1846 to 1950.<sup>11</sup> After 1800, the heirs of Prithvi Narayan Shah proved unable to maintain firm political control over Nepal.<sup>12</sup> A period of internal turmoil followed, heightened by Nepal's defeat in a war with the British from 1814 to 1816.<sup>13</sup> Stability was restored after 1846 when the Rana family gained power, entrenched itself through hereditary prime ministers, and reduced the monarch to merely a figurehead.<sup>14</sup> All the executive, legislative and judiciary powers were vested in the Prime Minister. The Rana regime, a tightly centralized autocracy, pursued a policy of isolating Nepal from external influences.<sup>15</sup> This policy helped Nepal maintain its national independence during the colonial era, but it also impeded the country's economic development.<sup>16</sup>

Jung Bahadur Rana, who was appointed as a Prime Minister on 15 September 1846, established his family oligarchy that lasted for almost 104 years. The ninth Prime Minister Padma Shamsher, who for the first time gave Nepal a written Constitution and Constitutional government.<sup>17</sup> Padma Shamsher tried to introduce a new note of liberalism and limited guided democracy in the Rana system.<sup>18</sup> However, his effort failed due to the opposition within the system. The anti Rana policy of the independent India, resentment among the Nepalese People with Rana rulers, the internal dispute and especially the nation-wide armed revolution launched by the Nepali Congress Party<sup>19</sup> all these factors contributed in bringing to an end the Rana rule in 1951.<sup>20</sup>

### A. Constitutional Developments After 1951

Once again the power shifted into the hands of the Shah Kings. The historic Proclamation issued by the King Tribhuvan Bir Bikram Shah on 18 February 1951 ended a chapter in Nepal of a family's monopoly of power and the country's isolation from the rest of the world. The Interim Constitution was adopted and recognized the supremacy of the King.<sup>21</sup> The Constitution provided a democratic form of government with the King as a Constitutional head.<sup>22</sup> Between 1951 to 59, king Tribhuvan and king Mahendra Bir Bikram Shah, over a period of less than 10 years, experimented with several forms of representative and direct rules. Ultimately, King Mahendra gave a Constitution on 12 February 1959<sup>23</sup> and held general elections in which Nepali congress emerged victorious.<sup>24</sup> On 27 May 1959, B.P.Koirala became the first ever-elected Prime Minister of Nepal.<sup>25</sup> But his government lasted only for a brief period of eighteen months.<sup>26</sup> Eventually King Mahendra imprisoned Prime Minister B.P.Koirala and other leaders of Nepali congress party, suspended fundamental rights guaranteed by the Constitution and dissolved the Parliament.<sup>27</sup> Political parties were banned. This development had shocked then Indian Prime Minister Jawaharlal Nehru and he said, "what has been done appears to be not only some kind of step against the Government of a party but basically against the concept of democracy itself. Therefore, we regret it and we are concerned about it."<sup>28</sup> In accordance with the Royal Proclamation of 15 December 1960, King Mahendra assumed the entire administration of the country until new arrangements were made.<sup>29</sup> In 1962, King Mahendra gave another Constitution to the people, which did not contain any fundamental rights.<sup>30</sup> All the executive, legislative and judicial powers were vested in the King. Neglect and discrimination of people along ideological ground became the order of this rule. The Panchayat Constitution of 1962 is in essence not different from the Constitution given by the Padma Shamsher in 1948.<sup>31</sup> Both the Constitutions were based on the concept of anti party system. The banned political parties did not sit quiet as the political and economic exploitations were mounting in the country. The pro-democracy movement in the Eastern Europe in the late 1980s also inspired the Nepalese people to intensify struggle against the party-less panchayat.<sup>32</sup> The people's movement, launched under the leadership of the Nepali congress party with the United left front overthrew three-decade-old Panchayat system.<sup>33</sup> King Birendra Bir Bikram Shah agreed to lift ban on parties and restore democracy in Nepal in 1990. Soon after, the Constitution<sup>34</sup> of the kingdom of Nepal was promulgated on 9 November 1990.

### III. MASSACRE OF ROYAL FAMILY AND SUBSEQUENT DEVELOPMENTS

The shocking massacre of almost the entire royal family by crown prince Dipendra on 1 June 2001 plunged Nepal once again into a serious state of crisis.<sup>35</sup> Gyanendra Bir Bikram Shah, the brother of murdered king Birendra was ushered in as the next monarch.<sup>36</sup> The political instability that followed the royal massacre and the ongoing conflict quickly ended Nepal's brief experiment with democracy.<sup>37</sup> In August 2002, Prime Minister Sher Bahadur Deuba dissolved all local elected bodies, and shortly thereafter he dissolved the national parliament, fearing a vote of no confidence movement against him.<sup>38</sup> On 4 October 2002, King Gyanendra suspended the democratic phase that had begun in 1990; he sacked the Prime Minister, postponed elections indefinitely, assumed executive powers himself and appointed Lokendra Bahadur Chand as the new Prime Minister.<sup>39</sup> King Gyanendra cited Article 127 of the Constitution to justify his act, which says, "if any difficulty arises in connection with the implementation of this Constitution, His Majesty may issue necessary orders to remove such difficulty, and such orders shall be laid before Parliament."<sup>40</sup> Human rights activists and members of political parties have noted, Article 127 cannot in any way be used to suspend democratic governance and the Constitution.<sup>41</sup> The King himself is granted immunity for any of his actions through Article 31 of the very Constitution he has undermined.<sup>42</sup> Lokendra Bahadur Chand too resigned in May 2003. On 4 June 2003 Surya Bahadur Thapa was appointed as a Prime Minister. Finally, on 7 May 2004, Prime Minister Thapa resigned.<sup>43</sup> The King invited representatives of all the political parties,

including the five agitating parties, for consultations.<sup>44</sup> The five party coalitions, which had been so successful in organizing the “anti-regression” movement, could not generate a consensus candidate for the next Prime Minister.<sup>45</sup> Nearly four weeks later, on 2 June 2004, in the absence of a consensus nomination by the political parties, the King appointed Sher Bahadur Deuba as Prime Minister.<sup>46</sup> Deuba, the leader of the Nepali Congress Party (Democratic), a breakaway faction of the Nepali Congress Party, is the Prime Minister who in 2002 had suspended local assemblies.<sup>47</sup>

On 1 February 2005 the king proclaimed emergency and took direct control of government.<sup>48</sup> Gyanendra’s move was widely condemned by the international community.<sup>49</sup> In a televised statement, Gyanendra blamed the politicians, saying they had discredited multiparty democracy by “focusing solely on power politics.”<sup>50</sup> Warning, “terrorists threatened the country” he said the security forces would end the nine-year-old Maoist insurgency in which 11,000 people have died.<sup>51</sup> Fundamental human rights were suspended.<sup>52</sup> There were widespread arrests; strict censorship was imposed on the media; and all internal and external communications were cut for days.<sup>53</sup> The king appointed a ten members Council of Ministers but not a Prime Minister.<sup>54</sup> The Council is made of Royal loyalists, many of them senior officials during panchayat period of absolute monarchy.<sup>55</sup> Following the declaration of the state of emergency, the CPN (Maoist) leadership denounced the King’s seizure of power, announced that they would not participate in peace negotiations in the current circumstances, and called an indefinite *bandh* (strike) beginning on 12 February 2005.

On 29 April 2005, King Gyanendra revoked the order of a State of Emergency issued on 1 February 2005 in respect of the whole Kingdom of Nepal.<sup>56</sup> Though emergency has been lifted officially, but this step of His Majesty’s government has failed miserably to provide reprieve to political leaders of various political parties and civilians in Nepal, especially to those who are opposing the unbridled power of the king.

#### **IV. COMMUNIST PARTY OF NEPAL-MAOIST AND PEOPLE’S WAR**

Nepal has been facing a serious problem from 13 February 1996 when the Communist Party of Nepal-Maoist (CPN-M) initiated a People’s war, i.e. an armed struggle to overthrow the existing political structure.<sup>57</sup> A brief ceasefire was established while His Majesty Government of Nepal (HMG) and the Maoists held three rounds of talks between August and November of 2001 to discuss the various issues and concerns of the Maoists, of which the three most important were: 1) a round-table conference, 2) an interim government and 3) a constituent assembly.<sup>58</sup> On 21 November 2001, the Maoists unilaterally withdrew from the 3<sup>rd</sup> round of talks, and two days later, they broke the ceasefire by attacking the police, army and the armed forces personnel. The first round of peace talks, which began on 30 August 2001, broke down on 23 November 2001, after the Maoists unilaterally withdrew from the talks and attacked police and army posts in forty-two districts, killing as many as eighty members of the security forces.<sup>59</sup> The government responded by declaring a nationwide state of emergency on 26 November 2001 and deploying the army for the first time in the conflict.<sup>60</sup> State of emergency was extended twice and lasted for nine months and was lifted finally on 27 August 2002.<sup>61</sup> The new ceasefire declared on 29 January 2003, has, for the moment, brought to an end the seven-year-old conflict, but not before it claimed the lives of over 7,000 people. Sadly, the talks soon reached an impasse over the Maoist demand for a Constituent Assembly and achieved little progress.<sup>62</sup> The Maoist unilaterally withdrew from the peace talks on 27 August 2003, shortly after massacre in *Doramba*.<sup>63</sup> The *Doramba* massacre remains one of the most notorious examples of brutality in a civil war marked by grave acts of violence. Since the breakdown of the ceasefire in August 2003, fighting between the two parties has resumed with renewed intensity and there has been an escalation in reports of human rights violations in Nepal.

#### **V. FUNDAMENTAL RIGHTS UNDER THE CONSTITUTION OF NEPAL**

The Constitution of Nepal was adopted on 9 November 1990.<sup>64</sup> In a dramatic reversal of previous formulations, it places sovereignty in the people<sup>65</sup> and makes the king the symbol of the nation, thus legally transforming the state from an absolute to a constitutional monarchy. It reinstates the system of multiparty democracy, which was absent since the brief democratic experiment of the 1950's, and presents guarantees of new basic rights.<sup>66</sup> Part 3 of the Constitution of Nepal provides fundamental rights<sup>67</sup> and part 4 of the Constitution<sup>68</sup> talks about the Directive principles of State Policy.<sup>69</sup> The Constitution states unequivocally that all citizens are equal and prohibits discrimination on the basis of sex, religion, caste and ethnicity and political ideology.<sup>70</sup> It further guarantees right to life and liberty, and ensures that the State will not make laws prescribing death penalty.<sup>71</sup> Other rights guaranteed to the citizens of Nepal include, among others, freedom of opinion and expression,<sup>72</sup> freedom to form unions and association,<sup>73</sup> the right to peaceful assembly without bearing arms,<sup>74</sup> freedom to move throughout or any part of the Kingdom and reside in any part thereof,<sup>75</sup> and the freedom to practice any profession and engage in any occupation, industry or trade.<sup>76</sup> The other rights are the right to equality,<sup>77</sup> press and publication right,<sup>78</sup> rights regarding criminal justice,<sup>79</sup> right against preventive detention,<sup>80</sup> right to information,<sup>81</sup> right to property,<sup>82</sup> cultural and educational rights,<sup>83</sup> right to religion,<sup>84</sup> as well as the right against exploitation,<sup>85</sup> right against exile,<sup>86</sup> right to privacy<sup>87</sup> and right to constitutional remedy.<sup>88</sup> Thus, Part 3 of the Constitution can be termed as the Bill of Rights of Nepal. The Constitution also provides for effective remedy and enforcement of the rights conferred by the said part. The basic principle of modern jurisprudence that only an effective and independent judiciary can protect and enforce the fundamental rights of citizens has also been recognized in Nepal. The Supreme Court is empowered, under its extraordinary jurisdiction, to protect such rights by issuing the various forms of writs<sup>89</sup> including *habeas corpus*, *mandamus*, *certiorari*, *prohibition* and *quo warranto*.

According to Article 1 of the Constitution, the Constitution is the fundamental law of the country and all laws inconsistent with it are void. This provision further guarantee the fundamental rights conferred in the Constitution. If any law is inconsistent with the Constitution because it imposes an unreasonable restriction on the enjoyment of the fundamental rights conferred in the Constitution or on any other ground, the Supreme Court, in exercise of its extraordinary jurisdiction (judicial review) under Article 88 (1) of the Constitution, upon a petition of any Nepali citizen, may declare a law as void either *ab initio* or from the date of its decision, if it appears that the law in question is inconsistent with the Constitution.<sup>90</sup> After the promulgation of the new Constitution, there have been occasions wherein the Supreme Court has declared some laws void on the ground of inconsistency with the Constitution.

Since 1990, the Supreme Court of Nepal has made some efforts to internalize the provisions of international conventions in practice. The case of *Reena Bajracharya V. Royal Nepal Airlines* is one of the most significant cases where the Supreme Court decided the issue of sex discrimination in light of the provisions of the International Convention on Elimination of All Forms of Discrimination against Women (CEDAW).<sup>91</sup> However, the Supreme Court has not maintained a similar position with regard to the other international Human Rights instruments.<sup>92</sup>

### **A. State of Emergency and Fundamental Rights**

The King Gyanendra dismissed the Sher Bahadur Deuba government on 1 February 2005 and imposed state of emergency.<sup>93</sup> Though emergency has been lifted on 29 April 2005,<sup>94</sup> but still lot of restriction imposed during the emergency continues to operate. The king justified his action in accordance with Article 27 (3) of the, which gives him the undefined responsibility to preserve and protect the Constitution.<sup>95</sup> However, Article 27 (3) is open to interpretation in the light of Article 35(2) of the Constitution which states that, "except as otherwise expressly provided as to be exercised exclusively by His Majesty or at his discretion or on the recommendation of any institution or official, the power of His Majesty under this Constitution shall be exercised upon the recommendation and advice and with the consent of the Council of Ministers. Such recommendation, advice and consent shall be submitted through the Prime Minister."<sup>96</sup> With the Constitution now suspended for all

practical purposes, it can be said that all the powers therein have now passed on to the monarch. Part 18 of the Constitution of Nepal provides under Article 115 power for imposition of state of emergency.<sup>97</sup> According to Article 115(2) the every proclamation of emergency shall be laid before a meeting of the House of Representatives within three months from the date of the imposition of emergency. According to Article 115(8) during the time of emergency the following rights remain suspended.<sup>98</sup> The Article 35(1) states that the executive power of the Kingdom of Nepal shall, pursuant to this constitution and other laws, be vested in His Majesty and the council of ministers. It is an established convention, under constitutional monarchy the king has no political prerogative and functions entirely upon the advise of the elected prime minister. But King Gyanendra has been different and has on different occasions bypassed the prime ministers and spoken directly to the press, formally or at informal meetings. After the takeover, King Gyanendra invoked Article 127<sup>99</sup>, which gives the monarch extraordinary powers to remove difficulties in the implementation of the Constitution, and appointed 10 ministers.

### **B. Judiciary and Protection of Human Rights**

The Constitution of Nepal provides basic human rights to every citizen of Nepal and to enforce these rights an independent and competent system of judiciary is established with a view to transforming the concept of the rule of law into a living reality.<sup>100</sup> According to the Article 85 of the Constitution the Courts in the Nepal shall consists of the following three tiers: (1) Supreme Court; (2) Appellate Court (3) District Court.<sup>101</sup> In addition to the Courts referred in the Article 85(1), the law may establish special types of courts or tribunals for the purpose of hearing special types of cases, provided that no special Court or tribunal shall be constituted for the purpose of hearing a particular case.<sup>102</sup>

The Constitution also provides for effective remedy and enforcement of the rights conferred under Part 3 of the Constitution of Nepal.<sup>103</sup> The basic principle of modern jurisprudence that only an effective and independent judiciary can protect and enforce the fundamental rights of citizens has also been recognized in Nepal and the Supreme Court is empowered, under its extraordinary jurisdiction, to protect such rights by issuing the various forms of writs including *habeas corpus*, *mandamus*, *certiorari*, *prohibition* and *quo warranto*.<sup>104</sup> Nepalese criminal justice system is based on adversarial system placing the court in a neutral position. Government Attorneys file charge sheet in the competent court on the basis of the investigation jointly made and evidences collected by Police and government lawyers. Accused has right to consult legal practitioner and get defended. In case accused due to poverty is unable to hire a lawyer, in such a situation accused can ask for legal aid under the Legal Aid Act of 1997, which is paid by the government. According to Article 26(14) of the Constitution legal aid for the poor and needy is a state policy.<sup>105</sup>

The Supreme Court is empowered by the Constitution to ensure the enforcement of these rights, namely, Articles 11, 12(1), 12(2) (C), 14, 18, 19, 20, 21, and right to *habeas corpus* as mentioned under Article 23 even the time of emergency imposed under Article 115 (1) of the Constitution. Interestingly, the decisions and orders of the Supreme Court are binding on His Majesty's government and all officers and courts.<sup>106</sup> In exercise of its extraordinary jurisdiction (judicial review) under article 88 (1) of the Constitution, upon a petition of any Nepali citizen, may declare a law as void either *ab initio* or from the date of its decision, if it appears that the law in question is inconsistent with the Constitution.<sup>107</sup> Article 88 (2), contains provision for public *locus standi* or, as modern jurisprudence terms it, public interest litigation, empowering the Supreme Court to issue various kinds of writs as required for a legal question involved in any dispute of public interest.<sup>108</sup>

#### *(i) Writ of habeas Corpus and Judiciary*

The police or other authorities ignore a large percentage of *habeas corpus* orders that are issued by the Supreme Court and Appellate Court of Nepal.<sup>109</sup> Relatives of at least 15 persons reported to have "disappeared" after they were arrested by the police in 1998 and 1999 filed *habeas corpus*

petitions in the Supreme Court.<sup>110</sup> In all cases the police denied that these people were taken into custody. Several persons were later released, but at least half are still “disappeared” and *habeas corpus* petitions on their behalf remain still pending in the courts.<sup>111</sup>

On 7 February 2005 the Supreme Court refused to register a *habeas corpus* writ by a group of lawyers led by Nepal Bar Association (NBA), President Shambhu Thapa seeking release of a senior advocate Sindhu Nath Pyakurel.<sup>112</sup> Pyakurel was detained on 1 February 2005; the Court registered the writ on 8 February 2005, citing delay in notification as reason. Pyakurel was eventually released on 14 February 2005.<sup>113</sup>

In another significant development, on 20 February 2005 Chief Justice Hari Prasad Sharma observed the NBA’s plea to the Supreme Court to accept writs on basis of non-suspended constitutional articles as “politically motivated”. Thereafter on 25 February 2005, it rejected a writ petition seeking legal remedy under rights not expressly suspended by the emergency order. However, there have been instances where the Court has issued orders under *habeas corpus* writs. Human Rights activist Gauri Pradhan was released on court orders of 29 February 2005, after about a week in detention.<sup>114</sup> However, Pradhan was re-arrested briefly from the main intersection about 100 meters away from the courthouse, and released again later the same evening.<sup>115</sup>

The disregard or delay in implementation of court release orders has been commonplace. In several well documented cases, detainees have been released on the orders of the judge following a *habeas corpus* hearing, only to be immediately re-arrested by police without warrant from the court premises or environs. The police’s blatant disregard for the authority and independence of the judiciary has become a particularly disturbing aspect of the human rights situation in Nepal.<sup>116</sup> For *habeas corpus* to become an effective remedy, the Supreme Court should use its power to enforce fundamental rights, in accordance with provisions in the Constitution of Nepal. *Habeas corpus* should be enforceable by a proper officer of the court, as provided in law, but currently not in practice. Officials failing to comply with such orders should be subject to orders in the nature of contempt of court.

(ii) *Compensation on Torture Act, 1996*

The Compensation on Torture Act 1996 is enacted as a complement to the Article 14(4) of the Constitution of the Nepal, 1990. The Article 14 (4) of the Constitution clearly states, “no person who is detained during investigation or for trial or for any other reason shall be subjected to physical or mental torture, nor shall be given any cruel, inhuman or degrading treatment. Any person so treated shall be compensated in a manner as determined by law.” The Compensation on Torture Act, 1996 provides a provision for compensation to the person aggrieved by mental or physical torture or inhuman or degrading treatment in course of investigation, inquiry, and trial of a case or an imprisoned. The amount of the compensation is not affixed by the Act, rather it has empowered the court to ascertain the amount of compensation taking into consideration the following facts:(1) infliction of physical or mental torture against the aggrieved party and the intensity of such torture; (2) depreciation on the income generation capacity of the aggrieved person due to such physical and mental torture; (3) age condition and family responsibility of the aggrieved person in case of the severe physical or mental torture beyond medical treatment; (4) necessary amount for medical treatment in case of the possibility of such treatment; (5) in case of the death of the aggrieved person necessarily minimum amount to the dependent family member for their livelihood, and (6) a just and reasonable amount claimed by the aggrieved person.

Prior to the enactment of the Compensation on Torture Act, 1996 and after the promulgation of the 1991 Constitution a case was instituted before the Supreme Court of Nepal, *Purna Bahadur Chanttel v. CDO Dang*<sup>117</sup> the Court declined to grant compensation to the aggrieved party citing an absence of law. This decision of the court was heavily criticised by the human rights activists that the Court had failed to take note of its obligation towards protection and promotion of human rights under the Part 3 of the Constitution of Nepal.<sup>118</sup> The demand of the present time is that the court improves

its past weaknesses; otherwise, the national commitment towards human rights may turn to be ostensible and flimsy.

### **C. Establishment of Human Rights Cells and Promotion Center**

#### *(i) Human Rights Promotion Center*

The His Majesty's Government of Nepal has established a Human Rights Promotion Center (the center) under the Prime Minister's and the Council of Minister's Office.<sup>119</sup> The Center will inform the general public about work carried out by HMG/N regarding human rights and maintain co-ordination between various entities including NHRC in connection with the responsibilities to be borne as per international human rights instruments to which Nepal is a party.<sup>120</sup> A nine-member 'Steering Committee' has been constituted under the Chairmanship of the Chief Secretary of HMG/N for providing necessary guidelines to the Center.<sup>121</sup>

#### *(ii) Human Rights (HR) Cell in the Home Ministry*

A HR Cell has been established in the Home Ministry.<sup>122</sup> The Cell monitors any violation of human rights within its organs including Nepal Police, Armed Police Force and National Investigation Department (NID). It also instructs other HR Cells established in the security agencies in order to protect the human rights and shares information with them.<sup>123</sup> The Cell holds regular meetings, reviews human rights situation and instructs its organs to protect human rights.

#### *(iii) Human Rights Cell in Police Headquarters*

A HR Cell has been established in Nepal Police headquarters on 16 January 2003.<sup>124</sup> The Cell mainly provides training to police personnel on human right issues, investigates complaints of human right violations committed by police personnel and creates awareness among police staff about the human rights and cooperates with other agencies including NHRC and International Committee of Red Cross and Red Crescents (ICRC).<sup>125</sup> The complaints received by the Cell against Police are checked carefully and reported to the chief of the Cell daily. The complaints are verified through different means and both the victims and the accused are interviewed. A thorough investigation of complaints received is carried out.<sup>126</sup>

#### *(iv) Human Right Cell in Royal Nepalese Army (RNA)*

The Royal Nepalese Army has established a Human Rights Cell at its headquarters on 8 July 2002.<sup>127</sup> This Cell mainly investigates the violation of human rights committed by RNA personnel. This Cell also imparts training to RNA officers on human rights, humanitarian laws and law of war. Since its inception, the HR Cell of the RNA has conducted several investigations regarding the allegations of human right violations committed by its soldiers.<sup>128</sup>

#### *(v) Human Rights Cell of Armed Police Force (APF)*

Similarly a Human Right Cell has also been established in *Armed Police Force (APF)*.<sup>129</sup> It is mainly entrusted to investigate any violation of human rights by its personnel, organise trainings to its staff on human rights issues and to make all sub-ordinate units alert against abuses.<sup>130</sup>

## **VI. EFFECT OF INTERNATIONAL TREATIES AT DOMESTIC LEVEL**

Following the restoration of democracy in 1990, Nepal also ratified a number of human rights instruments by which it must abide.<sup>131</sup> The Nepalese Constitution provides clear guidelines regarding the effect of international treaties at national level. Article 126 of the Constitution stipulates " the

ratification of, accession to, acceptance of or approval of treaties or agreements to which the Kingdom of Nepal or His Majesty's Government is to become a party shall be as determined by law."<sup>132</sup> It further stipulates that treaties or agreements concerned with a) peace and friendship, b) defence and strategic alliance, c) boundaries of the Kingdom of Nepal, and d) natural resources, and the distribution of their uses should be ratified or acceded by a majority of two-thirds of the members present at a joint sitting of both Houses of the Parliament.<sup>133</sup> Other treaties and agreements are subject to ratification or accession through a simple majority of the members present in the meeting of the House of the Representatives.<sup>134</sup> After the commencement of this Constitution, unless a treaty or agreement is ratified, acceded to, accepted or approved in accordance with Article 126, it shall not be binding on His Majesty's Government or the Kingdom of Nepal.<sup>135</sup>

In addition to the Constitutional provision regarding the effect of international treaties at national level, the government of Nepal has adopted the Treaty Act of 1990. This Treaty Act is a special legislation that governs the substantive and procedural matters of the ratification and accession of treaties and convention. Section 9 of the Act explicitly states that any law of Nepal inconsistent with a treaty or convention acceded or ratified by Nepal shall not be applicable, and provision of such treaty or convention will prevail. Hence, the international instruments acceded or ratified by Nepal constitute part of the Nepalese legal system, and as such, the government is bound to give effect to them as a part of its international obligation. The Treaty Act of 1990 is a progressive legislation, which establishes the supremacy of international law over domestic laws, in case of inconsistency between international treaty and national law. It is important that other South Asian countries should adopt this kind of legislation.

## VII. CONCLUSION

Since 1996, Nepal is passing through a very difficult time, mainly because of prevalence of unprecedented armed conflict between the Maoists and security forces. Both sides have committed flagrant violations of the human rights mentioned under the Constitution of Nepal and other human rights treaties which Nepal is party. The political instability and imposition of emergency by the King has further deteriorated human rights of the citizens of Nepal. Human rights violations are not only intolerable, but they are counterproductive for anyone who claims to be fighting for the people. In the immediate term, the protection of civilians and non-combatants must be the main and overriding priority for any human rights initiatives taken in today's Nepal. The human rights crisis in Nepal deepened further by imposition of the emergency by the King on 1 February 2005, which led to the suspension of many fundamental rights mentioned in the Constitution. Though emergency has been lifted finally on 29 April 2005, sadly there is not much improvement in the context of human rights till date. In present scenario it is important that the His Majesty's Government should take bold initiative to bring all political parties and the parties involved in the conflict and discuss to find out a peaceful solution for the better protection of human rights of the people of Nepal.

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1. Core Document forming Part of the Reports of States Parties: Nepal, HRI/CORE/1/Add.42, 14 June 1994.
2. *Ibid.* The Hindu population consists of 86.5 percent, Buddhists 7.7 percent, Muslims 3.5 per cent and others 2 per cent.
3. *Ibid.*, para .9.
4. *Ibid.*, The House of Representatives consists of 205 members elected from the one-man election constituency on the basis of a one-person-one-vote system through secret ballot by Nepali citizens who have reached the age of 18. The term of members of the House of Representatives is five years. His Majesty the King as the head of State appoints the leader of the party, which commands a majority in the House of Representatives as Prime Minister and constitutes the Council of Ministers on his recommendation and under his chairmanship. The Prime Minister and other ministers are

- collectively responsible to the House of Representatives, and the other ministers are individually responsible for the business of their respective ministries to the House of Representatives as well as to the Prime Minister.
5. *Ibid.* The National Assembly consists of 60 members: 10 are nominated by His Majesty the King from amongst persons of high reputation; 35, including 3 women, are elected by the House of Representatives on the basis of a proportional representative system by means of the single transferable vote; and 15 are elected from 5 development regions on the basis of the single transferable vote system by an electoral college consisting of the chiefs and deputy chiefs of village development committees and municipalities and the chiefs, deputy chiefs and members of the district development committees of each region. The tenure of office of one third of its members expires every two years.
  6. "Nepal A long Ignored Human Rights Crisis is now on the Brink of Catastrophe" Report of Amnesty International mission to the country, 10 – 16 February 2005, AI Index: ASA 31/022/2005, 18 February 2005, <http://www.amnesty.org/library/eng-npl/reports>.
  7. Country Reports on Human Rights Practices-2000, Released by the Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, 23 February 23 2001.
  8. *Ibid.*
  9. H. N. Agarwal, *Nepal: A Study in Constitutional Change* (Oxford, New Delhi, 1980)
  10. *Ibid.* Kathmandu derives its name from the word *Kastha-Mandap* or wooden House constructed by the Malla king, Lakshmi Narsingh.
  11. The following Rana Prime Ministers ruled Nepal for 104 years. (1) Jang Bahadur Rana, (2) Bam Bahadur Rana, (3) Ranodip Singh Rana, (4) Bir Shamsher Rana, (5) Dev Shamsher Rana, (6) Chandra Shamsher Rana , (7) Bhim Shamsher Rana, (8) Juddha Shamsher Rana, (9) Padma Shamsher Rana and (10) Mohan Shamsher Rana. Agrawal, note 9, p.4.
  12. The following were Shah Kings who ruled Nepal , (1) Prithvi Narayan Shah (1769-75); (2) Pratap Singh Shah (1775-78); (3) Ran Bahadur Shah (1778-99); (4) Girvan Juddha Bikram Shah (1799-1816); (5) Rajendra Bikram Shah (1816-1847); (6) Surendra Bikram Shah (1847-1881); (7) Prithvi Bir Bikram Shah (1881-1911); (8) Tribhuvan Bir Bikram Shah (1911-55); (9) Mahendra Bir Bikram Shah Dev (1955-1972); (10) Birendra Bikram Shah Dev (1972- 1998); (11) Dipendra Bir Bikram Shah Dev (1998-2001); (12) Gyanendra Bir Bikram Shah Dev (2001- till date) <http://www.nepalhomepage.com/general/kings/shahkings.html>.
  13. <http://www.historyofnations.net/asia/nepal.html>. Also known as the Anglo-Nepalese War, was fought between the British Empire and the Kingdom of Nepal. The Anglo-Gorkha war culminated in signing of the Treaty of Sugauli in 1815. This treaty determined the frontiers of Nepal.
  14. Agrawal, note 9, pp. 3-7.
  15. *Ibid.*
  16. *Ibid.*, The administrative system established by the Rana's received the support, consent and goodwill of the British government in India from 1846 to 1947.
  17. Padma Shamsher was Prime Minister from 1945-48. The first written Constitution a landmark in Nepalese history was promulgated on 26 January 1948. The Constitution envisaged the establishment of partyless legislative structure beginning from the Gram Panchayat at the lowest level.
  18. *Ibid.*, pp. 8-21.
  19. B. P. Koirala and Subarana Shamsher were spearheading the anti Rana movement.
  20. Agrawal, note 9, pp. 16-17. The revolution broke out through out the Nepal once people heard the flight of the Royal family in Indian Embassy at Kathmandu. After 104 days of the blood bath, the Ranas surrendered to the people's Mukti Sena. The three parties, the King, the Ranas and the Nepali Congress were reached on agreement at Delhi. On 12 February 1951 the Delhi talk was finalized resulting in a compromise formula regarding the formation of government. It was decided that the interim cabinet have ten ministers, half congress nominees and half Rana nominees. Mohan Shamsher was recognized as the new Prime Minister with king Tribhuvan as a constitutional head. On 15 February 1951 the king returned home and on 18 February 1951 issued a historic proclamation inaugurating the new political system and promised that the people of Nepal will be ruled by the new Constitution framed by a Constituent Assembly elected by the people.
  21. *Ibid.*, pp. 23-24.
  22. It was the first written Constitution ever given by a Shah King. The Constitution comprised of 47 articles.
  23. A fairly long Constitution comprised of 77 Articles, it included an elaborate list of fundamental rights.
  24. *Ibid.*, pp. 33-56.
  25. *Ibid.*
  26. *Ibid.*
  27. *Ibid.*, p.47.
  28. *Ibid.*, p. 47.
  29. *Ibid.*, pp. 49-51.
  30. *Ibid.*, pp. 51-127.
  31. *Ibid.*, p. 124.
  32. *History of Nepal*, <http://www.historyofnations.net/asia/nepal.html>,
  33. *Ibid.*
  34. This is the fifth Constitution adopted in Nepal. Padma Shamsher, the Rana Prime Ministers, who gave Nepal on 26 January 1948 the first ever written Constitution. The Padama's Constitution of 1948 envisaged the establishment of a partyless legislative structure a three tier panchayat system. Historic Royal proclamation of 18 February 1951 issued by

King Tribhuvan ended Rana regime. The Interim Constitution of 1951 provided a constitutional basis to the new political system of Nepal from 1951 to 1959. A new era began for Nepal when on 12 February 1959 a new constitution was adopted and the first general election was held in the history of Nepal. Unfortunately, 18 months old B.P. Koirala government was dismissed by the King Mahendra. King Mahendra ruled the country without any constitution from 1960-1962. A new constitution system called the Panchayat system was adopted in 1962. Fifth Constitution was adopted in 9 November 1990.

35. *Civil War Begins*, [http://en.wikipedia.org/wiki/History\\_of\\_Nepal](http://en.wikipedia.org/wiki/History_of_Nepal).
36. *Ibid.*
37. Manjushree Thapa, "Nepal's Political Rainy Season" <http://opendemocracy.net/articles/>
38. *Ibid.*
39. Other sections of the Constitution, however, unambiguously deny the King the authority to appoint his own prime minister and cabinet. Article 36(1) of the Constitution directs the King to appoint the leader of the majority party in parliament as prime minister. If this is impossible—for example, if there is a successful vote of no-confidence against the prime minister or if there is no clear majority in parliament and no agreement on a coalition—then the King may dissolve parliament but elections must be held within six months of such dissolution.
40. Human Rights Watch Report, "Between a Rock and Hard Place: Civilians Struggle to Survive in Nepal's Civil War", vol.16, n.12 (c) (2004), p.20, <http://www.hrw.org>
41. *Ibid.*
42. Article 31 of the Constitution stipulates that, "No question shall be raised in any court about any act performed by His Majesty: Provided that nothing in this Article shall be deemed to restrict any right under law to initiate proceedings against His Majesty's Government or any of his employee"
43. *Ibid.*
44. *Ibid.*, p.22.
45. *Ibid.*
46. *Ibid.*
47. *Ibid.*
48. Amnesty International Report, "Nepal: Human Rights Escalate Under the State of Emergency" *AI Index: ASA 31/036/2005*, <http://www.amnestyinternational.org>.
49. *Ibid.*
50. International Crisis Group, "Working to Prevent Conflict Worldwide Nepal's Royal Coup: Making a Bad Situation Worse" *Asia Report*, n.91, 9 February 2005
51. *Ibid.*
52. *Ibid.*
53. Amnesty International Report, note 48, pp. 1-9.
54. (1) Ramesh Nath Pandey, Minister of Foreign Affairs; (2) Radha Krishna Mainali, Minister for Education and Sports; (3) Dan Bahadur Shahi, Home Minister; (4) Buddhiraj Bajracharya, Minister for Tourism and Culture; (5) Durga Shrestha, Minister for Women, Children and Social Welfare; (6) Tanka Dhakal, Minister for Information and Communication; (7) Madhukar Shumsher Rana, Minister of Finance; (8) Ram Narayan Singh, Minister for Labour and Transport; (9) Krishna Lal Thakali, Minister of General Administration; (10) Khadga Bahadur GC, Minister for Local Development. International Crisis Group *Asia Report* note. 50, p. 17.
55. *Ibid.*
56. Asia and Pacific Region Quarterly Reports of Field Offices, Office of the High Commissioner for Human Rights (OHCHR), Geneva, June 2005, pp. 19-22. Available at <http://www.unhchr.ch>
57. Human Rights in Nepal Status Report 2003, prepared by the National Human Rights Commission of India, Kathmandu, 2003, Chapter –I, p.3, <http://www.nhrc-nepal.org>  
The conflict in Nepal is basically a social, economic and cultural issue and is produced and sustained by failed development as the armed conflict had led to continued violence in more than 50 of the country 75 districts. Insurrection continues in the form of torture, killings, bombings, extortion and intimidation against civilians and public officials.
58. Human Rights Watch, note 40.
59. *Ibid.*, p.14.
60. *Ibid.*
61. *Ibid.*
62. *Ibid.*
63. The Security forces have killed 19 Maoist activists after arresting them from a house in *Doramba*, all 19 persons hands were tied at their back and who had been under the control of security forces were shot dead from a close range. The National Human Rights Commission, "Doramba Incident, Ramechhap On-the-spot Inspection and Report of the Investigation Committee 2060 BS (2003)." <http://www.nhrc-nepal.org>
64. Nepal constitution of 23 Kartik, 2047 B.S. Nepal follows a different calendar based on Bikram Sambat.
65. See for the text M. V. Pylee, *Constitutions of the World*, (Universal Law Publishing, New Delhi, 2003), pp. 939-992. Preamble and Article 3 of the Constitution.
66. See Agarwal, note 9.
67. Articles 11 to 23 of the Constitution.

68. There is a similarity between the Indian Constitution and Nepalese Constitution is that Part III and Part IV of the both Constitution deal with similar aspects. However, Indian Constitution provides a longer list of Rights under Part III and Part IV.
69. Articles 24 to 27 of the Constitution.
70. Article 11(3) of the Constitution.
71. Article 12(1) of the Constituion.
72. Article 12(2)(a) of the Constitution.
73. Article 12(2)(c) of the Constitution.
74. Article 12(2)(b) of the Constitution.
75. Article 12(2)(d) of the Constitution.
76. Article 12(2)(e) of the Constitution.
77. Article 11 of the Constitution.
78. Article 13 of the Constitution.
79. Article 14 of the Constitution..
80. Article 15 of the Constitution.
81. Article 16 of the Constitution.
82. Article 17 of the Constitution.
83. Article 18 of the Constitution..
84. Article 19 of the Constitution.
85. Article 20 of the Constitution.
86. Article 21 of the Constitution.
87. Article 22 of the Constitution.
88. Article 23 of the Constitution.
89. Article 88(2) of the Constitution.
90. Core Document, note 1.
91. Human Rights Status Report, note, 57, p. 9
92. *Ibid.* In regard to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).
93. Article 115(1) states that, "if a grave crises arises in regard to the sovereignty ort integrity of the Kingdom of Nepal or the security of any part thereof, whether by war, external aggression, armed rebellion, or extreme economic disarray. His Majesty may Proclamation, declare or order a state of emergency in respect of the whole of the Kingdom of Nepal or of any specified part thereof".
94. The King's declaration of a state of emergency must be approved after 3 months by a two-thirds majority of the lower house of the parliament. If the lower house is not in session, the upper house exercises this power. A state of emergency may be maintained for up to 3 months without legislative approval and for up to 6 months, renewable only once for an additional 6 months, if the legislature grants approval. Article 115(2) and (3).
95. Article 27(3) of the Constitution stipulates that, " His Majesty is to preserve and protect the Constitution by keeping in view the best interests and welfare of the people of Nepal"
96. Pylee, note 65, pp. 939-992.
97. *Ibid.*, p. 987.
98. Article 12 (2)(a) freedom of opinion and expression; (b) freedom to assemble peaceably and without arms; (d) freedom to move throughout the kingdom and reside in any part thereof; and (e) freedom to practise any profession, or carry on any occupation, industry or trade; Article 13 (1): Press and Publication Right; Article 15 (1)Right Against Preventive Detention; Article 16 Right to Information ; Article 17Right to Property; Article 22 Right to Privacy; Article 23 Right to Constitutional Remedy (except right to habeas corpus).
99. Article 127 of the Constitution states that, " if any difficulty arises in connection with the implementation of this Constitution, His Majesty may issue necessary Orders to remove such difficulty and such Orders shall be laid before Parliament.
100. Articles 84 to 96 of the Part 11 of the Constitution of Nepal deal with the role, power and functions of judiciary.
101. The judiciary in Nepal comprises of 75 district courts, 16 appellate courts and one Supreme Court. The Chief Justice of the Supreme Court of Nepal is appointed by His Majesty the King on the recommendation of the Constitutional Council, a constitutional body composed of the Prime Minister, the Chief Justice, the Speaker of the House of Representatives, the Chairman of the National Assembly and the Leader of the opposition in the House of Representatives as its members.
102. Article 85 (2) of the Constitution of Nepal.
103. Article 88 (1) and (2) of the Constitution of Nepal.
104. Article 88 (2) of the Constitution of Nepal.
105. Article 26(14) of the Constitution provides that, "the State shall, in order to secure justice for all, pursue a policy of providing free legal aid to indigent persons for their legal representation in keeping with the principle of the Rule of Law".
106. Article 96 of the Constitution of Nepal.
107. Core Report, note 1.
108. *Ibid.*

109. "Nepal Widespread "Disappearances" in the Context of Armed Conflict", AI Index: ASA 31/045/2003, 16 October 2003, <http://www.amnesty.org>
110. *Ibid.*
111. *Ibid.*
112. Human Rights in Nepal, *Nepal Coalition of Human Rights Defenders*, 22 March 2005
113. *Ibid.*
114. *Ibid.*
115. *Ibid.*
116. *Ibid.*
117. *Nepal Kanoon Patrika-NKP 1991*, No 6, Human Rights & Judiciary, <http://www.hri.ca>
118. *Ibid.*
119. Nepal's State Party Report Submitted to Committee Against Torture, pp. 24-31, <http://www.ohchr.org>
120. *Ibid.*
121. *Ibid.*
122. *Ibid.*, pp. 25-26.
123. *Ibid.*
124. *Ibid.*, pp. 27-31.
125. *Ibid.*
126. *Ibid.*
127. *Ibid.*
128. *Ibid.*
129. *Ibid.*
130. *Ibid.*
131. Slavery Convention, Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, Convention on the Prevention and Punishment of the Crime of Genocide, 1948; International Convention on the Elimination of All Forms of Racial Discrimination, 1961; International Covenant on Economic, Social and Cultural Rights, 1966; International Covenant on Civil and Political Rights, 1966; Optional Protocol to the International Covenant on Civil and Political Rights, 1966; International Convention on the Suppression and Punishment of the Crime of Apartheid; Convention on the Elimination of All Forms of Discrimination Against Women, 1979; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984; International Convention Against Apartheid in Sports, Convention on the Rights of the Child, 1989; Convention on the Political Rights of Women. Source Core Document, note 1.
132. Pylee, note 65, pp. 990-991.
133. *Ibid.*, Article 126(2) of the Constitution.
134. Article 126(2) of the Constitution.
135. Article 126(3) of the Constitution.