

The Impact of Conflict on Legislative System: A Case Study of Nepal

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UNIT-1

INTRODUCTION

1. 1 Introduction:

Nepal is a small land locked country of the South Asian region. It has multi-ethnic, multi-lingual, multi-cultural, and multi-religious characteristics. The economy of Nepal is mainly based on agriculture, and the estimated GDP growth rate percent for the fiscal year 2004/5 is only 2.8¹. The estimated per capita GDP for the year 2004/5 is US \$ 294², which shows Nepal not only one of the poorest countries in the world, also shows poorest among the South- Asian countries. The people of Nepal live in the mountain, hill and terai regions. According to the Census of 2001, Nepal has 103 caste/ethnic groups³. The political history of Nepal began from 1768, when Prithivi Narayan Shah, the king of Gorkha, unified the ethnic based principalities of his time and formed the kingdom of Nepal. Since that time Nepal has been facing many ups and downs in its political history. There appeared many struggles and conflicts in different occasions. The conflicts were of socio- political and economic nature. Most of the conflicts were of political in nature, and all of the conflicts were settled only with the changes in political level not in socio- economic level. Among the remarkable changes in political history of Nepal were the changes of 1950(2007) and 1990(2047). The political change of 1950 had become possible only after overthrowing autocratic Rana regime, whereas 1990's change was the byproduct of Nepalese people's movement against the authoritarian rule of the king. Both the changes (of 1950 and 1990) had established the parliamentary form of government, but it proved to be short lived. Similarly both the changes remained as mere political. They were unable to be transformed into social and economic changes.

Conflict remained the basic characteristics of Nepalese society. Since the period of unification, Nepal has been facing any form of conflict. In earlier period, there was conflict among the family members of Shah Dynasty for the sake of holding political power. In another phase, there was the conflict between the feudal rulers (Rana/Shah) and the political leaders who were the representatives of common people. The conflicts of 2007 (1950) and 2046 (1990) fall within this category. Lastly, there are conflicts for the

¹ . HMG, Ministry of Finance (MOF), *Economic Survey- Fiscal Year 2004/2005*, Kathmandu, 2005, p. 8.

² . HMG, National Planning Commission Secretariat, Central Bureau of Statistics, *Statistical Year Book of Nepal*, Kathmandu, 2005, p. iv

transformation of society. Such conflicts not only intend to political changes, also have the objectives of changing socio- economic structure of the country. Maoist conflict was started with the similar objectives.

The Maoist movement started from the 13th February 1996 is one of the strong manifestations of conflict in Nepal. It has crossed the 10 years, and today it has become a major problem of the country. Till now almost 15,000 people have lost their lives. Though the Maoists had started their movement with the objective of establishing People's Republic (10th demand of the UPFN submitted to the govt.), but at present it is focuses for three major demands. They are-round table conference, formation of interim government and the election of constituent assembly. In the earlier period, all the political parties including governments were against these demands. Two major talks held between the government and Maoists were failed due to the differences on these demands, basically regarding the constituent assembly. But now oppositional political forces have unanimous voices regarding constituent assembly. They have minor differences about the way of achieving that demands.

The conflict has now turned into a major political issue. It has all-round and far-reaching impacts within the country. One of the impacts of conflict is on the legislative system. It has completely negative impact on that field. By the term "Legislative System" we mean, the collection of all forms of legal instruments resulted from both the supreme and sub-ordinate legislations, including constitution and international instruments. Whatever the impact conflict has created on the legislative system, it has weakened constitutional system, jeopardized rule of law, and has encroached basic rights of the people. For all these no single party can be blamed solely, rather the actions of both the parties (Government and Maoist) are equally responsible.

1.2 Statement of the Problem:

The decade long armed conflict of Nepal has severely impacted the nation. All the sectors of the country such as political, economic, social, educational, cultural, legal etc. have adversely impacted. More than 15,000 lives have killed including common peoples, political leaders and activists, teachers, women, children, government personnel, security forces and Maoist insurgents. More than 26,000 people were abducted by the Maoist insurgents in the

³ . HMG, Ministry of Population and Environment, *Nepal Population Report, 2004, Kathmandu,,March 2004, pp.69-71*

name of their 'people's war' during nine years.⁴ Thousands of people have become wounded and disabled.⁵ Billions of Nepalese rupees of government and private properties have been destroyed. Several infrastructures, i.e. buildings, bridges, culverts, roads, telephone towers, hydroelectricity plants, airports etc. have been destroyed. More than 50,000 people have been internally displaced and also forced to go abroad for the sake of secured life and employment due to armed conflicts. Some of the institutions that are responsible to provide justice, i.e. courts, government offices, police offices, and local bodies have been destroyed by the Maoist insurgents and the presence of the government has been limited to the vicinity of district Headquarters.

The Maoist insurgents have also established so-called 'people's court' in the country but that system has no recognition. On the other hand, the Maoist's people's court does not follow the established principles of justice. Despite these, however, some of the peoples are forced to go with so-called 'People's Court' due to lack of presence of the government in the nearby area and also ineffective and delayed justice. In some districts peoples are prohibited by Maoist insurgents to go with government institutions to seek justice and people are forced to go with so-called 'People's Court' to seek justice. If the security force knows the information that some one has gone with 'People's Court', the security force arrests and torture him/her. Thus people are in double risk in several districts of the country.

Besides, hostilities and forced disappearances have become common phenomena. Extra-judicial killings have become serial activities of both parties of armed conflict. The human rights are vigorously violated and abused by the both parties of armed conflict and the right of access to justice has been severely affected in Nepal.

1.3 Objectives of the Study:

The objectives of the study are as follows.

Main objective;

To find out the impacts of conflict on the legislative system of Nepal.

Secondary objectives:

- (i) To identify the nature of ongoing conflict in Nepal.
- (ii) To determine the causing factors of the conflict in Nepal.

⁴ INSEC, HUMAN RIGHTS YEARBOOK 2005, Kathmandu (April 2005), p.iii.

⁵ *Ibid.*

- (iii) To find out the response towards the conflict in Nepal.
- (iv) To disclose the various consequences of conflict in Nepal.

1.4 Limitations of the Study:

The limitations of the study are as follows.

- (i) Study is confined within Nepal.
- (ii) Focus of the study is on Maoist conflict and issues relating to the conflict.
- (iii) Priority is on the impact of conflict on the legislative system.
- (iv) The study covers the period from 13th Feb. 1996 to 24th April 2006.

1.5 Significance of the Study:

Conflict has become a major problem of the country. It has not only hindered the peace also weakened the constitutional system, jeopardized rule of law, encroached basic rights of the people, and obstructed development process of the country. Though, in every situation conflict can not be taken as a negative phenomenon. In certain occasions it can be considered as an important thing. It helps to bring the problems of the country into a forefront. But such conflict must be handled in a suitable way. That must be for better outcomes, for creation and for the welfare of the nation and the people. In contradiction to these things, the conflict in Nepal has become a major cause of destruction. The Nepalese people are not in position to bear such situation for a long period then they have suffered. So everywhere there is demand for peace. But peace seems to be a difficult subject.

One of the major areas where conflict has generated vast problems is legislative system. The basis of the legislative system has been crumbled down. All the legal instruments including the international conventions are severely violated. There is the situation of chaos and impunity. The rule of law is substituted by discretion and anarchy. In such a situation rare studies have been done on the impact of conflict on the legislative system. This study intends to make search on that area. So, the study will be significant to all those who are interested to be aware of the impact of conflict on concerned area. It will also help to the legal scholars, law makers, law executors, law adjudicators and the persons interested to the subject of conflict management. It will provide them help; first, to know the situation, second, to set their ideas in regard to the subject, and the last, it will help them to contribute to solve the problem. Also, it will help to the well wishers of Nepal from different parts of the world to know the exact nature of the subject.

1.6 Methodology Used:

Basically doctrinal methodology is adopted for the study. Both the primary and secondary information of doctrinal nature are collected, processed and used. Data were mostly collected from books, articles, reports, journals and newspapers best found in different libraries, offices of NGOs and bookshops. Mainly historical, analytical, comparative and case study methods are applied to the study.

1.7 Review of the Literature:

Human Right in Nepal; A status Report published by National Human Rights Commission (June 2003), covers major human rights issues in Nepal. The report is divided into 15 chapters, and each chapter cover separate subject matter. Chapter 1 is devoted to the introduction which briefly covers a historical, political geographical, cultural and socio-economic portrait of the nation. Additionally, it covers the general glance of the conflict in Nepal. Chapter 2 explains human rights in contemporary Nepalese context, it also deals about international human rights instruments. Chapter 3 sketches Nepalese constitutional provisions that guarantee basic human rights of Nepalese people. Chapter 4 explores the characters of Nepalese penal system. Chapter 5 discusses torture in Nepal and responsible government bodies for inflicting torture upon the people. Chapter 6 describes the position and role of independent judiciary for ensuing fair trial. Chapter 7 is devoted to the issue of basic needs and human rights including health, education, food, shelter and work. Chapter 8 deals about the position, issues and rights of women. It also deals with legal framework and initiatives taken for tackling the issue. Also chapter 9 is devoted to the issue relating to the rights of the children, legal framework and initiations to guarantee and secure them. Chapter 10 is on the Janajatis and explores the dissemination they have faced over the centuries. In the same way, chapter 11 is about the rights of the Dalits. Chapter 12 about the senior citizens, 13 about the rights of the persons with disability, Chapter 14 explores issues related to governance, and chapter 15 presents conclusions. The report successfully deals with the issues concerned. It discusses the role of the govt. and NGO's; and discloses the failures of the state to protect and promote human rights of the Nepalese People it also emphasizes the positive initiatives taken by the state. In total the report is successful to reveal facts about

concerned issues. During this process the report also discusses about the impact of conflict on legislative system, but not sufficiently.

A report prepared by Dr. Tara Prasad Sapkota on Participatory Research on the Impact of Conflict on Access to Justice: Legal Approach (2005), in its six chapters successfully tries to identify the major causes and factors affecting the rights to access to justice in Nepal, specifically in the situation of armed conflict. Among the 6 Chapters of the report, Chapter One covers the introduction and methodology of the study, Chapter Two overviews both the Hard and Soft law HRTs and their provisions on the Rights of access to justice. Chapter Three covers the review of Nepali legislations that provide the rights of access to justice. Chapter Four deal with the institutional framework on access to justice system in Nepal. Chapter Five incorporates the legal procedure on access to justice and remedies in criminal and civil cases and Chapter Six cover findings, conclusions and recommendations. The report finds that though the formal justice system is ineffective due to evils like time consuming, unnecessary delay, costly and weak execution of judgment. Additionally the armed conflict has badly caused the formal justice system. In order to make formal justice system effective, the weaknesses of the justice system must be corrected and some new measures should be adopted. The measures recommended in the report include; to fulfill the gap between the IHRIs and the Nepalese legislations, remove the inconsistent and divergent provisions existing in Nepalese laws, simplify the legal procedures to be followed by the courts, revise the existing jurisdiction of the courts, establish specialized courts and benches, introduce an ADR system, enhance the capacity of courts carryout effective supervision, monitoring and evaluation and resolve the armed conflict. The report asserts not only the political rather various other economic, social, legal and cultural causes responsible for the growth and development of insurgency in Nepal. It also suggests on the need to address all the factors for resolution of conflict and for long lasting peace.

Dev Raj Dahal in an article entitled, " Nepal: Changing Strategies of the People's War" (2005), discusses about the CNP (Maoist) role with the change in its ideology and strategies with the changing dimension of national and international politics: The article emphasizes, though Maoist's 'People's War' was initiated as a class war to establish a People's Republic in Nepal, now it has reached an understanding with the agitating seven party alliance for the election of a constituent assembly to draft a new constitution and has

expressed its commitment to join competitive democratic politics in the short run. Basically after the Royal takeover, Nepalese politics witnessed a rapid polarization of forces. On the one hand, there is the state versus the agitating seven party alliance including the Maoist rebels. On the other hand, donors appear to be polarizing themselves. Dahal adds about Maoist policy, at its third Plenum in Rolpa in Oct. 2005, CPN (Maoist) admitted the inadequacy of the orthodox ideas of Marx, Engels, Lenin and Mao and argued the party's need to enter into the spirit of the 21st century to face the cotemporary challenges of globalization. The same plenum formulated a strategy of what it calls, "hitting at the head of the enemy by riding on its back". The article concludes, at the present odd situation the Maoist, Seven parties, the King and donors all have their own strategies, but no one's single effort will result peaceful solution of the conflict, for that a consensus is to be reached. Otherwise, the mutually hurting stalemate will continue to plague the political life of Nepal.

Nepal: Supporting Peace Processes through a Systemic Approach (2005), a study conducted by Dev Raj Dahal, nicely analyses the current situation of conflict in Nepal. In this study Mr. Dahal highlights that violent conflict caused not only the death of more than 15,500 people, many of them non combatants, displaced over 200,000 and crippled public life to such an extent that multiparty politics has been pushed to margins. Conflict-affected women and men suffer from trauma, rape, harassment, torture and arbitrary detention. Violent conflict in Nepal arose when the political system as a central authority lost its capacity to fulfill the sub-systemic demands of various groups. The study signifies, neglect of midwest hills, urban rural disparity, social discrimination, institutional factors, declining economic performance, manipulation of ethnic and regional identities, struggle for control of state power, proliferation of small arms and regional and global conflict drivers as the structural and proxy causes of conflict. It has taken the establishment (govt. including RNA, APF and the Police) major political parties, CPN (Maoist) and international and regional actors as the key actors of present conflict, and has dealt about the position of the key actor. The study also suggests the options for systemic conflict transformation and covers strategic choices of political actors. By dealing with all these things, the study emphasizes that the resolution of conflict in Nepal is inseparable from social change. The change process needs to be sufficient to impact on the drivers of conflict and enable the macro actors to develop understanding and agreement on common ground. Conflict tend to

be resolved through negotiations and compromise but durable peace can be achieved only if it is based on democratic values and social justice. In this study Mr. Dahal has not only successfully diagnosed the causes of the ongoing conflict in Nepal also has made possible suggestions. He has also touched the constitutional dead locks created by the conflict but not dealt about the impact on legislative system.

OHCHR, Nepal in Report of the United Nations High Commissioner for Human Rights on the situation of human rights and the activities of her office, including technical cooperation, in Nepal (2006), covers various things in regard to the conflict in Nepal. Mainly the report focuses on the human rights situation in Nepal and the activities of OHCHR Nepal between 1 September 2005 and late January 2006. The report under its 4 Chapters incorporates subject matters relating to political context with human rights commitments, respect for human rights and humanitarian law, other activities of the OHCHR, Nepal and conclusion. Chapter 1 of the report starts with the political context on which conflict emerged and developed. It also covers brief account on Nepal and the United Nations Human Rights System, government human rights commitments and cooperation and CPN (Maoist) is human rights commitments and cooperation. Chapter 2 deals with the subject matter regarding the respect for human rights and humanitarian law in the context of the armed conflict. Under this chapter while dealing with the role of state authorities, the office found deliberate and arbitrary killings disappearances, arbitrary arrest and re-arrest, detention and unfair trial, torture and cruel, inhuman or degrading treatment, failure on the responsibility to protect the civilian population and accountability, thus violating the basic human rights and humanitarian laws norms and values. Likewise, while dealing with the role of CPN (Maoist), the office found killings of civilians and persons hors de combat, abductions, violence and threat to civilians and failure to their accountability. The report also deals about the nature and extent of violence perpetrated by illegal armed groups (retaliation groups) in Nawalparasi, Kapilbastu and Dailekh districts. Additionally the report incorporates the situation of groups of special concern; specifically- internally displaced persons, women and human rights defenders. The report has also dealt about the situation of democratic rights, like- freedom of movement and freedom of peaceful assembly, arbitrary detention and fair trial, freedom of expression and freedom of association. Along with these, the report covers the issues of long-standing human rights concerns. They include caste and ethnic discrimination, gender-based discrimination and

child rights. In all these matters, issues and areas of concern; the office found the basic human rights of the people violated, and the report suggests to the conflicting parties to respect human rights and humanitarian law and to work for perpetual peace.

The book written by S.D. Muni, entitled, *Maoist Insurgency in Nepal: The challenge and the Response* (2004), throws light on various aspects of Maoist insurgency starting from its roots to prospects. The book emphasizes that the Maoist insurgency is the product of Nepal's failed governance and persisting underdevelopment. The study shows that the Maoist's violent methods to capture power may not have the approval of dominant elites and international Community, but their political and socio-economic agenda have considerable appeal for the poor and long suppressed, Nepalese masses. The study also examines the responses of the Nepalese government and the international community. The book concludes that the king's military methods will not yield easy and desirable results, and for a lasting solution, Nepal's political and social order will have to be drastically transformed so as to accommodate popular aspirations unleashed by the Maoist movement. Additionally, the book under its Annexure, incorporates valuable documents in connection with Maoist insurgency.

Nischal Nath Pendey's book, entitled, *Nepal's Maoist Movement and implications for India and China* (2005), under its 7 chapter's covers the subject matter from history of Nepal's communist movement to future outlook for the Maoist Insurgency in Nepal. This book elaborates on the history of communism in the country, looks into the causes behind the growth of the insurgency, repercussions of the events of 9/11 on Nepal and hindrances to a negotiated settlement of the problem. The book traces the crises from political instability to unfair social system, affecting all levels of the kingdom's polity. As future outlook Mr. Pandey has forwarded three possibilities. One, the security services will bring an end to the insurgency, second, the Maoists will maintain their base areas, become more aggressive, start encircling the cities and then take over, third, there will finally be a negotiated settlement of the problem. But he concludes; political experiments for short term gains and factional rivalry will result in disappointment and turmoil for an even longer period. All the three powers (Maoists, King, Parties) will have to comprehend that Nepal cannot be allowed to sink to the status of a 'failed state' correcting its own follies and achieving its aspirations.

The book edited by Anjun Karki and Binod Bhattarai with the title, *Whose War? Economic and Socio-Cultural impacts of Nepal's Maoist Government conflict* (n.d.), under its 6 chapters, consists major aspects of Maoist insurgency. The 1st Chapter overviews the Maoist 'people's war' from beginning to the breaking of 2nd ceasefire between Government and CPN (Maoist). Chapter 2 deal with the factors fueling the conflict. Chapter 3 covers the field study of various districts, especially the Kailali, Ropla, Baglung, Dolakha and Sankhuwasabha districts. Chapter 4 analyses the economic and socio-cultural costs of insurgency. It also covers the positive aspects of the conflict. Chapter 5 reveals the patterns of victimization, and the chapter 6 incorporate observations and conclusions. The report identifies Maoist insurgency as a manifestation of ideology intertwined with age old grievances resulting from inequities embedded in the Nepali social structure. The spread of Maoist influence has strong social and economic roots including the exclusion of the poor and the marginalized by the state. As regard to the costs of the conflict, the report reveals that the socio-cultural costs tend to have longer impacts then the physical damages, both at the individual level and in society at large. The report asserts that the conflict has had some positive aspects. Though they are numerous, but what the Maoists have already succeeded in achieving is the pressure they have created on the state to be responsive to local needs. The field observations support the same thing. And the report concludes that ending violence has become Nepal's number one priority. It is now evident that no side can have a military victory and hence, peacemaking has to be continuously explored and at different levels of society. The civil society organizations are best positioned to initiate this process at every level, from village to centre.

The book entitled, *Polities of People's War and Human Rights in Nepal* (2005), written by Bishnu Pathak, successfully throws light on ongoing people's war and situation of human rights in Nepal, Under 9 chapters of this book, chapter 1 discusses about the general ideas regarding conflict, including Nepalese people's war and human rights. Chapter 2 covers the ideological perspectives of human rights. Chapters 3, 4 and 5 deal with Maoist 40 point demands and their impact on human rights, genesis of people's war and dynamics and strategy of the people's war respectively. Chapters 6 and 7 deal with the human rights, specifically Civil and Political Rights and Economic, Social and Cultural Rights. Chapter 8 deals with the Govt. Maoist talk and emergency situation, and chapter 9 with summary and conclusions A long with these, the book emphasizes on the part that

basically Maoist People's war is ideological war and she is fighting for socio-economic transformation of the country. The 40 point demands forwarded by CPN (Maoist) focus on the upliftment of the poor, disadvantaged, marginalized and vulnerable communities. Unfortunately since the initiation of the people's war Nepalese people have faced many challenges to their basic human rights. Human rights situation is at crossroads, as thousands of extra judicial executions; hundreds of involuntary disappearances; thousands of arbitrary arrests and detentions; and thousands of cases of torture, cruel inhumane and degrading treatment have been reported. The book concludes, neither side is going to win in the foreseeable future,` and people are not in position to bear the situation more. Thus peace has become a pressing need of the time. It must be achieved and people's rights must be consolidated for a dignified life. The state, Maoists, Political parties and civic organization must contribute to that goal.

A Rapid Assessment report prepared by Him Rights/Popwatch and Plan on IDPs Dynamics in the Kathmandu Valley (2005), basically deals about the auditing of conflict induced Internal Displacement, Within its 5 sections, the report covers conceptual framework, emerging trends and patterns of internally displaced persons, responses of stakeholders, responses of general public and recommendations. The report reveals that internal displacement in response to the Maoist conflict is occurring on a large scale in Nepal. Nepalese living in rural areas have been pushed to urban areas due to Maoist insurgency and the corresponding governmental response. The Maoists target party members, police officers, teachers, local merchants, social mobilizes etc., and individuals from these groups are most likely to fear for their safety in conflict ridden areas. Similarly, those individuals and groups that are targeted or affected by security forces are likely to fear for their safety in conflict zones. The report also illustrates that the Kathmandu valley is experiencing unsustainable load pressure on almost all traditional social services. The report nicely discusses the present situation of the IDPS and finds them facing different problems specifically food, shelter, security and sanitation. The report, also incorporates both the general and specific recommendations for short term, medium term and long term assistance for IDPS.

The report prepared by International Crisis Group on Nepal's Maoists: Their Aims, Structure and Strategy (2005), emphasizes that the Maoists are at heart a political party. They have developed military capacity but it is subordinated to political control. They use

terror tactics and coercion but they are not simply terrorists. Report also reveals Maoist strategy is of a protected people's war both political and military and they cannot be separated. They have a long term vision, and they have patience. The seven chapter report starts from background (both Maoism and Nepal), Maoist Politics and, covers organizational structure of CPN (Maoist), leadership, support base and resources, military strategy settlement and conclusion. The report stresses that whatever the strategy Maoists are adopting that is in accordance with the Maoist principle and historical appropriateness of the types of revolution. It concludes with the mentioning that whatever the outcome of their armed insurgency, the Maoists have changed politics in Nepal irrevocably. They have let many genies out of their battles. Regardless of the success or failure of their own movement, they have changed the environment in which future governments will have to work. Though there are less chances that Maoists will ever abandon their political goals and the desire to achieve them. But if decide they can gain more by compromise than by fighting. The report has no objective to cover the impact aspect and specifically impacts on legal field but it satisfactorily deals with aims and strategy of Maoist people's war.

1.8 Organisation of the Study:

The study is organized in Four Units.

The first Unit is about Introduction and Methodology. Second Unit deals with the history of the Conflict in Nepal. Third Unit incorporates the Impact of the Conflict on the Legislative System and concerned areas. Fourth Unit covers the conclusions and recommendations. Lastly reference and appendices are covered.

UNIT-2
HISTORY OF THE CONFLICT IN NEPAL

2.1 Background:

Nepal is a small and poor country sandwiched between two giant nations, i.e. India and China. Nepalese people are renowned all over the world for their sincerity and bravery. They had successfully fought during two world wars and were famous for their bravery. They are also famous for their patriotism. They had fought many wars with the British and Chinese Empires of the time and were successful to preserve their national identity. Nepal is considered as the garden of 4 castes and 36 varnas⁶. Nepalese people have the culture of tolerance. From time immemorial we do not find any clash and conflict among Nepali people in the name of caste, religion and colour. Before unification of 1769, Nepal was divided into many small states and municipalities naming Baisi- Choubisi states in the western; and different states in Tarai and western hilly region. King Prithivi Narayan Shah, the ancestor of present king started the unification process which continued till the Sugouli treaty of 1816. The present shape of Nepal was almost determined by the provisions of the Sugouli treaty signed between British India and the then government of Nepal⁷. But four western terrain districts of Nepal were later delivered by the British Indian government in 1860⁸. Though geographically the unification of Nepal had become possible 237 years ago, but in spirit the unification process is still incomplete. Likewise, politically Nepal has remained the land of regular conflict. During the period of its unification, there was rivalry among the members of royal family for the sake of capturing power. It was due to power conflict among the members of royal family in one side, and among the officials (Bhardars) in another. Jung Bahadur Rana captured the power and established the foundation of family aristocracy which lasted for 104 years. During that period also there were bloody conflicts and clashes for the sake of assuming power. The family of the founder of the Rana aristocracy, Jung Bahadur was totally eliminated by the sons of his brother Dhir Shamsher. Also another victim was Padma Shamsher, who was forced to be self exiled as

⁶ . This Social division is based on the saying of King Prithivi Narayan Shah.

⁷ . The Sugouli Treaty Signed between British India and Nepal is a most controversial, it reduced the actual size of Nepal.

⁸ . The four districts were- Banke, Bardia, Kailali and Kanchanpur.

he promulgated the first Constitution of Nepal⁹. Another conflict was the anti Rana movement of 1950. The 1950 movement was an armed struggle. Before 1950, the nature of the movement was peaceful from the people's side, but Rana rulers tried to suppress it violently. As its result, four members of Praja Parishad were given death sentence by hanging and shooting¹⁰. The forceful effort of Rana rulers could not suppress the movement rather it erupted in the form of armed struggle. As its result, Rana aristocracy came to an end. The movement of 1950 reinstated the king. Though the king had promised before the people to rule according to the wishes of the people¹¹, but his promise proved to be a deceit. King not only failed to convene the constituent assembly, also he suspended the parliamentary government headed by the elected prime- minister Bisheshwor Prasad Koirala. Later he introduced partyless panchayat polity which lasted for 29 years. During this period, the conflict was between the political parties and the king. Different political parties including B. P. Koirala's Nepali Congress continued armed struggle to overthrow the dictatorial regime of the king. All the struggles were forcefully suppressed. It was the people's peaceful movement of 1990, jointly launched by the political parties which succeeded to overthrow the dictatorial rule of the king. Partyless Panchayat system was substituted by the parliamentary form of the government. By the combined effort of the major political parties and the king a new constitution, the Constitution of the Kingdom of Nepal, 1990 was framed. The king was made constitutional, and sovereignty was formally vested to the people. Fundamental human rights of the people were guaranteed. Independence of the judiciary was secured, and the mechanism of check and balance among different organs of the government was introduced. The constitution was claimed to be one of the best constitutions of the world. Naturally it was hoped that Nepal succeeded to manage the long last conflict, and there remain only the challenge of development and modernization of the country.

2.2 Genesis of the Conflict:

There are various opinions in regard to the origin of the Maoist movement. Some people claim that Maoist movement has nothing with other things it is only the outcome

⁹ . *Government of Nepal Act, 1948* was the first Constitution of Nepal.

¹⁰ . They are considered as Martyrs.

¹¹ . King Tribhuvan in his speech of 15th Feb. 1951 had promised to frame the constitution by a constituent assembly.

of the decision taken by the unity conference of the party Unity Center, held in 1991. Also they claim that Maoist party was instigated to start armed conflict by the international Maoist organization naming RIM (Revolutionary International Movement). Contrary to this, others claim that Maoist movement was the outcome of the immature suppressive and anti democratic behavior of the political parties during their rule. Both these opinions are capable only to represent the partial truth regarding the subject.

CPN (Maoist) which was early known as CPN (Unity Centre) was the party which early participated in first general (1991) and local (1992) elections. In parliament United Peoples Front Nepal (UPFN), the frontal organization of CPN (Unity Centre) had secured the third position. Similarly, in the local elections also, UPFN had shown its great strength, basically in the Rolpa and Rukum districts of Rapti zone. In those districts, during and after election period, local administration had done repression and atrocities over the leaders and activists of UPFN¹². They were implicated in fake cases of killings and so forth. In this connection, in October 1993, UPFN leader Dr. Baburam Bhattarai visited different parts of Rolpa district with his team members to know the exact situation of his activists and supporters. They met the chief district officer Abdul Rais Khan to request for the security of the workers and meet their comrades in jail. But they were severely threatened by him. After returning from the field, Dr. Bhattarai on behalf of the UPFN Central Ad-hoc committee handed over a memorandum to the Home Minister Khum Bahadur Khadka on Nov. 2, 1993. The memorandum included 4 major demands, these were;

- (i) CDO Abdul Rais Khan should be dismissed from his post immediately
- (ii) All false offence cases should be withdrawn and people who have been imprisoned on fake grounds should be released.
- (iii) Administrative repression and terror should be ended; and
- (v) The various incidents occurred in the district should be investigated judicially¹³.

¹². Bishnu Pathak, *Politics of People's War and Human Rights in Nepal*, Kathmandu: BIMIPA Publications, 2005, p. 94

¹³. *Ibid*, pp. 94-5

It is said that indeed, the atrocities, oppressions, discriminations, exclusions, injustices and inequalities played a very significant role in eventually launching the paper war¹⁴.

For the demands put by the UPFN, they did not receive any response from the concerned authorities. Again after 2 years a UPFN delegation headed by Dr. Bhattraï met with prime minister Sher Bahadur Deuba and submitted 40 point demands on February 2, 1996 with a 15 day ultimatum. Among those demands, 9 were related to nationalism, 17 were related to the public and its well-being, and 14 were related to people's living¹⁵. At the time of submitting 40 point demands, UPFN leaders had made it clear that if their demands were not responded in time, party would be compelled to launch an armed struggle. The government did not response the demands and the Maoist declared the people's war on February 13, 1996, though it was started four days before the ultimatum was to expire.

Focusing on the basic reason behind the origin of Maoist movement a report of the field work done between May 2nd and June 24th 2003 emphasises;

The revolt of the Communist Party of Nepal, Maoist (CPNM), which began in February 1996, is a manifestation of ideology intertwined with age old grievances resulting inequities embedded in the Nepali social structure. The inequities stem poverty caste/ethnic/gender-based discriminations, political/social oppression and corruption in public office, which have contributed to the deprivation and marginalization of people, especially, those on the lower rungs of the socio-economic ladder. Add to the general inferences on failure of successive government that ruled after April 1990, when democracy was rested¹⁶.

Likewise, Dev Raj Dahal, in his report mentions the background of the origin of the conflict in the words;

Violent conflict in Nepal arose when the political system as a central authority last its capacity to fulfill the sub-systematic demands of various groups. Growing factionalism in the major political parties and the ferocious

¹⁴. *Ibid*, p.96

¹⁵. See Nischal Nath Pandey, *Nepal's Maoist Movement and Implications for India and China*, Srilanka: Manohar Publishers and Distributers, 2005, Annex1, pp.165-7

competition of their interests and actions disrupted the ordered civic life. Public cynicism with the political parties, bureaucracy and the court ran deep due to their weak performance, abuse of power, corruption and a growing culture of impunity¹⁷.

The CPN (Maoist) started its movement on February 13, 1996 by making targets on police outposts in Rolpa and Rukum districts of mid-west a Small Farmer Development Project Office in Gorkha District of West and another police outpost of Sindhuli district of eastern Zone of Nepal.

These were very small actions, for which government took very lightly and commented it "as the move to disturb the democratic process". Not only that one of the Minister commented saying "extremist will be suppressed within the six months"¹⁸. Maoists started their struggle with the use of Khukuri, locally made guns, pistols and hand grenades. In the beginning their targets were police posts and the workers of ruling political party, especially the NC. Along with these, in the villages Maoist had tried to forcefully end the social evils. They punished the persons who were involved in the activities like gambling, alcohol production and distribution and polygamy. They also advocated equality of sexes, and have been able to portray that they are at least better than the state on gender equality. Additionally, the Maoists advocated regional autonomy, promising nationalities and geographically specific regions the right to self determination¹⁹. These and similar other actions drew the attention of the local people which became successful to pave the way for Maoist insurgency. Whatsoever, basically the Third Plenum of the party CPA (Unity Centre) held in March 1995 took the decision to denounce the parliamentary elections and to take up arms against the establishment.

2.3 Causes for Origin and Development of the Conflict:

While discussing about the responsible factors for the origin and development of the Maoist insurgency, broadly we can trace out two factors. They are objective and subjective factors. Maoist party's decision to raise arms against the establishment and the

¹⁶. Arjun Karki, Binod Bhattarai (ed.) *Whose War: Economic and Socio-cultural Impacts of Nepal's Maoist-Government Conflict*, Kathmandu: NGO Federation of Nepal, (n.d.), p. xii

¹⁷. Dev Raj Dahi, *Nepal: Supporting Peace Process Through a Systemic Approach*, Berghof Foundation for Peace Support, Sept. 2005, p.3.

¹⁸. The then Home Minister Khum Bdr. Khadka had expressed such views.

¹⁹. *Supra* note 14, pp. xv-xvi.

actions taken by the party can be considered as subjective factors. Similarly the national and international situation and the inputs received by the movement can be taken as objective factors. For the origin and growth of the movement, both the factors have equal contributions. Nishchal Nath Pandey, cited various causes as the responsible factors behind the growth of the insurgency. In his list, are; Political instability, wide spread corruption, poverty and bad governance, alienation of the mid-west and the fighting spirit of the Janajatis and the Magar clan, dissatisfaction with judiciary, proper approach of the Maoists, unemployment, mishandling by the state and operations Romeo and Kilo Sierra Two²⁰. Mr. Dev Raj Dahal has nicely dealt about structural and proxy causes of conflict. Mr. Dahal mentions; neglect of Midwest hills, urban-rural disparity, social discrimination, institutional factors (monopolization of power by every institution), declining economic performance, manipulation of ethnic and regional identities, struggle for the control of state power, proliferation of small arms and regional and global conflict drivers as sub-systemic and systemic causes of conflict²¹. The views expressed by different analyst regarding the respectable factors of conflict are different and variable in nature. But similarities can be found behind all the opinions. On that basis the possible responsible factors for origin and development of the conflict can be cited as follows;

1. Ideological Factor:

CPN (Maoist) is a communist party which believes on Marxist ideology. The basis of Marxist ideology, is the Marxism, Leninism and Maoism. According to Maoist party, Maoism is the Marxism of present day world. New people's democracy is the goal of the party, and people's war is the way to achieve that goal. The nature of the war is said to be the long-run. For that guerilla warfare is necessary. Similar type of warfare was lunched by communist party of China, on the leadership of Mao-zedong. They had taken the strategy of encircling town by the villages. In recent time such war was lunched by the Peruvian communist party, known as Shining Path. In different parts of India, CPI (Maoist) also is launching armed revolution of same nature.

Though in Nepal also different communist parties had tried to launch similar types of war, but they failed. Jhapa movement of 1971-2 was a burning example of it. This movement was brutally suppressed by the then Panchayati government, and now the

²⁰. *Supra* note 13, pp.44-64.

²¹. *Supra* note 15, pp. 5-8.

party (ML) has been turned into a parliamentary party unlike the CPN(ML) now CPN (UML) CPN (Maoist) has been involved into the path of armed revolution by abandoning the tactics of using parliamentary elections. The renowned Third Plenum of CPN (Maoist) has outlined the strategy and tactics of armed struggle in Nepal. It has described the three stages of the protected people's war: (i) strategic defense (ii) strategic stalemate/equilibrium (consolidation of power), and (iii) strategic offence. Each stage is further divided into: (i) final preparation, (ii) initiation, (iii) continuation, and (iv) development and advancement²². Maoists claim that they are successfully implementing their strategy and at present they have reached to the stage of strategic offence by defeating police forces and regularly fighting with the Royal Nepalese Army. During this period, they have successfully captured the village areas and they have been focusing their attention and programmes towards the towns and capital of the country²³. In reality Maoists have been successful to pose threat before the establishment and now they have reached to the stage to be counted as one of the political forces within the country. Thus it is clear that one of the causes which made CPN (Maoist) to be involved in armed conflict is their ideology.

2. Political Cause:

Another important cause which made CPN (Maoist) to raise arms was post 1990 political situation of the country. As it is already mentioned earlier CPN (Unity Centre) (earlier form of CPN (Maoist)) was the party which was participating in parliamentary process. Its frontal organization UPFN (United People's Front Nepal) was the third largest party inside the parliament, and it was recognized as a national party. It had actively participated in local elections. In this way, it was the part of parliamentary politics. But it was unfortunate that whatever the parliamentary political exercise done within the country was not fair. It was partisan politics. The CPN (Maoist) cadres were brutally suppressed during and after the first local elections. In stead of participating in local organizational and political activities UPFN workers and activists were forced to flee their homes and even their home district, because they do not find any way of defense against the charges and atrocities done against themselves. This was the picture

²². *Supra* note 10, p. 96

²³. Maoists are repeatedly making such claims.

of one side, in another side whatever the situation developed was not satisfactory. Regulation of the polity became difficult when the consensus on the political outcome of the people's movement of 1990-multi-party democracy, the constitution, the rules of political institutions and leadership behavior-started falling apart. The incompatible goals of various actors and the ways of achieving them perpetuated various types of conflict at the society, polity and the state levels. Even political actor claimed the constitutionality of its action and invoked the notion of popular sovereignty but each wanted to monopolized power commensurate with its interests and capacity and rationalized its right to structure future political choices. The political divisions thus got wider²⁴. Not only that political parties were badly involved in power game. There were frequent splits and coalitions among political parties for the sake of requiring power. Within the subsequent 12 years of the change of 1990, every form of government i.e. majority government, a minority government, coalition governments and a minority single party governments were formed, but the democracy failed to cope up with the expectations of the people. As the result of which, Maoists became successful drawing the attention of the people towards their programmes.

3. International Factor:

CPN (Maoist) is the member of the International Revolutionary Movement (RIM), an international organization of Maoist communist parties, which believe in armed struggle. Peruvian Communist Party known as Shining Path, a member of RIM had already been involved in armed struggle. Armed struggle lunched by Shining Path had remained an issue of world wide concern of Maoist communists. They were interested to internationalise the armed struggle; and there was pressure from the side of RIM, to CPN (Maoist) to start people's war in Nepal. As CPN (M) started the armed struggle it was intensified within a short period which drew wide attention of the international community. International community started to react against the Maoist struggle. They came ahead assisting the government to suppress the movement. For the purpose of unifying and coordinating the revolutionary process in the South-Asian region and to get support to the Nepalese movement from the people's level, the left parties of India, Nepal,

²⁴. *Supra* note 15, p. 6

Bangladesh, Srilanka and Pakistan declared the formation of a Coordination Committee of Maoist Parties and Organizations of South Asia (CCOMPOSA) in July 2001²⁵. The CCOMPOSA comprised not only the CPN (Maoist) and the PWG, MCC, Revolutionary Communist Centre of India (Maoist) from India but also the Purba Bangla Sarbahara Party and Bangladesh Samajwadi Party (ML) and Communist Party of Ceylon (Maoist) from Sir Lanka.

4. Social Discrimination:

One of the major causes of the origin and development of Maoist people's war is social discrimination. It will not be exaggeration to say that Nepalese state was founded on Social discrimination. The discrimination is in various forms. It is mainly on gender, ethnic, lingual and religious basis. Though the women represent more than 50% population of Nepal but they have very little say in every affair of the country. Similarly the ethnic people represent majority of the country's population, but they have very less participations on the political and administrative matters. Not only that people from some of the castes are considered as untouchables and they even do not have permission to participate in social functions as equal to the members of so-called upper castes. In the same way different lingual and religious minority peoples also are feeling secluded from national main stream, as specific language and religion got national recognition. There is vast division among the people on economic basis. The gap between 'haves' and 'have nots' is in a critical position. All these factors paved the way for Maoist insurgency. New it is found that the involvement in the Maoist movement is great from the side of women, ethnic (Janajatis and Untouchables) and socially backward classes.

5. Poverty and Unemployment:

Since the poverty and unemployment has remained a major cause behind the origin and growth of Maoist insurgency in Nepal. Both the poverty and unemployment have been considered as the hindrances for the economic development of the country. Poverty is a multi-dimensional and complex problem. The causes of poverty are not only economic but also social and technological backwardness, too.

²⁵. *Supra* note 13, p. 130

31 percent of the population are below the poverty line. Population Census 2001 reports that 53.1 percent population of age 10 years and above are employed and 5.1 percent are unemployed²⁶. According to the result of the poverty analysis, among the total poor of Nepal 29.4 percent poor reside on villages of western hills, where population also is more. Likewise in villages of western hill 23.6 percent, villageous western terai 23.5 percent, villageous western terai 18.9 percent and in town areas approximately 4.7 percent population lies. In the same way there is an estimate that among the total poor in Himali region 7.5 percent, in terai 47.1 percent and in hills 45.4 percent population lies²⁷. Employment is the foremost means of transforming economic development into an opportunity to alleviate poverty. Both the 9th and 10th plans of Nepal have the same prime objective that is poverty alleviation. But the achievement is very slow. Due to the poverty and unemployment many people (basically youths) are forced to flee for foreign countries. Those who remain inside the country, a great number of them is attracted towards the Maoist movement, because they have no employment and most of them were suffering from poverty.

6. Corruption:

Wide range of corruption in every part of national life has been remaining a vital problem of Nepali society for a long time. Basically corruption in political and decision-making level detracted the people from the leaders and parties who have hands on those affairs. Also the corruption in judiciary and administration fuelled the dissatisfactions of the large masses of the people. Though the constitution of the kingdom of Nepal, 1990 has created an especial branch naming Commission for Investigation on Abuse of Authority (CIAA)²⁸ and it has been working on that field but no satisfactory outcomes have been seen. On the contrary corruption has been getting rapid momentum. People's wishes and aspirations were gradually being tarnished; and they were frustrated and alienated. In the meantime Maoist emerged as a new force by clamming all the evils and giving harmful slogans before the population.

²⁶. *Supra* note 2

²⁷. Secretariat of the National Planning Commission, Central Bureau of Statistics, *Brief Result of Poverty Analysis based on Nepal Living Standard Survey, Second 2060-61, 2005*, p.6.

²⁸. Article 97/98 of the *Constitution of the Kingdom of Nepal, 1990*

2.4 Responses to the Conflict:

When Maoist conflict started different kinds of reactions were seen in both the national and international level. The question of response (reaction) basically determines the relationship or way of dealing of the concerned parties on that particular issue. Whatever the responses seen, they basically can be arranged under two heading i.e. domestic and international responses.

2.4.1 Domestic Responses:

While talking about the domestic responses to the Maoist conflict, we can analyze it from three view points;

- (i) from the view point of the government;
- (ii) from the view point of the political parties;
- (iii) from the view point of the society.

Firstly, so far the government's view regarding the Maoist conflict is concerned, it is already discussed that it was started during the period of Prime Minister Sher Bahadur Deuba led NC Government. With other causes, government's immature and repressive activities were highly responsible for the origin and development of insurgency. Government considered Maoist insurgency as a law and order problem and since 1996 began to retaliate through police action. This militarized the political conflict, allowed it to reposition itself in the macro-sphere and contributed to a bigger vicious cycle of action and reaction²⁹. While dealing with the role of government, it can not be forgotten that whatever the party or government came to power, first they were unable to make a clear and solid policy to identify and tackle the problem. Secondly, they also failed to convince the king in the method of dealing with the insurgency. That is the reason, late king Birendra seemed non co-operative with the government in the matter of using Royal Nepalese Army³⁰. In view of S.D. Muni, a renowned Indian analyst, the Nepal Government's response to the Maoist challenge in general has been tardy, inconsistent and far from being effective. The broad thrust of the government's approach to the Maoist was to treat them as a national security and a law and order problem and deal with the use

²⁹. *Supra* note 15, p. 5

of force. Two major security operations of 'Romeo' and 'Kilo-Sierra-2' were conducted by the police forces in 1995 and 1998. They were very harsh and ruthless operations with no respect for human rights. They managed to physically eliminate a good number of Maoist cadres but contributed to the strength and spread of the Maoist movement. People in the areas of operation lost faith in the government and developed sympathy for the Maoists who were seen as victims of regression³¹. The governments headed by Lokendra Bahadur Chand and Krishna Pd. Bhattarai had set up two commissions-Dhami Commission 1997 and Deuba Commission in 2000 to identify the root causes of Maoist insurgency and suggest remedial measures. Both the commissions identified the insurgency as "political" in nature and suggested the negotiation as the means to solve the problem. Sher bahadur Deuba was the prime minister who not only declared Maoist as terrorists also declared the price tag over the head of Maoist leaders. Not only that his government for the first time invited Maoists to a peace process on July 23, 2001. Maoist leadership also responded it positively. After the announcement of the commitment to be involved in peace talks both the sides formed their teams for talks. On behalf of the government side, a five member negotiation team under the leadership of Chiranjivi Wagle, Minister for Physical Planning and works was formed. From the Maoist side also, a three member team was contributed under the leadership of Krishna Bahadur Mahara. All together 3 round talks were held. First round of talks was held at the Godavari Resort on August 30, 2001. The second round of talks was held at the Tiger Tops Resort, Thakurdwara Bardia on September 13 and 14, 2001. In this talk the Maoist negotiation team formally presented its 31 point agenda for discussion³². The third round of talks was again held at Godavari Resort on Nov. 13, 2001. In this talk Maoists forwarded the demand of constituent assembly by dropping the demand for institutionalization of republic. But coming to the third round of talks, the differences between two negotiating sides had been widened instead of narrowing down. Girija Pd. Koirala group of ruling NC party was regularly pressuring the govt. to conclude the talks soon and strongly suppress Maoist by using army. In the mean time Maoist party unilaterally broke ceasefire on Nov. 22, 2001. The CPN (Maoist) also announced the setting up of United Revolutionary

³⁰. In came clear in the Holeri case, as the result of which PM Girija Pd. Koirala was compelled to resign from his post.

³¹. S.D. Muni , *Maoist Insurgency in Nepal: The challenge and the Response*, 2nd impression, New Delhi: Observer Research Foundation, 2004, pp. 41and 43.

People's Council (URPC) under the leadership of Dr. Baburam Bhattarai and the People's Liberation Army (PLA) on Nov. 24, 2001. The PLA attacked army camp of Ghorahi, Dang and seized large quantities of arms and ammunitions. As its reaction, HMG declared a nationwide state of Emergency effective from Nov. 26, 2001³³. Also the government formally deployed the Royal Nepal Army (RNA) which launched Cordon, Search and Destroy operations against the Maoist insurgents. The king promulgated the Terrorist and Disruptive (Prevention and Control) ordinance (TADO) 2001. The TADO turned into TADA when the ordinance was passed as an act by the parliament declaring the Maoists as terrorists.

All the moves proved to be futile. Again on Jan. 19, 2003, both the sides reached to an agreement of ceasefire, which was first announced by the Maoists and than reciprocated by the government. In order to create a conducive environment for talks, the than PM Lokendra Bahadur Chand in his speech of public importance withdrew the label of terrorist, nullified the red corner notice removed the price tags on the heads of the Maoists and annulled the alleged charges against them on Feb.2, 2003. On the request of the state, the INTERPOL withdrew the redcorner notices against the Maoists. The government appointed Minister Narayan Singh Pun as co-ordinator on behalf of the government. In response, the CPN (Maoist) also declared its negotiating team on Feb. 2, 2003 under the leadership of Dr. Baburam Bhattarai. The first round of talks was initiated on April 27 at Shankar Hotel, Kathmandu. The Maoist negotiating team put forward its agenda. The second round of talks it was also held at Shankar Hotel on May 9, 2003. It took some decisions, including the release of Maoist detainees from Jail and formulation of the Code of Conduct etc. Among the decisions, one of the decision related to limit the Royal Nepal Army within five kilometers of their barracks or their stations proved to be most debated and controversial subject matter and was criticized from all the corners. The debate increased in such a level that Prime Minister Lokendra Bahadur Chand was forced to resign from his post. After his resignation king invited the leaders of major political parties for a joint audience and asked them to submit the name of their candidate for the post of prime minister within the next 72 hours. As they failed to suggest the name within specified time, the king appointed Surya Bahadur Thapa as prime minister. On June 12,

³². The Agenda is Placed under Annex-1

³³. *Nepal Gazette* 26th Nov. 2001

2003, the new government announced its negotiating team comprising two members of the cabinet Dr. Prakash Chandra Lohani and Kamal Thapa. Similarly, the govt. established the Peace Process Coordination Secretariat (PPCS). But the situation of the peace process gradually deteriorated, as Maoist negotiating team went underground for security reasons by closing their contact office situated at Anamnager. In between the situation of confusion and mistrust, the third round of talks started in Nepalganj and Dang on Aug. 17, 2003. The govt. for the first time officially put forward an agenda of massive socioeconomic reforms and major constitutional changes to accommodate the Maoist demands³⁴. Though the proposal incorporated some of the major reforms in socioeconomic issue, but it did not address the fundamental political issues put forward by Maoists. In the mean time the notorious Dormba incident came into public which made Maoists reactive. The Maoist talks team handed over a letter to the govt. team strongly protesting against the extrajudicial killings of their unarmed cadres in Doramba VDC of Ramechap district. Govt. did not seem serious about the Maoist grievances. In this way, due to poor handling of peace process, the most hoped peace talks was failed and the nation was pushed to further violence and conflict. From that period, the govt. is completely seen against the settlement of conflict through peaceful talks. Govt.'s such type of attitude (non-response) is responsible for the intensification of conflict in Nepal.

Secondly, so far the domestic response to the Maoist conflict from the view point of political parties is concerned, the political parties failed to develop any clear vision about the issue. Political parties have called the Maoist insurgency a political issue and it should be tackled politically. But this stance has been changed frequently. It becomes a political issue when they are out of power but while in government they have tried their best to show it as a security (terrorist) issue. In fact, it was the Nepali Congress government that dubbed it a problem of "terrorism" in the first place. Which ever Government came to power since then has been forced to toe that line³⁵. Also in earlier days, political parties tried to use the Maoist against each other. UML party was thinking that as a party having similar ideology Maoist will do no harm to it, rather they will harm to the ruling Nepali Congress. Because ideologically NC is the enemy of Maoist and practically it is in power. Both will be fighting together and make weaker to each other.

³⁴. *Annapurna Post*, 19 Aug. 2003.

³⁵. *Supra* note 15, p.10

In the same way, ruling NC was sure that the growth of the Maoist will cause the organizational loss as well as erosion of the UML support base. The RPP, NSP and other traditional political classes backed the government in its bid to restore peace. But whatever the stand major political parties were taking that proved to be different than the stand of the king. In this way, there emerged three political forces in the national politics i.e. the political parties, Maoists and the king. After removal of Premier Deuba from power on October 4, 2002, king Gyanendra significantly used his political power and leverage in decision-making. The king in his interview with Time Asia Magazine, expressed his interest to play the role of a constructive monarch by becoming visible to the public and know their concerns³⁶. After assuming executive powers from the elected government on Oct. 4, 2002, the king already experimented four Council of Ministers, three under the prime ministership of his chosen candidate and one under his own chairmanship, but they all failed to maintain peace and tranquility and security and to hold election to parliament. Still king seems firm in his policy to move alone by choosing the actors who have no vision, not sincerity and no support base, only the ambition of holding power. King's such policy and way of action has gradually paved the way to come closer for both CPN (Maoist) and political parties³⁷.

Lastly, in Nepal there is no clear form of civil society. In one side members of different professionals and class organizations, activists of NGOs and INGOs and retired officials who are the declared supports and members of any political parties claim themselves as the members of civil society. On the other, there is the strong opinion which strictly reject the existence of civil society in Nepal. They say that civil society comprises neutral masses who express their unbiased opinions in any issue. Civil Society is termed as a multitude of autonomous human associations, identities, networks and movements formed for the sake of protecting themselves from arbitrary and unjust decisions of the holders of power and wealth and promoting their rational self interest³⁸. If we consider Nepalese civil society as civil society than it will be the perversion of the meaning of the term. Whatever be the situation, the response of the civil society towards the conflict is not clear, it changes according to the situation. If Maoists succeeded in any

³⁶. *Time Asia Magazine*, 2 February 2004.

³⁷. 12 point agreement recently reached between Maoist and Seven parties is an example of it.

³⁸. FED et al (pub.), *Joint Assessment of Selected Sectors of Development Work in Nepal and its Impact on Conflict and Peace*, 2005, p. 27

action or assault, civil society expressed its views in favour of peace initiatives, but in case of security forces success the same society preferred to take opposite stand and express the views in favour of suppression and treating Maoists as terrorists.

2.4.2 International Responses:

When Maoists staged the arms against the state, in earlier periods no serious attention was given to them both from the domestic and international filed. In earlier days, the CPN (Maoist) condemned "US Imperialism", "Indian hegemony" and "native compared bourgeois" as the main enemies and barriers to the Nepalese people and people's war. It had strong relations with the different communist parties of the world who were the members o International Communist Organization- RIM. The members of this organization are the communist parties from both the countries India and USA, along with the communist parties of different other countries. The communist parties of South Asia had established a compact revolutionary zone in the region, and a Coordination Committee of Maoist Parties and Organizations of South Asia (CCOMPOSA) was formed in order to coordinate the activities of the parties.

In different regions (especially in Bihar and Andhra Pradesh) of India, Maoist communist parties had been already continuing armed struggles. Viewing the relationship between the Maoists parties of India and Nepal, Indian govt. had already (unofficially) labelled charge of "terrorists" upon the CPN (Maoist). India is the largest contributor of military aid in Nepal. It fears that the protected insurgency in Nepal could spillover to its geographical heartland, the Gangetic belt, and points out the possibility of smuggling sophisticated foreign arms to Indian insurgents³⁹. In early periods, Indian Govt. had allowed Maoist organizations to operate in Indian territory. Later, on the request of Nepalese govt. It banned such organizations. Similarly Indian govt. arrested and imprisoned many leaders of CPN (Maoist) and same of them were handed over to the govt. of Nepal, for which later was insisting for a long time. A section of Nepalese govt. and people were blaming that India is indirectly backing to the CPN (Maoist). But after the incident of 9/11, both the India and USA developed similar attitudes in regard to the Maoist insurgency. For this, S.D. Muni, an expert of security affairs and Nepalese politics, has some reservations. Mr. Muni expresses;

³⁹. *Supra* note 15, p. 16

The Maoists can be seen as international rebels in their approach since they seek to coordinate their activities with like-minded ideological groups and they indeed claim to have a programme to liberate the poor and suppressed peoples all over the world. Their programme in South Asia, particularly involving Nepal, India, Bangladesh and Sri Lanka has been clearly defined. They also have international links in other countries including America and Europe. And yet, the post, 9/11 framework of 'war against global terrorism' would not justifiably apply to them⁴⁰.

Contrary to the view of S.D. Muni, USA came strongly in oppression to Maoist insurgency. For this basically two reasons can be mentioned. One, the role of Maoists themselves. Since the beginning of insurgency Maoist seemed in opposition to the US global policy. They denounced US as imperialist power. Additionally, Maoist killed one of the staff of US Embassy in charge with spying against Maoists. Second, US govt.'s policy to combat international terrorism was so narrowly framed that It placed CPN (Maoist) on the list of "US foreign policy challenges". Since that period, US involvement in Nepal has been move active. The American Assistant Secretary of State Miss Christina Rocca frequently visited Nepal. The activities of US Embassy increased remarkably with the supply of arms US has started training of Nepalese forces. Though after Royal takeover of 2 Feb. 2004, US has stopped its military assistance to the RNA. But regarding the Maoist insurgency still US has been taking tough stand. US is seen even in opposition to the 12 point understanding reached between 7 parties and Maoist forces. Rather US has emphasized on the unity between the king and seven parties. US government's such policy has not only created hindrances in the process establishing peace within the country, if also has boosted the courage of the king to go against people and democracy.

⁴⁰. *Supra* note 29, pp.49-50.

UNIT -3
IMPACTS OF CONFLICT IN NEPAL

Present conflict of Nepal has many dimensions. It has influenced almost all the aspects of Nepalese society. There can be seen multiple impacts of conflict in Nepal. Conflict has both the adverse and positive impacts upon the various affairs of the country. The impacts can be studied under following headings:

3.1 Domestic Impacts:

Maoist insurgency is mainly a national phenomena, though it has international implications too. If we go through the 40 point demand of Maoists put forward from the side of United People's Front Nepal (UPFN), all the demands have domestic importance. The demands 1-9 are the demands related to nationalism, demands 10-26 are related to the public welfare and demands 27-40 are related to the people's living. Domestic impacts of the conflict is analyzed under following sub-headings;

3.1.1 Impact of Conflict upon the Domestic Laws:

The ongoing conflict has adverse impacts on the domestic laws. The nature of the impact is of various forms. Firstly, many laws including the Constitution are violated and misused. Secondly, for the purpose of tackling/handling the conflict many laws are passed/ made which do not fulfill the requirements of a just law; thirdly, the institutions working in legal field are facing various forms of challenges which diminish their capacity of performing their roles freely and effectively.

Among these things, so far the violation of laws is concerned, it can be dealt under separate topics.

A. Constitution of the kingdom of Nepal, 1990:

Constitution of the kingdom of Nepal, 1990 is the result of the people's movement, 1990. The Constitution was the outcome of the tripartite agreement among the three forces- the king, Nepali Congress Party (NC) and the Left Front (ULF). The Constitution is the fundamental law of Nepal and it clearly accepts the

fact that sovereignty lies upon the people⁴¹. But after the emergence of the Maoist insurgency the Constitution was repeatedly violated. The violation was done from every side—from the Maoists, from political parties and the king. But the nature of violation was different. Whereas, Maoists violated the constitution manifestly. To destroy the Constitutional structure (existing system) was the declared objective of CPN (Maoist). They wanted to frame a new Constitution as substitute of present Constitution. In order to fulfill this goal Maoists have been launching an armed struggle for last 10 years. To a great extent, they have succeeded to this job. At present there is no existence of parliament and elected government. Constitutional monarch has turned into an assertive monarch. Most of the articles of the constitution have become of less use, and now there is frequent use of one article that is article 127⁴², This is the article which is to using rare cases.. But today it has been frequently used. This situation leads to almost failure of constitutional system.

For the present position of the Constitution, only Maoists are not responsible. The political parties who had large sharing in the framing and implementation of the constitution also have large responsibility to protect and defend the values and norms of the Constitution. Contrary to this, Constitutional forces failed to accomplish their responsibilities sincerely. They used to be involved in power game. As a result, the spirit and provisions of the Constitution became the subject of encroachment in a great extent. By exploiting the situation, the king grasped the power and declared the state and sovereign powers inherent in himself⁴³. Now, king is enjoying absolute powers which are not provided by the Constitution Most of the fundamental rights of the people are severely encroached due to the conflict to which both the parties are responsible.

B. The civil Liberties Act, 1955:

This is the Act which covers most of the rights provided under constitution as Fundamental Rights of the people and covered by the Universal Declaration of Human Rights, 1948. Only the difference is that under the Act these rights are

⁴¹. Article 3 of *the Constitution of the Kingdom of Nepal, 1990*.

⁴⁰ Article 27 reads; If any difficulty arises in connection with the implementation of this constitution, His Majesty may issue, necessary orders to remove such difficulty and such orders shall be laid before parliament.

⁴¹. The proclamations of the king made on Oct. 4, 2002 and Feb. 2, 2004 incorporate these things.

provided as civil rights, and they are protected and enforced by Appellate Court by using the writ jurisdiction. For that Appellate Court can issue the orders of habeas corpus and injunction⁴⁴. The rights provided by this Act are violated by the activities of the conflicting parties and peoples are forced to live in a poor and inhuman condition.

C. Some Public (Offence and Punishment) Act, 1970:

This Act was enacted with the objectives of maintaining law and order within the country. This Act provides ample powers to the Chief District Officer. Though this Act has a long history of its misuse but mainly after the emergence of insurgency the misuse has been increased to a large extent. This act has the provision not only to arrest anyone without warrant also it gives power to the CDO to keep any person in detention for 35 days if he feels necessary⁴⁵. These discretionary powers are misused in a great number by the ruling parties in order to suppress their opponents.

D. The Public Security Act, 1989:

This Act is famous as a black law among Nepali citizens. The Act provide local authorities (CDO) the power to detain any person without specifying any criminal charge up to 90 days who allegedly threatens domestic security and tranquility, amicable relations with other counties and relations among citizens of different classes or religions. The authority has also the power to issue an order of confinement to a specific location up to 30 days and can be extended up to 90 days with the approval of the Ministry of Home Affairs⁴⁶. There is shameful record of the misuse of this Act, and the Act is severely criticized for its anti human rights provisions.

E. Torture Compensation Act, 1996:

One of the badly violated Act due to conflict is Torture Compensation Act. This Act follows the Article 14 (4) of the Constitution of the Kingdom of Nepal. It defines torture as the cruel, inhuman and degrading treatment to any person, and

⁴⁴. Articles 16 and 17 of *the Civil Rights Act, 1955*.

⁴⁵. Proviso of the Section 4 of *Some Public (Offence and Punishment) Act, 1970*.

such types of acts are strictly prohibited by the Act. Though the Act strictly prohibits such actions, but in practice it is customary to give torture to any accused and detainee. A Report Published by NHRC reveals that 12424 persons were arrested and tortured by the state authorities during the years 1996-2003⁴⁷. This figure clearly shows how the act is violated by cornering concerned Constitutional and human rights provisions.

F. The State Cases Act, 1992:

The Act is the main law which determines procedures regarding investigation and filing of the cases to which state is plaintiff. It includes both the civil and criminal cases. This Act has been repeatedly violated from the govt. side. They arrest the peoples on fake charges pretend to investigate and file the false cases against them⁴⁸. That is not only misuse of law also is the violation of basic human rights norms.

G. The Children's Act, 1992:

This Act has basic objectives that are physical, mental and intellectual development of children. Along with these, the Act incorporates the provisions regarding child rights, protection of the child and guardians, welfare of child, working conditions and various other provisions about the children. But conflict has created adverse impacts upon the life and future of those children. Rare provisions of the Act are implemented and most of the provisions are subject to violation. It has made the Act, almost an useless peace of legislation.

H. Prison Act, 1963 and Prison Regulation, 1964:

The Act basically deals with the prisons and prisoners. It also incorporates provisions regarding the rights, interests, facilities and conditions of the prisoners. The Act is important for protecting basic rights of prisoners and detainees. The recent

⁴⁶. Article 6 of *the Public Security Act*, 1989.

⁴⁷. NHRC, *Human Right in Nepal, Status Report 2003*, Kathmandu, 2003, p. 135 (Annex 1) quoting INSEC, *Human Rights Year Books* (1996-2003).

⁴⁸. The leaders of ANNISU (R) Krishna K.C., Himal Sharma and many more persons are facing such false charges.

amendment of the Act has made some remarkable changes based on the concepts of Probation and Parole⁴⁹.

Similarly the Prison Regulation has provisions for the regulation of prison administration. It basically incorporates provisions for the appointment of various functionaries, their duties and responsibilities. In spite of many legal safeguards made for protection of the rights interest and facilities of prisoners, the prisoners have been facing many problems and difficulties. Basically there are very less facilities within the Prison. There are frequent incidents of the violation of the provisions of jail Act and Regulation⁵⁰, which ultimately result the violation of the basic rights of prisoners and detainees. The condition has become serious after the emergence and during the period of conflict within the country.

I. The Human Rights Commission Act, 1997 and the National Human Rights Commission (Complaints, Actions and Determination of Compensation) Regulation, 2001 :

The Act is an important document for the promotion and guarantee of International Human Rights instruments in Nepal. The main characteristic of the Act is Constitution of an independent commission to work for human rights. The National Human Rights Commission was constituted in 26th May 2002. The Act has defined human rights as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution and other prevailing laws and the rights in the international instruments relating to human rights to which Nepal is a party⁵¹. Though commission is regularly working in the field of human rights since its establishment, but there are criticisms that commission is unable to discharge its duties in an effective manner. Many factors are responsible for this situation. Firstly, the commission has very narrow jurisdiction . Secondly, establishment of human rights promotion center under PMO has superceded the

⁴⁹. 2nd Amendment of the *Prison Act*, 1963.

⁵⁰. There are regular news reports which disclose the facts about the suspicious death of prisoners and torture of prisons inside prison.

⁵¹. Section 2 (F) of *Human Rights Commission Act*, 1997.

jurisdiction of the commission. Thirdly, commission is unable to function as an independent body. Very often it is blamed to be tilted with the government⁵².

The regulation is helpful for the implementation of the provisions of the Act. It is the nature of the conflict which has made the job of the commission so challengeable and tuff. The success of the commission is of the commission is judged on the basis of its performance. The performance not proved satisfactory so far.

J. The police Act, 1955:

The police Act, has the provisions to establish and regulate Nepal Police Force for the maintenance of law and order within the country. For that, police force has been provided the rights and duties to investigate and control the crimes, protect the people from unnecessary evils. The police has an important responsibility to save the citizens and society from the fear and threat of crime and criminals. It has been provided a lot of powers. In order to check the misuse of power, the Police Act has set the duties for police with there rights⁵³, which they have to follow while accomplishing their duties. But there is all-round criticism about the functioning of the police. There are news published in regular basis regarding the misuse of power and authority by the police⁵⁴. The ongoing conflict has increased on the incidents of police atrocities over civilians and misuse of the provisions of the Act and Regulation.

K. The Armed Police Act, 2002:

The Armed Police Force was constituted basically to deal with Maoist insurgency. Because police force was not able to fight against insurgency and there was no unanimity among the views of political parties and leaders about the use of Royal Nepalese Army to suppress internal conflict. Similarly late king Birendra was said not in favour of the use of RNA. As the intermediary force the Armed Police Force was established. The Act with others defines the term "armed

⁵². It has been frequently expressed by human rights activists.

⁵³. Section 50 of *Police Act*, 1955

⁵⁴. In Nepalgunj a teacher was killed while on the roof of his house, three police personnels in civil dress open indefinite firing and the incident took place, *Annapurna*, 16th March 2006.

insurrection" as any act that is disgusting to the government or creating a state of abnormality or to create difficulties in the operation of state machinery by using arms with the intention of destroying the sovereignty of the kingdom of Nepal or destroying the national integrity⁵⁵. The Act empowers the armed police force wide powers in order to defend insurgency. The Act has also constituted Armed Police Special Tribunal in order to punish the guilty members of armed police force. But the provisions of the Act has gone unimplemented and violated. The security officials have detained the person who have no involvement with the rebels⁵⁶.

L. Royal Nepal Army Act, 1959 :

This Act was framed by amending and unifying existing laws regarding Royal Nepalese Army because they were not sufficient to regulate reconstituted armed force of His Majesty the King. The Act has made the provisions regarding the conditions of service, special privileges, crimes, punishment, constitution of Army Court and its procedures etc..

The Act has clear and strict provisions about the regulation of Royal Nepal Army. It has made strict punishments in case of violating legal provisions which resulted into a crime. But at present Royal Nepal army is deployed to crush Maoist insurgency within the country. RNA is heading the security force constituted under the provisions of Terrorist and Disruptive Activities (Control and Punishment) Ordinance. There are several criticisms against the RNA regarding its role. Many news are published about the atrocities of the security forces including torture, killings and rape. In some cases RNA has denied the charges and in some cases it has publicly communicated that culprits are punished according to military law and rules. In spite of RNA's public commitment there are reparations of similar incidents. Human rights organizations are critical about the RNA activities amounted to the gross violation of human rights and misuse of

⁵⁵. Section 2 (K) of the *Armed Police Act*, 2002.

⁵⁶. Dr. Tara Prasad Sapkota, *Participatory Research on the Impact of Conflict on Access to justice: Legal Approach*, Kathmandu, 2005, p. 44.

powers provided by different laws⁵⁷. RNA's such role has diminished its image within and outside the country.

M. Local Administration Act, 1971 :

Local administration Act provides extreme powers to the Chief District Officer (CDO). Though CDO is the chief administrative officer, but he exercises not only the administrative powers also exercises judicial, security developmental and social welfare powers. The mostly misused power of the CDO is security power. Sections 6, 6A, 6B of the Act provide him various rights for maintaining peace and security within the district. There is the tendency to misuse these rights infavour of the interest of ruling party and group and for the suppression of oppositions. Though the CDO always remains as the representative of central govt. and his prime task is to promote the interest of the govt., but after the emergency of conflict these powers are misused to a larger extent and for narrow interests. According to the provision of TADO, CDO is the chief of district security force and now he mostly uses his powers with the help of security force since the presence of the state is limited to district head quarters and urban centres⁵⁸, the duty of CDO has remained only to declare curfew, riot affected area and order in order to suppress the activities of political parties. In this connection the Act is misused in many occasions and the situation of the country is going on deteriorating. During king's rule the Act was amended and provision of the appointment of Regional and Zonal Administrators on political basis was inserted. The administrators were representatives of the king and used to misuse power in a great number.

N. The Terrorist and Disruptive Activities (Control and Punishment) Ordinance, 2005 :

Present Terrorist and Disruptive Activities (Control and Punishment) Ordinances is the repeated version of the earlier Ordinances and the Act of same nature. This is a draconian law which never matches with the basic human rights

⁵⁷. It is a major cause which gave impetus to the issue placing RNA under Parliament

⁵⁸. *Supra* note 54, p. 108

provisions and the general principles of law. This ordinance provides special authority to the security officers issuing orders to arrest any person or a group of person, search any place, such as houses, vehicles, seizure of goods, for the use of force and weapons if feels necessary, disarm the persons that are holding arms, and stopping the bank accounts⁵⁹. Section 9 of the ordinance provides the right to the security officer to put any person under detention for six months if he has reasonable basis to believe that it necessary to prevent him from doing any terrorist and disruptive activities. The officer may detain such person for additional six months by taking permission from Home Ministry⁶⁰. In spite of the different provisions made under TADO to crush and control the Maoist insurgency, nothing has resulted yet. Rather there are voices against the suppression and atrocities over common people made by security forces in the name of dealing terrorists⁶¹. That is the vivid picture of the misuse of the domestic laws.

O. The Commission for the Investigation of Abuse of Authority Act, 1991:

CIAA Act was made as per the Article 98 (4) of the Constitution of the Kingdom of Nepal, 1990. The Act has the provisions regarding the functions, duties, powers and procedures of the Commission for the Investigation of Abuse of Authority. The Constitution and Act provided special jurisdictions to the commission to conduct inquiries into, and investigation of improper conduct or corruption by a person holding any public office. If commission finds any case of the abuse of authority, it may recommend to the concerned authority for taking departmental or any other necessary action. Also in case of corruption, it may file suit against such person in a court with jurisdiction in accordance with law. Commission's such power was confirmed by the Supreme Court⁶². But after the royal move of Feb. 2, 2004, a Royal commission was formed in order to investigate, file suit and hear the cases on corruption charges. This royal

⁵⁹. Section 5 of the *Terrorist and Disruptive Activities (Control and Punishment) Ordinance 2005*

⁶⁰. Section 9 of *TADO*.

⁶¹. "Power Excitement in the Security Force" *Kantipur Daily*, March 19, 2006

⁶². Attorney General Badri Bdr. Karki V. The Commission for the Investigation of Abuse of Authority, *NKP*, Vol. 5/6, Sept./Oct., 2001.

commission had encroached the jurisdictions of the commission until it was dissolved by the order of Supreme Court⁶³.

P. Education Act, 1971:

One of the law seriously encroached by the conflict is Education Act. Due to the conflict the schools of rural areas are turned into the places of Maoist gatherings. Likewise the teachers of various schools are not free to teach their students according to prescribed courses. Teachers have to contribute a certain percent of amount to the CPN (Maoist). Both the teachers and students have to forcefully participate on the trainings and programs organized by CPN (Maoist). Both the teachers and students have to forcefully participate on the trainings and programs organized by CPN (Maoist). Even in certain occasions they are abducted. There are the cases of the killings of teachers who disagree with the Maoist orders. Besides the CPN (Maoist), there are hundreds of cases of the unlawful arrest, torture, involuntary disappearance and killings of the teachers and students by the police and security forces. Many schools are turned into police stations and security posts. In many occasions schools are bombed and demolished due to the cross firing. Such activities not only violated the autonomy of the educational centers posed physically and psychological the threat the student's. And thus violate the various provisions of Education Act.

Q. Social Welfare Act, 1992:

The social welfare Act has made provision that the social organizations must be registered in the Social Welfare Council. According to the provision, social organizations are registered under SWC and are functioning in various areas. After King Gyanendra is move to take power the SWC had issued a code of conduct which aims to control the activities of social organizations. This code of conduct was strongly opposed by the organizations as considering the part of anti democratic move taken by the king. The main intention behind issuance of the code of conduct was to check on the activities of social organizations which were felt harmful to the king's move.

⁶³. Sanjib Paraguli V. Royal Commission et al., *Supreme Court Bulletin*, Special Issue, Feb. 2006.

Another piece of legislation amended to assist the king's step was Local Administration Act, 1990. This Act was badly misused by the local administrators in the name of curbing the conflict. It provide excessive powers to the CDOS. During king's rule, the Act was amended and the provision of appointing Regional and Zonal Administrators on political basis was inserted. The administrators were representatives of the king and used to misuse power in a great number.

R. Press and Publication Act, 1991:

The Act guarantees the people's rights regarding the running of press and publication. Section 4 of the Act has the provision not to close and seize the press once it is registered according to Sectopm 3. Similarly, Section 12 mentions that pre-restrictions will not be imposed in publishing any news, articles or some other reading materials except in the situation according to sections 14 and 15. Likewise section 13 guaranties that once any publication is registered, its registration will not be repealed in charge of any published news, articles or reading materials. In spite of all the provisions, the govt. imposed sensorship upon the newspapers and many other reading materials in the name of controlling terrorist activities. Similarly the press and publication sector was forced to be self censored, many journalists were arrested, tortured and killed by the govt. NCP (Maoist) also is not exception to it. There are some incidents of the killings, torture and abductions from the Maoist side also. In this way conflict has created negative impacts on the smooth functioning of the press and publication Sector.

The impact of conflict is not only in the use of law, it can be seen in the process of the enactment of law. Basically after the emergence of insurgency many laws are made, which in any sense can not be considered as just laws. Secondly, there is the tendency to rule the state according to the ordinance. It has been elapsed more than 3 years of the dissolution of parliament. During this period many laws are made and amended through ordinance. Repeated promulgation of the TADO, and various other ordinances⁶⁴ which are contrary to the general principles of law basic human rights and wishes of the people, are subject to weaken the democracy and the rule of

⁶⁴. Beside TADO, the Ordinances promulgated to amend the *Civil Service Act, Labour Act, Treaty Act and Social Welfare Act* invite criticisms Prom every corner of the Society.

law in the country. Similarly after the royal takeover of Feb.2, 2004, the judicial institutions are facing many challenges in the performance of their role. The formation of Royal commission was not only an unconstitutional act, it had encroached the jurisdiction of the commission on the investigation of the Abuse of Authority. The appointment of the judges of the courts is creating debates inside and outside the judiciary⁶⁵. Intervention of the government over the affairs of the judiciary is increasing day by day, and judiciary is almost losing its independence. In this way, conflict has created negative impacts in the field of domestic laws and legal affairs, and it has adversely affected to other areas too.

3.1.2 Impact of Conflict on the Rights of the Child :

Children are the future of any country Children are the human beings who are facing childhood.. Childhood means more than just the time between birth and the attainment of adulthood UN convention on the Rights of the Child says, a child means every human being below the age of 18⁶⁶. They do not have any interest, they are innocent and need support of their family and society for their development. Children do not start wars, yet they are most vulnerable to its deadly effects. Children rarely grasp the complex causes of armed conflict, yet they are all too often forced to flee their homes, witness atrocities or even perpetrate war crimes themselves. Children are not responsible for war, yet it robs them of their childhood⁶⁷. Not only that armed conflict maims and kills children and those who protect them. It destroys the homes and schools that were built to nurture them. It separates children from their families, increases their risk of exploitation and abuse, and exposes them to violence that can result in psychological and psychosocial trauma for years to come. In a number of countries, children are forced to take part in combat or to become servants, messengers or spies⁶⁸. In order to improve the situation of the child occurring due the armed conflict, Convention on the Rights of the Child, 1989 has made the provisions to create liabilities over the state parties. In this connection, Article 38 of the Convention makes provisions;

⁶⁵. Nepal Bar Association itself is against such practices.

⁶⁶. Article 1 of the *Convention on the Rights of the Child*, 1989.

⁶⁷. UNICEF, *The state of the World's Children*, 2005, New york: United Nations Children's Fund, Dec, 2004, p. 39

⁶⁸. *Ibid*, p. 64

1. States parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of eighteen years, states parties shall endeavor to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, states parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict⁶⁹.

Whatever the provisions made by the Convention on the Rights of the Child were not met, rather the situation was going on worsening. In keeping mind this fact UN General Assembly organized a special session on Children in May 2002. The session reviewed the progress of the earlier years and realized that though many things are done, yet much more needs to be done. The session adopted the Declaration and a Plan of Action. The Plan of Action emphasizes on creating a world fit for children. A world fit for children is one in which all children get the best possible start in life and have access to a quality basic education, including primary education that is compulsory and available free to all, and in which all children, including adolescents, have ample opportunity to develop their individual capacities in a safe and supportive environment. We all promote the physical, psychological, spiritual, social, emotional, cognitive and cultural development of children as a matter of national and global priorities⁷⁰. The paragraph 41 of the Plan further asserts; (H) hundreds of millions of children are suffering and dying from war, violence, exploitation, neglect and all forms of abuse and discrimination. Around the world children live under especially difficult circumstances: permanently disabled or seriously injured by armed conflict; internally displaced or driven from their countries as refugees; suffering from natural and man-made disasters, including such perils as exposure to radiation and dangerous chemicals; as children of migrant workers and other socially disadvantaged groups; as victims of racism, racial discrimination, Xenophobia and

⁶⁹ . Article 38 of *the Convention on the Rights of the Child*, 1989

related intolerance⁷¹. Children have the right to be protected from all forms of abuses. In this light protection of children from the impact of armed conflict and ensure compliance with international humanitarian law and human rights law is necessary condition. For this Plan of Action has recommended both the general and specific protections. One of the areas for specific protection is protection from armed conflict. Nos 20-32 are concerned with this protection⁷².

So for the Nepalese situation is concerned, Nepal has ratified the Convention on the Rights of the Child 14th on September 1990. Among the 23 million population of Nepal, 41 percent of the total population are children under 16 years⁷³.

Nepal has not only signed the Convention on the Rights of the Child (CRC), additionally she has signed two optional protocols. That are Optional Protocol to the Convention on the Rights of Children on the Sale of Children, Child Prostitution and Child Pornography, and Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. In domestic field Children's Act, 1992, Children's Rules 1995 were enacted, a task force was formed for contributing development of the child and juvenile benches were established in all the district courts. Similarly, article 20(2) of the Constitution has made the provision that "No minor shall be employed to work in any factory or mine, or be engaged in any other hazardous work"⁷⁴. Article 26(8) also has the provision that the state shall make necessary arrangements to safeguard the rights and interests of children and shall ensure that they are not exploited, and shall make gradual arrangements made for free education⁷⁵. In spite of the ample arrangements made for the welfare and protection of the rights of the child Nepalese children continue to be victims of random as well as premeditated violence perpetrated by individuals them, the state and during the armed conflict, also by the Maoist or other operating under the Maoist label⁷⁶. The impact of conflict upon children can best be learned from the facts incorporated in the report published by the Office of the High Commissioner on Human Rights, Nepal. The report mentioned, the rights of children under 18, including rights to life, physical integrity, health and education, were reportedly violated by both sides to the

⁷⁰. Unicef, *A World Fit for Children*, Kathmandu, Jan, 2003, p. 19.

⁷¹. *Ibid*, pp. 37-38.

⁷². *Ibid*, pp. 42-43

⁷³. CBS, *Population Census 2001*, Kathmandu, pp. 254-261

⁷⁴. Article 20(2) of *the Constitution of the Kingdom of Nepal*, 1990

⁷⁵. *Ibid*, Article 26(8).

conflict. There were reports of killings, beatings, illegal detention, recruitment or other use for military purposes, as well as attacks against schools and health facilities⁷⁷. About the Maoist role, the report further says, while CPN (Maoist) continued to deny that it used children for military purposes, many complaints regarding conscription of children for use as combatants, informants, cooks or porters were received. Children who had left CPN (Maoist) or who had surrendered to the security forces were at risk of being recruited again or being detained by the security forces⁷⁸. The report adds; OHCHR learned of at least 100 cases of children detained under TADO in prisons and police stations during 2005. Some of them for long periods beyond the limits of the law; at least a quarter of this number were arrested when they were under 16, the definition of a child in Nepal's children's Act, 1992⁷⁹.

In this way, the conflict has created adverse impacts on the rights of the child which certainly will effect to the future of the nations.

3.1.3 Impact on Human Rights :

"Human rights" is a broad concept. In General "Human Rights" are the rights provided to man as being the member of human society. Human rights are universal, indivisible and inalienable rights. Human rights and fundamental freedoms are the birthrights of all human beings. Their protection and promotion is the prime responsibility of governments. Human rights include, civil political, economic, social and cultural and various other forms of rights of man. Universal Declaration of Human Rights, adopted and proclaimed by General Assembly on 10th December 1948 is regarded as a common standard of achievement for all peoples and all nations. In its 30 Articles it has provided various rights and freedoms. Article 1 of the Declaration, mentions; all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in spirit of brotherhood⁸⁰. The human rights are classified into three categories and termed three generations of rights. The civil and political rights come under first generation rights. The socio-economic and cultural rights

⁷⁶. NHRC, *Human Rights in Nepal; A Status Report*, 2003 Kathmandu, p. 88

⁷⁷. OHCHR, *Report of the United Nations High Commissioner for Human Rights on the Situation of human rights and the activities of her office, including technical cooperation in Nepal*, Feb. 2006, p. 56. para 65.

⁷⁸. *Ibid*, para 67.

⁷⁹. *Ibid*, para 68.

⁸⁰. Article 1 of the *Universal Declaration of Human Rights*, 1948.

fall under second generation rights, and various other collective rights comprise the third generation of rights⁸¹. The application of human rights is possible in both the domestic and international. UN and its agencies play dominant role for international application of human rights. Emphasis is given to the establishment of regional and sub-regional arrangements for the promotion and protection of human rights. Similarly, national governments have the responsibility to take necessary steps for the application of human rights. The success of any government is not only measured by its efforts for economic development, also is best measured on the basis of human rights situation within the country. Though human rights remain the matter of same concern in peaceful situation also, but it becomes the issue of vital concern during the period of conflict. Because there is great possibility of violation of human rights during conflict. Keeping in view this situation the World Conference on Human Rights 1993 stressed; the World Conference on Human Rights deeply concerned about violations of human rights during armed conflicts, affecting the civilian population, especially women, children the elderly and the disabled. The conference therefore calls upon states and all parties to armed conflicts strictly to observe international humanitarian law, as set-forth in the Geneva Convention of 1949 and other rules and principles of international law, as well as minimum standards for protection of human rights, as laid down in international conventions⁸².

In Nepal, since the eruption of Maoist insurgency, large scale violation of human rights from both the parties is recorded by the human rights organizations. Till now, more than 15,000 persons are reported to be killed though there is no record of the damage of physical property and the number of involuntary and forceful disappearances torture and disability and displacement due to the conflict. For all these losses, damages and violations of human rights, both the conflicting parties are responsible. Whereas for killings, forced disappearance and torture, state is seen far ahead and for the damage of physical property and internal displacement Maoists are ahead than the government in spite of the commitments expressed by both the parties to the abeyance of human rights documents and humanitarian laws but the facts coming from different parts of the country do not match with their commitment. As its result, the situation is deteriorating day by day. National

⁸¹. Robert L. Maddex (ed.), *International Encyclopedia of Human Rights; Abuses and Remedies*, Washington D.C.: A Division of Congressional Quarterly Inc., 2000, p. xxix.

⁸². United Nations, *World Conference on Human Rights; The Vienna Declaration and Programme of Action*, 1993, New York: Aug. 1993, pp. 39-40

Human Rights Commission constituted almost 7 years ago is not proved effective as it was hoped. Non-governmental organizations working in the field of human rights are not proved reliable due to their way of functioning on partisan basis. Realizing the critical situation of Human Rights in Nepal, United Nations High Commissioner for human rights has established an office in Nepal. The office is established with the objectives of monitoring human rights situation within the country and advice the different branches of government, NGOs and members of civil society. Among the various functions of the offices as mentioned under Article V of the Agreement Between the United Nations High Commissioner for Human Rights and the Government of the Kingdom of Nepal Concerning the Establishment of an Office in Nepal, Article V(1)(a) mentions; (the office shall) (M)onitor the situation of human rights and observances of international humanitarian law, bearing in mind the climate of violence and the internal armed conflict in the country, including investigation and verification through the deployment of international human rights officers throughout the country as required⁸³. The report published by OHCHR Nepal found state authorities involved in deliberate and arbitrary killings, disappearances arbitrary arrest and arrest, detention and unfair trial, torture and cruel, inhuman and degrading treatment failure to discharge the responsibility to protect the civilian population and accountability of security forces for the violation of human rights by their members⁸⁴. Similarly the report covers CPN's (Maoist) activities regarding killings of civilians and persons hors de combat, abductions, violence and threat to civilians and accountability of leadership to the actions by their cadres contrary to their declared policy.⁸⁵

Since the beginning of the Maoist insurgency, Nepalese people have been facing many challenges on rights to life, liberty, security and dignity. Human rights situation of the country is at crossroads, as thousands of extra judicial executions; hundreds of involuntary disappearances, thousands of arbitrary arrests and detentions; and thousands of cases to torture, cruel, inhuman and degrading treatment have been reported. If these things are not checked strictly country will further the witness holocaust.

3.1.4 Impact of Conflict on Internally Displaced Persons:

⁸³. *Nepal Gazette*, Part 55, Sept. 5, 2005

⁸⁴. *Supra* note 75, pp. 46-52

Like other sectors, conflict has adverse impacts on internally displaced persons. Internal displacement is the outcome of conflict, and IDPs suffer many difficulties once they are displaced from their own homes and places. IDPs are subject to violation of their fundamental and human rights. United Nations Guiding Principles on Internal Displacement, 1998, defines; IDPs are those persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border⁸⁶. Above definition shows that IDPs are forcibly driven or forced to drive away from their own area, where they have been in easy or comparatively easier condition to fulfill their basic requirements. Once persons are displaced due to any cause, national authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction⁸⁷. Whatever the protection and assistance IDPs receive that is not the matter of mercy or kind rather it is their right. The same guiding principles emphasises that internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be prosecuted or punished for making such request⁸⁸. In spite of all these assurances most of the IDPs around the world are living in a miserable condition. It is estimated that throughout the world 25 million people are displaced within their countries due to conflict and human rights violation⁸⁹.

Various human rights instruments including Universal Declaration of Human Rights emphasize on the rights of the IDPs world conference on Human Rights, 1993 stressed the world conference on Human Rights recognized that gross violations of human rights, including in armed conflicts, are among the multiple and complex factors leading to displacement of people⁹⁰.

In Nepal, conflict induced internal displacement emerged as a problem mainly from the period of the outbreak of Maoist insurgency. As the armed conflict intensified

⁸⁵. *Ibid*, pp. 52-55

⁸⁶. United Nations, Office for the Co-ordination of Human Affairs, *Guiding Principles on Internal Displacement*, 1997.

⁸⁷. *Ibid*, Principle 3.1.

⁸⁸. *Ibid*, Principle 3.2.

⁸⁹. *Informal*, Vol. 19, No. 2 and 3, Sept. and Dec. 2005, p. 4.

after 2001, the problem started to spread all over the country. Peoples from rural villages started to flee. They were forced to leave their homes. As the insurgency intensified internal displacement turned into national problem. The people were not only displaced, they were forced to live a difficult life. The people are displaced due to several reasons. Among them are;

- (i) torture, threat and fear of torture and threat from both the conflicting parties.
- (ii) killing, arrest and abduction of family members and fear of such things.
- (ii) confiscation of private property and lock-up in the house, basically from Maoists.
- (iv) obstruction to follow own religion, culture, tradition and the job.

The IDPs are centered to the urban areas, basically within the capital or in the district headquarters. The main problems the IDPs facing are, unemployment, lack of access to food, shelter, clothes and children's education and women and children's basic health care⁹¹.

The internal displacement is a conflict generated problem within the country. Permanent solution to his problem will be the end of conflict. Before that, as an interim solution government and various other agencies can provide assistance in many ways. But it is unfortunate that there is no systematic record of the displaced persons. Displacement in Nepal is less visible than in other countries, partly because those fleeing the armed actors often do not want to be identified as IDPs. They either integrate into urban communities or migrate across the open border to India⁹². Independent studies put the figure of IDPs at around 80,000. But the government data of IDPs is very less. Unit for Relief Management for Conflict Affected People at the Home Ministry records IDPs to be figuring in some where in Eastern Nepal 16,000⁹³. But the estimate of UN Sources put the displacement figure some where between 100,000 and 200,000 people over the past few years⁹⁴. Likewise in the field of the protection and assistance of the IDPs also vary less things are being done. It is due to lower performance of the govt. Though for the commitments and programmes on conflict-induced IDPs, govt. does seem lagging behind. First of all working committee to study 'Maoists' Activities and Solutions was formed in 1997 which recommended for government concepts regarding rehabilitation of disabled persons. Ganesh Man Singh Peace campaign

⁹⁰. *Supra* note 80, p.37

⁹¹. Findings of a Research Conducted by Informal Team in Eastern Nepal, *Supra* note 87, p.22

⁹². *Supra* note 75, p. 55.

⁹³. *Good Governance*, Vol. 40, No. 4, Jan. Feb. 2006, p.4.

was launched in 1999 which established Victims of Conflict Fund, 2001; launched Immediate Relief Package Programme 2002, and IDP Rehabilitation Programme 2003 . The Tenth Five Year Plan (2002-2007) framed the strategy to rehabilitate conflict victims including those displaced and affected. In both the documents Code of Conduct and Concept of Forward-looking Reforms, 2003, produced during the talks with Maoists in 2003 the issue of IDPs is best mentioned. Likewise 25 point commitment 2004 NHRAP 2004 and touched the issue of IDPs and their right to be rehabilitated and return their homes. The Common Minimum Programme 2004, Relief Package (Approved by the council of Ministers) 2004 emphasise on rehabilitation and relief of for displaced persons. The Budget of Fiscal Years 2004/5, 2005/6 allotted budget for relief, training, shelter and basic public services for IDPs⁹⁵. Whatever the programmes formulated and commitments made from the side of the government, the position of the IDPs remained unchanged due to the increasing number IDPs and government's non-compliance with those commitments, strategies and programmes. There is the gross violation of the basic rights of the IDPs as its result the situation is deteriorating day by day. The 12 point understanding reached between 7 political parties and Maoist have increased, the hope of the displaced persons, as the understanding shows positive signs to the return of displaced persons. What will be the outcomes? it depends upon the future.

3.1.5 Impact on NGOs:

After the change of 1990, Non-Governmental Organizations (NGOs) have emerged as major change agents in Nepal. The NGOs have evolved as sources of new ideas, partners in project implementation and also as grassroots organizers, especially when it comes to implementing development programmes. Today there are more than 20,000 registered NGOs, about 15,000 of which are affiliated with the Social Welfare Council (SWC). About 2,200 NGOs are members of the national federation, the NGO Federation of Nepal⁹⁶. There has been an ongoing, often controversial debate about the role of civil society in Nepal ever since the restoration of democracy in 1990 allowed the registration of non-governmental organizations which meanwhile represent a great portion of civil society organizations in Nepal. A policy shift of many NGOs from direct project implementation

⁹⁴. *Supra* note 87, p. 32.

⁹⁵. *Ibid* p. 18

and working through the government structure to working through Nepali NGOs, brought about a big rise in the number of NGOs working in Nepal⁹⁷. There are many NGOs in Nepal, which are operating with high professional skills and competence. The growth of NGO numbers was due to their skill and effectiveness at program implementation starting from poverty reduction to fighting for social evils, protection of people's rights and lobbying and advocacy for national policy. There are mainly Society Welfare Act and other relevant laws which regulate the functioning of NGOs in Nepal. There remain high expectations of positive role of NGOs in democratic society. NGOs have often failed to work for facilitating those expectations of the people. As its result they become subject to various criticisms. Increased donor attention on one hand and a limited capacity of those NGOs to facilitate the development services, had to amounting public criticism about their role. Frequently, NGOs were charged with being donor driven, all kathmandu based and organized like family businesses, incompetent, not delivering good development services, not reaching the poor, and in some cases being corrupt⁹⁸. NGOs are also criticized especially as regards the non-inclusive memberships and lack of adequate transparency⁹⁹. Conflict has created adverse impacts on NGOs in Nepal. The conflict has brought about a setback in NGO activity in general, but in some areas. it has also forced the non profitable organizations to be more accountable to the people they seek to serve¹⁰⁰ for recent years, the Maoists have exerted tighter control over the development sector, by allowing project activities only after questioning the relevance and transparency in terms of finance, donor support and beneficiaries. They demand from local NGOs to get registered with their local "people's government" and pay a certain amount of the project funds to them¹⁰¹. Likewise, monitoring the impact of development work has been adversely affected due to the conflict. Project and NGO staffs are hesitant to go to the field as frequently as would be required¹⁰². In order to avoid the possible weaknesses of NGOs and facilitate them to be involved sincerely on their work, NGO Federation of Nepal has issued "Guiding Principles for Organizations Working in Conflict affected Regions". The guiding principles have 9 points. They include various commitments for organizations; non discrimination;

⁹⁶. *Supra* note 14, p. 149

⁹⁷. *Supra* note, 36

⁹⁸. *Ibid.*

⁹⁹. *Supra* note, 14 (p.149)

¹⁰⁰ *Ibid*

¹⁰¹. *Ibid*

impartiality of activities; transparency; not to provide any donation, vehicles, equipments or other materials to any political party or political groups; intolerance of any hijacking, violence or threats against any of the member/staffs of NGO; not to take side of anyone of the parties in conflict either to benefit or harm them; call on everyone concerned to comply with humanitarian laws and human rights conventions; and request all human rights organizations, committees, HMG and concerned authorities, political parties and other conflicting partisan interests to help by creating an environment to enable NGOs to perform in accordance with these guiding principles¹⁰³. Recently, government has issued a code of conduct for NGOs, which is directed towards preventing the social organizations to perform in a normal condition. This code of conduct is strongly apposed from the side of various NGOs and NGO Federation itself. This code of conduct is the outcome of king's move of Feb. 2, 2004. It shows that NGOs are facing difficult situation raised due to conflict and conflict related activities. Despite the limitations, there are many NGOs working with active networks and firm devotion to their programmes and commitments.

3.2 International Impacts:

Maoist insurgency being a internal matter of Nepal, it cannot be isolated from the rest of the world. It has far reaching impacts in the world politics. The international impacts of Nepalese conflict can be accessed under following topics:

3.2.1 Impact on Friendly Nations:

Nepal has diplomatic relationship with more then 117 countries. Among them, some are traditional friends and some new. Basically India, China, UK, USA, Japan, USSR and Pakistan can be considered as traditional friendly nations having strong ties with Nepal. Among these countries India and China re immediate neighboring countries and Pakistan is a neighboring country and a bonafied member of south Asian Association for Regional Cooperation (SAARC). As it is already discussed that friendly nations have mixed responses in regard to internal conflict of Nepal. While discussing about the impact of conflict on friendly nations there is a common understanding that all the nations are taking conflict as a serious problem of Nepal.

¹⁰². *Supra* note 36, p. 26

¹⁰³. *Ibid*

India is a south neighbour of Nepal. The border of Nepal connected with India in three sides-East, West and South. Not only that it is open from time immemorial. Every year Lakhs and Lakhs Nepalese people used to go India for education, treatment, pilgrimage, business and jobs. Among them, seeking the job is a prime motive. Nepalese people residing in India for education and jobs have formed their organizations and are performing different social and benevolent functions¹⁰⁴. Also they have been involving in political activities too. Some organizations affiliated with NCP (Maoist) have been working in India. Similarly Maoists have affiliation and brotherly relationship with different communist parties of India continuing armed revolution in different parts of India. Indian Government has two way pressure regarding Nepalese Maoists. Firstly, India was always fearful that if Maoist movement spreads and sustains in Nepal, it may boost the morale of Indian Maoists. Secondly, Nepalese government and anti-Maoist intelligentsia were always urging Indian government that since Maoists are freely working inside India their activities must be prevented and Maoist leaders arrested and handovered. It was the India who first declared Maoist as terrorists (though unofficially) and handovered some Maoist leaders to the Nepalese government. Recently Indian Home Ministry has disclosed the fact that from 2001 to 2005 Indian Security forces have arrested 180 Maoist Leaders and supporters from their territory 100¹⁰⁵. Not only that in later days Indian government banned the sister organizations of CPN (Maoist) and arrested many central leaders of CPN (Maoist) who are still inside the Jail. As Indian government took strong steps against Maoists in India, CPN (Maoist) appeared with strong anti-Indian policies. But this situation do not exist for a long time. King Gyanendra's step to sack the elected government and taking power at hand abruptly changed the Seenario. Indian government stood against the move of the king and infavour of pro-democracy movement. Friendly nations efforts especially of India and USA. to patch up the damaged relationship between king and parties failed in a regular way. As its result political parties and CPN (Maoist) reached in an understanding¹⁰⁶. This understanding has shown the symptoms of emerging bi-polar power balance within the country. It is also believed that behind the understanding India has been playing dominant role.

¹⁰⁴ . "All India Nepalese Unity Society" and "All India Nepalese Student Union" are such Organizations.

¹⁰⁵ . Annapurna Post, 28th March 2006

¹⁰⁶ . 12 Point understanding which is Placed in Appendix-3.

Unlike India, China is looking quite reserved about the ongoing conflict in Nepal. Though China looks unsatisfied with CPN (Maoist) in the misuse of the name of their leader Mao-Zedong and on the use of arms, but has not considered Maoists as terrorists. China is taking Maoists as anti-government forces, nothing more than that. After the royal takeover China's stand seemed confusing and it was interpreted that China has support to the royal move. This perception also seems untrue. Rather China is viewing this development as an internal matter of Nepal. During the recent visit of Nepal Chinese state councilor Ziasuwang stressed on the need of conversation between king and political parties in order to solve the present political crisis¹⁰⁷. It is supposed that on China the impact of Nepalese conflict is lesser than India. Since the border between Nepal and China is closed and China is facing no problems like Maoist insurgency. But the situation is not like that, China is fearful about the increasing activities of Western powers inside Nepal. The impact on both the neighbouring countries can be of same value. Only the difference is in form, India has direct impacts and China indirect.

Apart from neighbouring countries one of the countries who has keen interest over the Nepalese conflict is USA. Maoist insurgency has no direct impact upon USA. But USA is a single Super Power of the world today. She is strong opponent of Communist ideology and Communist affiliated thinking. Also she proclaims herself as a staunch and protector of democracy. Communism is an evil in the eyes of USA. CPN (Maoist) who is fighting for and in the name of communism is naturally an enemy of USA. That is the basic cause that made USA to stand in opposition to Maoists. In earlier days of the emergence of insurgency, Americans were watching the situation cautiously. After the incident of 9/11 USA became aggressive and labeled Maoists as terrorists. Though USA is quite clear that there is no any relationship between Nepalese Maoists and the All Qaeda Force which designed the 9/11 event. Maoist conflict is a political action not a terrorist. But the USA not only labeled Maoists as terrorist, also influenced the govt. to tackle it in a forceful manner. For that she provided the help in the form of ammunitions and training to the security forces-especially for RNA. US's such policy made issue more complicated. After royal move of Feb. 2, 2004, the situation of the country deteriorated and Maoist issue became more complicated. The royal regime is not in favour of any political and peaceful solution. Even the political parties loyal to the king are aggressively seen against the king. There is

¹⁰⁷ . *Kantipur*, 19th March 2006.

no chance to become any agreement between these two forces. Contrary to this US is forcing on the agreement between king and political parties against the Maoists. All the things are happening due to USA's negative thinking about Maoists. But the recent development within the country has pushed the US in dilemma. In one side her natural enemy Maoists are seen enclose with political parties, on the other, king is not accepting any proposal to reach in agreement with 7 political parties. In this situation US policy is loosing its ground. Though by stopping any kind of assistance to royal regime in opposition to royal move of Feb. 2006 US is saving its image, but such situation cannot last for a long time. What Nepal is seeking that is immediate solution of the conflict.

Beside these UK and other European countries are taking comparatively positive and balanced approach. They are seen in favour of the peaceful solution of the problem that can be brought through negotiation. For the outlet of present impasse the delegation of British legislatures has for the dialogue between king and political parties. In the same context they expressed that England wants to see constitutional monarchy and parliamentary democracy in Nepal, but they will regard whatever the decision taken by Nepalese people¹⁰⁸.

3.2.2 Impact on Donors:

Nepal is a poor and underdeveloped country. In the development and modernization of the country, the role of foreign assistance is remarkable one. It has been receiving foreign donation from a longtime. The area and form of foreign assistance is multifarious. For the last 50 years, the international community has been a part of Nepal's development endeavors. But most development experts admit that Nepal's foreign 'aid' driven development has been a failure¹⁰⁹. Whatsoever, the role of foreign aid and donors in any affair of Nepal can not be taken lightly. Among the donors the name of Japan, India, USA, UK, JICA, EU, GTZ, SDC, DFID, ADB and World Bank come in the forefront. Donors also are divided on how to resolve the insurgency. A group of donors, such as the EU, the UK and the USA has asked the king to restore the democratic process and to ally with mainstream parties to cope with the Maoists. Whereas the Indian government (parties having representation and support to govt.) has played a role to reconcile mainstream parties and the Maoists in order to bring Maoists to democratic process. The Swiss

¹⁰⁸. *Annapurna Post*, 25th March 2006.

Development Cooperation (SDC) has combined diplomatic, human rights, restoration of democracy, development and peace building aspect. It is trying to address the root causes of conflict through its projects. GTZ is now supporting "National Business Initiative for Peace"¹¹⁰. The SDC and DFID are establishing Human Rights, Democracy and Inclusion Fund to support local institutions and 'long-term change from below. Both SDC and GTZ aim to promote systemic peace building activities by means of developing linkages between projects and initiatives¹¹¹. The 15 member 'Nepal Assistance Forum' has important contributions in the development of Nepal. But growing crisis between state and Maoists in one side and political parties and king on the other, has created difficult situation to the donors. Donors also are in dilemma on how and to what purpose they have to provide assistance since many reports have been published regarding gross violation of human rights. Given the limited strategic choice left for the donors they will either continue to engage in reconciliation between the king and political parties or increase their support to the king. Donors are trapped in a dilemma withdraw of their support to the king could embolden the CPN (Maoist) but giving support to him would put off the democratic process¹¹². At this crucial juncture some donors have adopted a policy of aid withdrawal whereas others have adopted partial engagements with humanitarian interventions, project support and community development. How far country's ruined economy will survive and donors would keep their patience to one can make any guesses about it. It is clear that conflict has badly shattered the wishes and hopes of the donors.

3.2.3 Impact on UN:

UN is an international organization established with the objective of maintaining peace and tranquility in the world. This organization has been playing vital roles in favour of the peace whether it might have been violated due to war or internal conflict. In Nepalese context UN has been cautiously watching the situation and expressing its concern on the issue of maintenance of peace and protection of human rights. For that UN authorities have been regularly appealing to both the warring parties. Along with this UN has equally expressed its concern about the situation of women, child, aged persons and

¹⁰⁹ . Arjun Karki, "A Radical Reform Agenda for conflict Resolution in Nepal" Arjun Karki, David Seddon (ed.), *The People's war in Nepal: Left perspective*, Delhi: Adroit Publishers, 2003, p. 471.

¹¹⁰ . *Supra* note 15, p. 28

¹¹¹ . *Ibid*, pp. 28-29

IDPs. UN is not only showing its concern, also is interested to provide good offices and mediation for the peaceful settlement of conflict. Regarding the involvement of UN for mediation has remained a debatable question in Nepalese political community. CPN (Maoist) has been raising the issue of UN involvement for peace negotiations. But from origin, the establishment, NC, NC, (D), RPP and NSP are seen infavour of peace negotiation by Nepalese themselves. They are opposing even the involvement of UN. Contrary to this CPN (Maoist), CPN (UML), NCP(ML), NeWPP, Jana Morcha and civil society group welcome the involvement of UN or third party in the peace process. Not only Nepalese international opinion also is not in favour of UN involvement. India, China and USA oppose third party mediation including the UN. They oppose third party mediation with the opinion that Nepalese themselves are capable to solve the problem. The third party involvement would further complicate the situation. The international organizations UNHCR (now council), ICRC including UN have actively got involved in the peace related activities between Maoists and government. The UN through its Resident Representative in Nepal, Dr. Hening Karcher, offered to facilitate for the peace process between government and the Maoists¹¹³. Assistant Secretary-General of the UN Kul Chandra Gautam, himself a Nepali, responded; Nepal needs a neutral and impartial organization, like the UN, to facilitate the peace process. After that UN had sent Annan's senior political advisor Samuel Tamrat to Nepal several times to communicate UN's wishes of mediation. Again in July, 2005, Lakhdar Brahimi, special advisor of UN secretary general, paid a five day visit to Nepal. Before his departure Brahimi emphasized on peaceful solution of the Nepalese conflict. Not only this, UN also is stressing from time to time on ceasefire and peaceful negotiation. During the period of latest unilateral ceasefire from Maoist side also, Secretary General had urged both parties to work seriously on the agenda of peace. He had urged government side to reciprocate ceasefire and to Maoists not to break ceasefire. Though all the governments (previous and present) rejected the Secretary General's mediation offer, still UN is striving for peace. Continuous rejection of a section of internal political force and out side powers on the issue of the involvement of UN in peace process has not diminished the morale of the UN.

¹¹². *Supra* note 15, p. 32

¹¹³. *Kantipur*, 23rd Oct. 2002.

3.2.4 Impact on INGOs:

In the development of Nepal INGOs have important role. The role and activity of non-government social organizations is compulsory for human welfare and community development of Nepal. In order to reduce and provide assistance in different complex problems of Nepal, the help of international non-governmental social organizations has been proved useful. There are many INGOs working in different sectors. Most of them are now affiliated with the social welfare council. Affiliation requires a general agreement between the INGO and SWC and is based on the guiding principles laid down in the Social Organizations Registration Act, which was enacted some 18 years ago. A special 3 party agreement between INGO, SWC and NGO has to be approved before starting any work. The number of INGOs working within Nepal by signing an agreement with social welfare council has crossed 100¹¹⁴. The 10th Plan of Nepal has set some strategy and policies in order to make the involvement of INGOs/ NGOs possible for the development of different sectors of the country. The Plan has taken following strategy;

- (i) Involve NGOs and Civil Societies as partners of socio-economic development and procedure for effective coordination, monitoring and evaluation system for their works will be simplified.
- (ii) Code of conduct will be developed to make NGOs responsible and their work transparent. The auditing system will be made result oriented and their categorization will be carried out on the basis of their capacity and scope of work¹¹⁵. Likewise, the policy and implementation strategy include;

* Institutional Development (Related to Strategy 1)

- In order to maximize the benefit from the INGOs resources, the programs that they implement will be distributed geographically and sectorally in a coordinated way.
- The INGOs will be motivated to implement the programs through local institutions, national NGOs and other community based organizations and such programs will be made as part of the local planning process for their effectiveness.
- Institutionalization of monitoring and evaluation system will be developed for effective working of INGOs and NGOs.

* Partnership, coordination and Simplified Procedure (Related to Strategy 2)

¹¹⁴. Bal Bdr. Swanr, *Social Development in Nepal and the Activities of International Social Organizations*, Kathmandu: Sumitra Rijal, 2003, pp. 144-56.

- By reviewing organizational and institutional Act, Social Welfare Act and other related Acts to end the ambiguity, action will be taken for appropriate policy for legal system improvement and administrative arrangement.
- The existing status of resource mobilization of INGOs and NGOs, their services and programme implementation will be reviewed and one door system will be implemented to facilitate them and help enhance their performance.
- Prepare statistical database related to national and international non-governmental organizations¹¹⁶.

In spite of the above commitments of the government, INGOs have been facing different problems due to the conflict. The Maoist-aligned Tharuwan Autonomous Province of Tharuwan National Liberation Front put forward 10 point directives for the international development institutions and organizations (INGOs) as follows;

- INGOs working in the autonomous province shall register and renew their membership by paying the annual fee of Rs. 300.
- INGOs shall submit all the details of their programs, policies and plans with the Janaparished (People's Council). The program shall be periodically reviewed and monitored.
- All those of the staff drawing more than Rs. 10,000 per month shall pay 20 percent of their salary to Janaparishad as tax.
- INGOs must bear clean image and their budget must be utilized in proper manner.
- INGOs must consult the Maoists in the process of new recruitment. All the new appointees must have clean image and must not act against the policies and activities of the Maoists. The curriculum vitae of all the employees must be submitted to the Janaparishad.
- Local NGOs should be given priority for partnership. Programs should be chiefly undertaken in the priority areas of the Tharuwan Regional Province (TRP) or in remote and virgin areas devoid of development activities and programs so as to identify the 'pressing needs programs' of the communities. TNLF discourages the system of commission while implementing the programs.

¹¹⁵. HMG, National Planning Commission, *Tenth Plan (2002-2007)*, Nepal, 2002, p. 546.

¹¹⁶. *Ibid*

- No person shall be duplicated as representing the state, for instance the 'poverty reduction' program.
- All the programs and activities shall be held in coordination with the Janaparished. Considering the property of NGOs as public one, NGOs shall submit, on their own initiative, all the properties to the Janparishad after the closure of their organization.
- INGOs shall conduct their training/meeting in the villages instead of at expensive and big hotels in urban centers.
- NGOs shall maintain transparency by conducting public audit/hearing and pasting their forthcoming programs on notice board at the project site¹¹⁷.

Maoist policy towards INGO in one, side frustrated to the INGOs, as its result they cut off their programmes in various districts, on the other Maoist have no consistency regarding the application of their policy. Somewhere they applied it strictly and somewhere they seemed liberal. But after the 2nd peace talks, Maoists altered their policy. Except the INGOs financed by USA, Maoist became liberal to the INGOs supported by other countries, basically the countries which are not hostile to the people's war. In this way, at present INGOs in Nepal are confused and at dilemma as they find two parallel governments working separately in rural and urban areas.

3.3 Impact of Conflict on the International Conventions Undersigned by HMG-N:

Nepal is a country which was turned into democracy only after the people's movement of 1990. It was the year of 1990 which not only opened the door of democracy also witnessed the constitution guaranteeing basic human rights of the people. Though few human rights instruments were accessioned or ratified by the government before 1990, but they had remained only in the black letters of the human rights books. The Constitution of Kingdom of Nepal, 1990 accepted many provisions of the International Human Rights instruments under its Bill of Rights. Thus Nepal in one side accessioned or ratified 16 human rights instruments, on the other incorporated their major provisions as a Fundamental Rights¹¹⁸. Not only that the constitution and relevant laws provide clear guidelines about the status of the international instruments in Nepal. Article 126 of the Constitution states; "the ratification of, accession to, acceptance of or approval of treaties or agreements to which

¹¹⁷. *Supra* note 10, pp. 424-25.

¹¹⁸. Article 11-23 of the *Constitution of the Kingdom of Nepal*, 1990.

the kingdom of Nepal or His Majesty's Government is to become a party shall be as determined by law¹¹⁹. Beside the constitution, the Treaty Act, 1990 (2047) is a specific legislation governing both the substantive and procedural aspects of the ratification and accession of treaties and conventions. Section 9 of the Act clearly maintains; "any law of Nepal inconsistent with a treaty or convention acceded or ratified by Nepal shall not be applicable, and provision of such treaty or convention will prevail¹²⁰. Among the 16 international conventions ratified by Nepal, 7 were ratified during the Panchayat regime which was a dictatorial system. Those conventions include Slavery convention, 1953, Supplementary Convention on the Abolition of Slavery, the slave Trade and Institutions and Practices Similar to Slavery, 1956, Convention on the Prevention and the Punishment of Genocide, 1948, Convention on the Elimination of All Forms of Racial Discrimination, 1965, International Convention on the Suppression and Punishment of the crime and Apartheid, 1973, Convention on the Political Rights of Women, 1952 and International Convention Against Apartheid in Sports, 1985. If we go analyzing the content of above conventions and evaluating the merit of those conventions, we find that panchayet rulers ratified those instruments which were of little significance to Nepal's then international situation. ... (T) they ratified only those treaties and conventions that had no immediate effect on its continuous suppression of individual liberty and freedoms, especially political freedom¹²¹. Though the Panchayat regime did not sign other important human rights conventions, but efforts were continued to persuade the govt. to sign those instruments. This effort got success only after the fall of dictatorial Panchayat System and the rise of multiparty democracy. As its result 9 other conventions were signed by the party governments. The conventions ratified or accessioned include important human rights instruments. They include- International Covenant on Economic, Social and Cultural Rights, 1966, International Covenant on Civil and Political Rights, 1966, Optional Protocol on Civil and Political Rights, 1966, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979, Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984, Convention immoral Trafficking and Protocol, 1984, Convention on the Suppression of Immoral Trafficking and Protocol, 1949, Second Optional Protocol to the International Convention on Civil and

¹¹⁹. Article 127 of *the Constitution of the Kingdom of Nepal*, 1990.

¹²⁰. Section 9 of *The Treaty Act*, 1990.

Political Rights aiming at the Abolition of Death Penalty, 1989 and Optional Protocol to CEDAW, 1990. The governments not only ratified the international conventions, they also enacted some important laws to improve the quality of legislative system and make it consistent with international human rights laws. Likewise Nepalese judiciary also contributed a lot in the process of enriching legislative system of Nepal by using its extraordinary Jurisdiction provided by the constitution¹²². Though the post 1990 governments played significant role in accession/ratification of international conventions, but in the process of the compliance of those instruments and relevant laws, they proved unsuccessful. During this period a number of laws that are inconsistent with or contradict the norms and values set by international human rights instruments were regularly being enforced. Impunity emerged not only as a dreaded culture with in the country also the culprits were protected by the authorities who have the ultimate responsibility to punish them. Corruption became rampant in every branch and sectors of the country. Rule of law was substituted by rule of kins and caprices. In this way, the process of establishing democratic and human rights was totally diverted to the selfish end.

The emergence of Maoist insurgency further deteriorated the human rights situation of the country. All the 16 human rights conventions undersigned by HMGN result some obligations, which must be fulfilled by the signatories. But both the warring parties are regularly violating the provisions of the conventions. As it is already discussed under the sub-topics 3.1.2, 3.1.3 and 3.1.4 that the basic human rights provided by different various human rights conventions to the different sectors of the society are neither fully and properly applied, nor they are protected by the state. Gross violation of human rights and humanitarian laws during the conflict has become the major concern of international community. In spite of this situation, both the parties are expressing their commitments to those things. Not only that both are charging to each other that next has gone against human rights norms and humanitarian laws. International community include UN and international human rights organizations are regularly appealing to the parties not to violate human rights and humanitarian laws. Human rights organizations like Amnesty International, Human Rights Watch, International Commission of Jurists, International Crisis Group, Asian Human Rights Commission, UN Secretary General and Office of the

¹²¹. NHRC, *Human Rights in Nepal: A Status Report, 2003*, Kathmandu, June 2003, p. 7.

¹²². Article 88 of *the Constitution of the Kingdom of Nepal*, 1990.

High commissioner on Human Rights have been showing their serious concern on the issue. Viewing the critical situation of human rights in Nepal 61st human right session had decided to apply Agenda Item 19 for Nepal. According to its provision on 10 April 2005, the government of Kingdom of Nepal signed an agreement with the High Commissioner for Human Rights (OHCHR) concerning the establishment of an office in Nepal. The Agreement give the mandate to the OHCHR-Nepal offices, with other things, to assist the authorities in promoting and protecting human rights, to monitor the situation of human rights and observance of international humanitarian law, and to report to the Commission on Human Rights and the General Assembly. The High Commissioner's Representative to Nepal arrived in Kathmandu on 7 May 2005, and it started to function here. The Office of the Human Rights Commission in Nepal has published its first report by incorporating the human rights situation in Nepal and the activities of OHCHR - Nepal between 1 Sept. 2005 and late January 2006. The report includes the roles and activities of both the state authorities and CPNC (Maoist). The report has justified the claims of national human rights organizations regarding the violation of the provisions of international conventions by the conflicting parties. The national human rights organizations have been critical towards the conflicting parties for repeated violations of human rights from their sides. Mainly they are critical towards the state party for not being responsible for the maintenance of peace. They are also critical for arrest and re-arrest of different leaders of political parties, forced disappearance of the citizens, torture inhuman and degrading treatment for detainees, and curtailment of and encroachment over the constitutionally provided fundamental rights of the people. They are lobbying in international level to keep pressure upon the government so that she may not go beyond the limit. For that they are leading on the application of Agenda Item 9, which can create pressure upon the government of Nepal. So that government would be responsible for maintenance of domestic peace and about the commitments expressed on the international conventions undersigned.

3.4 Consequences of the Conflict:

The ongoing conflict in Nepal had emerged as a political movement, but the then government tried to deal it as law and order problem. Gradually the conflict started to get momentum and transformed into socio-economic movement. In early days it was confined only in the specific areas but later it spreaded all over the country. Now Maoists are

claiming that they have control over the 80% area of the country. During the 10, years Maoist succeeded to form their provisional governmental structures from centre to district and village levels. To date the reality is that Maoists have their control over almost all the village areas and they are striving for getting control over the urban areas. The growth of Maoist movement at a present position within a short period has not only puzzled the government, it has also drawn the attention of the world community. The friendly nations, donors, world organizations, INGOs and intellectuals have got surprise and they have started to make study, analysis to find out the exact causes behind the conflict, its nature and impacts. The friends of Maoists are making their efforts for how to make it successful and sustainable, and the oppositions are thinking about how to check it and make it failure. Whatever be the thing, almost all analysts and researchers are of the view that Maoist movement is successful in one thing that is; it has successfully drawn the contradictions of Nepalese society into forefront. It has exposed the feudal system of Nepal which has the 237 years history. Also it has drawn all the socio-economic, cultural and political problems to the surface. Unless these contradictions and problems are not solved properly, the conflict would not be solved. The reality is that one may not agree to the Maoist ideology and their way of action but he agrees with the issues which Maoists have raised. Because whatever the issues CPN (Maoist) is raising, these are not the issues of Maoist alone, rather they are issues of all the Nepali people. Thus one must agree that the consequences of Maoist conflict are far reaching and multi dimensional. The consequences can be cited as follows;

(i) Political Consequence :

CPN (Maoist) had started the movement in order to over throw the present state system and to establish democratic peoples republic. For that they have adopted the way of armed struggle. During this period they have formed their own army (whom they call People's Liberation Army). They have extended their organizational base. They have been successful to gain control over the rural areas of the country. Consequently they have succeeded to make parliamentary system failure. Though they succeeded to make the existing system fail, but they are unable to establish the system

whatever they intended. As the result of which the outcomes of the people's movement 1989 are at perplexity and king's dictatorship in a new form is established.

(ii) Social Consequence:

People's movement 1989 was purely a political movement. It was successful to make end of the Panchayat System and to re-establish Multi-party System. Achievement of political democracy was the major out come of the movement. But it was not sufficient. The responsibility of subsequent governments was to transform political democracy into socio-economic democracy. All the party governments were operating only to exercise political democracy. As its result the task of social transformation remained untouched. There were many social problems to overcome. The problems of Women, Janjatis (caste and ethnic groups), Schedule Caste and many others can be taken as examples. Society was guided by the narrow and conservative social thinking and norms. Basically traditional Hindu beliefs superseded the all parts of social life. Social evils like-unemployment, untouchability, bonded labour and gender discrimination remain unsolved. Such type of evils caused the frustrations among the common people. Maoist gave priority for these things, which attracted large masses of the people from these sectors toward Maoist movement. Not only that CPN's (Maoist) policy about right to self determination, inclusive democracy and federal system of government succeeded to draw the attention of vast people. Now all these matters are being discussed and raised everywhere. The credit goes to Maoist movement.

(iii) Economic Consequence:

Economically Nepal's situation is being deteriorated day by day. Low rate of national production, unequal distribution of national income, corruption in every part of national life, existence and continuation of feudal type exploitation, unemployment and poverty were the major economic problems to be solved by any democratic government. Instead of the problems being solved they were further intensified. Maoists gave promises to the people that they will solve the problems soon after assuming power. This made the people conscious and gave pressure upon the concern authorities to take necessary steps for controlling and making changes on these aspects.

Unlike the above situation, Maoists during the movement frequently called for strikes, lock out, bandh (shot out) and many other similar programmes which caused great economic losses of national and personal property. In the same way, Maoists as the strategy of their war used to destroy physical structure (property) all over the country. They include-Bridges, Office Houses, Communication towers, Electric Power Stations, Boarding Schools, Industries, Vehicles, Private Houses, Drinking Water Projects and many more other infrastructures. It not only lost the national and private property also added troubles to the peoples and hampered the developmental process of the country.

(iv) Legal Consequence:

The Major consequence of conflict is seen in legal field. Since the Maoist war was mainly focused against the existing state system. The state system is legalized by the existing Constitution of the Kingdom of Nepal 1990¹²³. NCP (Maoist) was fighting for republic and also was infavour of framing a new constitution by the people's elected representatives¹²⁴. In order to create such situation Maoist had had to prove existing constitution failure. They were repeatedly raising three demands, as- roundtable conference, all party government and the election of constituent assembly. For that Maoist first created the situation of the failure of the law and order. As the result, the elected governments proved to be un operative. PM Sher Bdr. Deuba's recommendations for the dissolution of House of Representatives and postponement of the general elections, paved the way for the king to hold power. King's step to use article 127 of the constitution for holding the power and continuance of ordinance rule pushed the constitutional system in Jeoparoly. Thus now there is no constitutional practice, only leap service.

As consequence of the conflict, the constitution is not only proved to be defunct, whole legislative system is paralyzed and monopolised. Most of the legislative pieces adopted and updated during normal situation are now almost perverted and misused. Likewise government is not sincere in application and compliance of the international conventions undersigned in different occasions.

¹²³. Preamble of the Constitution emphasizes on Parliamentary System, Multi-party Democracy and Constitutional Monarchy. These are characteristics of the form of government.

The conflict has its effects upon the formal justice system of the country. Our justice system has its inherent bad qualities, that are delay, costly, unfair corrupt and difficult to execute. To this, conflict has added further complications. The capacity of justice providers such as law courts, law enforcement officials (police) and public prosecutor have been severely affected. Similarly, justice seekers are also severely affected by the armed conflict¹²⁵. In this way, the consequence caused by insurgency in legal field has proved to be for reaching and negative.

¹²⁴. Emphasis is on Constituent Assembly.

¹²⁵. *Supra* note 54, p.104.

UNIT -4

CONCLUSION

4.1 Conclusions:

Present conflict continuing for more than 10 years is not only a political movement rather it has socio-economic and cultural roots too. The conflict was started from Feb. 13, 1996, when elected government was ruling in the country. The 40 point demands forwarded by the UPFN, the frontal organization of CPN (Maoist) were general demands and many of them could have been fulfilled if government would have taken them seriously. The demands were basically concerned with the common problems faced by Nepalese people. Among them 9 demands were related to Nationalism, 17 to the public welfare and 14 to the people's living. The demands represent the burning problems of the country. Along with this, Maoist conflict was not only directed against the parliamentary system and the government of that time, it actually was against the 237 year old "state System" which possess anti-national and anti-people characteristics. In one side, Maoist movement was trying to receive wide support of the people, on the other the government's failure to address the demands and aspirations of the people, low performance of the major political parties and brutal suppression of the government to the people of the areas where Maoist conflict was gradually in growth further intensified the conflict. Additionally, whatever the tactics Maoists were using for weakening the forces loyal to existing state system proved to be successful. They successfully used one party against another, one force against other, for implementing their own policies. The CPN (Maoist) adopted the strategy of protected war which consists of three stages; strategic defense, strategic stalemate, and strategic offensive. CPN (Maoist) has declared that it has now entered to the third stage of strategic offensive.

Contrary to this, at the beginning the government took the Maoist movement as a law and order problem and tried to deal with police operations like-Kilo Sierra Two, Cordon and Search, Search and Destroy etc. During this period, the government received not only the economic and weaponry assistance from India and USA also received military training from them. Government's action did not confine only with the forceful suppression, she passed the Terrorist and Disruptive Activities (control) Act and declared CPN (Maoist) and its sister organizations as terrorist organizations, issued red corner notice and specified the price tag over the head of Maoist leaders. But government's such moves

proved to be futile. It is not that government always choose the way of suppression, the governments headed by Lokendra Bahadur Chand and Krishna Prasad Bhattarai constituted the committees to study the Maoist problem and report the government. Both the committees respectively headed by Prem Singh Dhimi and Sher Bdr. Deuba, prepared the report which identified Maoist movement as politically inspired movement and suggested to adopt the way of peaceful negotiation in order to settle the Maoist movement. According to this, for the first time, the government headed by Sher Bdr. Deuba started peace talks with CPN (Maoist). The peace talks failed owing the vast differences between both the parties, Whereas CPN (Maoist) was infavor of roundtable conference, all party government and the election of Constituent Assembly, but government was not in position to accept the demand of constituent assembly. After the failure of 1st peace talks, Deuba government took tough stand against the Maoist movement He recommended the emergency in order to face the Maoist insurgency. The differences between NC leaders Girija Prasad Koirala and Sher Badadur Deuba regarding continuance of emergency led to the dissolution of the House of the Representatives. The dissolution of the House of Representatives added more complications to the conflict. The general elections could not be held on specified date. Prime Minister recommended the king to use Article 127 of the constitution. Though the king used Article 127, but he used it in his own favour, and he used it time and again. As the result, country went into dictatorial rule of the king.

Initially, conflict was ideological phenomenon. There were sociological, economic and cultural factors responsible for the conflict. Thus primarily it had domestic implications but gradually if got international form. The friendly nations, donors and international communities started to take interest on the conflict. Among them, the role of INDIA and USA proved quite responsible to make the issue more complicated. Besides INDIA and USA, United Nations also is taking its interest on behalf of the peace. UN secretary General is regularly making his appeal to both the warring parties to involve in the peace process.

The 10 year long conflict has multi-dimensional and far reaching effects in Nepal. Mainly it has violated basic human rights of the people. It has erased the constitutional government, weakened rule of law and made the outcomes of the 1990 movement almost useless. Additionally, the economy of the country is in ruin trade and industries have badly suffered and Nepal's image of peace has faded away. The situation of human rights has

become a issue of both the domestic and international concern. In Nepal, till now 15,000 people's have lost their lives due to the conflict. Many peoples are injured, tortured, have forcefully or involuntarily disappeared, abducted and displaced from their places. Such activities have badly affected the legislative system of Nepal. All aspects of Nepalese legislative system including Constitution, enactments, international conventions are badly violated and encroached. The functions and jurisdiction of the judiciary also is not exception to it. In one side, the credibility of the judiciary in itself is not high, and on the other, present government is intervening in the affairs of the judiciary. Not only the government CPN (Maoist) also is encroaching the jurisdiction of judiciary in two ways. Firstly, it has established parallel courts in the name of "people's court" which do not follow the established legal principles and procedures. Secondly, many personals, including the judges are abducted, tortured and the court buildings are bombed. Such actions ultimately weaken the judiciary and judicial system of the country. Judiciary which is also a necessary component of legislative system, needs to remain independent, fair and competent.

The legislative system is one of the important systems of democratic polity. It not only helps to regulate the human conduct also helps to regulate the democratic polity in a well manner. To make it functioning well, it must be insulated from all the negative impacts.

4.2 Recommendations:

Above study shows that conflict has many adverse impacts on legislative system of Nepal. It has not only created the situation to weaken the legislative system by encroaching its ambit, also distorting its nature with the introduction of undemocratic and unjustified laws. In order to reduce the impacts of conflict following measures are recommended.

(i) Respect for Human Rights:

The conflict has caused the gross violation of basic human rights of the people. For the violation of those rights both the conflicting parties are charged equally responsible. Basically Maoists are charged that they are badly suppressing the common people loyal to other parties/ideology. They have killed, tortured and abducted many people only due to the differences of thoughts and collecting being opposed to their

activities. Also Maoists are accused for forceful displacement of the people and donations and other amounts forcefully from the people. In the same way, government is charged for arresting the people illegally, detaining them illegally, for torture, extra judicial killings, involuntary and forced disappearances. All of these and similar other activities amounted to the gross violations of human rights. It has negative impacts in other aspects too. In order to lessen the impacts of conflict, first of all both the conflicting parties must stop such activities. They must respect basic human rights of the people.

(ii) Respect for Humanitarian Law :

Since conflict is a war or warlike situation. In such a situation both the warring parties must respect humanitarian laws along with the human rights. Human rights activists and international institutions like- UNO, ICRC are regularly appealing both the parties to respect for humanitarian laws, especially the common article 3 of Geneva Conventions. But in spite of their commitments, both the Govt. and Maoists are regularly violating the humanitarian laws. In order to avoid the situation, there must be created such an environment that both the parties respect those laws.

(iii) Obey the Constitution and Laws:

Present constitution is the product of the people's movement 1990, and most of the laws are in conformity with the constitution, but all the laws including the constitution are badly violated due to the conflict. The violation of the Constitution and laws has not only weakened the legislative system, also created chaos and disorder in the society. Thus for minimizing the negative impacts of the conflict the constitution and laws must be obeyed. For that law abiding forces must come into front for creating conducive environment for the abeyance of all the laws. Likewise law implementing authorities must implement the laws.

(iv) Stop Passing Anti-democratic Laws:

The conflict has generated many antidemocratic laws and the laws contradictory to the basic legal principles. The earlier governments have promulgated the Terrorist and Disruptive (prevention and control) Act or Ordinance

(TADA/TADO), in the name of controlling Maoist insurgency. This law was directly in violation of basic legal principles and the rule of law. Also after the royal move of 2 Feb. 2004 there are many laws promulgated and amended by declaring ordinances in contradiction to aforesaid criteria. Additionally the TADO is promulgated and frequently misused. This process is not only promoting anti-democratic rule, also is weakening the legislative system of the country. In order to improve the situation, such activities must be stopped.

(v) Fulfill the commitments Expressed Towards International Conventions:

As it is clear that Nepal has ratified 16 major international conventions, and expressed its commitment towards other various human rights documents. As Article 9 of the Nepal Treaty act 1990, gives recognition to the international human rights conventions as the part of domestic laws. But the provisions of those international conventions are violated by the conflicting parties. As its result, the human rights situation of the country is deteriorating day by day. For improving the situation both the parties must fulfill their commitments towards international conventions and other relevant human rights instruments.

(vi) Implement Policies and Programs Suitable for Socio-economic Development of the Country:

One of the major causes of conflict is socio-economic inequality and exploitation. Vast number of Nepalese population is exploited from the period of the unification of Nepal. Maoist movement has got energy from the masses exploited for a long time. If conflict is to be settled, we must frame the policies and programs suitable for socio-economic development of the country and to implement them properly.

(vii) Restore Democratic Process:

The political change of 1990 had introduced a democratic system within the country. Though the democratic system was established within the country but the fruits of democracy were not available to all the people. Maoist movement was started only after 6 years of the establishment of democracy. Maoists were critical

about the non-performance of the democratic government, and their conflict was directed against the system also. Thus Maoist movement was instrumental to weaken the democratic process within the country. At the meantime, the king held the power by suspending the elected government and introduced his dictatorship. Such type of move further weakened the democratic process and complicated the conflict. Now it has become inevitable to restore democratic process, if conflict is to be settled properly.

(viii) Start Peace Negotiations:

Now it is well accepted from both the conflicting parties and independent observers that no party can defeat militarily to one another. Thus there is only the way to settle conflict, that is peace negotiations. For that both the parties must be agreed on certain points. Similarly there is also the question of mediation for peace. For this necessary thing is to be sincere for peace. Though two round peace talks were held between the two conflicting parties then before, but they had failed. Still there remains only the way of peace negotiations. Thus both the parties must be ready for peace negotiations and reach to a positive conclusion.

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APPENDICES

APPENDIX -1

The 31 point agenda presented by Maoist negotiation team on September 13, 2001 at the Tiger Topes Resort, Thakurdwara, Royal Bardia National Park.

a. Main political agenda

1. Dissolve the present Constitution 1990 to draw a new constitution;
2. Dissolve the present government and parliament to initiate the process of interim government; and
3. Since the traditional monarchy has virtually been swept away, institutionalize the process for a republican state.

b. Immediate actions to ease the peace process

4. Make public the whereabouts of the people including Dandapani Neupane at the earliest;
5. Release all imprisoned Maoist leaders and activists including Matrika Yadav at the earliest;
6. Annul anti-people war laws, for instance, Public Security Regulations; Armed Police Force (APF) and Regional Administrators Ordinance/Act;
7. Withdraw the Integrated Security and Development Programs (ISDP) as it has covered up the conspiracy against the People's War; and
8. Withdraw the deployed army units which had been mobilized in order to launch various development programs.

c. Public interest issues

9. Abrogate Indo-Nepal Treaty 1950, Mahakali Treaty and other unequal treaties and agreements reached between Nepal and India;
10. Regulate open border between Nepal and India;
11. Guarantee the rights of self-determination, autonomy, people's proportional representation and abolish regional discrimination;

12. Initiate revolutionary agriculture and redistribute the land seized from feudals to landless;
13. Initiate immediate industrialization by restricting imperialism and India's monopoly;
14. Encourage Nepali traders against the Indian industrialists;
15. Contain public expenditure and apply progressive tax system;
16. Provide scientific education and abolish commercialization of education;
17. Uplift people's progressive culture;
18. Declare politically killed victims as martyrs;
19. Establish the right to treatment as a fundamental right;
20. Protect the rights of disabled, impaired and handicapped children;
21. Abolish gender discrimination and exploitation and provide property rights to daughters;
22. Abolish discrimination against dalits;
23. Introduce 40 hour work per week to the laborers;
24. Ensure right to expression and sensitize media in favor of talks;
25. Develop concrete policy for the youth;
26. Guarantee academic freedom and occupational protection;
27. Stop imperialist encroachment through NGOs and INGOs;
28. Protection the Nepali people residing abroad;
29. Form people's commission to investigate the Narayanhiti massacre;
30. Allocate 70 percent of national budget for physical infrastructure in the rural areas; and
31. Fulfill all the demands put forward by the people.

Source: Bishnu Pathak, *POLITICS OF PEOPLE'S WAR AND HUMAN RIGHTS IN NEAPL*

APPENDIX -2

The 40- Point List of Demands Submitted by Baburam Bhattarai to the then Prime Minister Sher Bahadur Deuba on 4 February 1996.

DEMANDS RELATED TO NATIONALISM

1. All unequal treaties including the 1950 Treaty of Peace and Friendship with India ought to be abolished.
2. The Integrated Mahakali Treaty reached with India should be abolished, as it is anti-national and detrimental to the long-term interests of the country.
3. The Indo-Nepal open border must be regulated and vehicles with Indian number plates should not be allowed to enter Nepalese territory.
4. Gorkha recruitment camps must be closed down and Nepalese must be guaranteed respectable employment inside the country itself.
5. Nepalese themselves should be encouraged to take up occupations inside the country and a work permit system should be announced before allowing foreign workers to work in Nepal.
6. Dominance of foreign investment and their monopolist capital in financial institutions, industries and other businesses must be stopped.
7. (The) Customs policy should be framed in order to (for) best developing a self-reliant national economy.
8. Imperialist and expansionist cultural pollution and molestation must be curtailed. The import and distribution of vulgar Indian cinema, videos and publications must be immediately stopped.
9. Imperialist, expansionist penetration inside the country in the name of INGOs and NGOs must be stopped.

DEMANDS RELATED TO THE PUBLIC AND ITS WELL-BEING

10. A new constitution must be drafted by the people's representatives elected in order to establish a people's republican state.
11. All special rights and privileges of the King and the royal family should be abolished.
12. The army, police and the administration must be totally controlled by the people.
13. All oppressive regulations including the Security Act should be abolished.
14. Political prisoners arrested in Rukum, Rolpa, Jajarkot, Gorkha, Kavre, Sindhupalckowk, Sindhuli, Dhanusa, Ramechap and other districts ought to be released.
15. Armed police operations going on in various districts must be stopped.
16. (The) Whereabouts of Dilip Chaudhary, Bhuwan Thapa Magar, Prabhakar Subedi who have been missing from police custody must be disclosed and the culprits should be brought to justice.
17. People killed during the people's movement of 1990 must be declared martyrs, their families should receive compensation and the culprits must be hardheartedly (sic) punished.
18. Nepal must be declared a secular state.
19. Girls Should be given equal property rights to those of their brothers.
20. State oppression of the people of the lower castes must be stopped. Areas that have dominance of the people of the scheduled castes and tribes must be given autonomy.
21. Discrepancy against the scheduled castes and tribes must be stopped and untouchables ought to be fully banned.
22. People of all languages must be given opportunities by the state. Education in the mother tongue must be allowed till the primary level.
23. Freedom of expression and publishing must be fully guaranteed. Government media must be given autonomy.

24. Academic liberty of intellectuals, poets, artists must be guaranteed.
25. Sectoral dissimilarity between the Terai and the hills must be brought down and there must be a proper balance maintained between the villages and the cities.
26. Local-bodies must be given full powers and adequate resources.

DEMANDS RELATED TO PEOPLE'S LIVING

27. Land should be of the tillers. Lands of rich landlords must be confiscated and distributed to the landless.
28. Property of commission agents and the bourgeois capitalists must be confiscated and nationalized. Capital stuck up on unproductive sectors must be put to use for industrialization.
29. All must be guaranteed of employment and 'unemployed allowance' must be given to those that are jobless.
30. Minimum wage of workers and labourers working in industrial and agricultural sectors must be set by the state and strictly reinforced.
31. Landless people must be arranged (sic) with adequate living conditions.
32. Bank loans taken by poor peasants must be written off. Small time entrepreneurs ought to be encouraged with adequate credit to finance their businesses.
33. Fertilizers and plant seeds must be cheap and easily available. The produce of peasants must get (a) good price and access to the market.
34. Flood and drought victims must be rehabilitated by the state.
35. The people must be guaranteed with free and modern health services. Commercialization of the education sector must stop.
36. Price rise must stop and the supply of daily essential commodities must be unobstructed. Daily wage must be set in proportion to the price rise.
37. Supply of drinking water, roads and electricity must be taken to all the villages of the country.

38. State must protect and encourage the small cottage industries.
39. Corruption, black-marketing, smuggling and commission taking must be strictly curtailed.
40. State must look after the disabled, orphans, the elderly and the children.

Source: Nishchal Nath Pandey, *Nepal's Maoist Movement and Implications for India and China*.

APPENDIX -3

12 point Understanding Concluded Between 7 Parties and NCP (Maoist) on 22 No. 2005

The long struggle between absolute monarchy and democracy in Nepal has now reached a very grave and new turn. Establishing peace by resolving the 10-year old armed conflict through a forward-looking political outlet has become the need of today. Therefore, implementing the concept of absolute democracy through a forward-looking restructuring of the state has become an inevitable need to solve the problems related to class, caste, gender, region etc of all sectors including political, economic, social and cultural, bringing autocratic monarchy to an end and establishing absolute democracy. We make public that, against this existing backdrop and reference in the country, the following understanding has been reached between the seven parliamentary parties and the CPN (Maoist) through different methods of talks.

Points of Understanding

1. Today, democracy, peace, prosperity, social advancement and a free and sovereign Nepal is the chief wish of all Nepalese. We completely agree that autocratic monarchy is the main hurdle in (realising) this. It is our clear view that without establishing absolute democracy by ending autocratic monarchy, there is no possibility of peace, progress and prosperity in the country. Therefore, an understanding has been reached to establish absolute democracy by ending autocratic monarchy, with all forces against the autocratic monarchy centralizing their assault against autocratic monarchy from their respective positions, thereby creating a nationwide storm of democratic protest.
2. The seven agitating parties are fully committed to the fact that only by establishing absolute democracy through the restoration of the Parliament with the force of agitation, forming an all-party government with complete authority, holding elections to a constituent assembly through dialogue and understanding with the Maoists, can the existing conflict in the country be resolved and sovereignty and state power completely transferred to the people. It is the view and commitment of the CPN (Maoist) that the above mentioned goal can be achieved by holding a national political conference of the agitating democratic forces, and through its decision, forming an interim government to hold constituent assembly elections. An

understanding has been reached between the agitating seven parties and the CPN (Maoist) to continue dialogue on this procedural work-list and find a common understanding. It has been agreed that the force of people's movement is the only alternative to achieve this.

3. Today, the country has demanded the establishment of permanent peace along with a positive solution to the armed conflict. Therefore, we are committed to ending autocratic monarchy and the existing armed conflict, and establishing permanent peace in the country through constituent assembly elections and forward-looking political outlet. The CPN (Maoist) expresses its commitment to move along the new peaceful political stream through this process. In this very context, an understanding has been reached to keep, during the holding of constituent assembly elections after ending autocratic monarchy, the armed Maoist force and the royal army under the supervision of the United Nations or any other reliable international supervision, to conclude the elections in a free and fair manner and accept the result of the elections. We expect reliable international mediation even during the dialogue process.
4. Expressing clearly and making public institutional commitment to the democratic norms and values like the competitive multiparty system of governance, civil liberties, human rights, the concept of the rule of law, fundamental rights etc., the CPN (Maoist) has expressed commitment to move forward its activities accordingly.
5. The CPN (Maoist) has expressed its commitment to create an environment allowing the political activists or other democratic parties displaced during the course of the armed conflict to return to their former localities and live there with dignity, return their home, land and property seized in an unjust manner and carry out their activities without let or hindrance.
6. Undertaking self-criticism and self evaluation of past mistakes, the CPN (Maoist) has expressed commitment not to repeat such mistakes in future.
7. The seven political parties, undertaking self evaluation, have expressed commitment not to repeat the mistakes of the past which were committed while in parliament and in government.

8. In the context of moving the peace process forward, commitment has been expressed to fully respect the norms and values of human rights and press freedom and move ahead accordingly.
9. As the announcement of municipal polls pushed forward with the ill-motive of deluding the people and the international community and giving continuity to the autocratic and illegitimate rule of the king, and the talk of elections to Parliament are a crafty ploy, we announce to actively boycott them and call upon the general public to make such elections a failure.
10. The people and their representative political parties are the real guardians of nationality. Therefore, we are firmly committed to protecting the independence, sovereignty, geographical integrity of the country and national unity. Based on the principle of peaceful co-existence, it is our common obligation to maintain friendly relations with all countries of the world and good-neighbour relationship with neighbouring countries, especially India and China. But we request the patriotic masses to be cautious against the false attempt by the King and (his) loyalists to prolong his autocratic and illegitimate rule and delude the patriotic people by projecting the illusory "Mandale" nationalism and questioning the patriotism of the political parties, and appeal to the international powers and the people to support, in every possible way, the democratic movement against autocratic monarchy in Nepal.
11. We call upon the civil society, professional organizations, various wings of parties, people of all communities and regions, press and intellectuals to actively participate in the peaceful movement launched on the basis of these understandings centered on democracy, peace, prosperity, forward-looking social change and the country's independence, sovereignty, and pride.
12. Regarding the inappropriate conducts that took place between the parties in the past, a common commitment has been expressed to investigate any objection raised by any party over such incidents, take action if found guilty, and to make the action public. An understanding has been reached to settle any problem emerging between the parties through peaceful dialogue at the concerned level or at the leadership level.

Source: *Informal Sector Service Centre (CINSEC)*



