

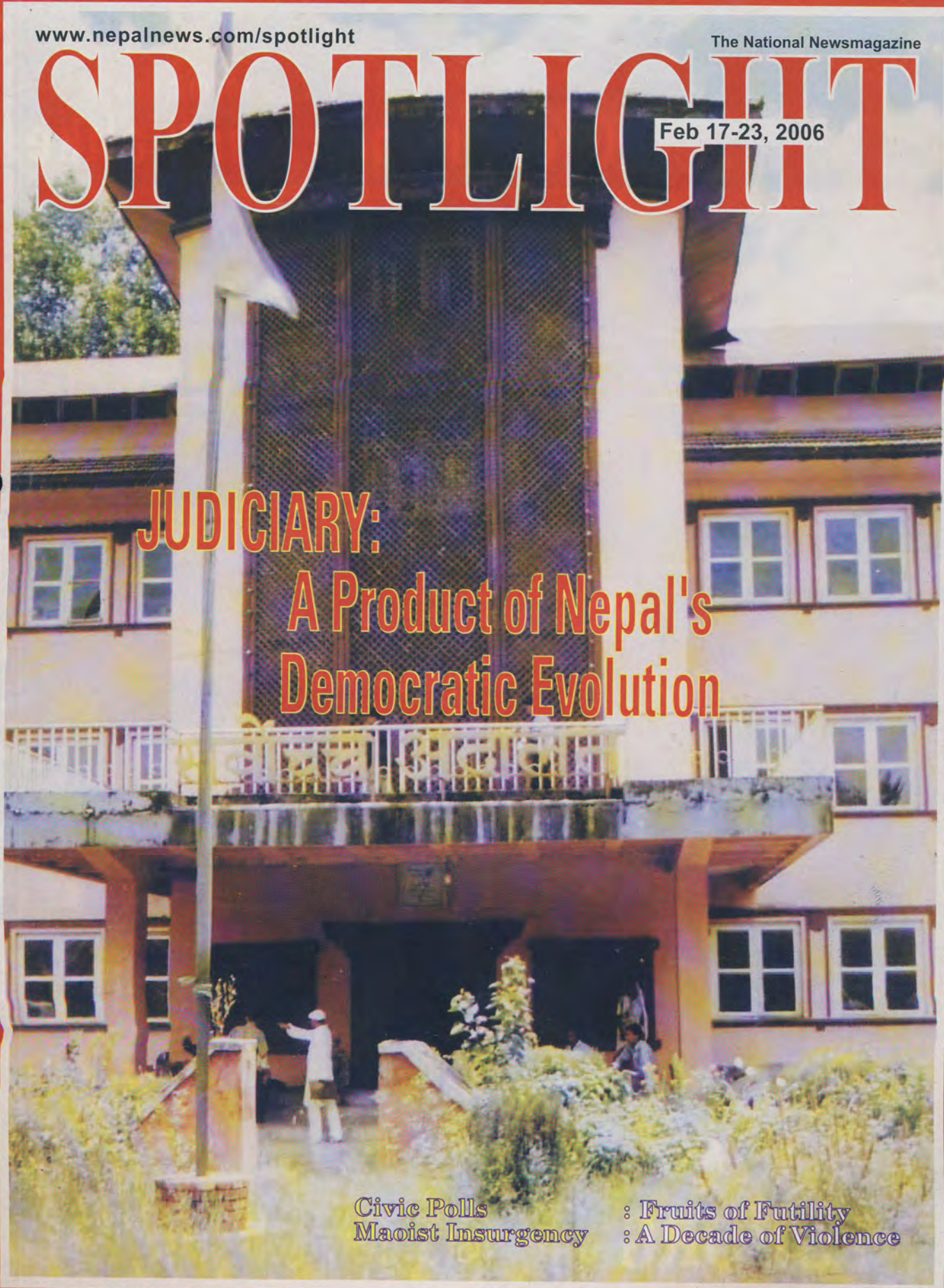
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The National Newsmagazine

SPOTLIGHT

Feb 17-23, 2006

JUDICIARY: A Product of Nepal's Democratic Evolution

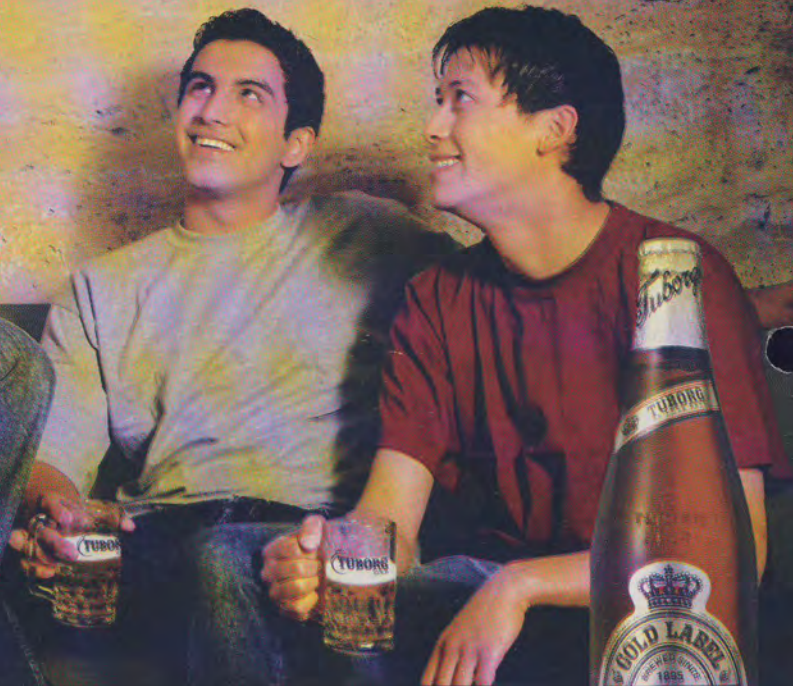
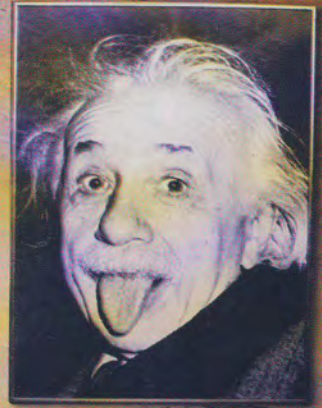


Civic Polls : Fruits of Futility
Maoist Insurgency : A Decade of Violence

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CONTENTS

	Page
LETTERS	3
NEWS NOTES	4
BRIEFS	6
QUOTE UNQUOTE/TRANSITION	7
OPINION : Dr. A.B. Thapa	8
SAFMA: Media Come Together	11
SPORTS: Towards Professionalism	18
WETLAND: Subas Dhakal	19
REVIEW: Status of Competition	20
ARTICLE: Shankar Man Singh	21
VIEWPOINT: Bikendra Thapa	22
TOURISM: Grim Spring	23
PROFILE : Kabita Ale	24



COVERSTORY: A Product Of Nepal's Democratic Evolution

The recent verdict by Supreme Court shows that Nepal's judiciary is independent and capable to work as guarantor of people's rights.

Page 12



Maoist Insurgency: A Decade of Violence

The Kathmandu Post

A decade after the beginning of Maoist insurgency, Nepal is in a mess both politically and economically

Page 10



CIVIC POLLS: Fruits of Futility

Rajdhani

The February 8 municipal polls could not deliver the desired fruits

Page 16

SPOTLIGHT

THE WEEKLY NATIONAL NEWSMAGAZINE

Vol. 25, No 24, February 17, 2006
Fagun 5, 2062

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Cover Design : Digi-Tech Scanning & Pre-Press Pvt. Ltd.
P.O. Box : 1655, Jwagal, Kupondole,
Lalitpur, Nepal
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Distribution : R.B. News Paper Traders
New Road, Kathmandu, Nepal
Ph : 4232784, 2020247, 4244679
E-mail : rbnewspaper@hotmail.com

Printers : Printers World P. Ltd.
Maitidevi, Kathmandu
Ph : 4423904, 4426520
E-mail : printerworld@wlink.com.np

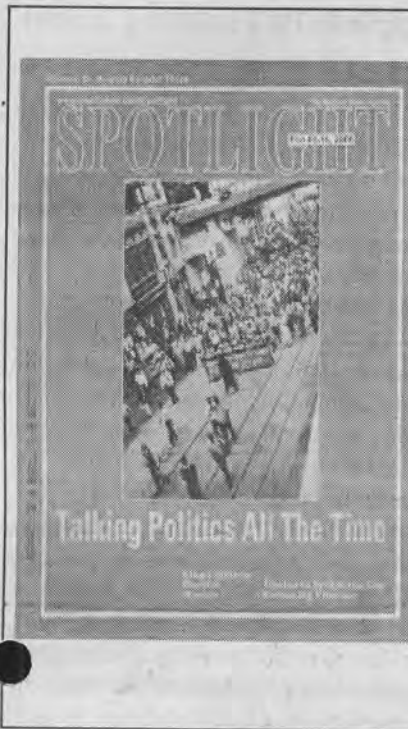
C.D.O.Regd. No
151/039-40
Postal Regd. No
42/61/62
U.S. Library of Congress
Catalogue No. 91-905060

The recently concluded municipal polls in Nepal has generated mixed reaction both in and out of the country. Even here, in the United States, the Nepali community and Nepal's American friends too have expressed diverse opinions. In an atmosphere where the candidates were fearing for their lives and the voters too were feeling quite insecure, the percentage of the polling cannot be said to be very disappointing. For people like us who long for lasting peace in Nepal and have been away from the country for quite a long time, the polls have come and gone as a silver lining in the dark clouds enveloping the troubled country. Boycott of the elections by the agitating seven parties have clearly exposed their true character. Firstly, it is against the democratic behavior and secondly, they knew they would fare very badly in elections not conducted by themselves. The boycott by the Maoists, the Maoists should have known, will further jeopardize their chances of joining the mainstream of Nepali politics. Despite the Maoist threats of dire consequences for participating in polls, the disturbances during the polls were minimal. This must serve as a good signal for the general polls which should be taken in less than two years. The uncalled for criticism of the polls by some representatives of friendly governments based in Kathmandu have not been in good taste and in direct violation of the diplomatic norms. HMG of Nepal should have taken proper action against them. But the nominated government, not enjoying the confidence and support of the people, could not pluck the courage of rising to the occasion.

The municipal polls should serve as an eye opener for all those who love Nepal and are Nepal's well wishers. Since peace is indispensable for a successful general election, all the characters in Nepal's political drama must give serious consideration on how to achieve and sustain it. Because of her size and might and because of her unfounded obsession of security threat, India's policy toward Nepal has failed to win the hearts of the Nepali people. They have only generated mistrusts and misgivings. Nepal's vulnerable geography, on the other hand, has further aggravated the situation by making Nepal unduly suspicious of India's motives. Both have failed or ignored each others' sensitivities and taken recourse to useless rhetorics. Now is the most crucial time for both to acknowledge their past mistakes and work for sincerely winning each other's trust and confidence. Since India cannot shirk her ultimate responsibility of maintaining peace in the region for which Nepal's unstinted friendship and cooperation is indispensable for her. Nepal, on the other hand, cannot overlook the reality that her peace and economic development wholly depend on India's friendship and good will.

King Gyanendra is wise and experienced. The gamble he has taken cannot afford to fail and has to bear productive fruits – which is the general elections in the stipulated time. The trend of eroding his popularity must be arrested without losing any undue delay. He must not procrastinate in finding out the reasons for it. Monarchy is still a revered institution and in the context of our national politics, indispensable. What the Maoist supremo thinks about monarchy should not bother patriotic Nepalis. If he is a truly patriotic Nepali he must be able to ascertain what is good for the country and not get carried away by selfish motives and unattainable utopian dreams. The Maoists are not that naïve not to understand that their ambition to rule Nepal will never come true due to reasons they should know better. The discredited politicians have lost their sense of judgment being deprived of power for such a long time. Nepal's good friends, the most powerful influences in international politics, must leave towing the Indian line and must come out clean by stopping to play their double game, a game which can prove to be disastrous even in their own interests. Consequently, they must stop pressurizing King Gyanendra in support of the corrupt and anti-national politicians of Nepal. They must never lose sight of the fact that if King Gyanendra fails, only those elements who do not respect the laws and the rules of the land and may pose grave threat to humanity only, will succeed. King Gyanendra too must not remain complacent on the advice of persons whose visions are narrow and must look out for men with dynamism who can prove to be great assets by rendering advice which will contribute towards his lasting success.

Madhav Kumar Rimal
Madhav Kumar Rimal
Chief Editor & Publisher



Heart of All Problems

The cover story this issue attempts to analyze the situation of development process during the state of political confusion last couple of years "Talking Politics All Season" (SPOTLIGHT February 10). It is true that without the parliament and the elected representatives at the local bodies, the people's voices have been overshadowed. But, what is equally true is that politics is the heart of the nation and in a similar manner that body organs cannot function properly with a weak heart, all sectors of the nation will be affected in a state of political confusion. So, in my opinion, there is nothing wrong with the political leaders and all concerned in talking about politics all season in an attempt to make the 'heart' healthy before thinking about anything else.

Rekha Poudel
Swayambhu

Public Welfare Overshadowed

You have rightly pointed out that the voices and needs of the common people have been overshadowed by the mainstream politics since the past few years "Talking Politics All Season" (SPOTLIGHT February 10). As you have stated in the story, earlier when there was a parliament and elected representatives in the local bodies, they used to raise the development concerns on behalf of the people. Whether the agenda of building infrastructures at local level or atrocities to the people from some sector, the MPs used to raise voices in the parliament thereby attracting the government's and the public attention. But, after the dissolution of the House of Representatives and the end of term of local representatives, such problems of the people have been overshadowed. The political leaders have little time to think about it and they do not have a proper forum to put their points. Moreover, with the constitution not functioning properly and democracy derailed, the leaders of the political parties are more concerned at restoring a proper democracy than raising people's problems. Likewise, the local leaders who would delegate to the MPs, and ministers regarding the problems at their areas are no more in position. The local bodies were sometimes run by

government officials and by nominated figures without a popular base at other times. Interestingly, the media which is also equally responsible for raising the people's problems, too, was focused on the mainstream politics ignoring the 'voice of the voiceless'. This has pushed the country back by several years in terms of development. We hope the situation does not last long, and the development processes run smoothly irrespective of the political instability in the country.

Raghubar Thapa
Nepaltar

A Sheer Failure

The recently held municipal elections were a sheer failure "MUNICIPAL POLLS: Desperate Exercise" (SPOTLIGHT February 10). As you have written it was a desperate exercise on part of the government to prove its legitimacy. Had it been a success it would have benefited the common people as they would have been with their proper representatives who could raise their voices and the development processes stalled since many years would gain momentum. However, the way it was conducted with the major political parties not contesting for it and the government actively participating in choosing the candidates and supporting

their close ones, the election has little meaning. Although, the government figure states that 21 per cent of the voters participated in the polls, scanning a few booths in the capital for a few hours would suggest that the figure was highly inflated. Most of the election booths had scanty voters throughout the day. There is little doubt that most of the votes were cast prior to the elections or by the people deployed by the government. In that, the elected candidates do not represent the real representatives of the people. With no public support and intimidation and threat from the insurgents, how much they can deliver to the people remains to be seen.

Reena Shrestha
Jawalakhel

Informative Story

The information you provided about late Krishna Bahadur Amatya and Nepal's traditional system of foreign exchange and bullion market is very informative "LATE KRISHNA BAHADUR AMATYA: Pioneer Foreign Exchanger" (SPOTLIGHT February 10). It provided interesting information about how the foreign exchange system worked in Nepal a few decades back. You have also rightly pointed out that such historical places and historical people should be preserved and given due respect.

Tirtha Khadka
Chhetrapati

Rhetoric Proclamation

The King's proclamation aired from the state owned Radio and Television was only rhetoric, in my opinion, simply aimed at fooling the innocent people "KING'S PROCLAMATION: Stresses His Roadmap" (SPOTLIGHT February 10). While, he says that the country's situation has largely improved in terms of governance, law and order and democratization in the past one year, it is as clear as daylight that nothing of what he claims has happened. Instead, things have worsened. It is not quite wise to fool the people in twenty-first century. They are much conscious than the people a century ago who believed everything that the rulers said and obeyed them.

Kedar Pradhan
Patan

Two Security Personnel And A Civilian Killed In Panauti Attack

In an overnight attack (on February 6) by the Maoists at Panauti – located just 32 kilometers northeast of the capital valley – two security personnel and a civilian have been killed. News reports said the Maoists entered into private residences to attack the Panauti municipality building where 25 security personnel were posted. The building has been thoroughly damaged. In a separate incident, five security personnel and at least one Maoist were killed after the Maoists attacked security personnel in Gaighat of Udayapur district. Likewise, the same night the Maoists also attacked security posts in Hetauda. Security forces have claimed that they did not suffer any casualty in Hetauda even as they killed a commander of the Maoists. Furthermore, on Tuesday night, Maoists launched attack in Dhankuta – the eastern regional headquarters. The clash is said to have continued till midnight. Reports say the government offices have been damaged in the attack. *Compiled from reports.*

Smart Sanction In The Offing!

The international community is preparing to impose 'smart sanction' if the King does not immediately restore the democratic process. On the eve of municipal elections in Nepal, a meeting was organized in Copenhagen, Denmark on the issue of Nepal crisis. A senior Danish Foreign Ministry official informed that the move like 'smart sanction' was under discussion. Discussions are on to impose sanction on travel and assets of the King and his aides and to stop the participation of Royal Nepalese Army in peacekeeping missions, said Gert Meinecke, deputy chief of Asian department of Danish Ministry of Foreign Affairs. "Smart sanction will be imposed after all other options have failed," said Meinecke, who has already served as Charge d' Affaires in Kathmandu. *Kantipur daily reports.*

FNJ Dares Govt. To Pinpoint Media Run By Remote Control

Reacting to the allegations by Home Minister Kamal Thapa and State Minister

for Information Shrish Rana that a section of media were operated by remote control, president of Federation of Nepalese Journalists (FNJ) Bishnu Nishthuri has challenged the government to pinpoint such media. "I dare the government to point out such media so that we can also investigate and take action. Otherwise, the remarks by unconstitutional ministers have no meaning," Nishthuri said. Mahendra Bista, general secretary of FNJ, added that if there was any remote control operating the media, it is in the hands of Nepalese people. *Leading dailies report.*

India For Constitutional Monarchy

Indian Union Minister of Urban Development, Jaipal Reddy, said that India was for constitutional monarchy in Nepal. "We believe there must be constitutional monarchy in Nepal. That is given the history and choices in hand," Reddy told reporter in Hyderabad, hastening to add that "there cannot be any kind of medieval monarchy, though." Reddy said the King should act in such a way that the main political parties are invoked in the process, adding the Indian side was "not becoming loud on pushing the political process forward in Nepal, but using diplomatic channels." This is being done, he said, with a view to "continually pressurize Nepal's King to do the needful." *The Himalayan Times daily reports.*

Efforts On To Free Nepali Hostages In Kabul

Spokesperson of Foreign Ministry Shankar Bairagi has said that the Nepalese Embassy in Pakistan has been directed to initiate efforts to release two Nepalis kidnapped from the Afghanistan capital Kabul. He said the Nepali ambassador at Islamabad has urged the Afghan government to initiate efforts for their release. The two Nepalis have been identified as Chet Narayan Pun of Pokhara and Tham Singh Rana of Kathmandu. "So far no information has been received about the kidnapers and the motive behind their act," said Pushkar Man Singh Rajbhandari, Royal Nepalese Ambassador to Pakistan. *Leading dailies report.*

Schools In Tansen Closed Due To Fear

Even after two weeks have passed since the Maoists launched ferocious attack against it, the residents of ravaged city of Tansen – the headquarters of Palpa district – are yet to overcome the fear and terror. Testimony to this fear is the locked up schools of Tansen. Students of schools and colleges have still not been able to attend their classes, which has resulted in their closing. The Maoists attacked Tansen on January 31. According to teachers, the students are in mental trauma since the Maoists had exploded bombs nearby each house in the city. "Amid such environment of fear, how can they come for studies," said Min Bahadur KC, principal of Srinagar Prashanti Boarding School. In fact, children have not been able to venture out of their houses even. Bandhs and rumors of another attack has resulted in such situation. The government offices, whose buildings were ravaged during the attack, have started resuming their services. *Kantipur daily reports.*

Govt. Reacts Strongly Against Int'l Criticisms

The Ministry of Foreign Affairs, on Saturday, expressed "total objection" to some statements made by a "few countries" on the municipal elections in Nepal and has asked them to refrain from making any "insolent" comments on matters that fall "essentially within the domestic jurisdiction of a sovereign country." The Ministry stated, "The Government of Nepal finds the statements made by a few countries on the municipal elections as totally objectionable and asks them to refrain from making such insolent comments on matters that fall essentially within the domestic jurisdiction of a sovereign country. Demanding democracy and criticizing the polls aimed at restoring democracy is nothing more than a paradox in itself." It adds that the government finds it incomprehensible why some countries have gone to the extent of deploring the municipal elections instead of appreciating the sincere efforts made to put derailed democracy back on track after a gap of seven years. The government strongly

calls for the "avoidance of double standards" by those who maintain it is dealing with such critical issues as democracy and terrorism, it said. Stating that the government "firmly believes" that municipal elections were a clear popular victory against terror that has derailed democracy for years, the statement said the elections were held against the backdrop of the killing of some candidates and persistent threats to kill more, physical obstructions restricting the movement of candidates and voters. The "successful holding of elections without any incident of rigging, booth capturing and manipulation" during the polls underline the sanctity of the elections, the statement said, adding, "The people have indomitably thwarted all attempts aimed at constraining the exercise of their fundamental democratic right." The statement said elections alone can provide constitutional legitimacy to power. The government would be "grateful to be enlightened if there is a substitute for the elections" in a democracy, the statement said. "The political parties were not debarred from participating in the municipal polls. In fact they were repeatedly asked to participate in the polls. By putting aside their faith in democracy, they themselves decided to boycott the polls at any cost," it said. *The Himalayan Times daily reports.*

17 Security Personnel And 4 Maoists Killed In Nawalparasi

Following the ambush explosion by the Maoists and subsequent clash in Sunwal-Butwal section of Mahendra Highway on Thursday (February 9) night, 17 security personnel and four Maoists have been killed. Over 20 have been injured. Following the attack, the Maoists abducted 12 security personnel. The Maoists have claimed that they have seized a number of modern weapons. *Leading dailies report.*

Chinese Official's Visit Put Off By A Month

The visit by State Counselor Tang Jiaxuan of China has been put off by a month. He was scheduled to start his visit to Nepal next week. High-level diplomatic sources informed that the visit has been

rescheduled to March 16. The sources said the Chinese official needed to participate in the meeting of Chinese Congress leading to the postponement. The visit by the State Counselor has been seen with growing interest here in Nepal. He is visiting the country at the invitation of vice chairperson of Council of Ministers Kirti Nidhi Bista. *Nepal Samacharpatra daily reports.*

Saptakosi DPR Work Begins

Works have been initiated from Baraha region to prepare the Detailed Project Report (DPR) of the Saptakosi High Dam Multipurpose Project. Source at the Ministry of Water Resources informed that the works have begun with the Indian support and that they would be completed by 2006. The Indian government had set aside Rs 470 million for the purpose of preparing its DPR after Indian Prime Minister Dr. Manmohan Singh accorded high priority to the project last July. A joint task force including Arjun Prasad Shrestha, former director general of Department of Electricity Development, and A.K. Jain, of Indian Central Water Board, has started DPR works. The project aims to build 269 m high dam in Saptakosi river between Ahale VDC of Dhankuta and Nainanaini VDC of Udayapur. Source said that currently, soil test is being carried out there. *Nepal Samacharpatra daily reports.*

Bill Inspectors In The Offing

The government is preparing to recruit 1000 bill inspector with the sole purpose of monitoring and strictly enforcing the practice of 'exchange of proper bills and invoice.' "I will dispatch around 100 such bill inspectors who will monitor the markets and inquire about the exchange of bills. They will inquire with the buyers and if any trader is found not providing bills, he/she will be fined Rs 5000," informed Dr. Roop Jyoti, Minister of State for Finance. He said persons providing information leading up to discovery of (lack of practice of providing bills upon purchase) will also be rewarded handsomely. Addressing a press meet, Dr. Jyoti also informed that the government was planning to purchase bills from buyers in order to encourage the practice of demanding bills from sellers. The

government expects to increase revenue collection by up to 25 to 35 percent with these moves. *Compiled from reports.*

Bomb Exploded In Ratnapark

Suspected Maoists exploded a crude bomb in Ratnapark – a crowded city center in the heart of the capital. The bomb, which was planted in a garbage can, exploded at around three in the afternoon. Luckily, there were no casualties from the explosion. Likewise, a bomb also exploded in Bhaktapur municipality. *Leading dailies reports.* ■

Peace Rally Organized

At a time when larger population have resorted to chanting slogans, pelting stones, vandalizing private and public properties and throwing harsh criticisms to their opponents, thousands of women representing eighteen different social organizations took part in a peaceful rally abstaining from everything that would evoke violence.

The rally that started from Basantapur on February 3, went through different nooks and corners excepting the prohibited zones.

The participants of the rally were clad in blue attire, hair tied with blue ribbon and carried blue colored banners and placards, where slogans to end violence were written. No slogans were chanted during the rally and no political-type speech was given at the corner meeting before concluding the rally.

Women's campaign for peace organized the rally urging all concerned parties for dialogue and reconciliation for the restoration of peace in the country.

"The main objective of the rally is to send a message to the mass that for the establishment of peace we should not only end physical violence, but also 'violence of ideas' by starting a trend to respect others' ideas and feelings," said Istala Tamang, representing the organizers.

Of the eighteen participating organizations were Forum of South-Asian Indigenous Women, Tamang Ghedung Women, Human Rights Communication Foundation, Civil Voice, Looz Misa Poocha, White Rose, Women Awareness Society, Tharu Women Consciousness Center, among others. ■



SPOTLIGHT Family wishes to extend best wishes to Queen Komal on the auspicious occasion of her 56th birthday

PROTESTING THE INDEFINITE SUSPENSION OF PREPAID mobile services by the government, the staffs of Nepal Telecom (NT) have decided to launch agitation. Two different employees union of NT have agreed to launch the agitation. In the first phase of their agitation, the staffs would work with black bands in their arms. The government has suspended prepaid since January 19. The NT has distributed 250,000 prepaid lines. The suspension of the services are said to have causes losses to the tune of Rs 1.5 billion to NT.

THE MAOISTS HAVE MADE PUBLIC THREE MANAGERS of Surya Nepal company they had abducted over a week ago. Managers Sarvajeet Rana, Prabhakar Bikram Shah and Dambar Limbu had been abducted from Nitampur, Bara. They were shown to human rights activists, journalists and civil society representatives at Chhatiwani VDC of Chitawan. Shalikram Jamarkattel, president of pro-Maoist trade union, has said the three will not be freed till their 5-point demands are met. During the meeting, the abducted employees urged rights activists and all others to take initiatives to free them soon.

ON THE LAST DAY OF DECLARING STOCK OF businesspersons as per the government announcement through Finance Ordinance, only 150 businesspersons have declared their stock. As per the recently released ordinance, nine percent Value Added Tax (VAT) is being imposed on the stocks thus declared by February 12. Government has strictly ordered the businesspersons to declare the stock honestly and in time or face 'strong action.' Rana Bahadur Shrestha, acting director general of Inland Revenue Department (IRD) informed that about 150 businesspersons so far have declared their stocks worth Rs 35 million. "More are in the pipeline," he told The Himalayan Times daily. Despite government's target to collect Rs 8 billion from stock declaration, the total collection is yet to be confirmed. However, the businesspersons do not agree on the government's move. Surendra Bir Malakar, vice president of Nepal Chamber of Commerce (NCC) said that the government has failed to take the private sector into confidence to recover billions of rupees from stock declaration that has

created clumsy environment in the revenue front. He demanded for the 'time extension' to declare stock and maintain the same three percent VAT rate instead of present nine percent.

AS IT SUFFERS FROM ACUTE LOAD SHEDDING THANKS to lack of adequate power generation, the state-owned Nepal Electricity Authority (NEA) is preparing to invest on its own to build 30 MW strong Chameliyagad hydro power project. After it could not obtain foreign investors in the project, the NEA is going ahead on its own. The NEA had earlier requested South Korea and OPEC organization for the financial investment in the project. However, the recent board meeting of NEA decided to proceed with the project on its own. The estimated total cost of the project is \$ 75 million - including the construction of 31 km long Kailali-Attariya 132 kv transmission line. Excepting the transmission line cost, the per kilowatt cost of the project is \$ 2000. An official said that the project will also help in ridding the regional imbalance in power generation as it falls in under-developed far western region of the country.

A NETWORK OF HUMAN RIGHTS ORGANIZATIONS have blamed the security personnel of firing bullet without warning killing a worker of Unified Marxist Leninist (UML) in Dang on February 8. The Human Rights Treaty Monitoring Coordination Committee has stated that Umesh Thapa was killed by the bullet he received without any warning. Presenting the finding, Subodh Raj Pyakurel, president of INSEC, said that the incident was the result of the public order given by Home Minister Kamal Thapa a day earlier to use 'the extreme force' to prevent 'disruption of polls.' In the same incident, Krishna Giri, a worker of Nepali Congress (NC), too, sustained bullet injuries.

IN ORDER TO ENCOURAGE THE PRACTICE OF OBTAINING bills from the sellers, the government has decided to purchase such bills and refund one percent of the Value Added Tax (VAT) to consumers. The consumers who submit the bills as prescribed by the government will be entitled to such refund. Officials of the Finance Ministry say the new decision was made to make VAT and income tax effective. Thursday's cabinet meeting has approved the decision, which will come into force from February 13. Currently, 13 percent VAT is imposed; that is Rs 13,000 per every Rs 100,000. With the new decision, a consumer who presents the bill that he purchased goods worth Rs 100,000 by paying the VAT of Rs 13000, will be refunded Rs 1000 by the government. The decision aims to encourage the practice of exchange of bills and invoices.

BHUTANESE REFUGEES LED BY THEIR HUMAN RIGHTS leaders Tek Nath Rijal are preparing to stage 'Satyagraha' (civil disobedience) in New Delhi in order to draw the attention of international organizations including the United Nations to resolve the refugee crisis. Y.P. Dhungel, member of the Bhutanese Refugee Repatriation Committee, said that various representatives of Bhutanese political parties, organizations and human rights workers will participate in Satyagraha. ■

"I find it full of contradictions. On the one hand (he) has talked about forming parallel government while, on the other, there are talks about resolving the crisis through constituent assembly."

Dr. Tulsi Giri, vice chairperson of the Council of Ministers, responding to an interview by Maoist chairman Prachanda.

* * *

"If anybody raises the question of legitimacy that would only dishonor the people. Were the 22 percent voters not citizens?"

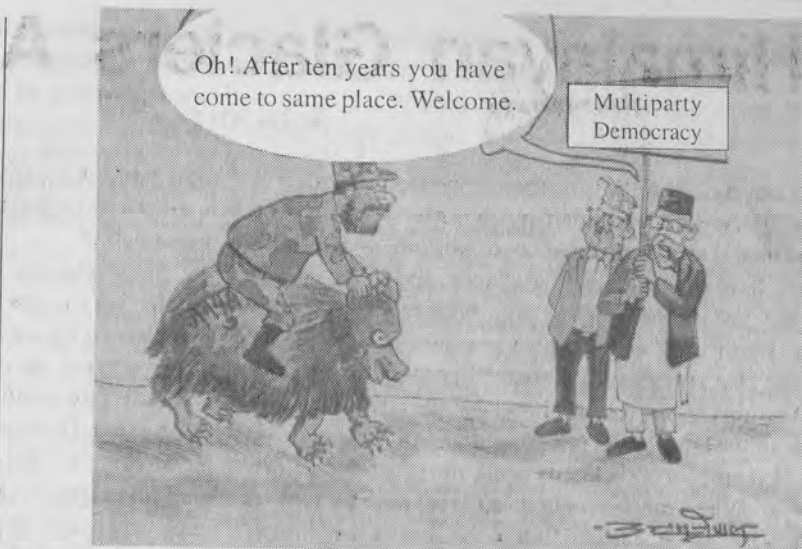
Keshab Raj Rajbhandari, Chief Election Commissioner (CEC), in response to the question about the legitimacy of the recent municipal elections, during a press conference.

* * *

"The same day a newspaper carried his interview (Prachanda), the same paper also had news reports that six persons were killed by the workers he leads. Now the Nepalese people are in a dilemma on what to accept – his interview or the actions in ground."

Kamal Thapa, Home Minister, talking to reporters at a press meet.

* * *



Rajdhani

Jaipal Reddy, Indian Union Minister of Urban Development, talking to reporters in Hyderabad, in The Himalayan Times.

* * *

"Whatever decision the people give, we are ready to accept."

Pushpa Kamal Dahal, alias Prachanda, the chairman of Maoists, in an interview with BBC.

* * *

"The flaws in Nepalese diplomacy are also responsible for the comments coming from the foreign powers about the elections (of the municipalities)."

Professor Khilendra Prasad Pande, foreign relations expert, in Jana Bhawana.

* * *

"We believe there must be constitutional monarchy in Nepal. That is given the history and choices in hand."

"I dare the government to point out such media so that we can also investigate and take action. Otherwise, the remarks by unconstitutional ministers have no meaning."

Bishnu Nishthuri, president of Federation of Nepalese Journalists (FNJ), reacting to charges made by government ministers that a section of media in Nepal are operated by 'remote control,' at a program in Kathmandu.

* * *

TRANSITION

ANNOUNCED: Poet **Bishwo Mohan Shrestha**, as the winner of the 'Basu Shashi Memorial Award' of this year, by 'Bashu Shashi Memorial Council.

Dr. Tirtha Prasad Mishra, as the winner of the 'Rudra Raj Award' of this year in History, by 'Rudra Raj Sahitya Sewa Samiti'.

APPOINTED: **Kumar Yatru**, as the executive editor of Rajdhani National Daily, by the daily.

ABDUCTED: Two Nepalese workers, by an unidentified group in Kabul, Afghanistan.

POSTPONED: The visit by State Counselor **Tang Jiaxuan** of China, by a month.

DISSOLVED: Royal Commission for Corruption Control (RCCC), by a verdict of the Supreme Court.

RELEASED: **Sher Bahadur Deuba**, former prime minister and president of Nepali Congress –Democratic (NC-D),

and **Prakash Man Singh**, former minister and leader of NC-D, from the custody of Royal Corruption Control Commission (RCCC), after the dissolution of RCCC by the Supreme Court.

ELECTED: **Rajaram Shrestha**, as mayor and **Bimala Rana**, as deputy mayor, of Kathmandu Metropolitan City.

Prem Lal Maharjan, as mayor, and **Keshab Khadka**, as deputy mayor, of Lalitpur sub-metropolitan. ■

Himalayan Glaciers And Nepal

By DR. AB THAPA

The last ice age, the Pleistocene, consisted of several periods of glaciations separated by interglacial periods of mild climates. During the past two million years there have been five major glacial advances and five glacial retreats, the last of these being our present period. It is said that Earth is now in a warm interglacial period. At present the ice covers only about 10 percent of the land surface. During the last ice age, however, ice covered nearly 30 percent of the land. At its peak about 18,000 years ago ice sheets a kilometer thick covered most of Northern Hemisphere. When the ice melted sea level rose by tens of meters, flooding large areas including the Bering land bridge that had served as a migration corridor for people moving into North America from Asia. During the present warm interglacial period these large ice sheets have disappeared and glaciers worldwide have generally shrunk.

Origin of Glaciers

Historical records on climate generally do not go back more than 2,000 years. Fortunately the past climates can be traced from many different sources of evidence. Tree rings, for example, can provide information on climate during the past 1,000 years; ice cores can cover the past 100,000 years; lake sediments furnish evidence stretching back as much as a million years; and marine sediments can yield data covering the past 10 million years. Scientists have used a combination of this evidence to determine that ice ages, or cold periods, when Earth's temperature is about 8°C colder than during the warm, so-called interglacial periods, occur at roughly 100,000-year intervals. Some scientists believe that cycles of changes in the distribution of sunlight due to long-term variations in Earth's orbit and the inclination of its spin axis to the Sun cause ice ages. These cycles are known as Milankovich cycles, named after the Serbian mathematician who first computed them. It is also a widely held belief that the changes in atmosphere, such as the decrease in carbon dioxide content that allows a faster rate of heat loss to outer space or an increase in atmospheric dust due to volcanic eruptions that prevents the warming effect of some of the sun's rays from reaching the earth account for the origin of the ice ages.

Annual Snow Line

Most glaciers have two parts, an accumulation area and an ablation or wastage area. In the accumulation area snowfall exceeds melting in each year. In the ablation area melting exceeds snowfall. The boundary between the two areas is called the annual snowline or sometimes the fern limit. In winter most glaciers are entirely snow-covered. In spring the snow cover begins to melt in the lower reaches, exposing the ice surface. As temperatures increase, the melting moves up the glacier. The snowline is the highest position the melting reaches during the year. Fern is old granular snow. The fern

limit may not exactly coincide with the annual snowline since in some years rapid melting leaves behind fern patches below the snowline.

Some glaciers exhibit features called ice streams and icefalls. Ice streams are valley glaciers that form tributaries to a common compound glacier that fills a valley. The tributary glaciers do not intermix but maintain their individual streams of ice, despite compression and extension as they move along side by side. The streams can easily be recognized as individual ice streams by the deposits of boulders, gravel, sand, and mud that separate them. Icefalls occur where a glacier flows over very steep terrain that accelerates the flow. The ice is stretched and fractures into large blocks and a maze of ice pinnacles. Icefalls are spectacular features that can extend over the entire width of the glacier and over a height of up to a kilometer

Glacier Movement

As glaciers move over bedrock they scrape and abrade its surface, producing fine-grained rock flour. Glaciers can also pluck away rocks up to boulder size and transport and deposit them along the margins of the glacier down in the valleys. The glaciers deposit these materials as till, a sediment consisting of mud, sand, gravel, and boulders. Much of this material is deposited in long mounds called moraines. Lateral moraines are formed on each side of a valley glacier where abraded sediment and plucked rocks are deposited. These moraines are often preserved when glaciers melt and can indicate previous glacier heights. Medial moraines separate tributary glaciers that flow into a compound valley glacier. Terminal or end moraines mark the farthest distance down a valley that a glacier has reached in its advance. Recessional moraines indicate to where glaciers advanced and remained stationary for some time in the past. Both terminal and recessional moraines can dam melt water streams, forming glacial lakes. Glaciers also deposit a blanket of till that forms a ground moraine on the surfaces over which the glacier flowed

Climatic Changes

Glaciers are very sensitive to climate change. Their size, life span, and history of growth and retreat all depend strongly on climate conditions. Since they are so sensitive to climatic changes they also serve as good indicators of such change. A glacier's accumulation and ablation, or gain and loss of mass, are primarily dependent on temperature and precipitation, but also on solar radiation, humidity, and wind speed. Location, orientation, and exposure of the glacier are also important, particularly for the smaller valley glaciers. The energy budget or balance of a glacier's surface reflects how much heat energy is received or lost from a glacier and whether evaporation or melting can occur. The energy budget explains in quantitative terms what is termed the microclimate of a glacier.

The large ice sheets can provide information about climate conditions over the past several hundred thousand years. Cores drilled deep down into the ice in Greenland and Antarctica allow the reconstruction of past climates since the analysis of successively deeper layers of ice yields information such as the atmospheric temperature at the time the ice was first deposited as snow. Dust layers from known volcanic eruptions provide reliable age determinations; ice that lies beneath a known dust layer is older, while dust that lies above is younger. Analysis of the ice itself and of the air bubbles trapped in the ice allows deductions about the composition of the atmosphere at the time when the ice was deposited.

Himalayan Glacier Study

About two decades ago the Royal Nepal Academy of Science and Technology (RONAST) had carried out extensive exercise to set up a Regional Center on snow and ice study in Nepal. The objective of the proposed CENTER was to develop cooperation among the countries of the Himalayan region for glaciological research in the mountain range of the Himalaya. The CENTER was expected

to promote sustainable economic and social development studies. As such, it would have consisted largely of application oriented research with both scientifically and socially valid objectives. RONAST, to take this idea a step further, even established relationship with Italian National Research Center (CNR) to carry out jointly Himalayan studies. A big research center equipped with modern facilities has already been set up near the base camp of the Mount Everest at Lobouche.

Snow and ice, representing both valuable resources and natural hazards are significant elements of the world hydrological systems, which occur subject to tremendous variations in space and time. Nowhere change is more significant than in the advancing and retreating tides of snow and ice. The RONAST was hoping that the proposed Regional Center on Snow and Ice would be engaged in scientific studies of the snow and ice balance of individual catchments and of regional groupings of catchments forming the headwaters of major Himalayan rivers.

The proposed regional center was also to promote sustainable economic and social development. As such, it would have consisted largely of applications oriented studies with both scientifically and socially valid objectives. Hydropower development has an enormous potential for the Himalayan region. Effective site analysis, as well as decisions on scale of capital installation, depend on determination of annual water supply and its seasonal variation. In addition, glacier-fed rivers are notorious for

their very high sediment load. This, of course, relate to the rate of reservoir sedimentation and rate of cavitation damage to turbines. Response to these problems can be made through dam, reservoir, and penstock intake design, which in turn will be influenced by detailed glacio-hydrological studies.

Glacier Lake Outburst Floods

At present glaciers are retreating in the Himalayan region, as a result, glaciers lakes are being formed. Such ephemeral lakes disrupt communication systems and various infrastructures like hydropower directly, or indirectly subjecting the mainstream to periodic catastrophic floods. Glacier lake outburst floods also produce peaks in sediment transfer.

On August 4th 1985 the nearly completed Namche hydropower plant was completely destroyed by the Dig Tsho glacier lake outburst flood(GLOF). The Dig Tsho glacier was on the terminus of the Langmoche Glacier. The GLOF damaged not only the entire Namche Hydropower station but also all the bridges, trails, cultivation fields, houses, livestock along its path to the confluence of the Dudh-Kosi and the Sun-Kosi rivers at a distance of 90 km from the Dig Tsho glacier.

In 1988 for the first time a joint team of Sino-Nepalese conducted the studies of the glaciers and glacier lakes in the Arun and the Sun-Kosi basins primarily in the Tibetan region of China. The Lanzhou Institute of Glaciology and Geocryology, took part in the study from the Chinese side, similarly the Water and Energy Commission took part

from the Nepalese side. The field investigation team used satellite imagery data to locate the lakes and to estimate their dimensions as well as their morphological characteristics. In Arun basin there are 737 glaciers in Tibet, whose total water storage is estimated to be 121 billion cu. m. It was found that there are 229 glacier lakes with a total storage volume of 1.23 billion cu. m out such glacier lakes 24 are potentially dangerous. Similarly there are 45 glacier lakes in the Sun-Kosi basin with a total storage volume of 388 million cu. m out of them 10 are potentially dangerous.

In 1990s Dr. Tomomi Yamada of Japan and Dr. B.P. Upadhyay, Professor of TU were involved in the study of glacier lakes within Nepal The study was conducted under the Water and Energy Commission. Their study covered Lower Barun, Chamlang Tsho, Naulekh, Sabai Tsho, Dudh Kund, Mojang, Tsho Rolpa, Duwo, Thulagi, Khyimjung and Kang Guru glacier lakes.

(Dr. Thapa writes on water resources)

MAOIST INSURGENCY

A Decade Of Violence

As Maoist insurgency enters eleventh year, the nation finds itself in a quagmire of violence and political turmoil

By SANJAYA DHAKAL

Ten years ago, Nepal was a struggling democracy. There was an elected parliament. Despite all the shortcomings and instability, the political leaders of Nepal were trying to govern the country based on people's mandate. The newly restored democracy was just six years old. Economic policies were beginning to bear fruit as the nation was enjoying the average of five to six percent growth. From grass-root level in VDCs to the parliament, elected representatives were firmly entrenched and actively engaged in debates to usher in rapid transformation of socio-economic conditions of the people.

Ten years later, Nepal is in a mess, to say the least. The Maoists' "people's war" has thoroughly disrupted the security and administration in large swathes of the country. Violence has become commonplace phenomenon. Politics is stormy. Elected representatives are nowhere to be seen. The local bodies have not seen elections in the last eight years (last week the current regime did hold a controversial elections for municipalities). Parliament has been unceremoniously dissolved. Constitutional forces are fighting with each other even as the Maoists continue to push forward their agenda. And the King has taken over the executive powers sidelining the political parties. The country is being increasingly isolated among the international community.

Above all, nearly 14,000 Nepalese have lost their lives. In the last one decade, the insurgency has taken a heavy toll not only in terms of human cost and suffering but also in terms of infrastructures destroyed.

Around 13,865 Nepalese have lost their lives thanks to the violent conflict during the period according to data compiled by Informal Sector Service Center (INSEC). Billions of rupees worth of infrastructures like bridges, hydropower projects, VDC buildings, government offices, telecom and electricity structures have been destroyed in senseless violence.

In recent days, the Maoist chairman Prachanda has given interviews to national and international media indicating that his organization may join the mainstream of



Attack in Nawalparasi: Senseless violence The Kathmandu Post

competitive plural politics if their demand for constituent assembly is met.

How credible and sincere his demands are remains to be seen. In an exclusive interview they gave to Kantipur daily, Prachanda and Dr. Baburam Bhattarai have indicated that they are "willing to engage in peace talks with the King's government if the King calls them for talks by announcing ceasefire." The two Maoist leaders also said they were "ready to accept the result of election of constituent assembly. Prachanda said that they would accept even if the people voted for active monarchy, constitutional monarchy or multi party democracy through constituent assembly."

The interview was published on the backdrop of eleventh anniversary of their "people's war." The year 2005 marked another milestone in the insurgency. This was the year when the political parties sulking after the royal steps of February 1, 2005 were compelled to engage in an embrace with the Maoists in the form of 12-point understanding.

For better or worse, the Maoists have indicated that they are willing to join the competitive political system – the same system which they helped to destabilize and disrupt through their violent tactics.

In another interview he gave last week to BBC, Prachanda tried to justify the violent movement his party has been waging. "Everyone knows when we were in the parliament, we put forward 40-point demands so that the problems of Nepalis would be solved in a peaceful way. But when the ruling classes were not ready to solve the problems of Nepalis peacefully,

and instead started victimizing our party workers and people who supported us in a brutal and illegitimate fashion, they compelled us and the Nepali people to take up arms," he said.

The government, on the other hand, does not seem willing to entertain the Maoist demand for constituent assembly yet. Vice chairperson of the Council of Ministers Dr. Tulsi Giri has ruled out talks with the "Maoist terrorists" unless the latter renounce violence.

Reacting to recent interview of Maoist chairman Prachanda, Dr. Giri said, "I find it full of contradictions. On the other hand (he) has talked about forming parallel government while, on the other, there are talks about resolving the crisis through constituent assembly," he said.

The government spokesperson and State Minister for Information Shrish Rana has said that the Maoists were still inflexible on constituent assembly and republic. "We must look in our constitution. Where is the place for constituent assembly in this constitution?" Rana asked.

Given the bitter differences in opinion, the violent conflict in the country appears far away from resolution, which is a very bad news for millions of peace-loving Nepalese.

SOUTH ASIA FREE MEDIA CONFERENCE

Bringing Media Together

Fifth SAFMA Conference brings prominent media persons from the region together

By KESHAB POUDEL in Hyderabad, India

Despite some political differences, there are many commonalities in the regions in terms of geography, history, culture and languages. But despite the commonalities existing among them, differences created through the political interest dominated the fifth South Asia Free Media Conference held in southern Indian city Hyderabad last week.

Participated by more than one hundred prominent media persons from five countries of South Asia, three-day debates mostly focused on India, Pakistan and Bangladesh regarding the media coverage in their respective countries against each other. The issues of Nepal and Sri Lanka appeared in the debate but their issues were ignored in the broader debates of three countries.

"India is our big neighbor and good neighbor. Instead of writing with factual and objective manner, Indian media are trying to project the small friendly country like Bangladesh as a den of terrorists citing fabricated and false sources. It is good to see India is improving its relations with Pakistan but Indian media are still biased towards other smaller neighbors," said Kabir Ahmad, senior journalist of Bangladesh. "Media in India need to be objective and impartial towards its neighbors like Bangladesh."

Moderated by Imtiaz Alam, general secretary of SAFMA and Vinod Sharma, senior Indian journalist and general secretary of SAFMA India chapter, the debates on National Languages Media and Peace in South Asia was lively.

"I agree that Indian media are ignoring neighbors' problems. We need to learn more about our neighbors' problems and

we are not doing enough," said Vinod Sharma, senior journalists with Hindustan Times.

Media in the region are influenced by various factors including state, corporate houses and other political considerations. These elements are threatening the independence and neutrality of media.

Announcing twelve points Hyderabad Declaration, the conference stresses the need to promote more interactions among the media persons of south Asia to understand each other.

"Recalling our resolve to rise above the national, ethnic, religious, linguistic and ideological divides while performing our duties as reporters, opinion makers

Media in the region are influenced by various factors including state, corporate houses and other political considerations. These elements are threatening the independence and neutrality of media. Announcing twelve points Hyderabad Declaration, the conference stresses the need to promote more interactions among the media persons of south Asia to understand each other.

and producers without indulging in acrimony, falsification, demonization, jingoism and embedding with respective establishments or powers that be. Realizing our responsibility as professional journalists to promote harmony among our peoples, cooperation among countries and rise above our respective divides while setting the high standards of objectivity, neutrality and independent," states the declaration.

This declaration is directed to the objections raised by media persons from

Bangladesh during the meeting. Media persons from Bangladesh objected towards the unprofessional standard of Indian media projecting Bangladesh as a haven of terrorists.

Despite progress in the process of confidence building measures between India and Pakistan, media war in both the countries against each other does not seem to have died down. "Firmly demand and persuade the governments of India and Pakistan not to indulge in any kind of provocation and acrimony or fuel conflict in one way or the other and pursue the composite dialogue process more vigorously and productively on both perennial and ancillary issues," declared the conference. "Concerned about the resumption of a low profile 'war of agencies' and words a lack of substantive movement in the composite dialogue process between India and Pakistan."

Unlike other countries of the region with long colonial past well-built institutions and press systems, it gave an invaluable exposure to Nepalese participants who have had brief experience with the free media. "Taking note of the continuing suppression of democratic rights and media freedom in Nepal and Maldives, we support the struggle of media community and civil society for the restoration of press freedom and democracy in Nepal," writes the SAFMA-V Conference in its declaration. Journalist Sudhir Sharma from Nepal presented the country paper at the seminar.

Inaugurated by Indian Union Minister of Information and Broadcasting Priyaranjan Das Munshi and concluded by another

Union Minister Jaipal Reddy, the conference gave opportunities to understand constraints and limitation of media in south Asia.

"The momentum for peace that it has built through its conferences and the mass media, and the trust that it has created among major stake holders, in turn, require its greater and more calibrated role in peace making in the region. But, at the same time complications are arising as we move ahead and face new problems," said Imtiaz Alam, in his report.

JUDICIARY

A Proud Product of Democratic Innovation

Following the verdict to declare the dissolution of the Royal Commission of Corruption (RCC), lawyers, members of civil society and politicians - who had condemned judges for their actions few weeks ago to the extent of boycotting them in public functions - are now expressing their solid solidarity with the Supreme Court. In its five decades long history of evolution, Nepal's judiciary, which is yet to take bold steps in many writs filed by common citizens other than political cases, has witnessed many ups and downs. Sometimes its decision triggers a drastic change while, at other times, its decision reverses the situation, particularly in response to petition related to the political decision. As a constitutional body evolved as a proud product of democratic innovation, challenges of apex court, which is itself in the process of institutional building, is to establish itself as an institution protecting and guaranteeing individual rights in all cases.

By KESHAB POUDEL

As soon as the Supreme Court (SC) delivered its verdict terming the formation of Royal Commission of Corruption Control (RCCC) null and void, the apex body - which was condemned as an undemocratic and inefficient body leading to public boycotts of the judges of the court by a section of lawyers - is now being hailed as the protector of constitution and the judges as guarantors of individual rights.

When the court declined to declare ultra vires media ordinance, lawyers, members of civil society and others condemned the judges and their decisions as historic blunder in judicial history.

Portrayed as a despotic regime in the world, the government formed under the chairmanship of King Gyanendra accepted the latest SC verdict releasing from its custody former prime minister Sher Bahadur Deuba and former minister Prakash Man Singh, who even declined to challenge constitutionality of the actions at the time of proceedings in the Supreme Court.

Former prime minister Deuba and his colleague - who had not gone to the court for seeking remedy in the first place and had declared to challenge it on political basis - are immediate beneficiaries of the judgment in spite of the fact that they did not venture to go to the court challenging the constitutionality of probe commission.

Although the court's verdict termed the very basic claim of King's actions of February 1 as against the spirit of Constitution, a good sign is that it has been taken in good constitutional spirit by the monarch. In our neighborhood few



Supreme Court: Custodian of rights

statement condemning the decision of Nepal Bar Association to publicly boycott chief justice.

Equally, there are lawyers who hold the opposite view on decision. "It is unfortunate verdict - which will encourage corruption," said senior advocate Kunja Bihari Prasad Singh, who hailed Supreme Court verdict on media ordinance.

Five-member bench consisting of Supreme Court justice Kedar Prasad Giri, Min Bahadur Rayamajhi, Ram Nagina Singh, Anup Raj Sharma and Ram Prasad Shrestha declared the formation of RCCC null and void from the beginning and quashed it from the date of decision. King Gyanendra had constituted the RCCC equipping it with the powers of investigation, prosecution and trial in March last year giving

continuity to the institution formed under the Emergency power.

The verdict was delivered to a public litigation filed by advocate Santosh Kumar Mahato and ex-minister Rajiv Parajuli, who was under custody of RCCC, by exercising Article 84 of the Constitution of Kingdom of Nepal 1990 demanding to declare the institution null and void. In its verdict, the court said all actions and decisions taken by probe commissions are declared void from the beginning. The court also says the probe commission could not have been established under Royal decree issued under article 127.

"One of the notable things of this verdict is how in a democratic constitution an ordinary and humblest of the citizens could challenge the highest of state authority and bring before court of law and get the verdict against the powerful authority. This is

the purity of democracy and supremacy of the constitution," said former attorney general Badri Bahadur Karki, who also pleaded the case arguing the formation of the RCC was unconstitutional. "The achievement of this verdict is that one does not need to rebel and kill or resort to violence but to exercise the peaceful judicial means to restore the democratic process. A written writ filed in the court achieved what seven parties and Maoists could not achieve through their violent means."

Evolution of Supreme Court

Since its establishment five decades ago as a guardian of the rights of the people following the revolution of 1951, Supreme Court of Nepal has seen many ups and downs including endorsements and rejections in exercising extra ordinary powers in the nature of various writs.

Despite so many lacunas and weaknesses, the Supreme Court has established as an institution guaranteeing the right of the people. Whether to give remedy to a person holding a gun to overthrow the present constitution or leaders of political parties and members of civil society, who have been launching peaceful agitation to the extent of demanding new constitution, all of them are knocking the door of Supreme Court whenever they want relief from arbitrary state power.

Although the decisions of the court are not free from controversies, the judiciary is slowly and gradually evolving as an institution of innovation of democratic product.

Despite its failing to protect the rights of citizens in many other ordinary writs and petitions, it has settled many constitutionally important cases - when the challenge demanded, the Supreme Court has risen to its call of duty. "Therefore what is required is that it should maintain its majesty all through so that the faith of the common man on its competency is always preserved," said advocate Karki.

What are there in the Judgment?

The judges clarified that the King can exercise his sovereign power and state authority only under the terms of present constitution, making the constitutional document law of the land.

years ago, the army ruler had dismissed judge of Supreme Court who challenged his authority.

This is not the first time when the country's political institutions have accepted the verdict of court in good spirit. Whether it was in the first phase of democratic system or dissolved Panchayat system or the present one, the court's verdict was always respected by all the side contributing towards the process of strengthening the institution of judiciary.

"This is a historic verdict of Supreme Court. The verdict showed that there is no one above the constitution," said Sambhu Thapa, president of Nepal Bar Association (NBA) reacting to the verdict. "Court has shown courage," said Thapa, whose recent remarks against the court have created many controversies and uproar. The judge society and full bench of Supreme Court even issued

The court also defined the ambit and scope of article 127. It could only exercise to activate the provisions and institutions under the constitution and not beyond them. King could not exercise it so as to create a new institution in parallel or as a substitute.

"Under article 127, no institution and organization created under the emergency order, probe commission being the one, could be given continuity when emergency order was already withdrawn. The most important thing is that the verdict established supremacy of the constitution over any authority and institution. Any or all actions or decisions including that of the King, if it involves the question of interpretation of the constitution or constitutionality, that will come and fall under the power of judicial review of Supreme Court," said former attorney Karki.

Under article 27 (3), His Majesty's power is limited to the area covered and procedure prescribed by the constitution. They don't extend the periphery or lie outside the scope of constitution. The immunity available under article 31 to His Majesty is limited to the actions and decisions done in his personal capacity not official capacity.

Who is going to take responsibility of all torture and sufferings committed to the people who were fined, jailed and taken into the custody by the unconstitutionally appointed commission?

"As under the existing laws, there is no provision for compensation. His Majesty should sack or distance himself from those advisors who persuaded him to take such unconstitutional steps so as to learn and teach lesson for the future," said advocate Karki.

Authority of Court

According to article 84 of the constitution, courts and other judicial institutions in accordance with the provisions of this constitution, the laws and the recognized principle of justice shall exercise the powers relating to justice in the Kingdom of Nepal.

A power of judicial review of the legislation has been conferred to it. As in the previous constitution of Constitution of Nepal, the article 1 of the Constitution of Kingdom of Nepal 1990 declares the constitution as the basic law of the country. The article 1(1) of the constitution says the constitution is the fundamental law of Nepal and all laws inconsistent with it shall, to the extent of such inconsistency, be void. The article 1(2) says it shall be the duty of every person to uphold the provision of this constitution.

Article 88 (1) enables any citizen of the country to challenge a law as unreasonable or contrary to the constitution in the Supreme Court. Under this article, any Nepali citizen may file a petition in the supreme court to have any law or any part thereof declared void on the ground of inconsistency with this Constitution because it imposes an

unreasonable restriction on the enjoyment of the fundamental rights conferred by the constitution or any other ground and extra-ordinary power shall rest with the Supreme Court to declare that law as void either ab initio or from the date of its decision if it appears that the law in the question is inconsistent with the constitution.

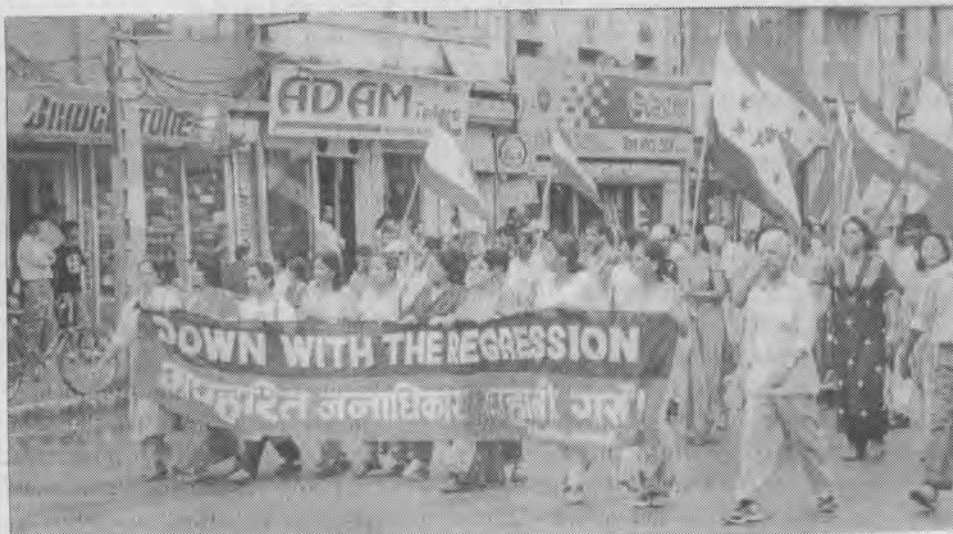
Article 88 (2) allows anyone to file the move directly regarding a case of public interest litigation if it involves any question relating to interpretation of law or the constitution. The present verdict against the RCC is given under this article.

As the court enjoys enormous power and political forces, at present, are in confrontational course, the Supreme Court is in the most difficult trial of its history in performing the role of justice. Following the verdict of the court, political forces in Nepal have to show the absolute faith over the constitution of Kingdom of Nepal 1990 – which gives level playing field to all political forces.

In its just five decade long history, Nepal's apex court has made several verdicts and all verdicts sparked one or other controversies. Whatever the consequences were, what judiciary has been gradually establishing is a body to protect the rights.

In many petitions and writs filed by common people against the arbitrary use of authority by state in business and other dealings, the court, however, has been adamant to issue verdict under the article 88.2. It evolves slowly and gradually and it will take centuries to get the maturity.

Increases in the list of the rights of the people would be irrelevant if one does not have the remedy for that. One can add any numbers of fundamental rights in the constitution - that is not going to guarantee the quality of the rule of law, if there is no remedy for that. Like article 71 of the previous constitution, article 88 (2) of the present constitution has been reformulated providing remedy for all these rights, which have no other remedies.



Political demonstration: Demanding rights

"This enhances the prestige of Supreme Court and people have to trust the court," said senior advocates Sarbagya Ratna Tuladhar. "Not only the King, all have to follow the spirit of the constitution."

The concept of writ jurisdiction, which has been evolved in the common law system of Britain, has been successfully experimented under the provisions of the constitution of Nepal. All those power of the writ jurisdiction have been left to be defined by the judiciary itself. The law has not defined or prescribed the limit of that extraordinary jurisdiction. That power is solely with the Supreme Court - that is such a great thing of the constitution,

made by Constituent Assembly seem to be completely ignorant what a main provision is already there in function even at this critical moment.

When there is no elected government even the government of the present arrangement and other agencies of the state are accountable to the supreme court whenever the question of infringement of the rights of the people comes to the notice of supreme court.

This power of the Supreme Court is more effectual and useful to the people compared to hundreds of other articles that are there.

The evolution of judiciary in Nepal has been in different circumstances than

Interestingly, for the first time in its history, actions of the government could be challenged in the courts. The role of the judiciary was established as an arbiter not only between individuals but also between individuals and the state. Despite minimum of numbers of laws and lack of institutional and professional support, judiciary in early 1951 under the leadership of chief justice Hari Prasad Sharma took many landmarks decisions. Such decisions intensified the conflict between the state and judiciary. In the case of B.K. Shrestha, a full bench presided by chief justice Pradhan declared the Supreme Court as the guardian of the constitution and the King under the law. The government reacted very strongly

against the activist trend set by the Supreme Court then.

An apex body in the judiciary, the Supreme Court has much powers in the present constitution compared to previous any constitution. The Supreme Court, under the present constitution, has power of judicial review to the extent of declaring a law void if it is found unreasonable or contrary to the provision of the constitution. As the independence of the judiciary is one of



Singh and Deuba after released by SC decision: Rights established

Rajdhani

which has assured the common people, that they would go for redress to the Supreme Court if all other avenues are closed. That is the single most important provisions of the constitution - which relates the constitution with common people. If that power of Supreme Court is removed the common people have no means for the exercise and enjoyment of constitution.

One wonders whether the judges and lawyers of land know its implication in full term. Persons who are talking of another constitution or constitution

the Common Law or the continual legal systems. Along with other organs of the state, judiciary in Nepal is in a rapid transformation from traditional stage to modernity. After 1951 revolution, for the first time in the history of Nepal, people were promised to have an independent judiciary as a guardian of the rights of the people. The rule of law was declared as one of the basic objectives of the state. Under the new constitution, the court was given extraordinary powers in the nature of various writs.

the basic features of the Constitution, any law in contravention to that, shall be void. The time has come for all political forces to declare that the present constitution has provisions to safeguard their rights.

As long as this single most important institution is functioning, most of the basic human rights of the people in Nepal have a guarantor and protector. The time has now come to show full commitment towards the constitution as it shows there are constitutional means available to restore the constitutional process. ■

MUNICIPAL POLLS

Fruits Of Futility

Despite the futile exercise, credible and widely participated elections still remain the most peaceful, constitutional and legitimate means of restoring democracy

By SANJAYA DHAKAL

In spite of scores of points against it, the February 8 municipal polls were able to underscore one positive aspect – that the security forces are quite capable of providing security to the election.

The election, which was held in the backdrop of violence by the Maoists, went on peacefully barring one incident in Dang where a worker of Unified Marxist Leninist (UML) succumbed to bullet fired by security forces.

Contrary to fears of widespread violence and terror, the polls went on relatively peacefully even as the whole exercise was rendered futile after the government failed to take the major political parties into its confidence. It was the boycott by the major political parties, more than anything else, that compelled the people to refrain from coming out in large number to cast their votes.

In a country where voter turnout usually surpassed even 60 percent, this time though it shrank to historic low point at 21 percent. In the absence of well-known and familiar candidates, people refrained from exercising their fundamental rights.

The election has re-vindicated that without the participation of political parties, it ceases to have full meaning and utility.

Regardless of the outcome of February 8 exercise, credible and widely participated elections preceded by dialogue among constitutional forces, however, continues to remain the most

viable means of restoring the derailed democracy and constitution back on track.

Low Turnout

Amid the active boycott by the seven political parties and physical threats by the Maoists, there was an expected low turn out of voters in the municipal polls held in 36 municipalities across the country.

While the government seems 'excited' with the voter turnout – which it wishes to term as a significant number given the threats by opposition – the political parties are pleased with the low



Women casting their votes: Low turnout

Rajdhani

turnout. "The so-called election that was held by detaining leaders, party workers and civil society leaders and by misusing the resources of state coffer and power has failed totally," the statement by the seven parties said.

The capital city and surrounding municipalities witnessed lowest turnouts. In Kathmandu, 14 percent votes were cast whereas Lalitpur, Thimi and Kirtipur municipalities saw 18, 13 and 33 percent voter turnout respectively. The voter turn out was the highest at 71 percent in Gaur municipality of Rautahat

district whereas municipalities like Lekhnath, Bharatpur, Khandbari, Tikapur and Pokhara received less than ten percent of votes. Biratnagar saw 36 percent turn out. Across the county, of the total 1480238 voters, only 308270 votes were cast.

Interestingly, in the election that was not participated by any major political parties, the pro-government faction of the Rastriya Prajatantra Party (RPP) led by Home Minister Kamal Thapa and independent candidates have won in most of the seats. The party has bagged 21 mayoral seats (including some as unopposed) and 19 deputy mayors out of the total 58 municipalities. Independent candidates have bagged 27 mayoral and 20 deputy mayor seats followed by pro-government faction of Nepal Sadbhavana Party. Rajaram Shrestha of RPP (Thapa) won the seat of Kathmandu mayor whereas independent candidate Prem Lal Maharjan has bagged the seat of Lalitpur mayor.

However, on the other hand, the Election Commission has stated that the elections were held in free and fair manner. The Chief Election Commissioner (CEC) Keshab Raj Rajbhandari said, "The Election Commission has conducted the election as per the provisions in the Constitution. This is the election held by Nepalese for Nepalese. There is no question why it should be illegitimate," said Rajbhandari. He added that low voter turnout could not be construed as the barometer of illegitimacy. He cited the example of elections in Kashmir two years ago when only 11 percent votes had been cast and that of Kuwait where only 22 percent votes were cast.

Huge International Criticism

In an unprecedented wave of international criticism, almost all major foreign friends of Nepal have criticized the election terming it as illegitimate since it could not ensure the involvement of political parties.

The United States has termed the municipal polls as hollow attempt to

legitimize King's power. "There was a clear lack of public support for these elections. Voter turnout in the capital is estimated at under 25%. Outside Kathmandu, turnout was reportedly half that level in some places. The government detained large numbers of political activists before the elections, restricted media and refused to allow independent outside monitors. Maoist intimidation and killing of candidates during the campaign also marred the vote. There is no political cause that justifies the use of violence," stated Sean McCormack, spokesperson of the Department of State.

"The only way to effectively deal with the threat posed by the Maoists is to restore democracy in Nepal. We call on the King to release all political detainees and initiate a dialogue with the political parties. His continuing refusal to take these steps is leading his country further down the path of violence and disorder," said McCormack.

Likewise, the Indian External Affairs Ministry spokesperson Navtej Sarna issued a statement questioning the legitimacy of the municipal polls. "Any credible electoral exercise should have the active involvement and participation of all the mainstream parties. Only then would such elections be able to contribute to the restoration of democracy and political stability." Even Japan joined the bandwagon 'deploring' the way the elections were held 'without a broad support' of the Nepali people. "Japan regrets that activists of the political parties were arrested in the process," a statement by Director-General for Press and Public Relations, Japanese Foreign Ministry said.

In the barrage of international outpouring of criticism, the government, on the other hand, seems unperturbed. The Ministry of Foreign Affairs has expressed "total objection" to the criticisms. The Ministry stated, "The Government of Nepal finds the statements made by a few countries on the municipal elections as totally objectionable and asks them to refrain from making such insolent comments on matters that fall essentially within the domestic jurisdiction of a sovereign

country. Demanding democracy and criticizing the polls aimed at restoring democracy is nothing more than a paradox in itself."

Parliamentary Elections!

Of late, the government ministers and the EC are talking about holding parliamentary elections within next one year. Stating that the Election Commission (EC) has been able to earn invaluable experience of conducting elections amid conflict situation, the CEC Rajbhandari said that it would hold parliamentary elections within next one year. "We have already decided to conduct parliamentary elections within 2063," he said.

While the parliamentary elections can, indeed, provide a means of restoring the system of governance by elected representatives, it will also end up in a fiasco similar to the municipal polls if the government remains hot-headed in its efforts to marginalize the legitimate political forces.

As such, the February 8 must have provided lessons for the government to learn at this juncture. Any indication that the government has not learned any lesson would only result in hardening of positions, polarization of politics and intensification of violence – which is in the interest of nobody much less the Nepalese people. ■

Promoting Water Saving Rice Production In South Asia

The Asian Development Bank (ADB) will help develop and disseminate water-saving rice technologies in the drought-prone and water-short region of South Asia, through a US\$1 million technical assistance (TA) grant, according to a press release by the ADB. Current rice production systems consume a high amount of water. It takes about 3,000 liters of water to produce one kilogram of rice. Irrigated non-agriculture areas, which provide 75% of total Asian rice production, consume 50% of all freshwater diversions.

"This profligate usage of water in irrigated rice production is unsustainable, given the increasing demand for freshwater due to growth in rice demand and growing competition from other sectors," says Tumurdavaa Bayarsaihan, an ADB Senior Agricultural Economist. "With the present rate of water usage, even maintaining productivity in many currently irrigated areas will be difficult unless more water-efficient rice production technologies suitable for irrigated areas are developed."

In South Asia, it is estimated that by 2025, 12 million hectares of irrigated rice may suffer from severe water shortage, with serious effects on the food security and social stability of the region. The Philippines-based International Rice Research Institute (IRRI) estimates that a 10% reduction in water use for rice irrigation would free 150 billion cubic meters, or 25% of the total freshwater used in Asia for nonagricultural purposes.

The TA will support the development of new water-saving rice production technologies based on improved varieties at IRRI, that will be distributed to national agricultural research centers in Bangladesh, India, Nepal, and Pakistan. These centers will further refine, evaluate, and then disseminate the developed varieties, validating them at selected target fields with the participation of farmers.

The TA will also help national agricultural and extension systems in four participating countries develop locally adapted water-saving rice technologies, including by sponsoring visits to IRRI, organizing an international workshop, and conducting a series of training courses. Last, the TA will develop a regional network for information exchange to ensure the broader impacts of the project.

The total cost of the TA is estimated at \$2.306 million. IRRI will contribute \$566,000, while the national research institutes of the four participating countries will shoulder the balance of \$740,000 in the form of staff time, land, and research facilities. IRRI is the executing agency for the TA, which will be carried out over about three years. ■

MARTYRS' MEMORIAL ANFA LEAGUE Towards Professionalism

Bouddha and Mahavir clubs are relegated to 'B' division while the race for the top spot is still on

By A CORRESPONDENT

The poor performance and consequent loss at 4-0 of Bouddha Football Club (BFC) in the match against the strong Tribhuvan Army Club (TIC) Sunday, ended its chance to stay in 'A' division this year. Likewise, Mahavir Club too was relegated after it was trounced 5-0 by New Road Team (NRT).

Having lost nineteen of the twenty six matches of the Martyr's Memorial San Miguel "A" Division League Football tournament- the largest football tournament of the country, BFC with meager 11 points has become the first team to be relegated this year. After BFC, Mahavir Club with the score of 22 points was shown the door. It could bag 22 points after playing all of its 28 matches.

BFC had climbed to 'A' division after topping the C and B division tournaments consecutively in the previous two years. Although, BFC has two more matches to play in the tournament, the performance in these matches cannot rescue it from the sad tale of relegation.

The 15 teams- 12 "A" Division Clubs, three Departmental teams of Mahendra Police Club, Tribhuvan Army Club and newly joined Gyanendra Armed Police Force- will play a total of 210 matches with 28 each in the first round of the league.

Nabil Three Star Club, the defending champion, Manang Marshyangdi Club, Tribhuvan Army Club and Mahendra Police Club are in stiff competition for

the victory with 61, 59, 60 and 59 points respectively. The race for the top title has been unusually stiff this year. The TAC and MPC having played goalless draw on Tuesday's match are staring at chances of TSC and MMC. The defending title holder TSC still seems to be the best bet for the award.

In the tournament with the highest cash award in any sports events in the

"Fair play" title. The attractive prizes have increased professionalism among the players.

Meanwhile, ANFA, which had decided to spare six motorbikes for best goalkeeper, Defense, mid-field, forward, best scorer and best coach of the league and a car to the best all round player, has withheld the decision to give motorcycle to the best scorer after it suspected match fixing for scoring maximum goals. Recently, it has decided to give a car worth Rs. 23,50,000 to the best player with 50 per cent money sponsored by Vaidhya's organization.

With the suspicions of match-fixing lingering in the air, the ANFA needs to take stern action to defeat efforts that could kill the sportsmanship. In an apparently fixed match on Monday,



Players in action: Enriching experience

Gorkhapatra

country, the winner will get a hefty cash award of one million rupees. Runner-up team will grab seven lakhs while 2nd runner-up will get five lakhs rupees. All Nepal Football Association (ANFA), the organizer of the tournament, has also decided to give away prize money to top-listed teams up-to eighth position. Forth position team will walk away with 3 lakhs while fifth position team will get 2 lakhs. One lakh for sixth, 50,000 each for Seventh and Eight position teams are assured. ANFA will provide 50,000 Nepalese Rupees for the team that bags

Macchindra Police club (which was on the lower rung of the score card facing relegation) defeated reasonably stronger team RCT by 9-8 goals. The match also saw RCT's Rishi Rai netting 8 goals, which made him leading goal scorer.

Such match-fixing would tarnish the image of football and ANFA in the days ahead if not checked immediately. This year also marked the first time ANFA held a prolonged league that was played on the basis of home and away. Each team played with another team twice during the protracted league tournament. ■

Paradigm of Wise Use of Wetlands for Poverty Alleviation: Panacea or Paradox?

By SUBAS DHAKAL

Wetlands are transitional ecosystems between land and water encompassing water, soil and organism that are adapted to the unique wet environment making it one of the most productive ecosystems. Natural functioning of the wetlands supports rich agricultural and wild diversity as well as provides environmental services such as flood protection, nutrient and sediment retention, maintenance of ground water table and so on that in turn become valuable benefits to the society. These services have been embedded into our daily livelihood to such an extent that without wetlands, we would simply be deprived of drinking water, varieties of rice, allopathic/traditional medications and several other basic amenities that we take for granted everyday. Moreover, majority of the poverty-stricken community in rural Nepal still depends on the occupational opportunities based on the direct use of wetlands resources. That is why participatory management approach has been embraced to 'use wetlands wisely' or 'maintaining the ecological integrity of wetlands while sustaining the economic benefits' for alleviating poverty.

Paradigm of wise use of wetlands for poverty alleviation therefore relies on a consensus of poverty and environmental degradation nexus that was first prescribed by the UN Bruntland Commission on Sustainable Development. This particular paradigm advocates equal precedence amongst environmental capital (benefits accruing from environmental services), economic capital (liquid medium or mechanism representing wealth) and social capital (informal structures and mechanisms within society) with an aim to integrate environmental and social considerations into economic policy. Such paradigm has gained a significant momentum over the years and this year's world wetlands day is being celebrated with a thematic emphasis on wise use of wetlands as a tool for poverty alleviation. Needless to say, wise use and poverty alleviation has become an imperative priority of the least developing countries like Nepal with wide ranging implications on national planning and policies influenced by the international priorities such as millennium development goals (MDGs).

Nepal's ongoing tenth national plan accentuates on eradicating poverty through sustainable management of natural resources including wetlands so that MDGs can be timely achieved. Such plan is further substantiated by the wetlands specific national policy of 2003 that emphasizes on wise use through people's participation. Rapid appraisal of the plan and policy certainly portray wise use of wetlands as panacea for poverty alleviation as they have carefully;

a) incorporated pertinent responses to the imminent pressure on wetlands so that the potential loss of structure (ecosystem itself), loss of function (environmental services) and loss of composition (species abundance and diversity) can be reversed and b) addressed the issues of property right, social inclusion, equity as well as economic valuation in managing wetlands and crafting poverty alleviation measures efficient at the national scale. However, effective implementation of such plans and policies has remained paradoxical in Nepal, prominently depicted by the disgraceful Bagmati River right in the heart of Kathmandu.

An unholy condition of the holy Bagmati River symbolizes nothing but the perpetuated mockery of national policies and international commitments. Such disdain to the wise use of wetlands is result of the political system plagued by lack of accountability as well as macroeconomic and sectoral policies that the system endorses without taking sustainability into account. As a result, country has embarked upon the myopic strategies to support and stimulate conservation policies for immediate political benefits. It is worthwhile to mention here that

An unholy condition of the holy Bagmati River symbolizes nothing but the perpetuated mockery of national policies and international commitments. Such disdain to the wise use of wetlands is result of the political system plagued by lack of accountability as well as macroeconomic and sectoral policies that the system endorses without taking sustainability into account.

author of the highly acclaimed book 'Environmental Policy', Jane Roberts made a plain yet profound inference that prospect of effective implementation of any plans, policies, programs or paradigms towards sustaining environmental and economic capital will be inadequate in a society run by the political system

that restricts the formation of social capital.

In that milieu, contemporary connotation of this year's world wetlands day celebration theme would be meaningful only if paradigm of wise use of wetlands for poverty alleviation can be transformed from paradox into panacea. Such transformation requires sincere initiatives at the local, national, regional and global echelon through a) acknowledging the role of social capital in sustaining environmental and economic capital within an egalitarian political system b) undertaking adaptive measures to mitigate consequences arising from vulnerability to the natural threats such as climate change to curtail the potential loss of economic capital and c) prioritizing national investment in environmental capital towards integrated resources management so that improved productivity will correlate with the poverty alleviation indicators.

(This article is based on the country paper presented at "International Training on Tropical Wetlands Management" held in Thailand. Author can be contacted at subasdhakal@gmail.com)

BOOK

Competition & Economy

Since the early 1990s Nepal has ventured into the un-chartered territory of liberalization and market economy. After the restoration of democracy, the pace of economic globalization picked up in all spheres of national economy.

In 2003, Nepal marked another watershed in its economic policy vis-à-vis the entire global community. It became the 147th member of the World Trade Organization (WTO).

The membership of the WTO guaranteed Nepal a privileged card that it could use to ensure access to the global marketplace. On the other hand, the same card also made it liable to allow the global traders to invade its territory. In one and a half years since the joining of WTO, Nepal has not been able to extract the promised benefits. Likewise, it has also not been swamped by the feared tides of globalization.

This last one and a half year has been a crucial period that has reminded Nepalese that nothing can be taken for granted, much less the membership of WTO. Apart from recognizing Nepal as a sovereign and separate economic entity, its membership has not yet resulted into any dramatic transformations in its socio-politico-economy.

Along with obtaining the membership of WTO, Nepal had also made a number of promises like opening up its trades in goods and services; lowering of custom tariffs; binding tariffs; legislative reforms and so on. Among one such promise is the creation of market-friendly open economic environment.

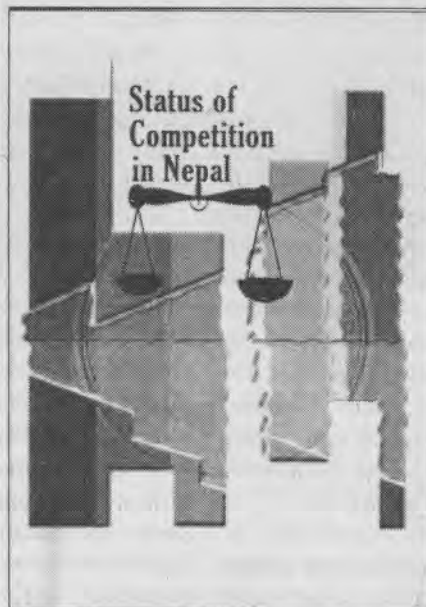
The creation of such environment, thus, demands enactment of proper laws and policies that can guarantee free and fair competition in the market. Competition Law, many trade experts have said, is the need of the hour to check mauling menace by unbridled monopoly.

The book "Status of Competition in Nepal" is a study-based book that not only traces the economic policies more

particularly the monopolistic practices it has encouraged but also provides feedbacks to the policy-makers on the way forward.

Published by SAWTEE in cooperation with the Department for International Development (DfID), the book is an eye-opener on how the anti-competitive practices are disrupting the free market economic practices and how they are ultimately bleeding the naïve consumers.

The SAWTEE is also engaged in three-year advocacy program entitled Competition Advocacy and Education Program (CAEP) since February 2004 with the support from DfID. The program aims "to inculcate competition culture among the stakeholders; create an atmosphere for the formulation and enactment of competition friendly policies and legislation; ensure participation of stakeholders in the process of formulation, implementation and enforcement of competition policy and laws; and build



Title: Status of Competition in Nepal
Published by: South Asia Watch on
Trade, Economics & Environment
(SAWTEE)
Pages: 84

capacity of stakeholders to act as a watchdog to prevent anti-competitive practices."

"Anti-competitive practices are a set of unfair practices, which enterprises may use in order to distort or eliminate competition with the aim of acquiring and abusing monopoly power," states the book.

It states anti-competitive practices such as collective price fixing; collusive bidding or tendering; tied selling; resale price maintenance; creating of artificial scarcity; price discrimination; predatory pricing; and unreasonably high pricing as existing in the country. It cites examples of price fixing by a group of domestic airlines; price fixing by brick-makers; telecom pricing and so on as being anti-competitive.

"Although domestic enterprises have been exposed to international competition due to the liberal investment and import regimes, Nepal does not have a competition law to ensure competition in the market," the book writes. During its accession to WTO, Nepal made a voluntary commitment to enact competition law. The government says it is in the process of enacting the same.

Competition policy and/or law has prime significance since it is related closely with the safeguarding of naïve consumers. They are a part and parcel of good consumer policy aimed at safeguarding, promoting and furthering the interests of the consumers. In a sea of organized economic entities working constantly to maximize their profit, consumers remain the only unorganized bunch. And it is the duty of the state and the community to prescribe proper laws to promote their interests which, in turn, is sure to promote the fair economic environment that provides equal opportunities for everybody to prosper.

The book provides a bird's eye view on the issues related with the consumer protection and competition in the country. It is divided into eight chapters dealing with economic performance and policies; nature of market/competition; sectoral policies; consumer policy; anti-competitive practices; perspective on competition law and policy; competition law; and the way forward. Its recommendations can form a basis on which the government can frame competition laws aimed at promoting the overall economic environment. ■

Insolvency Ordinance In Nepal

By SHANKAR MAN SINGH

Learning Lessons from Neighbors: A look at the Indian legal system reveals that it is based on common law of England and heavily loaded in favor of protection of unemployment of labor, which has its implications on the Insolvency law. Hence, in India, the process of winding up of companies is regulated by the Companies act and is under the supervision of the Court. Although article 19(1) (g) of the Constitution of India gives freedom to practice any profession or to carry on any occupation, trade or business to the citizens of India, there are restrictions on closure of any industrial undertaking. Such restriction is set to justify on the grounds that it is in public interest to prevent unemployment. As a result of such policy, there is a freedom to undertake any industrial activity, but there is no freedom to exit.

In the process of deregulation and liberalization that Nepal adopted since nineties, Nepal also introduced market based economy. As a consequence of this, in the context of deregulation and liberalization, a number of restrictions on undertaking industrial activity has been withdrawn and relaxed. There is a need to take the process of liberalization a step further and recognize that so long as company is acting in the interest of shareholder and otherwise observing the law of the land it should have the freedom to manage its affairs, merger, amalgamate, restructure, and reorganize or otherwise plan its affairs as it considers best in the interest of the stakeholders.

While undertaking reforms in insolvency laws there is a need to change the focus from strict regulations of the activities of companies to granting freedom to the industry in conducting its business activities and lay down norms for protection of interest of stakeholders.

Nepal's Insolvency Ordinance:

Experts and the businessmen have lauded the newly promulgated Insolvency Ordinance as a tool to enhance corporate governance and urged the government to work on institutional and human resources fronts for its effective implementation. Some opine that the insolvency ordinance can help amply to support investment, promote private sector growth, encourage enterprise, and generate employment. It is also crucial to manage corporate failure, promote corporate good governance, encourage sound practice and financial discipline and advance public confidence in corporate and financial sector. The Insolvency Ordinance would now allow companies to declare themselves as bankrupt in case of grave financial crisis.

In the annals of commercial law in Nepal, the promulgation of the Insolvency Ordinance can be said to be a milestone. On recapitulation, the very concept of insolvency might not be new to Nepal as in the Mulki Ain chapter there is a separate heading for the insolvency of an individual. However it is interesting to note that, as such, there is not a single case of the reporting of the insolvency case. The recent Insolvency Ordinance deals only

with the corporate insolvency and personal bankruptcy is out of the domain of the recent Ordinance.

In brief, the Insolvency Ordinance 2062, effective from 23 September, 2005 includes: applicable to all limited companies; a separate administrative office to be



set up to oversee the insolvency business, only licensed individuals will be allowed to carry out insolvency business i.e. become liquidators, company restructuring managers. Insolvency process can be initiated with prior approval of the court as also by owners of 5 percent or more shares in the company or by creditors who have a claim on 5 percent or more shares in the company or by creditors who have a claim on 5 percent of the total credit owned by the company. Insolvency process can be initiated if the company fails to pay the creditor the dues within 35 days of the receipt of a legal notice issued by the creditor asking for the payment.

A company is declared insolvent by the court also when it is found that the value of the liabilities of the company exceed the value of the assets. The court may order suspension of various transactions of the company as deemed necessary while the initial hearing is going on over the application for initiating insolvency process. Providers of essential services such as electricity, telephone etc. to the company cannot disrupt these services to the company after the court issues order to go ahead with the insolvency process. The court can issue order to restructure the company and appoint a restructuring manager. If a director of the company hides the fact that the company is on the verge of insolvency, he/she will be fined upto Rs. 200,000.

Insolvency ordinance provides a way out when the total liabilities of an individual or enterprise exceed the total assets so that the limits of the creditors cannot be met. It discharges the debtor from the burdensome debts and allows him to make a fresh start. It also provides for the speedy, efficient and equitable distribution of the debtor's non-exempt property to the creditors.

The Insolvency Ordinance 2005 covers the companies with Limited Liability Company and leaves out the personal bankruptcy from its ambit. It also includes the banks and financial companies. However, in the case of banks, prior approval from the Nepal Rastra Bank is required before initiating the insolvency procedures. The insurance companies are also covered by the law, but again it requires prior approval from the Beema Samittee. The voluntary liquidation has been excluded from the domain of the new Ordinance which also remains part of the new Company Ordinance 2005.

Safta And Nepal

By BIKENDRA SHAMSHER THAPA

The South Asian Association for Regional Cooperation (SAARC) was established to provide a platform to member countries to discuss mutually beneficial issues and accelerate the pace of socio-economic development in the region. SAARC initially envisaged the regional economic co-operation through South Asian Preferential Trading Agreement (SAPTA) that came into force on December 7, 1995. SAPTA was the first step towards the transition to a South Asian Free Trade Area (SAFTA) that shall significantly contribute to strengthen intra-regional economic co-operation to maximize regional potential for trade and development. The SAFTA Treaty, signed during the Twelfth SAARC Summit in Islamabad, has come into effect from January 1, 2006.

SAFTA Trade Liberalization Program offers the following schedule of tariff reductions:

- The Non-Least Developed SAARC countries (non LDCs) - India, Pakistan and Sri Lanka - shall reduce their existing tariff rates to 20% within 2 years, from the date of coming into force of the Agreement. If actual tariff rates after the coming into force of the Agreement are below 20%, there shall be an annual reduction on a Margin of Preference basis of 10% on actual tariff rates for each of the two years. The subsequent tariff reduction by these countries from 20% or below to 0-5% shall be done within a second time frame of 5 years, beginning from the third year from the date of coming into force of the Agreement. However, the period of subsequent tariff reduction by Sri Lanka shall be six years.
- The tariff reduction by the Least Developed SAARC countries (LDCs) - Bangladesh, Bhutan, Maldives and Nepal - shall reduce their existing tariff rates to 30% within 2 years from the date of coming into force of the Agreement. If actual tariff rates on the date of coming into force of the Agreement are below 30%, there will be an annual reduction on a Margin of Preference basis of 5% on actual tariff rates for each of the two years. The subsequent tariff reduction by these nations from 30% or below to 0-5% shall be done within a second time frame of 8 years beginning from the third year from the date of coming into force of the Agreement.
- Each member country shall maintain a sensitive list (a schedule of products on which members are not required to lower tariffs) to protect the interest of domestic stakeholders. The Sensitive Lists are subject to review after every four years or earlier with a view to reducing the number of items.
- SAFTA provides safeguard measures in case of a decline in import of product(s) covered under the Trade Liberalization Program. It also offers a detailed dispute settlement mechanism.
- SAFTA offers to compensate the LDCs for the loss of customs revenue due to the implementation of trade liberalization program.

Nepal has absolute cost disadvantage in almost all products that Nepal exports to SAARC countries or outside as compared to other SAARC members. Transporting raw materials from abroad and taking back finished products by the same surface route makes the transportation cost expensive compared to that of the coastal producers.

Moreover, Nepal's foreign trade is mainly Indo-Centric. In 2003/04, out of the total exports of Rs 53.95 billion, SAARC accounts for

Rs 31.55 billion and India alone for Rs. 30.78 billion. Similarly, out of the total imports of Rs. 135.84 billion in 2003/04, SAARC is Rs 79.76 billion and India is 78.74 billion.

The Indo-Nepal Trade Treaty prohibits Nepal lower its tariff for third countries' products to the level or below than that applied to Indian items. Under SAFTA, India has to reduce its tariff to 5% to all SAARC countries that will decrease the existing wide tariff gap that Nepalese products enjoy in India as against other South Asian countries. Nepal has adopted two sets of sensitive lists - one including 1,299 products for LDCs and the other including 1,335 items for developing members - to protect domestic industries under SAFTA. Despite the long list, SAFTA may not be able to protect the interest of Nepalese farmers, as Indian primary products will continue to enjoy duty-free market access in Nepal due to the prevalence Indo-Nepal Trade Treaty. In addition, certain products of Nepal are destined to a particular country. More than 80% of woolen carpet is exported to Germany and almost 90% of readymade garment is exported to the USA. Issues like these have very little to do SAFTA.

The service sector is playing an increasingly important role in economies of countries worldwide. It contributed 38% of the GDP and 35% of the total foreign exchange earnings of Nepal in 2003/04. These figures are likely to increase as economy develops further. However, SAFTA is quiet about trade in services. The economic integration effort in the region must include liberalization of services and investments, improvement in trade facilitation and co-operation in infrastructure so that investments are attracted towards tourism, health, education and business services.

South Asia has been identified as an energy deficit region. Nepal's industrial complementarity in hydropower generation is possible with production, processing and marketing spread on a regional basis.

The reduction in overtime revenue collection due to tariff cuts is inevitable. The loss in revenue may not be as high as expected due to the small share of Nepalese total trade to intra-region trade within SAARC, existence of bilateral agreements with preferential trading arrangement and Nepal's accession to the WTO. SAFTA also envisages compensating LDCs for the loss of their revenue due to tariff cuts. On the other hand, tariff reduction will encourage expansion of business by private enterprises, which will come into income tax net.

The production of cash crops in the agricultural field and employing manpower that have been the victim of disguise unemployment will supplement the efforts of Nepalese expatriates in poverty alleviation of the country.

South Asia's contribution in the global GDP and trade is minimal in spite of it being the habitat of a quarter of the world's population. About two-fifths of its population falls below the absolute poverty line. Wide mistrust among the countries has hindered South Asia to reap the advantages of intra-regional trade even after two decades since the establishment of SAARC and a decade since the implementation of SAPTA. The member countries need to express genuine commitment to SAFTA if they desire to share economic prosperity originating from the free trade area. Nepalese industries, at present, are not in a position to compete with that of other SAARC countries. Hence, Nepal should start capacity building and governance reform measures to reap the benefits of trade liberalization in the region and integrate itself into the world economy.

TOURISM INDUSTRY

Little Hopes This Season

As the spring season is about to begin, tourism industry wears a grim look, with no end to current political instability

By THAKUR AMGAI

Even as the recently released data from the Department of Immigration shows an increase by 14.6 per cent in the number of tourists entering Nepal via air-route in January compared to the same period last year, the tourism entrepreneurs and workers are not rejoicing.

The entrepreneurs, traders and workers of the industry all are ailing, not only because of low business immediately, but because of the escalating violence, strikes and blockades, disruption in transportation on the eve of the spring season.

The industry had heaved a sigh of relief autumn season last year during the unilateral ceasefire by the Maoists. "We urged the government to reciprocate the ceasefire and the Maoists to prolong it. The Maoists did prolong the ceasefire by one month, but they ended it after the government continued attacks on them," said a senior tourism entrepreneur. "Had the peace been prolonged for at least next few months, the tourist arrival this spring would have increased so much that the existing manpower and infrastructure would not have been adequate to serve them."

However, the industry has relapsed into the crisis, after the short relief. After the Maoists started to attack at various security posts, explode bombs at public places, disrupt transportation and call strikes, and the government started imposing curfew and severing telephone lines without prior notice, bookings started to cancel and tourists who had come with an intention to stay longer started to flee to India and other countries.

Likewise, the countries which had relaxed their travel advisories on Nepal

have started cautioning their citizens to visit Nepal only 'if necessary' and take 'special precaution.'

The increase of foreigners through air route in January does not indicate an increased business because the number of tourists from European market and USA, considered to have higher

spending capacities, is on the decline. According to a release from the Ministry of Culture, Tourism and Civil Aviation, the European Market with its 17 percent overall market share declined by 15.9 percent during the month with a decline of 14.8 percent from UK, 12.6 percent from Germany, 24.5 percent from France and 48.7 percent from Netherlands. The US market also went down by 11 per cent.

The increase in the month of January was supplemented by an increase of 31.8 per cent in Indian visitors. Other markets that showed increments include China (162.5 percent), Singapore (135.4 percent), Japan with its market share of 6 per cent (16.4 percent) and South Korea (27.3 percent). ■

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KABITA ALE

Revisiting Music After Two Decades

Started as a promising singer, Ale remained of the music industry for a long time depriving the fans of her melodious songs

By THAKUR AMGAI

As a little shy girl in Jhapa, who mimicked the popular songs of the era in solitude, avoiding listeners, she had never envisaged that she would come out of her shyness and could sing in a studio or on a stage enthralling a large group of audience.

Had it not been for her husband late J. B. Ale's consistent persuasion, perhaps she would have remained a singer for herself only even today.

As her habit was, Ale used to sing the songs she liked whenever she was left alone. She sang songs like Goli Rahechha Sansar Marimeteke', 'Timilai Jani Jani Marimeteke Hoina' and 'Timilai Maile Pheri' – popular songs aired from Radio Kharsang, every morning and evening, while cooking meal, with the 'background music' of the burning kerosene stove.

On noticing this, one fine morning her husband sneaked into the kitchen with a recorder. Before she knew anything, Ale's singing voice was recorded and taken to Radio which later took her through the voice test.

However, it was not easy for shy Kabita to sing. J. B. Ale, who himself is a songwriter and collector of folk songs, used to assist his wife in all aspects of singing from choosing the song to recording. At the time, when sound editing facilities were not available as these days, Kabita would spoil the recording several times thanks to the shyness and nervousness.

When she did manage to record some songs, the word of her flair for singing soon spread through the music fraternity. And when she recorded songs like 'Uthi Khar

Kataun, Basi Khar Kataun' and 'Jhyammai Chautari, Maya Laun Bhane Chhaina Dauntari', Kabita Ale instantly became a household name in rural and urban areas. She was seen as a promising singer and the listeners expected scores of other songs in her voice. Fans thronged to stage programs where she performed.

In one contest at Radio Nepal in 2035 (Bikram Era), Kabita sang three songs, one solo and two in groups and all three songs stood first, second and third. The next year she, along with her friends, were preparing to produce an album of folk songs. "Of the twelve songs to be recorded, I had completed recording four songs," said Ale. "Unfortunately, after having practiced thoroughly for several months, I was

trapped in a family affair and virtually could not spare any time for recording the remaining songs."

Such incidents where she had to abandon recording because of household matters repeated a few times again. This made her frustrated. She laments, "Music is such a beautiful thing in which everyone would like to be involved. For some one with a proven good voice and skill and who has already sung a couple of songs, it is very painful, if she cannot give continuity to music because of disturbing factors."

In the subsequent years, she was engaged most of the time in her husband's business of photography. She did, but sang very few songs and appeared in no stage programs.

After hibernating for almost two decades, now Kabita Ale has started to be seen in public. When she traveled from Mechi to Mahakali in the 'Peace Music Rally' in 2058 and performed at various places, the audience were pleasantly surprised to see their revered but unexpected singer on the stage. She is working on a project to bring out a new album with nine songs. She has performed old duets with her son Kranti Ale, who has also become a singer now, in a couple of stage programs, and started acting in tele serials and feature films.

"Although I was offered to act during the beginning of my musical career, I was too ashamed to do so then," says Ale. A photographer by profession, she probably did not feel comfortable to face the camera. She has acted in feature films 'Bandhaki', 'Maina Raja Maina Rani' and many tele serials including 'Maha Chautari', 'Virus', 'Mod', and 'Hospital', among others.

Ale who has sung over 300 songs including folk and some modern songs is honored with 'Bhupal Man Singh Karki Youth Award', 'Birendra Aishwarya Sewa Padak' and 'Master Mitrasen Award' and felicitated by several organizations at different occasions for her contribution to Nepali music and lately cinema. ■



Ale: Melodious life

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