

Chapter 2

Abolition of Monarchy

The Nepali Congress is the first political party to initiate a political slogan by honoring the monarchy as the symbol of national unity and the formation of a responsible government with the consent of the king. The system of monarchy as the symbol of national unity and the king as a constitutional monarch was devised with a deep political wisdom, especially bearing in mind the important role of the monarchy in the political transition of Nepal. However, at the same time, the king should also acknowledge and play an important role to institutionalize democratic processes. The king should not misunderstand the transitional political situation by acting irresponsibly to accumulate personal power being directed by a wrong process. King may succumb to whopping and sundry temptations. In no conditions, the king should be tempted to a wrong path. Any wrong act of the king, not only threatens the life of democracy, but it might also be the reason for the crisis of the monarchy itself. [My translation]

– Bishweshwar Prasad Koirala¹

2.1 Background

The abolition of the institution of monarchy on May 28, 2008, marks a turning point in the political and constitutional history of Nepal. This saga of constitutional development exemplifies the systemic conflict between people's aspirations for democracy and kings' ambitions for unlimited power. With the abolition of the monarchy, the process of making a new constitution for the Republic of Nepal had started under the auspices of the Constituent Assembly of Nepal.

This chapter primarily examines the reasons or causes behind the abolition of the monarchy in Nepal. It analyzes three main reasons for the abolition of the monarchy. First, it argues that frequent slights and attacks to constitutionalism by the Nepalese kings had brought the institution of monarchy to its end. Second, it analyzes the indirect but crucial role of India. Third, it explains how the 10-year-long Maoist

¹See Giri, Pradeed (Ed.) (2009). *Political Documents of Mr. Bishweshwar Prasad Koirala*. Kathmandu: Student Book Store, p. 53.

insurgency and the second people's movement (*Jana Andolan II*) culminated as a final blow to the monarchy. Furthermore, this chapter also analyzes why the peace and constitution-making process has yet to take concrete shape or make significant progress, despite the abolition of the monarchy. Finally, it concludes by recapitulating the main arguments.

For Plato, philosopher kings were the best kind of rulers.² His idea of monarchy was based on the assumptions that a monarchy could be the best institution to promote free will, the rule of law, and the institutionalization of democracy on a nonpartisan basis. Time and again, history has refuted these Platonic assumptions. Monarchies have often caused their own demise by assaulting the sovereign power of the people, ignoring democracy as a way of life, and disrespecting constitutionalism. The Nepalese case of conflict between the king and the people broadly reflects a similar pattern of a clash between the aspirations of democracy and greed for unlimited power at its core. Thomas Hobbes,³ who justified monarchy as the best possible form of governance, also warned that a monarchy could turn into tyranny. Throughout its history, Nepal has seen tyranny unbridled and people fallen victim to the caprices of the kings. Therefore, the Nepalese people solemnly decided to abolish the source of their oppression, the monarchy.⁴

²See Plato (2008). *The Republic Book VII*. (trans: Jowett, B.). Kindle Edition. The passage of the dialogue reads, "Well, I said, and you would agree (would you not?) that what has been said about the State and the government is not a mere dream, and although difficult not impossible, but only possible in the way which has been supposed; that is to say, when the true philosopher kings are born in a State, one or more of them, despising the honors of this present world which they deem mean and worthless, esteeming above all things right and the honor that springs from right, and regarding justice as the greatest and most necessary of all things, whose ministers they are, and whose principles will be exalted by them when they set in order their own city?."

³See Hobbes, Thomas (2009). *Leviathan*. Kindle Edition. In Hobbes words, "There be other names of Government, in the Histories, and books of Policy; as Tyranny, and Oligarchy: But they are not the names of other Forms of Government, but of the same Forms disliked. For they that are discontented under Monarchy, call it Tyranny; and they that are displeased with Aristocracy, called it Oligarchy: so also, they which find themselves grieved under a Democracy, call it Anarchy, (which signifies want of Government;) and yet I think no man believes, that want of Government, is any new kind of Government: nor by the same reason ought they to believe, that the Government is of one kind, when they like it, and another, when they dislike it, or are oppressed by the Governors."

⁴The first meeting of the newly elected 601 members body called the Constituent Assembly of Nepal on May 28, 2008, with 560 votes in favor and 4 votes in opposition, 37 not present, declared Nepal a Republic. Article 159.3 of the Interim Constitution of Nepal, 2007, had authorized the first meeting of the Constituent Assembly to make a decision on the fate of the king. Article 159.3 reads, "Notwithstanding anything contained elsewhere in this Constitution, the simple majority in the first meeting of the Constituent Assembly shall take a decision about whether or not to give continuation to the monarchy." *The Kathmandu Post*, one of the leading newspapers in Kathmandu, wrote, "We take joy and pleasure in congratulating all the citizens of Nepal. Turning Nepal into a republic is the biggest achievement of the people in the history of this country. Formally, from May 28, 2008 onward, we Nepalese are no longer subjects of the Shah Dynasty that fooled the innocent people for over 240 years, pretending that the king was a reincarnation of Lord Bishnu." For details, see also Dhakal, Amit (2008, May 29). The End of History: The Rise and Fall of the Shah Dynasty. *The Kathmandu Post*. <http://www.ekantipur.com/the-kathmandu-post/2008/05/29/top-story/the-end-of-history--rise-and-fall-of-the-shah-dynasty/148458.html>. Accessed July 12, 2012.

The constitutional development of Nepal has been shaped by five separate conflicts. First is the conflict between the state of Gorkha and other states (principalities), which ended with the integration and foundation of modern Nepal. Second is the conflict between the Shah Dynasty (a dynasty of kings) and the Rana Dynasty (a dynasty of prime ministers), which ended with the downfall of the Rana Dynasty. Third is the conflict between the king and the people, which resulted in the dissolution of the institution of monarchy on May 28, 2008. Fourth is the conflict between the Maoist and democratic political parties⁵—or, as it can be seen, between the ideologies of communism and democracy, which has drawn the country into a new socio-political landscape.

Ideally, this conflict of ideology is expected to conclude with the formulation of a new democratic constitution that will assimilate the Maoists into a democratic framework. Practically, democratization of the Maoists can only succeed when the Maoists give up the communist ideology, allowing them to be virtually assimilated into the democratic mainstream or the systemic interest module.⁶ However, there are serious hurdles down the road, especially because of a weak commitment of the Maoists to democracy and their excessive obsession with manipulating democracy as a platform for amassing power and money and creating public frustration to democracy so that the strategy of insurgency could be accomplished. Besides the ideological conflict, Maoists have also regrettably planted a conflict rooted in ethnicity-based politics. More specifically, the post-2006 political era of Nepal has faced a conflict of ethnic identity—the fifth and possibly most serious conflict. This conflict (ethnic conflict) may perhaps pose even bigger challenges than previous conflicts to Nepalese society, if not addressed with deeper wisdom than ever before. The issue of ethnic federalism is explored further in Chap. 4 of this book.

2.2 The First Conflict: Conflict Between Gorkha and Other Principalities

Since the beginning of the process of the unification of Nepal led by King Prithvi Narayan Shah,⁷ Nepal has experienced domestic as well as regional political tensions. As a landlocked country situated between the two giants of Asia, with

⁵The conflict between the Maoist and the democratic political parties presents a unique set of recipes for analysis. Maoists are organized political groups guided by the idea of communism being influenced by the ideas of Mao. There are also other communist parties in Nepal such as the Communist Party of Nepal, United Marxist-Leninists (CPN-UML). However, CPN-UML has expressed its commitment to democracy and is generally considered as one of the democratic political parties in Nepal along with the Nepali Congress.

⁶The “system interest module” is discussed under Chap. 1, Sect. 1.5.3 of this book.

⁷Prithvi Narayan Shah (1723–1775) was the King of Gorkha before he unified Nepal. Upon unification, he established the Shah Dynasty. Since then his descendants ruled Nepal as the Kings of Nepal. Gorkha was one of the small principalities among many in the pre-unified Nepal. Prithvi Narayan Shah’s 4-year journey of unification became substantial when he conquered Kathmandu,

China to the north and India to the east, west, and south, Nepal's aspirations for democracy, peace, and development are significantly connected to its neighbors. In terms of land size, Nepal is almost 22 times smaller than India and 65 times smaller than China. Despite its size, Nepal has managed to survive its own political turmoil as well as that overflowing from the boundaries of its much larger neighbors, but at the cost of tyranny, misrule, and faltered development. The median age of 27 million Nepalese is 19, a relatively young population that is rapidly providing a growing number of talented educated people, in a country with extensive biodiversity and rich topography and immense potential for hydropower and which acts as a trade and business bridge between China and India, and shows the promising future of Nepal. Despite all these potential promising future, the politics of conflict threaten to negatively influence Nepal's opportunities.

The first conflict transpired between Gorkha and other principalities from 1743 to 1775, culminating in the unification of modern Nepal. This unification consolidated Nepal's military strength and brought diverse cultures and ethnic groups together into a single state.⁸ Unification was occurring not only in Nepal but also across the globe. The period between 1500 and 1900 saw the rise of the centralized nation-state in many countries around the world. For example, Hideyoshi Toyotomi unified Japan in 1590.⁹ Italy and Germany were unified as centralized nation-states after the Crimean War of 1854–1856. Many centrally unified nation-states emerged, not only in France but also in Europe, after the French Revolution of 1789–1799.¹⁰ Before unification, all of these countries were divided into small principalities or nations, which shared inefficiency in terms of production, commerce, trade, security, and political undertaking.

Since the unification in 1769, Prithvi Narayan Shah's descendants ruled Nepal as kings until the Constituent Assembly of Nepal formally abolished the monarchy on May 28, 2008. With this unified strength, Nepal successfully defended her independence and sovereignty through a number of wars with China and British-ruled India. While having many negative consequences, those wars helped to build a sense of national pride, fraternity, and harmony by facilitating the peaceful coexistence of the diverse cultural and ethnic groups in Nepal. Additionally, during its 240-year regime, the Shah Dynasty used all available means to sustain this sense of harmony. However, the measures introduced by the Shah were built on domination and a hierarchical structure and thus were inherently fragile. The harmony maintained by the Shah Dynasty was not built on freedom, respect, and a rights-based approach

Patan, and Bhadgaon in 1769 and consolidated them to found the modern state of Nepal. He also established Kathmandu as the capital of Nepal. For detailed information about Prithvi Narayan Shah, see *Encyclopedia Britannica*, <http://www.britannica.com/EBchecked/topic/477264/Prithvi-Narayan-Shah>. Accessed July 12, 2012.

⁸Currently, there are 129 ethnic groups in Nepal.

⁹See generally Sansom, George (1963). *A History of Japan 1334–1615*. Charles E. Tuttle Company.

¹⁰See generally Smith, A. G. R. (1984). *The Emergence of a Nation State*. Longman Green and Co.

and, consequently, could erupt at any time into vicious conflict. Recently, it erupted into such a conflict. As a response to the potential ethnic conflict, the major political parties agreed to transform the unitary form of the Nepalese state into a federal structure; however, they failed to write a new constitution. Consequently, on May 27, 2012, the Constituent Assembly (CA) was dissolved, without accomplishing its tasks. The controversy on the modality of federalism—ethnic federalism, nonethnic federalism, and mixed federalism—seems more impassioned and ideological than driven by the factual appositeness of the country.

2.3 The Second Conflict: Conflict Between the Shah and Rana Dynasties

One of the army commanders, Junga Bahadur Rana, who killed many supporters of the king and usurped the state power and prerogatives exercised by the Shah Kings in 1846,¹¹ became prime minister and chief of the army not by a legitimate process but by his might and conspiracy. Junga Bahadur made the position of prime minister a post to be inherited by his family members and successors alone. From that point on, the Ranas¹² ruled Nepal, placing the kings as titular head of the Kingdom, until 1950. Junga Bahadur was an extremely charismatic and powerful person. Once, he exiled the king and queen to Banaras, India. He also charged King Rajendra of treason and kept him under house arrest, declaring Surendra, a son of King Rajendra, the king instead. In the history of Nepal, Junga Bahadur is considered the most powerful prime minister ever. The rise of Junga Bahadur deepened the conflict between the kings and Ranas, which was settled only after 104 years of despotic rule by the Ranas, ending after the revolution in 1951.¹³ The political culture of “might”

¹¹Both local and foreign writers have written a number of books about Junga Bahadur Rana, his charisma, and his political life. Among the interesting ones portraying his life are the following: Purushittama, C. S. R. (2002). *Junga Bahadur Rana: The Story of his Rise and Glory*. India: Pilgrims Publishing; Rana, Pudma Jung B. (1980). *Life of Jung Bahadur*. Kathmandu: Ratna Pustak Bhandar; Rana (1909). *Life of Maharaja Junga Bahadur*. University of Michigan Library.

¹²“Rana” is a title used by the descendants of Junga Bahadur Kunwar (Rana) as family name. Junga Bahadur was a military commander, who with the army’s support became the prime minister of Nepal. He established the dynastic premiership in Nepal. During the Rana Prime Ministerial dynasty, only the descendants of Junga Bahadur could ascend to the “Throne of Prime Minister”. The prime minister as the executive head held the most powerful position in the country with all state powers. During the Rana regime, there existed two dynasties and thrones in Nepal: the Shah Dynasty and the Rana Dynasty. The “Throne of King” used to be acceded to by Shahs and the “Throne of Prime Minister” used to be acceded to by the descendants of Junga Bahadur Ranas.

¹³See Bhandari (2005). Future of the Constitution and Democracy in Nepal. In Surendra Bhandari & Budhi Karki (Ed.), *Future of the Nepalese Constitution*. Kathmandu: Law Associates Nepal. The Nepali Congress had launched a revolution against the Rana regime from September 25, 1950. King Tribhuvan had taken refuge in the Embassy of India, in Kathmandu on November 6, 1950, and left for Delhi on November 7, 1950. On November 7, 1950 the Rana regime enthroned the

infused since the rise of Junga Bahadur has time and again jeopardized the needed legitimacy and democratic process even under the democratic era of Nepal.

Two important political developments occurred during the 1950s, both at the regional and domestic levels causing the end of Rana regime. First, the liberation movement in India inspired educated Nepalese youth to organize a political movement and fight for the cause of democracy in Nepal. Thus, the first political party of Nepal was formed in Dehradun, India, in 1927, called the *Prachanda Gorkha*.¹⁴ Inspired by Mahatma Gandhi's Charka movement, Tulsi Mehar, a social reformer, launched the Charkha (spinning wheel) movement in Kathmandu Valley in 1930 aiming to create employment, educate people, and develop labor skills in the populace, using local raw materials to produce cotton clothes at home. The Rana Prime Minister Bhim Shumsher arrested and imprisoned Tulsi Mehar on the charge of treason. In 1935, under the leadership of Tanka Prasad Acharya, another political party named *Nepal Praja Parishad* was established for the avowed purpose of democracy.¹⁵ Also supported by King Tribhuvan, the party inspired popular activism in Kathmandu in 1940. The Ranas arrested some of the leaders of the protest movement and sentenced four of them to death. Ranas also charged King Tribhuvan for supporting the movement against the Ranas. The Ranas found the king guilty, but they could not dethrone him because of imminent political risks.¹⁶

grandson of King Tribhuvan, the infant prince Gyanendra and declared forfeiture of the throne of King Tribhuvan. India declined to recognize the new King. The Indian Prime Minister Pandit Nehru said, "We cannot recognize a three-year-old boy as the King. We cannot therefore watch developments in Nepal as silent spectators. It is desirable that there should be a democratic government." In the meantime the Indian government and the Rana regime started to negotiate a solution. Finally, the Rana Prime Minister Mohan Shumsher accepted India's proposal, known as the "Delhi Proposal," and agreed for democratic reform in the country, including reinstatement of Tribhuvan as the king of the Kingdom and the formation of a new constitution through a constituent assembly. The Nepali Congress, King Tribhuvan, and Rana entered into a tripartite agreement, i.e., the "Delhi Agreement," and King Tribhuvan returned to the country on February 15, 1951, making a proclamation for a new constitution in the country on February 18, 1951. See Chaturvedi, S. K. (1992). *Nepal Internal Politics and Its Constitutions*. New Delhi: Inter-India Publications, pp. 48–64. See also K. C., Kaisher Bahadur (1976). *Nepal After the Revolution of 1950*. India: Sharada Prakashan Griha.

¹⁴Chandra Singh, one of the exiled and disgruntled Ranas living in India, established Prachanda Gorkha. However, the Ranas used all means to betray and destroy the Prachanda Gorkha. Finally in 1931, the Ranas arrested the leading figures of the Prachanda Gorkha, such as Umesh Bikram Shah, Maina Bahadur, Khadga Man Singh, Captain Khanda Man Singh Basnet, and Ranga Nath. They were sentenced to life imprisonment for treason.

¹⁵See Levi, Werner (1952). Government and Politics in Nepal. *Far Eastern Survey*. 21, 185–191, p. 186. Levi mentions that King Tribhuvan supported the party. The party started a popular movement in September 1940, which inevitably brought it publicity and therein laid the cause of its destruction too. During 1942–1943, four of its members were executed.

¹⁶*Id.*, p. 186. Levi claims that the King was popular among the people and was also a formal head of the army and that the Ranas were unsure about the loyalty of the army if they deposed the King.

Against this background, two major political parties of Nepal were established in India: on April 10, 1950, the Nepali Congress (NC) in Calcutta, India,¹⁷ and on April 29, 1949, the Communist Party of Nepal (CPN) in Calcutta, India.¹⁸

Second, after World War II, India's liberation from British colonial rule conveyed a number of messages to the Nepalese people. One, with the end of British rule in India, the Ranas had lost their moral political support. Two, India's transformation from a colony to a democracy inspired the democratic aspirations of the Nepalese people by offering a home for the establishment of Nepalese political parties and supporting their cause for democracy outside the reach of the Nepalese government. Three, India's concern about the possible Chinese influence over Nepal inspired allies in Nepal who could join with India in order to protect India's political security interests. Since the Ranas were close to the British colonial rulers, democratic India relied more on the monarchy and democratic forces in Nepal.¹⁹ These influencing factors from India contributed immensely to the shaping of the political landscape in Nepal.

¹⁷See generally Gautam, Rajesh (2005). *Nepali Congress*. New Delhi: Adorid Publications; Adhikari, Y. P (2001). *The Nepali Congress: Idealism to Realism*. Kathmandu: IRS (1991). *Nepali Congress and Struggle for Democracy*. Kathmandu: Institute of Regional Studies; Upreti, B. C. (1993). *The Nepali Congress*. New Delhi: Nirala Publications; Parmanand (1982). *The Nepali Congress Since its Inception*. India: B. R. Pub. Corp. The Nepali Congress was created following the merger between the Nepali National Congress and the Nepali Democratic Congress. B. P. Koirala had established the Nepali National Congress in Calcutta, India, on January 25, 1946. When he was arrested in Biratnagar during the *satyagraha* movement in January 1947, Professor Dilli Raman Regmi was made the acting president of the Nepali National Congress. When B. P. was released from prison 6 months later, Professor Regmi refused to hand back his office. B. P. established another Nepali National Congress in 1947. He was again arrested. Following this, members of the party met in Calcutta, India, in March 1949 and elected Matrika Prasad Koirala as president of the Nepali National Congress. Meanwhile, Mahendra Vikram Shah, a relative of King Tribhuvan, had founded a party called the Nepali Democratic Congress in 1948. Finally, the Nepali National Congress of B. P. and the Nepali Democratic Congress of Shah merged on April 10, 1950, forming the Nepali Congress.

¹⁸On April 29, 1949, the Communist Party of Nepal was established in Calcutta, India. Its original objectives were to end the autocratic Rana regime, feudalism, and imperialism. Though the Communist Party of Nepal was established in India, it was suspicious of the Indian policy regarding Nepal and wanted the Nepali Congress to declare clearly that it would not serve the interests of the Indian government before joining the 1951 revolution. It adopted a policy for a Republican Nepal in 1957, ratified by its second party congress held in Kathmandu in 1957.

¹⁹See Levi, *supra* note, pp. 185–191. Levi observes that the Indian government had never hidden its sympathy for the democratic cause in Nepal. It had often expressed its view that peace and order in that country, vital to India's security, could be safeguarded only if the Ranas would relax their autocratic rule and introduce badly needed reforms to satisfy the people. The Indian government's attitude could be called neutral and diplomatically correct. However, the treatment the king had received and the statements made by various government officials indicated very clearly that the Indian government's sympathies were with the Nepali Congress. The position of unofficial Indian groups and many newspapers was even more unequivocal.

With these developments of fostering the establishment of democracy, the Nepali Congress launched a movement against the Ranas supported by the Communist Party and the king.²⁰ The Nepali Congress announced that the fight was for the establishment of “full democracy” in Nepal coupled with political and economic justice, constitutional monarchy, land reform, and land distribution. It also favored a policy of close friendship with India.²¹ This movement, known as the People’s Revolution of 1951, conclusively ended the autocratic rule of the Rana Dynasty.

In December 1950,²² India procured an agreement between the Nepali Congress, the king, and the Ranas. The Ranas accepted the Indian proposal on January 8, 1951, followed by a cease-fire order by the Nepali Congress on January 16, 1951.²³ King Tribhuvan arrived in Kathmandu from Delhi on February 15, 1951, and made a proclamation on February 18, 1951, with a commitment that “the people be ruled by a democratic constitution framed by a constituent assembly elected by the people.” This was supposed to mark the end of an autocratic era and the beginning of a democratic era in the political and constitutional history of Nepal. However, despite the fall of the Ranas, the dream had yet to come true. The 1950s revolution emancipated the kings from the control and domination of the Ranas. In turn, the remnants of the Shah Dynasty prolonged its survival for another six decades until the monarchy was abolished on May 28, 2008. The political changes of 1950 and 1951 ended the conflict between the Shah and Rana dynasties in favor of the Shah Dynasty, but the kings did not keep their promises, which eventually ushered in a profound conflict between the king and the people.

2.4 The Third Conflict: The King Versus the People

On March 30, 1951, following the 1950 revolution, King Tribhuvan promulgated an Interim Constitution of the Kingdom of Nepal²⁴ on the advice of the Council of Ministers. The Interim Constitution came into force on April 11, 1951.²⁵ It was

²⁰Nepali Congress held an important meeting in Bairgania, India, on September 26–27, 1950. It authorized its president, M. P. Koirala, to carry out necessary activities to expedite the last struggle for freedom, kidnap the King, and bring him to India for his safety.

²¹See Levi, *supra* note, pp. 185–191.

²²*Id.*

²³K. I. Sing did not obey the cease-fire, but instead considered the compromise a betrayal. He continued fighting with the help of Raksha Dal and volunteer troops he had organized against the Ranas. He was arrested and imprisoned on a charge of *dacoity* by the end of February 1951.

²⁴See The Interim Government of Nepal Act, (1951). The Preamble states, “Whereas, it is necessary till such time, as the Constitution is not framed and promulgated, the administration of the country should function according to a Constitution and certain rules and principles. Now, therefore, His Majesty, the King of Nepal, on the advice of the Council of Ministers, is accordingly pleased to ordain and promulgate the following Act.”

²⁵Art. 1 (2) of the Interim Government of Nepal Act, 1951 provides, “It shall come into force from Chaitra 29, 2007 (April 11, 1951).”

meant to be a constitution for an interim period until a republican constitution,²⁶ to be prepared by a Constituent Assembly, could come into force.²⁷ With these developments, the Ranas' dictatorship was theoretically ended but practically remained in power; Rana Prime Minister Mohan Shumsher was leading the government that had been formed on March 30, 1951.²⁸

The 1950 revolution was the starting point for the institutionalization of democracy in the country despite serious challenges ahead. First, the foremost challenge was that the Ranas were still in power and dominating the political landscape of Nepal. Removing them from power was not an easy task, but it was the only way to end their political domination. Second, for the first time in a century, the king had an opportunity to enjoy state power and authority, resulting in his mounting ambitions, seeking to wield even more power. Since the Royal Nepal Army was loyal to the king, at any time the monarch could step in and assume absolute power posing a serious threat to the democratic aspirations of the people. Third, for centuries the country had been socially, politically, and financially exploited by its rulers and desperately needed socioeconomic transformation along with political change. To accomplish these tasks meant overcoming serious challenges down the road, made even more difficult due to fragile institutions on the one hand and inexperienced political leaders on the other hand.

In general, political parties and their activities were quite new for the Nepalese people, and leaders had never gained any experience organizing political parties and so lacked the skill to bring about the desired change. Fourth, amidst these challenges, the Nepali Congress had the great responsibility of institutionalizing democracy while it was itself mired in internal conflict over party leadership and additionally facing the noncooperation of almost three-dozen political parties,²⁹ including the Communist Party of Nepal. The road ahead was thus risky and dangerous.

²⁶See King Tribhuvan's address to the nation on February 18, 1951, 3 days after his return from India. He declared, "... the government of our people be carried on henceforth according to a republican constitution prepared by a constituent assembly elected on the basis of direct universal suffrage," cited in Singh, Top Bahadur (1985). *Constitution of Nepal and Constitutional Law*. Kathmandu: Law Book Publication Committee, p. 660; see also, Regmi, Mukunda (2004). *Constitutional Development: Constitution of the Kingdom of Nepal 1990*. Kathmandu: Mrs. Sitadevi Regmi, p. 74.

²⁷The concept of a Constituent Assembly was first introduced by Rana Prime Minister, Pudma Shumsher, following consultation with his brothers and senior members of the Rana ruling family in February 1947. He had proposed a body consisting of 12 elected members and 12 nominated members to initiate constitutional change or reform in the country. See Pande, Sardar Bhim Bahadur (1982). *The Then Nepal*. Kathmandu: rep. 1982. Referred in Regmi, Mukunda, *supra* note, pp. 4–5.

²⁸The Council of Ministers was appointed by the King and had to remain in office during the king's pleasure and be responsible to the king. The prime minister was required to inform the king of all the decisions of the cabinet.

²⁹See Levi, Werner (1954). Political Rivalries in Nepal, *Far Eastern Survey*. 23, 102–107, p. 103.

2.4.1 *Conflict Between the King and the People from 1951 to 1990*

The first government composed of Ranas, and the representatives of the Nepali Congress became mired in contradictory political cultures soon after its formation in March 1951. The Nepali Congress, led by B. P. Koirala, felt that the presence of the Ranas in the governance of the country was unnatural, oppressive, and irrelevant.³⁰ Conflict between these factions sharpened severely.³¹ Both asked for Delhi's help in resolving the conflict. Delhi sympathized with both factions, and the parties returned to Nepal in the spirit of cooperation.³²

However, problems quickly unfolded that could not be worked out. The congress group, led by B. P. Koirala, resigned from the government on November 11, 1951, asking the king to exercise his power to form a new government of the Nepali Congress excluding the Ranas.³³ Since the Ranas were still powerful, the king did not dare to eliminate Ranas from the government, as requested by B. P. Koirala. In the meantime, many other political parties had demanded an all-party government consisting of more than the Nepali Congress.³⁴ On different scales and amplitude, political movements were burgeoning across the country. The Rana Prime Minister Mohan Shumsher, who had refused to resign in the beginning, suddenly tendered his resignation on November 13, 1951, perhaps suspecting that the Royal Nepal Army would not support the Ranas. He may have also felt that the spreading democratic movement across the country could erupt at any time against the Ranas, compelling them to complete divesture of political power and social prestige.

With the resignation of Prime Minister Mohan Shumsher, King Tribhuvan formed a government of the Nepali Congress under the leadership of Matrika Prasad Koirala, as B. P. had expressed his willingness to focus on the party's work. It was the first civilian government in the history of Nepal. With the establishment of the civilian government, the Ranas' rule was finally ended. Nonetheless, challenges

³⁰ See Giri, Pradeep, *supra* note, p. 30.

³¹ See Levi, Werner (1953). Government and Politics in Nepal II. *Far Eastern Survey*. 22, 5–10, p. 5. Levi observes that the political life of the country proved to be even more difficult to settle. Under a peaceful surface there was much friction between the two factions of the Rana-Congress coalition government. Its cause was simple: the Ranas were reluctant to share political power, whereas the Congress wanted more. By the end of April 1951, conditions had deteriorated to the point where B. P. Koirala referred publicly to a crisis within the government.

³² *Id.*, p. 6.

³³ See Giri, Pradeep, *supra* note, p. 30.

³⁴ See Levi, *supra* note 31. Levi mentions that the main agitator was the communist-dominated United Democratic Front, composed of a number of small political groups, not all necessarily communist themselves. The Nepali Rastriya Congress, the Nepali Praja Parishad, the Akhil Nepal Rastriya Mahasabha, and the Nepali Communist Party (Stalinist) among others formed part of the United Democratic Front.

ahead were no less than before. The Nepali National Congress and the United Democratic Front had denounced the government as the new agent of capitalism and expressed their reluctance in supporting the government.

The popular rebel leader, K. I. Singh, was released from prison, demanded an all-party government, and also announced that he would lead an insurrection against the government at anytime in the event of the government not meeting the demands. Against this background, the king declared a state of emergency.³⁵ B. P. Koirala and Matrika Prasad Koirala also became entrapped in a grapple for power, eventually forcing Matrika to resign on August 10, 1952. The rivalry between B. P. Koirala and Matrika Prasad Koirala provoked the King to form an Advisory Board³⁶ instead of a government. Additionally, the King started ruling the country through his own executive power and in doing so overstepped the newly agreed modality of constitutional monarchy. Against this backdrop of severe political rivalries among the political parties, the King gradually was able to accumulate political strength.

Since the Constituent Assembly promised by the king was to be formalized by 1952,³⁷ but was never established, the Interim Constitution governed the country for 8 years. B. P. Koirala and his party, the Nepali Congress, had a clear vision of what the constitution and democratic polity should entail. Let me quote it at length what B. P. has written on the making of the constitution as follows:

The third question is about the purpose of an election. Is it only for a regular parliament or for a constituent assembly too? In other words, should the elected representatives be enshrined with the authority to choose and decide the form of a political system? Should they exercise a regular administrative work alone or also retain the authority of making a constitution? This concern poses a fundamental question to us. We have a firm conviction and decision that people should have the choice to decide a political system, which they like to adopt. Any rules and constitutions imposed by the King to the people cannot be contemplated as the democratic ones. A democratic constitution is that, which is prepared only by the elected representatives of the people. It is starkly a double standard to talk about democracy on the one hand and on the other hand deny the constitution making authority of the elected representative of the people.... Currently, we are facing an unsettled issue about who should prepare a constitution. In our opinion, the responsibility of profoundly significant task like constitution making should be retained only by the elected representatives of the people.... If the representatives of the people keenly wish not to give any space to the monarchy, it would be not only undemocratic but also a political absurdity to try to make a space for the monarchy in the constitution.³⁸ [My translation]

³⁵*Id.*, p. 8.

³⁶The Advisory Board was composed of General Keshar Shumsher Rana, General Mahabir Shumsher Rana, Lieutenant General Surendra Bahadur Basnet, Mr. Khadga Man Singh, and Mr. K. Massik Lal. The king had announced that the Advisory Board would last until an effective and representative Council of Ministers could be set up. The task of the Advisory Board members was to help the King hold early elections for the constituent assembly, establish an independent judiciary, and assure fundamental rights to the citizens. Their immediate function would be to root out corruption and nepotism from government, promote the people's welfare, and maintain law and order.

³⁷See Levi, *supra* note 31, p. 5.

³⁸See Giri, Pradeep, *supra* note, p. 62.

Despite the clear political vision of B. P. Koirala, political events including the rise of K. I. Sing as prime minister, the deep political ambitions of King Mahendra, and the continuously growing political rivalry between political parties should have been enough to compel B. P. Koirala to compromise with the king. In the words of B. P. Koirala, making a constitution by the Constituent Assembly was thus “highly unnecessary.”³⁹ Since King Mahendra was not sure about the role of monarchy in a constitution made by a Constituent Assembly, by opposing the idea of promulgating a constitution by an elected Constituent Assembly, B. P. Koirala’s ideas served to further aggravate the mutual distrust and contentions between the Nepali Congress and Communist Parties.

This political polarization pushed B. P. Koirala to ally himself further with the king. The king and B. P. Koirala agreed to draft a constitution by a committee of experts. Thus, instead of declaring elections for a Constituent Assembly, the king announced a Constitution Drafting Commission.⁴⁰ The king promulgated the constitution on February 12, 1959. For the first time in the history of Nepal, political parties were constitutionally recognized, and the parliament was composed of elected representatives of the people. However, it must be noted that the constitution had provisions⁴¹ by which the king could sidestep the constitution by exercising prerogatives and state power accorded to him.

Prior to the promulgation of the 1959 Constitution, on November 9, 1958, King Mahendra had announced elections for the parliament. The elections took place in February 1959, within a week from the date of the promulgation of the 1959 Constitution. The Nepali Congress won the majority of seats in the parliament. The communists were in the minority. The Nepali Congress formed the government under the leadership of B. P. Koirala. Immediately, the culture of political noncooperation sharpened between the Communist Parties and the Nepali Congress.

³⁹See Prasai, Dirgha Raj (2012). The Nepalese Political Scenario 1950–2011. http://www.international.to/index.php?option=com_content&view=article&id=1079&catid=54:dirgha-raj-prasai&Itemid=84. Accessed August 10, 2013.

⁴⁰See GoN (March 24, 1959). *Nepal Gazette*. 7(49). The Committee was composed of Mr. Bhagwati Prasad Singh (chair), Ramraj Pant, Surya Prasad Upadhyaya, Randhir Subba, and Hora P. Joshi.

⁴¹See Art. 55 of the Constitution of the Kingdom of Nepal 1959. Art. 55 (1) provides, “If His Majesty in His discretion is satisfied that a grave emergency exists whereby the security or economic life of Nepal, or any part thereof, is threatened by war or external aggression, or by internal disturbance, He may by Proclamation in His discretion:

- (a) declare that His functions shall to such extent as may be specified in the Proclamation, be exercised by Him in His discretion; and
- (b) assume to Himself all or any of the powers vested in or exercisable by Parliament or any other governmental body or authority; and any such Proclamation may contain such incidental and consequential provisions as may appear to Him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provision of this Constitution.”

Consequently, the lack of cooperation weakened the government, and it failed to deliver what people were expecting from it. At the societal level, people started fighting against each other in the name of their allegiance to political parties, which sharply divided communities and families into intolerable warring groups. A divided political culture became widespread. In a short period of governance, the political parties left a pervasively undesirable image of political rivalry only for the sake of power, which people did not admire. Certainly, it was a golden time for the power-hungry king to assume state power. Eventually, on January 6, 1960, the king, with the support of Royal Nepal Army, dismissed the elected government, dissolved the parliament, took over state power, and marshaled a new dictatorship over the country. This coup hatched by the king against the elected government marked the end of the 1959 Constitution and slayed the democratic aspirations of the Nepalese people with a callous ruthlessness.

On May 8, 1962, the king composed a six-member Constitution Drafting Commission.⁴² In a period of less than one and a half months, the commission drafted the constitution and submitted it to the king on June 14, 1962.⁴³ The king promulgated the new constitution on December 16, 1962, known as the *Panchayati* Constitution, which posited all prerogatives in the hands of the king and placed the king above the constitution. As a result, it propelled the struggle between the king and the people—represented by their political parties—to a new height. The conflict continued for about 50 years until 2008. During this period, the Shah Kings ignored their promises to the people, undermined the democratic aspirations the people, banned political parties, violated human rights, oppressed civilians, amassed wealth by abusing public resources, and ruled the country as dictators above the constitution. What is more, the kings incessantly distributed their images to the people as a living god, deserving unrequited worship and admiration without rebuke.

2.4.2 Conflict from 1990 to 2008

It took almost 30 years to restrain the absolute monarchy relished delightedly by the Shah Dynasty. The first people's movement launched in 1989 by political parties (the Nepali Congress and different communist factions) against the backdrop of

⁴²The commission was composed of Rishikesh Shah (chair), Shambhu P. Gyanwali, Prakash B. Khatri, Angur Baba Joshi, Dambar N. Yadhav, and Kul Shekher Sharma as members.

⁴³On March 19, 1948, Sir G. A. Falconer wrote to British Foreign Secretary Sir Ernest Bevin on the 1948 Constitution that follows "... It is hardly surprising that the majority of the people have had little or no education whatever and no training to fit themselves for the responsibility of even local self-government. To introduce democracy into Nepal it is therefore necessary to begin at the bottom. To begin at the top or even halfway as the few anti-Rana agitators in India would have it will merely produce chaos and the condition of the people will be worse than before ...," cited in Shaha, Rishikesh (1990). *Modern Nepal: A Political History 1769–1955*. New Delhi: Manohar Vol II, p. 187.

the Indo-Nepal trade embargo finally ended the absolute monarchical rule along with the *panchayat* system in 1990. The ego and personality clash between King Birendra (who was killed in 2001 with his family members in a royal massacre) and the Indian prime minister, Rajiv Gandhi, ended with the unilateral imposition of a trade embargo against Nepal by India. The trade embargo lasted for 9 months until democracy was established in 1990. On April 16, 1990, King Birendra restored multiparty democracy and agreed to be a constitutional monarch. On November 9, 1990, a new constitution was promulgated that legitimized democracy and modestly brought the absolute monarchy into the limits of the constitution. The Constitutional Recommendation Commission (CRC), formed on June 1, 1990, for “the preparation of a draft constitution with a view to strengthen Constitutional Monarchy and Multiparty Democracy”⁴⁴ prepared the draft of the 1990 Constitution.

The model of the constitutional monarchy enshrined in the 1990 Constitution was earnestly defective. Consequently, transferring power from the king to the people remained an unfinished agenda. Moreover, the concept of constitutional monarchy was contested from the very beginning of the making of the 1990 Constitution. The king continually overstepped the constitution, reducing the government’s capabilities to that of a passive onlooker. On a number of occasions, the Supreme Court also justified the constitutional onslaughts of the king. Among them, two cases are noteworthy. In the case of an ambassadorial appointment, the Supreme Court justified an appointment made by the king, without any advice and recommendation of the Council of Ministers in the name of “privileged communication.”⁴⁵ Another major attack on the constitution by the king culminated in dissolving the elected government in 2002, which was challenged before the Supreme Court of Nepal. However, the Supreme Court justified King Gyanendra’s action as constitutionally valid. The Supreme Court ruled that the action could not be challenged before a court as the king had invoked his authority of “removing difficulties” under Article 127 of the 1990 Constitution.⁴⁶

The court alone was not responsible for allowing the kings going beyond the limits of the constitution. The political leaders and government officials, instead of bringing the king within the premise of the constitution, chose the path of appeasing the king. The submissive political leaders kept allowing the king to overstep the constitution. A few examples illustrate the destructive roles the political leaders

⁴⁴See GoN (May 1990). Communiqué of the Chief Secretariat of His Majesty the King. *Nepal Gazette*. 40(Supp. 11).

⁴⁵See *Radheshyam Adhikari v. HMGN*, NKP 33(12), 1992, p. 810. See also Bhandari, Surendra (1999). *Court-Constitution and Global Public Policy: A Study on Nepalese Perspective*. Kathmandu: DDL, pp. 87–97.

⁴⁶*Advocate Bharatmani Poudyal v. Rt. Hon. Prime Minister Lokendra Bahadur Chand*, decided by a Single Bench of the Supreme Court of Nepal composed of Justice Hari Prasad Sharma, Decision No. 7305 decided on May 1, 2003. Article 127 of the Constitution of the Kingdom of Nepal, 1990, provides, “If any difficulty arises in connection with the implementation of this Constitution, His Majesty may issue necessary Orders to remove such difficulty and such Orders shall be tabled before the Parliament.”

played in this travesty of the constitutional democracy. Following the first general elections for the parliament in 1991, the king nominated ten members in the Council of State (Upper House) without consultation, advice, or recommendation from the Council of Ministers. Most of the time, the king nominated politicians who otherwise had no other chances of entering the House.⁴⁷ It provoked widespread criticism against the then prime minister, Girija Prasad Koirala, for not standing firm on warranting the king the limits of Article 35 (2) of the constitution.⁴⁸ Aware of the fact that the Royal Nepal Army was loyal to the king, Prime Minister Girija Prasad Koirala found himself helpless and could not invoke the available constitutional processes to rein in the excesses of the king.

The National Assembly was a Permanent House⁴⁹; therefore, it could not be dissolved or turned into a nonfunctional body. However, the House of Representatives could be dissolved and had been dissolved three times under the 1990 Constitution.⁵⁰ Constitutionally, on the dissolution of the House of Representatives, elections had to be held within 6 months.⁵¹ The constitution had envisioned that there could be no interval of more than 6 months between two sessions of the Parliament.⁵² Constitutionally, a session of the House could not be prorogued for more than 6 months. When the House of Representatives was dissolved on May

⁴⁷See Gajraj, Daniel (June 29, 2001). National Assembly Nominations. *The Kathmandu Post*. See also *Nepali Times*. January 2001.

⁴⁸Article 35 (2) of the Constitution of the Kingdom of Nepal, 1990, provides, "Except as otherwise expressly provided as to be exercised exclusively by His Majesty or at His discretion or on the recommendation of any institution or official the powers of His Majesty under this Constitution shall be exercised upon the recommendation and advice and with the consent of the Council or Ministers. Such recommendation, advice and consent shall be submitted through the Prime Minister."

⁴⁹Art. 46 (2) of the Constitution of the Kingdom of Nepal, 1990, states, "The National Assembly shall be a permanent House. The tenure of office of one-third of its members shall expire ever two years."

⁵⁰The first time, Prime Minister Girija Prasad Koirala recommended the dissolution of the House of Representatives when his own party's parliamentarians did not cooperate in the Parliament, and the king dissolved the House. The second time, Prime Minister Manamohan Adhikari recommended the dissolution of the House of Representatives when his minority government could not obtain the confidence of the House of Representatives. The third time Prime Minister Surya Bahadur Thapa recommended the dissolution but the king did not dissolve the House (based on the opinion of the Supreme Court). To continue the emergency beyond the permission of the constitution, Prime Minister Sher Bahadur Deuba recommended the dissolution of the House of Representatives, and King Gyanendra dissolved the House on May 25, 2002, which was the third dissolution of the House in 12 years.

⁵¹*Id.*, Art. 53 (4) provides that "His Majesty may dissolve the House of Representatives on the recommendation of the Prime Minister. His Majesty shall, when so dissolving the House of Representatives, specify a date, to be within six months, for new elections to the House of Representatives."

⁵²*Id.*, Art. 53 (1) prescribes that "His Majesty shall summon a session of Parliament within one month after the elections to the House of Representatives are held. Thereafter, His Majesty shall summon other sessions from time to time in accordance with this Constitution: Provided that the interval between two consecutive sessions shall not be more than six months."

25, 2002, the National Assembly was conducting its session. The king prorogued the National Assembly as well and never summoned its session. In this way, King Gyanendra started ruling the country without a parliament. King Gyanendra obsessively tried to follow in his late father King Mahendra's footsteps.

The transgressions continued regarding many aspects of the constitution, including providing assent to Bills. Article 71 of the 1990 Constitution had prescribed the procedure for the assent of Bills passed by the Houses. No Bills could become an Act unless His Majesty would assent and fix the Royal Seal. Therefore, a Bill passed by the Houses had to be presented to His Majesty for approval.⁵³ His Majesty was required to approve the Bill tendered to him within 1 month⁵⁴ from the date presented to him, unless His Majesty believed that the Bill needed further deliberations.⁵⁵ Under Article 73⁵⁶ of the 1990 Constitution, His Majesty could send back any Bill. However, His Majesty could not send back the Finance Bill for deliberation and, therefore, was required to assent within 1 month from the date of its submission for assent.⁵⁷ Under the 1990 Constitution, almost 150 laws were enacted or amended by the Parliament. However, none of the Bills received the approval of the king within the required time frame.

The case of the Citizenship Bill presented the worst scenario. A Bill to amend the Nepal Citizenship Act of 1964 was passed by the House of Representatives on June 11, 2000, and was transmitted to the National Assembly for deliberation.⁵⁸ The National Assembly rejected the Bill, despite the fact that it was a Finance Bill.

⁵³*Id.*, Art. 71 (1) provides that "A Bill which is to be presented to His Majesty for assent pursuant to Article 69 shall be so presented by the Speaker or the Chairman of the House in which the Bill originated after it has been duly certified by him under his hand."

⁵⁴*Id.*, Art. 71 (4) prescribes that "If any Bill is sent back with a message from His Majesty, it shall be reconsidered by a joint sitting of the two Houses and if the Bill so reconsidered is again passed as it was or with amendments, and is again presented to Him, His Majesty shall give assent to that Bill within thirty days of such presentation."

⁵⁵*Id.*, Art. 71 (3) prescribes that "Except for a Finance Bill, if His Majesty is of the opinion that any Bill needs further deliberations, He may send back the Bill with His message to the House of origin of the Bill within one month from the date of presentation of the Bill to Him."

⁵⁶Articles 73 (3) and (4) of the 1990 Constitution are as follows:

- (3) Except for a Finance Bill, if His Majesty is of the opinion that any Bill needs further deliberations, he may send back the Bill with His message to the House of origin of the Bill within one month from the date of presentation of the Bill to Him.
- (4) If any Bill is sent back with a message from His Majesty, it shall be reconsidered by a joint sitting of the two Houses and if the Bill so reconsidered is again passed as it was or with amendments, and it is again presented to him, His Majesty shall give assent to that Bill within thirty days of such presentation.

⁵⁷*Id.*, Art. 71.3.

⁵⁸*Id.*, Art. 69 (2) provides, "A Finance Bill passed by the House of Representatives shall be transmitted to the National Assembly. The National Assembly shall, after deliberations on such Bill, send back the Bill to the House of Representatives within fifteen days from the date of receipt of the Bill with recommendations, if any."

The National Assembly could only make necessary recommendations on a Finance Bill, which in turn the House of Representatives could accept, if deemed appropriate.⁵⁹ The House of Representatives passed the Bill a second time after it had been rejected by the National Assembly and tendered it to His Majesty for assent on December 1, 2000.

In spite of the constitutional requirements related to the Finance Bill, His Majesty did not assent to the Bill but instead held it without action for almost 3 months. Further, on March 20, 2001, instead of assenting to the Citizenship Bill, His Majesty asked the Supreme Court of Nepal for its opinion on the compatibility of the Citizenship Bill with the constitution. This act of the king manifestly ignored Article 35(2) of the 1990 Constitution and undermined the authority of the government. Simultaneously, Article 27(3)⁶⁰ of the 1990 Constitution, which required the king to abide by, respect, and protect the constitution, was grossly violated by misusing the constitutional provision. Both King Birendra and King Gyanendra gravely abused and arbitrarily misinterpreted Article 27(3) to overstep the constitution. Outrageously, King Gyanendra attempted to justify the October 4, 2002, takeover under Article 27(3) of the constitution.

Examples and experiences from other countries practicing constitutional monarchy, especially from the United Kingdom, show that the act of the denial of assenting to Bills undermines the framework of constitutional monarchy. In the case of the United Kingdom, traditionally, the British queen was given the power of veto to deny assenting to Bills. The veto power, however, has not been used since the reign of Queen Anne. The power of veto has fallen into disuse as a consequence of ministerial responsibility. The veto could only be exercised on ministerial advice, and no governments would wish to veto Bills for which they were responsible.⁶¹

It is a fundamental principle of a constitutional monarchy that the “king can do no wrong,” and therefore, the Council of Ministers should take all responsibilities for both the constitutional and unconstitutional acts perpetrated by the kings. During the 17-year history of the 1990 Constitution, the kings undermined and violated the constitution several times. However, no governments took any responsibility for the unconstitutional acts of the kings. Rather, each government, willingly or unwillingly, became a silent spectator of these acts. Instead, one of the former ministers, Dr. Minendra Rijal, acknowledged the fact that the Deuba government had satiated all the interests of the Palace, even engaging in unconstitutional acts, with the intention of maintaining democracy.⁶² What an understanding of

⁵⁹*Id.*, Art. 69 (3) provides, “The House of Representatives shall, upon deliberations on a Bill returned within recommendations pursuant to clause (2), present it to His Majesty for assent along with such recommendations as it may deem appropriate.”

⁶⁰*Id.*, Art. 27 (3) provides, “His Majesty is to preserve and protect this Constitution by keeping in view the best interests and welfare of the people of Nepal.”

⁶¹*See* Wade, E. C. et al. (1978). *Constitutional and Administrative Law*. ELBS, 9th ed, pp. 178–179.

⁶²*See Kathmandu Post* (July 31, 2005).

democracy and its institutionalization! Rijal's statement proves that the political leaders had misinterpreted democracy as a lust for power. This power-obsessed attitude of the political leaders was undoubtedly an important reason behind the endless ambition of the king.

Many attempts were made at authoritarian reversals, even during the reign of King Birendra, but those were modest compared to the actions of King Gyanendra. As soon as Gyanendra became king on June 4, 2001, after the massacre of King Birendra and his whole family, he sped up the authoritarian reversal. He formed a Royal Commission to investigate the Royal massacre. The commission was formed under the chairmanship of then residing Chief Justice Keshav Prasad Upadhyaya and two other members, namely, the speaker of the House of Representatives, Mr. Taranath Ranabhat, and the leader of the opposition party in the House, Mr. Madhav Kumar Nepal. Mr. Nepal refused to be a member of the commission, as his party did not allow him to be a part of such a commission. The commission had to be formed under the recommendation of Article 35 (2) of the constitution, but King Gyanendra on the first day of his reign ignored Article 35 (2) and showed his desire to rule the country beyond the scope of the constitution.

The October 4, 2002, takeover by King Gyanendra in particular set in motion the process of completely dismantling the constitutionalism established by the 1990 Constitution. It moved the conflict between the king and the people into a critical stage. On October 4, 2002,⁶³ King Gyanendra dismissed the Deuba government, which constituted a suspension of fundamental rights, with the imposition of a state of emergency in the country in November 2001, and finally dismissed the House of Representatives in May 2002. The major political parties rhetorically welcomed the king's unconstitutional move. The king invited applications for the post of prime minister. Among the political leaders, Madhav Kumar Nepal of the Communist Party of Nepal petitioned the king for the position of prime minister.⁶⁴ However, the king nominated Lokendra Bahadur Chand, a royalist, for the position instead.

⁶³ See GoN (October 4, 2002). Royal Proclamation by His Majesty King Gyanendra Bir Bikram Shah Deva. *Nepal Gazette*. 52(Suppl. 49). The Proclamation states that "As it is our responsibility to preserve nationalism, national unity and sovereignty, as well as, to maintain peace and order in the country and also to ensure that the condition of the nation does not deteriorate for any reason, a situation has arisen wherein, by virtue of the Royal Prerogatives as exercised by us and in the spirit of the Constitution of the Kingdom of Nepal 1990, as well as, taking into consideration Article 27 (3) of the Constitution, Prime Minister Sher Bahadur Deuba should be relieved of his office, owing to his incompetence to conduct the general elections on the stipulated date in accordance with the Constitution, and the Council of Ministers dissolved. Similarly, the general elections dated for November 13 also needs to be postponed. We, therefore, issue the following orders in accordance with Article 127 of the Constitution of the Kingdom of Nepal 1990 . . ." [my translation].

⁶⁴ See Adhikari, Aditya (May 4, 2010). The Lure of Power. <http://www.ekantipur.com/2010/05/04/oped/the-lure-of-power/313609/>. Accessed July 1, 2012. Adhikari states that Madhav Nepal's desire for power was immense; yet that the communist leader rejected the principles and went to stand in line outside the palace, application in hand, in the company of such monarchical loyalists such as Pashupati Shamsheer Rana, Kirtinidhi Bista, and Badrinath Mandal.

Later, King Gyanendra nominated Sher Bahadur Deuba⁶⁵ as prime minister on June 2, 2004.⁶⁶ Major political parties, including the Nepali Congress, kept demanding the restoration of the House of Representatives,⁶⁷ but the CPN-UML joined the Deuba government, stating that the regression of the king was half corrected. On February 1, 2005, the king again dismissed the Deuba government and usurped state power, resumed himself as the chairperson of the Council of Ministers, and composed a government of entirely loyal royalists. A period of absolute rule thus began.

Following the November 2005 Agreement,⁶⁸ the people's movement broke out all over the country like a blazing fire. King Gyanendra kneeled down before the power of the people on April 24, 2006, announcing that the sources of state power were the people and that sovereignty inherently belongs to the people alone.⁶⁹ The king also reinstated the parliament, which had been dissolved on the recommendation of the former Prime Minister Sher Bahadur Deuba on May 22, 2002. The Maoists joined the parliament and government, and the parliament promulgated a new Interim Constitution in January 2007. The Interim Constitution provided that the fate of the monarchy would be decided by the first meeting of the Constituent Assembly. Elections were held for the Constituent Assembly. No party secured a majority, but the Maoist secured a position of the largest party in the Constituent Assembly.

Following the CA elections, the CA met for the first time on May 28, 2008. In its first meeting, the CA declared the abolition of the monarchy, and Nepal became a republic. Finally, the conflict between the king and the people concluded with

⁶⁵See International Crisis Group (June 15, 2005). *Towards A Lasting Peace in Nepal: The Constitutional Issues. Asia Report.* 99(6). The Report states, "Due to the controversial manner of their appointment, Deuba and his cabinet lacked credibility. Other political actors, including the Maoists, viewed the coalition as the King's 'puppet.' Governing under the pervasive threat of Article 127, dismissal deprived the Deuba government of freedom to make independent policy choices. All decisions had to be approved by the Palace."

⁶⁶The major political parties defined Deuba's appointment merely as the continuation of the October 4, 2002, regression in a different form, and in no way did they take it as a correction of regression. See *The Kathmandu Post*. <http://www.ekantipur.com/2004/06/03/top-story/five-party-alliance-leaders-react-differently/12538.html>. Accessed August 21, 2012.

⁶⁷See Adhikari, Aditya, *supra* note.

⁶⁸The agreement is known as the 12-Point Agreement.

⁶⁹See *The Kathmandu Post* (April 24, 2006). The king announced that "Convinced that the source of State Authority and Sovereignty of the Kingdom of Nepal is inherent in the people of Nepal and cognizant of the spirit of the ongoing people's movement as well as to resolve the on-going violent conflict and other problems facing the country according to the road map of the agitating Seven Party Alliance, we, through this Proclamation, reinstate the House of Representatives which was dissolved on 22 May 2002 on the advice of the then Prime Minister in accordance with the Constitution of the Kingdom of Nepal-1990. We call upon the Seven Party Alliance to bear the responsibility of taking the nation on the path to national unity and prosperity, while ensuring permanent peace and safeguarding multiparty democracy. We also summon the session of the reinstated House of Representatives at the Sansad Bhawan, Singha Durbar at 1 P.M. on Friday, April 28, 2006."

the abolition of the institution of monarchy. Nevertheless, the deposed king, his family members, and royalist political parties are still active and trying to restore the monarchy. For example, Kamal Thapa, Pudma Sundar Lawoti, and some other royalist politicians are continuously stressing the revival of monarchy and blaming the major political parties for failing to make a constitution, engaging in rampant corruption and exacerbating the political instability in the country.⁷⁰ Dhirga Raj Prasai writes,

The country is standing on the verge of dismemberment in the last seven years. When the relationship between the king and the people have been detached, one can easily imagine that Nepal can't remain safe and unified if monarchy is actually abolished from the country. In a country with such geographical and ethnic diversities, Nepal will fall into a severely dangerous situation because of the tug of war for power and money. This can be avoided only if there is monarchy because monarchy is always politically impartial.⁷¹

During the absolute rule of King Gyanendra, his vice-chair, Mr. Tulsi Giri provocatively observed that, "In the Nepalese context, monarchy and democracy cannot go together." During the period of absolute rule in 2005, Giri's statement was considered provocative, but today, it seems a realistic one. As B. P. Koirala reiterated with deep conviction, people unconditionally retain the authority to choose a political system they wish to adopt, and if they choose to give no space for monarchy in such a system, it would be politically absurd to seek a space for a king against the verdict of the people.

2.5 Concluding Observations

The saga of the constitutional development in Nepal is a case of systemic conflict between peoples' aspirations for democracy and kings' ambitions for unlimited power. During the 240 years of monarchic rule, the rulers suppressed free will, took away liberties, denied democracy, impeded development, fostered poverty, and sustained injustice. The abolition of the institution of monarchy on May 28, 2008, marks a turning point in the political and constitutional development of Nepal. Following the abolition of monarchy, the Nepalese people had an opportunity to engage in institutionalizing democracy, entrenching liberty and free will, building the nation on the basis of democracy, promoting development, ending poverty, and securing the rule of law and justice through writing a new constitution. These aspirations of the Nepalese people are basic, dear, and undeniable. However, the

⁷⁰See *Telegraph Nepal* (June 12, 2013). Nepal's Monarchy Revival a Must says Kamal Thapa. <http://www.telegraphnepal.com/headline/2013-06-12/nepal:-monarchy-revival-a-must-says-kamal-thapa.html>. Accessed June 25, 2013; see also *Telegraph Nepal* (June 21, 2013). Monarchy Still Relevant says Kamal Thapa. <http://www.telegraphnepal.com/headline/2013-06-21/nepal:-monarchy-still-relevant-says-kamal-thapa.html>. Accessed 25 June 2013.

⁷¹See Prasai, Dirgha Raj (April 17, 2013). Why Monarchy is Necessary for Nepal?. <https://www.facebook.com/kamalthapa.rppnepal/posts/510215632375552>. Accessed 25 April 2013.

constitution-making process advanced considerably slowly, buffeted by new issues of transforming the unitary structure of the state into a federal structure on the basis of ethnic identity, and managing ideological rivalries between the political parties finally caused the unwanted demise of the Constituent Assembly on May 27, 2012.

Traditionally, it was believed that kings had three major sources of power: the incarnation of Vishnu, political prerogatives, and the command of army.⁷² As the incarnation of the god Vishnu, the kings were above the constitution and law. Socially and culturally, they were inviolable and pious to be worshipped by the common people. Indeed, uneducated people worshipped the kings like a god. Questioning the king was considered blasphemy. The kings exercised all the prerogatives of sovereign power, including the executive, legislative, and judicial power, except during the period of Ranas rule from 1846 to 1950. The Royal Nepal Army, formerly the Gorkha Army created by Prithvi Narayan Shah, was almost always loyal to the kings. For 240 years, kings ruled Nepal, excessively manipulating all of these sources of power.

The mighty institution of monarchy finally crumbled. As discussed above, there are a number of reasons which caused its abolition. Primarily, these reasons can be recapitulated into three broad clusters. First, the kings themselves planted the seed of their own demise. Second, with a decade-long insurgency, the Royal Nepal Army had almost depleted its ammunition and resources. The supply of ammunition, constrained by India, put the Royal Nepal Army in a disadvantageous position. For a long time, India had supported the monarchy in Nepal but finally began to distance herself when the monarchy conflicted with Indian political leaders, especially with the Nehru (Gandhi) family. Third, the Maoist insurgency, especially against the backdrop of the Royal massacre of 2001, created a fertile ground for the final blow to the monarchy, culminating in the second people's movement of 2005–2006, which demonstrated the abounding power of the people, along with their democratic aspirations.

If the Ranas had not usurped power from the Shah Kings in 1846, perhaps the monarchy would have been abolished earlier. The reason is simple: the burden of blame for the misrule, despotism, nepotism, and exploitation of Nepal was solely heaped upon the Ranas instead of the kings. The monarchy had a golden opportunity in 1951, but King Tribhuvan ignored all the occasions, to the disadvantage of the monarchy. He refused to abide by constitutionalism nurtured on the ideals of democracy and constitutional monarchy. When he got a chance, he blamed the Nepali Congress, denouncing them as unable to form a government. Instead, he formed the Advisory Council and started exercising executive power within 2 years from the 1951 revolution. King Mahendra played a critically egregious role in the 1960s. He dismissed the elected government of the Nepali Congress, dissolved the parliament, suspended fundamental rights and freedoms of citizens, imprisoned

⁷²See Bhandari, Surendra (June 29, 2003). Constitution of the Kingdom of Nepal 1990 in the Context of Conflict in Nepal. A Paper Presented in a National Workshop organized by Foundation for Parliamentary Studies and Development in Kathmandu.

political leaders, banned political parties, and started monopolistic rule with the help of the Royal Nepal Army. Further, he legitimized the institution of absolute monarchy by promulgating the 1962 Constitution. This absolute monarchy ruled the country for almost 30 years, until democracy was established in 1990.

The 1990 Constitution was another profound opportunity for the kings. Despite many weaknesses, the 1990 Constitution was built upon a limited concept of constitutional monarchy and democracy. From the very inception of the 1990 Constitution, King Birendra started to contest the framework of the constitutional monarchy and kept overstepping the constitution. Political parties and leaders played the role of passive onlookers in the face of constitutional encroachment by the kings. Upon ascent to the throne, in the same manner as his father King Mahendra did, King Gyanendra perpetrated definitive onslaughts to constitutionalism, devastating the political landscape of the country. With a coup on February 1, 2005, he dissolved the government, took all executive power into his hands, ruled the country without parliament, and tried to regain all the sources of power of the absolute monarchy: the incarnation of god, political prerogatives, and the loyalty of army. In short, the kings had weakened the elected governments and overstepped the constitution, declined to accept the framework of constitutional monarchy, to the extent that they caused their own end. A strong democratic government and respect for constitutionalism would be the best policy tools in the hands of the kings to protect the monarchy. However, time and again the kings refused to become constitutional monarchs and invited the demise of the institution of monarchy.

Perhaps the monarchy could have lasted longer if King Birendra and his family had not been assassinated at the Royal massacre on June 1, 2001. The Royal Commission accused Prince Dipendra for the massacre. Even so, the public did not believe the report and suspected King Gyanendra's involvement, but this was not validated by any formal sources. Against the backdrop of widespread social skepticism, King Gyanendra failed to regain the public's respect and support. Despite the massacre, had King Gyanendra unflinchingly demonstrated respect for the constitution and that he was bound by the principle of constitutional monarchy and helped strengthen the elected government and democratic institutions; perhaps the monarchy could have survived for longer. With these observations, the first conclusion is that King Gyanendra is the immediate reason for the demise of the institution of monarchy in Nepal.

The Indian factor played a crucial role in the abolition of the monarchy. Since the era of King Mahendra, the warmth of the relationship between the Nehru family of India and the Shah family of Nepal was slowly deteriorating. It was especially strained following the personal conflict between King Birendra and Indian Prime Minister Rajiv Gandhi. Consequently, India imposed a 9-month trade embargo against Nepal, which caused the demise of the *panchayat* system. This caused further worsening in the relationship between these two families. In the case of King Gyanendra, India was very reluctant to cooperate with the Royal Nepal Army acting against the democratic aspirations of the people. During the 10-year-long Maoist insurgency, the Royal Nepal Army had almost depleted its arms and ammunition, especially due to the supply being constrained by India. With this

constraint, King Gyanendra could not use the army to fight against the people. Not through benevolence but rather through having no other choices, the distraught king unwillingly accepted the decision of the Constituent Assembly on the abolition of monarchy. Finally, he left the Royal Palace without any resistance.⁷³ Therefore, the second conclusion is that India played an indirect but significant role in the abolition of monarchy in Nepal.

The 10-year-long Maoist insurgency, implemented by a young and politically indoctrinated militia, played a strategic role in weakening the monarchy. Had the monarchy abided by the 1990 Constitution and helped strengthen the democratic institutions, perhaps the Maoist insurgency alone could not have made such an impact. Unfortunately, King Gyanendra did not believe in the virtue and strength of democracy and therefore kept unintentionally pushing the political parties into forging unity with the Maoist against him. Finally, the people stood up for democracy and pronounced their verdict on the monarchy. Hence, the third reason for the abolition of the monarchy can be associated with the Maoist insurgency bolstered by the *Jana Andolan II*, especially against the backdrop of the Royal massacre of 2001.

Despite this historic achievement of the Nepalese people in abolishing monarchy, the opportunity to institutionalize democracy, establish peace, and promote socioeconomic development by addressing the problems of poverty, injustice, discrimination, exploitation, corruption, misrule, nepotism, and many other social and political evils is primarily conditioned by three important factors. First, without a complete defeat of the royalist school of thought, the royalist elements will continue to keep seeking opportunities to destabilize the democracy. The royalists have not given up their hopes of a return to power. They like to see the political parties and their leaders unable to address the question of ideological conflicts and thus fail to bring the Maoists into the democratic mainstream. Second, bringing the Maoists into the democratic mainstream is perhaps the most difficult task, as it demands that the ideology of communism to be weeded out of the party, which is pervasively and fundamentally indoctrinated. Third, the issue of identity has culminated in restructuring the state based on ethnicity and has posed a much more complex social and political course in the making of a constitution.

Against this background, the political leaders are the only hope of the Nepalese people for meeting these three challenges and driving the country into the path of peace, democracy, and prosperity. However, the weaknesses of the political leaders cannot be ignored. Fundamentally, they are not immune from the political culture that the Shah and Rana dynasties had implanted in the Nepalese political soil. On top of that, they are mired in populist ideas rather than conceptually correct ideas. Political leaders have not yet developed the skill of taking policy decisions based on systemic interest module driven by a knowledge base free of

⁷³See *The Himalayan Times* (2011, September 5). *Wikileaks suggests depleted arms behind ex-king's surrender*.

political ideology. In addition, they have relegated constitutionalism and democracy as the source of political and national consensus and have unlikely derogated their power and political understanding to retain a position in the government by all possible means. For them, this irrationality has worked out as the consociational democracy, unfortunately.

The Shah Dynasty institutionalized a political culture of noncooperation and intolerance already in vogue in the political traditions of the Malla kings of Kathmandu Valley. They were also successful in creating a widespread fear and a sense of servitude in the general population. They nurtured a national culture portrayed in the social perception of nurturing a culture of loyalty to rulers and of pleasing the powerful people in order to be blessed (*kripabad*); to blindly follow a ruler without question (*biswaspatra*); to foster a sense of achievement and success to be achieved by pleasing people in power (*chakari*); to restrain the pursuit of freedom, knowledge, skill, and innovation by surrendering to the ruling class (*chaplusi*); and to endorse nepotism in promoting one's people for socio-political opportunities (*natabad*). Further, power alone is elevated as a source of social, political, and legal justification. Power alone was knowledge for both Ranas and Shahs; the same has been true for the political leaders. In those days, knowledge, reason, and scholarship were unnecessary qualities for success or for social political justification. In short, this culture can be described as a "feudalistic undemocratic culture," which is extensively and deeply embedded in the Nepalese socio-political atmosphere.

Even today, the feudalistic undemocratic culture has immeasurably imprisoned the vision of institutions, political parties, and leaders. No matter who they are—communists or so-called democrats—they all commonly share this feudalistic undemocratic culture. The monarchy is abolished, but the feudalistic undemocratic culture is pandemic. Unless this culture is uprooted, the vestiges of monarchy will keep ruling the country. It seems reasonable that the conflict between the king and the people will finally be settled with the abolition of the feudalistic political culture.

The feudalistic undemocratic political culture is the stumbling block both for the institutionalization of constitutionalism and fostering the pace of growth and human development. Democracy needs a culture of diligence, perseverance, as well as the pursuit of knowledge, innovation, industriousness, honesty, and self-respect. Peace can only be built on constitutionalism, justice, the rule of law, and the democratic way of life espoused by a rights-based approach. The path is full of opportunities and hopes, but it is not easy. A politically volatile, economically vulnerable, and socioculturally sensitive country like Nepal has no alternatives other than a liberal democracy and a rights-based approach to address its immense problems and create opportunities for its people.

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Bhandari, S.

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