

Report



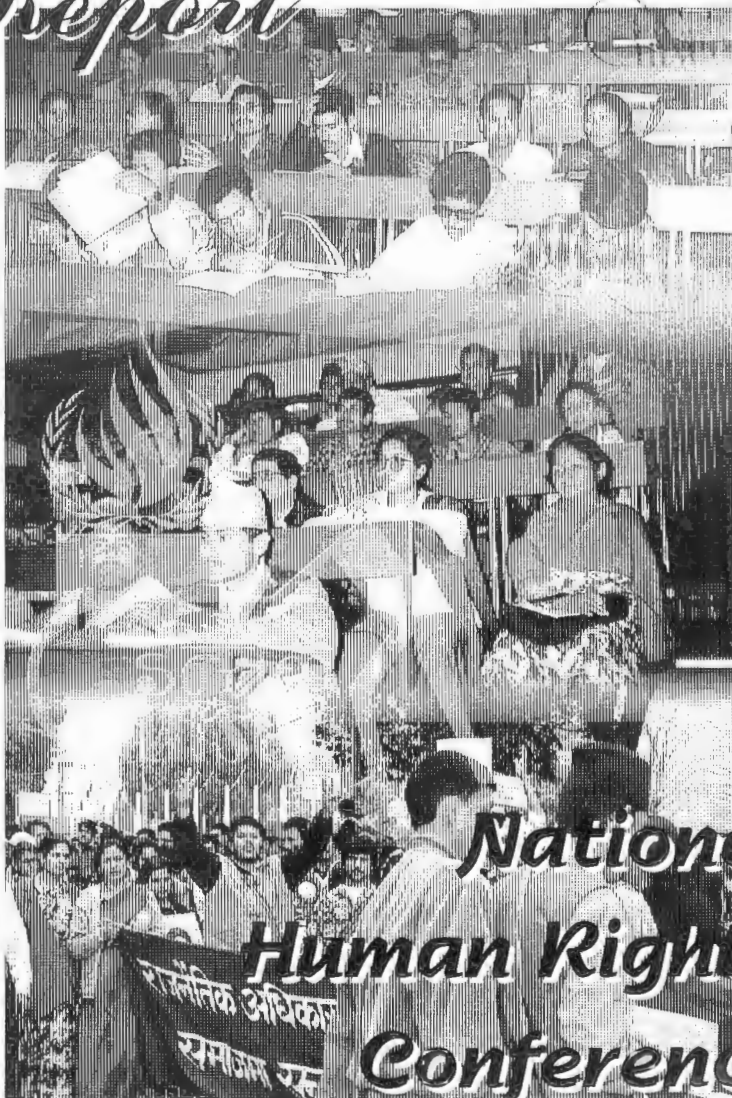
National Human Rights Conference

5-9 April 1997

राजनैतिक अधिकार
समाजम्

Resource Centre

Report



**National
Human Rights
Conference**

Kathmandu
5-9 April, 1997

Report of the National Human Rights Conference

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Report of the
National Human Rights Conference
Kathmandu
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Eight years after the establishment of Informal Sector Service Centre (INSEC), it has been able to make a special place in the human rights community in Nepal. The solidarity among the various human rights organizations, their inspiration and the affection of Nepalese citizens enabled it to work with the grass roots people in different 55 districts together with our network organizations.

It was necessary to evaluate the achievements made in the field of human rights in the country. There was a growing need to set goals and priorities in this field for INSEC and other human rights organizations. Keeping this fact in mind, INSEC organized a human rights conference with the participation of the activists of its network organizations in 55 districts of the country. The Conference held in Nepal Administrative Staff College, Jawalakhel, Lalaitpur began on 5 April, 1997. Looking at the gravity of the conference and the topics to be discussed, organizations based in Kathmandu which have been specializing in their own field were invited in this conference. The renowned activists of different organizations would presented papers in various subjects of human rights.

The contents to be discussed in the conference were:

I. Human Rights and the State

- a. Human Rights and existing Nepalese Constitution and Legislation of Nepal
- b. Human Rights and the Nepalese Executive, Legislative and Judiciary of Nepal
- c. Human Rights Mechanisms in Nepal

II. Status of Human Rights Treaties

1. The Rights of the Child in Nepal: Legislation and Implementation
2. Women's Human Rights in Nepal: Legislation and Implementation
3. Civil and Political Rights in Nepal: Legislation and Implementation

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4. Economic, Social and Cultural Rights in Nepal: Legislation and Implementation
5. Torture Eradication in Nepal: Legislation and Implementation
6. The Labour Rights in Nepal: Legislation and Implementation
7. Non-Discrimination: Legislation and Implementation
8. Eradication of Bonded Labour in Nepal: Legislation and Implementation.

III. Implementation of Human Rights Treaties

1. Status of Accession, Ratification and Domestic Implementation of the International Human Rights Treaties in Nepal
2. Priority Areas of Human Rights in Nepal.

The objectives of the conference was to

- a. Discuss on the status of human rights in Nepal.
- b. Identify the problems in implementation.
- c. Express commitment through the "Kathmandu Declaration of Human Rights"

Inauguration of the Conference

In an august environment decorated with various banners and posters, Deputy Prime Minister Mr. Bam Dev Gautam inaugurated the conference by lighting three candles to honour respectively the martyrs, persons disappeared by the state and the victims of torture of the political movement.



Deputy Prime Minister is inaugurating the conference

Addressing the Inaugural Session, Deputy Premier Gautam hailed the role of INSEC and other Human Rights organization in the democratic movement in Nepal.

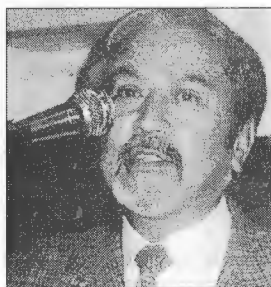
"I am aware that human rights should not be violated by any process of state mechanism", the Deputy Premier observed, "we have strictly instructed the state mechanism to honour the rights of the citizens". Deputy Prime Minister Gautam said that the government is prepared to form a Human Rights Task Force which will include the experts from human rights organizations in the country. Recalling the commitment of the present government to human rights, he remarked that the government has decided to observe *Chait 26* (April 8) as the Jana Andolan Day. On the occasion, Deputy Premier announced that the government is to launch special programmes for the martyr's family and torture victims of political movement. He also asserted that the "state terrorism" as observed in the tenure of the earlier government will be stopped, Maoist "People's War" will be resolved through political means and priority will be placed to repeal or amend laws contrary to the spirit of the Constitution.

Speaking at the Inaugural Session Dr. Devendra Raj Pandey, former Finance Minister, called to employ 'reason' and 'conscience' on our activities. Speaking with respect to human rights, Dr. Pandey observed that individual rights should not cost group rights, and vice versa.

MP Padma Ratna Tuladhar, the chair of Human Rights Sub Committee in the parliament, addressing the inaugural session said that human rights record is deteriorating in Nepal. Referring to the constitutional provision prohibiting torture, he said, "We are unable to translate the constitutional and legal spirit in our actions, torture has not stopped in reality." He also cited



Dr Devendra Raj Pande



Padma Ratna Tuladhar



Bishwa Kanta Mainali



Krishna Pahadi

National Human Rights Conference



Dr Bhogendra Sharma

Kamaiya system and cast exploitation as an example of the failure.

Krishna Pahadi, Chairman of Human Rights and Peace Society, addressing the inaugural session, stressed that the present government should be able to mark a separate identity from that of its predecessors; and demanded that the 'People's War' sponsored by the CPN (Maoist) be resolved.



Bishweshwara Dahal

Bishwa Kanta Mainali, Chairman of the Forum for the Protection of Human Rights, Dr Bhogendra Sharma, Director of the Centre for the Victims of Torture and Bisheswara Dahal, Adviser to CPN (UML) Central Committee also wished a success of the conference and spoke on the issues of human rights.



Sushil Pyakurel

The Inaugural Session was chaired by INSEC Chairman Sushil Pyakurel. Putting his remarks Mr Pyakurel said, "Human rights defenders took on human rights movement as an inseparable part of the national movement even in the Panchayat Regime when human rights was suspended." Speaking with reference to the governments formed after 1990, Chairman Pyakurel observed that they have failed to honour the martyrs of democratic movement. Similarly, he held that the governments have not been responsive to protect the families of the martyrs; to trace out whereabouts of those disappeared;

and to launch relief programmes for the victims of torture. "Still there are the prisoners of conscience in jails, the practice of torture is still prevalent in custody, the conditions of jails are quite poor, kamaiya system is still prevailing and the government has failed to launch special programme for the children and women." said Chairman Pyakurel drawing the attention of the government.

More than 350 human rights activists from over 63 districts, journalist, intellectuals, academicians, legal and administrative official participated in the inaugural session. Representatives of the diplomatic missions were also present on the occasion.

Paper Presentation and Discussion

DAY 1

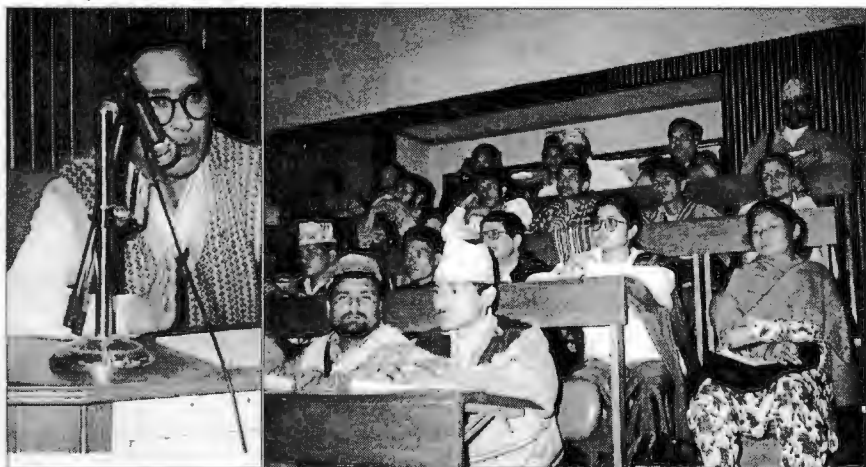
On the first day of the conference, three Working Papers were presented. The first paper was presented by Advocate Hari Krishna Karki.

Existing Nepalese Constitution, Laws and Human Rights

Hari Krinsha Karki presented a paper entitled "Human Rights, Laws and Constitution in Nepal." In his paper Mr Karki, major achievements made through the promulgation of the Constitution of Nepal, 1990, in which human rights provisions have been enshrined. He highlighted main rights incorporated in the constitution.

The paper recognizes the achievement made terming human rights as unremovable component of the constitution, as mentioned in the preamble. Apart from the rights, the paper identifies provisions in the laws that are contrary to human rights. The laws, challenging the principles of the independent judiciary, recorded in the paper are:

1. Essential Article Protection Act
2. Weapons Act
3. Act for Punishment for Black Marketing and Other Social Crimes
4. Sensus Act
5. Food Act
6. Communicable Disease Act
7. Act to Control Essential Articles
8. Nepal Quality Control Act



9. Act related to Acquire Land
10. Public Offence Act
11. Railway Act
12. Registration Act (related to birth, death, other personal events)
13. Social Reform Act
14. Public Security Act

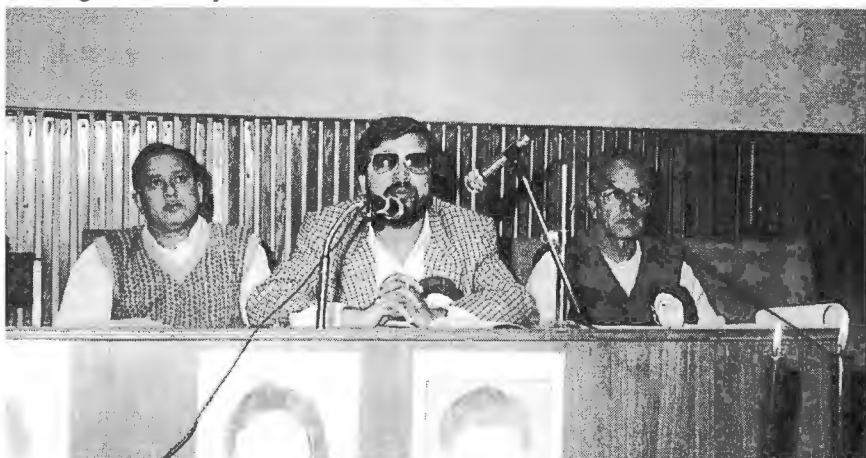
The other acts which provide right to authorities, as above, without the verdict of the court are:

1. Export Import Act
2. Act related to Alcohol
3. Income Tax Act
4. Forest law

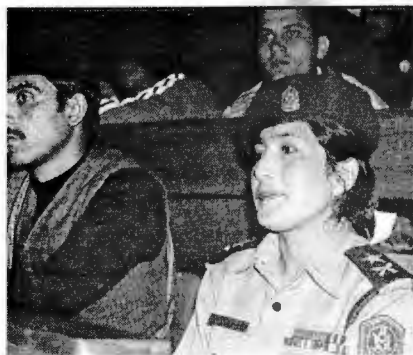
Nepalese Legislature, Judiciary, Executive and Human Rights

Kashi Raj Dahal presenting his paper on Human Rights and Legislature, Judiciary and Executive of Nepal discussed that Nepalese constitution has envisaged human rights as the foundation for peace and development. Suggesting to analyse the implementation of human rights provisions, the paper reveals, as an example, that the provision of Capital Punishment has not been completely abolished though it stands contrary to the spirit of present constitution. These rights can not be denied, except for few during the Emergencies. The paper records the rights enshrined in the constitution. The constitution incorporates the fundamental rights of the citizens in the articles 11-23. These rights include:

1. Right to equality
2. Right to Liberty



3. Right to Speech and Publication
4. Criminal Justice
5. Right Against Preventive Detention
6. Right to Information
7. Right to Property
8. Right to Education and Culture
9. Freedom of Conscience and Religion
10. Right Against Exploitation
11. Right Against Expulsion
12. Right to Privacy
13. Right to Constitutional Remedy



The constitution, according to the paper, recognizes people as the all source of power. The multi-party parliamentary system, constitutional monarch, rule of law and independent and competent judiciary are the basic foundation laid for the protection and promotion of human rights in Nepal.

The paper also mentions the international human rights treaties ratified by Nepal as the commitment to the human rights principles and practices. There are altogether 14 such documents ratified by Nepal.

Discussing the role of the Legislature in Nepal, the paper emphasizes the enactment of the laws in the spirit of the constitution. It identifies some of the laws which are against the spirit of the constitution. They are to be repealed or amended. Despite the constitutional provisions against the Capital punishment, there are three laws still incorporating it. The legislature has not amended the following laws which incorporate the provisions of the capital punishment:

1. Military Act
2. Punishment for Crime Against State Act
3. Act Related to the Successor of the Crown

There is a greater need for act for the enjoyment of the right to information, the paper underlines.

The legislature, however, made some progress in the human rights law making. Bill against torture and bill to constitute human rights commission have been passed in the parliament. the performance of the parliament is not satisfactory, the paper rated.

Dealing on the role of the Executive in the protection and promotion of human rights, the paper expresses its concern on the lack of the coordination between

different government agencies for the implementation of the provisions made in the laws. The lack of fulfillment of the commitments for the submission of the reports in the treaty monitoring bodies of the UN, the continuation of the provisions to handle the various cases by administrative authorities, protection of the criminal elements by politicians, the non-compliance to laws by the police are some of the issues that are against the human rights norms and standards.

The paper highlights role of judiciary in establishing the human rights standards in the cases relating to activate the right to equality, protect the right to liberty, enforcing the right to criminal justice, to make effective the right to information. The paper presents some of the cases as proofs. However, the paper also mentions the inability to provide prompt justice to the victims.

At the end, the paper highlights the areas for legal reform. However, the paper maintains that there are existing provisions in the laws which are in line with international documents, yet not ratified. Therefore, the following need to be ratified:

1. The Convention Against the Forced Labour 1957
2. The Convention Against the Forced Labour 1930
3. The Convention for the Protection of the Association and Right to Association 1948
4. The UNESCO Convention Against the Discrimination in Education 1960
5. The Convention regarding Consent, Minimum Age and Registration of Marriage 1962
6. Second Optional Protocol to ICCPR

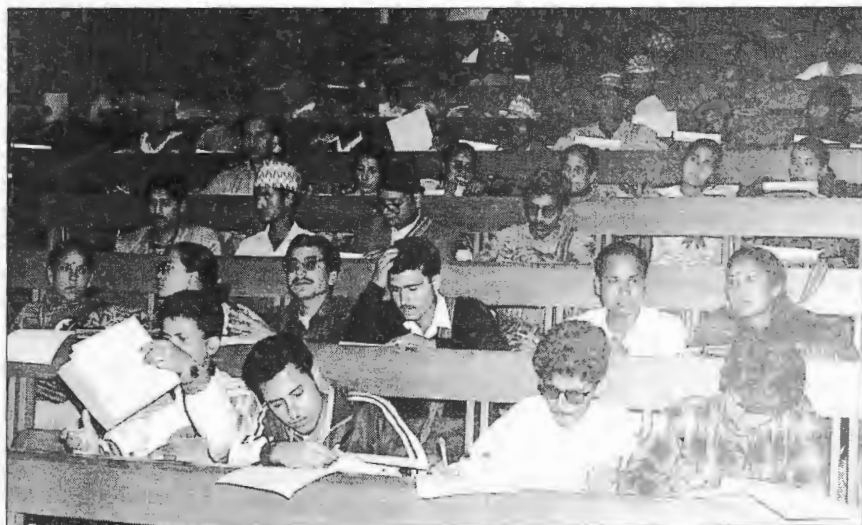
The paper, finally, makes recommendations regarding the amendments of the provisions in existing 9 legislations.

Human Rights Mechanisms in Nepal

Surya Dhungel presented a paper on Human Rights Mechanisms in Nepal. The paper reviews international commitments, constitutional structures and the rights of ethnic minorities, marginalised people and women in discussing the topic.

It discusses constitutional and legislative mechanisms in depth. It discusses the mechanisms in following four points.

1. Constitution, which itself makes human rights as the unchangeable and unamendable provisions, is main basis for building infrastructure for the new mechanisms. The judiciary has been entrusted with the rights of judicial review.



2. Legal Protection Mechanisms: The Court being another mechanism helps protect the rights of the citizens.
3. Checks and Balance through Independent Agencies: The Constitutional Council, Judiciary Council, Security Council, Public Service Commission, Office of the General Auditor, Election Commission, Commission on the Investigation of the Abuse of Authority are independent and powerful constitutional bodies which help enjoy the rights.
4. Provision for Affirmative Actions: The additional provisions for the underprivileged and vulnerable groups of the society.

The paper does not cover the mechanisms created so far for direct services to the citizens at large. They could be Human Rights Commission, child reform homes, juvenile courts etc created to implement the certain laws.

All the papers were commented by various participants in the first day.

DAY 2

Group Discussions and Commemoration of the Democratic Movement

On the second day, participants were divided into five large groups which were later divided into sub-groups for the purpose of convenience.

Group 1 discussed on:

- a. The role of the executive in the field of human rights after the establishment of Democracy in 1990
 - the accomplishments
 - failures
- b. The tasks to be accomplished in the future.

The outcomes of the group discussions: ***accomplishments***

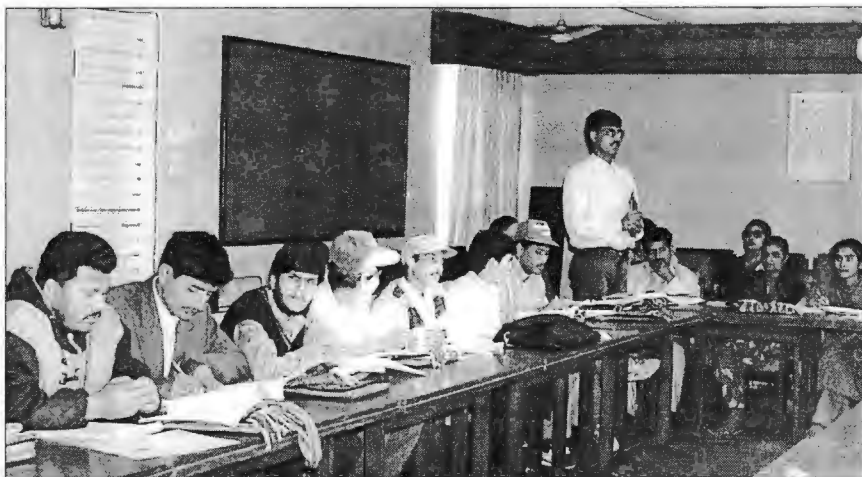
1. *the pension to elderly, widows and handicapped people*
2. *the announcement of the day to commemorate democratic day as gesture to respect the movement*
3. *enactment of the human rights commission law and the compensation for the victims of torture.*

failures

1. *no full compliance to the constitution of Nepal, 1990*
2. *lack in showing respect to martyrs and their families*
3. *failure to keep law and order simultaneously showing respect to human rights*



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4. *impunity to the human rights violators(as mentioned in the Mallik Commission Report)*

The tasks to be accomplished in future

1. *constitution of the separate commission, department or ministry for human rights*
2. *Authorize the courts to handle the all cases, contrary to the present practice in some areas*
3. *stop the political appointment in the legal sector*
4. *stop the criminanlization in politics*
5. *Investigation Commission of the Abuse of Power must be made effective at all levels*
6. *Police administration should be made sensitized on the human rights and laws*
7. *enact the human rights laws and make plans for effective implementation*
8. *incorporate human rights education in the school level*
9. *appointment according to the expertise on relevant subjects*
10. *vocational education should be expanded and made accessible*
11. *establishment of women's and children's courts*
12. *The government should take initiatives for the fulfillment of basic human needs.*

Group 2 discussed on:

- a. *The role of judiciary after the democratic movement for the protection and promotion of human rights*

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- the accomplishments
 - failures
- b. The future additional role to be performed for the betterment in the field.

The outcomes of the group discussions

The tasks accomplished by the judiciary

1. *the information flow could be maintained*
2. *established the human rights norms and standards*
3. *activated the human rights provisioned in the constitution*
4. *established the criminal justice*

failures

1. *lack of the documentation of the court procedures*
2. *unsuccessful to stop to keep the suspects in the custodies for the prolonged time*
3. *unsuccessful in abolishing the practice to give the verdict by the judges in the cases involving themselves*
4. *failed to stop the influence(financial) on the courts.*
5. *lack of technical facilities to research*

Tasks to be accomplished

1. *end of the political appointments in the legal sectors*
2. *courts should be facilitated for its greater independence*
3. *the judges should be facilitated to take part in the seminars, workshops and other programmes related to human rights.*



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4. *To enhance the respect for the courts, a Legal Reform Commission should be formed for the reforms in line with the aspirations of people.*
5. *The judiciary should take a lead role to stop the negative intervention of the government.*
6. *The procedures should be reformed to the extent of independent inquiry of the courts.*

Group 3 discussed on:

- a. The role of legislature in the field of human rights after the democratic movement of 1990
 - the accomplishments
 - failures
- b. The future role of the legislature for the protection and promotion of human rights.

The outcomes of the group discussions

Accomplishments

1. *The legislature enacted labour law,*
2. *law for the compensation for the victims of torture,*
3. *human rights commission laws and*
4. *enactment of children's act*

Failures

1. *failure in enacting laws in spirit of the international human rights documents ratified by Nepal*
2. *Unable to sensitize on human rights.*

Tasks to be Accomplished in the Future

1. *repeal of the laws contrary to the spirit of the constitution*
2. *enactment of the laws for agriculture labourers*
3. *commitment and pledge for the betterment of the socially oppressed castes*
4. *allocation of budget for the national programmes on human rights.*
5. *incorporation of human rights education in school curriculae*
6. *enactment of the laws related to refugees*

Group 4 discussed on:

The existing constitution, laws and human rights

- positive and negative aspects
- recommendations for reforms

The outcomes of the group discussions

Positive Aspects of the Constitution

1. *parliamentary system, multi-party democracy, independent judiciary, rule of law, and unalterable provisions of human rights enshrined in the constitution*
2. *Fundamental rights in the articles 11-23*
3. *inalienable rights of the haebas corpus*

Negative Aspects of the Constitution

1. *non-enactment of the equal property rights for women*
2. *lack of secularism*
3. *lack of economic rights*
4. *lack of rights related to development and environment*
5. *lack of the rights for education in mother tongue in higher education*

Recommendations

1. *Repeal of the laws contrary to the constitutional spirit*
2. *enactment of laws to end the bondage in the kamaiya system*
3. *prompt and effective judiciary*

Group 5 discussed on:

Human Rights Mechanisms

- Mechanisms created after the democratic movement
- Mechanisms already existing prior to the movement
- Mechanisms to be created for the protection and promotion of human rights.





- Ensuring the accessibility of these mechanisms —by government/people
- Informing people about the mechanisms and their utilities.

The outcomes of the group discussions

*Mechanisms created after and before the democratic movement: The mechanisms created **before** the democratic movement of 1990 are: human rights committee in the parliament, world peace council, child homes, human rights commission, ethnic commission, etc which are catering human rights related services to the people.*

In the afternoon a human rights rally was organised. Begun from Jawalakhel, Lalitpur the procession with banners, placards and slogans **Long Live Democracy, Long Live the Mass Movement, All Human Rights for All**, etc. The rally then turned into a mass meeting. Dr. Rajesh Gautam, General Secretary of INSEC; Goma Devkota, a women leader and political activist and the widow of Martyr Rishi Raj Devkota 'Ajad' and INSEC Chairman Sushil Pyakurel shed light on the importance of the day. On the occasion photoes of the mass movement, 1990 were displayed. On this very day in 1990, police had a massive repression where many lost their lives.

DAY 3

International Treaties And National Legislations

Economic, Social and Cultural Rights in Nepal : Laws and Implementation



Dr. Gopi Upreti, presented the first paper of the day entitled "Economic, Social and Cultural Rights in Nepal : Laws and Implementation". The paper was prepared by him and Mr Ganga Prasad Subedi. The paper presents a study on economic, social and cultural aspects of human rights. It also seeks to analyse economic advancement and structure of the world, international financial institutions and their roles.

In the paper Dr. Upreti and Mr. Suvedi argue that political parties have not been able to establish the fundamental social rights of the people, thus, human rights activists should launch movements both in and outside the country. The paper highlights the governments international commitment by way of ratifying the International Covenant on Economic, Social and Cultural Rights. However, the paper also gives vivid discription on how the government has failed to respect and implement the provisions outlined in the covenant. He also put forward the fact that there are not laws to adequately implement the provisions of the covenant. The paper analyses some of the tasks carried out by various governments after the advent of multi-party democracy in the country. It incorporates the government interventions in various occassions for the betterment of the underprevilledged, elderly and people in the situations of bondage and economic exploitations. The paper suggested 18-



point recommendations for the effective implementation of the rights enshrined in the international document. These recommendations include: the end of the dual land ownership, fixing of the wage of the agriculture labourers, creating agriculture infrastructure like irrigation etc, programmes related to integrated development in the sectors like agriculture, forestry; development of the hydro-power, and social security and to create such the structures to bear these provisions.

Women's Human Rights in Nepal: Laws and Implementation



Advocate, Sapana Malla presented a paper on Women and Human Rights: Laws and Implementations. The paper reviewed international mechanisms with respect to women, the areas of concerns identified by the Fourth World Conference on Women, case studies on the violation of human rights of women in the national context and has suggested steps to be taken in national and international level for the promotion and protection of women's human rights.

Regarding the legislation for the realization of human rights of women, the paper identifies some of the areas where laws are not adequate to serve the purpose. They include:

1. the weak provisions to stop polygamy
2. Weaknesses in the Abortion Law
3. Inadequate provisions for punishments in the laws against rape
4. Inadequate provisions for defining the forced prostitution
5. Lack of the laws in regards to family violence.

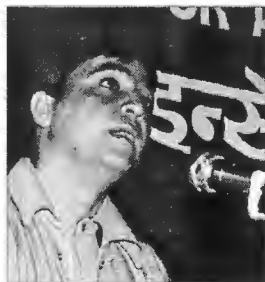
At the end paper makes recommendations for the effective implementation of the human rights of women. They Include:

1. Domestic implementation of the international laws
2. Raising awareness for the education of women
3. Raising awareness against ill-customs
4. Political commitments for the human rights of women
5. Prioritising women's issues by the human rights organizations operating in the country
6. Amendment of the laws contrary to women's human rights
7. Constitution of the family courts
8. Enhancement of the role of the judiciary for the realization of the women's human rights

9. Public Interest Litigation against the violation of women's human rights.
10. Enactment of new laws
11. Enforcement of the existing laws
12. Public information on human rights instruments and laws
13. National Plan of Action according to the recommendation of the World Conference on Women's Rights.
14. Monitoring Mechanism
15. Gender balance in preparing the report on any human rights international instrument ratified by Nepal
16. Participation of the NGOs in preparing the report on CEDAW
17. Expansion of the programmes regarding the implementation of women's human rights.
18. Measures to immediately stop the family violence
19. Human rights education to general public and government officials
20. Equal rights to women to become the member of trade unions and other organizations.
21. Free legal aid to women needing such service
22. Ensure the enjoyment of social, economic, political, civil and cultural rights by women



Civil and political rights in Nepal: Laws and Implementation



Mr. Krishna Pahadi, President of Human Rights and Peace Society presented another paper on Civil and Political Rights in Nepal: Laws and Implementation. Mr Pahadi, in his paper, highlighted the civil and political rights enshrined in the Universal Declaration of Human Rights. The paper also highlighted the provisions in the International Covenant on Civil and Political Rights.

Dwelling on the domestic implementation of the covenant, the paper highlights major achievements made in regards to the civil and political rights through national legislations. Discussing the Human Rights Commission Bill, the paper gave its critical support. Regarding the enjoyment of the rights by the citizens of Nepal, the paper critically evaluates the situation in

the following sub-headings:

1. freedom from fear and want
2. right to life
3. freedom from torture
4. participation in the rule
5. situation of the prisons
6. Arbitrary Arrest and Prisoners

The paper also emphasizes needs for human rights education. It also recognizes Impunity as a major problem in the field of human rights.

The Rights of the Child in Nepal: Laws and Implementation



Mr. Tarak Dhital on behalf of Gauri Pradhan, Chairman of CWIN, presented the last paper of the third day entitled "the Rights of the Child in Nepal: Laws and implementation". The paper highlights the problems faced by the Nepalese children.

It highlights the international commitment of Nepal in regards to the rights of the child. They include:

1. The Convention on the Rights of the Child 1989
2. The Convention Against All Forms of Discrimination Against Women 1990
3. The Plan of Action and the Universal Declaration for the Protection, Survival, Development of children
4. IPEC, International Programme for the Elimination of the Child Labour 1992
5. Vienna Declaration on Human Rights and the Plan of Action 1993
6. Copenhagen Declaration on the Social Development 1995
7. The Beijing Declaration on Women's Development
8. Stockholm Declaration against the Commercial Sexual Exploitation of Children 1996 and other international human rights instruments including the international covenants on economic, social and cultural rights and civil and political rights.

The major regional commitments of the government of Nepal, as identified by the paper, are

1. First SAARC Delhi Declaration on Children, 1986
2. Second SAARC Colombo Declaration on Children, 1992
3. Third SAARC Rawalpindi Declaration on Children, 1996

The major national commitments, the paper highlights, are:

1. The Constitution of Nepal, 1990



2. Children's Act 1991
3. Action Plan for the Children for 1990s
4. National Programme for Elimination of the Child Labour
5. The National Council for Women and Children's Development

The presenter highlighted the major difficulties met for the effective implementation of these commitments, both national and international. They include the lack of coordination between various ministries, lack of awareness and the sensitivity on the part of the government, non-implementation of some of the provisions in the laws and the regulations brought to enforce the laws. It also expresses concern for not being able to put the Children First. At the end, the paper put forward ten-point recommendations for the realization of the rights of the child in Nepal. The recommendations relate to the concern, priority, commitment, vision, programme, resource mobilization, community awareness, information and documentation, development activities, coordination and management.

Each paper presented in the morning session was commented by the various participants. However, in the afternoon, five groups, later sub-divided, were formed. These groups discussed the Economic Rights, Social and Cultural Rights, Women's Human Rights, the Rights of the Child, and Civil and Political Rights after 1990, the year of advent of democracy in Nepal. They also identified the tasks to be accomplished in the years to come for the effective implementation of the rights discussed during the presentations.

DAY 4

The first paper presented on the 4th day of the conference related to the social discrimination and social oppression. The paper named as the Abolition of Cast Discrimination in Nepal reviewed the laws and practices.

Abolition of Cast Discrimination in Nepal: Laws and Implementation



Advocate Pawan Kumar Ojha, Executive Member INSEC and the Chief of the Nepal Law Campus (Tribhuvan University) presented a paper entitled "Abolition of Cast Discrimination in Nepal: Laws and Implementation". The paper presented an analysis on the situations of the discriminated caste and interprets the problem as the racial discrimination. He also highlights the ratification of the International Covenant Against All Forms of Racial Discrimination. The paper dwells on how

the state and rulers determined the castes and their social status during the Rana Regime in Nepal. After the end of this regime, Nepal embraced democracy in 1951, after which two constitutions formally banned the caste discrimination. However, the paper puts in, the practical problems continued. In the 60s laws were enacted to ban the practice. But the social evils continued for non-implementation of the laws. The new constitution promulgated in 1990 also provides for rights to equality and non-discrimination.

Therefore, the paper recommends the new and effective laws to eliminate this discriminatory practices. Major weapon to fight this social evil, the paper puts, is to raise awareness at all levels of society—the victims, perpetrators and the law-enforcement agencies.

Labour Rights in Nepal: Laws and Implementation



GEFONT General Secretary Bishnu Rimal presented a paper on Labour Rights in Nepal: Laws and Implementation. The paper reviewed the national legislations which are in line with the different ILO conventions. However, the paper identifies some of the shortcomings of the laws. They are;

1. The laws do not cover labourers in all sectors.

2. No laws are there to deal with the labour in informal sectors
3. No clear provisions for the Nepalese labourers working in the foreign invested farms or companies
4. Situation of non-implementation of existing laws due to the indifference of the government.
5. The labour act is not only confusing in many aspects but also inadequate.
6. The laws regarding the labour court is inadequate and confusing.
7. The provisions in the labour act is not adequate regarding the procedures of the collective bargaining.

The paper also highlights the demands put forward by the trade unions in regards to the amendments in the provisions. The relate to the provisions in the labour act, labour court, trade union regulations, industrial employee training act, overseas employment act, transportation act etc. It also highlights the policy aspects to be amended in the labour act.

It also expresses concern for ratification of the ILO conventions. Nepal has ratified only following ILO conventions:

1. Convention No 14 Weekly Leave
2. Convention No 98 Independence of Organization and Collective Bargaining
3. Convention No 100 Equal Wages
4. Convention No 111 Non-Discrimination (Employment and Profession)
5. Convention No 131 Minimum Wage
6. Convention No 138 Minimum Wage
7. Convention No 144 Tripartite Consultation

At the end, the paper suggested to expand the definition of the trade unions so as to accommodate the workers of all kinds.

Abolition of Torture in Nepal: Laws and Implementation



Director of CVICT Dr Bhogendra Sharma presented a paper on "Torture Abolition in Nepal: Laws and Implementation" prepared jointly by himself, Mr Rabindra Sharma and Ms Mandira Sharama. The paper discusses the international legal standards and practices on torture. It also analyses the situation of Nepal and establishes the fact that 69% of the total prisoners and people in custodies are victims of torture. The presenter highlights the fact that the

Constitution of Nepal 1990 is the first document to ban torture. The Act to Compensate the Victims of Torture 1996 is another leap forward, the paper puts



in. However, it also is not free of faults. The Act has not made the perpetrator accountable for the torture. The paper also points out some of the problems in enforcing and enjoying the provisions of the acts. They are:

1. problems to fix the compensation
2. physical torture not showing any sign of torture
3. Influence, intimidation and other problems

It also suggests recommendations to eliminate torture:

1. the measures for managerial, legal, and social rehabilitation of the victims
2. amendment of the existing law in favour of victims
3. the perpetrators should be treated as criminals in accordance to the international practice and the those punished should be publicized.
4. political parties should not use the cases of torture for the benefit of their campaigns
5. incorporation of human rights education in the formal curriculae to create awareness against torture.

Abolition of Bonded labour in Nepal: Laws and Implementation



INSEC Chairman Sushil Pyakurel presented a paper on "Bonded labours in Nepal: Laws and Implementation." In the paper he discussed on the origin of bonded labours, *saunki*, efforts made to liberate the bonded labours, formation of Kamaiya Liberation Forum, etc.

The bonded labourers found in the agriculture sector

are the most victimized in the system called Kamaiyas. The paper highlights the facts that all the kamaiyas are not in bondage. The paper highlights the means to make kamaiyas. The means mentioned in the paper is Saunki, the loan taken by the victims.

The paper categorizes the Kamaiyas as follows:

- people with Saunki and without land
- people with Saunki and only a small piece of land
- people without Saunki and without land
- people without Saunki and with land

Then the paper discusses at length whether all the Kamaiyas are bonded. It recalled the INSEC survey conducted in 1992 and put forward the fact that the more Saunki is taken, the more chances of being bonded. It highlighted some of the facts which indicate the kamayas being in bondage.

- lack of freedom of movement
- lack of freedom to sell ones labour in the market
- lose of human dignity.

The paper also sheds light on the efforts made by the state to eliminate the slavery or slave-like practices. In 1833 AD, the then Prime Minister, through the Law of the Land,

1. banned to exchange slaves with cattles
2. banned to sale childeren below 11





3. fixing the price of the slaves according to their age.

This, in fact did not prohibit the slavery or slave-like practices, therefore, it continued. In 1905 AD, another law freed the slaves. The slaves working more than 10 years for their masters could be free without any payment to them. However, those willing free working more than 3 years had to pay to their masters. After the end of Rana Regime, the system formally collapsed and the consequent constitutions promulgated, one way or the other, prohibited the practice. The constitution of Nepal 1990, clearly puts in the provision clearly banning such practices.

Despite the ratification of the international treaties and incorporating the provisions in the Constitution, there are bonded labourers under the system of *kamaiya* in five districts of mid- and far-west of Nepal. This fact is even recognized by the government, which conducted a survey in 1995, the paper reveals.

The second part of the paper devotes to the contribution for the elimination of the system. It highlights how the survey conducted by INSEC in 1992 drew attention at national and international level. The first effort made in the government level was by the UML government formed in 1994. It allocated funds for the programmes to be conducted in these areas. The Coalition government following the UML's footsteps continued for the elimination of the problems, the paper mentions. The non-governmental sector also put their effort launching programmes, which include:

- literacy
- awareness
- skill development trainings

- small scale loan programmes
- income generation programmes

The paper reveals that the following organizations are working for the elimination of the kamaiyas systems in the said areas.

1. His Majesty's Government and its various agencies
2. Kamiaya Liberation Forum
3. INSEC
4. BASE
5. Grinso
6. Plan International
7. Lutheran World Service
8. Save the Children(US)
9. UNDP/SWC
10. Unicef Nepal
11. Action Aid Nepal
12. Danida



There are some other organizations working in this sector.

Then the paper devotes some space on the evolution of the Kamiaya Liberation Forum and how the kamaiyas themselves came forward to establish the forum after the long contribution of the human rights organizations conducted the human rights education for them.

At end people discusses the problems of the elimination of the system. It emphasizes for two approaches:

1. legal — banning the system
2. alternate employment and rehabilitation.

However, it elaborates the concept by focussing the results of a workshop jointly organized by Unicef and INSEC in Nepalganj, which suggested following programme to completely eliminate the system. The programmes suggested by the workshop, as the paper puts in, are:

1. Kamiaya Housing Project
2. Skill Development and Income Generation Programme
3. Kamiaya Women Programme
4. Vocational Training for Kamiaya Children
5. Kamiaya Loan Programme
6. Legal Reform Programme
7. Legal Aid Programme
8. Awareness Programme

9. Adult Literacy Programme
10. Kamaiya Basic Education Programme
11. Kamiaya Loan Relief Programme
12. Kamaiya Small Scale Loan Programme
13. Kamaiya Health Programme
14. Kamaiya Health Workers Training
15. Kamaiya Basic Health Care
16. Programme for Under Five Children of Kamaiyas
17. Media programme for Kamaiya System Elimination

At the end, the paper emphasizes that these programmes should immediately be launched from all sectors. This paper was also commented by various organizations.

Priority Areas of Human Rights in Nepal



INSEC Programme Co-ordinator Krishna Prasad Upadhyaya presented the last paper for the conference "Human Rights in Nepal: Priority Areas." Divided into three parts, the paper discusses on Human Rights Concepts, Human Rights and State Responsibilities and Priority Areas in the present Context.

Discussing the Human Rights Concept, the paper devoted some space to clear some misconceptions regarding human rights. Human Rights, as the paper puts in, is the relation between the state (the duty holder) and the people; and the content of human rights is determined by the nature of this relation. It also highlights, in general, the duties of the state as obligations. They are respect-bound obligation, protection bound obligation and fulfillment obligations. Non-discrimination should be the state policy while fulfilling these obligations of the state.

Then the paper dwells on how the Content of human rights can be determined with the help of the Basic Human Status, the dignified situation of economic, social, cultural, civil and political life of a human person. The basic principle from which they derive are Security, Identity and Participation. They are inter-dependent to each other. Then the paper went on to define the Violation of Human Rights, and direct or indirect involvement of state in it.



The Second part of the paper was devoted to analyse the Nepali state's role as discriminatory from its very inception and the continuation of it, though in decreasing scale. Secondly, the paper identifies the state as having double standard in expressing its international commitments. The state has been the state party to the International Covenant on Economic, Social and Cultural Rights, the provisions of which have been violated by expressing commitments to the policies of various international financial institutions. Such double standard, as the paper maintains, has influenced the role of state as duty holder for human rights. It is in this context, the paper evaluates the state's obligations to respect, protect and fulfill the human rights needs of the citizens. Evaluation of the state's performance in fulfilling these obligations, as paper put in, gives basis to define the nature of the relation of the state and the people—meaning the content of human rights in Nepalese context.

The third part of the paper, analyses the content and issues of human rights. The main content of the human rights identified by the paper are:

1. discrimination
2. non-implementation
3. impunity
4. indoctrination of human rights (human rights education)

However, the priority of the issues as the paper puts in, can be summarized as:

1. Women's human rights as top priority, the issues being the question of political participation, discrimination in the property, education and health; and the widespread family violence,

2. Bonded labour and agriculture labour where legislation from the state is essential to make environment to take them to the labour market, and monitoring mechanisms for the implementation the labour law and children's act
3. To fight the impunity, the Mallik Commission report can be used as the primary document to start with.
4. Indoctrination of the citizens with the human rights is another top priority. This can be started with the education in formal education establishments, general public and law-enforcement agencies.

All the papers were commented in the plannery itself. Altogether 39 participants commented and sought clarification on the papers.

Constitution of Drafting Committee

The planery also elected a 15 member drafting committee to present a draft declaration for discussion. The members of the committee were:

1. Advocate Biswo Raj Pandey, Member
2. Advocate Kedar Koirala, Member
3. Ms Ganga Kafle, Member
4. Ms Padma Bhattarai, Member
5. Mr. Amar Dangi, Member
6. Mr. Mukunda Dahal, Member
7. Prem Biswokarma, Member
8. Mr. Durga Thapa, Member
9. Mr. Binod Lamichhane, Member
10. Ms. Bimala Rai, Member
11. Mr. Bikram Kunwar, Member
12. Ms. Lata Pyakurel, Member
13. Mr. Mukunda Kattel, Member
14. Mr. Lekhanth Bhandari, Member
15. Mr. Krishna P Upadhyaya, Coordinator

The committee met in the evening for two hours and presented the draft in the planery for discussion. The draft presented by the committee was discussed and adopted by the planery. The Declaration has been divided into Preamble, Our Concerns and Our Future Responsibilities. The Declaration has spelled out Discrimination, Exploitation, Impunity, International Capital as the main concerns.

The Kathmandu Human Rights Declaration.

PREAMBLE

- Inspired by the inherent right of human persons enshrined in the Universal Declaration of Human Rights,
- Accepting the fact that human rights is the direct concern of the state,
- Recognizing the rights of the citizens and the state obligations created by various international human rights instruments,
- Mindful of the achievements made in the Vienna World Conference on Human Rights, Rio Earth Summit, Copenhagen Conference on the Social Development, Beijing World Conference on Women, Cairo International Conference on Population and Development and other international conferences and seminars;
- Conscious of the fact that UN declared the human rights decade for human rights education (1995-2004),
- Respecting the valour and sacrifice of the Nepali citizens and the aspirations of the democratic movement under the leadership of the United Left Front and the Nepali Congress in 1990,
- Delighted at the ratification of the international human rights instruments by the interim government formed after the successful conclusion of the democratic movement of 1990,
- Expressing happiness over the incorporation of aspirations of the democratic movement in the constitution of Nepal,
- Mindful of the achievements of the conferences and seminars organized by various human rights organizations after the democratic movement in Nepal,
- Expressing concern over the problems on human rights, despite all the achievements made,



We 300 participants from 63 districts of Nepal present in the National Conference on Human Rights organized by INSEC, Informal Sector Service Centre, in Kathmandu on April 5-9, 1997, adopt this Kathmandu Declaration on Human Rights.

OUR CONCERNS

1. Discrimination

From the very inception, the Nepali State has adopted the discriminatory policies which victimised the people according to sex, geographical area, caste, conscience and in distributing the resources.

- The discrimination against women are the most profound and grave in our society. There are legal provisions to discriminate male and female child. Women are discriminated within the families and society. The problems are being grave as women do not enjoy equal participation in education, health, politics and other sectors.
- Discrimination is also incarnated in form of caste. The state itself is indifferent to the problems of the large populace discriminated in the country.
- The state's discriminatory policy in resource allocation has contributed to unequal development of different geographical regions. Similarly, the state has not been able to equally protect and promote the language and culture of the people.

2. Exploitation

- Some of the traditional systems of Nepal has been contributing to sustain the various forms of exploitation. The lack of the legislations to end the systems like Kamaiya and haliya has contributed to the continued exploitation of the agriculture labourers. We are also gravely concerned on the rising trends of the child labour in Nepal. This has been challenging all the national commitments.
- The exploitation of women's labour is grave in the country. Women labour constitute two-third of domestic and agriculture labour. They are either underpaid or non-paid. The trafficking and sale of women and children for sexual exploitation dishearten us. Child Marriage, Polygamy, unequal marriage, dowry and jari system become the additional means of exploitation, discrimination and oppression of women.
- Traditional ill-customs prevailing in the society contribute for the exploitation of women. These ill-customs contribute to deprive the women from their rights. Badi, Deuki, Jhuma, and Polyandri are such ill-customs.

3. Impunity

Traditionally, impunity prevails in Nepal. The criminals not only go unpunished but awarded.

- The human rights violators are encouraged for not bringing them to the justice. This has increased the possibility of more violation of human rights.

- The social environment, which allows the oppressors of women accusing them witches and the perpetrators of family violence to openly and proudly saunter around, is our grave concern. It is unfortunate to protect such elements by the political parties and the state machineries.

4. International Capital

- The international capital has also adversely affected our human rights movement. The policies of the World Bank, IMF, ADB, WTO, and the investors of the developed countries has adversely affected the decision power of our governments. This has contributed to the violations of the economic, social and cultural rights of people.
- There is no division of opinion that the act of accepting the conditionalities of international investors and expressing the commitments in their policies, in contradiction to the international commitments on human rights, is opposed to human rights.

5. Unless efforts are made to increase the campaigns for human rights education, it is nearly impossible to create human rights culture among the people and state machineries.

• OUR FUTURE RESPONSIBILITIES

We make our commitment to undertake following tasks in future:

1. Efforts will be made enactment of legislations, created mechanisms for their effective implementation and launched programmes to end the discrimination against women and children.
2. Efforts will be made to enact new laws to end the discrimination based on the castes, and the laws will be implemented for the enjoyment of the right to equality.
3. The solution of the unequal development due to the unequal distribution of resources will be sought and programmes will be carried out to empower the people.
4. Effort will be made to end the remnants of the slavery or slave-like practices like Kamiaya and haliya by way of legislations and social rehabilitation.
5. More efforts will be made to stop the trafficking and sale of women and children by creating appropriate mechanisms and taking additional measures.
6. Efforts will be made to fight against the social evils like dowry, child marriage, polyandry, jari and other such degrading and cruel practices.
7. Efforts will be made to bring the human rights violators to the justice.
8. Opinion will be created to fight the anti-social security policies imposed by



IMP, WB, WTO, and the investors of the developed countries.

9. Opinion will be created against the commitment of the government in the policies of the international financial institutions which are in contradiction to the provisions enshrined in the international instruments of human rights.
10. For the creation of human rights culture and indocrinate the society with human rights, human rights education campaigns will be widened with an effort to incorporate human rights education in the formal curriculae, to educate the law enforcement agencies and the general public.
11. For the realization of human rights, efforts will be made to repeal the laws contrary to human rights.
12. Efforts will be made to create human rights mechanisms, undertake administrative measures to facilitate them and make the mechanisms accessible to people.
13. Opinion will be created to make government, parliament and political parties accountable to people.
14. Efforts will be made to make secular state policy.
15. For the institutionalization of democracy, efforts will be made to make government, political parties and parliament to adhere the moral values and practices, and every effort will be made for the free, fair and impartial elections at all levels.

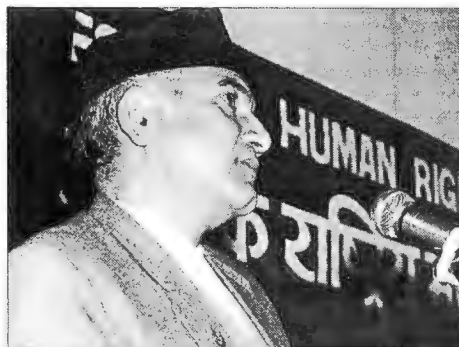
The conference also adopted a 39-point Resolution. These were the immediate concern.

Cultural Evening



Cultural evening was observed on 4th day of the Conference with folk songs, dances and humorist programmes.

Concluding Ceremony



Minister for Local Development Mr Amrit Kumar Bohara concluded the National Human Rights Conference at a function. Speaking from the chair of the Chief Guest Minister Bohara thanked INSEC as well as the participants for their commitment to evaluate the human rights situation in the country. "You have accomplished a tedious job as to review the composite situation of human rights and have

paved your ways forward by way of the Kathmandu Declaration", he said.

Minister Bohara opined that even after the achievement of democracy human rights is being violated by the government. Speaking on the role of human rights activists in a democratic society, Mr Bohara said that the conclusions derived from the conference be taken down to the grassroots people. He further observed

that human rights activists should take into account the difficulties of the working people. "INSEC has made an excellent contribution in the field of human rights education. It is worthy to recall that INSEC has launched programmes addressing specifically to the oppressed and victims", Minister Bohara remarked.



Recalling that the present government has committed to promoting and protecting human rights, he noted that police force should work as the volunteers of the people.

Chairman Sushil Pyakurel also addressed the concluding session. Thanking all for their co-operation to meaningfully conclude the session, he expected similar co-operation in future.

GEFONT General Secretary Bishnu Rimal addressing the concluding session highlighted that human rights activists and workers should work hand in hand for the effective protection and promotion of human rights and democracy.

Speaking on behalf of the participants Bishwaraj Pande, Morang, opined that the conference has been important and usefull. Padma Bhattarai, Banke, observed that it is an outstanding achievement for us that so many issues have been discussed in a single forum, here. She highlighted on the need of self-awareness to resolve the problems we are confronting with. Kalyani Khadka also spoke on the occasion..

The session was moderated by Devika Nanda Timilsina. Krishna Prasad Upadhyaya read out the Kathmandu Declaration adopted by the conference.

Some Other Glimpses

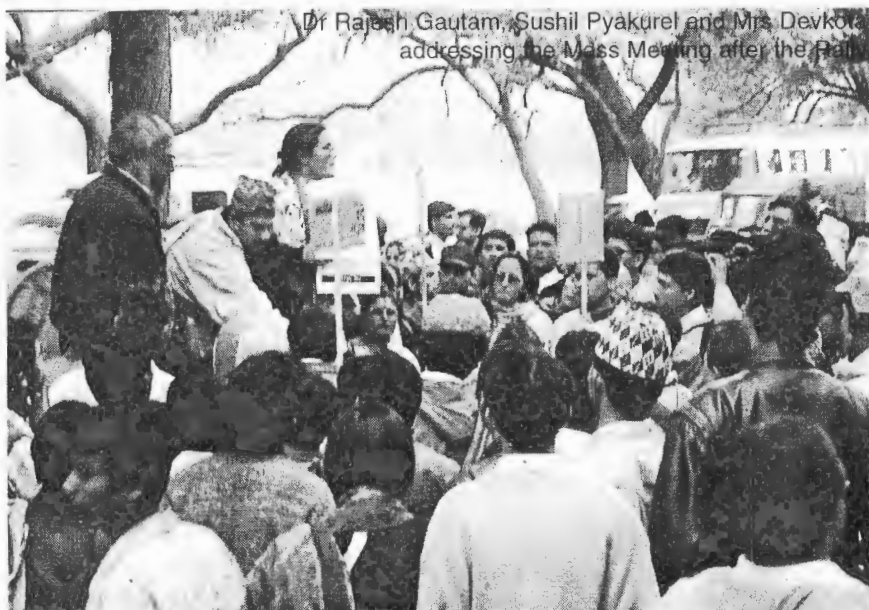




Photo display on the movement 1990



Busy
secretariat
of the
Conference

Mass
Meeting
after
Rally



Guest
Participants
and
Host

INSEC Book No. 44/1997



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