

INTERVIEW

Rishikesh Shaha on Human Rights and Democracy in Nepal

An Interview with the President of the Human Rights Organisation of Nepal (HURON)

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Active in Nepali politics since 1949, Rishikesh Shaha is a unique figure who has had a first hand experience of the upper echelons of power, as well as of the hardships of political persecution, and who, at the same time, has pursued academic studies and drawn on these experiences in numerous scholarly publications on the political history of his country.

He witnessed the dawning of democracy in the fifties as a leading politician and became Nepal's first representative at the UN. Later, he played a significant part in drafting King Mahendra's 1962 constitution, but soon afterwards resigned, went into opposition and was jailed several times for his political views.

Many of his books deal with the Panchayat era *Three Decades and Two Kings - Eclipse of Nepal's Partyless Monarchic Rule* 1990, *Politics in Nepal (1980-1991) - Referendum, Stalemate and Triumph of People Power* (1992). But he has also published works on the general history of Nepal: *The two volume Modern Nepal. A Political History 1769-1955* (1990), and *Ancient and Medieval Nepal* 1992).

In 1988, together with a good number of other concerned intellectuals, many of whom today are prominent figures in quite different parties, (for example, Dr. Baburam Bhattarai from the leftist United People's Front

and Daman Dhungana from the Congress Party) Rishikesh Shaha founded the Human Rights Organisation of Nepal (HURON). The organization was under considerable repression from the government; his house, where also the office was located, was under constant observation. In 1989 he was arrested on the charge of seeking to subvert the established order in collusion with a foreign power, and the state prosecutor asked for the death penalty, but he was eventually released on bail.

After the restoration of democracy, Mr. Shaha has remained an independent voice. At a press conference just four days before our interview he presented a HURON report on the violence during the recent *Nepali band* (General strike) on April 6, 1992 in which the figure of deaths caused by police action was put at 14 instead of the official 7. He took the opportunity to give a statement on the general political situation in the country, appealing to the leaders to strengthen the external or formal safeguards of democracy provided for the constitution. Many of the points made in the statement were touched upon during our talk. The following is an abridged version of the one and a half hour interview which Mr. Shaha gave me on May 15, 1992 at his house in his frank and outspoken manner.

G: On April 6 the new democracy in Nepal had to go through another test: a *Nepal band* seemed to signal popular discontent; and police, again, resorted to firing, killing several persons. Which, in your opinion, is the greatest danger for democracy right now in Nepal?

S: To me the greatest danger for democracy arises from the complacency of our political leaders. They, the ruling party especially, seem to argue that because there is this global trend of democratization, the democratic process cannot be reversed. This is what they have been saying, even to the people in public speeches. My contention is without democratic freedom you cannot have anything. This is what I say to the left also. You must have an electoral system because it enforces the grand principle of accountability. There are people who want to expose that parliamentary system, the extreme left. To them I say: Look, I cannot accept that attitude. Democratic freedom may not be a sufficient condition, but it is a necessary condition of economic uplift, social uplift also. I tell the leaders: Don't be too sure that democracy might not have back-slidings and set-backs. Unless you can develop democracy into an effective instrument for removing social and political ills, it may be doomed. So the greatest danger to democracy to my mind comes from the inability of our leaders to cope with the economic and social problems which the country faces. Seventy percent of the people live below the poverty line, according to the latest World Bank development report. Unless you have some kind of security net for them, there will be trouble. There is a lot of discontent, as the second *band* (on May 3) even without the participation of the United Marxist Leninist Communist

Party of Nepal showed. The people are discontent. Why: because of rising prices, because all these kids have no jobs. And of course, this liberalization has aroused high expectations and these expectations are not being quickly fulfilled. But the leaders are not looking at these problems; instead they are saying: Oh, because there has been democracy all over the world, we have no worries for the future. I say no: if I were in your place, I would be worried. It is very difficult to make democracy work in the trying circumstances that prevail in Nepal.

G: Does also, in your opinion, the politicization of the students and the civil servants contribute to this unstable situation?

S: ... It is very dangerous. Without a functioning civil service we cannot have a reliable, effective, efficient and clean administrative machinery. ... Of course, the opposition says that the Congress Party has politicized them; they call it Congressization. I say there is Congressization, but the other side is also not playing fair. They are also trying to win over the civil servants. And that accounts for a lot of instability in the land now. ... We are receiving very disturbing reports about the law and order situation, from east, from west, from everywhere.

G: But is this politicization not part of the democratic process?

S: No, in other countries, such as Britain and India, even in the United States, the civil service officers are appointed through public competition. It is on the basis of merit that they are recruited, and on the basis of efficiency and seniority they are promoted. For that you have the Public Service Commission here also. I call that one of the formal safeguards of democracy.

These formal safeguards must be strengthened. Public Service Commission, and independent audits and accounts, you hear nothing about these things. You do hear, though, of the scandals: Oh, the government has pocketed so much money in this deal or that. In democracy you have independent audits and accounts. The Public Service Commission is not making any appointments just now; it is simply out of the picture. The Prime Minister heads an Administrative Reforms Commission, that is responsible for the removal of people and all that: but where is the Public Service Commission? ... And then the third thing is an independent judiciary. We shall have to see how independent it will be in practice. It has all the protection it needs. So these I regard as the formal or external safeguards of democracy. We must strengthen them if we are to make democracy work in this country.

G: Let me come to the Constitution. As you know, the new constitution was drafted within a rather short period, within seven months. So, as far as I remember, you had been in favour of a constituent assembly. But the Constitution has never been voted on by the people. What consequences do you see deriving from this?

S: I said to His Majesty: "Your Majesty, the best thing for You will be to follow in the footsteps of Your illustrious grandfather, King Tribhuvan, who had made an offer to hold elections for a constituent assembly. Then there will be no quarrel. Without it You will be caught up in bargaining with the various parties. And You will have a constitution trying to satisfy all the political parties without ensuring democracy for the people in general." This was my humble submission. This constitution

unduly favours the parties. The parties are not even required to show their accounts. And it gives everything to the major parties. So much so, that the Election Commission was not even prepared to allow other minor parties to run in their own name on the plea that they had not got the requisite number, that is 3%, of the votes in the country. The Supreme Court gave a verdict only yesterday, that, no, it is not wrong not to let these small parties run in their party's name. So Comrade Rohit's Workers' and Peasants' Party (WPP) will be campaigning in its own name. ... Comrade Rohit's contention was, I think, very correct. He said: I don't claim the privileges of a national party, because my party did not get 3% votes, but you cannot prevent me from running as a party or putting up candidates from my party for election. And there were other parties, I mean the new parties, parties to be born, how could they get 3% votes? The constitution can't ask the people to do the impossible. But thank God, the judges have said that the election commissioners, or the election officer, was wrong not allowing the WPP's candidate to run in the name of his party. ... Comrade Rohit had filed his case before the parliamentary by-elections to a particular constituency were held, but the verdict came after the elections were finished. What prevented these learned judges from coming out with this verdict right at that time, right at that time before the elections? They could have done that. They could have asked the election commissioner: Allow Rohit's candidate also to run in the name of his party. You see, the old mentality has not changed. They don't want to hurt the powers-that-be. This is why I always insist: Unless your mentality changes, nothing is going to happen.

Even the judges, they seem to be afraid of treading on somebody else's toes.

These things don't change overnight, and it will take us some time to change our ways. I have said in the course of my report that all those people who are in favour of privatization and open market here, you see, they will not acquire a protestant bourgeois work ethic overnight. They will try - I have said in my report - to corrupt the elected political leaders in the same way as they were used to corrupting the predecessors of these rulers in the government.

G: You said that the Constitution is overly party-oriented. Can you explain a bit more?

S: Overly party-oriented it is bound to be, because the parties' nominees were among the members of the Constitution Drafting Commission. There were only one or two nominees of the King and they were also ex-party leaders. So at that time when the parties had won against the King, naturally they all succumbed to their pressure.

G: Can you say in more detail what articles, or what aspects of the Constitution are the result of this party-orientation? What do you see as the major weakness of the Constitution? (As Mr. Shaha wrote an article on the Constitution in *HIMAL* Nov./Dec. 1990 only passages that add or clarify some of his points are reproduced here.)

S: Chapter XVII in the Constitution deals with political organizations. It merely provides that the constitution of the party must be democratic, the rules and the manifesto must be democratic and it must be registered. Now it does not even say, that its accounts should be audited every year and made available to the public. It should have been there. In other constitutions, parties are not even mentioned; in the American

constitution parties are not even mentioned. ... You see, it is a negative right, you can form political organizations, the government should not interfere, that's all. So they could have left it at that. ... They are not going to provide, as in your case (in Germany), or in the case of Israel, money to the parties for running elections on the basis of their record in the previous one. They are not going to do anything of that kind. So why the 3% rule?

... About the constitutional weaknesses, the King has the power to revoke the Constitution. He might revoke the Constitution only for fear that there might be another popular upsurge which might end monarchy. Theoretically speaking, he can revoke the constitution because it is he who has given it. Whoever has given the Constitution can take it away. ...

G: To come to another aspect, how do you see the state of religious freedom in the country?

S: (Reads from *HIMAL*) "Right to religion. The officially distributed (but unofficial) English translation of the Constitution reads thus: 'Every person shall have the freedom to profess and practise his own religion as coming down to him from the perennial past (sic) having due regard to traditional practices. Provided that no person shall be entitled to convert another person from one religion to another.'"

Now look: in Nepali there is no word for proselytization. What the real text says, I have given my translation. Even the translation has not properly been done. Because in Nepali for "convert another person", there are no appropriate words because we do not have the practice.

G: What is it in Nepali: *dharma parivartan garāune*?

S: My translation of the above clause is: "Provided that no person shall cause or compel another individual to change one's religion." These were the words written by me for King Mahendra's Constitution. You see, the late King wanted me to draft his Constitution.... I told him even then: "Sir, it will look very bad if you do not allow people to change their religion out of their own volition.

G: Have you had any cases of people imprisoned for changing their religion?

S: These people have been released. Some of the missionaries, I championed their cause. ... They have all been released. The pressure on them has decreased, because of the allround liberalisation. The municipal law, however, remains the same. ... There is the Muluki Ain, in the Muluki Ain they can be punished for changing their religion. And the Muluki Ain articles have not been changed. Now, it is up to the judges to rise to the occasion and say that the Muluki Ain is not consistent with the spirit of the Constitution, and declare the provisions therein *ultra vires* of the Constitution. We have to see whether the judges will have the courage to say that.

...Now about torture, let me tell you that I pleaded with my friend Mr. K.P. Bhattarai to sign that optional protocol to the International Covenant on Civil and Political Rights. ...Now, the effect will be, if anyone is denied his personal right in any way, after exhausting all the means for the redress of grievances in Nepal, he can go to the International Court of Justice, or to the Human Rights Commission for the redress of his personal grievances against the government. He has signed that ... during his time as prime minister.

...So torture has also been abolished, but the people are still being

tortured. ... Long before the leftist report came out, I said on the basis of the report I received from my own HURON friends that in Baglung people were being tortured.

G: In what context?

S: Some police inspector was killed there. After that the police went berserk and rounded up several people, and they were all tortured. And some of them are still in prison..... The leftists did their research only now. I came out with the statement about three weeks ago. Saying that the government was definitely wrong. I asked the government to set up a judicial inquiry commission to go into it and find out about what had happened.

The difference between now and the Panchayat regime is that the present rulers allow me to meet these prisoners. And then, the victims of torture have told me in the presence of police officers and inspectors that they have been tortured. That is the change. During Panchayat-Raj they would not allow me to go anywhere near them.

Now about death the penalty, even the Constitution says that in certain cases it is still allowed. So if you look at the Amnesty comment, it says that in Nepal the death penalty is only partially abolished. Because there is one law here. Let me be very frank with you, there is one law here, which is called *rājgaddi uttaradhikāritva ain*, or the Law Relating to Succession to the Royal Throne, which was drawn up by the King's father and revised by the present King. In that law there is a provision that if anybody makes advances to the royal ladies, or wants to do something untoward to the King, the person can be hanged. So I said: Why don't you go and tell the King that this act should be changed in the present context?

G: One question concerning the protection of ethnic minorities. How has the situation changed in that respect?

S: Neither the leftist parties nor the Congress Party have been able to find a solution. And all these ethnic minorities are discontent with both the parties. Their leaders have deserted the mainstream political parties. They have started founding their own organisation. There is *Janamukti Morcha*, Peoples's Liberation Front of Messrs. Gore Bahadur Kapangi, and M.S. Thapa. ... They have told me that the leftist won't do anything for them. They have tried to put up their own candidates. And there are Panchayat-oriented ethnic group parties. They are also fed up with the Panchayat parties, and with the communists also....

G: Do you think these ethnic parties have a good chance to win in the local elections?

S: They may fare better in local body elections but the government has not given real powers and responsibilities to local bodies. They have been given responsibilities for development without having any real power or authority as units of local self-government. I said: For god's sake, the people will never learn how to run their own affairs, if you don't give them powers, give them money also. I told them of the Constitution of Brazil, in which it is provided that 31% of the budget be spent through institutions of local self-government. Otherwise the people will never learn how to run their affairs. This is the only way in which you can build up democracy from bottom up. But now, I have absolutely no doubt that Congress and the Leftists will try to capture whatever is possible, and then they will try to run things in their own way, and with the help of the civil

servants again, as it was being done in the Panchayat time.

...You see, there should have been a chapter on local self-government in the text of the Constitution itself. It is not there. And when I raised this question, one of the members of the Constitution Drafting Commission belonging to UM-L CPN, Mr. Bharat Mohan Adhikari, said: We wanted to have a complete chapter, here in the Constitution, but Mr. K.P. Bhattarai didn't want it. So we dropped the idea at the last minute.

... And there is another trend, that of ethnicity or regionalism. The Tarai is a big region. The Sad-bhavana Party is regarded as being pro-Indian but it could be more popular in the Terai area because most of the parties have given more tickets to the hill peoples who have moved to the Tarai than to the indigenous Tarai people. So they must show some kind of vision and foresight in this respect. Otherwise the Tarai people are not going to take it for long.

Meanwhile the Tarai youth, have grown very very extreme. They say: "There is no Palk Straits between Nepal and India. Now water or natural boundary between India and Nepal. If the bloody fools in the hills want to suppress us, the same way as they did in the past, there will be another Liberation Tigers' Front in the Tarai. We will see what your government in the hills will do. We border on Bihar. And look at Bihar, there are explosions every other day. So we can get all the technical knowhow.... and give you the taste of what is going to come." So this is another danger.

G: Coming to my last question, concerning your own work, what are your next projects. What do you plan to write on in the near future?

S: ... Now, if I find time, I shall start writing my autobiography because I

think I should share my experience in life with succeeding generations. Not because I have been a great success, or anything of the kind, but only because I have lived turbulently and have had a rather adventurous life. I have married in the Rana family. We have been Khans or Shahas. We belong to one of the Twenty-Four Principalities in the Gandaki basin. And, for good or bad, I came to be associated with the popular

political movements. Which here played a critical role in our country's recent history. As a gadfly, you can say. But I have had some role and I have seen the working of politics and government in Nepal from both the inside and the outside. I think my fellow-countrymen at present and in the future would profit by my experiences and learn from my mistakes and failures.