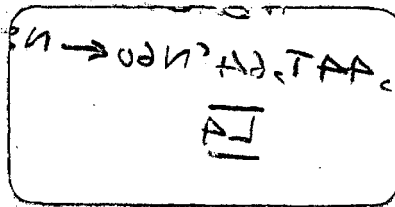


# **THE NATIONAL PANCHAYAT OF NEPAL**

# THE NATIONAL PANCHAYAT OF NEPAL

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A dissertation submitted for the partial fulfilment of the requirements of the degree of Master of Philosophy of the Jawaharlal Nehru University, School of International Studies.

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**PREFACE**

The fact that few Nepalese or foreign writers have done any work on Nepal's National Panchayat has prompted me to write the present dissertation. The National Panchayat, the capstone of the partyless Panchayat system, is not only the law-making body but also the centrepiece of the system. The present study is an exploratory attempt in which the author has tried to examine some salient features of Nepal's supreme legislature as a subsystem of the Panchayat system.

The present study is based mostly on secondary sources available in the library of the Indian Council of World Affairs, Sapru House, as well as in the library of Jawaharlal Nehru University. It is divided into four chapters. The first deals with certain features which became responsible for the emergence and decline of democratic institutions in Nepal during the 1950-60 period. The second chapter is a brief description of the Panchayat system formally introduced by King Mahendra in April 1963. In the third chapter an attempt has been made to examine the process of political participation in the form of currently obtaining electoral system. The fourth chapter evaluates the National Panchayat in its structural-functional perspective. These chapters are followed by my conclusions in which I have tried to point out that the National Panchayat has yet to achieve its institutionalization to be an autonomous, a full-

fledged democratic institution. However, I alone am responsible for the views expressed in the dissertation.

In completing this dissertation, I have received help from many persons. I remain grateful to my supervisor, Dr L.S. Baral, Associate Professor of Nepalese Studies, School of International Studies, Jawaharlal Nehru University, for planning and guiding me to undertake the present study. I am equally grateful to Dr Bimal Prasad, Chairman of the Centre for South, Southeast and Central Asian Studies at the School, for help and kindness in so many ways. I am grateful, too, to Professor A.J. Dastur, Head of the Department of Civics and Politics, University of Bombay, who gave me tenderly treatment during my stay at Bombay. It is a pleasure to acknowledge my debts to my colleagues Dr L.R. Baral and Dambar Narayan Yadav, Department of Political Science of Tribhuvan University; Dr Mohammed Mohsin, Professor Ganesh Raj Singh, member of the National Panchayat, for their valuable suggestions and encouragement. I am thankful to Dr Satish Kumar and Dr S.D. Muni, Centre for Diplomatic Studies, SIS, for their help. Thanks are also due to Dr Tulsi Ram Vediya, Professor Samba Bhakta Pant, D.N. Dhungel, T.N. Shrestha and K.R. Pande for their inspiration.

I wish to thank the library staff of Jawaharlal Nehru University and the Indian Council of World Affairs, Sapru House, for the facilities they provided me in the preparation of the present dissertation.

I am obliged to the authorities of my University, Tribhuvan University, for nominating me as a recipient of the Colombo Plan Scholarship and for permitting me a lien on my teaching job at the University's Department of Political Science, and thus helping me to avail of the opportunity to study at the School of International Studies for the M.Phil.degree. I am equally thankful to the officials of the Ministry of Education, Government of India, in charge of the Colombo Plan, who took every pain to make my stay at Delhi fruitful.

Finally, I owe a deep sense of gratitude to my teacher and colleague Professor B.C. Malla, Chairman of the Department of Political Science, Tribhuvan University, Kathmandu, without whose sympathetic encouragement and help this work would not have been completed.

29 October 1974

New Delhi 57

  
Mohammed Habibullah

Chapter I

INTRODUCTION

Emergence and Decline of Democratic  
Institutions in Nepal 1951-60



Nepal, a mountainous country, has been spoken of as "a yam between two stones",<sup>1</sup> China in the north and India in the south. Extending 500 miles along, it is divided by different rugged terrains and river systems, all of which have created several pockets of mutually isolated settlements of peoples. In between are high mountain regions, with some of the highest mountains in the world. At the foothills is the Terai region, interspersed with jungles and flat lands conterminous with India. This diverse and divisive geopolitical pattern has been responsible for the socio-economic and, most notably, political life of Nepal.

Nepal is the largest of all the three Himalayan States (the other two being Sikkim and Bhutan) in size and population. It is the meeting ground of two cultures, Aryan and Mongoloid. Over the centuries, immigrants from India and Tibet have settled in various parts of the country. At present the population is divided on racial lines that parallel<sup>2</sup> the geopolitical zones. In the higher altitude regions of the north the people are mainly of pure Mongoloid stock, with their language, dress and customs similar to those found in

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1 As said by Prithvi Narayan Shah. See Divya Upadesh, ed., Babu Ram Acharya and Yogi Narhari Nath (Kathmandu, Seventh edition, 1960), p. 11.

2 E.B. Mihaly, Foreign Aid and Politics in Nepal: A Case Study (London, 1965), p. 7.

Tibet. In the south, where the land is flat and affords easy accessibility from that quarter, the people are indistinguishable from their neighbours across the border in India. They are, almost invariably, of the Aryan stock. Thus the people of Nepal as a whole belong to different races with their separate languages or dialects. There are several tribes, such as Bhotias, Newars, Limbus, Kiratis and Lepchas, of whom an overwhelming majority follow Buddhism. Non-Buddhist tribes are the Gorkhas (consisting of Brahmans and Kshatriyas), Magars and other tribes Sanskritized in the distant past. There is also a small Muslim population, approximately 800,000 in number, who emigrated from Kashmir and India in the distant past. The Muslims live in different parts of the country, their concentration being in different parts of the Terai region.<sup>3</sup>

The founder King of present-day Nepal, that is Prithvi Narayan Shah, was a devout Hindu who considered Nepal to be the real abode of the true tenets of Hindu dharma.<sup>4</sup> For about a hundred years under the Rana oligarchy in Nepal (that is from the middle of the 19th to the middle of the 20th century), Hinduism not only got the state protection but was also practiced by the State functionaries.<sup>5</sup>

Nepal's independence has been traditional, respected

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3 Asad Husain, British India's Relations with the Kingdom of Nepal, 1857-1947 (London, 1970), p. 24.

4 Prithvi Narayan Shah, n. 1, p. 11.

5 For details see D.R. Regmi, Modern Nepal (Calcutta,

by external rulers, even including the British, and was scrupulously maintained by the ruling dynasties with a feeling of complete identity with the ruled. The Nepalese monarch is the only remaining Hindu King in the world.

The present kingdom of Nepal owes its existence largely due to the efforts of Prithvi Narayan Shah who founded the current ruling house with his capital in Kathmandu soon after his conquest of the Kathmandu Valley in 1769 and extended his domain up to the river Tista in the east a little before his death in 1775. The valley of Kathmandu occupies more or less a central position between the Sapta Gandak and Koshi river systems on the west and the east respectively. By the end of the eighteenth century, Nepal's boundary crossed the Sutlej river in the west and became conterminous with the boundary of Panjab and Kashmir.

The founder of the autocratic Rana regime, Jang Bahadur Kunwar (later Rana), followed almost totally all traditional customs. The regime had been nurtured by Rana rulers in such a way until the 1950 revolution that even the general populace looked upon the rulers as divine superiors and endowed with all kingly qualities. The country's total wealth was owned only by the family members of the ruling class of the Ranas and their entourage residing in the Kathmandu Valley. D.R. Regmi,

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Raj  
1961); also Dhundi / Bhandari, Nepalko Aitihasik Vivechana (Banaras, 1957), and Satish Kumar, Rana Polity in Nepal: Origin and Growth (New Delhi, 1967).

a noted historian of Nepal, observes:

In fact the family of the Prime Minister wields supreme power exercising 'divine right' of ownership over the entire length and breadth of Nepal as did the monarch himself before he signed away his powers. 6

He further says that the Rana family had "all rights and no duties."<sup>7</sup> Hassaoldt Davis has described the Rana Prime Minister's autocracy, as narrated to him by the British Resident in the following words:

You know, of course, that there is a King of Nepal as well as the Maharaja, and that the Maharaja is properly the Prime Minister. The King, whose real title is Maharaj Adhiraj, is as much a puppet as the King of Italy, while the Prime Minister, or Maharaja, has almost autocratic powers. The entire national revenue passes through his hands. There is no doubt that he is one of the wealthiest men in the world, and perhaps of the wisest, to maintain his kingdom inviolate from the foreign influence. 8

Indeed, the Rana Prime Minister was the fountain of all powers, while the King remained a nominal head, who performed some ceremonial functions such as holding darbars, signing legal documents and receiving envoys etc. The personal and political life of the King was all the time under the surveillance of the Prime Minister. All appointments, civil or military, were conferred by the Prime Minister and all complaints regarding

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6 D.A. Regmi, Whither Nepal (Kathmandu, 1952), p. 17.

7 Ibid.

8 Davis Hassaoldt, Nepal: Land of Mystery (London, 1959), p. 201.

the conduct of public affairs were brought to his notice.<sup>9</sup>

The class stratification of the society<sup>was</sup> fully complied with Vedic religious precepts. It was based on complete caste-ridden dominance by the higher castes over the lower castes in all respects - social, political and economic.

Nepal, in the aftermath of the Second World War, could not remain aloof from the new wind of liberation blowing in several Asian countries. Its impact was increasingly felt from 1946 when the Nepalese youth started political activities against the Ranas. Of a greater magnitude was the impact of independence of India in 1947, followed by the establishment of the People's Republic of China in 1949. Both were momentous events which heralded a process of tremendous geopolitical change and tension around Nepal. India's quest for security of northern frontiers at the time Communist China was busy "liberating" Tibet compelled it to be concerned with Nepal's internal politics. The Ranas, who had been able to eliminate the threat to their family autocracy while the British ruled India, were ill at ease to reconcile to the fact that India had achieved its independence. However, under the force of the contemporary circumstances both India and Nepal concluded the Nepal-India treaty of trade and friendship on 31 July 1950.

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9 Orfeur Cavenagh, Report on the State of Nepal: Its Government, Army and Resources (Calcutta, 1874), p. 15.

This "put no obstacles whatsoever in the way of the revolutionary Nepali Congress Party which founded its inspiration in the universities and politics of India."<sup>10</sup>

On 6 November 1950, King Tribhuvan and all the members of his family, with the exception of his four-year old grandson Gyanendra, escaped the Royal Palace and took asylum in the Indian Embassy at Kathmandu from where they were flown to New Delhi as desired by the Government of India. This act of the King took both the Nepali Congress and the Ranas by surprise. However, the Nepali Congress could ill afford to postpone its plans of armed insurrection. The situation consequent upon the royal family's unexpected flight to the Indian Embassy looked congenial for the apparently previously planned insurrection. On the night of 10 November, the Nepali Congress started its armed revolution to exterminate the century-old Rana regime. Meanwhile the Rana Government dethroned King Tribhuvan and placed his grandson Gyanendra on the throne of Nepal. But the Indian Government did not recognize the new King. Ultimately under a compromise evolved by the Indian Government, Prime Minister Mohan Shamsher agreed to accept King Tribhuvan as the legitimate ruler. After his return to Kathmandu the King made a proclamation on 18 February 1951 conceding that the people

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10 MacAlister Brown, "The Diplomatic Development of Nepal", Asian Survey (Berkeley), vol. XI, no. 7, July 1971, p. 663; see also Bal Chandra Sharma, Nepalko Aitihāsik Ruprekha (Banaras, 1951), pp. 403-16.

had a right to be governed in accordance with a Constitution drafted by a duly elected Constituent Assembly. Elections to the Constituent Assembly would take place in the near future. For the interim period, he set up a coalition government of Rana and Nepali Congress representatives, with Mohan Shamsher as the Prime Minister. Shortly thereafter the King promulgated an Interim Constitution to run the country until a new Constitution drafted by the promised Constituent Assembly came into force. But the hopes that the interim political arrangements would usher in parliamentary democracy in Nepal proved wishful thinking. Such a system was indeed inaugurated in June 1959 after eight years apprenticeship in democracy, but that was terminated by King Mahendra in December 1960.

#### NON-EXISTENCE OF DEMOCRATIC INSTITUTIONS

The experiment of constitutional monarchy made in Nepal between 1951 and 1959 proved to be a progenitor at best for the centralization of power in the hands of the King. The Interim Government of Nepal Act, 1951 (popularly known as the Interim Constitution), which was devised to establish parliamentary democracy in Nepal, was amended from time to time in such a way that eventually its original spirit was almost totally changed. King Tribhuvan had started as a King-in-Council but by and by monarchy was so revamped that he had no difficulty in asserting himself as an absolute King. This helped his son and successor, King Mahendra, to further revamp monarchy to be

increasingly absolute. The coup he carried out in December 1960 made it apparent that British-type parliamentary democracy was not uppermost in his mind. This would be discussed in the second chapter of the present dissertation. However, it may be mentioned here that the factors that became responsible for the strengthening of absolute monarchy were both internal and external.

The political experiments carried on in Nepal during 1951-59 failed to socialize the populace in democratic processes mainly because of the absence of democratic tradition. The traditional - institutional ethos of the country perpetuated as much by the attitude of the landed aristocracy as by that of the illiterate peasantry served, by and large, as a stumbling block to the evolution of limited government. Belief in religious superstitions and traditional value system constrained the naive people to be susceptible to authoritarianism. With their long experience of administration and social influence, conservative sections of the aristocracy, most of whom were based in the capital, were associated with palace intrigues and conspiratorial politics as in the past, with the sole motive of preserving their privileges accumulated over generations. It was they who largely dominated the society even during the political upheaval of 1951-60. During this period the institution of monarchy became a point of reference for those who were afraid of democratic processes. <sup>11</sup>

11 G.B. Devkota, Nepalko Rajnitik Darpan / Political



Thus, to the extent democratic processes were retarded, authoritarianism was being strengthened with the centralization of power in the hands of the King.

The politicalized bureaucracy, that was dominated by the Rana-trained elite of the Kathmandu Valley, was no less a factor in the strengthening of subject political culture in the mass publics. The main reason behind this was the insecure tenure of the bureaucrats that made them more concerned about their security rather than administrative efficiency. Not surprisingly, the administrative reorganizations made from time to time from 1951 onwards contributed to administrative instability. More unfortunate were the frequent ministerial changes often leading to almost whole-sale change in official policies and programmes. Such a situation revived traditional personalism, patrimonialism and opportunism, all of which encouraged corruption at various levels with the result that the national economy was brought to a near collapse and pushed the nation to the very brink. According to Rose, "the frequency of ministerial changes and the instability of the political party system further complicated the administrative task."<sup>12</sup> What

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Mirror of Nepal ] (Kathmandu, 1959), p. 235; see also Anirudha Gupta, The Politics of Nepal: A Study of Post-Rana Political Development and Party Politics (New Delhi, 1964), p. 85.

12 Leo E. Rose and Margaret Fisher, The Politics of Nepal: Persistence and Change in Asian Monarchy (London, 1970), p. 66.

was more, the lack of people-oriented mentality of a majority of the bureaucrats, most of whom were trained in the old pattern of the administrative machinery that still continued operating, became responsible for administrative inefficiency gravely affecting the new dimensions of political change. Consequently, the bureaucracy was anything but impersonal, and it was inevitable that administration was far from efficient. This sort of situation has generally been alleged to be a casual factor of political instability in the country during 1951-60. However, it may be posited that if ever there was any political instability during this period, it was more due to administrative corruption than due to the failure of the institutional arrangements made to facilitate the establishment of a democratic order. It is also alleged that no less significant was the role played by the King, whether King Tribhuwan or King Mahendra, which in one way or the other contributed to the political instability.

#### POLITICAL PARTIES VS. DEMOCRACY

Another factor in the transitional nature of democratic processes in Nepal was the role of political parties. The style of their operation in the post-Rana period was not any more different from the party politics of any newly independent Asian or African country. As elsewhere, in Nepal too political parties were extremely localized and personalistic. Most of them were small and far from mass-based. The issues involved

in the oppositional politics in Nepal between 1951 and 1959 were mostly non-ideological in character; and if ideological, the parties paid only lip service to their professed ideologies. The common feature of all the political parties was that they were almost invariably hostile to the Nepali Congress leadership on the personal plane. Almost all the parties, except the Nepali Congress, had their offices in the capital with no widespread contact with the periphery on a day-to-day basis. Although they did claim that they had widespread popular support, membership of the non-Congress parties did not generally spread beyond the Kathmandu Valley. However, when after eight years the people were given the opportunity to judge them in the General Election of 1959, the popular verdict was markedly definitive.

The election results were disastrous to most of the prominent party leaders. The presidents (general secretary in the case of the Communist Party) of all the contending parties, with the single exception of B.P. Koirala of the Nepali Congress, were defeated. Included in this list were most of the politicians who had dominated the political scene in Nepal since 1951 - K.I. Singh, Tanka Prasad Acharya, Bhadrakali Mishra, Dilli Raman Regmi, Randhir Subba, Keshar Jang Raymajhi, Pushpalal Shrestha, Ranga Nath Sharma and Vedanand Jha. Both D.R. Regmi and Tanka Prasad Acharya forfeited their deposits, as they did not poll even one sixth of the total vote in their constituencies. 13

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13 Bhuwan Lal Joshi and Leo E. Rose, Democratic Innovation in Nepal: A Case Study of Political Acculturation (Berkeley & Los Angeles, 1966), p. 295.

These defeated leaders, who lost all patience to wait until the next election, left no stone unturned to topple down the Nepali Congress Government. In so doing, they reflected their own desperation at being judged so adversely by the people. No longer could the leaders disowned by the electorate get <sup>to</sup> the corridors of power by a back door. Consequently, they concentrated on their energies to get to power by dubious means. However, it may be mentioned that the parties did not differ greatly insofar as their programmes and policies were concerned. All stood for constitutional monarchy, radical social and political reform, economic development, land reforms and the like. This was more evident in their manifestos published at the time of the General Election. And when most of the party leaders were swept away by the electoral turnover, they became chary of appreciating the radicalism of the Nepali Congress Government. They started finding fault in whatever that Government did. To such opposition parties the apparent focal point for the distribution of patronage was the King and not the people.

#### ROLE OF THE KING

The next important factor in the direction of the political processes set in train during the period under review was the role of the King himself. In the beginning, King Tribhuvan had expressed his desire to remain just a figurative Head of State like the British monarch. Article 22 (1) of the

Interim Constitution had stipulated clearly that "whenever anything is proposed to be done by the King, it will be understood that it will be done by the King on the advice of his minister or ministers concerned."<sup>14</sup> However, when powers were increasingly centralized in the hands of King Tribhuvan to be sovereign in the real sense of the term, he could afford to be assertive even within one year of the new change-over brought about in February 1951. A special Emergency Powers Act, 2009 V.S. (1952) promulgated by the King suspended all the provisions relating to the executive part of the 1951 Constitution. Again, on 10 January 1954, King Tribhuvan issued a Royal proclamation which vested him supreme authority over the executive, the legislative and the judiciary. Now the position of the King was supreme. The powers of the High Court were even more drastically curtailed. The King's inherent powers and prerogatives were kept in-tact in every field.<sup>15</sup>

Notwithstanding the fact that royal prerogatives were enlarged, there were still hopes that as the King had "endeared himself to the people," he would ill afford "to risk his popularity

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14 Published in Nepal Gazette, 2 (24 Bhadra, 2009 V.S.), pp. 17-20. Produced in Dhundi Raj Sharma, Parliament ra Salahkar Sabha (Nepal Academy, Kathmandu, 1960), pp. 244-55.

15 2010 Sal Magh 7 Gateko Shahi Ghoshana (The Royal Proclamation of January 10, 1954, Kathmandu, Gorkhapatra Press, 1954); see also One Year of Democracy in Nepal, Directorate of Publicity, HMG, Kathmandu, 1952, p. 18.

by backing out of his promise<sup>16</sup> of holding a General Election and of giving a Constitution drafted by a duly elected Constituent Assembly, which, as a matter of fact, was to be "the first-step" towards the establishment of constitutional monarchy in the country. This, however, did not happen to be the case when the General Election as promised by King Tribhuvan was not held until he was alive.

Crown Prince Mahendra succeeded King Tribhuvan in March 1955. It was believed that the new King would fulfil his father's commitment to the General Election meant for a popularly elected Constituent Assembly. But this belief was belied by his temperament of ruling absolutely.<sup>17</sup> With powers further centralized in his hands, he managed to manoeuvre the existing political forces. Consequently, the Constitution of 1959 became a royal award contrary to what his father had declared earlier.<sup>18</sup> It only formalized the King's centralized power with extensive discretion to rule as it pleased him.

#### EXTERNAL FACTORS

By the end of the 1960s, several momentous events took

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- 16 L.S. Baral, "Nepal's Apprenticeship in Democracy 1951-60", India Quarterly (New Delhi), vol. XXVII, no. 1, January-March 1971, pp. 185-202.
- 17 Leo E. Rose and Margaret Fisher, n. 12, p. 66.
- 18 The Constitution of the Kingdom of Nepal, published in the Nepal Gazette, 2015-11-1 V.S. See also Narendra Goyal, The King and His Constitution (New Delhi, 1959), p. 7.

place in the international arena, particularly in the South Asian subcontinent. Nepal's neighbouring countries were no longer friendly as before. Communist China had already extended its domain over Tibet, and, at the same time, India's leverage in Nepal's politics was progressively eroded after King Mahendra sat on the throne. Meanwhile Nepal's position had been also elevated in the world community partly due to the establishment of parliamentary democracy in 1959. These developments attracted favourable world opinion and helped the country in its task of development. However, the real beneficiary seemed to be King Mahendra who, after his take-over in 1960, showed his capabilities to profit by Nepal's elevated position in the comity of nations on the one hand and by the not-too-friendly relations of the two big neighbours, India and China, on the other. Not surprisingly, with the dismissal of parliamentary system of government on 15 December 1960, he could revive the tradition-based monarchical order in Nepal.

Thus, several domestic as well as external factors, that were available to him facilitated King Mahendra's task of administering the country personally without any check.<sup>19</sup> The political arrangement made after the coup, including the announcement of the Constitution of 1962 and the formal introduction of a new political system - the Panchayat System - in

19 For details see Leo E. Rose, Nepal: Strategy for Survival (Berkeley & Los Angeles, 1971); see also S.D. Muni, Foreign Policy of Nepal (Delhi, 1973), p. 124.

1963, showed how he was primarily concerned to be the sole and supreme leader of the country. The supporting domestic and international factors were still congenial to him, and with opposition considerably weakened, he remained the real policy-maker and decision-maker in every sphere. The National (Rashtriya) Panchayat, the country's legislature, further contributed to this situation.



## Chapter II

### THE PANCHAYAT SYSTEM A LA KING MAHENDRA

On 15 December 1960, King Mahendra, by evoking emergency power provision under the current Constitution of 1959, dismissed the first-ever popularly elected Government in the country. Prime Minister B.P. Koirala and other ministers, as well as a large number of party leaders, were arrested. The elected Parliament, in which the Nepali Congress held two-thirds majority, was dissolved. Several clauses of the Constitution, including those that guaranteed fundamental rights and parliamentary democracy, were also suspended. The King took over the country's administration in his own hands and banned all existing political parties.

While justifying his action, the King levelled various charges against the dismissed Government. Leaders of the Nepali Congress were accused of exploiting the name of democracy, setting aside the interests of the country and the people for their own personal ends. The King also alleged that anti-national elements received encouragement by the party Government. It was even said that those at the helm of the country's administration indulged in bribery and corruption. The Nepali Congress Government was insensitive to the needs and requirements of the nation and its economic policies were based on theoretical principles.<sup>1</sup>

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1 King Mahendra, Proclamations, Speeches and Messages, vol. II (December 1960-65), Ministry of Information and Broadcasting, Department of Publicity, HMG/Nepal 1967.

On 26 December 1960, the King formed a Council of Ministers under his own chairmanship to assist and advise him in day-to-day administration. It consisted of nine members of whom two Ministers and three Assistant Ministers belonged to the Nepali Congress. The first two in the Ministerial hierarchy, Tulsī Giri and Vishwa Bandhu Thapa, were formerly known as B.P. Koirala's "trusted and tried lieutenants." It appeared that the King, by appointing Nepali Congressmen as his Ministers, wanted to show that he was not as much against a party as against party government. Furthermore, it appeared that the King's silence about the policy to be followed by the Council of Ministers was purported as an indication of no shift from the policy of the deposed Koirala Ministry. Although, the King did not prescribe any term of reference to the Council of Ministers at the time of its formation, the senior Ministers made it clear in their speeches that they would not initiate any new programme unless those undertaken by the Nepali Congress Government were fully executed.<sup>2</sup>

In his policy statement announced on 5 January 1961, King Mahendra declared his intention to establish a political system, later called Panchayat system, in many respects similar to the Panchayat system of 1948 given by the then Rana Prime Minister, Padma Shamsher. The King claimed:

<sup>2</sup> Samai (Kathmandu), 28 December 1960; and Nepal Samachar, 28 December 1960.

Since Panchayats are the basis of democracy and a democratic system imposed from above has proved unsuitable, as is apparent from the present experience of the country, we have now to build democracy gradually layer by layer from the bottom upwards. It is our aim to associate the people in the administration at all levels and to develop village, district and town Panchayats, with a view to enabling them to take active interest in the problems and progress of the country. <sup>3</sup>

The King hoped that with this new political system Nepal would catch up with the level of development in other developed countries and would accomplish in ten or twenty years what they took centuries to do. <sup>4</sup> He declared that the foremost duty of his Government would be to make every possible effort to remove the difficulties and hardships of the people in every sphere. He promised to eradicate all sorts of corruption and favouritism, to strengthen the rule of law and make justice inexpensive and speedy. He also promised to give a new plan that would be realistic in approach and would promote all-round development in socio-economic and political fields. <sup>5</sup>

In the policy statement the King also said that political parties had been banned, as it had been necessary "for the present" to prevent them from playing a dys-functional role in

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3 King Mahendra, n. 1, p. 1.

4 Ibid.

5 L.S. Baral, "The New Order in Nepal Under King Mahendra, 1960-1962: An Assessment", International Studies (New Delhi), vol. 13, no. 1, January-March 1974.

the task of creating a favourable climate for the presently envisaged movement of national reconstruction. Further, the King invited active co-operation of all to fulfil his "selfless and sacred desire" of attaining all-round development of the nation.<sup>6</sup>

The King's position was strengthened by the support of most of the non-Congress leaders, different sections of the press and individuals belonging to different sectors in the society. However, what was instructive was the emphasis the King and his entourage laid on establishing an indigenous political system based on people's genius and temperament, and compatible with the country's religions and social traditions. As if to remove any confusion about the new political system the Home Minister, Vishwa Bandhu Thapa, supposed to be its main ideologue, assured the people in a speech broadcast on Radio Nepal on 11 January 1961 that democracy was "safe in the hands of our democratic King and soon we shall be able to function under a strong democratic system." While maintaining that the King had been forced to declare all political parties illegal only in order to channelize the entire energies of the Nepalese in one direction for some time, he said that "if all the people gave co-operation, in some years, we shall again see party flags and signboards."<sup>7</sup>

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6 For further detail see King Mahendra, n. 1, p. 1.

7 Nava Samai (Kathmandu), 11 January 1961.

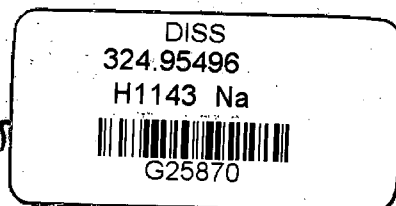
Framework of the Political System

The King's first step in the direction of introducing what he said an indigenous political system was the appointment of an official ad hoc committee, consisting of four high officials of the Government Secretariat, instructed to investigate political systems in Yugoslavia, Egypt, Pakistan and Indonesia.<sup>8</sup> A Ministry of National Guidance was created to provide the framework of the new political system to be worked out under the broad supervision of the Crown. The Ministry was charged with the organization of the four-tiered panchayats and "class organizations" structured as a mutually complementary mechanism to support the political system.

The King appointed a six-man Constitution Drafting Committee in May 1962 to draft proposed amendments of the 1959 Constitution.<sup>9</sup> The Committee consisted of Government officials only and was headed by Rishikesh Shaha, Finance Minister (later Foreign Minister for a short while). However, the blueprint of the new political system had been ready before the Constitution was announced in December 1962. In July 1961, Vishwa Bandhu Thapa, the Minister of National Guidance announced the salient features of the political system. According to him, there would be a four-tier structure of panchayats at the

8 See Leo E. Rose, Panchayat Raj in Nepal, Working paper presented before the South Asian Studies, University of California, Berkeley, 1962.

9 Ibid.



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regional and central levels. Each village, town, district and zone was provided with a panchayat of its own. It was said that while village and district panchayats would be entrusted with administrative powers as far as possible, zonal panchayats would discuss various national issues. All these bodies would be surmounted with the National Panchayat to be presided over by the King himself. It would consist of representatives from class and professional organizations of the central level and persons nominated by the King. The National Panchayat, which would meet annually, would adopt resolutions on domestic and foreign issues.<sup>10</sup> Thapa also pointed out that "the edifice of democracy should be built from below with the panchayat as the base." Making an appeal to the countrymen, he asked them to co-operate in the steps taken by the King with the "pious desire" of establishing real democracy for developing and re-constructing the country through a dynamic and controlled process.<sup>11</sup>

In a way the institutional framework of the future system announced by the National Guidance Minister, was not entirely novel. It was more or less similar in letter and in spirit to the Panchayat system which Rana rulers had devised under the Constitution of 1948 to further legalize their

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10 Gorkhapatra (Kathmandu), 17 July 1961.

11 Ibid.

century-old despotic regime. Equally striking was King Mahendra's denunciation of political parties, which sounded as a clear echo of what the Rana Prime Minister, Padma Shamsher, had publicly said at the time of announcing the 1948 Constitution.<sup>12</sup> Inasmuch as parliamentary democracy had been discredited for its alienness, it was not surprising if the Panchayat system was claimed by King Mahendra and his political entourage to be entirely indigenous, in perfect accord with the so-called national tradition under which panchayats, that<sup>is</sup> village councils, operated in different parts of the country, mostly as caste tribunals, and adjudicated minor caste disputes when so required. Towards the end of their regime, Rana rulers had attempted to establish regional panchayats structured within the framework of the Panchayat system provided by the Constitution of 1948. Indeed, all governments during 1951-60 had taken steps to set up panchayats as units of local self-government. For instance, in part 2 (6) of the Interim Constitution of 1951, it was specifically mentioned that "His Majesty's Government shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government."<sup>13</sup> Between 1951 and 1955 as many as

12 See Prime Minister Padma Shamsher's Speech at the time of the announcement of the Government of Nepal Act, in January 1948.

13 P. Neupane, ed., The Constitution and Constitutions of Nepal (Kathmandu, 1969), p. 145.



826 panchayats were set up in different parts of the country and Panchayat Officers were appointed to supervise them.<sup>14</sup>

Even after King Mahendra's succession to the throne in 1955, the efforts made earlier in the direction of reorganizing panchayats were continued by successive governments. In 1959, the Nepali Congress Government decided to reactivate panchayats and for that purpose as many as 33 Panchayat Officers were appointed - 32 in the districts and one in the Kathmandu Valley. Provisions were accordingly made for their appointment as well as for that of 109 Panchayat Supervisors, of 274 panchayat staff members, 33 junior clerks and 99 peons.

However, the panchayats established after King Mahendra's take-over were strikingly different from them. Apart from serving as units of local self-government, the new panchayats, like those provided under the Panchayat System of Padma Shamsher, became part and parcel of the structure of the entire political edifice and were meant to be the units of the country's administration at different levels. These panchayats became the electoral units which elected representatives to the National Panchayat in the prescribed manner.

#### The System of National Guidance

King Mahendra's immediate concern, soon after his take-over in December 1960, was to guide and control the different

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14 Indra Prasad Kaphley, Fundamental Bases of Panchayat Democratic System (Kathmandu, 1967), p. 64.

sectors of Nepalese society. This he did by setting up a new Ministry, Ministry of National Guidance, on 18 February 1961. It was given the charge of setting up class and professional organizations (popularly known as class organizations) as a plural infrastructure for articulating different class interests under official surveillance.<sup>15</sup> It has been said that "like Soekarno, King Mahendra too wanted to maintain his guidance system to exercise his over all control of national affairs."<sup>16</sup> Emphasizing the importance of the new Ministry, the King said:

The principal duty of this new Ministry will be to work in the broader interests of the country and to achieve a greater measure of progress and development in all sections of society and among its various classes, to coordinate the rights and interests of the various areas and their people and not to let regional interests conflict with national interests or with similar interests of other areas.<sup>17</sup>

According to its terms of reference, the National Guidance Ministry was required to coordinate the activities of panchayats and class organizations. On 27 December 1961, a National Guidance Act was enacted and accordingly National Guidance Officers were appointed in each of the 75 districts to function as required by the Ministry. District and Zonal Guidance Committees were set up in each district and zone. Members of these Committees were appointed by the National Guidance

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15 L.S. Baral, n. 5, p. 4.

16 Ibid.

17 King Mahendra, n. 1, p. 1.

Ministry.

On 3 April 1963, the National Guidance Ministry was abolished by the King on the ground that it had fulfilled its purpose; and all its functions were amalgamated with a newly established Ministry, the Ministry of Panchayat. But within four and a half months the King again formed a 31-member National Guidance Council under his own chairmanship. The Council, formed on 23 August, consisted of the Chairman of the Council of Ministers, Minister of Finance, Home and Panchayat, Chairman and several members of the National Panchayat, Chairman of the Standing Committee of the Council of State, Chairmen of the Peasants', Youth, Women's, Labour, and Ex-Servicemen's Organizations, and several prominent persons, including Tanka Prasad Acharya, a former Prime Minister, Rang Nath Sharma,<sup>18</sup> Mrigendra Shamsheer and Purna Prasad Brahaman.

It was hard to believe that the King needed an "extra-constitutional" body like the National Guidance Council, when there were already the National Panchayat, the Council of Ministers and the Council of State to advise him in the course of running the country. It was also hard to see how the National Guidance Council would function smoothly when its members were also well known for their mutual hostilities. Not surprisingly, the King reorganized it in May 1965 with minor changes. All its members, except T.P. Acharya and R.K.

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18 Naya Samai, 23 August 1963.

Shaha, were retained. However, the Council could not function, allegedly, because of in-fighting. Its deliberations were held in camera, and it is hard to say if reports published about these deliberations were authoritative. The way it was abolished early in 1967 was clear that like any advisory body its creation was an exercise in futility. However, the national guidance system continued to operate in a different form.

On 29 September 1967, the King gave a programme, called Back To Village, to mobilize the entire nation under a directive issued by him. This programme, later called National Campaign, contained the following ten objectives:

- 1) to strengthen and popularize the feelings of nationalism and national unity;
- 2) to develop and strengthen partyless feeling and to propagate that the Panchayat system had no alternative;
- 3) to conduct the country's non-aligned foreign policy in conformity with its principles;
- 4) to campaign against corruption, injustice and unnecessary delay in discharging duties;
- 5) to activate the rural people and arouse consciousness among them;
- 6) to accelerate the pace of successful implementation of the current Lands Act and Legal Code, social reforms and other national construction work;
- 7) to publicize and propagate the cooperative feeling and programmes;
- 8) to propagate the importance of afforestation, protection of forest and animal in the public life;

- 9) to lay the stress on the increase of agricultural production; and
- 10) to spread and encourage the feeling and development of suitable cottage industries all over the country. 19

A "National Campaign Central Office" was established at the Singh Darbar Secretariat in Kathmandu to provide guidance to district-level National Campaign Managing Committees, evaluate activities of the panchas carried out under the programme in different districts and maintain records thereof, and discharge central-level functions as provided for in the Campaign. Its primary objective was to assist in the implementation of the "Back To Village" campaign in a guided, systematic, coordinated and disciplined manner throughout the country. <sup>20</sup>

Obviously, the Campaign was a medium for the King to control the concentration of panchas at urban centres and thus refrain them from being associated with party-oriented action which tended to be more pronounced at such centres because of the several facilities which were lacking in rural areas. However, the Campaign too was purely advisory in character. As a consequence, the enthusiasm which the Campaign had aroused in the initial phase of its implementation soon began to decline.

Other steps which the King took from time to time in

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19 Translated by L.R. Baral, The Political Opposition in Nepal, Ph.D. thesis, Jawaharlal Nehru University, 1973, pp. 280-81. For details see the Official Publication, Gaun Pharka Rashtriya Abhiyan 2024 (HMG/Nepal, 1967), pp. 5-6.

20 Gorkhapatra, 27 October 1967.

the direction of national guidance was the issuance of a series of directives and codes of conduct for the panchas as a whole. On 26 October 1967, a code of conduct was issued for National Panchayat members to prohibit them from indulging in groupism or any other activity that tended to inhibit the development of the Panchayat system. They were forbidden to do anything that was detrimental to this system. They were required to activate class organizations and coordinate their activities with those of panchayats. The code also enjoined on the National Panchayat members to oppose and boycott any such activity which was detrimental to the Panchayat system, and to refrain also from any action that tarnished the prestige of the National Panchayat. Furthermore, it was made obligatory for them to perform their functions assigned to them under the Back To Village National Campaign.

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In April 1970, the King again gave a general directive to the panchas in order to encourage them to pay due consideration to the basic objectives of the Panchayat system. The King warned them that "they should not feel frightened of difficulties that may arise in the way or deviate from their path. The directive also underlined the need to organize the panchas whenever a controversy arose between them and anti-Panchayat elements. It was also explicitly mentioned that "in case any

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21 Gorkhapatra, 27 October 1967.

problem arises between Panchayat members on the one hand and those who do not have faith in the Panchayat system or hold ambiguous views on the other, Panchas should side with their colleagues." <sup>22</sup>

As in the case of the previous national guidance system, different experiments have been made with the programmes assigned to the Back To Village National Campaign. This would be apparent from a number of amendments made in the basic objective and reorganization of the Campaign in different forms. Of late, it has been given the role to act as a whip of the Panchayat system and evaluate Panchas for any elective or ministerial office. This has given the Campaign the political basis of a one-party system. However, it is far from clear if the Campaign can develop its muscles to be strongly political in character. So far it is another device to control and guide mass publics to follow official lines closely.

From <sup>the</sup> codes of conduct and directives, simultaneously, issued from time to time, either by the King or by the government as the case may be, it appeared that their objective was to control the members of the different components of panchayats and class organizations on the one hand and, to facilitate the running of the country's administration under the unchallengeable leadership of the monarch on the other. Such measures were apparently essential to guide the behaviour and

conduct of the country's population so as to preclude any possibility of opposition to the political system in any form or from any quarter.

### Class Organizations

The most significant landmark under the framework of the Panchayat system was the formation of class organizations. The concept behind these organizations were apparently borrowed from Yugoslavia and Egypt. The main imperative behind the formation of these organizations was to fill the vacuum created by the absence of political parties all of which were banned by the King soon after his take-over.<sup>23</sup> Under the scheme of the class organizations, the whole society was divided into seven sectors. Each sector was provided with an organization of its own: (1) Peasants' Organization; (2) Labour Organization; (3) Women's Organization; (4) Youth Organization; (5) Ex-Servicemen's Organization; (6) Students' Organization; and (7) Children's Organization. All except the Students' and Children's Organizations were provided representation in the National Panchayat.

The class organizations were not only devised as adjuncts to the Panchayat system but were also based on a four-tier structure as in the case of the panchayats. But in the case of the Labour and Ex-Servicemen's Organizations the criteria to form their

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As declared by Vishwa Bandhu Thapa, Minister of National Guidance, in an interview to the editor of the Samiksha weekly on 29 March 1961. For a detail see Samiksha weekly, 29 March 1961.



primary units are different from the rest of the three Organizations. Where applicable, a primary committee is formed in each village or town panchayat area. It is elected directly by all the members of each class organization within the jurisdiction of the appropriate panchayat. Besides, there are districts, zonal and central councils and committees set up in the prescribed manner for each of the class organization. Each regional executive committee consists of eleven elected members including four office bearers; Chairman, Vice-Chairman, Secretary and Treasurer.

The Central Council consists of all the Chairmen of the District and Zonal Organizations. A Central Committee is then formed which includes four office-bearers, namely, Chairman, Vice-Chairman, Secretary and Treasurer, who are elected by the Members of the Central Assembly. In addition to these, <sup>there is</sup> one representative from each of the district organizations within the respective zone.<sup>24</sup>

The Students' Organization was abolished in 1967 and as such there are now six class organizations functioning in the country.

Although it was officially maintained that the class organizations had freedom to operate in their respective spheres, they were, however, required to remain aloof from politics.

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24 Nepal Ain Sangraha, vol. 2, Ministry of Law and Justice, HMG/Nepal, 1974.

No parallel organization could be set up without being illegal. Much emphasis was laid on the need to co-ordinate classes. What was the purpose of such organizations was made clear by the National Guidance Minister, Vishwa Bandhu Thapa, when he said:

The Government will open wide door for the classes to give vent to their feeling in the direction of preserving and promoting their interests. But the tendency to move away from the class interest and indulge in politics will be curbed. Every class must confine its activity to its own interests. (25)

However, it was hard to perceive how class consciousness could be created and class interests advanced through such non-political class organizations. Coordination of the activities of the various classes with the development programmes undertaken by the Government is another duty assigned to the class organizations. They are also intended to serve as instruments for controlling the public on political, economic and social questions as well as for channelling popular forces and movements into the activities the regime wishes to further.

However, the concept behind the class organizations as underlined by the National Guidance Minister suffered from several fallacies. In the first place, none of the class organizations has so far served its own class and participation of the people in their programmes has been markedly minimal. Most of the time its leaders have been found engaged in

intra-personal rivalries for power, flouting the main task of the class organizations - articulation of specific class interests. This state of affairs has largely been responsible for two immediately observable features of the present political processes. First, the Government has maintained a studied vagueness about the form, functions, and relationships of these organizations. As a result, they find it hard to formulate and execute their policies and programmes independently. Second, any group activity if disapproved of by the authorities is nicknamed party politics and suppressed with repressive measures. Thus the only activity which the class organizations can indulge safely is to be the publicity media for official policies and programmes.

#### The Constitution of 1962

King Mahendra announced a new Constitution on 16 December 1962 to herald the Panchayat system as conceptualized by him. The most distinguishing feature of the new Constitution was to make the King sovereign in the real sense of term. This gave the impression that King Mahendra had not been satisfied with the centralization of power vested in him under the 1959 Constitution, in itself a royal award. Even though the Constitution had made the monarch absolute, King Mahendra seemed anxious to rule without any external restraint. The Constitution of 1962, another royal award, was obviously designed in this direction.

Although the Constitution of 1962 said in its Preamble

that the Government of the country should be conducted "in consonance with the popular will," and that this was possible "only through the Panchayat system rooted in the life of the people in general.... originating from the very base with the active cooperation of the whole people and embodying the principles of decentralization", in spirit the King's superordination in every sphere was unmistakably palpable. With the promulgation of the Constitution monarchy was revamped to make it absolute in every sense. Article 3 (1) of the Constitution defined Nepal as a "monarchical Hindu state." The emphasis on the monarchical nature of the polity was<sup>a</sup> significant declaration of political intent in the sense that for the first time it was incorporated constitutionally. Further, Article 20 (2), while vesting the sovereignty of Nepal in the King, said that all powers, executive, legislative and judicial emanate<sup>d</sup> from Him. As regards the executive powers, it was also said:

The executive power of Nepal shall be exercised in accordance with this Constitution and other laws for the time being in force by His Majesty either directly or through Ministers or other officers subordinate to Him. 26

Besides his supreme position in the executive and legislative fields, the King also became the supreme Commander-in-Chief of the armed forces. There was no constitutional check on the

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26      Article 24 (1), The Constitution of Nepal (English Translation), Ministry of Law and Justice, HMG, 1963.

King. He was placed above any law whether provided or not in the Constitution. What was more, the new Constitution brought the country under the overall tutelage of the King.

The Constitution provided for the establishment of a network of Panchayats throughout the country at village, town, district, zone and the centre levels. The Panchayats at these levels were respectively known as the Gaun Panchayat, Nagar Panchayat, Zila Panchayat, Anchal Panchayat (amended in 1967) and the Rashtriya or National Panchayat.

The National Panchayat, the pinnacle of the Panchayat system, has been given powers of legislation, but the Constitution has placed innumerable restrictions in the way of its independent functioning, so much so that the King can veto any bill passed by it. Further, the fact that it is an indirectly elected body denies the prestige and importance that it would have had as a directly elected body, representative of, and responsive to, the wishes of the people. The secrecy that surrounds its proceedings further isolates it from the public and reduces its value as the real articulator of the needs and aspirations of the nation. In effect, therefore, the Rashtriya Panchayat is reduced virtually to a rubber-stamp rather than a real legislative assembly in its own rights.<sup>27</sup>

The National Panchayat, the apex of the partyless Panchayat system, is the supreme national unicameral legislature,

<sup>27</sup> See Satish Kumar, "The Panchayat Constitution of Nepal and Its Operation," International Studies, vol. VI, no. 2, October 1964, p. 143.

comprising 125 members, 90 of them are elected from among the members of the Anchal Sabha (Zonal Assemblies) who in turn are elected from among the members of the Jilla Sabhas (District Councils) who, again in turn, are elected from the Gaun Sabhas (Village Councils). In other words, membership of the National Panchayat is based on local panchayats, the basic unit of the three-tiered Panchayat system, from each of which members chose from among themselves representatives for their district panchayat. They may advance by similar stages to the National Panchayat. Of the remaining 35 members, 15 members are elected from various class organizations, 4 from the Peasants' Organization, 2 from the Labour Organization, 4 from the Youth Organization, 3 from the Women's Organization and 2 from the Ex-servicemen's Organization. Four members are elected from nation-wide Graduates' Constituency and the remaining 16 members (i.e., 15 per cent of the total elective members) are nominated by the King.

The National Panchayat is a perpetual body, one-third of its members elected from Zonal Assemblies retiring every two years. Other members serve for a fixed term of four years.

Chairman and Vice-Chairman of  
the National Panchayat

The National Panchayat is presided over by a Chairman appointed by the King on its recommendation after his election from among its members in the prescribed manner. The date for holding the election is fixed by the Acting Chairman of the

National Panchayat, with the consent of the contesting candidates whose names are forwarded to the King with the names of five proposers and five seconders for each of the candidates. In case of more than one candidate standing to the election, there is a provision for election by secret ballot. A candidate is elected if he secures more than 50 per cent of the votes cast. In case of a tie between two candidates, the decision is made by drawing lots. The Chairman's term of office is of two years. He is also eligible for re-election.

A candidate standing to the election of Vice-Chairman requires only one proposer and one seconder for the recommendation of his name to the King. The other procedure of election is the same as in the case of the Chairman.<sup>28</sup> In case the Chairman resigns, or is indisposed or ceases to be the member of the National Panchayat, or his term expires, or if he is removed by the King from his office on the recommendation made by a two-thirds majority of the total membership of the National Panchayat, the Vice-Chairman performs the duties of the Chairman, if authorized by the King.

The National Panchayat meets twice in a year, with the proviso that the intersessional period between the prorogation and reconvening of the two sessions does not exceed six months. As the head of the State, the King addresses each session of the

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28 For details see Rules and Procedures of Rashtriya Panchayat, 2019 (1963), Rashtriya Panchayat Secretariat, Kathmandu.

National Panchayat mentioning the past achievements and future policies to be followed by his Government. The Chairman may subsequently allot a date for discussions on matters referred to in the royal address. At the same time, the motion of thanks adopted by the House on the royal address is conveyed to the King by the Chairman.

Communications from the King to the House are made through the Chairman. A message from the King, whether with respect to a bill in the National Panchayat or otherwise, is received by the Chairman who reads it to the House and gives necessary directives in regard to the procedure to be followed for the consideration of the matters referred to in the royal message, and in giving those directives he can suspend or make amendment in the rules to such extent as may be necessary.

#### Steering Committee

The Constitution provides a Steering Committee to advise and assist the Chairman of the National Panchayat in conducting the business of the House. It consists of 21 members from among the members of the National Panchayat. The Chairman and the Vice-Chairman of the National Panchayat are the ex-officio chairman and vice-chairman respectively of the Steering Committee. Other ex-officio members are Prime Minister, Ministers for Finance, Home, Panchayat and Law. Ordinary members of the Steering Committee are elected by the members of the National Panchayat. The term of office of the members,



except in the case of the ex-officio members, is of two years.

### Sub-Committees

Article 41A of the Constitution provides for various Sub-Committees of the National Panchayat in order to enable its members to take a more active part in the administration of the country. According to the National Panchayat Committees Act, there are five committees for this purpose, each consisting of 22 members of the National Panchayat. They are: (1) the Panchayat Committee (Panchayat administration, Class Organizations, law and justice), (2) the Finance Committee (finance, economic planning, industry, commerce, power, Public Works, communications and transport), (3) the Social Committee (health, education, publicity, broadcasting and foreign affairs), (4) the Administration Committee (district administration, police, administrative management, and defence) and (5) Agriculture and Land Reform Committee (forest, agriculture, food, land reform and irrigation).

Each committee consists of a minister concerned, besides 22 members of the National Panchayat. The minister is the ex-officio member of the committee. The members of each committee are nominated by the Chairman of the National Panchayat, keeping into account their personal qualification and regional representation.

Each committee elects its own Chairman and Vice-chairman from among the members. The National Panchayat Secretariat is

the Secretariat for each committee. The ministers, who are not members of the committee, are not allowed to attend its meeting. Like the National Panchayat, the committees also meet in camera.

Privileges of the National Panchayat Members

The immunities and privileges enjoyed by the members of the National Panchayat are similar/enjoyed by legislators in liberal democracies. The Constitution allows full freedom to members of the National Panchayat to discuss any internal matter in the House. It clearly says:

There shall be full freedom of speech in the National Panchayat and no member of it shall be arrested, taken into custody or be liable to proceedings in any court in respect of anything said or any vote cast by him in the National Panchayat or any of its committees. 29

The National Panchayat has full authority to conduct its internal matters and no question vis-a-vis the nature of its proceedings can be raised in any court. The most important privileges provided to the members of the National Panchayat is the "freedom of speech". The Constitution stipulates that no member or officer of the National Panchayat shall be arrested during the continuance of the session or in between the period in which the notice is summoned and prior to the commencement of the session.

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29 Article 51 (1).

30 Article 51 (4) (a) (8).

The immunities provided by the Constitution to National Panchayat members were obviously meant to communicate public opinion without fear or favour of the Government. The provision of the freedom of speech has ensured that minority rights and interests would also be cared through their representatives by enabling them to plead with the government if its decisions went against the interests of the minority. At times, however, the parliamentary privileges and immunities have been violated by the authorities.

Besides, members of the National Panchayat find it hard to justify their position as popularly elected representatives where existing rules do not allow them to publicize the proceedings of the House.

#### Closed Character of the House

Proceedings of the National Panchayat are not open either to the public or to the press. A summary report of its proceedings or those of its committees are released to the press through the government-owned National News Agency. The Constitution of 1962 stipulates that "the proceedings of the National Panchayat or any of its committees shall not be held in open"<sup>31</sup>. The King himself vigorously defended this provision of secrecy saying that "he did not like" to encourage the dog-in-the-manager policy by keeping the National Panchayat meetings open

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31 Article 42 (6)(a)(b).

to the public." <sup>32</sup> However, the proceedings of the House are open to the following:

Members of the Royal family, members of the Raj Sabha, any person who, in the opinion of the Chairman of the National Panchayat, is concerned with the business of the House, members of local panchayats, or of the executive committees of various levels of class organizations, permitted by the National Panchayat Chairman after consultation with its Steering Committee. It is open to the public on occasions the King or a distinguished invitee addresses it.

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32 On 8 February 1963, while speaking in reply to the address of welcome presented to him by the Town Panchayat at a civic reception held at Dhanagadhi (Seti Zone). See King Mahendra, n. 1, p. 161.

Chapter III

NATIONAL PANCHAYAT ELECTIONS

The Prospect of Electoral and Other Political Reforms

Election in a democratic system is a distinctive method of measuring public opinion and attitudes regarding alternative choice of policies and leaders. This has, therefore, been commonly regarded as the best means to govern the people through their popular representatives. Election also provides a medium for the communication between the popularly elected representatives and the electorate. To have full and frank political debates on all matters concerning the lives and aspirations of the people, free election, therefore, is a cardinal feature of a democratic system. Such election helps the people to form opinion towards the system's goals and the Government to be responsive to the popular will. In Nepal, although the currently operating Panchayat system has aimed at evolving truly democratic institutions for full-fledged political participation of the people at all levels, severe restrictions on fundamental rights and much too limited electorate have considerably reduced the significance of voting.

The first set of elections to culminate in the election to the National Panchayat commenced in February 1962 and were complete by April 1963. The National Panchayat consists of 125 members drawn from four sources. 109 members are electees and the remaining sixteen royal nominees. There is an electoral college in the form of Zonal Assemblies for all the 14 zones into which the country is divided for administration

purposes. 90 members are elected from these Zonal Assemblies. Each zone has a specific quota for its representation in the National Panchayat according to the number of district panchayats under its jurisdiction. Each district panchayat, including its chairman and vice-chairman, consists of 11 members. These members are elected from among the members of the district assembly represented by one member from each village panchayat and one-third of the membership of each town panchayat within the district area. Under the Acts on elective bodies, provision is made for direct elections to the basic tier, village and town panchayats, on the basis of adult suffrage. Elections to all other higher-tier bodies in the panchayat hierarchy are indirectly held from among the representatives of the basic tier.

Besides the electees from the territorial constituencies, there are sixteen electees from the specified and professional organizations: four each from the Peasants' and Youth Organizations, three from the Women's Organization, and two each from the Labour and Ex-Servicemen's Organizations. The electoral college for these 15-members of the different class organizations is the central council of the respective Organizations consisting of all the members of the 75 district executive committees and all the chairmen of the 14 zonal councils. As in panchayats, elections to the basic tiers of the class organizations are held directly and those to the higher tiers

indirectly from among the immediately lower-tier representatives filtered through the basic-tier representatives.

The last category of the members of the National Panchayat are representatives from the graduates' constituency. All the country's graduates whose names are registered in the voters' list are permitted to elect their four representatives directly from among themselves on the basis of preferential proportional representation.

The term of office of those elected by the zonal assemblies is of six years, one-third of them retiring every two years. Whereas that of the elected representatives of the prescribed class organizations, the graduates' constituency and the royal nominees is of four years.

It would now be in order to know how the National Panchayat elections are conducted. The elections to village and town panchayats were for the first time held throughout Nepal in 1961-62 by show of hands, a practice which was later replaced by secret ballot.<sup>1</sup> Government officers were empowered to conduct the elections to different levels of panchayats. However,

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1. In a Press Note released from the Department of Publicity and Broadcasting on 30 September 1962, Vishwa Bandhu Thapa, Minister of Panchayat, justified the decision to hold elections by show of hands. He also maintained that he was satisfied that the main purpose to have the right type of persons inducted into the political set-up had been achieved. By giving some "impressive-looking" figures in defence of this electoral

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until 1967, that is until the amendment of the Constitution, when provision was made for an independent Election Commission to prepare electoral rolls and supervise and conduct elections, all elections were supervised by the Panchayat Ministry.

The electoral procedures followed for the election to the National Panchayat were different in many respects from those followed for the General Election held in 1959. Elections to all the tiers of panchayats and class organizations were held in a situation in which not only all the existing political parties had been banned but political activities other than official ones had also been outlawed. The candidates standing to the elections were elected not on the basis of any popular mandate which the electorate could not place on the electors in the context of the political arrangements ordered under King Mahendra. Another equally striking feature of the elections was that almost all former party leaders boycotted the elections. There were widespread allegations about the government's interference or preference to particular candidates for their election. At some places when more than one candidate was in the

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procedure, he argued that to elect candidates by show of hands was not merely "the most practical procedure" but also far more economical than secret ballot adopted for the parliamentary elections in 1959.

For details see L.S. Baral, "The First Panchayat Elections in Nepal, 1962-63: The Emergence of a New Political Generation", International Studies (New Delhi), vol. 12, no. 3, July-September 1973, pp. 462-77.

field, the concerned Returning Officers were also alleged to have manipulated elections in favour of the candidates whom they wanted to be elected unopposed.<sup>2</sup> In fact, some Returning Officers went the extent of proposing a bunch of names after consulting the mukhias (headmen) of the concerned villages, leaving the voters with the "Hobson's choice" of agreeing or disagreeing with the list.<sup>3</sup> It was also alleged that in some districts elections were held through lots. From some quarters it was complained that in some district panchayats, elections for their chairmanship were held without the knowledge of the majority of the voters.

However, it would appear that the first panchayat elections were held in a situation of uncertainty and suspicion because of the newness of the political system as well as the electoral procedures. Moreover, the people had hailed the Panchayat system without trial, whereas the previous parliamentary system was said to have been dismissed when found unsuitable after its trial of eighteen months. The recruitment of the new generation into the basic tier of the Panchayat system, most of whom had hardly any political background, provided the matrix of producing the cadre needed for augmenting popular leadership

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2 District Officers and Magistrates, acting as Returning Officers, supervised district panchayat elections in their respective offices in January and early February 1963.

3 See R.S. Chauhan, The Political Development in Nepal, 1950-70: Conflict Between Tradition and Modernity (New Delhi, 1971), p. 241.

under the Panchayat system. It was from among this cadre that membership of the National Panchayat was finally drawn.

The election procedure currently adopted has, it has been alleged, encouraged vested interests for practising different kinds of irregularities to influence the electorate outcome as desired by them. One may argue that elections in any country cannot be totally immune from shortcomings; but it cannot be disputed that the electoral procedures designed in Nepal have more scope of irregularities than elsewhere. The too small an electorate for election to the National Panchayat from the territorial constituency (Zonal Assemblies) has been a considerable handicap for people to elect their true representatives. This would be evident from the provision which requires a contestant to be a member of the appropriate district panchayat whose total membership strength is eleven. The handicap is further accentuated by the legal provision under which a candidate has to be proposed and seconded individually by two members only from among the appropriate district panchayat. These limitations have facilitated the task of those candidates to get elected by influencing voters through money or intimidation. Under these circumstances it is difficult to see how elections could be free and fair. It can be imagined that even the chances of others to contest the National Panchayat election are lost if one candidate successfully influences the majority. Not surprisingly, sometimes candidates are returned unopposed when no proposer and seconder

are available. As such, it is doubtful if the right type of persons supposed to represent the people's interest at the level of decision-making are ever elected. Besides, there are ways in which the people have been disabled from choosing their true representatives. As for example, except the elections from the graduates' constituency there is no evidence so far that the candidates for any panchayat and class organization elections have ever raised any issue on which they want to be elected. As a matter of fact, under the Panchayat system, no vote can be sought on any ideological basis, and, no policy other than the one officially approved can be offered to the voters as their alternative choice. Neither the candidates standing to elections can offer any definite programme to be mandated by their voters nor are their performances in the National Panchayat ever known to the voters because of the in-camera sitting of the House. This perhaps would account for the inability of the sitting members to be elected consecutively for the second term on the basis of their past performances. It is said that the elections of such electees has not exceeded 20 per cent at any time. This has hindered the growth of leadership on the one hand and encouraged all sorts of corruption and groupism on the other. It is interesting to note that under the Panchayat system any political activity or groupism considered to be party-oriented is outlawed on the ground of the partylessness or consensual character of the system. But, if the published reports on election issues are

any guide, it has been found that candidates anxious to win elections to panchayats or to class organizations have manifested their affiliation, covertly or overtly, with the political parties of their ideological persuasion. No less obvious has been the groupism into which candidates have sharply polarized themselves at the time of the election. This tendency is in sharp contrast to the rationale of the Panchayat system at any rate. However, the candidates involved in such activities are only concerned with the idea to achieve victory in the elections; and once they are elected, they become zealous status quo preservers. Such a stance of theirs has alienated the people from their representatives on whose behalf the latter claim to act. It would be further noticed that for past thirteen years, after the royal coup in 1960, the currently operating political system has not been able to produce even a single leader of national stature. The presently operating electoral system has generally been held responsible for such a situation.

#### Membership Qualifications

Qualifications to stand for the membership of the National Panchayat, as prescribed in the Constitution, are as follows:

All Nepali citizens of 25 years at least and belonging to any of the major Class Organizations are qualified to be National Panchayat members. Its membership is also open to all those who have not been expelled from the membership of the House for

breach of privilege or disqualified by law. All government servants, except Ministers, Ministers of State or Assistant Ministers, are eligible to contest the elections. However, the final decision whether or not a person has requisite qualifications for membership of the National Panchayat lies with the King who may consult the Election Commission to arrive at such decision. 4

The membership criteria as laid down under the Constitution are as simple as elsewhere but the election process of graduating the candidates right from basic tier upward has inhibited the election of the right type of candidates to the National Panchayat. Furthermore, there is no provision of a ceiling on election expenses. A candidate has to pool his own financial resources to fight the election. Consequently, it has often been found that in the elections money has been the main factor in the electoral outcome and competition among candidates has made elections increasingly more expensive in sharp contrast to the objective of the Panchayat system to make elections much less expensive than those <sup>in</sup> parliamentary democracy. If we add all the amounts of election expense, it would be found out that the total expense incurred by a candidate to reach the capstone, that is the National Panchayat, has made elections under the Panchayat system much more expensive than election in parliamentary democracy.

It would, therefore, be no exaggeration to say that the

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4 Articles 35, 36. The Constitution of Nepal, Nepal Ministry of Law and Justice, HMG, 1968, p. 21.

election system in Nepal adopted under the currently operating Panchayat system has been the main source of all sorts of irregularities. As a result, it has become almost impossible for a right type of person to get elected to the National Panchayat.

#### Election Irregularities

If the reports published in the private press are any guide, it would appear that elections to all elective bodies including the National Panchayat elections are characterized by a variety of irregularities, either because of official pressure in favour of a particular candidate, or intimidation of voters and use of money by individuals, to influence the electoral outcome. These irregularities have been on the increase ever since the introduction of the present election system in 1963. In such a situation, it would be hard to say to what extent elections are free and fair, and to accept the official assertion that real public representation is ensured in elections. Nepali newspapers have been complaining against elections being held in an atmosphere of pressure and intimidation ever since the first series of elections culminating in the election to the National Panchayat from the territorial constituencies (Zonal Assemblies). It was once reported that "in some districts Commissioners and District Officers approached the candidates with warrants of arrest in one hand and nomination withdrawal forms in the other, asking them to choose either of the two."<sup>5</sup>

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5 Sama (Kathmandu), 3 March 1963.

However, despite the widespread dissatisfaction shown by the people through different media at the irregularities during the first National Panchayat elections, nothing was done to eliminate such irregularities in future. In all probability the widely reported occurrence of irregularities led King Mahendra to direct the Council of Ministers in 1966 to set up an Election Commission to ensure free and impartial elections to different tiers of panchayats and class organizations. The royal concern was further reflected in a statement made by Surya Bahadur Thapa, Chairman of the Council of Ministers. While justifying the need of an Election Commission, he told the National Panchayat on 18 August 1966:

The formation of the Commission does not mean that elections have not been fair in the past. The present stage of the Panchayat system is quite different from the earlier one. Since the people have been fully assimilated in the system, the formation of the Election Commission will help to clear the misunderstanding that may arise from the continued supervision of the elections by a Ministry of His Majesty's Government. 6

It would be in order to mention that the 1962 Constitution had made no provision for an Election Commission. Until the formation of an independent Election Commission provided by the amended Constitution in 1967, all elections were held under the supervision of the Home and Panchayat Ministry. The increasingly higher incidence of irregularities seem to have

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6 Gorkhapatra (Kathmandu), 19 August 1966.



compelled the authorities to recognize the need of the Commission. However, even after its establishment there were allegations that the Government had not desisted from interfering in elections to all tiers of panchayats and class organizations. Two things were apparently necessary if one was anxious to be a member of the National Panchayat; first, one had to be an officially preferred candidate, and secondly, he had enough money if he wanted the electoral outcome to be in his favour. As such there was no need of evidence that these two factors were a severe handicap for the people and honest panchayat workers, who wanted to get elected to the National Panchayat. There are cases of such allegations made by persons who held positions of eminence before but were defeated in elections when they were no longer in such positions. A case in point would be what Nagendra Prasad Rijal, a former Chairman of the National Panchayat, said while talking to the newsmen after his defeat in the election to the National Panchayat. He maintained that he had been defeated because "official power and resources" had been utilized against him. He asserted further:

Now I feel that democratic representation is not possible when the size of the electorate is limited. The possibility of pressure and interference cannot be ruled out until the number of voters in the National Panchayat is increased. 7

Along with a former Assistant Minister, Chandra Bahadur Palungwa, Rijal was also reported to have filed complaints in the Tribunal

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7 Samiksha Weekly (Kathmandu), 12 June 1968.

set up to deal with cases of irregularities in the National Panchayat elections, praying for the invalidation of the election of their rivals.<sup>8</sup> Vijaya Prakash Thaiba and Upendra Bahadur Karki, members of the Mechi and Koshi Zonal Assemblies respectively, filed similar complaints. Khadanand Sharma, Chairman of the Mustang District Panchayat, was another person who was also reported to have filed complaints against the election of his rival, a former Assistant Minister, Narsingh Bhakta Tulachan,<sup>9</sup> of the Dhaulagiri Zonal Assembly. Perhaps equally pertinent would be the case of Tulsi Giri, a former Chairman of the Council of Ministers, when he filed a writ petition at the Supreme Court praying for the invalidation of the uncontested election of his rival, Rudra Prasad Giri, to the National Panchayat from the Dhanusha District Panchayat. He alleged that "Rudra Prasad Giri had been declared elected unopposed by the Election Officer, while his own nomination paper had been ignored".<sup>10</sup> Subsequently, many candidates contesting National Panchayat elections expressed their desire to boycott elections on grounds of these irregularities. For instance, Ratna Man Singh Maske, a candidate contesting the election to the National Panchayat from Morang district, issued a statement declaring that he had decided not to fight the election in view

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8 Gorkhapatra, 25 June 1968.

9 Ibid.

10 Ibid., 2 May 1967.

of the "irregular actions being taken in the name of election and democracy."<sup>11</sup>

However, irregularities have also been encouraged due to an increasing amount of money alleged to have been spent by candidates of vested interests during elections. Candidates have been alleged to have spent between Rs. 5,000 and Rs. 1,00,000 for National Panchayat elections. Election expense varies from one area to the other. Mostly, it has been found that elections are costlier in urban areas than in rural areas.

That apart, rival candidates or their agents have allegedly resorted to interference, coercion and physical obstruction against voters during National Panchayat elections. For example, on 25 May 1970, the Supreme Court issued an order in respect of the election from the Bagmati Zonal Assembly on a certiorari writ petition filed by Gorkh Bahadur Kathayat demanding the invalidation of the recent Kathmandu District Panchayat election on the ground that he had been prevented from participating in them.<sup>12</sup> Similar reports were published from time to time in several local newspapers. On 17 January 1971, one newspaper, commenting on a similar issue, wrote: "The manner in which elections are being held in our country these days has created apprehensions about the future of the Panchayat system itself."<sup>13</sup>

11 Samiksha (W), 12 June 1968.

12 Gorkhapatra, 26 May 1970.

13 Sama, 17 January 1971.

From the above accounts it would be clear that irregularities have been a constant feature in elections. It is not that the authorities are unconcerned about this. But how to eliminate these irregularities has been a problem which has not been tackled satisfactorily so far. The press has constantly been drawing the attention of the Government to the undesirable repercussions on the body politic in general and on the political life of the nation in particular. Thus, election irregularities have always emerged as one of the constants compounding the political problems of the country. Another facet of the irregularities, though impliedly, would be apparent in the election to National Panchayat from the graduates' constituency. To this, we shall now turn our attention.

#### Graduates' Constituency Election

It has already been mentioned as to how the electoral system for election to the National Panchayat from the graduates' constituency is entirely different from that of Zonal Assemblies and class organizations. Voters of this constituency are relatively politically conscious, because of their higher education and awareness of the need to exercise their franchise judiciously. It is only in the election from this constituency where issues are generally defined and problems affecting the nation categorized. However, neither the voters nor the candidates tended to manifest any particular interest when the election from the graduates' constituency was held for the first

time in 1963, but accordingly as the Panchayat system was implemented both the constituents and the candidates became fairly acquainted with issues and problems on the basis of past experiences or were alert to those likely to emerge in the future to affect not only the political life of the nation but their individual lives also. Consequently, unlike elections to other elective bodies, election to the National Panchayat from the graduates' constituency continued to be increasingly competitive for the contestants on the one hand and interesting to the voters on the other. If the electoral outcome has any relevancy to the democratic process of articulating or organizing public opinion, then the election from the graduates' constituency would be an illustration to prove that those who had sought for institutional reforms had the greater chances of being popularly mandated. This has been evident from the election of such reformists despite the palpable official interference contrived for their defeat. Thus, even if such interference was apparently no less than in the election from other constituencies, a large number of graduate voters remained uninfluenced while casting their vote in favour of the so-called officially favoured graduate candidates. This would be seen in the 1967 election from the graduates' constituency which was held after four years' trial of the Panchayat system. The election was scheduled for 12 May 1967. Twenty-eight candidates had filed their nomination papers for four seats in the National Panchayat. Altogether 55 booths, including eleven at the Royal Nepalese Embassies abroad, were

set up for the election. The most interesting thing observed during the election campaign was that almost all the candidates told their voters that if elected they would demand the revival of political parties.<sup>14</sup> Some of them declared that if elected, they would petition to the King for the fulfilment of their demands including release of political prisoners, removal of the provision of secrecy of the National Panchayat proceedings, broadening of the electoral base and election of the Prime Minister from among the members of the National Panchayat. Perhaps this was too much for the Government to tolerate. On 2 May, Shankar Ghirmire, Nirmal Lama and Ram Raja Prasad Singh, the three graduate candidates who were conspicuously more vocal in their demands for reforms, were arrested by the police.<sup>15</sup> Not only that, all those who were suspected by the authorities in favour of these demands were also arrested. On 13 May, Surya Prasad Upadhyaya, Home Minister in the dismissed Nepali Congress Ministry, Vishwa Bandhu Thapa, former Vice-Chairman of the Council of Ministers, and Indra Kant Mishra, editor of the daily Dainik Nepal, were arrested under the Public Security Act. Tulsi Giri, former Chairman of the Council of Ministers, was prohibited from leaving the Kathmandu Valley, while Rishikesh

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14 Dainik Nepal (Kathmandu), 30 April 1967.

15 Ibid., 3 May 1967.

Shaha, former Foreign Minister, and Tripurvar Singh, former General Secretary of the Nepali Congress, were directed to present themselves before the Special Court formed to try the cases of Shankar Ghimire and Nirmal Lama.<sup>16</sup> The detention of these political leaders reflected to an extent the Government's apprehension that any liberalization of the Panchayat system would correspondingly enhance its insecurity.

However, after three months the postponed election was scheduled to be held on 25 August. Since there was no law to prevent the three arrested candidates from contesting the election,<sup>17</sup> an ordinance was promulgated to disqualify their candidature. The remaining 25 candidates fought the election. The result was in favour of those candidates who were either politically active in the past or had shown their concern for liberalization of the Panchayat system. Those who won the election were: 1) Rishikesh Shaha, who had demanded open session of the National Panchayat, election of the Prime Minister from among the members of the National Panchayat, and broadening of the electoral base; 2) Prayag Raj Singh Suwal, formerly a worker of the Nepali Congress, who had been kept under imprisonment for about 6 years following the Royal take-over on 15 December 1960; 3) Birendra Keshari Upadhyaya, an engineer, who had been

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16 Nepal Times (Kathmandu), 14 May 1967.

17 Elections (Offences and Penalties) Ordinance of April 3, 1967; see also Nepal Gazette, 21 July 1967.

recently dismissed from civil service; and 4) Basudev Dhungana,<sup>18</sup> formerly a worker of the now-banned Communist Party.

In the 1971 election there were 22 graduate candidates in the field. There were allegations that graduate employees of the Government had been verbally directed by Secretaries of different Ministries to vote in favour of certain officially preferred candidates. Krishna Prasad Gautam, Jagdish Jha, Megh Bikram Shah and Nirmardan Basnet, all of whom had refused to support the proposal moved at the meeting of all the graduate candidates to boycott the election on the ground that Nirmal Lama, who had been arrested under the Public Security Act in 1967 on the eve of the election to the National Panchayat from the graduates' constituency, had not been allowed to file his nomination paper this time too. These four candidates, who were alleged to have been officially preferred, also refused to sign a collective manifesto issued by the so-called independent candidates demanding, inter alia, direct election to the National Panchayat from village panchayats on the basis of adult franchise, open session of the National Panchayat, and the election of the Prime Minister from among the members of the National Panchayat.<sup>19</sup>

However, despite the palpable interference by the Government in the election, all so-called Government-backed candidates

18 Gorkhapatra, 10 September 1967.

19 Navin Khabar (Kathmandu), 7 June 1971.



lost the election heavily. On the contrary, Ram Raja Prasad Singh, who had identified himself as a follower of B.P. Koirala, Prime Minister of the dismissed Nepali Congress Government, secured the highest vote among the other winning candidates - Prakash Chandra Lohani, Krishna Prasad Bhandari and Prayag Raj Singh Suwal, who had also campaigned in favour of liberalization in the Panchayat system. Although the election strategies adopted by the various candidates were not much different from those of the 1967 election, the pattern of official tactics of interfering in this election was markedly different from the previous ones. There was the allegation that the Government had also tried to influence the Chief Election Commissioner, Purna Prasad Brahman, to contrive the election outcome in favour of the officially preferred candidates; but it is claimed that he turned down the proposal in order to vindicate the Commissioner's impartiality and thought it better to resign immediately after the election results were over. His resignation, the reason of which was not disclosed publicly, was forthwith accepted by the King.

#### The Prospects of Electoral and Other Political Reforms

Ever since the National Panchayat started functioning, demands for electoral reforms have been made by its members either during the course of its proceedings, or at extra-legislative sites, or through the press. Different individuals and large sections of the press have been more vigorous

in drawing the Government's attention towards several drawbacks in the present election system. However, barring certain electoral reforms in the case of the election to the National Panchayat from class organizations, no such reforms have ever been introduced by the authorities for election to the National Panchayat from territorial constituencies from which the majority of National Panchayat members are elected. The issue whether or not election to the National Panchayat should be broad-based has become a point of controversy between reformists and status quo preservers. Of the status quo preservers, Tulsī Giri, a former Chairman of the Council of Ministers, has been the most significant for his views expressed from time to time for quite a few years. Though for a while he was on record of having expressed his dissatisfaction with certain features of the present political system, he changed his position from 1969 after he became a member of the Special Advisory Council.<sup>20</sup> From then on he has been zealously propagating his views for maintaining all the so-called fundamentals of the present political system intact. He stands for preserving the present status quo, including the small electorate as provided for election to the National Panchayat and its in-camera sitting. His another thrust of argument is that

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To advise and assist the King whenever he so required, the Council was set up by the King on 13 April 1969 with Tulsī Giri, Surya Bahadur Thapa, Kirtinidhi Bisht and Vishwa Bandhu Thapa (Samaj, 13 April 1969).

the partylessness of the political system has to be maintained at any cost, for partylessness is directly related to the King's supreme, active and absolute leadership. So, once electoral reforms are made, the National Panchayat is open to the public and the press, and the Prime Minister is elected from among the members of the National Panchayat, the whole concept of the fundamentals of the political system would collapse and with that the leadership of the King as well.

However, Shailendra Kumar Upadhyaya, while he was Home and Panchayat Minister from March 1970-71, refuted Giri's contentions and for some time until the tenure of his ministerial office, he argued in favour of broad-based election to the National Panchayat. Rishikesh Shaha, a former Foreign Minister, and Surya Bahadur Thapa, a former Prime Minister, argued in favour of the above-mentioned tripartite reforms. Besides Giri, other die-hard bigots, prominent being Vishwa Bandhu Thapa, who also happened to be the Chairman of the Central Management Committee of the Back to Village National Campaign since 1969, Kirtinidhi Bisht, Prime Minister up to July 1973, and Rajeshwar Devkota, Chairman of the National Panchayat, followed Giri's line closely to be status quo preservers. However, the main debate on the question of political reforms took place between Giri and Upadhyaya, to which we shall now come.

On 25 May 1970, Giri, while addressing a conference of panchayats and class organizations of the Janakpur zone held at

Janakpur, disagreed with the view that the election system should be broadened. While maintaining that the present election system reflected the partyless character of the Panchayat system, he contended that if the election system were broadened, the fundamental basis of the present political system would collapse.<sup>21</sup> He further argued that in case a system of direct elections on the basis of adult franchise was introduced, the condition of the partylessness would be "pitiable". He also wondered if there was any relationship between partylessness and a fully broad-based election system. He renewed his emphasis saying that the election system was entirely conceived in terms of the partyless character of the political system and the broadening of the election was entirely up to the King who was the propounder of the Panchayat system.<sup>22</sup>

Similarly, on 4 June 1970, addressing a seminar organized by the Panchayat Study Forum in Kathmandu on "King Mahendra and the Partyless Panchayat Democracy", Giri declared that the King's leadership and the present base of the election system constituted the foundation of the partyless character of the system. He said:

The scope of the election system is an integral aspect of the structure of the Panchayat system. In case it is broadened, elements who have infiltrated into

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21 Gorkhapatra, 27 May 1970.

22 Matribhumi Weekly (Kathmandu), 25 June 1970.

the Panchayat system in disguise will be able to operate openly. This will prove fatal to the interests of the partyless system. In this country, the leadership of the King is unchallenged. His Majesty's active and direct leadership has an unbreakable link with the partylessness of the system. 23

However, the views of Upadhyaya, Home and Panchayat Minister, were based on entirely different premises. In an article published in several newspapers in reply to the article written by Giri earlier, Upadhyaya maintained that:

It would be better to admit that the Panchayat system is democratic and is based on the public opinion, instead of creating confusion about it by putting forward misleading arguments and describing it as a blend of both the communist and the parliamentary systems or a system which is equidistant from both. Public opinion does not mean the claim of a great thinker, but the opinion reflected by the organs formed under the Constitution. 24

He further claimed that opinion in favour of broad-basing the election system had been expressed at different levels of panchayats. He wrote:

Any system in any society is an outcome of the conditions prevalent in it at any particular time. It will be incorrect to say that circumstances do not change with changes in the society and the march of the time. 25

He also remind<sup>ed</sup>/as to how during the past 10 years the scope

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23 Gorkhapatra, 5 June 1970.

24 Nepal Times, 5 June 1970.

25 Ibid.

of the election system had been changed in the case of village and town panchayats from show of hands to secret ballot. Giving the example of class organizations, he added that previously the representatives from these organizations to the National Panchayat were elected by about 150 voters whereas now about 300 voters participated in elections. Speaking on the last day of the above-mentioned seminar organized by the Panchayat Study Forum, Upadhyaya declared that "change is a basic law of nature," and "if any person would not understand it will be left behind by the course of history." He refused to believe that the Panchayat system was neither "neutral" nor "the mixture of communism and the parliamentary system." While admitting that the form and structure of Panchayat democracy differed from those of other democratic systems, he maintained that "it had emerged because the people desired a system suited to their soil", and that democracy flourished only where there was full freedom for the individual to maintain his self-respect and develop his genius. At the same time, he warned those "who considered themselves senior in the system and think that nobody should enter into it." Later, he argued that "in case we attempt to choose persons who should be allowed to enter into the Panchayat system in the name of its partyless character, then why should not it be called 'a one party system'?"<sup>26</sup> Obviously warning the status quo preservers of the repercussions of their intransigence,

he said:

The history of the world shows what are the consequences of narrowness. Nobody can say in what form the Panchayat system will finally develop. We should have the faith that our sons too and not we alone will live under the Panchayat system. 27

Finally, he criticized those who maintained that the scope of the election system should not be broadened so as to safeguard the partyless character of the Panchayat system. His view was:

The people must be free to elect the representatives of their choice. In case persons occupying positions of authority or His Majesty's Government tell the people to vote for any particular candidate, there would be no difference between the party system and a partylessness. The situation will be even worse in the sense that good persons would be unable to be elected. In case there is such interference, we shall have political parties without flags and manifestos. 28

The stand taken by Vishwa Bandhu Thapa on the finality of the political system was entirely different from his previous stand when he was out of power. It was only a few years ago that he had publicly demanded the revival of political parties,<sup>29</sup> but after his political refitment in April 1969 he

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27 Ibid.

28 Ibid.

29 On 18 February 1966, Vishwa Bandhu Thapa, while addressing a function organized by the Political Science Department of Tribhuvan University at Kathmandu on the occasion of National Democracy Day, maintained that "an atmosphere of terror and panic prevailed in the country

started justifying the partylessness of the present political system. On 8 June 1970, in an article published in the official daily Gorkhapatra, he even criticized the demand made by some individuals regarding the broadening of the existing election system. He alleged that the demand for universal adult franchise was the attempt for the revival of political parties. He was of the opinion that what Nepal needed was partylessness and supreme leadership of only one individual, the King. He wrote:

The institution of the Crown is accepted by all and therefore its capacity to provide leadership is beyond dispute. The appointment of a Prime Minister or of any other person to preside over the meetings of the Council of Ministers does not indicate any change in the political character of the Panchayat system. Since there do not exist opposition groups within panchayats and since there can be no representation of any particular ideas under the Panchayat system, no one but His Majesty can become the leader of entire Panchayat members. A Prime Minister, even though he is a representative of the people, does not represent any idea under the Panchayat system and hence cannot assume the position of a leader. 30

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and people were afraid to talk freely." While advocating in favour of the restoration of political parties, he said, "because in their absence people have no medium to express their views, revival of political parties is indispensable." Among other demands made by him on that occasion, one of them was that of a clear distinction between the role of the Crown and that of the people.

For a detail see, Janmabhumi (Kathmandu), 20 February 1966.



Like Giri, he also justified the closed proceedings of the National Panchayat which, in his view, was not a debating forum like a Parliament. All members of the National Panchayat, including Ministers, were equal. However, in what he said the main thrust of his arguments was to support Giri. Among those who appeared as reformists, the first was Rishikesh Shaha, who was a colleague of Giri in the Council of Ministers until September 1963, and was associated with the present political arrangements even upto July 6, 1964. But he started advocating reforms in the political system soon after he was out of office.

However, because of his quick shifts in loyalties in the past, he failed to arouse public opinion to exert influence on the Government. Such was also the case with Surya Bahadur Thapa, a former Prime Minister and one of the stalwarts of the Panchayat system. So, when he pointed out the handicaps of the existing election system and suggested to the Government in May 1972 to take steps towards the introduction of the tripartite reforms as demanded by others before, so that Panchayat system became more democratic and the National Panchayat as a truly popularly elected representative body,<sup>31</sup> he was publicly held suspect. From May to August of the same year, Thapa was most active in opposition front. He was put in prison in in August for this.

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31 Himali Bela (Kathmandu), 13 May 1972.

Even now voices for political reforms, broad-basing of the present election system being one of the major ones, do not seem to have any chance of being heeded to by the higher-ranking authorities. It may be mentioned that the tripartite demands of reforms so continually raised by different individuals do not involve any constitutional amendment and so a formal announcement by the Government would be sufficient for their fulfilment. Yet, this has not happened thus far.

To what extent the demand for any reform is permitted under the currently operating system would be known from what King Birendra himself pointed out while speaking at a civic reception held at Pokhara on 28 October 1972. He declared that "the economic development cannot proceed smoothly while politicising balks it. This is where we have to remain vigilant and foil unitedly the efforts of those who are against the system and against progress."<sup>32</sup> In such a situation it is hard to say how demands of political reforms are likely to be fulfilled. This would be further clear from the futility of Surya Bahadur Thapa's hunger strike observed in February 1973 to press the Government to concede his five-point reforms mentioned in a letter to the Prime Minister of the day, Bisht. Although the reforms demanded made by Surya Bahadur Thapa were not anti-system, he was forced to break his fast on its twenty-first day

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32 King Birendra, Proclamations, Speeches and Messages, vol. I (January 1973), HMG/Nepal, p. 27.

when he realized that there was no chance of their fulfilment in the face of the Government's indifference to them.

However, there are instances when persons demanding political reforms have been ignored by the authorities. More intriguing was Shailendra Kumar Upadhyaya's views expressed by him while he was Home and Panchayat Minister. It was to be wondered if Upadhyaya, a person in such<sup>a</sup> responsible position, could get away with it. It appeared that either he really wanted to mobilize public opinion in favour of such reforms, or to detect such persons who were in favour of such reforms so that they could be handled by the authorities as the opponents of the present political system. However, as a reformist, Upadhyaya did not cut much ice, thereby showing how he lacked mass following. His silence on the question of electoral reforms after he was out of power would be instructive.

Now the question that arises is who will put pressure on the Government to bring reforms in the currently operating political system. So far as the question of the opening of the National Panchayat to the press and the public is concerned, it does not seem how the Government is likely to take steps in that direction in absence of an opposition lobby. It is believed that often opposition or groupism has emerged in the National Panchayat on certain issues, but that has so far been ineffective. If eyed with distaste by the authorities, even group activities, though not in opposition to the political

system, are likely to be branded as party-oriented activities and hence punishable under existing laws. In such conditions even broad-basing of the election to the National Panchayat has no meaning unless its session is opened to the public and the press. Thus, the prospect of political reforms does not seem to be in sight. It may be mentioned that even King Mahendra had declared that the present system was flexible enough to incorporate reforms in tune with the times. His son and successor, King Birendra, has also been emphasizing the possibility of timely reforms in the system from the very beginning of his ascension. Speaking on the occasion of the National Democracy Day on 19 February 1972, he asserted:

That the Panchayat system of democracy, being consonant with the popular will and having its roots deeply embedded in the Nepalese social milieu is not only dynamic but also capable of evolutionary growth and development. We are confident that the system will respond to changing times through suitable improvements. 33

In conclusion the question is: Who will decide the timing of the reforms: whether the King on his own discretion, or public opinion that has so persistently been made in their favour, or the individuals who have been imprisoned and persecuted for demanding these reforms? These are the questions that have been raised more and more in Nepal, with no definite answer as yet. On the other hand, these demands have been so

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33 King Birendra, n. 32, p. 6.

pressing that the Government is also finding it more and more difficult to justify its intransigence. The view of status quo preservers that the tripartite reforms which have agitated the public and the press would amount as a threat to the system is baffling to reformists. Therefore, the prospects of reforms remain vague.

While developing their thesis on the objective of legislative bodies, legislative output, legislator's role and the inter-relation between the legislature and public opinion, Wahlke and Eulau point out that the central objective of legislative bodies everywhere has been and continues to be the making of laws. They maintain that "paradoxically, the increasing representational character of popular assemblies has tended to make legislative behaviour less relevant to legislative output." So, according to them, to expect that legislation is the only objective of legislatures is to be far from what happens in reality, in the sense that "once the technical development of society reaches a scale then the formation of public policy tends to be either a function of the executive, with its corps of expert civil servants, or policy suggestions come from well-informed interest groups outside the government apparatus." Under these conditions, it has been further pointed out, a legislator's role will be less with the facts relevant to law-making than with the climate of opinion as it relates to the decisions confronting him. Wahlke and Eulau also stress that, as representative institutions, legislatures are more sensitive barometers of public moods and feelings than either administrative or judicial institutions. So, they conclude by remarking although the legislature may be an instrument of social change, or an instrument of social obstruction, these are in fact very much related to the structural inputs of a polity which mould

the legislative behaviour of a legislator.<sup>1</sup>

The performance and the role of the Nepalese National Panchayat in Nepal's contemporary political and social life may be viewed in terms of what Wahlke and Eulau have said. It functions like any legislature in a liberal democracy so far as law-making is concerned. However, its legislative behaviour falls under the same category of Parliament in "tutelary democracy"<sup>2</sup> as classified by Shils. The functioning of the National Panchayat can be broadly understood if we may analyze the role of the King, the executive, the Chairman and its members.

#### THE ROLE OF THE KING

Under the framework of the Panchayat system, the National Panchayat does not occupy a pre-eminent position like a sovereign parliament in a liberal democracy. The Nepalese political system has provided all sorts of concentration of political authority in the hands of the executive dominated by all-pervasive supremacy of the King. The King functions as the supreme legislator. As the head of State he addresses the sessions of the National Panchayat and prorogues it, and being the head of the executive, he formulates and initiates public policies. He appoints and dismisses ministers like a traditional monarch. The ministers are individually and collectively responsible to

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1 See John C. Wahlke and Heinz Eulau, eds., Legislative Behaviour: A Reader in Theory and Research (Illinois, 1959), p. 5.

2 See Edward Shils, Political Development in the New States (Paris, 1968), p. 60.

him and hold their office at his pleasure. They are appointed to implement the programmes and policies given by him. It is generally felt that unlike the British Cabinet the Nepalese Council of Ministers is a body devoid of real power and in practice meant to carry out policies and programmes as desired by the King. A former Prime Minister, Kirtinidhi Bisht, is on record to have stated in the most unambiguous terms the position of the Council of Ministers and of himself vis-a-vis the King.

We do not regard the Prime Minister's speech as a statement of the policies of His Majesty's Government. Policies in respect to every problem have been and will be formulated by His Majesty. The function of the Council of Ministers is only to implement these policies honestly and efficiently. 3

As a legislative body the National Panchayat can discuss any matter other than the conduct of the King, the Queen, and the Crown Prince, as well as the measures taken by judges in the exercise of their responsibilities. A bill passed by the National Panchayat becomes law only after it receives royal assent; but money bills and bills pertaining to the army, civil list of the royal family, imposition or collection of or increment in taxation, appropriation or expenditure of any amount or increment in the amount sought to be appropriated or expended out of the Consolidated Fund or any other Government fund, and bills made for the purpose of public good mentioned in Article



17 of the Constitution, require the prior approval of the King for their introduction and such sanction is only obtained through the concerned Cabinet Minister or a Minister of State or an Assistant Minister. Except these bills, any member of the National Panchayat can introduce a bill in the House.<sup>4</sup> Furthermore, a bill passed by the National Panchayat and presented to the King for his assent should be given assent by him within one month of the presentation of the bill. But, if the King desires, he can withhold his assent with amendments in consultation with the Raj Sabha (the Council of State) and return the bill to the National Panchayat with a message, whereupon the National Panchayat is required to submit its recommendations to the King as soon as possible. It depends upon the King whether to accept or reject such recommendations, and decide whether to give or to withhold his assent to the bill in the form in which it was presented to him, or send it back to the National Panchayat with amendments even if the bill was passed by a two-thirds majority of the House.<sup>5</sup> Not only that, during the period when the National Panchayat is in recess the King can, at any time, promulgate an ordinance if he thinks that such an ordinance is required by the circumstances. In doing so, it is within his discretion to consult the Raj Sabha. Such ordinance has the force of law and if not withdrawn it has to be laid

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4 Article 55 (a)(b).

5 Article 56 (1)(2)(3).

before the National Panchayat within seven days of the commencement of its session. Such an ordinance would ipso facto cease to have effect after forty-five days of the sitting of the National Panchayat.<sup>6</sup>

Although, there are some similarities between the 1959 Constitution and the 1962 Constitution insofar as basic law-making procedures are concerned, there are, however, striking differences between them in regard to approach and attitude towards legislation. As a matter of fact, if royal assent to bills passed by the Parliament were taken for granted under the 1959 Constitution, a more active role is visualized for the King in the legislative process under the new Constitution. The King has the real and executive discretion which, even in the last resort, cannot be challenged or over-ruled by the National Panchayat. He may require it to submit its opinion before the passage of any bill being currently considered by the legislature. The King may consider such opinion and after that give assent to the bill either in the form in which it was presented to the National Panchayat or altered as desired by him. Besides, it is important to note here that the law-making procedures defined in the present Constitution may create a constitutional crisis if the King rejected a bill passed by the House, and a majority of its members became adamant on its passage as originally presented for royal assent. However, no such crisis has

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6 Article 57 (1)(2).

ever occurred and it would seem that a happy convention has been set up under which a bill passed by the legislature would automatically receive royal assent. But the question that still remains unanswered is of whether the past experience in this respect would enable the National Panchayat to be determined not to abide by the royal desire. Thus, in such a situation a struggle between the King and the legislature may not be entirely ruled out.

#### The Role of the Chairman

Like the Speaker of a Parliament of any democratic country the Chairman of the National Panchayat is its ceremonial head. Within the walls of the National Panchayat his authority is supreme. Though his powers and duties have been laid down in the rules and, to some extent, in the Constitution, the rules he has to administer are of elastic character and in some matters he has to exercise his discretion. However, as in the case of his counterpart elsewhere, the Chairman is expected to be the symbol of impartiality and wield his authority with the cold neutrality of a judge. This obligation of impartiality is obviously implied in the constitutional provision which entitles the Chairman to vote only in the case of equality of votes.<sup>7</sup> Not only that, the Chairman, while taking oath of office, makes a solemn affirmation to carry out his responsibilities and duties "without any fear, favour or partiality and

<sup>7</sup> Article 46.

with loyalty and upright discretion." <sup>8</sup> In a party system the Speaker's impartiality within the House is further secured by the fact that he remains above all party or political considerations, and resigns from the party to which he belongs in order to vindicate his conduct. But since under the Panchayat system no political or group activities are permitted, the question of non-partisanship, at least in theory, does not arise at all. In practice, it may be mentioned, the case is different. It is generally believed that the Chairman has been disabled to keep himself away from political manoeuvres or pressures of the executive. Hence, if the reports published in the domestic press are true, it would appear that there are several cases in which the Chairman has been hand in glove with the executive. Perhaps such a conduct, which is contrary to democratic practices, has to do with his election.

It has already been mentioned in the second chapter as to how the Chairman is elected. He is appointed by the King on the recommendation of the National Panchayat. The Acting Chairman of the National Panchayat, with the consent of the candidate, forwards his name to the King with names of five proposers and five seconders from among its members. In the case of more than one candidate, election is held by secret ballot. However, rival candidates have often allegedly appeared as Government-

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<sup>8</sup> See Rules and Procedures of Rashtriya Panchayat, 2019 (1963), p. 97 (Rashtriya Panchayat Secretariat, Kathmandu)

preferred and independent ones. Generally, the candidate supposedly preferred by the Government has won the election. So, the questions are: 1) Has the Chairman of the National Panchayat been able to maintain impartiality befitting his position? 2) Whether or not he has encouraged groupism which in itself is out of accord with the Panchayat system?

The question of groupism during the election to chairmanship of the National Panchayat may be viewed in terms of the 1971 and 1972 election results. In the 1971 election, which was held in the last week of June, Rajeshwar Devkota defeated his rival Nripa Bahadur Swarnr by a narrow margin of 11 votes. He secured 53 votes, while Nripa Bahadur Swarnr polled 42. Besides the alleged official pressure brought to bear on voters for the intended electoral outcome, there were speculations from different quarters that had there not been 20 vacant seats in the National Panchayat, Rajeshwar Devkota might have been defeated.<sup>9</sup> In the election held in June 1972, there were two candidates, Nagendra Prasad Rijal and Mrs Kamal Rana, in the field. Nagendra Prasad Rijal, who was alleged to be a Government-preferred candidate, was declared elected by a mere margin of 6 votes. He secured 60 votes against 54 polled in favour of Mrs Rana.<sup>10</sup> In this connection, one of the local newspapers reported that "official influence and resources had

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9 Nirmal Weekly (Kathmandu), 2 July 1971.

10 Gorkhapatra (Kathmandu), 21 June 1972.

been mobilized and pressure was exerted on the royal nominees to cast their votes in favour of Rijal".<sup>11</sup>

In democracy it is essential for the chairman of a legislative body to be impartial for the simple reason that since he is the final authority to run the House properly, he is expected to be above political activities and not subjected to any sort of official or governmental pressure. But, in Nepal, some of his reported actions suggest that the Chairman of the National Panchayat has often been found either partisan or subject to the Government's pressure. For instance, in March 1965, Rajeshwar Devkota, the then Chairman of the National Panchayat, was also elected to the chairmanship of the Central Committee of the Nepal Peasants' Organization. His activity was criticized from different sections of the press.<sup>12</sup> However, after a great deal of political controversies, Devkota resigned from the chairmanship of the Central Committee of the Nepal Peasants' Organization on 25 March 1965.<sup>13</sup> Again, in June 1971, the Chairman of the National Panchayat, who also happened to be the same Devkota, was alleged to have been subject to the pressure of the Government in refusing to administer oath to Ram Raja Prasad Singh as an elected member of the National Panchayat

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11 Nawin Khabar (Kathmandu), 21 June 1972.

12 Swatantra Samachar, 5 April 1965; see also Samai (Kathmandu), 6 April 1965.

13 Gorkhapatra, 26 March 1965.

from the graduates' constituency. Later, Devkota had to administer oath to Singh under the King's directive. It is indeed intriguing that despite this gross kind of abuse of his powers, Devkota continued to be in his office. Another instance of the partiality shown by the Chairman of the National Panchayat would be in the case of Nagendra Prasad Rijal who, on 25 June 1972, ruled out the proposal of secret voting on the issue of a censure motion to be moved against the incumbent Prime Minister, Kirtinidhi Bisht. Hence it would seem that the Chairman of the National Panchayat is not bound by the democratic convention to be neutral in political disputes. Such a feature has considerably inhibited democratic tradition from developing in the country.

#### The Role of the Executive

Unlike in a parliamentary system, the executive branch of government in Nepal is not basically responsible to the National Panchayat. The Council of Ministers headed by the Prime Minister is designed only to assist and advise the King in discharging his executive functions.<sup>14</sup> The hold of the National Panchayat over the Council of Ministers is therefore dubious in many respects. No doubt ministers are appointed by the King from among the members of the National Panchayat; but since the King is empowered to nominate any person to be the member of the

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14 Article 25 (1), The Constitution of Nepal, Ministry of Law and Justice, HMG, 1968.

National Panchayat, he can, in effect, have his own way in the appointment of a minister. Further, the ministers are neither individually nor collectively responsible to the National Panchayat.<sup>15</sup> However, there is a provision that the National Panchayat at its own initiative can deny its support to any minister or ministers, as the case may be, by a two-thirds majority of its present and voting members. However, the minister to whom support is denied is not obliged to resign under the Constitution unless this denial is approved of by the King. The King on his own part can remove any minister irrespective of the extent of support the latter enjoys or lacks in the National Panchayat.<sup>16</sup> Consequently, such provisions have made the executive unaccountable to the National Panchayat. This is a feature which is in sharp contrast to what obtains in a democratic system where executive actions are subject to the scrutiny by the legislature. That is why the legislature in a democratic system can influence the conduct of the whole executive machinery. The tools available to the legislature to exercise such influence are its right to sanction the administrative expenditure to be incurred in the implementation of public policies and to ratify international treaties and agreements entered into by the executive on behalf of the State. For all this, the legislature is considered to be a vital branch of government,

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15 Article 26 (1)(2)(3)(4).

16 Ibid.



more vital than it is generally realized. In a parliamentary system, it may be re-emphasized, the executive derives its sanction from the legislature. The function of the executive is to execute the laws enacted by the legislature. The true guardian of democracy is a public-spirited legislature and not a power-conscious executive. To play its part, the legislature has to be a watch-dog of the executive, not its lap-dog, interested in the loaves and fishes of office.

However, it cannot be denied that the foremost objective of a legislative body in a democracy is to communicate the concern of its members to the people as a whole the state of affairs currently obtaining in the country. In Nepal, too, there are provisions under which members of the National Panchayat can freely discuss or deliberate on any matter relating to the internal or external situation confronting the country. But there is no provision under which a member found making false statement knowingly or unknowingly on the floor of the House can be tried for a breach of privilege or contempt of the National Panchayat. Whereas in democratic countries, such as England, this sort of behaviour is a breach of privilege or contempt of the House,<sup>17</sup> in Nepal nothing happens to a minister

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17 In the British House of Commons, when it was found out that John Profumo, the Secretary of State for War, had deliberately made an untrue statement in the House, he was adjudged guilty of a grave contempt of the House and a motion was adopted regarding the censure of the House.

even if he makes false statements, knowingly or unknowingly, on the floor of the House. For instance, when asked by a member of the National Panchayat to explain about the Torch Procession organized in connection with India's claim over the Susta area, a small land near the Indo-Nepal border in the Western Terai, on 10 March 1969, Prime Minister of the day, Kirtinidhi Bisht denied that any such procession had been organized or that it had gone round the town and held a public meeting.

<sup>18</sup> However, what the Prime Minister had said was wrong, because on 8 March 1969, more than 2,000 persons had organized a procession in Patan refuting India's claim over the Susta area and demanding the abrogation of the existing "unequal" trade agreement between India and Nepal.

At times it has also been seen that ministers have not thought it necessary to take the supreme legislative body into confidence even on crucial matters affecting the nation. As for example, Prime Minister Kirtinidhi Bisht, in an exclusive interview with a special correspondent of the Rising Nepal on 25 June 1969, asked the Government of India to withdraw the Indian Military Liaison Group stationed in Nepal as well as the Indian personnel stationed at checkpoints in Nepal adjoining Tibetan boundary. It was indeed unfortunate that the Prime Minister had not made his statement in the National Panchayat even when it was in session and it was not surprising if

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18 Gorkhapatra, 11 March 1969.

Rishikesh Shaha, presently a member of the National Panchayat, charged that the Prime Minister had insulted the National Panchayat by issuing a press statement at a time when it was in session.

The next instance would be the statement made by Foreign Minister Gehendra Bahadur Rajbhandari on 16 August 1970 in reply to some members of the National Panchayat who had asked him to clarify the Government's position regarding the issuance of travel documents to B.P. Koirala, a former Prime Minister of Nepal, by the External Affairs Ministry of the Government of India to visit Europe on health grounds. The documents had been issued to Koirala when his application for a passport had been turned down by the Crown Prince of Nepal. In his reply to the National Panchayat, Rajbhandari denied that Koirala had ever requested the Government of Nepal for a passport. He further mentioned that no information had been given that Koirala could not be cured in India. The Government would have definitely given the matter necessary consideration if such an information had been given.<sup>19</sup> It so happened that Koirala had applied to King Mahendra for a passport when no action had been taken by the Foreign Affairs Ministry on the application for the same submitted long before. Thereupon Koirala had requested the King to direct the appropriate department to issue a passport on the ground of his deteriorating health. The King was then

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19 Gorkhapatra, 17 August 1970.

ill and Koirala's application was forwarded to Crown Prince Birendra who was acting as the Chairman of the Royal Council because of his father's illness. The Crown Prince refused a passport to Koirala. The correspondence between the Royal Palace and Koirala was published in a local fortnightly newspaper, whereupon it was known that Koirala had at first applied to the Ministry of Foreign Affairs and then requested the Crown Prince to expedite the matter when no action was taken by the Ministry. <sup>20</sup> So it seemed that Rajbhandari, though Foreign as well as Palace Affairs Minister, did not know about the correspondence between Koirala and the Crown Prince until its publication. Thus Rajbhandari failed to supply correct information required by the House, for what he had said about Koirala was entirely wrong. But the National Panchayat was not competent enough to exercise its power to a person found guilty of contempt of the House. So Rajbhandari continued to be in his office despite all this.

#### The Role of National Panchayat Members

How National Panchayat members behave and adopt their role in the legislative proceedings is difficult to be ascertained. From the officially published reports of the proceedings, it would appear that members generally behave as yes-men of the executive. Nevertheless, it has often been found that some have been critical of official programmes and policies and

demanded certain reforms in the present system. For instance, on 8 March 1968, three elected members, Rishikesh Shaha, Ratna Prasad Kharel and Birendra Keshari Upadhyaya, speaking at a public meeting held at Kathmandu for the first time after royal coup in 1960, demanded liberalization of the Panchayat system. Shaha declared that democracy could not be successful in an atmosphere of fear and suspicion. He maintained that unless the existing scheme of elections, particularly the elections of the National Panchayat from Zonal Assemblies, was broadened, only those who had money could come out victorious. He also held the administration responsible for rendering class organizations and panchayats inactive because of its excessive control. <sup>21</sup> Kharel demanded the abolition of the provision relating to the secrecy of the National Panchayat proceedings on the ground that such secrecy had prevented the people from knowing precisely the activities of their representatives. The three speakers also denounced the Government's recent action of devaluing Nepalese currency and increasing land taxes with-<sup>22</sup> out the approval of the National Panchayat. After a few months, again a group of eleven National Panchayat members, each known for his affiliation with a political party or ideology in the past, united for the first time to work as a lobby in the National Panchayat so that they could put pressure on the

21 Nepal Bhasha Patrika (Kathmandu), 12 March 1968.

22 Samaj, 10 March 1968.

Government for reforms in the system but with much little success.  
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Next time, in 1969, there was a larger group of 64 members who petitioned to the King accusing the incumbent Government of its inefficiency and misrule. The petition failed to get the desired response from the King. It was alleged that far from acknowledging the petition, the Secretary of the Royal Palace Secretariat wrote a letter to the Chairman of the National Panchayat requiring him to read out the letter in the House in which petitioners were described as those who could not get their self-interests fulfilled.

From rumours current in Kathmandu, members of the National Panchayat may have at times acted as a group to voice their dissent on a particular issue. But such group activities have not sustained as the dissidents have hardly come out in the open to criticize the Government. Moreover, persons said to have been associated with such a group have dissociated themselves from it soon after its formation, for some obvious personal considerations and opportunism. This strengthens our impression of a virtually non-existent pressure group within the National Panchayat. The latest case in point would be the role of K.I. Singh, a former Prime Minister, who from March to August 1972, was known to be associated with a vocal group of oppositionists in the National Panchayat, including their leader,

Surya Bahadur Thapa. After the arrest of Thapa in August, K.I. Singh continued to be in the group but only for a short while. As it was characteristic of him, he changed his posture after some time.

It may not be out of place to say a few words about the role of the King's nominees in the National Panchayat, whose basic purpose, it is said, is to assure representation of the experts and top intelligentsia, who may not be prepared to face election.<sup>24</sup> But since there is no fixed criteria in the Constitution in regard to their nomination, it depends upon the King to nominate whom he likes. However, it is alleged that the nomination provision has served the interest of the authorities rather than its purpose, for it has often happened that often a member defeated in the election has been nominated by the King. Vedanand Jha, Tulsi Giri and Gehendra Bahadur Rajbhandari, to name the few, have been the notables among royal nominees. While it would be hard to question the discretion of the King about nominating such persons, what seems intriguing is that persons disowned by the electorate have been found patronized by him.

#### Privileges of the Members

The privileges and immunities of National Panchayat members, as provided in the Constitution, are most democratic. But

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24 U.N. Sinha, Panchayat Democracy of Nepal: In Theory and Practice (Ministry of Information, HMG/Nepal, 1972), p. 46.

these are in theory at best. In practice, there are several instances when the privileges and immunities of a legislator have been undermined by official actions, thereby showing how they are contingent on the mercy of the executive. A case in point would be the arrest of Rishikesh Shaha while the National Panchayat was in session. He was arrested on 10 July 1969 under the Public Security Act. Several members of the National Panchayat and a few former political leaders protested against the official action of violating parliamentary immunities constitutionally granted to a National Panchayat member. Some members of the National Panchayat also said in the House that Shaha's arrest was illegal, for he had not committed any crime. They demanded that charges against Shaha should be established for his punishment either by the National Panchayat, or by the judiciary, as the case may be, in accordance with the provision that the National Panchayat was the sole authority to punish its member if he was involved in breach of privilege, but if accused of a crime, the judiciary was the authority to try and punish him. Although, Shaha was released later, his arrest on no specific charge was proof of the erosion of democratic values in the country.

In a democratic country too a member of a legislature is not immune from preventive detention. But if he were detained merely because he was a political opponent of the party in power, the court would order his release, and if his detention were valid, the court would ensure his right to correspond



with the legislature and make representation to its Chairman who alone can take action against him. Thus Shaha's detention would prove that the privileges and immunities constitutionally provided to the National Panchayat and its members are just like ornaments. Not surprisingly, the administration has on occasions shown disrespect to the National Panchayat as is also evident in the case of Ram Raja Prasad Singh, Jaya Prakash and Angdandi Lama who were beaten by the police in the House. It is alleged that the administration branch even did not deem it necessary to seek permission of the Chairman of the National Panchayat while sending the police inside its premises, nor did the Chairman protest against the entry of the police inside the House when it was in session. This shows that the privileges of the members of the National Panchayat are not well protected. It is true that the powers, privileges and immunities of the House and its members shall only be valid if they do not conflict with the Constitution. It is also true that defiance of the rules of procedures of the legislature is a breach of privilege by a member who is as such punishable by the Chairman by admonition, reprimand, suspension or expulsion from the House as stipulated. But what happens is otherwise.

However, what has happened in Nepal indicates that the National Panchayat lacks certain vital functions. To make it more functional-oriented and responsible to the people, it requires some basic criteria which its members also severely lack. This would suggest that the legislative decisions are

neither governed by public opinion nor are they related to the political infra-structure which has been designed, in theory at least, for shaping and organizing public opinion and for guiding the conduct of National Panchayat members. Corollarily, it may be said that in Nepal, the structural arrangements in the polity have been made in such a way that there is the least possibility of pressure to be brought to bear by public opinion on the decision-making process. This would be seen from the futility of the demands of certain reforms made by different members of the National Panchayat since its inception. The main reason behind such futility is that members of the National Panchayat lack the political power which in a democracy a legislator acquires from his constituency. Whatever political base he is supposed to have mainly depends on simply two persons of his constituency, i.e. district panchayat. It is these persons who have to propose and second his candidature while filing his nomination papers for standing to the National Panchayat election from his Zonal Assembly. He does not have to bother other members of the remaining district panchayats for his support if he manages to influence 8 out of 11 members of his own district panchayat in order to come out victorious in the election.

Another disheartening feature would be the dysfunctionality of the class organizations to the social sectors for which they have been specifically set up. How far they have been successful to articulate specific interests of their classes

and achieve the cherished goal of the system to be fully democratic is a point subject to a discussion at length, which is not our present purpose. Yet it would be important to note that these organizations, which touch the every section of the society, have just 15-member representation in the National Panchayat and secondly, it is alleged that their activities are controlled by the Government. However, since the National Panchayat members have no accountability to their constituents, what role they adopt in the House has nothing to do with their individual popularity. As opposition lobbyists, members could have functioned in a better way; but the present system has not provided for opposition in the National Panchayat. As a result, the role of various groups in the formulation of public policies in the legislature is difficult to be ascertained. It is as such no wonder if it has generally been found that the legislator's demands, whether inside or outside the House, have no popular mandate and his voice does not carry weight because he has no political base in the body politic. That is why the National Panchayat can neither become responsible nor responsive to the people. As a result, it is neither a recommendatory nor a mandatory body. It is something in between. Since it lacks the representative character in the real sense of the term, it has failed to contribute to the growth of leadership in the country. The way it has been functioning makes it subservient to the bureaucracy. On this ground it can be said

that it approaches to a model in which the bureaucracy, rather than the people's representatives, has an upper hand in controlling it.

## CONCLUSION

From the brief account of the National Panchayat, it would be clear as to how it suffers from several limitations. It does not fulfil all the criteria for which an open and truly representative legislative assembly is commonly known. Elected as they are purely on individual merits, its members have by and large shown a lack of commitment to their electorate. This has, as such, reduced the National Panchayat to a debating club at best.

Secondly, the significance of voting is also considerably undermined as the voters do not have any real choice of alternative policies and the persons from whom they have to choose as their leaders are of a ridiculously small minority. The irregularities rampant in the election, the groupism based on personalism and patronage, the use of money, interference by local authorities, and the role of socially influentials still feudalistic in attitude and character are some of the features which have been determining the electoral outcome. Besides, the closed sessions of the National Panchayat have deprived its members of the sense of accountability to their electorate. In such a situation the National Panchayat has not been in a position to contribute to the growth of leadership in the country, a fact which is further strengthened by the electoral outcome in which very few sitting members are elected for their next consecutive term. Besides, from the pattern of its functioning the National Panchayat has been

like an advisory body at best, with no check on the executive and no real power for its members to educate the public about the political and other issues affecting the nation.

The National Panchayat is no doubt a legislative institution enjoying several features of a parliament in any liberal democracy, but its members do not seem to have any bargaining powers with the executive which, as a matter of fact, has been dominating the legislature.

Notwithstanding all this, it is possible that once the National Panchayat proceedings are open to the public and the press, its members would be more responsible to the people and develop their political base among them and command their confidence. Until such a situation is created the paucity of leadership is bound to continue and the nature of political participation in the present political system is likely to be affected further.

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