Preliminary Notes on the Nature of Rana Law and Government

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During the last quarter of the eighteenth century, Gorkha, a small kingdom in the central hill region, subjugated the petty principalities that existed along the southern flanks of the Himalaya mountains, some with strips of territory in the Tarai. The rulers of Gorkha, who belonged to the Shah dynasty, then shifted their capital to Kathmandu, and laid the foundation of the present Kingdom of Nepal. The frontiers of the new kingdom were stabilized after a war with the British East India Company during 1814-16, when it was left with territories in the hill region between the Mechi river in the east, and the Mahakali river in the west, and a 25 to 35-mile wide strip of Tarai bordering on India in the south.

Political unification was achieved under the leadership of the king, but the kingdom was unable to enjoy political stability for long. Internecine conflict among members of the nobility, and even those of the royal family, was the main reason for the political crises that affected Nepal throughout the concluding years of the eighteenth century. Matters came to a head in early 1799, when the king, Rana Bahadur Shah, abdicated in favor of an infant son, Girban Yuddha Bikram Shah, and went into voluntary exile in India. He returned to Nepal five years later, and assumed the office of regent, but was assassinated in April 1806 by an illegitimate half brother. Bhimsen Thapa, a member of the nobility who had remained loyal to Rana Bahadur Shah, then became Prime Minister. For thirty-one years, from 1806 to 1837, he ruled Nepal with virtually dictatorial authority, retaining his position even after the king, Rajendra Bikram, had attained majority. For nearly nine years after 1837, Nepal was a victim of political instability at the hands of factions headed by the king himself, his two queens, and the Crown Prince, Surendra Bikram Shah, each with supporters among the nobility. In May 1845, the Prime Minister, Mathbar Singh Thapa, was killed by an unidentified assassin. A four-member government was then formed. One of the members of that government was Jung Bahadur Kanwar, Political conflict continued, however, culminating in a massacre of leading members of the important political families on September 14, 1846, and the flight or banishment of several others. On september 15, 1846, Jung Bahadur was appointed Prime Minister of Nepal. He remained Prime Minister for thirty-one years, with an interval of a few months during 1856-57, when his brother, Bam Bahadur, was Prime Minister. Jung Bahadur laid the foundation of a political system which, notwithstanding occasional inter-familial conflicts and political conspiracies, survived until 1951.

The rise of Jung Bahadur in Nepal's political life was in conformity with the political traditions of the kingdom. Throughout Nepal's post-1768 history, participation in the political process had become the exclusive prerogative of the Brahman and Chetri families who had followed King Prithvi Narayan Shah from Gorkha to Kathmandu. Jung Bahadur belonged to one of the less influential sections of these families, which had distinguished itself at the middle echelons of the administration and the army rather than in the matrices of central politics.

During the period from 1846 to 1856, Jung Bahadur functioned as Prime Minister in his individual capacity. The Rana family was, therefore, a mere de facto political elite which owed its status to the actual exercise of political power. Subsequently, it acquired that status through the exclusion by constitutional law of other political classes from political power, as well as through the formal institutionalization of its own privileges and obligations. In August 1856, a royal order was promulgated formally limiting succession to the Prime Ministership to members of the Rana family.[1] Other sections of the mobility from among whom Prime Ministers had traditionally been appointed, such as Thapas, Pandes, and Chautariyas, were thereafter excluded from the ranks of the political elite. This order closed the doors of political power to the non-Rana political classes and their role was relegated to oppositional politics aimed at the restoration of the pre-1846 power structure.[2] The Rana family, comprising "the Vizier, and his brothers and son,"[3] accordingly constituted the political elite that ruled Nepal until 1951.

In 1856, Jung Bahadur was designated as the Maharaja of Kaski and Lamjung, with special powers to impose or commute capital punishment, to appoint or dismiss government officials, to declare war or make peace with Tibet, China, and the British government or other foreign powers, to dispense justice and punishment to criminals, and to formulate new laws and repeal or modify old laws pertaining to the judicial and military departments of the government. A royal order promulgated in August 1856 in this connection bestowed authority on the Maharaja of Kaski and Lamjung to prevent the king himself "from trying to coerce the nobility, the peasantry or the army, of from disturbing the friendly relations with the queen of England and the Emperor of China."[4] The Maharaja of Kaski and Lamjung thus exercised authority all over the Kingdom of Nepal.

The Rana family constituted a political elite whose power was based on the control of the administration and the army, and subjugation of the Crown. It was not a ruling class in itself, because its power was not based on property ownership and inheritance.[5] Nor did Rana authority depend, like that of the Shah rulers, on the rights of conquest. Unlike the Shah rulers, therefore, the Ranas faced the problem of legitimation of their

authority by explaining administrative measures in a language which people could understand and interpret in terms of traditional values and orientations. For instance, Jung Bahadur justified his decision to restore Birta lands to the victims of the 1806 confiscation by declaring:

> The Birta and Guthi lands confiscated in 1806 have been assigned to the army. If now they are taken away from the army, and restored to the original owners, the army will cease to exist. If the army does not exist, the religion of the Hindus may not be safe. Arrangements should therefore be made in such a way that the confiscated Birta and Guthi lands are restored, while also maintaining the army, so as to safeguard the religion of the Hindus.[6]

This traditional pattern of legitimation was, at times, supplemented by a more rational approach. For instance, when impressing labor services for transportation of food supplies to the front during the 1855-56 Nepal-Tibet war, the Rana government declared:

> You know that preparations are being made for war against Tibet this year. For this war, His Majesty has spent funds from the treasury, while the troops who have been deputed to the front are risking their lives. Both His Majesty and you will be harmed if food is not supplied to these troops. It is therefore your duty to provide assistance in doing so.[7]

Status of the Rana Family

We have mentioned above that Jung Bahadur belonged to one of the less prominent sections of the nobility that had followed King Prithvi Narayan shah from Gorkha to Kathmandu. The family originally bore the clan name of Kanwar, a Chetri caste. Before Jung Bahadur became Prime Minister, it had no claim to a caste-status superior to that of the other sections of the traditional Gorkhali nobility. In May 1849, however, a royal order was issued, officially recognizing the Kanwars, or Kunwars, as they had preferred to call themselves, as the descendants of a Rajput family of Chittor in India, and conferring on them the title of Rana.[8] The Rana family thus attained a higher social status than the other sections of the nobility.

Legislation was subsequently enacted to confer a special status and specific obligations on the Rana Prime Minister and other members of the Rana family. It prescribed that any attempt to kill the Rana Prime Minister or overthrow the rule of the Rana family should be regarded as an act of treason.[9] It thus gave the Rana family the status and dignity of a royal house. The Rana Prime Minister and other members of the Rana family were prohibited "to accept tax-free land grants, except on forest lands, in the old territories of the kingdom. However, they may accept Birta grants in newly-acquired territories.[10] They shall not accept any contracts for the collection of revenue, or be a partner in such contracts, or provide surety for persons who take up such contracts.[11] This law ensured a special status for the Rana family vis-a-vis other sections of the traditional nobility.

The Growth of Civil Administration

The political and administrative organization of the pre-Rana system was feudalistic-militaristic in character. Political authority and absolute rights of landownership were vested in the king, but political and administrative functions were delegated to local administrators, revenue farmers, land assignees, and village functionaries. As such, it was these feudal lords, rather than the central government, who collected taxes. All that was left to the centre was, therefore, "What they choose, or think proper, to hand over to it."[12] This system led to a weakening of the political and economic authority of the central government. The Rana rulers adopted the only alternative that could check the process of this weakening. In the words of Hicks:[13]

> Against this erosion of his power (of his economic and therefore of his political power) a strong and determined ruler will naturally struggle. But what is the alternative? There is only one alternative: he must create a civil administration, a bureaucracy or civil service.

Rana rule marked the transition from the semi-feudalistic Gorkhali empire to a centralized agrarian bureaucracy. It succeeded in setting up a civil administration which replaced the delegated authority of local administrators and revenue farmers, thereby fostering the growth of a centralized agrarian bureaucrary. For the first time, distinct and separate organs of administration, devoted specifically to fulfilling various administrative and governmental functions,[14] emerged in Nepal.

The most necessary function of the newly-created civil administration was the collection of revenue.[15] During the early 1860s, therefore, a number of reforms were introduced in revenue administration in the Tarai districts. General administration and revenue collection functions were reorganized under separate district-level offices. A system of revenue collection through salaried functionaries of the government, rather than by contractors or revenue-farmers, was introduced.

The new district administrators were civil servants, not traders and financiers. They were given military ranks and subjected to military discipline.[16] Most of them belonged to Kathmandu or the hill districts; hence their property could only be impounded or confiscated, if necessary. Regulations were promulgated prohibiting them from acquiring lands or undertaking contracts in the areas where they were assigned.[17] They were directed "not to engage themselves in even a single dam of trade, beyond purchasing articles of daily assumption or as ordered by us."[18] Any official guilty of bribery or corruption was liable to be "dismissed from service, put in irons and brought to Kathmandu in a cage."[19] This was, indeed, a far cry from the early years of the nineteenth century, when Kathmandu had no alternative but to issue plaintive warnings to erring revenue contractors that "sin will accure if unauthorized taxes are collected."[20]

One basic condition for the success of efforts to create a civil administration is that "servants should be employed to keep a watch, or check, on other servants."[21] The Rana rulers appears to have taken note of this need quite early in their career. Although an office for the scrutiny of government accounts is said to have existed ever since the establishment of Gorkhali rule in Kathmandu,[22] it was reorganized in 1848 as a quasi-judicial body under General Badrinar Singh, a brother of Prime Minister Jung Bahadur, to audit accounts of government income and expenditure and dispose of cases of irregularities and corruption. With two officers and 168 employees of subordinate ranks, and a salary bill of approximately Rs 2,000 every month, excluding the emoluments of the general, it was possibly the largest administrative organ of the central government at that time.[23] Detailed regulations were incorporated into the new legal code for the maintenance of accounts of government revenue and expenditure, as well as for audit.[24] In 1870 Prime Minister Jung Bahadur also formed a high-powered anti-corruption department, which was abolished by his successor, Prime Minister Ranoddip Singh, eight years later.[25]

The formation of a central office in Kathmandu to maintain a record of government employees of all ranks, as well as of their postings, transfers and promotions[26] was another important step towards the evolution of a civil administration. This arrangement made it possible for the leave and other conditions

of service of even district-level employees to be controlled directly from Kathmandu.[27]

These internal political changes almost coincided with far-reaching changes in the external political situation. Nepal's defeat in the Nepal-British war of 1814-16 had created a crisis of national identity and objectives. Efforts to enlist assistance from China to avenge this defeat proved consistently unsuccessful. Indeed, China itself had been badly humiliated by the opium wars and weakened by internal rebellions and so was hardly in a position to help Nepal, even if it had so wanted. Kathmandu realized that China was neither able nor willing to help it against the British. The extent of China's impotence became clear during the 1855-56 Nepal-Tibet war, which it was able neither to prevent nor to influence in Tibet's favor, in contrast to its role during the 1788-89 Nepal-Tibet war. These circumstances necessitated a basic change in Nepal's foreign policy. Nepal now veered away from China and tilted towards the British. Prime Minister Jang Bahadur paid a visit to England in 1854, and personally led an army to India to help the British crush the 1857 mutiny in India.

The British success in suppressing the 1857 mutiny made it an unchallenged power in the region. It also changed the entire basis of British rule. After power was taken over by the British Crown from the East India Company, "India was no longer ruled by a gang of passionate adventurers, frantic to enrich themselves."[28] As Barrington Moore has pointed out:[29]

> In the middle of the eighteenth century the British were still organized for commerce and plunder in the Honorable East India Company and controlled no more than a small fraction of India territory. Hy the middle of the nineteenth century they had become in effect the rulers of India, organized in a bureaucracy proud of its tradition of justice and fair dealing.

Moreover, "generally speaking, the internal political boundaries of India became fixed. This removed the princes' fear of expropriation, and identified their interests with those of the British." Neither Nepal nor the British now had aggressive designs on the territories of each other, with the result that there was no basic conflict in their interests, and hence no rationale in the policy of "peace without cordiality"[30] that had characterized the period after the 1814-16 war.

Cordial relations with the British brought two important benefits to Nepal. One was the accretion of territory in the far-western Tarai. Under the 1816 treaty, Nepal had surrendered

to the East India Company the whole of the low lands between the rivers Kali and Rapti. These territories were restored to Nepal in November 1860 "in recognition of the eminent services rendered to the British government by the State of Nepal" during the 1857 mutiny.[31] Nepal thereby acquired approximately 2850 square miles of territory in the present far-western districts of Banke, Bardiya, Kailali, and Kanchanpur. Jung Bahadur's policy of friendship towards the British thus helped to recoup a small part of the territorial losses which Nepal had sustained as a result of the 1814-16 war. The newly-acquired territories contained valuable forests and extensive tracts of cultivable lands.[32]

Tranquillity in the southern border areas was another benefit of friendly relations with the British. It enabled the government of Nepal to pursue effectively its policies of reorganizing the district administration as well as of speeding up land reclamation and administration in the Tarai without any fear of external aggression. In 1851, local authorities in far-western Nepal were instructed:[33]

> If Chinese and English troops violate the borders and kill or loot our people, take appropriate steps to defend our territories. Refer the matter to us for instructions if there is time and act according to such instructions. If not, take appropriate steps to defend our territories and repulse the enemy.

However, regulations promulgated for the same region in 1861 fully reflect the changed situation. These regulations directed local authorities to report to Kathmandu in the event of external aggression,[34] thereby implying that the government of Nepal did not apprehend such an eventuality. Similar regulations were promulgated for other parts of the Tarai region as well.[35] In addition, a treaty of extradition signed between Nepal and the British government in 1855, facilitated the task of maintaining law and order in the Tarai regions. The treaty required each government to extradite criminals guilty of "murder, attempt to murder, rape, maiming, thugge, dacoity, highway robbery, poisoning, burglary and arson" who escaped into its territories.[36] Strict instructions were sent to local administrators to comply faithfully with the prescribed extradition procedure. Officials from British India were forbidden to intrude into Nepali territory in pursuit of criminals, and Nepali officials too were directed not to intrude into British Indian territory for such purposes.[37] District officials were warned that their extradition could be sought under this treaty if they embezzled funds and escaped to India.[38]

The promulgation, in early 1854, of a legal code for the first time in the history of Nepal was one of the outstanding achievements of Rana rule. The objective of the code was "to ensure that uniform punishment is awarded to all subjects and creatures, high or low, according to (the nature of) their offense, and (the status of) their caste." For the most part, the code retained customary practices relating to land tenure, as well as traditional customs and usages of different local or ethnic communities in the country. The essence of this code was to allow an autonomous status to the customs and usages of each community within the framework of the Rana legal and administrative system. In other words, the objective was "to regulate legal activities in various spheres, thus regulating the entire systems of social control these activities implied."[39] At the same time, it seems to have made an attempt to introduce reforms in a few areas such as slavery, bondage, and the custom of Sati.

From the viewpoint of the present study, two features of the 1854 legal code merit special attention: its constitutional character, and its provisions for a civil administration system which could exercise a certain degree of autonomy vis-a-vis the ruling elite. The code laid the foundation of a constitutional system of government in Nepal by prescribing that "everybody, from (members of the royal family) to a ryot, and from the Prime Minister to a clerk, shall comply with the provisions of this legal code."[40]

As mentioned above, the 1854 legal code contained several provisions which conferred definite powers and authority on both executive and judicial officers in the regular exercise of their official functions. These provisions debarred even the king or the Prime Minister from encroaching upon the powers and authority thus conferred on executive and judicial officers. For instance, government employees were forbidden to convert Birta lands into Jagir even on the orders of the king or the Prime Minister. The code prescribed that they would not be held guilty if they disobeyed such orders, but that obedience would be regarded as an act of guilt.[41] Similarly:[42]

> Government officers shall dispense justice according to the law. They shall not obey any order of the king the Prime Minister or the government to dispose of cases contrary to the provisions of the law. They shall not be punished on the ground that they have not complied with such orders. In case the Prime Minister, or any general, colonel, etc. orders the release of any judicial detainee, the facts shall be represented to

> him. If the order is repeated even then, it shall be ignored. ... Any officer who cannot detain a person about whom such an order is received shall be punished with a fine.[43]

Moreover, the 1854 legal code regulated administrative procedures and conferred certain rights on the citizen vis-a-vis the administration. For the first time in the history of Nepal, regular procedures were defined for different branches of the administration, thereby minimizing the scope for individual discretion. Government officials were required to specify the law and its particular section under which they made their decisions and judgments.[44] A definite procedure was laid down also for filing complaints against government officials and functionaries.[45] Anybody could now claim that the judgment pronounced on his case was at variance with the provisions of the code.[46] The promulgation of the code also expedited administrative procedures, for no reference to the government was permitted in matters covered by it:[47]

> No government officer need obtain the sanction of the government in matters which have been provided for in the law while disposing of cases. In case he seeks sanction in such matters, he shall be punished with a fine.

Nevertheless, neither the constitutional aspects of the 1854 legal code nor the autonomy that it sought to confer on the administration appears to have had any significant impact on Nepal's political system and administration. The preamble, which had sought to circumscribe the authority of the king and the Prime Minister, was subsequently repealed. Provisions which had given the legal code the status of constitutional law, as well as those which sought to confer on the civil and judicial administration a measure of autonomy vis-a-vis the political authority, shared a similar fate. The role of the legal code was thereafter limited to the fields of personal and administrative law. Legislation alone could not circumscribe the reality of the Rana Prime Minister's absolute authority. There were no constitutional safeguards to ensure that he actually complied with the spirit of the restrictive provisions of the legal code.

Footnotes

1. Satish Kumar, Rana Polity in Nepal (Bombay: Asia Publishing House, 1967) , p. 64.

2. Bhuwan Lal Joshi and Leo E. Rose, Democratic Innovations in Nepal (Berkeley and Los Angeles: University of California Press, 1966), p. 41.

3. The phrase "the Vizier, and his brothers and sons" was apparently first used in the "Raj Kaj Ko Ain" (State affairs Act). Information regarding the date when this law was first promulgated is not available, but its contents show that it was promulgated by Prime Minister Jang Bahadur. The earliest reference to this law available to the author is contained in "Birts Land Grant to Prime Minister Ranoddip Singh" Ashadh Sudi 1, 1940 (June 1883) (Regmi Research Collections, Vol, 32, p. 74). The Raj Kaj Ko Ain was amended by Prime Ministers Bir Shamshere in 1888, Chandra Shamsher in 1906 and 1909, and Juddha Shamsher in 1937. The consolidated text of the law was obtained from the Ministry of Law and Justice. It was repealed in 1963 by: Ministry of Law and Justice, "Raj Kaj (Aparadh ra Sajaya) Ain." [Treason (Crime and Punishment) Act)]. Nepal Gazette, Vol. 12, No. 8 (B) (Extraordinary), Ashadh 15, 2019 (June 29, 1962), Section 11, p. 6.

4. For an abstract translation of this royal order, see Satish Kumar, op. cit., pp. 159-60.

5. T.B. Bottomers, Elites and Society (Middlesex: Penguin Books, 1971), p. 44.

6. Mahesh C. Regmi, Land Tenure and Taxation in Nepal (Berkeley: Institute of International Studies, University of California, 1965). Vol. II, pp. 158-59.

7. "Imposition of Rice-levy in Kuti-Mahabharat Region." Baisakh Sudi 1, 1921 (April 1864). Regmi Research Collections, Vol, 30, pp. 51-56.

8. Satish Kumar, op. cit., p. 158.

9. "Raj Kaj Ko Ain" (State-affaires Act), op. cit., Section 21.

10. Ibid, Section 3.

11. Ibid, Section 4. This section was repealed on Shrawan 28, 1994 (August 13, 1937).

12. John Hicks, A Theory of Economic History (London: Oxford University Press, 1969), p. 18.

13. Loc. cit.

14. S.N. Eisenstadt, The Political System of Empires (New York: Free Press, 1963), pp. 21 and 274.

15. Hicks, op. cit., p. 19.

16. Cf. "Appointment of Colonel Ripubhanjan Pande Chhetri to discharge Revenue-collection and Judicial Functions in Morang District," Marga Badi 8, 1918 (November 1861). Regmi Research Collections, Vol. 10, pp. 189-91.

17. Cf. "Audit Regulations for Eastern Tarai Districts," Marga Badi 7, 1918 (November, 1861). Section 24. Ibid, p. 245.

18. "Regulations for Eastern Tarai Districts," Marga Badi 6, 1918 (November 1861). Section 39. Ibid, p. 28.

19. "Survey Regulations for Eastern Tarai Districts," Marga Badi 6, 1918 (November 1861). Section 21. Ibid, p. 163.

20. Mahesh C. Regmi, A Study in Nepali Economic History, 1768-1846. (New Delhi: Manjusri Publishing House, 1971), p. 138.

21. Hicks, op. cit., p. 19.

22. Satish Kumar, op. cit., p. 102.

23. "Appointment of General Badrinarsing Kunwar as Chief of Kumarichok." Marga Sudi 4, 1905 (November 1848). Regmi Research Collections, Vol. 33, pp, 79-82.

24. His Majesty's Government, "Rairakamke" (On Revenue Collection). Shri 5 Surendra Bikram Shah Devka Palama Baneko Muluki Ain [(Kathmandu: Ministry of Law and Justice, 2022 (1965)]. Section 9, p. 55.

25. Satish Kumar, op. cit., p. 104; Regmi Research Series, Year 7, No. 2, February 1, 1975. pp. 32-33.

26. Satish Kumar, op. cit., p. 103; Regmi Research Series, Year 6, Vol. 8, p. 150.

27. Cf. "Order regarding Appointments in Saptari Kathmahal Office." Poush Badi 11, 1942 (December 1885). Regmi Research Collections, Vol. 54, pp. 181-188.

28. John Strachey, "The End of Empire." Imprint, Vol. 1, No. 1, April 1961, p. 114.

29. Barrington Moore, Social Origins of Dictatorship and Democracy (Middlesex: Penguin Books, 1967), p. 341.

30. Ramakant, Indo-Nepalese Relations, 1816 to 1877. (New Delhi: S. Chand, 1968), p. 78.

31. For the full text of the treaty, see Ramakant, op. cit., pp. 375-76.

32. "Revenue and Expenditure in the Naya-Muluk Region, 1917 to 1922," Regmi Research Collections, Vol. 37, pp. 42-46, and 55-56.

33. "Regulations for Territories under the Doti Administrative Headquarters Office," Kartik Sudi 8, 1908 (November 1851). Section 24. Regmi Research Collections, Vol. 49, pp. 98-99.

34. "Regulations for Naya Muluk Region," Marga Badi 6, 1918 (November 1861). Section 17. Regmi Research Collections, Vol. 47, p. 446.

35. "Regulations for Eastern Tarai Districts," Marga Badi 6, 1918 (November 1861), op. cit., Section 12, pp. 10-11.

36. Ramakant, op. cit., pp. 373-74, and p. 377.

37. "Regulations for Eastern Tarai Districts," Marga Badi 6, 1918 (November 1861), op. cit., Sections 2-11, pp. 4-9; "Regulations for Naya Muluk Region," Marga Badi 6, 1918 (November 1861), op. cit., Sections 2-8, pp. 440-43.

38. Cf. "Appointment of Colonel Dilliman Singh Basnyat Chhetri as Chief of Bhamarpur-Chhatauna Kathmahal Office," Poush Badi 9, 1942 (December 1885). Regmi Research Collections, Vol. 54, pp. 162-70.

39. Eisenstadt, op. cit., p. 138.

40. Shri 5 Surendra Bikram Shah Devka Palama Baneko Muluki Ain (Legal Code Enacted during the Reign of King Surendra). op. cit., Preamble, p. 2.

41. "Jagga Jamin Goswara Ko" (On Miscellaneous Land Matters). Government of Nepal, Ain (Legal Code), Kathmandu: Manoranjan Press, 1927 (1870 A.D.). Part I, Section 19, pp. 16-17.

42. Shri 5 Surendra Bikram Shah Devka Palama Baneko Muluki Ain (Legal Code Enacted during the Reign of King Surendra). op. cit., p. 218.

43. Ibid, p. 218.

44. Ibid, p. 173.

45. Ibid, p. 223.

46. Ibid, p. 171 and p. 220.

47. Ibid, p. 171.