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HUMAN RIGHTS AND AGRARIAN RELATIONS IN NEPAL

(A Study of Interrelationship)

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FOREWORD

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I am glad to introduce this study report towards the relationship between human rights and agrarian relations in Nepal.

European Human Rights Foundation entrusted ICJ/Nepal Section to implement activities towards relationship between human rights and agrarian relations in Nepal. Nepal is an agriculture country with predominance of rural farmers. Social status-structure is linked with land holding and land resources one has acquired at his/her disposal.

This study report seeks to indicate relationship between human rights and agrarian relations in the country. Political rights can not be enforced in the context where social, economic and cultural rights are neglected. The Constitution of the Kingdom of Nepal, 1990 guarantees civil and political rights whereas social & economic rights are yet to be brought to the realm of enforceability.

Thanks are due to Mr. Mukti Rijal, Dr. Amir Ratna Shrestha and Mr. Krishna Man Pradhan, Director of ICJ/Nepal Section for their efforts in the preparation of the report. I also express thanks to Mr. Ganesh Man Shrestha Computer Programmer and other who cooperated in the preparation and publication of the report.

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HUMAN RIGHTS & AGRARIAN RELATIONS

Setting

International Commission of Jurist/Nepal Section is a non-governmental organisation committed to rule of law and legal protection of human rights. It was established in 1982. European Human Rights Foundation provided grant to ICJ/Nepal Section to undertake activity towards relationship between human rights and agrarian relations in Nepal.

ICJ/Nepal Section organised two micro level interactions on the relationship between human rights agrarian relations and prepared the present report during 1994.

Nepal is an agricultural country. The problem of landlessness has been very much acute in this country. Even a landownership title is

needed for claiming citizenship in the country. Land titles make a person creditworthy and socio-economic entitlements are correlated with the size of land holding. This report seeks to bring to fore the state of agriculture and the relationship between agrarian relations and human rights.

Methodology

The report draws upon the primary and secondary data sources. The secondary sources consulted for the study are primarily the books reports and the relevant theme papers while primary data sources are the outcome of the proceedings of the two micro-workshops organised in two places in the country.

Chapter Scheme

The study report consists of seven chapters. The first chapter provides a short socio-economic profile of Nepal. The second chapter deals with state of farm productivity in Nepal. The third chapter takes a look at the agrarian structure or the state of agrarian relations in the country. The chapter four of the report discusses land reform measures undertaken in the past. The chapter also takes a critical look into the reasons why the past

land reform initiatives failed. The major highlights of the Land Act (Fourth Amendment) are also included in the chapters.

Chapter five discusses the relationship between democracy, development and human rights. Moreover, chapter six provides an elaboration on the human rights implications of the existing agrarian relation in country.

Chapter seven sets forth some conclusions and recommendations.

Limitations

The report is of exploratory nature and it provides base for further studies and investigations.

Chapter - 1

SOCIO ECONOMIC PROFILE OF NEPAL

Nepal is a mountainous country sandwiched between China and India. It has an area of 147,181 sq. km. The country has a population of about 20 million. The country has varying geographical features - mountain, hill & terai (plains). Due to difficult physiognomy the arable land in Nepal is limited. The population is predominantly rural. The urban population is 10 per cent of the total population. A short description of the state of socio-economic development is provided below—

Agriculture

Development of agriculture has been associated with the advancement of nation. Improvement of living standards, industries, trade and national income is not possible without development of agriculture. Almost all the population of Nepal is engaged in agriculture for their livelihood. The tools, techniques and

support systems of the agriculture are traditional. Still peasants are compelled to depend on monsoon rain for proper cultivation. Agriculture contributes 66 percent of the GDP and 80 percent of the total export earning.¹ Agriculture has contributed about 56% of the total GDP in 1990/91. It accounts for about 75% of export and absorbs more than 90% of the labour force. The ratio of agriculture production is declining in each and every year. It is mainly due to the fragmentation of land, soil erosion, land degradation and so on. Besides, the geological construction of Nepal is also very weak and fragile.

Agriculture development is possible by way of profit planning. Farm planning is an effective way to determine a more profitable and efficient way of combining and allocating farm resources. Each and every farmer must do farm planning about what to grow, how much to grow, how to utilize limited resources. Economist Dr. Y. P. Pant rightly observed:

“For maximum utilization of resources planning in agriculture should proceed at the

¹ Basic Principles of the Sixth Plan 1980-85, NPC, HMG of Nepal, 1978, pp 1-3.

micro level. Farm plans would be prepared for each farmer initially by the budgeting methods. Programming may be adopted, later on. If the cultivators are convinced of the merits of plans and if their income rises it will not only benefit the farmers by maximizing higher returns but also result in the most profitable way of using limited resources.²

Cultivated land in Nepal for the purpose of agriculture is estimated to be around 26532.70 hectares. It comes about 18 per cent of the total area of the country. Terai holds major portion of agricultural land which account for 57% of the total cultivated area.³ The rest of 43% cultivated land covered by hills and mountain area. Agriculture has been the main source of livelihood for the majority of population in Nepal. Different types of fruits, vegetables and foodgrains and so on are the main products of agriculture in Nepal. None of the sector namely industry, trade, commerce and business generate income without sufficient utilisation of natural

² Y. P. Pant and S.C. Jain, *Agricultural Development in Nepal*, 1969.

³ *Statistical Pocket Book 1992*, CBS, NPC, p. 3

resources and development of agriculture farm system. Agriculture plays pivotal role in economic sector in Nepal. About 54% of total GDP was generated from agricultural sector in 1989/90. This was the highest among the South Asian countries. Agricultural trade balance was good during 1974/75. Rs. 251 million was surplus in agriculture trade. But, now it is deteriorating. Trade balance was negative at Rs 1178 million in 1989/90. Major reason was the rapid decline of per capita agricultural production than per capita domestic consumption of agriculture production.⁴

Agriculture was given top priority in Nepal in almost all planning periods. Still there has not been satisfactory improvement of agricultural conditions in the country.

Industry

The modern age is the age of industrialisation. Industrialisation is essential for the effective economic development of the country. It is aptly observed that industrialisation is an integral part of national plans to accelerate the

⁴ Eventually the contribution of agriculture to foreign exchange earnings has declined. *Review of the Agricultural Sector, 1989/90* HMG/N. Ministry of Agriculture, Economic Analysis Division, 1990. p. VI.

rate of economic development in Nepal.⁵ In other words, low rate of industrial development signifies that the country is in the pre-industrial stage of development. The use of the terminologies "pre industries" or "underdeveloped" is synonymous for poor or underdeveloped.⁶ Industrialisation can be one of the strategies in increasing the level of income. Industrialisation has been recognised as the essential and strategic element in the economic growth of developing countries.⁷ It is generally agreed that industrialisation in the Eastern and South Eastern Europe is the general interest not only of those countries, but of the world as a whole.⁸ Industrialisation is a way of achieving a more equal distribution of income in depressed areas at a higher rate and a lower than a rich areas.⁹

⁵ *Industrial Policy, 2037*. HMG, Ministry of Industry and Commerce, p. 1.

⁶ Gunnar Myrdal, *Asian Drama, An Inquiry Into The Poverty of Nations*, 1972, p. 29.

⁷ UN, *Industrial Research & Industrialisation of Developing Countries -Problems and Prospects*, UNIDO Monographs, New York, 1967, p. 7.

⁸ See generally, Hollis B Chenery, *The Role of Industrialisation in Development Programmes*.

⁹ P. N. Rescastein-Roden, *Problems of Industrialisation of Eastern and South Eastern Europe, the Economics of Underdeveloped*, A. V. Agrawal and S.P. Singh (eds.) Oxford University Press, 1971, p. 245.

Industrial development of Nepal is still at a very premature stage. Industrial development in modern terms was started very late. The formation of Udhog Parishad (Development Board) by the Charter of *Khadga Nisana* in 1935 can be called as initiation of process towards industrialisation in Nepal. The first and foremost legislation to help in the process of industrialisation was Nepal Company Act, 1936 B.S.

Industrialisation started in Nepal from the beginning of planned economic development. Industrial policies were formulated under the planned economic development. The industrial policies were mainly concentrated in the area of import substitution and export promotion. Ironically, one has to admit that the industries have not made any substantial progress both in the area of import substitution and export promotion. As a result, the industrial sector contributes less than 10 per cent of the GDP and very small amount of export carryings.¹⁰ Nepal is not yet able to afford adequate basic minimum needs to the people despite three decade of

¹⁰ Mahesh Banskota, *The Nepalese Industrial Sector Memeograph*, CEDA, Kathmandu, Nepal, 1979. p. 1.

planning experiences. In other words, Nepal is not yet able to the growing tendency of poverty. Some planned and conscious attempts were laid out only after the initiation of the development plans in 1956, to promote the industrial sector of the country. The first five year plan (1956-61) gave utmost priority to the industrial sector. This sector could not effectively contribute to the national economic growth. The share of the total industrial sector to GNP is only 10.07 percent in 1976/77 and employment share is 10 percent.¹¹

The government has tried to extend various facilities to the industrialist by formulating suitable investment-friendly industrial policies. The first industrial policy was formulated in 1957. It was not very effective. New industrial policies were formulated in 1962, 1974 and 1981. The industrial policy of 1981 is relatively more extensive and detailed in nature unlike the previous policies.

The Third Five Year Plan (1965-70) also intended to develop industries.¹² The third five

¹¹ Naresh Banskota, *A Study of the Nepalese Industrial Sector*, *The Economic Journal of Nepal*, EIC TU, vol. - 2 No-4, 1979.

¹² *Third Plan*, NPC, Kathmandu, 1965 p. 92.

year plan included the industrial programme with a view to promote, modernise and expand import substitution and export promotion industries and other basic industries for agriculture. The Fourth Five Year Plan 1970-75 gave topmost priority efforts to private sector industry. But there was not classification of industries for private and public sector in the plan policy. The Fourth Plan stressed:

"It can not be said that private sector will set up all the basic and feasible industries capable of making special contribution to the industrial development of the country. The government will attempt to establish paper, fertilizer and cement industries with the aim of gradually selling them to the private sector in the future.¹³

The Fifth - Five Year Plan (1976-80) focused on boosting industrial production, increase productivity and add quality to output.

The Sixth Five Year Plan 1980 gave priority also to industry and commerce. The sixth plan targetted to uplift the small and cottage industry.

¹³ Y. P. Pant. **Planning Experiences**. Sahayogi Prakashan, Kathmandu, 1975 p. 30.

The Seventh Five Year Plan (1985-90) also accorded second priority to the industry with a view to industrialise the country. The plan gave top most priority to the private sector by reaching various facilities.

The Eighth Five Year Plan laid emphasis on industrial development through encouragement to private sector investment. The liberalised economy characteristics of privatisation of state owned enterprises has been the hallmark of the Eight Five Year Plan. Ninth Five Year Plan is being formulated for the following years. Twenty year planning perspective is also discussed these days.

Employment

Better utilisation of labour force can achieve economic development. Most of the developing countries are facing problem of population growth for economic development. But unchecked growth of population tends to neutralise the effectiveness of development activities. In fact, human resources is one of the most important resources for economic development. It is basic and plays vital role in the formation of the economic development policy.

The problem of employment is becoming more and more acute. Employment structure in our economy is such that nearly 36 per cent of the population is unemployed, 63 per cent is disguised unemployed, of which 36 per cent and 63 per cent in urban and rural areas respectively.¹⁴ It leads to aggravation of under employment and unemployment in Nepal.

Agriculture absorbs 94% of the total human resources, and only 6% is absorbed in non-agricultural sector.

The rate of human resources (labour force) utilised for economic activity has been declining from 84.3% in 1952-54% to 83.8% in 1961 and to 67.4% in 1971. The rate of inactive human resources is increasing in each census.¹⁵

Human Resources Development

The modern economics are confronted simultaneously with two persistent man-power problems, firstly, the shortage of persons with critical skills in the modernising sector and

¹⁴ Ram Bahadur KC, *Village Industrialisation*, Vikas. A Journal of Development, NPC/N. vol. 3, no. 2. April 1989, p. 14.

¹⁵ - *Population Census of Nepal, 1952-54, 1961 & 1971.*

secondly surplus labour in both the modernising and traditional sectors. The strategy of human resources development is concerned with the two fold objective of building skills and providing employment for unutilised or underutilised manpower. The shortage and surplus of human resources are not separate and distinct problems. They are intimately related. Both have their roots in the changes which are inherent in the development process. Both are related in part to education. Both are aggravated as the tempo of modernisation is quickened. The shortage of persons with critical skills is one of the contributing causes of the surplus of people without jobs. The manpower problems of two countries are not exactly alike.

The manpower shortage of modernising countries is quite easy to identify. In all modernising sectors there is likely to be shortage of highly educated professional manpower. Such manpower usually prefer to live in the major cities than in the rural areas. Therefore, their shortage is magnified by their relative immobility. Also their skills are not used effectively. In West Africa and also in many Asian and Latin American countries graduate engineers may be found managing the routine operation of an

electric power sub station or doing the work of draughtmen. The shortage of technicians, nurses, agricultural assistants, technical supervisors, and other sub professional personnel is generally even more critical than the shortage of fully qualified professionals. The reason could be many. The modernising countries usually fail to recognise that the requirements for such type of manpower exceed by many times those for senior professional personnel. In Nepal, the few persons who are qualified to enter a technical institute may also be qualified to enter a university. They naturally prefer to enter a university because of a higher status and pay. There is shortage of top level managerial and administrative personnel in both the private and public sectors. Teachers are almost always in short supply because they tend to leave the teaching profession if more attractive jobs become available in government politics, or private enterprise.

There are also shortages of craftsmen of all kinds as well as senior clerical personnel in most modernising countries. The analysis of human resources development is parallel and complementary to the study of the processes of savings and investment in the material sense. In designing a strategy for development, one needs to

consider the total stock of human resource. The rate of modernisation of a country is associated with both its stock and rate of accumulation of human resources. High level of human resources is needed to staff new and expanding government services, to introduce new systems of land use and new methods of agriculture, to develop new means of communication, to carry forward industrialisation, and to build the educational system.

The process of change from a traditional society to the modern one requires very large amount of human resources. The rate of accumulation of strategic human resources must always exceed the rate of increase in the labour force as whole. The rate of increase in scientific and engineering personnel may have to increase even more rapidly. Clerical personnel and craftsmen may require to increase at least twice as fast as the labour force.

In Nepal, the rate of increase in human resources will need to exceed the rate of economic growth. Nepal has already faced with critical shortages of high level of manpower. The rate of annual increase in high level human resources to the annual increase in national income may need to be as high as three to one or even higher in

those cases where expatriates are to be replaced by citizens of the developing countries. The accumulation of high level manpower to skill bottlenecks is a never ending process. Due to various reasons, the critical skills of manpower and high level of manpower are eager to leave Nepal and to settle abroad rather than to contribute for their homecountry.

The manpower problems cannot be same in any two countries. Some may have serious surpluses and other have very specialised kinds of skill bottlenecks. In Nepal, specialised manpower is not sufficient. Planners need to make a systematic assessment of the human resources problems in their particular countries. Such assessment may be called manpower analysis. Manpower analysis cannot always be based on an elaborate or exhaustive survey. It is seldom possible to calculate precisely the numbers of people needed in every occupation at some future time. But, whether statistics are available or not, the purpose of manpower analysis is to give a reasonably objective picture of a country's major resources problems, the inter-relationships between these problems, and their causes, together with an informed guess as to probable future trends. Manpower analysis in both qualitative, and

it must be based upon with an informed guess as to probable future trends.

The major human resources problems in Nepal can be summed up as follows:

- (a) a rapidly growing population
- (b) mounting unemployment in modern sectors of the economy as well as widespread under employment in traditional agriculture.
- (c) shortage of persons with the critical skills and knowledge required for effective national development.
- (d) inadequate or underdeveloped organisation and institutions for mobilising human effort and
- (e) lack of incentives for persons to engage in particular activities which are vitally important for national development.

Chapter - 2

STATE OF FARM PRODUCTIVITY IN NEPAL

Nepal grows different types of agriculture products. They can be broadly grouped under food crops and cash crops. Among the crops paddy, maize, wheat, millet, potato, onion, jute, tea, sugar cane, tobacco, oilseeds are principal and important.

Paddy: It is the main food crop which is mostly produced in West Terai and East Terai because of sufficient water hot climate and clay loam. Among 75 districts of Nepal, around 53 districts produce paddy as a main crops. Paddy is also produced in Kathmandu and Pokhara valley. Around 48% area is covered by paddy production in total area of food crops. In comparison to 1992/93 area under paddy crop increased dramatically which accounted for 1324 thousands hectare in 1992/93 and 1454 in 1993/94. Second main crop is maize in Nepal which is the main

food grain. Hot-wet climate terrace land is essential for maize crop. So, east, west mountain areas are suitable for maize production.

Potato:- Potato is main cash crop in Nepal. It is especially used for curry item by Nepalese people except in Himalayan area. For Himalayan people it is a main food for their livelihood. Light clay loam is suitable for potato crop. Sufficient irrigation is also essential for it. As such, Terai area is famous for potato production. Per hectare productivity is also higher in Terai area comparison to other areas. However, it is common crop in Nepal. Total productivity of potato is 8.62 thousand m.t. per hector in Nepal. Area covered by potato cultivation is 87 and 89 thousand hectar in 1992/93 and 1993/94 and total production is 733/780 thousand m.t. in 1992/93 and 1993/94 respectively. This data shows that the area is extended whereas production is raised significantly.

Sugarcane:- Sugarcane is also an important cash crop in Nepal. Sugarcane is as a main raw materials for organised industries like Morang Sugar Mill, Birjung Sugar Mill and so on. It is also a main item of import substitution good in Nepal. So it plays important role to save foreign currency. Middle Terai area is famous for sugarcane

production. In the same way sugarcane crop is produced in east west Terai area. Sugarcane crop is also produced in Kathmandu valley. At present, the productivity of sugarcane is 34. 89 thousand m.t. in Nepal. Total sugarcane cultivate area is covered by 83 and 40 thousand hector in 1992/93 and 1993/94 respectively. While total production is 1366 and 1431 thousand m. t. in 1992/93 and 1993/94 respectively which shows positive trend.

Jute:- Jute is most important cash crop in Nepal. It plays vital role in Nepalese economy. Fertile land and plain area hot wet climate, sufficient irrigation are necessary for jute production. These facilities are available in east Terai area of Nepal. So east Terai is famous for Jute production. Carpets, jute bag, jute thread are produced by Biratnagar Jute Mill and Raghupati Jute Mill which are totally based on raw jute production. Raw jute as well as jute production are exported to foreign countries and can earn lot of foreign currencies So, it is known that jute crop is very important for international trade as well as industrial development. The productivity of jute is 1.27 thousand m. t. per hectare. Total area of jute cultivation is 9 thousand hector in 1992/93 and 1993/94 while jute production is 10 and 11 thousand m. t. in 1993/93 and 1993/94 respectively.

Jute production depend on international market At present, due to the instability in international demand and price quantity of jute production is declined which is not favourable for Nepalese economy.

Tea:- Tea is also one of important cash crops in Nepal which is used for guest hospitality. Hot climate, sufficient irrigation and terrace land is good for tea cultivation. Terrace mountain land is more suitable for tea crop. History of tea production is not so long. It was started since 1920 in Illam district. After that, tea production began in 1922 in Soktim. For the purpose of massive increase in tea production, Nepal Tea Development Corporation was established in B. S 2023 under the Company Act, 1964. At present, Illam, Soktim, Kanyam, Tokla, Barne and Baradashi area are the main tea production project under government sector. At present under tea cultivation is 566.8 hectar and total production is 124 m.t. In the same way several tea estates are under private sector. Area under private tea cultivation is 1060 hectare and total production is 318 m.t. At present 2054 areas are covered under tea cultivation and total production is 900 m.t.

Tobacco:- Tobacco is produced in all districts of Terai and inner Terai. However, Saptari,

Sunsari, Morang, Dhanusa, Mohattari, Sarlahi, Siraha and Parsa districts are popular for tobacco productions. Suitable climate and facilities are available in these districts. Actually, sandy land terrace for tobacco production are suitable for tobacco production. Due to the establishment of Janakapur Cigarette Factory in B. S. 2021 and Tobacco Development Company Limited on B. S. 2028, the productivity of tobacco is raised significantly. Tobacco cultivation is covered by 7 thousand hectare in 1992/93 and same area in 1993/94 and total production is 7 thousand m.t. in 1992/93 and 1993/94. This data show that, in spite of many problems, area under tobacco cultivation as well as total tobacco production is not changed in 1992/93 and 1993/1994.

Man-land ratio:

Uneven man-land ratio is a main obstacle of agricultural development. A favourable man-land ratio is severely limited. Even in future, fast increasing population growth will strain the available land resources. Total 1.6% population is increasing per year while only one source of employment sector is agriculture. The existing situation of over crowding in agriculture sector has created a state of under-employment of labour on land in the hilly and mountainous regions.

Even if part of labour is withdrawn from agriculture to other sectors, total output of agriculture can be increased. The contribution of surplus labour to output may be positive. Due to the high man-land ratio, an average size of land holding should naturally be small. The existing land under plough is being more and more fragmented and sub-divided. On the one hand most of the holdings are small for an economic operation of land on the other hand, it has caused unnecessary loss of land in boundaries and lower yield of crops. The cultivation of land in relation to the existing labour force is limited. So rent is fixed arbitrarily at high rates. However, the Land Act of 1964 had fixed the rent at as high as 50% of gross output of main crop. It is carried on in an old fashion with traditional and outdated methods of productions. Rent is fixed more than 50% of main crop by landowners.

Agricultural credit survey data has indicated that institutional credit agencies served only 24% to farmer family whereas 76% borrowed from non-institutional sources. Non-institutional sources have charged varied interest rates, which are from 10 to 50%. Actually small and marginal farmers are victims of high rate of interest. Therefore, economic poverty is the one of main

evils that hindered growth of agriculture in Nepal.

Moreover, marketing facilities are great importance for agricultural development. However these facilities are not available. Of the total number of 640 rural markets in the country 480 or 75% are concentrated in Terai, while 100 or 25% in the accessible hilly regions. The inaccessible hills and upper hill regions do not have marketing facilities. There is extreme difficulty of transport and communication in most parts of the country. Efficient marketing of agricultural products could not be possible, and as such the growth of agriculture has been seriously affected.

Finally, irrigation facilities are also very essential for agricultural development which is far from adequacy. Agriculture is excessively dependent on monsoon rainfall in Nepal which is not dependable. Winter is almost dry and almost rainfall in June to August. So, dual crops is not possible. Therefore the deficient supply of water is the main cause for the low productivity of agriculture in Nepal.

Chapter - 3

AGRARIAN STRUCTURE IN NEPAL

Nepal is identified as one of the least developed and poorest countries in the world. According to the Capability Poverty Measure (CPM), an alternative measure of poverty introduced in the Human Development Report 1996, Nepal falls exactly at the bottom list of 101 countries. Based on the Capability Poverty Measure, Nepal has an average 77% of population suffering from deprivation of capability shortfalls in three basic dimensions of human development; living a healthy well nourished life, having the capability of healthy reproduction and being literate and knowledgeable.¹⁶

There are several perspectives adopted by researchers towards understanding poverty. But

¹⁶ Dr. Kishor Kumar Gurugharana, Social Indicators of Poverty in Nepal, SPOTLIGHT, Dec 6-12, 1996.

two are very important. In the first, the terms of poverty are hinged on economic principles. They are defined by a person's capacity in economic transactions-buying items for consumption, and selling productive services. This definition of poverty measures the extent of a person's poverty according to the level of total income. In the second, poverty is defined under the concept of the culture or subculture of poverty. This approach tries to understand poverty and its associated traits-economic, social, and psychological- as forming a culture. The culture of poverty grows and flourishes high rate of unemployment and underemployment for unskilled labour, low wages, failure to provide social, political and economic organisation either on a voluntary basis or by government imposition for the low income population¹⁷

Poverty in Nepal can be understood by examining several indices. They are commonly used to measure poverty. As most of the poor people in Nepal live in villages and whose subsistence is more or less based on the non-cash

¹⁷ See generally, Dilli R. Dahal, *Rural Poverty in Nepal: Issues, Problems and Prospects*, HMG-USAID, GTZ, IDRC, FORD-Winrock Project, March 1987.

sectors no single approach can measure the critical dimensions of poverty. There are several micro economic parameters operating at the local level. Various indices can be used to gauge into the magnitude of poverty in Nepal. However, land per capita daily consumption of food etc. can be taken as the major indices of poverty and human rights deprivation in Nepal.

Land & land tenure patterns

Land has traditionally represented the principal form of wealth. It is also the principal symbol of social status, and the principal source of economic and political power. Ownership of land has meant control over a vital factor of production and therefore a position of prestige, affluence and power¹⁸ The majority of the inhabitants in Nepal are farmers. Almost 85% of the population live in villages. Villages in Nepal are said to be above forty thousands. Most peasant families in Nepal live on the margin between subsistence and destitution. Agricultural yields are low because only a little more than a fifth of land is cultivated.

¹⁸ Mahesh Chandra Regmi, *Land Ownership in Nepal*, 1976, p. 1.

Technology used in farming is primitive and obsolete.

Nepal is an agricultural country. Agrarian structure is one of the most important aspects affecting economic development of the country. Agrarian relations comprises the institutional framework of agricultural production. And it is included land tenure and tenancy problems, agricultural credit and marketing, taxation and service made available by government to the rural population. However, to understand the nature of the agrarian relations it is better to discuss the land tenure system-legal or customary system under which land is owned or occupied. A brief introduction to the traditional land tenure system is provided here. These land tenure systems exist no more in legal sense of the term but they have direct bearing upon the existing land ownership distribution pattern in the country.

Raikar

Land is considered to be domain of state. This tradition is characterized by state landlordism. It is also called as Raikar System. Agricultural lands under Raikar tenure were cultivated by private individuals but within the limits.

The state used to grant Raikar lands, both waste and cultivated to individuals as well as to religious and charitable institutions under generally freehold tenure. This gave rise to private rights. Birta, Guthi, Jagir tenure are the more or less derivatives of the Raikar land tenure system.

Birta

Birta is an assignment of income from the land by the state in favour of individuals. It is very much feudalistic in orientation and content. The beneficiaries of the Birta system were the groups which did not participate in economic pursuits. Their maintenance was provided at the cost of agrarian class. But the Birta Abolition Act of 1960 abolished this pattern of land tenure.

Guthi

Guthi is a form of institutional land ownership. It is assigned to religious and charitable groups. It is an endowment of lands for the performance of religious and charitable functions. Landowners have often taken advantage of religious and charitable attributes to fulfill vested objectives which are quite remote from considerations of religion and charity.

The Guthi land tenure system does not create favourable conditions for productivity. It does not insure that land is put to its best physical productive or ecological use. It has also the worst features of absentee landlordism.

Jagir

The term Jagir covers the grants for maintenance, appreciation, or remuneration. It is created for reasons of political expediency or exigencies of administration. Jagir assignments entitled the beneficiaries to appropriate agricultural rents and other income from the lands which are covered by the assignment. The Jagir system exposed the cultivator to the exploitation of an individual rent receiver. The rent receivers had little interest in the land. He was intent only on making the most out of the Jagir assignment. He subjected the tiller to higher exaction than would have been the case had the land continued under Raikar tenure.¹⁹

Kipat

Kipat was a form of communal landlordship.

¹⁹ See generally, *supra* note 18.

Kinship, location and traditional occupation are the main characteristics of Kipat landownership. A Kipat owner derived his rights by virtue of his or her membership in a particular ethnic group. The communal character of Kipat did not mean that land was actually cultivated on a communal bases. It was owned and cultivated by individuals, but only subject to the reversionary rights of the community.

Jimindari landownership

The term Jimindar is derived from the Arabic term Jimindar or functionary, a trustee, or a person in charge. This category of land ownership emerged when individuals employed by the government to collect land and other taxes at the village succeeded in acquiring lands. They also entrenched their authority in such a manner that it gradually assumed the form of property. Jimindari system was a tool utilised to squeeze surplus agricultural production from the peasantry.

With the abolition of Jimindari land ownership, feudalistic forms of land control have been almost eradicated in Nepal but some well entrenched vestiges of the exploitative agrarian

relations are creating socio-economic disparities in the society.

The forms of landownership discussed shortly above have been abolished following the political changes in 1951, and later. They are, in deed, the relics of immoral exploitation of the real cultivators of the land but they existed in other forms or variants till sometimes ago. They also remain even today. They have direct bearing on all the participants in productive activities. There has been an official affirmation as back as 1952 in which it is stated.

“Unless the land tenure system is improved, the economic condition of peasantry and agricultural production will not improve. Landownership is passing from the hands of peasants to those of money lenders and other rich people. But the actual cultivators do not have securities of tenure. This has reduced agricultural production and increased the number of landless peasants.”

Chapter - 4

SOCIO ECONOMIC STRUCTURE AT NEPALESE VILLAGE

Most of the people in Nepal live in rural areas. The main occupation is agriculture which is mostly unproductive. It is carried on in an traditional way. As a result, the yield from land is automatically low and peasant continue to live at a bare subsistence level. More than 90% of the total population live in rural areas.

Rural Conditions

Agriculture is still the main source of income. It is not in a healthy condition. Very few percent of the total population is engaged in some small and cottage industries. Small and cottage industrial goods are produced only for fulfillment of local demand. Due to the low quality and high price, they could not compete with foreign goods.

Therefore people of rural areas are totally dependent on agriculture.

Lack of Assets

Lack of assets is another problem of rural people. They have insufficient assets as well as income. The main asset is only land which may be a small area and of poor quality. Most of them are landless. Since they have lack of income and access to credit many have access to land without having tenancy rights. Tenancy does not provide a secure hedge against risk and access to the land from one year to the next is often uncertain. Hence their income is not enough to maintain minimum level of subsistence, so they are dependent on labour market income. Rural areas people have larger family sizes, so, those who work in poor families have to support non-working family members. There is also downward pressure on participation rates among the poor because of lack of land, illness, disability, gathering fuel and fodder, carrying water, cultural prohibitions and frequent pregnancy. Again large number of people are unemployed in poor rural areas.

Main problem of rural people is poverty. They are still in the vicious circle of poverty. The

problem of poverty has been in issue of major concern world wide. More than one billion people in the developing world are still living in poverty (World Development Report 1990). Of them 80 percent are in rural areas. Also, domestic policy and institutions often have built in biases. Policies have been biased in favour of urban development. This has worked against the rural people by forestalling resources which could have been invested in their development. Policies have failed to provide infrastructure and incentives to motivate the poor rural people. There has been bias towards export-crops, which undermines resources devoted to local food production in which most small holder farmers are engaged.

Marginalisation of Women

Marginalisation of women is important problem in rural area. Women especially in rural areas are discriminated against with little or no access to land. Women depend on casual labour and earn very little. Their access to inputs, extension, training and credit is poor. This limits their ability to take advantage of the commercialization of agriculture. With the growing population of female headed households the marginalisation of women has severely increased poverty.

In-addition, most rural people are suffering from climatic problem. Agriculture in rural areas is totally dependent on monsoon rainfall. Irrigation facilities are not available yet. Natural disasters occur frequently. They are not able to built up the capability to counteract the effects of such distress. Food shortages are often exacerbated during such times. Small holdes farmers and other poverty groups invest any income they had earned previously to meeting present needs. They can not save and therefore have no means of reinvesting. Long term growth is jeopardized. Also, food shortages create idebtedness. To feed themselves the rural people may have to borrow money at high interest rates. They have to devote most of their energies to debt servicing.

Another, rural people are exploited in various ways. Landowners exploit share croppers and tenants, money lenders exploit debtors and traders exploit small-scale producers. All these factors combine to keep millions of people in poverty in rural areas.

Moreover, political troubles and civil war affect all aspects of development. However, the people who are most affected by political strife are rural people who are already disadvantaged in a number of ways. Development flows from both

national and international agencies to the rural poor are often disrupted when there in internal political conflicts.

Lack of Education

Due to the lack of education, they do not have knowledge about family planning. Another cause of population growth is increase in the infant mortality rate. In spite of various deseases, infant mortality has increased dramatically in rural areas. Again sex bias is another causes of population growth. Rural people think sons are their social security and will look after in their old age, so they want to give birth more child. Again Hindu religion requires cremation affer death, which can only be carried out by sons. It is a belief that if the cremation is not performed; then the dead parents has to suffer in the hell. This necessarily leads to parents wishing to bear at least one son before their death.

Also, rural areas are cheating by natural. Geographical condition is not favour to develop rural areas.

Lack of Transport

Due to the geographical conditions transport

and communication facilities are not developed. It takes large capital which is beyond capacity of Nepalese people. Nepal totally depend on foreign countries for vast investment in such facilities. Therefore rural people suffering from transport and communication facilities.

Finally social indicator are backward in rural areas, such as education, health area and other social services. As a result meanlife expectancy has decreased and mortality has increased sharply. More than half of the population have no access to health services, most of them have lack pure drinking water.

Bonded Labourers

During the Rana regime even though salary system was abolished in formal terms, the abolition of slavery system had not taken place. After democratic political change that occurred in the country especially in 1951, nothing substantial happened in restructuring socio-economic entitlements. The change of 1990 has been a remarkable step in the democratisation of the Nepalese society. However, the situation of bonded labourers in some western part of the country is still critical. It is worst and degrading form of human degradation. Bonded labourers

(Kamaiyas) are basically agricultural labourers. It is a land slave system. Majority of Kamaiyas are concentrated in Dang, Banke, Bardiyas and Kanchanpur. More than 95% of Kamaiyas are in far western and western region from Tharu community. They are bounded by Saunki. Average daily income of a Kamaiya worksout roughly Rs. 4.13. There is no fixed working hours. Kamaiya cannot exercise their franchise.

Skewed Land Distribution & Poverty

Land and property relations include relations defined by the mode of appropriation. Talking of the agrarian relations, three aspects may be related—

- (a) Patterns of control of land and land resources.
- (b) Patterns of labour use, employment especially how people make a living on land.
- (c) Income distribution as a result of specific patterns of land and labour uses.

The present agrarian structure in Nepal consists of—

- (a) Top stratum of big farmers
- (b) A layer of medium sized farmers
- (c) The backbone of peasant farming
- (d) Large bottom layer of marginal farmers
- (e) Landless people

In fact more than half of the households in Nepal hold less than one hectare of land. Most of the land in Nepal has been held by a top stratum of big farmers, upper class people and institutions. Land has been kept in various forms of land tenure. The common people in Nepal are either landless or mostly tenants and sharecroppers.

Statistics reveal that there is a marked disparity in landholding between the hills, Terai and the Kathmandu valley. Based on a survey taken some years back, the average land holding size in different regions of Nepal has been 1.26 hectare in Terai, 1.22 in the hills and 0.086 in Kathmandu.

The rural household survey conducted with a limited size of population has found that 23 per cent of the households in Terai possessed no land compared with one percent in hill villages. A statistics brought forth by National Planning Commission revealed that 16.3 per cent of the total

rural households in Nepal are landless.

Although hill region of Nepal has greater equality in terms of landholding many people living in the hills are poorer than in the Terai and Kathmandu. This is because average farm income is highest in Kathmandu and lowest in the hills.²⁰

The average value of assets per farm family was estimated at Rs 38,395 and the regional increase for the hills and Terai stood at Rs. 29,914 and Rs. 495 respectively.

²⁰ *Supra* note 17 at 9.

Chapter - 5

LAND REFORMS MEASURES & THEIR PITFALLS

Agriculture is important function in the social and economic life of Nepal. In fact, the governments, after the downfall of Rana authority in 1950, that came to power have taken steps in improving the skewed pattern of land ownership in the country. The exploitative agrarian relations system failed to protect the rights and interests of those who work on the land. The concentration of landed property in the hands of a few persons does not secure any of the advantages of large scale operation or investment. Tenants secure no benefit. Landowners are less interested in maintaining fertility of soil. They are less keen in increasing agricultural production, than in holding wealth in a secure form.

Land Reform Measures

Land Act, 1957

The Land Act of 1957 was the first major formal state level initiative undertaken in Nepal. Its main objective was to define the nature of relationship between landowner and tenant. But it did not attempt to introduce any structural changes in the agrarian system. The provisions of Land Reform Act of 1957 were not effective because of the lack of an effective implementation. Its provisions remained only in the paper.

Land Reform Programme, 1964

In fact, comprehensive land reform step was enacted in 1964. The land reform programme 1964 aimed at remoulding agrarian relations. It aimed at mobilising investment for agricultural productivity. The programme was implemented with a view to achieve two major goals. The first goal has been to establish cultivators on land as freemen and citizens, operating land which they own or hold securely and owning at least an equitable share of the product of the land. The second goal has been to divert investment capital and surplus manpower from agriculture for the

development of non-agricultural and industrial sector as will.

The Land Act of 1964 also prescribed ceiling on landholding and provided that a family would not be permitted to own not more than 25 Bighas of land. The ceiling on landholding prescribed by the Act is as follows.

CEILINGS ON LAND HOLDING IN DIFFERENT PARTS OF NEPAL

Region	Agricultural lands	Residential lands	
		Urban area	Rural area
Terai and Inner Terai regions (in Bighas)	25	1.	3
Kathmandu Valley (in Ropanis)	50	5	8
Hill regions (in Ropanis)	80	10	16

Another important feature of the Land Act of 1964 has been the security provided to the tenants. Existing tenants or those who raised the main crops were entitled to permanent tenancy rights on the agricultural tenants tilled by them. However, the law prohibited tenant to sell his or

her holding. The tenancy right also did not develop into sellable rights. Tenancy rights were not subdivisible. The law prescribed that after the death of a tenant, tenancy rights on the lands tilled by him or her should accrue to the surviving husband or wife or son, whosoever is trusted by the landowner.

Minimal Impact

The land reform measure made an effective intervention in the systems of landownership and tenancy.²¹ But it did not have any major impact in the skewed agrarian structure and uneven land ownership. It rather strengthened the position of landowners as rent receivers. It did not impose any obligation on them beyond collecting rents after crops are harvested. It was not a successful attempt to acquire land in excess of the prescribed ceilings. It did not affect the nature of the land holding system.

The land reform programme of 1964, according to a study, only 44950 hectares of surplus land to be redistributed to poor tenants. The total

²¹ Land Reform in Nepal, Seminar Proceedings Report, Nepal Law Society, 1995.

was initially expected to be about 25,00,00 hectares. In total, only 5968 hectares of land above the ceilings were confiscated. Similarly, the government's efforts to resettle the landless and poor families have also produced relatively poor results. The Land Reform Programme of 1964 led into what has been described as dual ownership of land. It gave rise to disputes and complications thereby creating negative impacts on agricultural productivity.

Land Act (Fourth Amendment), 1996

The legislative initiative was taken to correct some of the anomalies resulted from the implementation of the land reform measures of 1964. Especially the problem relating to dual ownership of land characterized by stakes of both landowner and tenants at land created a medley of problems including legal disputes and litigations in the court. It has negative impact in the productivity of land.

The Fourth Amendment of the Land Act 1996 has stipulated that the ownership of land shall be vested in one person either landowner or

tenants²² Land owner and tenants are both entitled to buy the land and acquire ownership tile of the land in mutual agreement.

There is a provision in the Fourth Amendment of the Land Act which states "HMG shall create a credit mechanism to enable either land owner or tenant to buy the land." This provision is a very significant one in abolishing the dual land ownership.

A perusal of the provisions of the Fourth Amendment leads one to appreciate some of its provisions contained in it. It has sought to do away with provision relating to dual ownership of land which may resolve some of the existing complications. But it can have implications as it reduces land tenants to the state of agricultural wage earners. The cultivators of the land may be deprived from the right of claiming tenancy over land. No matter how long the tillers may be working on the land, they shall not be entitled to claim right of tenancy. Their status may be that of agricultural wage earners. This will have worse poverty related implications.

²² Section 26 (e), Land Act (Fourth Amendment), 1996.

Chapter - 6

DEMOCRACY, DEVELOPMENT AND HUMAN RIGHTS

The three different words, democracy, development and human rights plays very crucial role for overall development. Also these words are interrelated, and thus inalienable. They can not be separated. It has already been proved that development is not possible without democracy. Human rights can be respected, and enforced promoted only in an environment where democratic values are fully adhered to. However, human rights should be defined in relationship between human rights, democracy and development. Now development has been recognised as human rights. Many developing countries have been unable to raise their economic standard because of huge external debts. Until and unless the country is trapped in its external debts, its people will never be able to enjoy their human rights. No person of a country

will be able to work hard for his country until and unless, he enjoys the fulfilment of basic human needs. Human rights is thus the most pre-requisite for development. Democracy can not be truly realised in the absence of respect to and promotion of human rights. However, democracy should prevail for proper guarantee of human rights and development.

The Universal Declaration of Human Rights of 1948 is a historic document. It is an achievement which obliges the state to respect and promote human rights. The Declaration has given universal recognition to the most of the human rights. The Declaration has been known as the common standard of mankind in regard to human rights. Later, the United Nations adopted two broad sets of human rights in 1966, one is known as International Covenant on Civil and Political Rights and other is International Convent on Economic, Social and Cultural Rights. Both the Covenants aim to give people freedom from fear and want. Thus, both Covenants need to be enforced for freedom, justice and peace in the world. The protection of human rights should be promoted as universal principles transcending all political, economic, social, cultural, legal, religious and civil systems. But, human rights have been

often used in a very narrow referring only to civil and political rights as first generation rights. As a result human rights have often been broadly misused to mean only civil and political rights. The fundamental issues such as right to good education & social security health, employment and food have often been ignored.

Under the Covenant on Civil and Political Rights, all governments, those who have ratified, are bound to protect the life, liberty and security of their citizens. The citizens should be guaranteed that no one is enslaved, and that no one is subjected to arbitrary arrest and detention or to torture. Everyone is entitled to a fair trial. The right to freedom of thought, conscience and religion and to freedom of expression is to be protected.

Under the Covenant on Economic, Social and Cultural Rights, those states that have ratified this Covenant are expected to try progressively to improve the living conditions of their citizens. For example, the states should try to guarantee the right to food, clothing, housing and health in addition to protection of the family and the right to social security, education and employment.

The Declaration of the World Human Rights

Conference held in Geneva has concluded that human rights are universal inalienable and interdependent. Thus, the respect for civil and political rights should not be divorced from the enjoyment of economic, social and cultural rights. In other way, the real economic and social development can not occur without the political freedom to participate in that process including the freedom to dissent. It is often argued that measures curbing political freedoms are necessary to get their economic development it does not hold any validity. There are stronger arguments that priorities must be established: what was the point of talking about the establishment of courts and reforming the prison system when the pressing issue was ending starvation and seeking relief from crippling foreign debt.

While interpreting the term human right, stemming in part from the one side, the concept of development also come to be regarded as a human aspiration separate from the achievement of human rights. Also the Universal Declaration of Human Rights constitute the core of much of the world's development and human rights efforts. The spirit of the Universal Declaration of Human Rights reflects in its content that all the countries of the world, and their people have right to

develop. The state has its right to get its sovereignty protected and secure international cooperation while individuals are entitled to receive protection of rights. UN Declaration on Right to Development adopted in 1986 provides the right to development to people. Development has now been recognized as a human rights. Ironically most of the developing countries are not able to develop their country, and are not able to guarantee socio-economic rights fully to its peoples. Economic injustice and deprivation is horrendous in most of the developing countries.

The human person is the central subject of development. The universal nature of the right is beyond question. All human rights are universal, indivisible, interdependent and interrelated. Thus human rights signifies both civil and political and broader range of economic, social and cultural rights, as well as the right to development. The achievement of development and democracy must be based on universal respect for human rights and fundamental freedoms. Democracy and development is topmost priorities of the developing countries. In order to achieve development, democracy and human rights should be promoted and protected as universal human rights. However, the process of

development including the eradication of extreme poverty and the alleviation of the debt burden of developing can only be carried out on the basis of a new pattern of global cooperation.

Chapter - 7

AGRARIAN RELATIONS & HUMAN RIGHTS IMPLICATIONS

The issue of human rights has become one of the greater significance, and also common concern in the world community. In fact, it has been a long cherished ideal of mankind to enjoy human rights in the fuller sense of the term. The United Nations has adopted a series of declarations and conventions for the promotion and protection of human rights. The UN Conventions and Declarations imply that there must be respect for all human rights-economic, social, cultural, civil and political and people must be allowed to participate in development process.

Articles 22, 23 and 25 of the Universal Declaration of Human Rights (UDHR) assert that everyone has "the right to social security and is entitled to realization of the economic, social and

cultural rights indispensable for his dignity and the free development of his personality, the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment."

The articles also explicitly mention about the right to a standard of living adequate for health and well being of himself and of his family including food, clothing, housing and medical care and necessary social services, and the right to security.

Similarly, UN Covenant on Economic, Social and Cultural Rights which was adopted in 1996 but came into force in 1976 and ratified by 130 countries requires the state parties to recognize the right of everyone to an adequate standards of living for himself and family including adequate food, clothing and housing and to the continuous improvement of living conditions. The Covenant also obliges the state parties to take appropriate steps to ensure the realisation of the right to an adequate standard of living recognising the essential importance of international cooperation based on free consent.

The UN Covenant also emphasises on the

fundamental right of every one to be free from hunger and obliges the state to undertake measures to the end. The state parties are required to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilisation of natural resources.²³

Moreover, International Labour organisation (ILO) in its Convention 141 countries has recognised the fact that there is massive underutilisation of land and labour and that makes it imperative for rural workers to be given every encouragement to develop free and viable organisation capable of protecting and furthering the interests of their members and ensuring their effective condition to economic and social development.

The ILO Convention also recognises that land reform is an essential factor in improvement of

²³ Art II (2) (a) (b), **Convenant on Economic Social & Cultural Rights, 1996.**

the conditions of work and life of rural workers and that organisations of such workers should accordingly, cooperate and participate actively in the implementation of such reform.

There is a very important UN Declaration on the Rights to Development (UNDRD) adopted in 1986 which imposes an obligation upon the state to guarantee the right to development through internal efforts and mobilising external resources.

Since Nepal is party to UN declarations and conventions including those referred to above, it is incumbent upon it to enforce employment measures in regard to improving the condition of farmers and agricultural workers. If we truly accept the interdependence of all human rights we must guarantee economic, social and cultural rights. Interdependence of human rights means that we cannot have one without the other. It is impossible at one and same time to maintain respect for political and civil rights and to tolerate violations of economic, social and cultural rights. Respect for one set of rights is dependent on respect for other sets of rights. If we want respect for political and civil rights, we cannot focus on political and cultural rights alone. We must also

focus on economic, social & cultural rights.²⁴

The Constitution of the Kingdom of Nepal, 1990 has enshrined the fact that both civil and political rights, economic, social and cultural rights are indivisible and inalienable. The Fundamental Rights chapter embodied in the Constitution has guaranteed the civil and political rights while it has also taken cognizance of the economic, social and cultural right. Right to equality, right to freedoms, right to property and cultural and educational rights provided in the Constitution intend to promote and protect civil and political in addition to the economic, social and cultural rights of the people.

There is also a chapter in the Constitution which stipulates about the Directive Principles of the State Policy. The directive principles of state policy comprise a broader set of economic, social and cultural rights for the enforcement of which the state is required to undertake various policy and programme measures. Measures relating to improvement of productivity of land, implement rural development activities to reach services to

²⁴ David Matas, *Economic, Social, & Cultural Rights and the Role of Lawyers-North American Respective*, ICJ Conference, Bangalore 23-35 oct, 1995.

people living in the nook and corner of the country and undertake activities to uplift the standard living of the disadvantaged section of people are some of the major obligations imposed upon the state in this Chapter of the Constitution of the Kingdom of Nepal, 1990. However, there is problem in bringing these principles from the realm of unenforceability to the realm of enforceability. Now efforts have been on to formulation optional protocol to this Covenant so that enforcement of its provisions could be enforced is monitored.

In an agrarian economy, the ownership of the means of production and particularly of land is central to any understanding of social and economic rights. Rights of people have better possibilities of promotion and enforcement if highly skewed and uneven land distribution pattern is rectified or corrected.

The close relationship between inequality in the distribution of land ownership and inequality in income distribution in the rural areas was emphasized by the USAID Mission Director in his report for the year 1980-81. as he said,

"In Nepal, ownership of land, the overwhelming item of wealth and thus the receipt of wealth is highly concentrated. Two

per cent of all rural households cultivate about 27 per cent of the land."²⁵

Once the unequal distribution of land and concentration of land in the hands of few people is rectified through legal and democratic means. It would result into positive human rights implications. Rural people's struggle for development is identical with the fight for human rights. The assert of their right to means of production especially the land is considered very much essential in combating poverty and wealth discriminations in the society.

The fundamental rights to human needs can be better addressed if people have the access to their lands and forest, a development approach which is based on the concept of human rights, access to resources and fulfillment of real needs will result in greater self-reliance. A right to life is useless without the guarantee of basic human rights to food, health, housing and education.

Food is the basic right of man. Mahatma Gandhi has said "the only from God dare appear before a hungryman is food". Food distribution in

²⁵ Quoted in David Sheddon, *Nepal: State of Poverty*, 1981, p. 19.

Nepal is unequal as larger land resource is concentrated in the lands of few people. Poor and landless people suffer a deterioration in both the quantity and quality of their food intake. This has resulted in widespread malnutrition.

Likewise, the right to good health is a basic human right. It should be maintained in the most efficient and inexpensive manner. But poor and landless people do not afford an access to health services in Nepal.

Housing is another basic right which is denied to many poor and landless people. Proper land reform and capital is important for the success of housing the poor. There is a correlation between landlessness and deprivation from the right to education. To combat illiteracy promote education state should increase the land entitlements of people.

In sum, in the country like Nepal agrarian relations based on equity and justice is the heart and soul of human rights guarantees.²⁶

²⁶ *Third World Development or Crisis ? Declarations and Conclusions of Third World Conference*, Penang, Malaysia, 9-14 Nov, 1984.

Chapter - 8

CONCLUSIONS & RECOMMENDATIONS

Agrarian relations characterised by disproportionate concentration of land resources in the hands of few people has been an obstacle for the realisation of the rights to basic human needs in Nepal. So there should be comprehensive land reform programme implemented so that fair democratic and just share of land and land resources benefits is warranted. Some recommendations are provided below-

- (a) Land reform in Nepal has been a mere means of transferring land ownership but the objective of land reform schemes should be to assist the rural poor to achieve economic security. Its objective should be to enable the rural poor and landless people to overcome their conditions of subservience and dependence and develop individual

initiative and ensure their participation in the formulation and implementation of the land reform programme.

- (b) Land distribution or redistribution, abolition of duality in the ownership of land shall not solve the problems of landless people or rural poor as has been envisaged in the Fourth Amendment of the Land Act. It needs to be complemented with a more comprehensive agrarian reform programme by agricultural and economic policies taking into account of their needs and their own cooperative organisations to obtain machinery, fertilizers, seeds, water resources and other inputs, and facilities for transport and marketing.
- (3) The Fourth Amendment of Land Act has stipulated that the government may establish agriculture credit banks to assist the tenant farmers to purchase the land from landowners. The landbank should be established and also form the part of the comprehensive agrarian reform programme.
- (4) The cause of the failure of the land reform programme in Nepal has been an excessively paternalistic attitude of the government

authorities who have often retained detailed and elaborate control over the farmers' land thus preventing the development of initiative, self-reliance and cooperation among the intended beneficiaries. A true grassroots democracy has not been achieved, and intended beneficiaries remain in a subservient condition. It is time that the government involve farmers or farmer's organisation, local government institutions (LGIS) such as VDC, Municipality and DDC in the scheme of implementing land reform measures. A concerted effort of all the concerned shall contribute towards the realisation of genuine land reform.

- (4) Legislations enacted so far towards achieving the goals of land reform is not clear and unambiguous. Necessary amendments are necessary to make clear the object of land reform schemes, establish the rights of the beneficiaries and make provisions for necessary assistance to them.
- (5) Right to food has been recognised as a human right obligations flowing from the internationally formulated right to food can be subsumed under state categories of

obligations. The obligation to respect the right to food refers to the obligations of state to refrain from any act which might result in deprivation of food for a larger number of people and enact and enforce prohibitions of activities resulting in such deprivation. The duty to fulfill entails the obligations to enact legislation aimed at progressive realisation of the right to food and to incorporate the realisation of the right to food into development objectives.

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