

Former Chief Justice Kalyan Shrestha in ‘Towering Judges’ around the world

A recent book published by Cambridge University Press lists former Chief Justice Kalyan Shrestha as one of the most prominent judges in the United States, the United Kingdom, India, Singapore, South Africa and other countries.

Dr. Mara Malagodi, an associate professor at the Chinese University of Hong Kong, is one of the few foreign scholars to have a good knowledge of Nepal’s current constitution, its drafting process, and its constitutional and judicial history. His critical articles on the constitutional tradition of Nepal and the constitutions that have come into existence at different times have been published as part of many journals and books.

Malagodi has written a long chapter on former Chief Justice of Nepal Kalyan Shrestha in his book ‘Towering Judges: A Comparative Study of Constitutional Judges’ recently published by Cambridge University Press.

Published by Cambridge University Press as part of a series of comparative studies of constitutional law and policy, the book is edited by Rehan Abeyratne, an associate professor at the Chinese University of Hong Kong, and Iddo Porat, an associate professor at the College of Law and Business, Israel. In which 19 famous and extraordinary judges of the last century from 14 different countries have been written.

Chief Justice of Australia Sir Anthony Mason (1972-95), Chief Justice of India PN Bhagwati (1973-86), Chief Justice of South Africa Arthur Chaskelson (1994-2005), Lady Hale (2009-20), Chief Justice of the United Kingdom Along with Warren (1953-69), Charles Evans Hughes (1930-41), William Brennan (1956-90), Hugo Black (1937-71), Owen Roberts (1930-45), Nepal’s best are listed as ‘Towering Judges’.

Only judges of the Supreme Court or the Constitutional Court are included in this list, especially judges in the field of constitutional law. The two editors wrote in the preface to the book, “There are two reasons. First, we want to contribute to the field of comparative study of constitutional law. Second, constitutional law is inherently more political in nature than other areas of law, and it contributes more to a larger society.”

Malagodi is a professor who comes to Nepal and interacts with people in the field of law in Nepal. She had a long talk before writing about former Chief Justice Shrestha in this book. The study of his decisions and the topics written by Nepali and foreign media about Shrestha have been examined. Although the style and subject matter of the writing is not the same as the ‘Judge’s Biography’, in this article Malagodi paints a picture of the entire judicial life of former Chief Justice Shrestha.

Judge: At the summit or among the people?

Equally interesting is the opinion expressed by former Chief Justice Shrestha about the position of a judge in an article published on ‘Towering Judges’ around the world. “Judges should not be at the top,” he told author Malagodi. “The judge should be able to meet the expectations of the people. ‘Towering judges’ is a way to separate a judge from the reality around him. I want to be on the ground, not on top, as a judge.”

The book praises former Chief Justice Shrestha for taking him to the top despite difficult circumstances. Towards the end of the Maoist armed war in Nepal, Shrestha became a Supreme Court judge from the then Chief Justice of the then Court of Appeal in August 2008.

A decade later, Shrestha witnessed the ups and downs of Nepali society and politics from the judge’s chair. The Cambridge publication states that Shrestha, who witnessed the transition from armed

conflict to constitutional democracy, has played a high role in protecting the rights of citizens and the independence of the judiciary through judgments.

The book states, “A series of dramatic developments during the tenure of Judge Shrestha created a crisis in the very existence of Nepal’s judiciary, especially the Supreme Court. With such a situation, Shrestha fought with his constitutional role and professional integrity.”

Malagodi has mentioned that political parties have tried to weaken the judiciary while drafting the constitution. “Political parties aimed to reduce the power of the judiciary during the drafting of the constitution,” she wrote. “The 2072 constitution has weakened the Supreme Court in three ways. First, a constitutional bench has been set up within the Supreme Court as the sole body to test the constitutionality of the law. Which has created a stalemate in the process of resolving constitutional disputes. Second, the process of impeachment of a judge is very simple. There have been two failed attempts in 2073 BS and 2074 BS. And third, members of the executive have considerable influence in bodies such as the Judicial Council and the Constitutional Council, which recommend the appointment of judges and chief justices to the Supreme Court. On top of that, we have to go through the process of parliamentary hearing. “There has been an attempt to make the Supreme Court more powerless and Shrestha has consistently stood against it,” Malagodi wrote.

In his book ‘Towering Judges: A Comparative Study of Constitutional Judges’, it is mentioned that Shrestha worked on three strategies during his tenure in the Supreme Court. “He fought for the independence of the judiciary at any cost. He gave priority to the protection of the fundamental rights of the citizens. And, worked to increase the institutional capacity of the Supreme Court,” the book states.

During his decade-long tenure in the Supreme Court, Shrestha has made many decisions to protect transitional justice, gender equality and the socio-economic rights of citizens. The book, which cites him as an example, discusses a series of orders on two of the many other issues that former Chief Justice Shrestha has fought with the executive.

Among them are the orders he gave in many disputes between the then CPN (Maoist) -led government and the Nepal Army, and the dissolution of the first Constituent Assembly. Due to his orders regarding the Nepal Army, the YCL, a sister organization of the then ruling party Maoists, staged a violent street agitation in Kathmandu and even burnt Shrestha’s idol. The book states that despite such political adversity, it is committed to the best judicial integrity.

When the Judicial Council headed by Chief Justice Shrestha recommended 11 judges to the Supreme Court in 2072 BS, people from political background were also involved. The decision was widely criticized. The book also addresses the ongoing criticism of the subject.

Writer Malagodi asks former Chief Justice Kalyan Shrestha what his legacy is. Shrestha gives a short answer, “My decisions.” “Based on the immediate findings, I disagree with Judge Shrestha,” Malagodi wrote. “I think, his legacy is not limited to judgment. It’s wider than that.”

This book seeks to assess the impact of Chief Justice Kalyan Shrestha on the constitutional changes that have taken place at a critical juncture in Nepal’s democracy and history. “Chief Justice Shrestha stood with confidence and moral integrity in the midst of Nepal’s political turmoil,” the conclusion said. “He fought with professional integrity to prevent the constitutional role of the Supreme Court from being shattered and ultimately preserved his original identity as a protector of justice.”