

Nepal's New Legal Code

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Nepal's new legal code (Muluki Ain) promulgated by King Mahendra in August last year is a landmark in the social and political development of Nepal

It codifies and consolidates the country's laws, hitherto dispersed and, to a great extent, ambiguous.

For the first time, it sanctifies the principle of equality before law by abolishing the repugnant system of deciding the punishment for crimes according to the caste of the person involved.

It forbids child marriage and polygamy and grants property rights to women.

All these reforms were long overdue and mark the culmination of Nepal's transition into the modern world which began with the overthrow of the autocratic rule of the Ranas in 1951,

THE past 15 years in Nepal have seen many exciting events. The overthrow of the autocratic, century-old Rana regime in 1951 marked the beginning of a new epoch. But a period of political instability followed, which ended in 1959 when a government elected on the basis of adult franchise was formed. This government was, however, unexpectedly dismissed in December 1960 and all political parties were banned. In December 1962, the King promulgated and enforced a new constitution based on the Panchayat system, "suitable to the genius of the Nepalese people". This constitution had hardly begun to function when the new *Muluki Ain* was announced.

With the change of political system in 1951, social change was inevitable. The sudden and rapid exposure of Nepalese society to the modern world, the expansion of education, and changing social values made the existence of century-old social laws an anachronism. The reform of law was, therefore, long overdue. To understand the new code of August 1963, it would be necessary to know something about the previous code and its origins.

First Ain

Law was first codified in Nepal in the middle of the nineteenth century by Jang Bahadur, the first Rana Prime Minister. Coming to power in 1846 after the murder of a large number of senior civil and military officers, Jang Bahadur was anxious to consolidate his power. While he took steps to eliminate all opposition within the country, he was careful to maintain good relations with the British. He visited England in 1851 and familiarised himself with the efficient administration there. He

decided to strengthen himself against rivals by modernising his administration and Government. Almost the first thing he did on his return from England was to set up an official *Kausal* (Council) to codify Nepal's laws. This *Kausal* consisted of about 230 persons, including the state pundits of law and religion, important civil and military officials, and experts in medical science and astronomy. The deliberations of the *Kausal* continued for nearly three years. The outcome was that law in Nepal, till then merely composed of commands and occasional promulgations by the rulers, was now embodied in a bulky and comprehensive document which came to be known as the *Muluki Ain*.

The chief object of Jang Bahadur's *Muluki Ain* as declared in its introduction was to eliminate discrimination in punishments to people of different ranks for the same offence. All officers of the state were enjoined to adhere strictly to the provisions of the *Ain*, and those found guilty of contravening it were liable to be dismissed and fined Rs 500, or imprisoned. Ministers and officers were called upon to suggest, from time to time, amendments and additions to this *Ain* which would be adopted at yearly intervals.

Thus, Jang Bahadur's *Ain* codified Nepali civil and criminal law for the first time in Nepal's history — and made it uniformly applicable to the whole country and to all ranks of people (with the important exception of caste as a basis of discrimination; this will be referred to later). Jang Bahadur's *Ain* was thoroughly revised in 1886 during the rule of Prime Minister Bir Shamsheer (1885-1901). The revision brought the *Ain* further in

consonance with current social and political requirements, polished it and made it more compact and precise. Subsequently the *Ain* was reprinted a number of times without any major change during the rule of Prime Ministers Chandra Shamsheer (1901-29), Bhirri Shamsheer (1929-32) and Juddha Shamsheer (1932-46).

No Change for 80 Years

Between 1886 and 1963, therefore, law had not undergone any change in Nepal. And in 1951, when a new era began, the antiquated *Muluki Ain* was a great anachronism. Jang Bahadur's *Ain*, in its introduction, had laid down that 'caste' would be as important a criterion as 'crime' in deciding punishments. It said: "Henceforth, to all the people, high and low, the punishment awarded must be uniform, in accordance with the crime and *caste of the person*". While the death sentence could be pronounced on everyone else, a Brahman, however grave his crime, was exempt from it. Further, the Prime Minister could make law superseding or violating the provisions of the *Ain*. At places, in the old *Ain*, the judicial power of hearing appeals was vested in the Prime Minister, the *Mukhtiyar* or the *Talukwala*. Such provisions were clearly against all notions of a modern democratic Government with separation of powers and functions between various organs. They were also against the letter of the new constitution promulgated in 1962 by King Mahendra.

A serious defect of the old *Ain* was that this was not the whole law. For, a number of laws and procedural rules having the force of law were issued later in the form of

Khadga, *Nisana*, *Sanad* and *Sawal* by the Prime Minister and other officers. Some of these new laws superseded the provisions of the old *Ain* and some were supplementary to them. Thus, in spite of the codification in 1850 and 1886, the law as inherited by Nepal from the Ranas was a combination of the *Ain*, and numerous *Khadga* and *Nisana*, *Sanad* and *Sawal*. At times even judges found it difficult to trace a particular piece of law. To do away with such anomalies, and to bring about some badly heeded legal reforms, King Mahendra appointed a Law Commission under the chairmanship of Attorney General Shambhu Prasad Gyawali. This commission, helped by the work of the law commissions appointed since 1951, produced a draft which was accepted by the King and decreed as the new *Muluki Ain*.

Basic Objectives

The basic objectives of the new *Ain*, as described by the Secretary of the law commission, are: (i) to consolidate in the *Muluki Ain* of all previous laws of the *Ain*, *Sanad*, *Sawal*, etc; (ii) to eliminate from the existing *Ain* the provisions relating to the Prime Minister, *Mukhtiyar* and *Talukwala* (because they are inconsistent with the political set up under the new constitution) and to decentralise authority; (iii) to bring the *Ain* into conformity with existing conditions; (iv) to modernise methods of punishment; and (v) to make the *Ain* conform to the new constitution (which guarantees equality of law to all citizens irrespective of religion, colour, sex, caste, etc) and to remove 'caste' as a basis of determining punishments.

The new *Ain*, like the previous one, is divided into five parts, but the classification is more scientific and precise. Part one is introductory, giving the name of the *Ain*, the date of enforcement, the definitions of words, etc. Parts two, three and four deal with Procedural Law, Civil Law and Criminal Law, respectively. Part five contains provisions about dissolution of previous laws, etc. In the process of codification and reform some chapters of the previous *Ain* have been removed, the names of some have been changed, and the provisions of some others have been redistributed

among various other or new chapters.

End of Caste Discrimination

Through its social reform measures the new *Ain* ushers in a new era of social development. These measures are in accordance with the objectives and principles of the State's social policy as described in the new constitution, e.g., the abolition of untouchability, child marriage, and polygamy. Caste discrimination is abolished by prescribing for an offence the same punishment for all the castes. Child marriage is prohibited by fixing the minimum age for marriage of boys and girls at 18 and 14 respectively. But the most significant reform is the abolition of polygamy. This, however, seems to be an experimental measure as its violation is punishable by only seven days' imprisonment or a fine of fifty rupees. And remarriage is permitted if the first wife does not bear a child within ten years of marriage, or suffers from leprosy, etc. Another very interesting provision of the new *Ain* is that there must not be a difference of more than twenty years between the ages of the bride and bridegroom. Till now a man of sixty in Nepal could marry a girl of seven.

Divorce is permissible if (i) the husband or wife conspires to cause death or serious physical injury to the other; (ii) the husband and wife live apart but without mutual consent for a period of three years or more; (iii) the husband keeps another woman; (iv) the wife has illicit relations with another man; (v) the two agree to a divorce.

The new *Ain* is silent about widow remarriage. But according to the Secretary of the Law Commission, "the fact that the *Ain* does not prevent it makes remarriage possible for those widows who want it of their own accord". The new *Ain* prevents any one from forcing a woman to marry. If the woman concerned files a suit, such a marriage will be declared void and the guilty person will be punished.

The new *Ain* has also liberalised the law regarding the property rights of women. The previous *Ain* imposed many restrictions on the sale of property by women — depending on her age, type of pro-

perty, whether she was a widow or not, etc. According to the new *Ain*, any adult women can sell or transfer her property, whether parental or earned, according to her will.

The significant provisions of the new *Ain* as mentioned above indicate the advance the new *Ain* makes over the previous one. But some Nepalese have alleged that by abolishing caste as the basis of civil and criminal law, the *Ain* has done great harm to Hindu religion. But this criticism cannot be taken seriously. In the first place, the new constitution clearly mentions that Nepal is a Hindu State and that only a follower of the Hindu religion and Aryan culture can be the King of Nepal. Further, the constitution also guarantees the fundamental right to practice one's religion. No one is permitted, however, to convert another person. The chapter entitled *Adal* specifically prohibits conversion from the Hindu religion to any other. The same chapter further protects the citizen's religion in Article 10: "No person can interfere or cause interference by any means in the social customs and traditions of any other person. Any person doing so would be liable to one year's imprisonment or one thousand rupees fine".

The new *Ain* has won almost unanimous commendation, August 17, when it came into force, was a day of celebration throughout the country. There were, however, a few dissident voices. The "Dharam Raksha Mahamandal" (Conference for the Protection of Religion) opposed it on the ground that its provisions were contrary to tradition (National News Agency, May 28). The Nepal Women's Organisation expressed dissatisfaction with the *Ain* because it did not provide for registration of marriages and prescribed very mild punishment for polygamy. According to one prominent Nepali daily, caste organisations were deeply perturbed. The same paper also reported that on the day of the enforcement of the *Ain*, posters barring entry to untouchables were seen at the gates of the Pashupatinath temple, while a restaurant in Kathmandu put up a "For Hindus Only" sign. Some opponents of Mahendra wanted to know why the National Panchayat

was not consulted on the *Ain*. Some others contended that social reforms were meaningless in a land of gross economic inequalities.

Political Criticism

Most of these criticisms stem from vested interests. The orthodox religious circles are naturally perturbed at the destruction of institutions which benefited them. The anti-Royalists are similarly bound to criticise every action of the King. Mahendra promulgated the new *Ain* before April 14 (when the first session of the National Panchayat was inaugurated) when he had the sole power to make laws. There may be some justification in the

demand that the King should have postponed the *Ain* and consulted the National Panchayat. But a revolutionary and progressive measure like the new *Ain* was not likely to meet with the instantaneous approval of a heterogeneous assembly like the National Panchayat. The King, in his anxiety to reform the law at the earliest opportunity, made full use of the interim powers of law-making vested in him under Article 93 of the constitution.

But the criticism of the Nepal Women's Organisation that punishment for polygamy is very mild is justifiable. Polygamy, though widely prevalent in Nepal, is parti-

cularly common in the rural areas where it is economically advantageous to the peasants. It adds to their man-power in the fields. Whatever the punishment, it would be difficult, therefore, to enforce the anti-polygamy law in the rural areas. In Kathmandu valley educated opinion can be mobilised against this institution. But a polygamist has to pay only fifty rupees or undergo seven days' imprisonment for another wife.

This notwithstanding, the *Ain* is a great step forward. Some of its provisions are obviously transitional or experimental in nature. That is both necessary and desirable.

Around Bombay Markets

Patchy Performance

Thursday, Morning

DALAL STREETS performance last week was a patchy one, quite promising in parts but poor in some other respects. Turnover was not bad though activity was virtually confined to a few speculative counters. Tata Chemicals, National Rayon and Telco were the outstanding bright spots and they struck new high levels in the major up-swing. Improved production and hopes of decontrol helped to sustain bullish sentiment in Steels though higher levels encountered considerable resistance. Automobile shares rallied after a mild setback following the Prime Minister's vague hint about setting up an automobile unit in the public sector. Bank shares tried to steady up after the uneasiness caused by excited talks about nationalisation of banks. The so-called cash market continued to be completely listless though there appeared to be a modest revival of interest in new issues which are now being placed on the market.

All eyes were on Bhubaneswar last week. But it was not for watching the progress of the debate on the draft resolution on democracy and socialism. The market was deeply concerned over the health of the beloved Prime Minister who has been advised complete rest. Market sentiment was swayed more by Shri Nehru's health bulletin than by what the Congress leaders had to say on democracy and socialism.

Anxiety about the Prime Minister's health touched off considerable haste selling on a few occasions and the selling was quite pronounced on Wednesday evening. The market turned a little steadier when the latest medical bulletin reported a satisfactory improvement in the Prime Minister's health. The debate on the Congress Working Committee's draft resolution on democracy and socialism has been quite a tame affair and once the market is relieved of anxiety about Shri Nehru's health, equity prices can be expected to push ahead in quite a significant manner. Of course much will depend on how the Finance Minister will modify the fiscal policy in order to stimulate production, saving and investment. The market is anxiously awaiting to know how T T K is going to tackle the question of unaccounted money which has long been agitating his mind.

Cotton.

Futures Hit New High

AFTER minor technical adjustments the cotton futures market pushed its way into new high ground last week. The March contract which had reacted from Rs 737.25 on 26th December to Rs 727 on 2nd January was up again at a new high of Rs 738.75 on the 6th and thereafter moved irregularly between Rs 738 and Rs 734.50. At its Wednesday's closing of Rs 737.50

it showed a net gain of Rs 7.75 per 3 quintals over the week. The spread between the March and May contracts gradually increased from Rs 8.75 to Rs 12, the distant position being quoted at a discount reflecting mainly the poor prospect of tenders in the nearby March contract. Normally, the distant contract should be quoted at a premium in order to cover the cost of carrying cotton during this period.

Last week's improvement in futures was due more to heavy short covering than to any aggressive bull support. Bear covering seemed to have been touched off by the continuing strength in the spot material. Keen spinner demand for quality cottons has pushed up the prices of superior varieties very near the ceiling. Most varieties are quoted at levels where buying for stock building is not remunerative in that the cost of carrying cotton would push up prices beyond the statutory ceiling. The keen demand for indigenous superfine varieties is due to the shortage of imported cottons. While the scope for any further appreciable rise in spot cotton prices seems limited as prices are already fairly close to the ceiling, not many observers are inclined to expect any big decline from the current levels in the immediate future.

Export sales registered up to 4th January are placed at 1.10 lakh