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What about Nepal's democracy? Political parties, elections, federalism, secularism and social inclusion¹

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There are certainly more important things for Nepal than politics. However, thanks to the parties and their top politicians, the politicisation of all areas of public life has now reached such an extent that it permeates and determines all other areas in an often unbearable way. I no longer know why I chose this topic as the focus of my research more than 50 years ago, perhaps because Nepal was then in the toughest phase of the panchayat period and I hoped to observe that the country would gradually find its way to democracy and a better quality of life for all citizens.

I know that not everyone shares my analyses. And they don't have to. If I can stimulate reflection and dialogue, then my task has already been fulfilled. Even though I have been a son-in-law of Nepal for 50 years, I still have the great advantage of being able to view the country from a certain external perspective without being politically tied to it. I see this as an advantage, but I refuse to accept the accusation that I am measuring Nepal's politics against European or Western standards. Many friends and colleagues in Nepal find it much more difficult to escape the extreme party-political penetration of all areas of public life that has become increasingly widespread over the past 30 years.

Nepal's democracy in the mirror of history

I would like to begin with a brief outline of the development of democracy in Nepal. Democratic ideas only became established at the end of the Rana period. While there had already been various attempts within Nepal in the later Rana period, the party political foundations were only initiated by young Nepalis in exile in India at the end of the 1940s.

The 1950s were a period of conflict between the monarchy, which was endeavouring to restore its absolutist power, and young, inexperienced party-political forces. As is well known, the absolutist Hindu monarchy prevailed under King Mahendra. The panchayat system he created was a sham democracy with invented historical roots, without a broad popular base, with a ban on political parties and with an elaborate system of control. Citizens were involved only at the lowest local level. Under this centralised system of monarchy, the country's development stagnated. At the same time, Mahendra attempted to turn Nepal into a socially and culturally unified state, specifically drawing on the Hindu political mindset and foundations of the Muluki Ain of 1854, the first written code of law, which included both civil and criminal regulations and

¹ A similar version of this article has been published in [Khabarhub](https://www.khabarhub.com), 3 June 2024

was strictly based on the Hindu caste system of the Nepalese tradition. The development of the census figures from 1961 onwards is evidence of the obvious manipulation and speaks for itself.

King Birendra initially continued his father's policies, but allowed a certain democratisation of the panchayat system from 1980 onwards. This enabled the banned parties to gradually infiltrate the system from the mid-1980s. The People's Movement of 1990 marked the first real return of a Western-style party political system to Nepal. The absolutist monarchy was transformed into a constitutional one. Although the king was still involved in many areas of the state, he no longer had the power to assert himself.

However, conservative elements in the political parties now in power were responsible for the fact that numerous compromises were made during the system change of 1990, which Padma Ratna Tuladhar was able to explain to me in long conversations at the time. Although the diversity of languages, ethnicities, cultures and religions was recognised, this was done with restrictions and at the same time Nepal continued to be oriented towards the Hindu state and the monarchy. The latter still enjoyed numerous privileges, could not be prosecuted, had supreme command of its ever-loyal army and had the authority to declare a state of emergency, at least temporarily. Ultimately, this was what made Gyanendra's two-stage coup, in 2002 and 2005, possible in the first place.

The incompleteness of the system change of 1990, but also the developing power struggles between the political parties and their leaders, the complete disregard of the political regulations of the 1990 constitution and the lack of further development of the young democratic system contributed decisively to the emergence of the Maoist insurgency from the mid-1990s onwards. The 40 demands with which the Maoist party addressed the government led by Sher Bahadur Deuba in January 1996, for example, included, with very few exceptions, political and social issues that any democratic government should have addressed.

The inability of Nepali politicians and parties to form coalition governments, the extreme power-orientation of their top politicians and their misjudgement of the Maoist insurgency inevitably led to the decline and failure of the imperfect political system of 1990. The palace massacre of 1 June 2001 was ultimately the final blow. Sher Bahadur Deuba still attempted a dialogue with the insurgent Maoists, but had no real agenda. With Gyanendra, a monarch came to the throne who quickly revealed similar ambitions for power as his father Mahendra. Deuba's suggestion to Gyanendra to mobilise the army against the Maoists and suspend numerous fundamental rights was readily taken up by the king, resulting in a complete escalation of the conflict. The second half of the insurgency, from 2001 until Gyanendra surrendered power in April 2006, saw a multiplication of casualties compared to the first five years. The main victims were the civilian population who were caught between the two fronts and faced accusations of affinity from both sides. Gyanendra, the army leadership, the respective governments in Kathmandu and the Maoist leaders were responsible. The latter two groups have shared the country's political leadership since 2006 and supposedly want to ensure justice for the victims, i.e. people from the circle of perpetrators for the victims of their actions at the time. What can we expect?

Hopes for a democratic system emerged after Gyanendra relinquished power in April 2006. All parties, including those orientated towards monarchy and the Hindu state such as the RPP, committed themselves at the time to the creation of a socially inclusive, federal and secular

republic on the basis of a constitution that was to be created by a constituent assembly elected by the people. To this end, the transitional constitution of 2007 was adopted by the re-established parliament of 1999. Despite its relative brevity, this interim constitution was the most democratic of the seven constitutions Nepal has seen in the last 75 years. Thanks to the machinations of the political parties, today's constitution, the 2015 constitution, unfortunately represents another step backwards.

The failure of the political parties

With regard to Nepal's democratic system, developments began in the mid-1990s that continue to characterise the current system under the 2015 constitution:

Lack of absolute majorities and inability to form coalition governments, intra-party factionalism and power struggles, coalitions of opposing parties, frequent party splits or mergers, formation of alternative parties with little alternative, manipulation of elections through electoral alliances, constant prevention of democratic parliamentary work, violations of the constitution and laws, disregard of the principle of separation of powers, disregard of courts and constitutional bodies, restriction and disregard of people's fundamental rights such as the right to information and freedom of expression, threats to freedom of the press, proximity to criminal or corrupt persons, social non-inclusion in the allocation of offices and candidacies, blatant nepotism, continuation of patriarchy, marginalisation of young people, discrimination against Dalits, identification of state and society on the basis of the culture of the Khas Arya castes, lack of investigation of violent offences, no equality for women, citizenship law on a patriarchal basis, restrictions on freedom of the press and freedom of expression, inadequate use of planned budget funds, adherence to the same and repeatedly failed top politicians, refusal to rejuvenate within the party, government responsibility for parties with little voter support, prevention of federalism through misuse of the provinces, demands for a return to the socially discriminatory Hindu state, endeavours to abolish the republic and return to monarchy. This list could go on and on.

In short, the political parties and their leading politicians are happy to disregard the separation of powers and the principle of law and order. Time and again they suggest that they believe they are above the law. Court proceedings against prominent politicians are often dragged out for many years, even when they involve possible capital offences. During this time, it is taken for granted that these politicians continue to hold the highest offices of state.

Although leading politicians have been proven to have been involved in corruption and illegal activities, which has been increasingly documented by the relevant commissions and the police for some time, they are excluded from further investigations and prosecution. Even if the government declares its intention to take tough and impartial action in such cases, such politicians are usually released on bail or even without any conditions within a very short period of time and can continue to work in all party and state offices. If well-known politicians accused in this way are imprisoned, they are often transferred from prison to a well-equipped hospital because they have suddenly fallen seriously ill. Even politicians who have been convicted of capital offences by a court and sentenced to life imprisonment are pardoned by the president at the urging of the government if their party's MPs are urgently needed to keep the government in

power. Only recently, the Supreme Court made it clear that such a pardon is not the same as a declaration of innocence, but politicians are not interested in this at all.

'Big' parties and 'alternatives'

These were some theoretical details about the state of democracy in Nepal. I think it is fair to ask whether this can really be called a democracy. At least the top politicians always claim that democracy is in danger if they do not remain in power or return to such a position. If a coalition is broken overnight and a new one is formed, this is supposedly always for the good of the country and to preserve democracy, but this is never explained in detail. This is reminiscent of the buzzword of an impending conspiracy, which is usually used when top politicians realise that their power is in serious danger due to their constant failures.

In the last 17 months, for example, there have been three new governments at national level, accompanied by no fewer than four votes of confidence in parliament. The Prime Minister has always remained the same, namely Pushpa Kamal Dahal. As head of government, he was of course not responsible for the shortcomings and failures of the previous government. The fact that his party only received 11 per cent of the votes in 2022, almost 20 per cent less than in 2008 in the first elections after the end of the Maoist insurgency, does not interest Dahal at all. Yet nothing makes it clearer than this trend what voters think of the former promises of the Maoist party and its leader and what importance they attach to the party with regard to the country's political future.

However, things are not much better for the other two 'big' parties either. The CPN (UML) recorded a decline of 6.3 per cent of votes in 2022, while the Nepali Congress saw a drop of around seven per cent. Both parties only received around one in four votes. All parties can only dream of absolute majorities for a single party. But none of these parties are seriously asking themselves why the voters are running away from them. Instead, they are thinking out loud about abolishing the proportional electoral system. After all, the direct electoral system is much easier to manipulate. Unfortunately, it also makes a decisive contribution to reducing social inclusion even further than the political leaders have already achieved after the initial big promises of 2008. Adequate social inclusion was one of the main demands of the people during Jana Andolan II in 2006. Today, none of the so-called top politicians are interested in this any more. Is there really a need for Jana Andolan III as the only way out, as Narayan Manandhar, whom I hold in high esteem, recently suggested in an article in República?

The problem in this situation is the lack of alternatives. There are three parties that have been passing on political responsibility to each other for years. Their leaders - Sher Bahadur Deuba, KP Sharma Oli and Pushpa Kamal Dahal - have failed several times, but all consider themselves indispensable. Sometimes they fight each other, sometimes they form coalitions, but their main concern is always personal power. They lead their parties in an almost dictatorial manner, to which the law on political parties, which they created and which promotes the authoritarian power of party leaders, contributes significantly. Factionalism exists in all parties, but the law largely helps to keep it in check. If dissenting party members oppose the respective major party leader, he alone can order their expulsion from the party and thus the loss of all offices, including

seats in parliament. In an emergency, however, the party law can also be temporarily manipulated to prevent this, as was the case in 2021 on the initiative of Deuba and Dahal when the CPN (US) split from the CPN (UML) because the MPs of the new party were urgently needed.

Once a promising new party is founded, offering itself as a 'genuine alternative' to the 'degenerate' system of the old parties, it is not uncommon for these parties to soon turn out to be the exact opposite. In 2017, for example, the Bibeksheel Sajha Party achieved promising successes. In 2021, its leader Rabintra Mishra identified the party's 'alternative' as a return to the Hindu state and monarchy. Today, he is a leading member of the monarchist RPP. The Bibeksheel Sajha Party has not really recovered to this day.

Just five months before the last elections, Rabi Lamichhane founded the Rastriya Swatantra Party (RSP) and immediately received almost 11 per cent of the vote, only slightly less than the Maoist party that has been in power since then. To date, the RSP has only vaguely hinted at what it understands by its 'alternative'. In any case, it is not unreservedly behind the federal system. It would prefer to abolish the provinces. In addition, it is also flirting with a return to the Hindu state. There is also little sign of the claimed social inclusion within the party. Instead of taking on a structured opposition role in parliament as a declared alternative party, Lamichhane was not above participating in various coalition governments of the old parties he criticised so much and accepting high-ranking ministerial posts. He has also repeatedly been less than scrupulous about complying with legal regulations, but is always defended because the votes of his MPs are urgently needed to form or preserve a government.

CK Raut should also be mentioned, who was in favour of an independent Tarai state for a long time, usually not very militant, but nevertheless persistently persecuted by the central government. After a deal with the then Prime Minister Oli, he founded the Janamat Party (referendum party) because he had decided to achieve the separation of the Tarai through a referendum. The party took part in elections for the first time in 2022 and immediately passed the 3 per cent hurdle. Today, Raut is not afraid to participate in coalitions with the old parties either, but sometimes appears erratic in doing so. He leaves open what has become of the idea of splitting with the Tarai.

Finally, the conservative parties should also be mentioned, all of which are now in favour of a return to the Hindu state, which is clearly unconstitutional on the basis of the current constitution, but for which these parties are not prosecuted. In most cases, their demands are combined with a reinstatement of the monarchy and are therefore openly supported by former King Gyanendra, which also has no consequences. The clearly strongest of these conservative parties is the Rastriya Prajatantra Party (RPP), which received 5.5 per cent of the vote in the last elections. The party uses this 'massive' support from voters as a legal basis for its demand for a return to the proven failed political system of 1990, possibly even with elements from the time before that. Gyanendra's attempted coups in 2002 and 2005 and his co-responsibility for many deaths and crimes during the Maoist insurgency remain completely unmentioned. The fact that for the large mass of the population - Dalits, Janajati, Muslims and women in general - the abolition of the Hindu state and monarchy were among the few real achievements of the Maoist insurgency and the subsequent Constituent Assemblies must be emphasised in this context.

Basic principles of democracy

Popular sovereignty means that all state power emanates from the people. In a representative democracy, popular sovereignty is expressed through regular democratic and free elections in which representatives of the people are elected for a fixed term to make political decisions on behalf of the people.

Separation of powers means that the three central state functions are performed by different and independent bodies that control each other. The three powers are the legislative, executive and judiciary. The purpose of the separation of powers is to make the abuse of power more difficult or prevent it. For example, judges should be able to decide freely and independently whether someone has complied with a law without being pressurised by the government, for example.

In addition to this horizontal separation of powers, there is also a 'vertical separation of powers'. This refers to the division of state competences between different levels such as the national, provincial and local levels. The national level must not interfere in the work and tasks of the two lower levels.

The principle of the rule of law means that all state authorities are bound by the law in their actions. In a democracy, the elected representatives of the people cannot do as they please, but must observe the requirements of the constitution. The same applies to the executive and judiciary. The principle of the rule of law thus protects and safeguards the freedom of citizens from the state. State arbitrariness should thus be excluded. The principle of the rule of law also means that the same laws apply to all citizens (legal equality) and that they can rely on compliance with the law (legal certainty).

Constitutionalism means that the constitution is a binding framework for the state and its citizens. It lays down the rules of the political process, in particular the form of government, the form of decision-making, the legal status and function of the constitutional bodies, the judicial system and the rights and duties of citizens.

A constitution does not have to remain the same, but can also be amended. However, changes that affect the principles of the state should not be permitted.

Respect for fundamental and human rights is another hallmark of democracies: In a democracy, the fundamental rights of the people living there must be protected. This refers to individual rights to which every person is entitled from birth. They are universal, universally valid, inalienable, indivisible and may not be restricted in any way. They range from personal rights and civil liberties to economic, social and cultural human rights. Human rights must not only be respected and protected by state authority. They are the basis of social coexistence and also apply to interactions between people. Even a government that has been elected by the majority according to democratic principles cannot abolish these rights (e.g. freedom of expression, freedom of assembly or freedom of religion).

Pluralism means that many different political, civil, economic or religious interest groups are allowed to compete with each other in a democracy and that this is desirable. Parties, media and associations are also key elements of pluralism. In order for the debate between the various interests to take place peacefully, all those involved in the opinion-forming process must accept

the democratic principle of majority rule and the procedural rules of the rule of law as laid down in the constitution, laws and regulations.

Free media such as newspapers, radio and television have an important function in a democracy. They inform, provide critical commentary and encourage people to scrutinise the actions of the state. In this way, they also exercise control over the actions of the state. They are therefore also informally referred to as the 'fourth estate'. Free and independent media are therefore a basic prerequisite for democracies.

If you compare this brief summary of basic democratic principles with what is happening in Nepal and what the politicians and parties like to call a democracy worth preserving and protecting, it quickly becomes clear that Nepal's democracy is still worlds away from an ideal state. Western democracies do not always realise the ideal state either. However, it is important that there is the possibility of correction and control and that power cannot be deliberately abused. Nepal has achieved a great deal on the road to democracy in just a few decades. But there have also been repeated setbacks, some of which were mentioned in my initial historical excursus. Much could certainly be improved if people's unrestricted personal rights were respected without ifs and buts. Adequate social inclusion in all areas of public life is just as important as the abandonment of patriarchal thinking and the complete equality of women.

Young people must also be introduced to responsible participation appropriately and at an early stage. It is unacceptable that you have to be at least 25 years old to be active in parliament. All so-called top politicians have failed several times, but they cling to power and declare themselves indispensable, 72-year-olds for example, for at least another 20 years. Those who have proven that they can't do it should step down and make way for a younger generation. This would already make many things easier.