

Mara Malagodi. 2013. *Constitutional Nationalism and Legal Exclusion: Equality, Identity Politics, and Democracy in Nepal*. New Delhi: Oxford University Press.

Constitutional experiments in Nepal started only in 1948, but during this short period of sixty-five years, six different constitutions were promulgated and implemented in the country. The seventh one, to be framed by the elected constituent assembly, is still pending, despite the repeated assurances of political leaders for four years to make a ‘democratic’ constitution. People argue that the second constituent assembly (elected in November 2013) also will not frame a democratic constitution to the satisfaction of all. Among the six constitutions with which Nepal has experimented, the 1990 Constitution is of special importance. First, it was a constitution framed by the representatives of the two main political forces of the country at the wake of the peoples’ movement of 1990 and secondly, the full proceedings of the making of the constitution are available in the archives for researchers and general readers. Mara Malagodi’s *Constitutional Nationalism and Legal Exclusion: Equality, Identity Politics, and Democracy in Nepal* is a good attempt to analyze how and why the 1990 Constitution was framed, along with its shortcomings and impact on post 1990 period.

A revised version of the author’s doctoral dissertation submitted to the School of Oriental and African Studies, University of London, the book is divided into eight chapters. The introductory chapter raises two basic

questions viz. why was that particular choice of institutionalism of the nation at the constitutional level made in 1990, after the return to democracy at the end of thirty years of autocratic, monarchic panchayat regime? And why was its impact on patterns of legal exclusion sanctioned and perpetrated by state actors from November 1990 to October 2002? In this connection, the author has presented her theoretical approaches concerning nationalism, constitutionalism, democracy, equality, and identity politics in a very attractive manner in the second chapter and has tried to connect the nationalism and political modernity of Nepal with the theories propounded by modern political thinkers.

The book has a chapter on the history of Nepali nationalism starting with the Licchavi period. Modern nationalism consists in varied parts of ethnic, linguistic, and religious identities, and so, the author's focus only on monarchy, hinduism, and Nepali language do not give a comprehensive picture of Nepal as a nation. The information about the 1948 and 1951 Constitutions is very brief, whereas the Constitutions of 1959 and 1962 have been analyzed only in terms of religion, language, and monarchy. Moreover, the Gorkhali expansion, the clash with the East India Company, the Rana regime etc. have only a nominal impact on the constitutional development of the country. The Civil Code (Muluki Ain) of 1854 may be of great value to the study of constitutional nationalism, but the author's treatment of the first legal code is of an introductory nature, without going through its contents. It does not seem that the author has consulted the contents of this valuable first legal document of Nepal. However, the author's theoretical and comparative approach to constitutional nationalism in relation to Nepal must be appreciated.

The fourth chapter seems to be the main part of the book making a detailed survey of the framing of the 1990 Constitution. The author admits that "the aim of this chapter is to verify the research hypothesis formulated in Chapter 1 and answer the first core research question: Why was that particular choice of institutionalization of the nation at the constitutional level made in 1990 Nepal" (p. 97)? Analyzing briefly the peoples' movement (*Jana Āndolan*) of 1990, the author makes a detailed survey of the drafting of the constitution by the Constitution Recommendation Commission and its finalization by the cabinet committee, altering at least two major issues viz. the Hindu Kingdom and the guarantee of monarchy. Here again, the author is selective in focusing on the main themes. The definition of the

nation, the positioning of Nepal's Hindu monarchy, the concept of unity in diversity, the right to religion, language issue, right to equality, the citizenship question and finally the preamble are the only subjects taken up by the author for her comments and analyses. The author's view that the 1990 Constitution did not make any major departure from the past may be correct. To put it in her own words "Nepal's constitution makers took for granted the essentially political idea of the inner unity of the Nepali state and nation historically grounded in the institution of the Shah monarchy and exemplified by the notion of *dhungo* (stone)" (p. 178). However, the reviewer feels that we should not ignore the nature of the peoples' movement 1990, which ended in a compromise with the king. Everyone, including the author, agrees that the 1990 Constitution was a document of compromise between the king and the political parties. Even then the transformation of absolute kingship to constitutional monarchy was a great achievement of the day.

The fifth chapter explains the political development in Nepal after 1990 as an impact of the newly promulgated constitution. The critical analysis of the three general elections (1991, 1994, and 1999) would have been helpful to evaluate the positive and negative impact of the 1990 Constitution on the politics of Nepal. But the author gives just an outline of these elections, failing to arrive at any concrete conclusion. Similarly, the royal palace massacre and the Maoist insurgency have also been discussed only in points. Gyanendra's role as a king up to 4 October 2002, when he dismissed the prime minister superseding the provisions of the 1990 Constitution, has been narrated in brief, and the author considers that date as the practical abrogation of the 1990 Constitution.

The theme of the sixth chapter is the working of the judiciary under the 1990 Constitution. Citing examples of four House dissolution cases, one ambassador appointment case, and one royal commission for control of corruption validity case, the author argues how the Supreme Court struggled to preserve its independence from the executive and, ultimately its credibility.

As the title of the book suggests, the study is focused on equality, identity politics, and democracy in Nepal, and so the author has one full chapter on legal exclusion in post-1990 Nepal. She has analyzed discrimination in different shapes on the basis of religion, language, and gender and concludes discrimination as the shortcoming of the 1990 Constitution, which continued the old system and practice with minor alterations. However we must admit that the 1990 Constitution was drafted within a few months,

ignoring the demand of a constituent assembly or an interim constitution. If the political leaders had taken the option for a constituent assembly or an interim constitution, the constitution making process might have taken longer (as is the case in today's Nepal).

In the final chapter, the author repeats the same conclusion that the 1990 Constitution making process was shaped by the perception of the permanence of the institution of the Shah monarchy and the existing version of Nepali nationalism constructed over time around the model of Hindu Kingship (p. 269). However, "Nepal's 1990 constitutional experience seems a useful prism to analyze the country's current endeavors to work out a new constitution-making process" (p. 274). In fact, the 1990 Constitution cannot be blamed for political chaos especially with the Maoist insurgency. Rather the political leaders, because of their personal or party interest, did not handle the situation in a proper way. The author herself admits it and issues a warning cum suggestion in these words: "It is to be hoped that Nepali politicians will rise above the daily labors of party politics and remove through deliberation the obstacles to finalizing the new constitution, as the success and durability of any constitutional settlement lies as much in sound institutional design as in constructive political negotiation" (p. xvii).

The lawmakers prepared a document which could have been implemented in a most positive direction, with suitable amendments whenever necessary. But the inter and intra party conflicts led the country to a state of confusion, and the basic objections of 1990 Constitution were largely ignored.

Coming to the technical part of the book, the author uses a mixed format, putting published books and papers in parenthetical references, and the rest of the sources, i.e., interviews, newspapers, official documents, court cases, internet, etc. in the form of traditional footnotes. The author has quoted earlier writers even on well known facts and events, and in doing so, she did not verify facts from reliable sources. As a result, there are some gross mistakes. To mention a few: Tugalak Shah for Gayasuddin Tughalak (p. 61), behadursum ser for Bahadur Shamsher Jung (p. 77), and Nepali Congress for Nepali National Congress (p. 82). Blindly quoting Burghart, the author writes that from the time of Jang Bahadur Rana the title of *cautariyā* was reworded as *prāim ministar*. In fact, the post of *cautariyā* was given to a brother or near relative of the king, and it has no connection with the post of prime minister. There are some typographical errors too. For example: 1973 for 1972 (p. 92), Saman for Daman (p. 167), and 769 for 1769 (p. 291).

More than that, the book seems to be a collection of the views of other writers. The author has used first person (I) while expressing her views, which is usually not done in academic work. Similarly, in almost every chapter, sub-chapter or even section, the author proposes the objective of that particular section or sub-chapter or chapter, which seems to be unusual. However, the presentation of Nepali months in traditional style i.e. Asar, Saun and Bhadau, and the proper transliteration of Nepali words must be appreciated.

The author has interviewed only persons connected with constitution making. In order to evaluate the shortcomings or impact, people from different walks of life should have been consulted to seek their reactions, because a constitution is the fundamental law of the land and it is for all.

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