

# Tradition, Political and Legal Systems of Nepal

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## Abstract

*This study concerns the political system, and traditional rituals practiced in Nepal. It focuses on the analysis of the unique relationship between the political system and tradition in Nepal. The Nepali legal system is based on customary law. Nepali society is largely based on the traditional framework. Perhaps all societies have been developing their social norms. Britain, which is considered the mother of democracy, has been operating its governing system according to tradition. In this way, no one would deny that the state or society is progressing in its way or pattern. In that way, I have conceptualized tradition as trends that have been practiced for a long time or accepted by people. Ancient civilizations, be those Athens or India, have been bound in some tradition. This study is focused on what traditions are maintained in the political and legal systems in Nepal, and how those traditional rituals have influenced today's political system of Nepal. As a library study, it is purely qualitative in nature, and it has descriptively analyzed the secondary materials from the Middle Age to the present day.*

**Key words :** development, religion, traditional rituals.

## Background

Customary laws are the bases of the law and politics of the nation. This research is concerned with the influence of traditional rituals on the political and legal system. However, it has tried to find out how much influence tradition has had on today's political and legal systems. The study has been limited within that limitation as the study would be too long to explore all aspects of the history of caste, and tradition. However, historical issues are also included in the related context.

It is not possible to find a definite point as to when the governance system was operated based on the traditional rituals, because the traditional beliefs, and scientific bases regarding the origin, and its development are different. However, it has been accepted as a proof that human civilization has developed due to human virtues, and the common purpose of humanity. In the same way, many old foundations have not been found regarding the history of Nepal for human habitation, and how the state was organized. It is not that easy to find a scientific basis to state for certain when there was the first human settlement in Nepal. However, 'based on the genealogy, historians have found the facts that *Gopalvanshi, Varmavanshi, Gupta vanshi, Mahishavanshi, Abirvanshi, Kiratvanshi,*

etc. ruled in Nepal based on the mythological details (Nepal, 2079). Similarly, It is not easily possible to find the authentic bases of what kind of rules were applied during that regime. 'In 2033, Russian archaeologists conducted an exploration around Budhanilkantha in Kathmandu finding the proof of a human habitation in the Kathmandu Valley since the pre-Christian era, as stone tools that are about 30,000 years old have been found there,' (Sharma, 2075 B.S.). 'During the pre-historical period, the *Kiratis* ruled over Kathmandu, while other dynasties ruled outside the valley' (K.C, 2063 B.S.). During that time, various dynasties ruled in different regions including *Shakyas* in the Tarai, and *Kolas* in Kapilwa. From the ancient times to the unification period, there were many kingdoms of many dynasties in Nepal. Most of the ancient and medieval kingdoms were ruled by feudal lords. Because the study of the civilization of all Europe from Britain has proved that the kings are the heirs of the feudal lords it can be said that the wisdom of the rulers and their pieces of knowledge was the basis of the traditional rituals at that time.

Some history of the governing system of the Gorkha kingdom can be found. The basis of the rule of Gorkha king Ram Shah can be traced in those states. Historical foundations can be found about the state skills of Gorkha King Ram Shah. There is evidence that King Ram Shah administered the Gorkha kingdom based on Hindu traditions. Gorkha king Ram Shah also made many reforms to the state administration. Those reforms were based on the traditional rituals of that time. The punishments made by him were based on the traditions and rituals of the time. 'According to the rules made by him for the death penalty, if a relative of the dynasty dies, they will be deported, *Brahmins*, *Sanyasis*, *Bairagis*, and *Bhats* would also be deported if they die, *Khas*, *Magars*, *Newars*, and other castes would be given the death penalty if they die,' (Yadav, 2042 B.S.). These rules were made based on caste, but when the custom of caste started, and why it was established may be another subject of research. The basis of the map of modern Nepal was prepared by King Prithvi Narayan Shah. Before unification, there were *Baisi*, and *Chaubisi* kingdoms in the Hills, many other small kingdoms in the East, and the Terai. This study has attempted to find out how traditional rituals are influencing politics after unification, and what kind of influence these traditional rituals have on today's political system and law after the restructuring of the state.

### Objectives

In the research, an attempt has been made to find out what kind of tradition has an effect on the political system in Nepal. More specifically, the study was guided by the following objectives.

- To find out what traditional rituals are maintained in Nepalese politics; and
- To analyze how those traditional rituals are influencing the political and legal system of Nepal

### Methodology

It is qualitative research in nature. Considering the nature of the issue under exploration, only secondary materials have been used in this research. Secondary notes,

various published writings, documents, and works of experts have been analyzed. Descriptive and analytical methods have been applied to the analysis of the data.

## Discussion

### Pre-democratic era

In general, the early society was governed by traditional rituals and customs. Since when such practice started, it can become a subject of different research. Therefore, it is not possible to find a certain point as to when the state was run based on religion, and traditional rituals in Nepal. Until the creation of laws, it can be assumed that all societies have been governed by creating ethics based on traditional rituals. However, the first written law of Nepal was created by incorporating religion, and traditional rituals into the old civil law. 'In Nepal, based on tradition is determined by the nature of caste work. At that time, regardless of the caste, the scholar, and ascetic who knew the scriptures were called Brahmin, and the one who could fight or knew the war was called Kshetri,' (Sharma, 2075 B.S.). King Rajendra Bikram Shah made a new civil law based on those old beliefs which had been running as an acceptable rule in the society for a long time.

Comparatively, the most centralized government was operated in Nepal during the Rana period. Rana Prime Ministers were all-powerful and had to be answerable to the common man, and the army or national servants of the Prime Minister. At that time, the Prime Minister ruled the country according to his will, while the society was bound by traditional rules,' (Joshi, and Rose, 2004). During the Rana period, the society was run based on traditional Vedic Sanatan traditions at that time. There is no history of rebellion by the states that were united during the unification period, while society was operating under the guise of eternal traditions throughout Nepal. But at that time 'the Aath Pahariya Rais of Dhankuta rebelled against Hinduism' (Baral, 2063 B.S.).

Looking at the political history of Nepal, it is found that there was a practice of maintaining the social system by forming the work based on class and caste system. But the development of caste in Nepal, and its beginning is based on its geographical structure and accessibility. 'In search of a new place, the Mongols went west and south. The Aryans went north, and east. Their main gathering is found in the Gandaki region of Nepal. The Mongol tribes of the eastern part of Gandaki are dispersed in Bhot, Himwat Khand, Inner Madhesh, Dewar, and Brahmaputra regions. Similarly, the Aryas in the west of Gandaki spread not only in the plains of Bharat Khand but also in Kashmir, Kangra, Gadwal, Kumaon, and Karnali regions. Some castes sometimes reached far beyond their territory due to their power,' (Gurung, 2012). In the scattered Nepali society, the system of caste, and caste gradually started, and it seems that work was divided based on caste, and caste. The reforms made by King Ram Shah and King Jayasthiti Malla were also based on caste division, and assigning work responsibilities to those castes.

'King Jayasthiti Malla made various reforms. Those reforms have had a long-term impact on Nepal's social system, and laws. According to the caste, and *varna* system made at that time, it was divided into four castes, and thirty-six varnas. According to the caste

division, the work of the society was also divided,' (Yadav, 2042 B.S.). It can be said that the period before the unification of Nepal until the establishment of democracy in Nepal was a dark age in terms of law because the old civil law made during the reign of King Rajendra was only a law. That law was also based on the will of the Rana, and the traditional rituals of that time. It can be said that the construction of Nepali society is also a combination of nomads because if we study the social literature deeply, we will not find purity in the generations of many castes of Nepal. Based on work, and efficiency, such divisions have been created, and traditions have been on track. For example, the Chantal caste, who were primitive in Baglung, and Myagdi, became Chantyal from a miChinool 'Chhino' because they were experts in mining. Some scholars have considered them to be the Thakuri generation,' (Nepal, 2079 B.S.). These mentioned foundations are the sources of Nepali society, and rules, and it can be said based on this evidence that today's society was gradually formed based on traditional rituals, and new laws were formed based on those customs, and traditions.

### **Post-democratic era**

In Nepal, the period after 2007 B.S. is considered a democratic period. The interim constitution made at that time marked the end of Rana's rule and the way forward for democracy. The law of that time was focused on how to build an elected house, and how to make a democratic constitution rather than new changes. 'After the establishment of democracy in Nepal, the Terai Congress, and the Terai Mukti Mukti Morcha used to rebel against the Hindu rulers for self-rule, but under the rule of the king, Nepali language, and Hinduism were reduced to make the country more widespread,' (Baral, 2063 B.S.). In the democratic era, and the Panchayati system, social norms outside the Hindu tradition were not given importance, and voices were raised about other religions, languages, and traditions at that time. 'Since that time, the laws of the Panchayat era were made into laws by incorporating the traditions of Nepali society into the Hindu beliefs. To establish a unitary state as a strong centralized state, the Rana had built the multi-ethnic, and multi-lingual society of Nepali society as a base, and even after the attainment of democracy, it became stronger,' (Khanal, 2063 B.S). There have been criticisms of Buddhism as well, as it has been misused in the making of the law, which only applies to the conduct of Hindu followers by excluding only a few categories in the state and not recognizing other religions, and traditions. 'Especially encroaching on other traditions of Hindus, applying Hindu penal system in the administrative system, accepting the system of caste division in the name of tradition is establishing caste rule,' (Neupane, 2000).

Along with the restoration of democracy in Nepal, the political tradition, and its basis have also been searched. Nepal's political tradition has been associated with a certain religion. Since the governing system of Nepal has been influenced by the traditional rituals based on Hinduism, and most of the laws of Nepal have been built based on the same traditional rituals, this issue has become a priority in the democratic period. Discussions have started about the influence of religion, and traditions that have been in place for a long time about state management, and state reconstruction. The Constitution

of the Kingdom of Nepal in 2047 B.S. did not accept secularism. The Constitution defined the dominion of traditional rituals as 'Nepal is a multi-ethnic, multi-lingual, democratic, independent, indivisible, sovereign, Hindu constitutional monarchy, (Article 4(1),' (Shree Panchko sarkar, 2047). After the restoration of the democratic period some reforms have been achieved after a long struggle, and sacrifice, Nepal operated under a system of governance based on absolute Hinduism, but other religions were also free to practice their religion. That provision of the constitution maintained the Hindu tradition that has been in place since the unification of Nepal.

Since the unification of Nepal, Prithvi Narayan Shah had governed a unitary system based on the rules of Hindu traditional rituals. The continuation of this practice was disrupted by the interim constitution in 2063 B.S., which was created during the peace process after the Maoist rebellion. The Interim Constitution of Nepal 2063 B.S. has defined Nepal as 'Nepal is an independent, indivisible, sovereign, secular, inclusive, and fully democratic state, Article 4(1),' (Nepal Sarkar, 2063). By this definition, Nepal has become a secular state based on the Hindu tradition since the unification period. The Rashtriya Prajatantra Party of Nepal has been opposing this announcement since then, while Hindu organizations including the World Hindu Federation have been continuously protesting. 'At that time, the Mongol national organization has shown two main reasons for not adopting Hinduism, the first is to establish their existence in the local bodies, and to destroy Hindu dominance, and the second is to accept the ethnic identity of the Mongols, who are about to be erased by the Hindus by abandoning Hinduism at the local level', (Hangen, 2012). In addition to the organization of the Mongols, many chastising organizations were opened at that time. Those organizations have recently joined the National Federation of Tribes. Based on the latest statistics taken in 2011, it has been shown that there are 10 types of religions in Nepal, namely Hinduism, Buddhism, Islam, Kirant, Christianity, Prakriti, Bon, Jainism, Bahai, and Sikhism. It has the largest number of followers of Hinduism. This data shows that 81.3 percent of Nepal's population adopts the Hindu religion, (CBS 2012, Cast/ Ethnicity/ Language). In a democracy, the influence of religion, and custom or the supreme belief adopted by more than eighty percent of the population has not been a common subject in this country. Why voices raised in unusually on such common issues should be the subject of impartial research.

It seems that in the second period of democracy, the change of religion was adopted based on caste. The main reason for this is the political situation in Nepal. But how much is the relationship between religion, and politics and in Nepal, what kind of influence has religion had on political development? There is no exploratory research on this matter. There has been no factual investigation in this regard. The statistics of the population based on religion in Nepal have been tabulated as follows.

Religion	Population	Percentage
Hinduism	21,551,492	81.3
Buddhism	2,696,099	9.0
Islam	1,162,370	4.4
Kirat	807,169	3.1

Christianity	365,699	1.4
Prakriti	121,182	0.5
Bonism	13,006	0.049
Jainism	3,214	0.0121
Bahai	1,286	0.0048
Sikhism	609	0.0023
Total	26,494,504	100

Source: CBS 2012

Although it is said that the situation of religious conversion has been created in opposition to the long-standing Hindu traditional monopoly, it seems that a factual investigation has yet to be done as to why the presence of all classes and communities decreased in politics, and all state bodies. However, based on the old statistics, the number of Hindus has decreased in terms of religion, but if the latest calculations are taken as the basis, the number of people who follow Hinduism has increased. Which is kept in the following table:

Religion/Year	2058 B.S.	2068 B.S.
Hinduism	80.6	81.3
Buddhism	10.7	9.0
Islam	4.2	4.4
Kirat	3.6	3.1
Christianity	0.5	1.4

Source, CBS 2012

Although these statistics show that the number of people who follow Hinduism, Islam, and Chrihasnity have increased in 10 years, 'in 1981, the statistics of those who follow Hinduism was 89.6 percent,' (Khanal, 2063,) while the statistics of 2011 show that it was 81.3 percent. Studying this entire period, it is seen in the size of the statistics that the size of Hinduism in Nepal has decreased, and the number of followers of other religions has increased.

After 1990, along with the open political environment in Nepal, the non-development of Nepal is the failure to maintain ethnic, regional, and gender equality, and the main reason for this is the influence of Hindu tradition on politics. But based on which religious tradition, and what is the impact on development, the impact of tradition on development, and the impact of other religions. Hinduism on development can be researched and discovered, but Nepali laws and political culture seem to have grown up in Hindu traditions. Hinduism has been criticized by analyzing that the pace of equality and development in the country has fallen behind due to the centrality of politics under the guise of this Hindu tradition. A factual analysis of religion, radition, and its interpretation, use, and effect may be yet to be done.

There is a discussion about the ongoing struggle between the Hindu tradition, and other traditions. Especially in this period, it is an existing reality that Hindus and other religions are aware of their religion. How has any tradition, and its culture affected politics? Can any tradition be a hindrance to development or not, or can tradition favor

development or not? There is no research on this matter. But non-Hindus continue to call Hindus exploitative in public. The table presented by Krishna Bhattachan is presented here that there are disputes between non-Hindus and Hindus on these specific issues.

In favor	Against
<ul style="list-style-type: none"> <li>• Monarchy</li> <li>• unitary state</li> <li>• Hindu supremacy</li> <li>• Buddhism, a part of Hinduism, is believed by the Om Kar family of Buddhism to be the new incarnation of Lord Vishnu.</li> <li>• Registration of Shiv Sena as a political party</li> <li>• Discouraging non-Hindus directly, and indirectly</li> <li>• Building National Statistics</li> </ul>	<ul style="list-style-type: none"> <li>• Federal republican democracy</li> <li>• A separate identity of religion</li> <li>• Religious tolerance</li> <li>• Secularism</li> <li>• Equality for all religions based on the constitution, and law</li> <li>• Affirmative action against discrimination</li> <li>• Factual realistic national statistics</li> </ul>

Source, Bhattachan, 2008

This type of analysis by non-Hindus on Hindus does not seem to be based on facts. Because not all Hindus are supporters of monarchy, followers of the unitary state, discourage other religions, and indulge in fabrications, and illusions. Based on tradition, and caste, tribal, and Dalits have also joined their brotherly organizations within political parties, and based on this, the issue of state restructuring has come forward. The supremacy of Hindu tradition was also said to be one of the reasons for the Maoist war that lasted for ten years. In the first leaflet he issued on February 13, 1996, explaining the reason for the people's war, he said that the dominance of '...one religion...' was imposed, while in his manifesto, 'Nepal is a multi-ethnic, multi-lingual, multi-cultural, multi-religious, and geographical country. It is a diverse country, therefore, paying attention to the concrete characteristics of Nepal based on the right of ethnic, and regional self-determination, and autonomous governance, it was raised that the current unitary form of the state will be ended, and the state will be restructured in a federal framework (Maoist, 2064 B.S.). Maoists, like other caste organizations, made Hinduism the main basis among the various obstacles to development, and equality. In the same way, CPN (UML) in the manifesto of the Constituent Assembly in 2008 has shown religion as one of the causes of discrimination by saying that 'to end all existing discriminations such as gender, caste, regional, linguistic, religious as social oppression', (NCP UML, 2064 B.S.), while the Nepali Congress expressed its commitment to consider all religions, cultures, and regional diversity as the heritage of the Nepali nation, and implement the demands from those regions through the constitutional process (Nepali Congress, 2064 B.S.).

The Majdoor Kisan Party has mentioned that 'one should be allowed to practice religion according to their beliefs' (Majdoor Kisan Party, 2067 2064 B.S.), while the Madhesi People's Forum stated that although the structure of Madhesi is based on Hinduism, in reality, Nepal should be secular due to its multi-religious nature. The matter

has been mentioned,' (Madhesi People's Forum. 2064). In this way, religion, and rituals have been made one of the main bases of state restructuring, and the political agenda of political parties because more than 80 percent of people in Nepal believe in Hindu traditions, and customs. It has a significant impact on the country's politics, and laws. About the constitution of Nepal, the restructuring of the state, the political tradition of Nepal, and its basis have started to be searched. In a country inhabited by many tribes, it is a common topic to discuss the issue of governance based on a religious tradition. A large population in Nepal follows traditional Hindu practices. It is also a fact that Hindu customs and beliefs have become the general practice of Nepali society. Compared to other religions in the world, the demand for a Hindu state has not been heard even though there is a large population of Hindus in the country. However, this demand was also raised during the election of the Constituent Assembly, but why demands are raised on unusual subjects rather than normal subjects can also be a subject of research.

### Conclusion

The politics and laws of any country are built based on its valid traditions. In the same line, Nepali society and politics cannot remain far from that trend. The Nepali legal system is based on custom. Therefore, it has an important impact on the politics of Nepal. Nepali society is made up of diversity in terms of population. Although there is diversity in social and spiritual practices, the statistics prove that the number of people who accept Hinduism in Nepali tradition is very large. On the other hand, since the unification of Nepal, the kings mostly made the Hindu tradition the basis of governance. In the same way, there was a great influence on Hindu tradition in Kathmandu Valley. For these reasons, many Nepali laws have been based on Hindu traditions. Even after the attainment of democracy in Nepal, those traditional laws are still in place, but that was a normal issue because the tradition adopted by more than 80 percent of the population influences the laws of the country. Even in the republican period after the restructuring of the state, that tradition has remained. However, in some issues the people of other traditions have raised their voices for reform. On the other hand, a large group of people has raised their voice that the status of the state should be maintained based on the traditional Hindu rituals. These two ideas are common for a democratic country, but if tradition gives positive messages, the traditional rituals may harm society. It is necessary to have impartial research on such issues.

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