

**“Why a Secular Republican Constitution
for the Former Last Hindu Kingdom of Nepal?”**

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Chapter I

1. Background:

Nepal has been going through an unprecedented historical transformation for last couple of years. The twelve years people's war led by Nepal Communist Party Maoist and popular movement of 2006 waged by Nepalese people under the leadership of Nepalese political parties have definitely ushered Nepal into a new era. Within these two and half years Nepalese people have witnessed a number of epoch making political changes. The peaceful and successful election of April 2008 has ensured one of the most representative Constituent Assembly. More than two century old Monarchism, which was based on, Hinduism, feudalism and autocratic system of governance, has been abolished forever. A federal democratic republican set up has been guaranteed by the Fifth Amendment of Interim Constitution. The country has been declared a secular state with a clear recognition of multi-religious, multiethnic and multilingual character of the state and a clear commitment to equally deal with all religions and ethnic groups in Nepal.

Now, the country, on the one hand, is in the process of socio-economic transformation of the Nepalese society in order to sustain the political achievements. On the other, we are engaged in the drafting of a new constitution to institutionalize those achievements. Of course, we are not going to make a new constitution in absence of our own constitution. In fact, Nepal is one of the rich countries having at least six constitutions within very limited time of six decades. However, the new constitution will fundamentally differ than all previous constitutions both in terms of process and spirit. This constitution will be proclaimed by the people's representatives, while all other previous constitutions were promulgated by the rulers either on their own or on the suggestions and recommendations of hand full experts loyal to them. In terms of spirit, unlike with previous constitution the new constitution is supposed to incorporate the ideals of democracy, fundamental human rights, people's supremacy, secularism, federalism and aspirations of the Nepalese people in real sense.

2. Fact of Nepal and its political Development

2.1 Nepal In figure

Before starting to delve into the topic of today's discussion, let me introduce Nepal briefly. Nepal is located in the southern part of the Himalayas, bordered with India in the South, East and West and with the Tibet Autonomous Region of the People's Republic of China on the North. Covering the area of 147181 square kilometers, the terrain expands from very low land -60 meters high- to the

highest peak of world – the Mount Everest. Accordingly, the country is naturally diverse and rich in terms of climate, flora and fauna. The geographical diversity is adequately reflected in the socio-cultural life of the people. Demographically, it has the population of more than 23 million. Nepalese society is multi-ethnic and multi-lingual society. There are more than hundred ethnic groups most of them having their own mother languages and unique customs. The Sherpas, Limbus, Rais, Newars, Gurungs, Bahuns, Chhetris, Tharus and other people of different castes live together cooperatively and peacefully in Nepal. There are more than 100 spoken languages and 59 ethnic groups in the secular republican Nepal. Nepali is the country's official language and English is spoken and understood by almost all the people living in the major cities.

As far as religion is concerned, there are nine categories mentioned in population census 2001 Caste/Ethnicity, Mother tongue & Religion. Hindu 18330121, Buddha 2442520, Islam 954023, Kirat 188106, Jain 4108, Christian 101976, Sikh 5890, Bahai 1211, Others 78979 . However, this data often come into controversy as some marginalized communities and activists do not support this. The people here mostly follow Hinduism and Buddhism but apart from this some also practice animism, Tibetan Lamaism, shamanism etc. It is a country of "more Gods than the people", "More Temples than the houses" and "More festivals than the number of days in a year"!

2.2 Political Development

The first civilization in Nepal flourished around the 6th century B.C. They were confined to the Kathmandu valley, the present-day capital of the country. Prince Siddhartha Gautam was born in Lumbini, Nepal in 563 B.C. The growth of Buddhism in Nepal gradually gave way to Hinduism, with the influx of migration from India, around the 12th century. The foremost dynasties that ruled the then Nepal, such as the Gopals, the Kiratis, and the Licchavis expanded their rule. But it was only in the reign of the Malla kings from 1200-1769 A.D., that Nepal assumed the approximate dimensions of a modern state.

Nepal came close to its present day form in the latter half of the 18th century when Prithvi Narayan Shah, the ruler of a small principality called Gorkha in Western Nepal, expanded the borders of his kingdom. His heirs however, proved unable to maintain firm political control over the country. After more than a year of hostilities with the then British East India Company, a commercial treaty was signed with Britain in 1792 and then again in 1816. After that, Nepal became economically dependent. However, it was not until 1923 that Britain recognized Nepal's absolute independence politically.

From the Day one of the Shah dynasty the process of Hindunization process was started in the name of building temples and starting worships in those temples. In

the time of Rana regime and party-less Panchayat system, the process of Hindunization continued and became even deep rooted. As soon as King Mahendra came to the throne in 1955, after the demise of King Tribhuvan, he soon assumed direct rule, terming it "guided democracy". A new constitution was promulgated, superseding the Constitution of 1951. Again in 1962, a new constitution was drafted, which was the third in Nepal. The constitution introduced the party-less Panchayat system, which vested all the authorities within the King. Hinduism had played a crucial role in all these Constitutions. The King had been given all power of governance as Hinduism considers the King as a symbol of God.

2.3 Restoration of Multi Party Democracy

The political scenario in Nepal underwent a major change, right after the failure to negotiate trade and transit treaties with India disrupted the economy in 1989. In 1990, a pro-democracy movement forced King Birendra to lift the ban on political parties. 30 years of party-less Panchayat system introduced by King Mahendra was dissolved with the success of the people's movement.

A new constitution was promulgated. On November 19, 1990, King Birendra declared the Constitution of the Kingdom of Nepal 2047. According to this constitution also, Nepal was officially declared Hindu Kingdom.

The first free election in three decades was held in May 1991. Within the period of 12 years of multi party parliamentary Democracy. Nepalese people got 13 governments and any parliament could not complete its full tenure. Political instability adversely affected the service delivery to people and further increased the people's dissatisfactions. The power was centered in palace instead of the people. The monarchism based on Hinduism was not acceptable for the Nepalese people of the twenty first century any cost. Society was in favour of revolutionary changes but the then Constitution was confined in Hindu tradition which was huge contradiction. In these circumstances dissatisfaction of the people became even stronger then environment of radical changes. As the time and situation was demanding people's revolution, Maoist's movement started at that particular time. Nepal was destined to see rampant political changes in the decade that followed.

2.4 Maoist Revolution

Due to feudalistic and autocratic monarchical system of governance based on

Hinduism, poor service delivery and increasing political instability, the Maoist movement gained momentum in the country. In February 1996, the Maoist party started a bid to replace the parliamentary monarchy with a people's new democratic republic. They launched "People's war", led by Pushpa Kamal Dahal 'Prachanda' and Dr. Baburam Bhattarai. The Maoists declared a parallel government of their own on the district level, in the areas where they had already formed a stronghold.

2.5 Royal Family Massacre and Coup

On June 1, 2001, the Royal Family massacre took place. None of the members of King Birendra's family survived the shootout. Very mysterious incident it was and still facts are unexposed. Prince Gyanendra, the younger brother of King Birendra, was then crowned the new King of Nepal. This incident proved that king is not incarnation of God Vishnu but he was blamed a culprit of Royal massacre. The faith on Hindu monarchism decreased and secularism movement was boost up.

The King had behaved like a representative of feudalism. Maoist movement was against it. The Maoist started to overthrow feudal characters rooted in culture, tradition politics, and social practices in rural areas. They started to reform temple practices, over-ruled their economic aspect of *guthi*. They started to questioning of the arbitrary role of priests. As the tradition of depriving a large section of population (the arbitrarily defined as lower caste and untouchable communities) from religious practices in Hindu temples was heartening the sentiment of those people, the Maoist came right there for the cause of those deprived people. In this way the movement against Hindu kingdom was intensified and gradually took momentum.

In November 2001, government declared a state of emergency, as the Maoists attacked an army barrack in Dang, western Nepal: the Royal Nepal Army was deployed against them for the first time.

A state of emergency was declared in November and the army was ordered to crack down on the Maoist combatants. The rebels intensified their campaign, and the government responded with equal intensity, killing hundreds of general peoples including fighters from both sides, the largest toll since the insurgency began in 1996.

On January 29, 2003, the dialogue was held with the Maoists and ceasefire announced. However, the dialogue could not be successful. The Seize fire ended and conflict resumed again.

On February 1, 2005, King Gyanendra assumed complete sway in a bloodless coup. Several top politicians were put under house arrest and civil life was severely restricted. Telephone lines were cut off, media curbed and public gatherings forbidden. Without a parliament or a Prime Minister, King Gyanendra held full sway in appointing or displacing the members of his own formed cabinet.

In September 2005, the Maoist rebels declared a unilateral cease-fire, which ended in January 2006. To overthrow the King's grip, the seven party alliances held a meeting with the Maoist, in New Delhi, India. Consequently, in November 2005, the two sides signed a 12-point agreement. The agreement was about ending the prevalent violence and to forge ahead against the monarch. The parties, which were initially vocal against the Maoists, had joined hands with the Maoists, making it an eight party alliance. Together, they declared People's movement second, which went on for 19 days. In the 12 point agreement problems of society was well spelled out as class, caste, religion and sex. The republicanism, federalism and secularism was the spirit of that agreement.

2.6 People's Movement Second

In April 2006, massive pro-democracy protests were organized by seven opposition parties, supported by the Maoists, which went on for weeks. At the same time armed activities also were continuing simultaneously and supported by seven party alliance. They rejected the offer King Gyanendra made through his first address to hand over executive power to a prime minister. They said he had failed to address their main demands: the restoration of parliament and the redrafting of the constitution. After three more days of street demonstrations and bloodshed, on April 24, 2006, King relinquished power to the people. As pressure mounted and the protests intensified, King Gyanendra agreed to reinstate parliament. The new parliament stripped the king of his powers and selected Girija Prasad Koirala as Prime Minister. In May, it voted unanimously to declare Nepal as a secular state and strip the king of his authority over the military.

According to the 16 point and 8 point understanding between the seven parties and the Maoists, the interim constitution was drafted on August 25, 2006.

2.7 Maoists In open politics

The Maoists came into open politics on the condition that all agree on socio-economic transformation. The government and the Maoists signed the landmark Comprehensive Peace Accord in November 2006, ending 10 years of conflict by

agreeing to address root causes of the conflict. The agreement also called for integration of the Maoist army with the state security forces and making public the whereabouts of those forced to disappear by the state and the Maoists, among others. The Maoists agreed that those fighters who had joined the armed forces after May 25, 2006, or were under 18 years of age by that date would be discharged from the camps. The peace accord agreed to establish the interim parliament, and the government.

In March 2007, the Maoists joined the interim government. An agreement was inked to hold the Constituent Assembly Election in June 2007, through a mixed election system. The election however, was postponed after the Election Commission said the time line for preparations was not sufficient as the legal framework for the election was still not in place. The Constituent Assembly Election was rescheduled to November 22, 2007. However, months later on September 18, 2007, Maoists walked out of the government, demanding a fully proportional electoral system. They also claimed that Nepal had to first be declared a republic before holding the election.

On October 5, 2007, the Constituent Assembly Election, which was supposed to elect people's representatives to write a new constitution, was postponed. Maoists tabled motion in the interim parliament calling for a fully proportional election system and an immediate declaration of a republic. Resolution was accepted with majority, but the NC did negative vote.

The cabinet meeting held on Dec 28, 2007, declared Nepal a Federal Republic, to be implemented by the first meeting of the Constituent Assembly. A two thirds majority of the parliament passed the resulting constitution amendment bill, adopting Federal Democratic Republic and setting mid- April as the deadline for the conduction of the Constituent Assembly Election.

The amended Interim Constitution increased the number of Constituent Assembly members from 497 to 601 members, out of which 58% would be elected through proportional voting system and 42% through direct election. According to the system, 240 would be elected through the First-Past-The-Post elections in single member constituencies, 335 will be elected through national proportional representation and 26 will be nominated by the new government to be formed from the CA Election. With the passing of the Constitutional Amendment the Maoists rejoined the government on Dec 31, 2007.

On January 11, 2008, the cabinet meeting set the new date for Constituent Assembly Election as April 10th 2008. They decided the election would be conducted on one day.

Chapter II

3. What is Secularism?

The word secular means "of this world" in Latin and is the opposite of religious. As a doctrine, secularism is usually used in reference to any philosophy which forms its ethics without reference to religious dogmas and which promotes the development of human art and science.

The term secularism was coined by George Jacob Holyoake in 1841 and he originally used it refer to the practice of the ethics of free thought. Holyoake did not believe that secularism and atheism were related, but at the time Charles Bradlaugh argued that atheism was a prerequisite for secularism. According to Holyoake Secularism is a code of duty pertaining to this life, founded on considerations purely human, and intended mainly for those who find theology indefinite or inadequate, unreliable or unbelievable. Its essential principles are three: (1) the improvement of this life by *material* means. (2) That science is the available Providence of man. (3) That it is good to do well. Whether there is other good or not, the good of the present life is good, and it is good to seek that good.

Virgilius Ferm in his *Encyclopedia of Religion*, secularism is: ...a variety of utilitarian social ethic which seeks human improvement without reference to religion and exclusively by means of human reason, science and social organization. It has developed into a positive and widely adopted outlook which aims to direct all activities and institutions by a non-religious concern for the goods of the present life and for social well-being.

Defined in such a manner, secularism is very closely related to modern humanist philosophies. It is easy to see why many religionists would oppose such secularism, provided they believed that the only means to improving humanity is through their own particular religious system.

Secularism can, however, be used in a much narrower sense when conveying the idea that government and public policies should be "secular" in nature and therefore not reflect any sectarian, religious ideals - in other words, a strict separation between church and state. A great many religionists support such

secularism because, in the public arena, it puts all religions and all religious beliefs on relatively equal ground about the government and public policies.

4 Impact of Hinduism in Nepal:

Hindu Religion had always played a prominent role in Pre 2005 Nepal, which was a Hindu kingdom. It was believed that king was personification of god Vishnu. Whatever done by the king, it was believed wish of the god, so no mistake. Nepali politics has been closely related with Hindu religion. The inseparable status of politics and Christianity had become a history long ago in Europe; but even up to 2005 the case in Nepal was quite different. Every traditions were made as per Hindu religion, official functioning style was also the same, structure of the society and state and government functioning was also according to the Hindu Religion.

Even today, the naming the place, persons and goods are mostly based on Hindu religion. Textbook teaching and learning process also the same. Every event and practices were Hindunized.

Despite being a multi-religious country, official religion was Hindu; multi-lingual country, only Nepali language was recognized as official language. Sanskrit language was considered more privileged and State had full funded the Sanskrit university. In the name of Hindu religion, a lot of property was allocated by the state in the name of Guthi.

Government holidays and religious practices were Hindu based. Others religion were not recognized in the same proportion as Hindu. They were even suppressed by the state. Legal provisions were in place so that convert of Hindu religion and practice of other religion was assumed as an offence against state.

The tradition of untouchability is also granted from Hindu culture. As other religious groups are largely denied of entering into education system, working places and government employment, Hindu religion is heavily dominant in such places.

These above mentioned practices create two strata in Nepalese society – the upper and privileged strata and the lower and unprivileged one. Even though the system was highly criticized politically, economically and socially for a long time, however, it was the royal massacre that intensified the criticism. The religious freedom was always a core concern of the excluded communities, which was quite impossible in a Hindu kingdom.

5 Secular State in the world

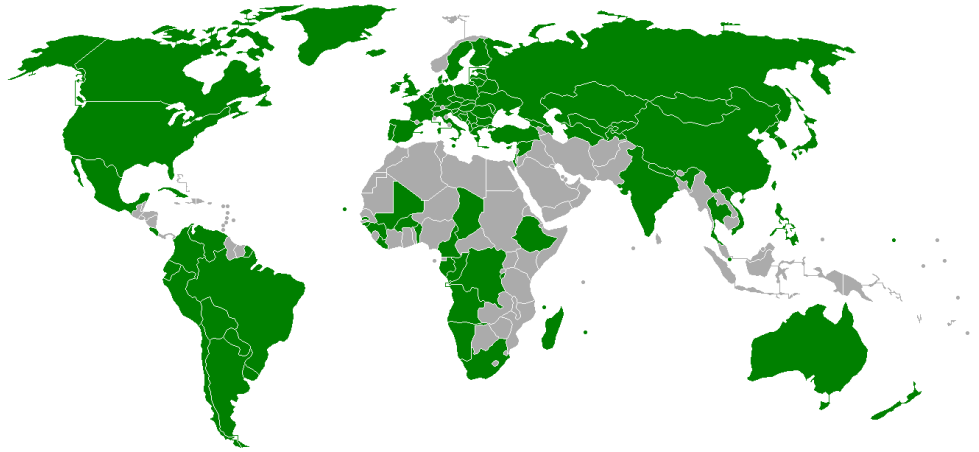
A **secular state** is a concept of secularism, whereby a state or country is officially neutral in matters of religion, neither supporting nor opposing any particular religious beliefs or practices. A secular state also treats all its citizens equally regardless of religion, and does not give preferential treatment for a citizen from a particular religion over other religions. Most often, it has no state religion or equivalent.


A secular state is defined as protecting *freedom of religion* as pursued in state secularism. It is also described to be a state that prevents religion from interfering with state affairs, and prevents religion from controlling government or exercising political power. Laws protect each individual including religious minorities from discrimination based on religion.

A secular state is not an atheistic state (e.g. Albania under Enver Hoxha), in which the state officially opposes all religious beliefs and practices. In some secular states, there can be a huge majority religion in the population (e.g. Thailand, Turkey etc.) and in others; there may be great religious diversity (e.g. India, Lebanon, etc). Some may have *de facto* official religions, in which even though a government does not support or deny religion, it may require some members of its government to be a certain religion (e.g. Philippines, Indonesia, and Peru).

Secular states become secular either upon establishment of the state (e.g. United States) or upon secularization of the state (e.g. France). Movements for *laïcité* in France and for the separation of church and state in the United States began the evolution of the present secular states. Historically, the process of secularizing states typically involves granting religious freedom, disestablishing state religions, stopping public funds to be used for a religion, freeing the legal system from religious control, opening up the education system, tolerating citizens who change religion, and allowing political leadership to come to power regardless of religious beliefs. Public holidays that were originally religious holidays and other traditions are not necessarily affected, and public institutions become safe from being used and abused by religion.

Not all legally secular states are completely secular in practice. In France for example, many Christian holy days are official holidays for the public administration, and teachers in Catholic schools are salaried by the state. In India, the government gives subsidy in airfare for Muslim going on Haj pilgrimage. In 2007; the government had to spend Rs. 47,454 per passenger.



 Secular states map

6 Why Nepal Became a Secular State

For long, the world's only Hindu Kingdom, Nepal recently declared itself secular. This is not just a symbolic move, but also the culmination of a silent People's Revolution aiming to restore democracy and the rule of civilized law in the land. The main objective of declaring Nepal as a secular state is to free the Nepalese society from deep rooted feudalism based on Hinduism. The move also fully recognizes the multi-religious multi-cultural and multi-ethnic characters of Nepalese society.

6.1 Royal Impunity background for secularism

The current Nepalese monarch King Gyanendra assumed Nepal's throne on 4 June 2001 as the beneficiary of his brother King Birendra Shah's suspicious assassination. Illegal activities such as hooliganism, vandalism, murder and many other types of criminal activities in and from the palace were never investigated by the then governments. In the same manner, the Royal massacre remained always uncovered. Crown prince Paras's several criminal actions were unpunished. Anarchy was dispread from the palace. The center of the injustice, which was so prevalent in the country during monarchism, was palace itself. More importantly, the businessman-turned-King steadily marched his country towards an absolute monarchy. This is the most important factor for the declaration Nepal as a secular state.

Gyanendra did not hesitate to destroy Nepal or Nepal's Constitution in order to 'protect' it! The Constitution that Gyanendra left in tatters had come into being in 1990 during the reign of the assassinated King Birendra Shah, and was the basis of the general elections of 1991, 1994 and 1999. Unfortunately, elections brought no political or economic stability and the country saw nine governments in 10 years. This period also witnessed a Maoist insurgency that threw economic life in Nepal into serious disarray, created a sense of fear and insecurity throughout the land, and gained control of nearly 80% of Nepal's territory, the violent activities of the insurgents, and savage reprisals by the Royal Nepalese Army have caused the death of an estimated 13,000 Nepalese so far. It is purely political activities but within the political activities, religious belief was also inherent. Majority of the peoples didn't accept the activities carried out by the Gyanendra whatever legal or constitutional but because of extra moral extra ethical and extra religious too. Secular feelings were immerged in this way. King was taken as a good but Gyanendra's activities were far from god and not accepted by common man. Therefore, feeling and belief was broken then declaration of secular state was possible and nobody objected it.

At the time of his *coup* in 2005, Gyanendra pretended that he wanted to bring back peace to the kingdom. Nothing of that sort happened, and the situation only got worse since when he usurped executive power. Even though he revoked the illegal Emergency on 29 April 2005, his despotic rule continued. His was a tyrannical regime marked by hopeless governance, incompetent administration and unaccountable actions. Intimidation of Human Rights activists, restrictions on the media, and brutal repression by the Royal Nepalese Army became the ingredients of every day life.

6.2 Massive suppression creates secular state

The developments in Nepal did not go completely unnoticed. In early 2005, the Paris-based *Reporters Sans Frontiers* posted a red alert on the Human Rights situation in Nepal. In July 2005, 8 UN experts described the situation as “extremely serious” because of secret detentions and widespread use of torture in the country. In October 2005, Human Rights Watch raised the alarm over a new Code of Conduct introduced for the media: under this new Code, FM radio stations were banned from broadcasting either news or any criticism of the royal family. The Code established a government-appointed Social Welfare Council to ‘oversee’ the work of NGOs and made all employees of NGOs criminally responsible even for activities that they were not directly involved in. The Code also barred NGO staff from having political affiliations. That Nepal was a member of the then active UN Human Rights Commission made no difference to her domestic commitment to Human Rights. These all actions were not to protect the country neither people nor any religion especially Hindu religion.

However, the *Janandolan* – the people’s movement clamouring for restoration of democracy – forced the superstitious despot to cut short his holiday and rush back to Katmandu on 12 April 2006. At its first meeting, the 205-member reinstated Parliament unanimously proclaimed that the King would be stripped of his powers and that the military would henceforth be brought under civilian authority – the King would no longer be the Supreme Commander of the Armed forces. The National Anthem which comically hails “May glory crown you, courageous Sovereign” and which equates worship of the King to patriotism was scrapped. The King would henceforth be subject to taxation, would no longer enjoy legal immunity and would be unable to name his heir to the throne.

Rejecting the King as the symbol of Nepalese unity, the people and Parliament broke the link between the State and the Religion in whose name the King reigned. Nepal, the world’s only Hindu state, was declared a secular country by Parliamentary proclamation and it was consolidated by interim constitution.

What a pathetic fall for the King of Nepal who was propped up as the embodiment of Lord Vishnu for the last 238 years when Nepal was in the grip of the Shah and the Rana dynasties.

7 Constituent Assembly Secularism and Republican

Twice deferred, Nepal's historic Constituent Assembly (CA) election was finally held on April 10, 2008. None of the parties succeeded in getting a simple majority in the CA. The Communist Party of Nepal (Maoist) won [120 out of 240 in direct election and 100 out of 335 in PR election system] 220 out of 575 elected seats, followed by the Nepali Congress with 37 seat out of 240 in direct election and 63 out of 335 in PR election system] 110 seats. The Communist Party of Nepal (Unified Marxist-Leninist) won [33 seats out of 240 in direct election 70 seats out of 335 in PR election system] 103 seats and the Terai-based Madhesi People's Rights Forum got all totle 52 seats. Through by-elections was took place after one year of original election date 3 seats out of 6 won by Maoist. One of the main slogan of the election was secularism which is clearly reflected in election result.

The final list of members elected under the proportional representation system was released on May 8, 2008. The members of the Constituent Assembly were sworn in on May 27, 2008, and the first session of the CA was convened on May 28, 2008. After declaration secular state most of the members sworn in in the name of people instead of in the name of god.

Out of 26 newly nominated members, 15 come from indigenous nationalities, religious minorities and six from marginal tribes. The cabinet on July 4, 2008 selected two legal experts and six women to the CA.

While the CA has the prime responsibility of drafting a new constitution for Nepal, it also functions as a regular parliament. Through the fourth amendment to the Interim Constitution of Nepal on May 28, 2008, the CA also provided for the first time, a largely ceremonial President, as the constitutional head of state. The same amendment also provided for a Vice President. However, the Prime Minister continues to be the head of the government.

The first session of the Constituent Assembly on 28 May, 2008, voted to declare Nepal a federal democratic republic, thereby abolishing the monarchy and secular state. 564 members of the Constituent Assembly voted for this motion, with 560 in favor and only four opposed.

Of all the parties represented in the Constituent Assembly, only the Rastriya Prajatantra Party Nepal (RPP-Nepal) opposed the motion. On 29 May, the royal standard was removed from Narayanhity Palace and replaced with the national flag. On June 2, 2008 the former King said he had accepted the Constituent Assembly's decision.

The first President of Nepal was elected on July 21, 2008. Dr. Ram Baran Yadav from Nepali Congress was elected to the post by the Constituent Assembly members. Earlier on July 19, 2008, the CA body had elected Parmananda Jha of Madhesi Janadhikar Forum as the Vice President.

On July 24th 2008, Nepal's Constituent Assembly elected Subash Chandra Nembang of CPN-UML as its chairman.

Pushpa Kamal Dahal Prachanda, chairman of the Communist Party of Nepal (Maoist), was elected the first Prime Minister of the Federal Democratic Republic of Nepal on August 15, 2008.

8 Unconstitutional Move and Change Govt.

When Maoist led Government were in their duties president unconstitutionally intervened on COAS removal case. PM Prachanda resigned from his post and raised the issue of civilian supremacy. Maoist claimed that this move was not different then Royal coup. At that time king had referred constitutional provision article 127 but president did not think to refer any constitutional provision so he did not do any thing accept violation of legitimate decision of the Government and constitution. We designed constitutional provision relating to President was nominal head, He can do nothing. Cabinet shall do everything then president should seal each matters without any question. However, with having this constitutional provision some political parties went to the president with petition as past practiced by the king then president also ready to do it. So constitutional crisis is there all decisions related with Military are debatable. Democratization of Army is our constitutional provision Army is not ready to obey the order of the legitimate government's decisions. Due to this type of activities peace and constitution both are in danger. It is needed to resolve the politicians agreed matured political decision. At the same time as secular state government tried to reform in Hindu religion was started from management of Pashupati temple. But surprisingly, it was heavily criticized by the political parties who were in favour of secularism.

Now we are in transition, not only in transition but great debate too. Consolidation of Republican and secularism are major task of new Nepal due to political turmoil peace and constitution is at risk. Peace without consensus is not possible. Likewise the passing of any single article of the new constitution requires the support of at least two third majority in the Constituent Assembly. Therefore, the peace and constitution, without Maoist participation, are quite impossible.

Chapter III

9. Revolutionary Changes

Nepalese peoples were desperately waiting for revolutionary changes especially for socio-economic transformation. As these issues were not fulfilled so peoples were not so happy. Furthermore, secularism was a big challenge than political one. It was deep rooted in the mind set of the people, leaders and society. These were the reasons for people's movements in Nepal that finally brought up historical changes in Nepalese politics. We achieved most important historically recorded issues such as **republicanism, federalism** and **secularism**.

10. Religious diversity:

When Nepalese society was governed under Hindu kingdom country was a Hindu. Others religion were not recognized by the state. There was no fund for other religion except Hindu religion. There was a Sanskrit University fully funded by the government but rest of the Language and religions were not being taken in account. National holidays national festivals, educational curriculum, and practices each were unilaterally in favor of Hindu religion. Legal and constitutional arrangements were also in that line. Religion was inclined to the state sovereignty and it was inclined to the King. This was the fact.

On the other hand, religious diversity was another fact of the country. There were so many religious communities they were happy to follow their practices. They had their own belief, their own sacred books, schooling practices, worship and other practices also. They were managing, on their own sources, their traditional festivals and beliefs.

Sometimes they were impressed from others religion and practices then they had changed their religion but it became illegal. They were charged punished and fine and kept in jail. However, they did not change their belief.

Food habits and meal practices were also affected from religion. For example cow is a sacred animal for Hindu but not necessarily for others. However, it is considered as a national animal and killing it is punishable. Most of Nepalese

people's faith were not accommodated and accepted by the state. In fact, their religion was victimized always from the state in terms of practices in schools, festivals, curriculums, National holidays etc.

Thus, in Nepal as Hindu Kingdom there was a huge inequality between Hindu believers and believers to other religion. This, in turn, was creating the feeling of exclusion and deprivation in many Nepalese. And, this were the very reason of the need for secularism in Nepal.

Ultimately, we had declared Nepal as a secular state instead of Hindu Kingdom and we are committed to institutionalize this provision again in the new constitution to be drafted by the Constituent Assembly.

11. Efforts to address the diversity

Firstly, recognition to diversity from the state, state organs and political parties is a must. I am happy to mention that after the establishment of secular, republican and federal set up we are in right direction.

Secondly, we should ensure religious freedom. People should be allowed to practise whatever religious belief and practices they have. However we have an old and traditional legislation and traditionally guided bureaucracy and political leadership. We are not effectively able to properly address this issue. However, we are trying our best.

Thirdly, we are following affirmative action of positive discrimination ensuring special quotas for excluded and deprived people in almost all sectors of state institutions public services.

Fourthly, before now, there were no freedom to organize in the name of caste and religion but now there is no any obstacle. Everybody has right to organize for their welfare and their rights.

Fifthly, we agreed on mixed election system for proper representation of all the people. Due to the proportional representation system that we adopted CA has become one of the most representative legislations throughout the world. Genuinely speaking, all sectors of Nepalese society are quite rightly represented in the Constituent Assembly.

Sixthly, religious rights are not only a bill of rights but also have been translated in practices and daily life. We have already changed several legislations. Others are in course of amendment. Along with this we are very much focusing on constitution making process. If we will be able to ensure these provisions in the fundamental law of the land we would be successful.

Even though, still there are a number of differences among political parties on various issues, we have achieved a huge success in terms of republicanism, secularism and federalism. Now we are focusing how to consolidate these valuable achievements. No doubt, there is several descending opinion too. Some are trying to dismantle this achievement and retreat back to the same status. We are also facing such type of challenges.

Past constitution had not mentioned Nepal as a multi religious but had defined Nepal as a multi-national, multi-linguistHindu kingdom.

Interim constitution has clearly defined the nation as:

'Having common aspiration of multiethnic, multilingual, multi religious, multi cultural characteristics and having committed and united by a bond of allegiance to national independence, integrity, national Interest and prosperity of Nepal, the Nepalese people collectively Constitute the nation.'

It further says that 'Nepal is an independent, indivisible, sovereign, Secular, inclusive and a fully democratic State.

12. Secular state and Consolidation

Politically secular state was declared immediately after April movement. People's war was for secular state too. However, April movement also coined their slogan within movement declaration of secular state election of constituent assembly and federal democratic republic. From the backing of movement, the then Parliament was reinstated. That parliament, through the adoption of a parliamentary declaration, had declared Nepal as a secular state, which was later on incorporated in the Interim Constitution.

A Provisions of Interim constitution

Right to Equality: (1) All citizens shall be equal before the law. No Person shall be denied the equal protection of the laws.

(2) No discrimination shall be made against any citizen in the Application of general laws on grounds of religion, race, sex, caste, tribe, Origin, language or ideological conviction or any of these.

(3) The State shall not discriminate among citizens on grounds Of religion, race, caste, tribe, sex, origin, language or ideological Conviction or any of these. Provided that nothing shall be deemed to prevent the making of special provisions by law for the protection, empowerment or Advancement of the interests of women, Dalit, indigenous ethnic tribes, Madeshi, or peasants, laborers or those who belong to a class which is Economically, socially or culturally backward and children, the aged, Disabled and those who are physically or mentally incapacitated.

(4) No discrimination in regard to remuneration and social Security shall be made between men and women for the same work.

Right against Unsociability and Racial Discrimination: (1) No person shall, on the ground of caste, descent, community or occupation, be subject to racial discrimination and unsociability of any form. Such a Discriminating act shall be liable to punishment and the victim shall be entitled to the compensation as provided by the law.

(2) No person shall, on the ground of caste or tribe, be deprived of the use of public services, conveniences or utilities, or be denied access to any public place, or public religious places, or be denied to perform any Religious act.

(3) No person belonging to any particular caste or tribe shall, while producing or distributing any goods, services or conveniences, be prevented to purchase or acquire such goods, services or conveniences; or No such goods, services or conveniences shall be sold or distributed only to a person belonging to a particular caste or tribe.

(4) No one shall be allowed to demonstrate superiority or Inferiority of any person or a group of persons belonging to any caste, tribe Or origin; to justify social discrimination on the basis of cast and tribe, or to Disseminate ideas based on caste superiority or hatred; or to encourage caste Discrimination in any form.

(5) Any act contrary to the provisions of sub-clauses (2), (3) and (4) shall be punishable in accordance with law.

Right to Religion: (1) Every person shall have the right to profess, Practice and preserve his/her own religion as handed down to him/her from Ancient times having due regards to the social and cultural traditional Practices. Provided that no person shall be entitled to convert another person from one religion to another, and shall not act or behave in a manner which May jeopardize the religion of others.

(2) Every religious denomination shall have the right to maintain Its independent existence, and for this purpose to manage and protect its Religious places and religious trusts, in accordance with law.

Article 33 (d) to carry out an inclusive, democratic and progressive restructuring of the State by eliminating its existing form of centralized and unitary structure in

order to address the problems related to women, Dalits, indigenous tribes, Madhesis, oppressed and minority community and other disadvantaged groups, by eliminating class, caste, language, sex, culture, religion and regional discriminations.

(e) To formulate a minimum common program for socioeconomic transformation to eliminate all forms of feudalism and implement it gradually.

Article 35(3) The State shall, while maintaining the cultural diversity of the country, pursue a policy of strengthening the national unity by promoting healthy and cordial social relations, based on equality and coexistence, amongst the various religions, cultures, castes, groups, communities, origins and linguistic groups, and by helping in the equal promotion of their languages, literatures, scripts, arts and cultures.

B. Muluki Ain

Nepal was a Hindu kingdom since very long. The impact of Hindu kingdom was a symbol of feudal society. Politics and religion were inseparable in our context. Executive Power was exercised by the King who was from the Hindu religion Hindu religion is a major component of the Nepalese society. Nepalese code is also very old which we call Muluki Ain. It is based on Hindu feudal religion. Though, we changed our constitution but muluki ain is remaining the same. This is a caste based Code. Every thing is based on caste, religion and feudal system. We declared secular state in constitution and same constitution mentioned that cow is a national animal and according to the Muluki, Ain murder of Cow punishable as homicide.

C. Other legislation

These are the fact of the religious development of Nepalese legal and constitutional development. However, Nepal is a unique country in its nature and character. There is no any fundamentalism in any religious communities all religions are in good adaptation and cooperative mood and all are very liberal in their belief and attitude. All respect their own and other's belief and thoughts. When liberation movement was started then its impact was on the every corner of the Nepalese society. All were aware about their identity and rights. People's war became very good and effective tools for this purpose. Peoples war and April movement weakened the monarchy then all communities were gradually became stronger they tried to make their organization. It was not only belief on religion but was good connection with social transformation. It was big departure from feudal culture and mentality too. In 1990 constitution Nepal was mentioned as Hindu kingdom and nobody questioned it.

D. Ensured inclusion

First time Nepal made a strong provision for proper and proportional representation through enactment. The Election Law related with constituent assembly clearly mentions and fixes the quota. Election mandated to proportional representation through list from the political parties and Election commission have right to ask question to the political parties and correct them. When Interim constitution making process started then they became more active. The provisions in the Interim constitution has inspired others legislations like Civil Service Act, Police Act, Armed Police Act and so on.

The concept of inclusion has also accepted in Nepal Army too.

13. Constitution making experiences and practice

When we talk about 1990 constitution before that, we should analyze the current situation. At that time peoples movement was ended by compromise with king the compromise was among NC, Left Front and Palace. King was in strong position and power. The King was Hindu. But the voices, were in favour of secularism and for the Constituent Assembly too. At that time no body cared about it and all parties including left and communist parties agreed with king on Hindu kingdom. They gave up their demand of secularism. After the people's movement, the nation became Hindu kingdom and Hindu religion retained once again as state protected and funded religion.

People's movement of 1990 was also based on freedom from inequality and unequal treatment. After completion of movement, depressed people wanted justice. They wanted to ensure their rights in the Constitution and practices. However, they failed to achieve religious freedom as well as secular state again the state started exploitation and unequal treatment with other religion. After all, the peoples divided in different religion united themselves against Hindu monopolized Kingdom. They took part actively in Peoples war and peoples movement.

When we were in the phase of interim constitution writing at that time there were no such type of freedom in every sector of the society. Religious freedom and secularism was also another important issue of Nepalese society. However, Nepal is already declared secular state and we are in the process of consolidating it. Still there are many challenges ahead us. Some of Nepalese forces especially regressive forces want to retreat these achievement. And, others are also unhappy with these limited changes even in the form of secularism.

So Constitution drafting teams tried to meet concerned communities consult them and tried to convince them.

Religious Diversity is the main character of our society but previously it was silent. Because of unitary state, it had only one culture; one language and one religion were recognized by the state. We do have a multi religion but formally, the nation was called Hindu, likewise we do have multi-language but it was recognized as one language Nepali as a National and official Language. We were in unitary state in the past and it was like a mono nation in state of multi-language, multi-culture and multi- religion.

There were so many religions in practice but they were not duly recognized by the state. All religions were flexible so there was no any conflict between and among religions. One religion was protected. It was heavily state funded. Hindu religion was official religion and formal one. Others religion were in marginalized position they were almost in vanishing point ,such type of unequal treatment were there but all religion and religious practices were very flexible .

There were certain domination by majority to minorities in every where The sphere of religion was also not in exception .In the time of monarchy there was no democracy, so no one could express their grievances in public. Their deep-rooted unhappiness could never be exposed. However, they were in the process of coming together and united each other knowingly or unknowingly. They had a good knowledge that the main problem was Hindu monarch. Monarchy had dominated democracy. Without abolition of monarchy democracy was not possible and without democracy religious freedom was also not possible. After long struggle of 10 years peoples war and peoples movement democracy was restored with weakened monarchy and more religious freedom.

In the constitution making process we adopt very new method. Preliminary draft and concept paper prepared by CA member themselves are based on people's opinion. We designed different thematic committees and another Drafting committee. We are now in the process of discussion. The focus of discussion is how to consolidate valuable achievements and on the basis of these achievements what can be further achieved in future. The secular issue is also in a same line.

14 Hindu Kingdom was in history of Nepal

The seeds of Nepal's institutional problems were sown in 1768 when King Prithvi Narayan Shah, King of the Gorkha principality who unified Nepalese territory by conquest, proclaimed Nepal to be the 'pure land of Hindus' and 'a garden of four

varnas and thirty-six Jats'. This official patronage of Hinduism and its primitive social structure was even more rigidly enforced during the time of the Ranas who ruled from 1846 to 1951. Jung Bahadur Rana founded the Rana regime. He proclaimed the Civil Code of 1854, which provided a legal footing for the ancient Vedic organization of society, and the customary practices of different jats. The *dharmasastras* – the Hindu texts – were the basis of law for nearly one hundred years which is entirely against secularism.

15 The Nepal-India Relation and Hindu Connection

In 1950 when King Tribhuvan and his family were in exile for a few months, the Present King Gyanendra – then a three-year old child and Tribhuvan's youngest grandson – was appointed King – but this was not recognized by any international powers. When Tribhuvan returned to Nepal, the 1951 the Interim Government of Nepal Act was passed. There was no mention here of Nepal being a Hindu state.

Nor was Nepal declared a Hindu state in the Constitution of 1959.

However, when King Mahendra seized power from his father King Tribhuvan through a royal coup in 1960, he ended the multi-party democratic system and introduced a party-less *panchayat* system. The *Panchayat* Constitution of 1962 declared Nepal as a Hindu state.

When the 1990 Constitution was adopted, it reaffirmed Nepal's identity as a Hindu state closely associated with the monarchy. Cow slaughter was banned, and the absolute ban on religious conversion was reconfirmed. Safeguarding the tradition of Hindu supremacy and promotion of the Sanskrit language was considered a duty of the state.

While Nepal is a small kingdom, neighboring India has 800 million Hindus, whose far right leaders the King wooed: indeed the head of the Vishwa Hindu Parishad (the World Council of Hindus) which terrorised the minority Muslim communities in India was one of the first guests of the King after he took over Nepal. The seventh World Hindu Conference, held in Gorakhpur (India) in February 2003, passed a resolution to protect the Hindu Emperor in Nepal – and when Nepal was declared a secular state, it seemed as if there was more sadness expressed in India than in Nepal. The Hindu state that came into existence in Nepal was an abhorrent one.

16 Secular state in consolidation

Half-baked western scholarship explains the problems of South Asia as being a result of fatalism. The people of Nepal gave the lie to this by becoming masters

of their destiny. However, their job has only just begun. Now the task of nation building needs to be taken up in right earnest.

Abject poverty remains the plight of a majority of Nepalese: over 9 million out of the 26 million Nepalese live on less than the equivalent of one dollar a day. Half the population does not have access to either clean water or to electricity.

The restored Parliament's resolution to reserve 33% of all Government posts for women should be turned into a law as soon as possible – neighboring India is still unable to move a similar law through Parliament, demonstrating how progressive the political forces in Nepal are. A Nepalese rights group as violating women's rights has identified some 118 laws. These must be scrapped or modified as appropriate.

Peace must be re-established, for which the Army must be reigned in, and the Maoists have to be integrated into the new national Army. Unless peace is made with the Maoists, satisfactory functioning to a Constituent Assembly and framing a new constitution cannot be guaranteed. The insurgents wanted a secular republic and their interim goal is a bourgeois democratic system. The secular state has been secured.

Nepal's other institutions have to be strengthened too – for example the courts have a progressive role to play in modernizing Nepal's society. When in January 2005 the Supreme Court refused to entertain a bid to restore Parliament and trying to maintain status quo and serving to their master King are critical notion though the Supreme Court has impressed in many ways: On August 10, the Supreme Court stayed the government's order closing down the private radio station FM 91.8.

In September 2005, the Court ruled that the practice of keeping women in cow sheds during menstruation be stopped.

In November 2005, the Supreme Court ruled that women under 35 years of age could apply for passports without permission from parents or husbands.

In December 2005, the Supreme Court asked the government to scrap a discriminatory rule that required women to seek permission from family members if they intended to sell inherited property. The Supreme Court also asked the government to review the provision under which a daughter has to return any inherited property to her paternal home after getting married.

A number of other features bode well for Nepal in the period ahead: the existing rules prohibit political parties named after religions or castes. This means that it should be possible to encourage secular parties whose agenda would be

people's development rather than exploiting differences in society. The new government should take care that now that Nepal is no longer a Hindu state, the Christian and Muslim evangelical vultures from abroad do not land with their sack loads of money to exploit the people's ignorance and convert them to their own brand of superstitions. The government should introduce educational programmes for all Nepalese, which will impart modern knowledge and cultivate critical intelligence.

17 Ultimately Nepal became secular state

Above all, the triumphant people of Nepal have demonstrated that they can be creators of their own history. They have shown themselves to be capable of creating a silent and responsible revolution: they will be both the architects and the custodians of the new Nepal they desire. Ultimately Nepal became a secular state through crossing several hinders and obstacles.

18. Achievement on Inclusion of diversities through new arrangement:

First, we should know why Nepal became secular state. Whatever we describe above chapter those all are root cause of the declaration of secular state and revolutionary change. I tried to explain and present fact relating to revolutionary change for secular state from Hindu kingdom. Those all are encouraging factors of diversity. Whatever I mentioned facts and figure and trends of Nepalese society within that solution is there. Problems always cannot survive without solution is also applicable in this case.

When Hindu Kingdom set aside religious diversity they had gone forever. So we have to address those diversity, it is because our achievement were with the strength of the diversity is rightly taken in account.

We achieved a lot in the field of inclusion and diversities. We are really departing from ancient traditional society to modern society, and inclusive of diversities along with overthrow of the Hindu Kingdom. We were able to hold peaceful election of the Constituent Assembly and make it one of the most representative legislative bodies throughout the world. We ensured the representation of each and every marginalized sectors of society even third gender representation. We are committed to include all Nepalese in mainstream of nation-building process. We are committed for revolutionary changes not only in political but also in socio-economic front.

We fully agree that without effective participation and full representation of all sectors of Nepalese society, neither we can sustain our achievements, nor we can make a new Nepal – a just, peaceful and prosperous Nepal. We are also aware that given the literacy level of Nepalese people, we may not achieve quality and desired result while adopting representation policy, but we are also sure that this is the only way to enable Nepalese people who are excluded and deprived for centuries. We also understand that if we fail to address their problems and sentiments, the change and achievement cannot be long lasting. Lastly, Diversity is not a burdened of the society as well as country but it is asset of the society. If we sincerely address the demands of the diverse community we will be able to address the real problems of the society.

19. Conclusion

Secular Nepal became possible only after long efforts of the religious freedom fighters. It is a result of scientific idea, practical motion and real spirit of the people. If your Idea is on basis of science it can be practical. If your practical Idea is implemented in the society it can be adopted. If it is adopted that can be way of life of the human being, which can be long lasting. Let us make our religious belief more practical more scientific and easier to adopt. Then welfare of the human being can be achieved. Let us try to address all type of problems with realistic approach and address all grievances through your positive manner that could be success.

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