

The Right to Freedom: Nepal's Journey through History

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ABSTRACT: This article studies and reviews the historical evolution of the right to freedom in Nepal. It explores the key political events and constitutional developments that have contributed to the formation of the right to freedom in the country. The article tries to delve into topics such as the autocratic Rana rule, the abolishment of slavery, and sati practices. Furthermore, revolutions against Rana regimes such as anti-Rana movements, the rise and fall of the Panchayat system, and the Maoist insurgency are also discussed. The study also examines Nepal's constitutional history, from early efforts in the 1950s to the promulgation of the Constitution of Nepal 2072 which shines light on the right to freedom for Nepali citizens. The study aims to review the historical records, laws, and movements regarding civil liberties and human rights to understand the changes in Nepal's legal and social construct in the twenty-first century.

KEYWORDS: Right to Freedom, Human Rights, Constitution of Nepal, Rana Regime, Panchayat System

INTRODUCTION

The right to freedom is the right of an individual to do whatever one likes and wants to do; whether through actions or speech. The freedom should be bound by the law of the land, which basically changes from one country to another. The right to freedom is a fundamental Human Right of every individual, which is protected by international and national laws.

Fears (2007) examines the ideal and reality of freedom from various ages and concludes that freedom is an ideal consisting of three component ideals:

1. National Freedom
2. Political Freedom
3. Individual Freedom

At the national level, freedom can be defined as freedom from foreign control. According to Fears (2007), it is the desire of a nation, ethnic group, or tribe to rule itself. It can also be known as national self-determination. On the other hand, the freedom to vote, hold office, and pass laws can be defined as political freedom. It is the ideal of "consent of the governed" (Fears, 2007).

In its most basic form, individual freedom can be defined as the freedom to live according to one's own choice as long as one does not harm others, or another's nation, and each epoch in history (Fears, 2007). Individual freedom may hold different meanings for different individuals. It is freedom of conscience, freedom of speech, economic freedom, and freedom to choose one's lifestyle (Fears, 2007).

For one to be able to understand freedom properly, one must first have the knowledge about human rights. Human rights are inherent rights of every human. These include the right to life and liberty, the right to property, the right to freedom, the right to happiness, and the right to equality for all people. Moreover, human rights include social, cultural, and economic freedom such as freedom to participate in science and culture, work, and education.

One of the human rights is the right to freedom. Humans live in a society and in the present society people want to be independent and free. At present time it is not easy to chain a person with an invisible chain of slavery, poverty, duty, etc. People are more educated about their rights as humans, which is needed for both their personal and professional development.

Right to freedom as a human right

Human rights could be generally defined as those rights that are inherent in our nature and without which we cannot live as human beings; so, we can say human right is a right that we get for being a human (Australian Human Rights Commission, 2013).

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These rights have been recognized in international laws and fundamental laws (constitutions) of different countries. Human rights are considered the basic rights that all persons are entitled to.

After World War II, by considering the needs of people, countries of the world gathered together and the Universal Declaration of Human Rights was formed which included the "Right to Freedom" (Universal Declaration of Human Rights, 2024).

METHODOLOGY

This study is based on the doctrinal research method. Under the doctrinal approach, the methods that are adopted are descriptive, comparative, and analytical. Both primary and secondary sources of information have been collected, studied, and analyzed.

Information has been obtained from the following sources:

Books, articles, reports, official websites of different concerned organizations, internet sites, brochures, journals, etc.

History of the Right to Freedom in the Context of Nepal

Following are the revolutions by Nepalese people for Freedom.

Rana Regime and Right to Freedom

In 1903 B.S, JBR came to power and became the all-powerful Prime Minister of Nepal (AawaajNews, 2020). In the course of the regime, the hereditary prime ministers held all the powers for themselves. They lived in luxury using the public's expenses. Further, they suppressed media, education, and foreign entities. Throughout the regime, the upcoming Rana prime ministers exercised absolute power. Their nature was so autocratic that the reforms they brought were either to expand their luxury or to sustain their autocracy. This led to a development of hatred and distaste for the system by the ordinary people (Pokhrel, 2023). Despite its autocratic rule, people had gained some freedom:

Muluki Ain 1910: A written law was made at that time by JBR. The Muluki Ain provided many rights but remained unsatisfactory.

Abolishment of the sati system: It is the custom in which the widow is placed on the pyre of her deceased husband and burnt alive (Sharma, 2023). Even though all the limitations on forcing pregnant women and women with young children to practice Sati of the Muluki Ain were imposed by JBR, it did not prohibit the practice completely. Subsequently, Bir Shumsher brought another rule that no woman can be declared as Sati without the permission of the prime minister, or in his absence the higher judicial and legal body (Sharma, 2023). Chandra Shumsher declared the abolition of this practice on 8th July 1920 (Sharma, 2023). His declaration mentioned that the person who encourages or helps or actually burns the Sati, would be sentenced to death for 'murder' (Sharma, 2023).

Abolishment of the slavery system: During the Rana regime, slavery was officially made illegal in 1925 (University of Central Arkansas, 2021). The comprehensive speech of Chandra Shumsher on Nov. 28, 1924, represented a genuine desire to abolish this inhuman practice (Shrestha, 2008). Despite the efforts, slavery continued for more than three-fourths of the century. While the constitution of 1990 (2047 B.S) granted the people freedom from slavery, serfdom, or forced labor in any form, there was slavery in the name of traditions like Haliya and Kamaiya and the Nepali society had to wait till July 17, 2000, for its official abolishment (Shrestha, 2008). The establishment of schools and colleges was also done in the Rana period.

Anti-Rana Movement

Later, the people were getting fed up with the tyrannical rule of the Ranas and the educated class started to give political awareness to the people against the despotic and totalitarian rule of Ranas. Some voices were raised against the Rana regime in an unorganized way after the First World War, but Chandra Shumsher suppressed them. He also suppressed anti-Rana movements like Makai Parva and Arya Samaj along with movements in the form of the charkha movement, library parva, and Jayatu Sanskritam gained momentum that made people more aware of their rights and encouraged the people to fight against the Rana rule (Kafle, Ghimire, & KC, 2024).

In 1993 B.S., Nepal Praja Parishad was formed by Nepalese democrats. King Tribhuvan, who was controlled by the Ranas, was dissatisfied with his position (University of Central Arkansas, 2021). So naturally, he was in the favour of the democrats. They were plotting and secretly scattering pamphlets against the Ranas. But unfortunately, the leaders of the Nepal Praja Parishad, Sukraraj Shastri and Dharmabhakta Mathema, were caught and executed on the charge of treason after the secret party and the plan was disclosed (University of Central Arkansas, 2021).

Padma Shumsher, the 9th Rana Prime Minister for the first time gave Nepal a written constitution called the "Government of Nepal Act 2004" to check up on the growth of the anti-Rana movement (Manandhar, 2019). This constitution included the right

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to freedom as a fundamental right in 'article 4' (Adhikari, 2023). But this constitution was not satisfactory and was not implemented so, this constitution did not stop the revolution of people.

Many leaders who were involved in the Indian campaign returned and became active in the anti-rana movement. The Nepal communist party, was formed in the year BS 2006 (Thapaliya, 2019). It was in the autumn of the same year when the Nepali National Congress and the Nepali democratic congress merged to form the Nepali Congress.

After the formation of the Congress party, funds were collected from both Nepal and India. It was putting together an army of its own — the Liberation Army (Pokhrel, 2023). The border regions suffered large-scale strikes from the liberation army. They were slowly extending their influence into many parts of the country. The situation in the country had been deteriorating. Mohan Shumsher sent his delegates to India for a talk when he started to realize that the revolution was getting out of control. Previously, such attempts were unsuccessful. The Rana delegates, Nepali congress, and King Tribhuvan signed the tripartite Delhi compromise with the active mediation of the Indian government on Falgun 1. The king then returned to the country on Falgun 7 in his position (Pokhrel, 2023). Then an election for the constituent assembly was agreed to be held that year. The event is marked as the event of democracy in the country.

After the introduction of democracy, the "The Nepal Interim Government Act, 2007" was formed. It was promulgated on 17th Chaitra 2007 B.S. It was divided into 7 parts, 73 articles, and 3 schedules. It made many provisions including the fundamental right of people which included the right to freedom of people of Nepal in 'Article 17[2(a-g)].'

Period 2007 to 2017

Since the declaration of democracy in Nepal, party politics in Nepal started with Nepali Congresses' and Nepal Communist Party's leadership. The Delhi agreement was concluded with the committee to form a constitution having the nature of a republican one to rule over the state (South Asia Terrorism Portal, 2001). But, due to the various internal factors like conflict between and among the political parties regarding the authorities of the state and other misconceptions, they did not fulfill the committee made by themselves.

King Mahendra formed a commission to draft the constitution. It was said that the commission rejected the draft on the king's advice because, in those drafts, the executive and legislative rights were provided to the council of ministers rather than the king (Cowan, 2020). The fourth draft was accepted including the amendment in some points (Cowan, 2020).

In this way, Nepalese people got their 3rd constitution (Constitution of Nepal) which was a bit more democratic than the previous one. This democratic constitution was promulgated on 1st Falgun 2015 B.S. This constitution included the right to freedom of all citizens as a political right in 'Article 7(a-d)', but, it did not work in the favor of the general people, who still could not get their freedom back.

The King only aimed at having more powers to himself and the public was not considered important. The political parties were inexperienced at that time, leading King Mahendra to move to the extreme to seek more power in the country (Kharel & KC, 2024). People were unaware and there was a sea of illiteracy. Suspicion, disinterest from foreign powers and intervention, corruption, and procrastination were rising. By contrast, the new constitutional assembly was rife with bad blood between political parties. In such conditions, King Mahendra seized democracy and centralized all state powers to himself on 1st Poush, 2017 B.S and he initiated the party less panchayat system from 22nd Poush, 2017 B.S (Kharel & KC, 2024).

Panchayat system

The party less Panchayat system of governance was introduced to Nepal. Even though people could vote for their leaders, the Panchayat system was built on an absolute monarchy and all powers were centralized to the king. Under this system, the King was the head and had the sole power behind all the governmental institutions including the Parliament and the Cabinet. The King banned political parties, and was the executive and military ruler as well. The King himself was in the position of the commander-in-chief. He possessed powers to appoint and dismiss judges of the Supreme Court, appoint members of the Public Service Commission, and change the Constitution as he pleased (Kharel & KC, 2024).

As the fourth constitution of Nepal, the constitution of Nepal 2019 B.S was formed, which included the right to freedom as a fundamental right in 'Article 11[2(a-d)] and gave constitutional recognition to the party-less panchayat system put into practice by King Mahendra.

Fall of Panchayat System

There were many reasons behind the fall of the Panchayat rule. One of the main causes was that even though there were some rights and freedoms given to people in the constitution, it was not practically implemented (Khadka, 1986). The government suppressed any form of protests, but the public was slowly becoming more aware and literate (Khadka, 1986). The public was angered by this suppression. The government was focused on getting more power instead of working for the wellness of the

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citizens and the development of the country. Corruption was rampant in the country. The people were slowly becoming more aware and literate. The public was angered by this suppression from the Panchayat government. The government was focused on getting more power instead of working for the wellness of the citizens and the development of the country. Corruption was rampant in the country.

The constitution made in the panchayat system was promulgated on 1st Poush 2019 B.S, was amended in 2023 B.S, 2032 B.S and 2037 B.S and was finally abandoned by the public movement in 2046 B.S that restored the multi-party system in the country (Manandhar, 2019).

Public Movement I (2046)

The public movement of 2046 B.S carried the sole purpose of throwing the autocratic Panchayat rule which was introduced in 1972 B.S by King Mahendra and bringing the essence of democracy back to the country through the re-establishment of a multi-party system.

The various communist factions united as one and formed the United Left Front. The Nepali Congress and the Nepal Communist Party set aside their different views and together, agreed to fight a revolution against the Panchayati system. The result was that the support from the general public for political parties was starting to increase. The people's movement was announced from 7th Falgun 2046 B.S and there were various strikes and protests all around the country. The citizens poured onto the streets disobeying the curfew set by the government (Gyanwali & Khanal, 2023). Finally, on 26th Chaitra 2046, King Birendra issued a radio broadcast and declared that the Panchayati system ended and democracy was re-established (Gyanwali & Khanal, 2023). The revolution of 2046 B.S. effectively ended the Panchayati rule.

Many achievements were gained through this movement and one of them was a democratic constitution promulgated in 2047 called the "Constitution of Kingdom of Nepal" which guaranteed fundamental rights like the right of freedom in 'Article 12[2(a-e)]'.

Rise of Maoists

After the end of the panchayat system, Nepal had a democratic constitution and multi-party elections. People had expected that democracy would follow. However, it did not. Unemployment soared, and along with it, disillusionment and dissent. Certain social ills such as corruption, power-grabbing, internal quarreling, nepotism, favoritism, and political leaders who were more interested in personal gains than government stability contributed to widespread dissatisfaction with politics in Nepal, which might largely explain the fast-growing support for the Maoists' cause (Upreti, 2006).

Poverty, unemployment, regional disparities, dependency on foreign aid, unequal foreign trade relations, and slow and unequal development have also been considered reasons for the expansion of the support base for the Maoists. (Upreti, 2006). In 1994, they abandoned their legislative seats and their leaders went underground. Then in February 1996, they declared the People's War, claiming that only a communist state could solve the country's various social and economic ills, giving birth to Maoist Insurgency in the country (Upreti, 2006).

The Maoists started an armed insurgency amidst political instability from the remote hills of the mid-Western region and finally emerged as a threat to the Nepal government. The war against state power became widespread, and the Maoists were able to gain the support of the lower and middle classes.

People's Movement II (2062/2063)

The Maoists armed struggle focused on liberating the people from the severe forms of economic, social, political, and gender oppression and discrimination. After the unfortunate royal massacre of King Birendra and his entire family on Jestha 19, 2058, King Gyanendra dismissed Sher Bahadur Deuba's government and centralized the executive authority in his hand (Shukla, 2005). After that, all political parties were against the palace and monarchy. The Seven Party Alliance (SPA) firmly agreed on the Maoists' twelve-point agreement. They agreed to prepare for the second phase of the mass movement in Mangsir 7th, 2062, and signed the agreement in Delhi (Sijapati, 2009). It led to the Mass Revolution II, which made King Gyanendra reinstate the dissolved House of Representatives. The leaders of the movement demanded the convening of a new Constituent Assembly and power to the people and the monarchy was ended. G.P. Koirala became the prime minister of the country. On Jestha 4th, 2063, a 25-point peace code of conduct agreement was signed between the government and the Maoist party (Sijapati, 2009). Last of all, the Comprehensive Peace Agreement was sealed on Mangsir 5th, 2063 B.S. between the then Prime Minister G.P. Koirala and the Maoist Chairman Prachanda. An interim Government was formed, and the days of unbridled monarchy were over (Sijapati, 2009). "The Interim Constitution of Nepal 2063" B.S was promulgated on 1st Magh 2063 B.S in the name of the people by the legislative parliament. This constitution established Nepal as a secular and republican state whose state power is inherent in the people and gives the right to freedom as a fundamental right to all citizens which was guaranteed in 'Article 13[2(a-f)]'.

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Constitution of Nepal 2072

As the Interim Constitution of Nepal 2063 was made for a temporary period, we needed a permanent and dependable constitution so, "The Constitution of Nepal 2072" was promulgated.

Nepal is now governed according to the Constitution of Nepal, which came into effect on Sept 20, 2015 (Aswin 2, 2072) replacing the Interim Constitution of 2007 (2063). This constitution includes the provision of the right to freedom in Article 17[2(a-g)]. The Constitution was drafted by the Second Constituent Assembly following the failure of the First Constituent Assembly to produce a constitution in its mandated period (Ghimire, 2013).

FINDINGS

- The right to freedom is a human right as well as a fundamental right.
- During the Rana regime, there were some notable reforms like the Muluki Ain (1910) and the abolition of the Sati and Slavery systems which contributed to development of right to freedom in Nepal.
- With the 1950 democratic revolution and the end of the Rana rule, Nepal experienced a new wave of democratic movements which were essentially movements for freedom of the citizens.
- The Panchayat system was founded on the monarch's complete authority which tried to seize the freedom of the citizens and form an autocratic government. In this system, only the King had all the authority when it came to the main structures of power such as Parliament and Cabinet. It did not help much for right to freedom.
- The Constitution of Nepal 2072 has guaranteed various freedoms to the citizens such as Freedom of Expression, Freedom of Association and others.

CONCLUSION

Right to freedom is a vast topic. It's development in Nepal has been a remarkable journey. Nepal has seen changes in the right to freedom to the citizens. From sati system and slavery system being a common tradition in the society to providing the right to live with dignity in the country, Nepali citizens have come a long way to have this type of freedom. The political parties have seen a huge difference in how they could be established. During the monarchy and Rana regime, formation of political party was unthinkable or at the very least a really difficult task. With all powers centralized to a single entity, people could not express their views freely. In the latest constitution of Nepal, it has provided the right to association that provides each individual to form political parties and other associations. This is a dramatic change in the country.

Despite significant progress, many challenges still remain. Such as ensuring equitable access to these freedoms and addressing the remnants of historical inequalities. Gender inequality and discrimination on the basis of caste is still seen prevalent in many traditional societies. Government and citizens must work together to abolish these types of inequalities for the better development of the country.

Nonetheless, the journey of right to freedom in Nepal was not an easy one. Continuous determination and support of the mass helped to gain freedom in the country. Nepali citizens must continue to strive to ensure their fundamental right, if it ever gets violated. The study emphasizes that freedom cannot be ensured by just legal systems but needs a societal commitment that requires persistent effort and accountability.

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