

A former Supreme Court judge was elected vice president of Nepal. This may not sound particularly provocative, unless you also know he had been demoted from the bench as a result of allegations he accepted a bribe to free a convicted smuggler caught with narcotics while on bail awaiting an appeal. This startling development took place just a few weeks after a known criminal, who allegedly carried out bombings in the capital and committed rape and murder, was elected a member of the Constituent Assembly.

The Need to End the Culture of Impunity

Political uncertainty exists in Nepal because there is a struggle for power between several political parties. This creates opportunities for individuals with shady or criminal backgrounds to take up key political positions. This is a nation that struggled with 10 years of communist insurgency and now faces major challenges, including its transition from a monarchy to a republic.

Nepal's Vice President Pramananda Jha remains a controversial figure because of the allegations against him and his record as a judge. He was investigated and then demoted to an appellate court judgeship, where protests from lawyers eventually forced him to end his career as a sitting judge. But, that did not stop him from winning the position of vice president. The victory was a product of his membership in the Madhesi People's Rights Forum (MPRF), the fourth largest political party in Nepal and an organization with enough votes to swing the power equation.

The MPRF is a relatively new party that emerged after violent ethnic protests took place in southern Nepal in 2007. People in that area of the country have been demanding autonomy and greater rights after what they claim has been decades of discrimination by rulers. As a result, the MPRF has become a powerful group, even though most of its leaders have questionable backgrounds.

"It is unfortunate that someone with a bad record like Jha can be elected to an esteemed position like vice president. This is the result of anomalies in Nepalese politics. If he had been punished for his crimes, this would never have happened," Suresh Lal Shrestha, an advocate who led the campaign against Jha, said.

The committee of Supreme Court judges who conducted the probe recommended action against him, stating he was guilty of unethical activities. One of the committee members, speaking on condition of anonymity, said, “We found him guilty of the charges but not much action was taken against him except for the demotion,” because Nepal’s Parliament was disbanded for several years.

Endemic Corruption?

Jha is not the only one who was able to take advantage of the unstable political situation in Nepal. Several politicians with shady backgrounds won election to the Constituent Assembly in April 2008.⁴

Most notably, independent candidate Baban Singh, who had been hiding out for months while on the Nepal police’s most wanted list. He campaigned while he was in hiding, won the seat and then took the oath without even being detected by the authorities.

When Singh finally emerged in public, it was too late for the police to catch him. The law states that a member of the assembly cannot be arrested while the assembly is in session — and the assembly is expected to remain in session for at least two years.

The police in Singh’s area express frustration about not being able to arrest a criminal. To add insult to injury, they are required to salute him because of his position as an assembly member.

“He is a criminal, but because he is an assembly member, we can’t arrest him. But the case against him is still open and there is an open warrant for his arrest. But we can’t do anything right now,” Jaya Bahadur Chand, the police chief in the area, said.

Corruption Compelled: Even the Honest are Compromised

Most politicians admit to the anomalies that exist in the political arena, but they also say that the political situation compels them to do things they normally would not agree to.

According to Pradeep Gyawali of the Communist Party of Nepal (United Marxist-Leninist), people like him are being forced to go along with their party’s decisions, no matter how wrongheaded they might be. His party supported Jha

in the vice presidential election and became part of the new coalition government.

“To save the coalition with other parties and comply by the party’s orders, we were forced to vote for such controversial figures,” Gyawali said.

Gagan Thapa, a legislator and youth leader from the Nepali Congress Party, agreed: “Personally I feel I have done wrong by voting for Jha, but I was compelled to for political reasons.”

Thapa added that these events are starting a dangerous trend toward acceptance of “dirty figures” in positions of political leadership.

Several politicians who have been charged with corruption have been elected to the Constituent Assembly. Among them is Jaya Prakash Prasad Gupta, known for financial irregularities while he served as Minister for Communication and Information.

Gupta switched parties to the MPRF, where he became an active leader. He succeeded in returning to power by climbing the ethnic ladder (he is a Madhesi from southern Nepal) and again became a minister, this time in the new government.

Bijaya Kumar Gachchedar, a colleague of Gupta’s, also won in the election despite his past history of political corruption.

The CIAA

The Commission for the Investigation of Abuse of Authority (CIAA), the body with authority to investigate, charge and file cases against top officials and politicians, filed several cases against these politicians, but was unsuccessful in throwing any of them behind bars.

The CIAA’s record shows that only one conviction resulted from the 40 high profile cases they filed in the past four years. The rest of the accused have gone free. Otherwise, the agency has only been able to convict low-level government officials.

“It is only those low-level government workers who have no political backing who are convicted. The real corrupt and unethical politicians and officials get away easily because they have political backing. Because Nepal is a small society, these high profile people have a strong

social network and relatives who help them out,” Prakash Osti, a senior advocate and anti-corruption activist, said. “It is only the small fishes that get fried while the big ones get away easily.”

Is the Judiciary Above the Law?

Court cases can take years to reach settlement, but it is said that getting the right amount of money into the right hands will push a case through, and almost guarantee a positive ruling.

While it is common knowledge that judges are bribed by agents to sway cases, corrupt behavior in the judiciary has not gone without protest. Court employees took part in a three-day strike in August 2007, demanding an end to bribery and financial irregularities. That work stoppage was risky because the law forbids the press and public from criticizing or accusing judges; those who do face charges of contempt of court.

The Nepal Bar Association investigated allegations of corruption in the judiciary and published a report citing widespread irregularities, including the taking of bribes, nepotism and the practice of ruling in favor of political supporters.

By law, judges can only be removed or punished if impeached by the parliament.¹⁰ Yet no judge has ever been impeached during 18 years of democratic rule in Nepal.

Uncertain Pushback

It is not that the CIAA has not tried to do its job. On August 17, 2002, it began a campaign against corrupt top officials and politicians, which spread fear among them, but the campaign lasted for only about two years.

Since then, the CIAA has become an almost inactive tool in the fight against corruption. The government has failed to appoint a commission chief or additional commissioners to run the agency. As a result, corrupt politicians and officials have little to fear from prosecution.

The CIAA has become a page in history, its activities only remembered in books and documents. CIAA Commissioner Bedh Prasad Siwakoti says this is because the country is passing through a transitional phase and the commission has not been able to dedicate itself fully to rooting out corruption.

He further blamed the courts for not taking the CIAA seriously, “We oppose the decisions by the court to free corrupt officials in the face of the ample evidence that we provided,” Siwakoti said. In the absence of watchdog agencies like the CIAA, officials and politicians have nothing to fear and are openly involved in corruption and irregularities.

Looking Toward the Future

Since the end of the communist insurgency and the change from a monarchy to a republic, Nepal has been a country in transition facing many uncertainties and much instability.

The Constituent Assembly, elected in April 2008 with the task of rewriting a constitution within the next two years, has not even begun its task. One of the key components of the new constitution should be to ensure good governance and a clean administration. For this to take place, the assembly needs to adopt laws that ensure top officials and politicians are free of corruption, and agencies like the CIAA are active and have full political support.

