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आयोगको पूर्व स्वीकृतिविना यस प्रकाशनका लेख र सामग्रीलाई बौद्धिक वा शैक्षिक प्रयोजनबाहेक व्यापारिक वा अन्य प्रयोजनका लागि पुनः उत्पादन एवम् मुद्रण तथा कुनै पनि माध्यमबाट प्रयोगमा ल्याउन पाइने छैन । बौद्धिक तथा शैक्षिक प्रयोजनार्थ स्रोत खुलाइ आवश्यक अंशहरू साभार गरी प्रयोग गर्न सकिने छ ।

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यस पत्रिकामा प्रकाशित लेखहरूमा व्यक्त विचार लेखकका निजी हुन् । ती विचारले लेखकको पदीय हैसियत तथा राष्ट्रिय मानव अधिकार आयोग, नेपालको प्रतिनिधित्व गर्दैनन् ।

The views expressed in the articles of this publication are solely those of the authors. The views do not represent the status of author and the views of NHRC.

कोभिड १९ महामारी र मानव अधिकार

डा. समिरकुमार अधिकारी

सारसङ्क्षेप

सन् २०१९ को अन्त्यमा छिमेकी चीनमा पहिचान भएको कोभिड १९ महामारीले सन् २०२० र २०२१ मा निकै ठूलो विश्वव्यापी जनस्वास्थ्य समस्याका रूपमा मात्रै नभइ समाजको आर्थिक, सामाजिकसहित सबै क्षेत्र प्रभावित भएको छ । अझ सीमित ज्ञान र सीपका बीचमा धेरैभन्दा धेरै मानिसहरूलाई सुरक्षित राख्नका लागि सङ्क्रमण रोकथाम, नियन्त्रण, उपचारका उपायका लागि लिनुपरेका कदमहरूले मानव अधिकारका विषयमा समेत धेरै बहसहरू सतहमा ल्याएको पनि छ । क्वारेन्टिन, आवतजावत, परीक्षण, आइसोलेशन, खोजपडताल, स्वास्थ्य सेवा सम्मको पहुँच, उपचार, स्वास्थ्यकर्मी, सुरक्षाकर्मीको ठूलो त्याग र योगदान, खोपको समतामूलक पहुँच आदिका कारण समेत मानव अधिकारका विषयहरू धेरै चर्चामा आउनुका अतिरिक्त विरोधाभासपूर्ण बहसहरूसमेत भएको देख्न सकिन्छ । यो अत्याधुनिक समयमा समेत चिकित्सा विज्ञानको ज्ञान र सीपको सीमितताका बीचमा समग्र मानव सभ्यतालाई एकै ठाउँमा ल्याएर उभ्याउने काम यो महामारीले गरेको हामी सबैले भोगेका छौं । विश्व स्वास्थ्य सङ्गठनद्वारा सन् १९४८ मा जारी संविधानले उपलब्ध हुनसक्नेसम्मको गुणस्तरको स्वास्थ्य सेवा प्रवाह गर्नुपर्ने विषयलाई केन्द्रमा राखी सबै देशहरूले प्रवाह गर्ने नियमित स्वास्थ्य सेवाहरू र महामारीका सेवालाई चुस्तदुरुस्त बनाउन सहजीकरण गर्दै आएको छ । प्रस्तुत लेखमा कोभिड १९ महामारीमा नागरिकको स्वास्थ्यको अधिकारसहित समग्र मानव अधिकार संरक्षणको विषयमा चर्चा गरिएको छ ।

मुख्य शब्दावली: कोभिड १९ मानव अधिकार, जनस्वास्थ्य, आइसोलेशन, क्वारेन्टिन, महामारी, सङ्क्रमण

परिचय :

कुनै पनि स्थान विशेषमा विभिन्न समय र मौसममा देखापर्ने जनस्वास्थ्यका समस्याहरूलाई त्यस स्थानमा इपिडेमिक रूपमा हुने समस्याका रूपमा लिइन्छ र सोही अनुसारका नियमित निगरानी र सेवाप्रवाहको व्यवस्था गरिन्छ । त्यसभन्दा फरक नयाँ किसिमका जनस्वास्थ्यका समस्या देखापर्ने र अन्य स्थान वा देशमा समेत जोखिम पुऱ्याउन सक्ने संभावनाहरूलाई मध्यनजर गर्दै विगतमा भएका अनुभवका आधारमा सम्बन्धित देशहरूले आवश्यक व्यवस्थाहरू गर्ने काम गरिरहेका हुन्छन् । यदि जनस्वास्थ्यका समस्याहरू एकभन्दा बढी देशमा फैलिएको छ वा फैलिने सम्भावना छ भने सम्भावित जोखिमहरूलाई आंकलन गर्दै

विश्वव्यापी महामारी (प्यान्डेमिक) को रूपमा घोषणा गरी संयुक्त कार्यहरू गर्दै जोखिम कम गर्ने तथा प्रतिकार्य गर्ने प्रयासहरू गरिन्छन् । यी कार्यहरू गर्ने गराउने क्रममा हामीले सामान्य अवस्थामा भोगिरहे जस्तो मानव अधिकारका स्वतन्त्रताहरू भोगचलन गर्न नमिल्ने अवस्था पनि सिर्जना हुन सक्छन् ।

हरेक मानिसको जन्मदेखि मृत्युसम्मका लागि आवश्यक आधारभूत अधिकार र स्वतन्त्रताका सम्पूर्ण विषयहरूलाई मानव अधिकार भनिन्छ । यी अधिकारहरू मानिसको ठेगाना, धर्म, संस्कृति आदिसँग तुलना गरेर निर्धारण गर्न मिल्दैन तर विशेष परिस्थितिअनुसार परिमार्जन वा निषेध हुनसक्ने हुन्छन् । मानव अधिकारहरू मानिसको आत्मसम्मान, समता, समानता, सम्मान र स्वतन्त्रता आदि मूल्यमान्यतामा आधारित हुन्छन् । ती मूल्य मान्यताहरू अन्तर्राष्ट्रिय, राष्ट्रिय र स्थानिय कानूनहरूद्वारा स्थापित गरिन्छन् । मानव अधिकारको महत्त्वपूर्ण कर्तव्य भनेकै आधारभूत स्वास्थ्य सेवालगायतका जीवनको अधिकारका लागि सम्मान, सुरक्षा र परिपूर्ति गर्नुपर्ने हुन्छ ।

सन् २०१९ को अन्त्यमा छिमेकी चीनमा पहिचान भएको कोभिड १९ संक्रमणले सन् २०२० र २०२१ मा निकै ठूलो विश्वव्यापी जनस्वास्थ्य समस्याका रूपमा मात्रै नभइ समाजको आर्थिक, सामाजिकसहित सबै पाटाहरूमा अमेट प्रभावहरू पारेको छ । अफ सिमित ज्ञान र सीपका बीचमा धेरैभन्दा धेरै मानिसहरूलाई सुरक्षित राख्नका लागि सङ्क्रमण रोकथाम, नियन्त्रण, उपचारका उपायका लागि लिनुपरेका कदमहरूले मानव अधिकारका विषयमा समेत धेरै बहसहरू सतहमा ल्याएको पनि छ । क्वारेन्टिन, आवतजावत, परीक्षण, आइसोलेशन, खोजपडताल, स्वास्थ्य सेवासम्मको पहुँच, उपचार, स्वास्थ्यकर्मी, सुरक्षाकर्मीको ठूलो त्याग र योगदान, खोपको समतामूलक पहुँच आदिका कारणसमेत मानव अधिकारका विषयहरू धेरै चर्चामा आउनुका अतिरिक्त विरोधाभासपूर्ण बहसहरूसमेत भएको देख्न सकिन्छ । यो अत्याधुनिक समयमा समेत चिकित्सा विज्ञानको ज्ञान र सीपको सीमितताका बीचमा समग्र मानव सभ्यतालाई एकै ठाउँमा ल्याएर उभ्याउने काम यो महामारीले गरेको हामी सबैले भोगेका छौं । अफ समय र स्रोतसाधनको सीमिततामै चाँडोभन्दा चाँडो प्रभावकारी उपायहरूको खोजी गर्दै राज्यहरूले कानूनी कदमहरू उठाउन पर्ने बाध्यताहरू सिर्जना भए । यिनै सन्दर्भहरूलाई मध्यनजर गर्दै सन् २०२० मार्च ११ मा विश्व स्वास्थ्य सङ्गठनका महानिर्देशकले सबै देशहरूले जनस्वास्थ्यको सुरक्षा आर्थिक, सामाजिक र मानव अधिकारको सन्तुलनबाट गर्नुपर्दछ भनी सार्वजनिक रूपमै सम्बोधन गर्नुभएको थियो । विश्व स्वास्थ्य सङ्गठनले सन् १९४८ मा जारी संविधानले उपलब्ध हुनसक्नेसम्मको गुणस्तरको स्वास्थ्य सेवा प्रवाह गर्नुपर्ने विषयलाई केन्द्रमा राखी सबै देशहरूले प्रवाह गर्ने नियमित स्वास्थ्य सेवाहरू र महामारीका सेवालाई चुस्तदुरुस्त बनाउन सहजीकरण गर्दै आएको छ । त्यस्तै नेपाल सरकारले संविधानको धारा १६ देखि धारा ४८ सम्म भएका व्यवस्थाहरूमा समेत फरक तरिकाले व्यवस्थापन गर्दै गराउँदै कोभिड १९ संक्रमणको रोकथाम, नियन्त्रण गर्दै गएको थियो । नेपालको संविधानको धारा ३५ को उपधारा १, २, ३ मा भएको आधारभूत स्वास्थ्य सेवा र आकस्मिक स्वास्थ्य सेवाको प्रबन्ध तथा स्वास्थ्य सेवाको सूचना जानकारी व्यवस्थापन चुनौतिपूर्ण अवस्थाका बावजूत पनि राज्यका तर्फबाट हरतरहले हुन पुगेको थियो । मानव अधिकारका क्षेत्रमा काम गर्ने संयुक्त राष्ट्र सङ्घ

लगायका सङ्घसंस्थाहरूको प्रयासले सन् १९४८ मा जारी विश्वव्यापी मानव अधिकारसम्बन्धी घोषणपत्रले समेत संक्रामक भाइरस रोकथाम नियन्त्रणका क्रममा कानूनी दायराहरूमा रही राज्यको शक्ति प्रयोग गर्दा हुने मानव अधिकारमा केही कुण्ठित हुने कुरालाई स्वीकारेको छ ।

कोभिड १९ को परिचय :

सन् २०१९ को डिसेम्बरको अन्त्यमा छिमेकी देश चीनको हुवेइ प्रान्तमा अज्ञात कारणले मानिसहरूमा न्युमोनिया हुँदै अस्पताल भर्ना हुने तथा मृत्यु हुने क्रम देखियो । यसको कारण खोज्दै जाँदा मानिसहरूमा नयाँ किसिमको कोरोना भाइरसको संक्रमणका कारण यो देखिएको पुष्टि भयो । यो नयाँ किसिमको कोरोना भाइरसलाई त्यसबेला नोबेल कोरोना भाइरस (2019-nCoV) भन्न थालियो । यो भाइरस वुहान सहरको हुनान सिफुड मार्केटसँग सम्बन्धित छ कि भनि बिस्तृत खोजी कार्य भएको थियो तर हालसम्म यस संक्रमणको उद्गमस्थल र कारणका बारेमा अबै पनि कुनै निश्कर्षमा पुगिसकेको छैन । यो सङ्क्रमण तीव्र गतिमा चीनका अन्य भागसहित संसारका धेरै देशमा फैलियो । अनि विश्व स्वास्थ्य सङ्गठनले सन् २०२० को जनवरीको उत्तरार्द्धमै जनस्वास्थ्यको आकस्मिक अवस्था भनी घोषणा गर्‍यो । त्यसको दुई महिना पनि नपुग्दै यसलाई विश्वव्यापी महामारी (प्यान्डेमिक) भनेर घोषणा गरियो । सन् २०२० फेब्रुअरी ११ मा यसलाई कोभिड-१९ रोग भनी नाम दिइयो । यसको कारक भाइरसलाई SARS-CoV-2 नामाकरण गरियो । मानव इतिहासमा सबैभन्दा तिब्ररूपमा फैलिएको यो कोभिड १९ ले विश्वलाई नै आर्थिक, सामाजिक, सांस्कृतिक रूपमा ठूलो क्षति पुऱ्याएको छ । जसले मानिसको स्वतन्त्र आवागमन, पेशा, व्यवसाय आदिमा समेत ठूलो क्षति पुऱ्याएको छ । विश्वव्यापीरूपमा कोभिड १९ बाट २०७८ साल कार्तिक पहिलो सातासम्ममा २४ करोड ३७ लाख ७३ हजार ९५ जना संक्रमित भएको तथा ४९ लाख ४५ हजार ३ सय जनाको मृत्यु भएको तथ्याङ्क छ । नेपालमा २०७८ साल कार्तिक पहिलो सातासम्ममा ८ लाख, ८ हजार ५ सय ३४ मा सङ्क्रमण पुष्टि भएको छ । नेपालमा सङ्क्रमण पुष्टि भएकामध्ये ११ हजार ३ सय ४५ जनाको मृत्यु भएको छ ।

महामारीमा संकलित तथ्याङ्कभन्दा यथार्थ प्रभावित हुनेहरूको सङ्ख्या निकै ठूलो हुन्छ भन्ने सिद्धान्त छ । हामीले जति प्रयास गरे पनि टिप अफ आइसबर्ग मात्रै पहिचान गर्न सकिन्छ । सोहीअनुसार पनि विश्वभरि अबै धेरै व्यक्तिहरू यसबाट प्रभावित भएको कुरा स्पष्ट हुन्छ । स्वास्थ्य प्रणाली कमजोर भएका गरीब देशहरूमात्र नभई सबल स्वास्थ्य प्रणाली भएका विश्वका शक्तिशाली देशहरू पनि कोभिड १९ को संक्रमणबाट नराम्ररी थला परे । विश्वका सबै देश, वर्ग, तह र तप्काका मानिसहरूलाई कोभिड-१९ ले गाँज्यो । मास्कको प्रयोग, भौतिक दूरी र हातको सरसफाइका बानी तथा देशभित्र रहेको जनसङ्ख्याको बनावट र अन्य रोगको अवस्थाअनुसार कोभिड-१९ को सङ्क्रमणका कारण बिरामी हुने तथा मृत्यु हुनेहरूको अनुपातमा केही फरक परे पनि समग्रमा सबै प्रभावित भयौं । सङ्क्रमण रोकथाम गर्न नवीनतम विधि प्रक्रियाभन्दा परम्परागत सामाजिक विधिमा आधारित भएर तय गरिएका जनस्वास्थ्यका मापदण्डको

भरमा मात्रै आजको आधुनिक समाजले यो महामारीविरुद्धको लडाइँ लड्नुपर्यो । पछिल्ला दिनहरूका खोपको विकासले केही आशा दिन सकेको हो । खोपको उत्पादन र प्राप्तिमा विषयमा प्रभावशाली र अन्य देशमा हुन गएको फरक बुझाइ तथा तीव्र प्रतिस्पर्धाका कारण खोपको न्यायोचित वितरणबाट वञ्चित हुन पुगेका देशहरूमा जोखिम बढेर गएको देखिन्छ ।

कोभिड-१९ सर्ने तरिका :

कोभिड-१९ सङ्क्रमित व्यक्तिको नाक, मुखबाट निस्केका छिटाहरूमा रहेका भाइरसहरू अर्को स्वस्थ व्यक्तिको नाकमुखमा प्रवेश गरी एक व्यक्तिबाट अन्य व्यक्तिलाई सङ्क्रमण सर्दछ । भाइरसले समयानुकूल आफूलाई परिवर्तन गर्दै लगेको र बढी सङ्क्रामक हुँदै गएकाले छिटाहरूमा माध्यमबाट सर्नुका अतिरिक्त अन्य माध्यमहरूबाट पनि सर्न सक्ने अवस्थालाई समेत मध्यनजर गर्दै सावधानी लिनुपर्ने भयो । हाल छिटाका अतिरिक्त सम्पर्क, हावा, सरसामग्री, च्याल, दिसापिसाब आदिलाई समेत यसको सर्ने माध्यमका रूपमा लिएर सावधानी अपनाउँदै आइएको छ । त्यसैले एक अर्को व्यक्तिबीचको भेटघाट कम गर्न, मास्कको उचित तरिकाले प्रयोग र बिसर्जन गर्न, हातले कुनै पनि सतह नछुन र छुइहालेमा हात साबुनपानीले सफा गर्न, हावा र प्रकाश आवतजावत गर्ने स्थानमा मात्रै बसेर काम गर्न भनिएको हो । यसको सर्ने अवस्थालाई तापक्रम, मौसमले कुनै प्रभाव नपार्ने भएकोले नै जाडो होस् वा गर्मी सबै मौसममा र संसारभर सबैतिर तीव्र गतिमा फैलिएको छ ।

कोभिड-१९ को सङ्क्रमणलाई फैलिन नदिन सङ्क्रमण कहाँ कहाँ छ त्यो चाँडो पत्ता लगाइ स्रोत पहिचान गर्दै त्यसभन्दा अन्यत्र फैलिन नदिने उपायहरू गर्नु पर्दछ । यसका लागि व्यक्ति व्यक्तिले जनस्वास्थ्यका मापदण्डहरूको पालना गर्ने गराउने सँगसँगै सम्बन्धित निकायहरूले धेरैभन्दा धेरै सम्भावित व्यक्तिहरूलाई अलग्याएर राख्ने, परीक्षण गर्ने सम्पर्कमा आएकाहरूको खोजी गर्ने र सङ्क्रमणको चक्रलाई तोडी जोखिममा रहेका वर्गहरूलाई सुरक्षित राख्ने कार्यहरू गर्नुपर्दछ ।

एक व्यक्तिबाट अर्को व्यक्तिलाई कोभिड १९ को भाइरस प्रवेश गरेपछि ५-६ दिनमा लक्षणहरू देखिने वा अन्य व्यक्तिलाई सार्ने सम्भावना हुन्छ । सामान्यतः यो क्षमता कम्तिमा भाइरस प्रवेश गरेको दुई दिनदेखि र बढीमा १४ दिनसम्म हुनसक्छ । कसैकसैमा अपवादका रूपमा बढी दिनसम्म पनि हुनसक्छ । त्यसैले कोही व्यक्तिहरू शङ्कास्पद हुनुहुन्छ भने कम्तिमा ५ दिन अलग्गै बस्ने र कुनै लक्षण देखिएमा परीक्षण गर्ने । अन्यथा १० देखि १४ दिन क्वारेन्टिन बस्नुपर्दछ भनिएको हो । त्यस्तै कसैलाई पनि सङ्क्रमण पुष्टि भएको छ र कुनै लक्षण छैन वा सामान्य लक्षण छ भने कम्तिमा दश दिन अलग्गै आइसोलेशनमा बस्नु पर्दछ । सामान्यतया यही दश दिनभित्रमै जटिलता हुने वा चिकित्सकीय परामर्श वा सेवा चाहिने हुन्छ । त्यस किसिमको जटिलता वा गाह्रो यो समयमा भएन भने प्रायः निको हुन्छन् । त्यसपछि अरूलाई सङ्क्रमण सार्ने सम्भावना पनि हुँदैन । कसैकसैमा कोभिड १९ पश्चात् शारीरिक, मासिक समस्या पनि हुन सक्दछ, जसलाई पूर्व कोभिडको सङ्केत (पोष्ट कोभिड सिन्ड्रोम) भनिन्छ ।

कोभिड-१९ को भाइरस :

भाइरस प्रोटिनको बनावट हो । यसमा रहेका प्रोटिनको बनावटलाई हेरेर नामाकरण तथा पहिचान गरिन्छ । बाहिरी प्रोटिनको बनावट श्रीपेचजस्तो हुने वर्गका भाइरसलाई कोरोनाभाइरस भनिन्छ । कोरोना भाइरस निकै ठूलो परिवार हो । यस परिवारभित्र धेरै किसिमका सदस्यहरू छन् जसमध्ये कसैले मानिसलगायत धेरै जनावरहरू बिरामी पार्न सक्दछन् त कसैले जनावर विशेषलाई मात्रै असर गरिरहेका हुन्छन् । कुनै कोरोना भाइरस कसैलाई पनि बिरामी नपार्ने पनि हुन्छन् । कोरोना भाइरसका विभिन्न सदस्यहरू आफ्नो स्वरूपको बनावटमा भएको प्रोटिनमा परिवर्तन हुँदै स्वरूप परिवर्तन गर्नसक्ने क्षमता राख्दछन् जसलाई भाइरसको म्युटेसन पनि भनिन्छ । त्यो म्युटेसन सामान्य तथा जटिल किसिमका हुन सक्दछन् । सामान्य परिवर्तनले उक्त भाइरसबाट हुने रोगको सर्ने तरिका, देखाउने लक्षण तथा जटिलताहरूमा खासै उल्लेख्य फरक नपर्दा रोगको रोकथाम तथा उपचारमा धेरै फरक पर्दैन । भने निरन्तर रूपमा परिवर्तन हुने क्रममा भाइरसको जटिल अर्थात् ठूलै परिवर्तन हुन्छ, जसले गर्दा रोगको सर्ने तरिका, देखाउने लक्षण, उपचार आदिमा आमूल फरक पर्न जान्छ । त्यसैले रोकथाम, उपचार आदिमा प्रयोग भइरहेको सबै उपायहरू बेकार हुन पुग्दछन् । भाइरस प्रोटिनको एक संरचनामात्रै भएको तथा यसलाई सजीवकै रूपमा पनि लिन नसकिने र त्यसमा पनि निरन्तर संरचनामा परिवर्तन भइरहने भएकोले भाइरसका प्रभावकारी उपचार औषधिहरू बन्न नसकेका हुन् । कोभिड-१९ का भाइरसका स्वरूपहरू (भेरियन्टहरू) लाई ३ वर्गमा राखेर निगरानी, चर्चा आदि गर्ने गरिएको छ:

- क) भेरियन्ट अफ कन्सर्न : त्यस्तो भेरियन्ट जसको सङ्क्रमण गर्ने र बिरामी तथा मृत्यु बनाउने क्षमता बढी हुने प्रमाणहरू छन्, त्यसलाई भेरियन्ट अफ कन्सर्न भन्ने वर्गमा राखिन्छ । यसलाई हाम्रो शरीरमा विभिन्न किसिमका सङ्क्रमण वा खोपहरूका कारण तयार भएका एन्टिबडीहरूले समेत खासै काम गर्न सक्दैन । यिनमा B.1.1.7 Alpha, B.1.351 Beta, B.1.617.2 Delta, P.1 Gamma आदि पर्दछन् । हामीकहाँ दोस्रो लहरमा धेरै फैलिरहेको कोभिड-१९ को सङ्क्रमण यही वर्गका कारणले हो ।
- ख) भेरियन्ट अफ इन्टरेस्ट : यसका आनुवंशिक परिवर्तनमा भएको बनावटले पहिला भएका सङ्क्रमण वा खोपहरूका कारण सङ्क्रमण लगायत यसका प्रभावहरूलाई कम गर्ने क्षमतामा ह्रास हुने खालकालाई भेरियन्ट अफ इन्टरेस्ट वर्गमा राखिन्छन् । यिनमा B.1.427 B.1.429 Epsilon, B.1.525 Eta, B.1.526 Iota, B.1.617.1 Kappa, B.1.617.3 आदि पर्दछन् ।
- ग) भेरियन्ट अफ हाईकन्सीक्युन्सेस : रोकथाम तथा उपचारका विधिहरू प्रभावकारी रहेको भन्ने प्रमाणहरू रहेका भेरियन्टहरू जुन हालसम्म पत्ता लागिसकेको छैन ।

कोभिड १९ का लक्षण तथा चिन्हहरू :

कुनै पनि रोग लाग्दा हामीलाई जे जे अनुभव हुन्छन तिनलाई उक्त रोगको लक्षण भनिन्छ तथा स्वास्थ्यकर्मीले हाम्रो शरीरमा जे जे देख्नुहुन्छ, त्यो उक्त रोगका चिन्हहरू हुन् । कोभिड १९ का लक्षण चिन्हहरू व्यक्तिअनुसार

फरक फरक पर्ने गरेको हामीले देखेका र भोगेका पनि छौं । त्यसमध्ये धेरै जसोलाई निम्नानुसारका एक वा अनेक लक्षणहरू हुनसक्दछन् जुन सामान्यतया कम्तीमा २ र बढीमा १४ दिनमा आउँदछन् ।

मुख्यरूपमा : ज्वरो, खोकी, थकाई, स्वाद वा गन्ध हराउने आदि ।

अन्य : छिटो छिटो श्वास फेर्ने वा श्वासप्रश्वासमा गाह्रो हुने, जिउ दुख्ने, कम्पन, घाँटीमा अप्ठ्यारो हुने, नाकबाट पानी बग्ने वा बगेजस्तो लाग्ने वा नाक बन्द हुने, छाती टाउको दुख्ने, वान्ता वा वाकवाकी, पखाला, छालामा बिबिरा आउने आदि ।

जटिलताहरू : धेरै प्रतिशत सङ्क्रमितहरूमा लक्षणबिना नै रोग निको भए पनि केहीमा लक्षण र केहीमा स्वास्थ्य जटिलताहरू हुन पुग्दछ । ती जटिलताहरूको समयमा पहिचान हुन नसक्दा तथा पहिचान भए पनि उपचार सफल नभएर केही प्रतिशतको ज्यानै जानेसम्मको अवस्था हुन्छ । सङ्क्रमणका कारण हाम्रो रोग प्रतिरोधात्मक प्रणालीमा दबाव सिर्जना गरी रगतमा साइटोकिन भन्ने प्रोटीनको अत्यधिक उत्पादनका कारण धेरैजसो स्वास्थ्य जटिलताहरू हुन पुग्दछन् । जसले हाम्रा शरीरका टिस्यूहरूलाई मार्न सुरु गर्दछ । परिणामतः हाम्रो फोक्सो, मुटु, मृगौलाहरूले काम गर्न नसक्ने अवस्था बन्दछ । यस क्रममा निम्नानुसार जटिलताका लक्षण चिन्हहरू देखिन्छन् : एक्कासी श्वास फेर्न गाह्रो वा श्वास रोकिनु, न्युमोनिया, अकस्मात कलेजो, मुटु, मृगौलामा समस्या आउनु, अन्य सङ्क्रमण हुनु, मुर्च्छा पर्नु, रक्तनलीहरूमा रगत जम्नु र रक्तसञ्चारमा अवरोध हुनु आदि ।

पहिलादेखि अन्य स्वास्थ्य समस्या भएकाहरूलाई कोभिड-१९ को सङ्क्रमणले विशेष गाह्रो बनाउन सक्छ । मुटुका समस्या, क्यान्सर, मृगौलाको समस्या भएका, दम तथा श्वासप्रश्वाससम्बन्धी समस्या भएकाहरू, मधुमेह, धेरै मोटा व्यक्तिहरू, उच्च रक्तचाप, मद्यपान र धुम्रपान गर्नेहरू, सिकलसेल वा थालासेमिया भएकाहरू, अंगप्रत्यारोपण गरेका व्यक्तिहरू, गर्भवती, कलेजोका समस्या, डिमेन्सिया, डाउन सिन्ड्रोम भएकाहरू, नसा तथा मस्तिष्कमा समस्या हुनेहरू, लागू औषध प्रयोग गर्नेहरू, एचआइभीलागायत विविध औषधि प्रयोग आदिका कारण रोग प्रतिरोधात्मक क्षमतामा समस्या भएका व्यक्तिहरू सबैभन्दा धेरै जोखिममा रहने पाइएको छ ।

पहिचान तथा परीक्षण :

कोभिड-१९ भए नभएको थाहा पाउनका लागि धेरै किसिमका विधि तथा प्रक्रियाहरूको अवलम्बन गरिन्छ । जस्तै हामी कहिलेकाहीँ सङ्क्रमण बढी भएका स्थानबाट यात्रा गरी आएका छौं भने हामीमा भाइरसको सङ्क्रमण भएको हुनसक्दछ । त्यस्तोमा हामीलाई कुनै पनि लक्षण नदेखिए पनि कम्तीमा १० दिन अनिवार्य रूपमा अलग्गै बस्नुपर्ने हुन्छ । यसो गर्नाले हामीलाई कुनै पनि लक्षण नै नभई तथा थाहै नपाई सङ्क्रमणको चक्र अगाडि बढ्नबाट रोकिन्छ । यसका साथै पहिचानका लागि गरिने कुनै पनि परीक्षण विधिहरूले हाम्रो शरीरभित्र रहेको भाइरसलाई शतप्रतिशत सही तरिकाले पहिचान गर्न नसकी हुन सक्ने जोखिमबाट समेत जोगाउँछ ।

महामारीको बेलामा यात्रा गरेर आउने जाने व्यक्तिहरू, लक्षणसहित वा लक्षणरहितका सङ्क्रमित व्यक्तिको सम्पर्कमा आएका व्यक्तिहरू, संक्रमणको लक्षणसँग मिल्दोजुल्दो लक्षण भएका व्यक्तिहरू, श्वासप्रश्वासको समस्या लगायतका दीर्घरोगीहरू, ज्येष्ठ नागरिकहरू आदिलाई सङ्क्रमण वा जोखिमको शङ्कामा राखी विशेष निगरानी गर्नुपर्ने हुन्छ ।

कोभिडको सङ्क्रमणको पहिचान गर्ने क्रममा चिकित्सा विज्ञानमा आवश्यकता, उपलब्धताको आधारमा रगत, नाकमुखको च्यालको परीक्षण तथा छातिको एक्सरे, सिटिस्व्यान, इको आदि प्रयोग गरिन्छ । कोभिड १९ पहिचानकै लागि भन्ने डायग्नोस्टिक परीक्षण विधिका रूपमा रियल टाइम पोलिमरेज चेन रिएक्सन अफ आरएनए (आरटीपिसिआर), एन्टिजेन टेस्ट तथा एन्टिबडी टेस्टको प्रयोग गरिन्छ । कोभिड पहिचानमा आरटीपिसिआरलाई गोल्ड स्ट्याण्डर्ड विधिका रूपमा प्रयोग गर्ने गरिएको छ । हाल नेपालमा यो विधिबाट परीक्षण गर्नसक्ने गरी करिब १ सय स्थानमा प्रयोगशालाहरू स्थापना भई परीक्षण भइरहेका छन् । यसका मेशिनहरूमा नाकमुखबाट लिइएका च्यालको नमूनाहरू परीक्षण गर्न सरदर एक घानलाई ५/६ घण्टा लाग्छ । यस विधिको यो भन्दा द्रुत परीक्षण किट वा विधिहरू हामी कहाँ उपलब्ध छैनन् । एन्टिजेन टेस्ट तथा एन्टिबडी टेस्ट विधि पनि नेपालमा प्रयोग भएका विधिहरू हुन । यी दुवै विधिका द्रुत परीक्षण गर्न सक्ने किट वा विधिहरू उपलब्ध छन् । सङ्क्रमणपछि रगतमा निर्माण हुने एन्टिबडी (रोग प्रतिरोधात्मक क्षमता) मा आधारित भएर एन्टिबडी टेस्ट विधिबाट परीक्षण हुन्छ जुन कोभिड १९ को पहिलो चरणको महामारीमा नेपालमा प्रयोग गरिएको थियो । पहिलो लहरपछि यस विधिलाई संक्रमित पहिचानकै लागि भनि प्रयोग गर्न बन्द गरिएको छ । त्यस्तै च्यालको नमूनाहरू लिई भाइरसको अस्तित्व पत्ता लगाउने एन्टिजेन टेस्ट विधिबाट समेत हाल नेपालमा धेरै परीक्षणहरू भइरहेका छन् । नेपालको भूगोल, यातायात, स्वास्थ्यकर्मी र स्वास्थ्य संस्थाको अवस्था, लागत तथा दीगोपनाका हिसाबले द्रुत परीक्षण विधिहरू धेरै नै उपयोगी छन् ।

रोकथाम र उपचार :

हालसम्म कोभिड-१९ को कुनै पनि उपचार पत्ता लागिसकेको छैन । सुरुवातदेखि नै धेरै अध्ययन अनुसन्धानहरू भइरहेका भएपनि सफल हुन सकेका थिएनन् । त्यसैले पनि सङ्क्रमण रोकथाम र नियन्त्रण नै महत्त्वपूर्ण उपाय हो । खर्च, दुःख तथा परिणामका हिसाबले उपचारभन्दा धेरै गुणा प्रभावकारी रोकथाम र नियन्त्रण नै छ । रोकथाम र नियन्त्रण गर्ने सन्दर्भमा सबैको भूमिका महत्त्वपूर्ण हुन आउँछ । यसमा हामी चुक्न पुगियो भने छोटो समयभित्र धेरै व्यक्तिहरू सङ्क्रमित हुने अवस्था आउँछ र हेरचार तथा निगरानीकै लागि भए पनि विद्यमान स्वास्थ्य संस्था, स्वास्थ्यकर्मी जस्ता क्षमताहरूले नपुग्ने हुन्छ र सबैलाई गाह्रो हुन जान्छ । स्वास्थ्य जटिलता भएर उपचारका लागि अस्पताल पुगेकाहरूलाई जटिलताका आधारमा स्वास्थ्यकर्मीहरूसँग भएका विविध उपायहरूको प्रयोग गर्ने गरिन्छ ।

सामान्य तथा मध्यम लक्षण भएका संक्रमितहरूको संख्या धेरै पाइन्छ । यस्ता व्यक्तिहरूलाई अन्य व्यक्तिहरूको सम्पर्कमा आउन नसक्ने गरी १० दिन अलग्याएर राख्ने, खोकी लागेमा खोकी कम गराउने औषधि, ज्वरो आएमा ज्वरो घटाउने सिटामोल औषधि दिइन्छ । चिकित्सकहरूले उचित नठ्याएसम्म कुनै

पनि औषधि प्रयोग गर्न हुँदैन । अफ स्टेरोइड जस्तो औषधि प्रयोग गर्न हुँदैन । जीउ, हात दुख्यो वा ज्वरो आयो भन्दैमा ब्रुफेनजस्तो प्रयोग गर्न हुँदैन । भोलिलो, पोषिलो आहारको प्रयोग गर्ने नियमित व्यायाम गर्ने, मानसिक तनावहरूबाट मुक्त रहनुपर्दछ । नकारात्मक समाचारहरूबाट टाढा रहने, हल्लाहरूको पछि लागेर अनावश्यक कुराहरू पत्याउने, सुनाउने गर्नुहुँदैन । आधिकारिक निकायबाहेकको सूचना जानकारी नसुन्ने, नपढ्ने, नहेर्ने बानी बसाल्नु पर्दछ । हाम्रो समाजमा कुनै पनि स्वास्थ्य समस्या हुनेबित्तिकै सबै जना जान्ने भएर यसो गर्नु उसो नगर्नु यो खानु यो नखानु भन्ने प्रचलन धेरै देखिन्छ । यस्ता कुराहरूको पछाडि नलागी स्वास्थ्यकर्मीहरूको सल्लाहअनुसार मात्रै गर्ने बानी बसाल्नु पर्दछ । त्यस्तै मध्यम तथा कडा जटिलता भएका बिरामीहरूलाई स्वास्थ्य जटिलताका आधारमा अस्पतालमा भर्ना गरी विशेषज्ञ चिकित्सकले जाँचबुझ गरी आवश्यकता र औचित्यताका आधारमा अक्सिजन, एन्टिबायोटिक, स्टेरोइड, प्लाज्माथेरापी, एन्टिभाइरस, एन्टिफंगल औषधिहरू आदिमध्ये प्रयोग गर्नुपर्ने हुनसक्दछ । कोभिड-१९ को उपचारका लागि अनुसन्धानात्मक उपचारका औषधिका रूपमा लोपिमाभिर/रीटोनाभिर, रिबाभिरिन, रेम्डेसिभिर, क्लोरोक्विन, भिटामिन सी, प्लाज्मा थेरापी आदि रहे पनि कुनै पनि औषधि यसको उपचारमा सिद्ध भएका औषधिको रूपमा छैनन् । बरु कोभिड-१९ को सङ्क्रमण रोकथाम नियन्त्रणमा जनस्वास्थ्यका मापदण्डहरू (भौतिक दूरी, मास्कको प्रयोग र हातको सरसफाई) प्रभावकारी सिद्ध छन् । यससँगै कोभिड-१९ विरुद्ध विकास भएका खोपहरू सङ्क्रमण चक्र रोक्न र सङ्क्रमण भइहाले पनि स्वास्थ्य जटिलता रोक्न उपयोगी रहेका छन् । नेपालमा कोभिड-१९ विरुद्धका खोप लगाइसक्न धेरै व्यक्तिहरू बाँकी रहनुभएको, संक्रमणको जोखिम उच्च रहेको तथा जनस्वास्थ्यका मापदण्डहरूको पालनामा हेलचेक्रयाई भईरहेकोले कोभिडविरुद्धको खोप लगाउनु भएका नलगाउनु भएका सबैले जनस्वास्थ्यका मापदण्डहरूको अनिवार्य पालना गर्नुपर्ने हुन्छ । नेपालमा हालसम्म कोभिसिल्ड/अस्ट्राजेनेका, भेरोसेल र जानसेन गरी जम्मा तीन किसिमका खोपहरू प्रयोगमा आएका छन् । यसबाहेकका फाइजर, मोडर्नाका खोपहरूसमेत आउने क्रममा छन् । यी ३ वटै खोपहरूका बनावट एक अर्काभन्दा फरक भएकोले एउटा किसिमको खोप लगाएको व्यक्तिले दोस्रो मात्रा अर्को किसिमको खोप लगाउने विषयहरू अनुसन्धानकै क्रममा रहेको र हालसम्म सकारात्मक नतिजाहरू नआएकोले नेपाल सरकारले पनि लगाउने सिफारिस गरेको छैन । हालसम्म प्राप्त अध्ययन, प्रमाण र सिफारिसका आधारमा जानसेनको खोप एक मात्रामात्रै लगाए पूर्णमात्रा हुन्छ भने भेरोसेल ४ हप्ताको फरकमा २ मात्रा र कोभिसिल्ड १६/१८ हप्ताको फरकमा २ मात्रा लगाउनुपर्ने हुन्छ । २०७८ कार्तिक पहिलो हप्ता सम्ममा नेपालमा १ करोड ५२ लाख ३ हजार ५ सय ५० मात्रा खोप प्रयोग गरिसकिएको छ भने १ करोड ९० लाख मात्रा खोप नेपाल आइसकेको छ । नेपाल सरकारले १८ वर्ष माथिको सबै जनसंख्यालाई निःशुल्क खोप लगाउने लक्ष्यसहितको कार्य योजना बनाएर खोप अभियानलाई तिव्रता दिइरहेको छ । १२वर्षदेखि १८ वर्षबीचको उमेर समूहका लागि अनुसन्धानहरूबाट सफलता पाउँदै गएका खोप नेपाल आउने क्रम सुरु हुँदैछ । सो खोप ल्याएर लगाउने योजनामा समेत सरकार लागेको छ । तर १२ वर्ष मुनिका बालबालिकाका लागि हालसम्म कोभिड-१९ विरुद्धको खोप विकास भइसकेको छैन । विश्वव्यापी

रूपमा समतामूलक तरिकाले खोको वितरण चुस्त दुरुस्त बनाउन विश्वस्वास्थ्य सङ्गठन, गाभी लगायत विभिन्न संस्थाहरूले प्रयास गरी कोभ्याक्स सुविधाको स्थापना गरे पनि यस माध्यमबाट आवश्यकताअनुसार विश्वव्यापी खोप वितरण हुन सकेको छैन । परिणमतः खोपको आपूर्ति प्रणालीको विश्वव्यापी चुनौतीको मार गरीब तथा विपन्न देशहरूले भोगिरहेका छन् ।

कोभिड १९ महामारीमा मानव अधिकारको विषय :

कोभिड १९ संक्रमणका आशङ्का लागेदेखि नै वा सङ्क्रमणको महामारीको बढ्न सक्ने संभावना हुन थालेदेखि नै हाम्रो स्वतन्त्र आवतजावतलाई व्यवस्थित गर्नुपर्ने बाध्यात्मक र निर्विकल्प उपाय थियो । एक व्यक्तिको सम्भावित सङ्क्रमण चाँडो पत्ता लगाउन, अन्यमा सङ्क्रमण सर्न नपाइ समुदायलाई सङ्क्रमण फैलिन नदिन तथा सङ्क्रमितको सम्पर्कमा कोको आए र मानिसहरूको आवतजावतले जोखिम कुनकुन क्षेत्रमा बढ्दैछ भन्ने यावत विवरण तयार गरी सङ्क्रमण चक्र रोक्न मानिसको स्वतन्त्र आवतजावत गर्न पाउने अवस्थालाई निषेधित गरिएको थियो । आफूले चाहेअनुसार विदेशबाट स्वदेश वा स्वदेशबाट विदेश जान आउन पाइएन, त्यस्तै स्वदेश नै आइसकेपनि स्वतन्त्र रूपमा आफ्नो घरमा जान नपाउने मात्रै होइन, आफ्नै घर पुगेर पनि स्वतन्त्र रूपमा बाहिर निस्कन नपाउने अवस्था सिर्जना भयो । सामान्य अवस्थामा भए यसलाई मानव अधिकारको हननको रूपमा लिइने थियो तर विश्वव्यापी महामारीको अवस्था भएकोले संक्रमणको रोकथाम र नियन्त्रणको लागि यी कदमहरू अपरिहार्य थिए । सङ्क्रमणबाट बच्न र बचाउन गर्नुपर्ने निर्विकल्प उपायहरू अपनाउनै पर्ने व्यक्ति र सरोकावालाको एकातिरको बाध्यात्मक अवस्था र अर्कोतिर उपलब्ध हुँदै जाने उपायहरूमध्ये प्रभावकारिता, व्यवहारिकता, खर्च, दिगोपना आदिलाई मध्यनजर गरेर बहुजहिताय हुने गरी गरिने कार्यहरू पनि सबैको एकैरूपको समानता वा समता वा स्वतन्त्रताजस्तो पनि नहुने हुन्छ । कोभिड १९ सङ्क्रमण महामारीका समयमा विभिन्न चरणमा आइपर्नसक्ने त्यस किसिमका अवस्थाहरूलाई निम्नसार हेर्न/बुझ्न सकिन्छः

क) प्राथमिकीकरण

कोभिड महामारीको अवस्थामा स्वास्थ्य सेवा प्रणालीमा अत्यधिक दबाव पर्न जाँदा भएका जनशक्ति र स्रोत साधनबाट नियमित स्वास्थ्य सेवा प्रवाह र आकस्मिक स्वास्थ्य सेवा दुवै व्यवस्थापन गर्न प्राथमिकीकरण गर्नुको विकल्प हुन्छ । त्यसो गर्न सकिएन भने तत्काल सेवा पुऱ्याइ हाल्नुपर्नेले सेवा नपाइ ज्यान जाने हुन सक्छ र अर्कोतिर तत्काल सेवा नगरी पछि गरेपनि हुने ठाँउमा स्वास्थ्यकर्मी, औषधि उपकरण आदि स्रोत साधनको खर्च भइरहन सक्छ । त्यस्तै पहुँचवालाले अनावश्यक स्रोत साधनको दुरुपयोगसमेत गर्न सक्दछन् । एकजनाका लागि केही घण्टाका लागि मात्रै पुग्ने अक्सिजन छ भने जसलाई बचाउन सकिन्छ वा जो बाँचेमा बढी प्रतिफल दिनसक्छ, जसमा थप अरु वैकल्पिक उपाय गरिहाल्न सकिन्छ त्यसलाई दिनुपर्ने बाध्यात्मक अवस्था हुन्छ । त्यो भएको अक्सिजन दुवैलाई दिने काम गरियो भने दुवैलाई बचाउन नसकिने संभावना हुन्छ । बाँकी एक जनाको लागि यथाशीघ्र थप व्यवस्थापन गर्नुपर्ने चाहि पक्कै हुन्छ । एउटा मात्रै भेन्टिलेटर

भएको अवस्थामा कसलाई प्रयोग गर्ने कसलाई नगर्ने, एक जनामात्रै चिकित्सक रहेको स्वास्थ्य संस्थामा सयौं बिरामी आउँदा कसलाई हेर्ने नहेर्ने तत्काल निर्णय गर्नुपर्ने हुन्छ । यस्तोमा प्राथमिकरण गरेर उपचार गर्नुपर्ने हुन्छ । अझ यो विश्वव्यापी महामारी भएकोले चाहिएको बेलामा एकले अर्कालाई तत्कालै साथ र सहयोग गर्न नसक्ने अवस्था हुँदोरहेछ । नेपालीमा रहेको हुलमुलमा जीउ जोगाउनु अनिकालमा बिउ जोगाउनु भन्ने उखान यहाँ ट्याकै लागू हुन्छ । त्यो एक जना चिकित्सकबाट धेरैभन्दा धेरै फाइदा लिनसक्ने गरी र जनतामा सकेसम्म कम नोक्सान हुनेगरी उपायहरू निकाल्दै कामहरू गर्नुपर्दछ । नेपालमै सुरुसुरुमा कोभिड १९ सङ्क्रमण पुष्टि भएका सबैलाई नेगेटिभ नआउन्जेल अस्पतालमै राख्ने काम भयो । पछि लक्षण भएकासमेत घरमै निगरानीमा आईसोलेशनमा राख्ने र स्वास्थ्य जटिलता भएकालाई मात्रै अस्पताल भर्ना गरी उपचार गर्ने कार्य गरियो । स्वास्थ्य जटिलता भएकालाई पनि प्राथमिकिकरण गर्दै अस्पतालमा उपचार गरियो । यसरी प्राथमिकिकरण गर्दा नैतिक चुनौतिहरू धेरै नै हुने भए पनि धेरैभन्दा धेरै मानिस बचाउन योभन्दा अर्को विकल्प स्रोतसाधन सम्पन्न देशहरूसँग समेत भएन । मानव अधिकारका दृष्टिकोणबाट हेर्दा यस्ता निर्णयहरू प्रशस्त प्रमाण, सूचनाहरूका आधारमा चिकित्सकिय ज्ञान, सिपका आधारमा ती प्राथमिकिकरण भए कि भएनन् भन्ने हो । भेदभावरहित समतामूलक तरिकाले सन्तुलित प्राथमिकिकरण र व्यवस्थापन महत्त्वपूर्ण हो । विश्वका हरेक स्वास्थ्य संस्थामा रोगको पहिचान, उपचार व्यवस्थापनमा सधैं प्राथमिकिकरण गरेर गर्ने गरिन्छ अझ महामारीमा यसको प्रभावकारिता भन्ने बढेर जान्छ । सङ्क्रमण जोखिमलाई आङ्कलन गरेर कुन पेसा व्यवसाय खोल्ने र बन्द गर्ने कहिलेसम्म कसरी कसरी गर्ने भन्ने पनि प्राथमिकिकरण नगर्दा भन्ने ठूलो जोखिम हुन जाने भएकोले सो अनुसार गरिएका थिए ।

ख) छनौट तथा परीक्षण (Screening, Testing)

महामारीको समयमा कसलाई शङ्का गर्ने, परीक्षण गर्ने भन्ने पनि पेचिलो विषय हो । सबैतिर कोभिड १९ को नाम सुन्नेबित्तिकै त्रसित हुने बेलामा तपाईं सङ्क्रमणको आशङ्कामा हुनुहुन्छ, जाँच गरौं है भन्नेबित्तिकै मानिसको सातो जाने बेलासमेत थियो । अझ सामाजिक भेदभाव, लान्छना आदिका आधारमा हेर्दा कसैलाई पनि सङ्क्रमणको शङ्कामा छनौट गर्न र परीक्षण गर्ने विषय सहज पक्कै थिएन । नेपालमा सुरु सुरुमा सङ्क्रमण पुष्टि हुँदा संक्रमित व्यक्तिलाई सार्वजनिक गरिदिनुपर्ने, हामी सावधान हुने थियौं भनेर आउनेहरू पनि थिए । नयाँ सङ्क्रमित पहिचान भएपछि त्यहाँ मन्त्री जानुभएको थियो भनेर मन्त्रीलाई विभिन्न किसिमका लान्छना लगाउने कामहरू पनि भए । बिस्तारै सङ्क्रमण उदयपुर, नेपालगञ्ज, विरगञ्जमा समुदायमा धेरैभन्दा धेरै मानिसमा देखिन थालेपछि समुदायस्तरमा छनौट परीक्षण ठाउँ विशेष, समुदायविशेषको लान्छनाको विषय बन्नसक्ने सम्भावनालाई व्यवस्थित गर्न निकै चुनौतीपूर्ण नै रह्यो । पछि स्वास्थ्यकर्मी लगायत अग्रपङ्क्तिमा रहेर काम गर्नेहरूलाई छनौट परीक्षण गर्दा घरभाडा बस्न समेत गाह्रो हुने अवस्था सिर्जना भयो । अझपछि सहरका मानिस गाउँ जाँदा सङ्क्रमणको भयले सावधानीभन्दा भेदभाव सिर्जना भए ।

ग) ट्रेसिङ्ग तथा निगरानी

मानिसहरू कहाँबाट कहाँ गए, कसकसलाई भेटे, कति समय कहाँ कहाँ व्यतित गरे आदि बिषयहरू यस महामारीको बेला सङ्क्रमण पहिचान, रोकथाम नियन्त्रणका लागि निकै महत्वपूर्ण हुन्छन् । यसकै आधारमा संक्रमित समयमै पत्ता लगाउन, परीक्षण गर्न गराउन, सम्भावित जोखिम क्षेत्र पहिचान गरी तयारी प्रतिकार्यका रणनीति बनाई कार्य गरिन्छ । हामीले प्रयोग गर्ने फोन, सिसिटिभि, सार्वजनिक सवारी साधनका टिकट, सवारी साधनको आवतजावतको रेकर्ड, किनमेलका लागि प्रयोग भएका बिल आदि विभिन्न तरिकाले मानिसको आवागमनलाई निगरानी गरी आवश्यक कार्यहरू गर्नुपर्ने हुन्छ । जुनजुन देशमा यी सबै व्यवस्थित थिए र राम्ररी प्रयोग भए त्यहाँ कम क्षतिमै महामारी नियन्त्रण भए । नेपालमा यी सबै विषयहरू व्यवहारमा ल्याउन सम्भव नै रहेन । एक त हामीसँग यस्ता प्रणालीहरू व्यवस्थित थिएनन् अर्को व्यक्तिगत गोपनीयता, स्वतन्त्रता जस्ता कुरा उठाएर हामीले भएका कुराको पनि पूर्ण रूपमा प्रयोग गर्न सकेनौं । त्यो समयमा विदेशबाट नेपाल फर्किनुभएका र बढी सङ्क्रमण फैलिएका ठाउँबाट अन्यत्र यात्रा गरेर आएका व्यक्तिहरू कहाँ कहाँ जम्मा भइरहनुभएको छ भनी मोबाइलको स्थान्तरणलाई हेर्दै सम्भावित जोखिम क्षेत्र पहिचान गर्दै तयारी र निगरानीका कार्यहरू भने गरिए । सामाजिक सञ्जालमा कुन ठाँउमा, कुन व्यक्तिहरूले कुन किसिमका अफवाहहरू फैलाइरहनु भएको छ त्यसको निराकरणका लागि निगरानी तथा त्यसअनुसार प्रतिकार्यका लागि समुदायिक सहभागिता तथा सूचना सम्प्रेषण आदि कार्यहरू गरिए । यस किसिमले प्रविधिहरूको प्रयोग सहज हुने भए पनि सामाजिक भेदभाव, लान्छना, मानव अधिकारका विषय तथा सङ्कलित तथ्याङ्क अन्य प्रयोजनमा दुरुपयोग हुन सक्ने जोखिम भएकाले समयमा पूर्णरूपमा प्रयोग गर्न पाइएनन् । केही देशमा भएका अभ्यासमा समेत त्यस किसिमको अनुभव देखिए ।

घ) क्वारेन्टिन, आइसोलेशन तथा आवतजावतमा रोक

सङ्क्रमणको फैलावट रोकन, स्वास्थ्य सेवा प्रणालीको क्षमताले नियमित र आकस्मिक स्वास्थ्य सेवा दिन सक्ने अवस्था बनाइराख्न र थप व्यवस्थापनको लागि समयावधि पाउन विश्वव्यापी रूपमै सबै देशहरूले समय समयमा मानिसहरूको स्वतन्त्र आवागमनमा रोक लगाउनुपर्थो । त्यही भएर विदेशबाट वा जोखिम क्षेत्रबाट आएकालाई वा शङ्कास्पद सङ्क्रमितलाई क्वारेन्टिनमा, सङ्क्रमण पुष्टि भएकालाई आइसोलेशनमा र सबैलाई बन्दाबन्दी गरेर राख्नुपर्थो । अझ कतिपय देशमा त मानिसहरूलाई घरघरमै, आवास क्षेत्रमै सरकारी तवरबाटै ताल्चा लगाएरै थुनेको हामीले थाहा पायौं । बन्दाबन्दीले मानिसको स्वतन्त्र आवतजावत मात्रै हैन पेसा व्यवसाय, शैक्षिक गतिविधि सबैमा असर गर्यो । मन परे पनि नपरे पनि मास्क नलगाई कतै पनि हिँड्न पाइएन । महामारीमा क्षतिका हिसाबले छान्नुपर्ने उत्तमभन्दा उत्तम विकल्पका उपायहरूमा कम क्षति र बढी प्रतिफल योग्य भएका उपायहरू प्रयोगमा आए । अन्यथा सङ्क्रमण तीब्र हुन गई स्वास्थ्य सेवा प्रणालीले धान्नै नसक्ने भई धेरैभन्दा धेरै जनधनको क्षतिको अवस्था सिर्जना हुने थियो । क्वारेन्टिन तथा आइसोलेशनको कुरा गर्दा नेपालमा उपलब्ध सार्वजनिक स्थल र स्रोतसाधनले गर्न सकिनेसम्मको क्वारेन्टिन व्यवस्थापनका प्रयास भए । स्थानीय तहभन्दा सरकारको अर्को निकायले क्वारेन्टिन

व्यवस्थापन गर्न सक्ने अवस्था थिएन । क्वारेन्टिनमा राख्न आफ्नो स्थानिय तहमा भएका सार्वजनिक भवन वा आफ्नो स्रोत साधनले व्यवस्थापन गर्न सकिने होटेल वा अस्थायी संरचना जेजस्ता छन्, त्यस्तैमा बाहेक व्यवस्थापन गर्न सकिने नै हुँदैन । आफूसँग भएका र आफूले समन्वय गरेर व्यवस्थापन गर्न सक्ने स्रोत साधनबाट व्यवस्थापनका राम्रा प्रयास भएका हुन् तर क्वारेन्टिनको सन्दर्भमा सुविधा सम्पन्न स्थान, सेवा, आवश्यकता परिपूर्तिको माग एकातिर धेरै नै रहे । अर्कोतिर भर्खरै बनेका स्थानिय तहहरूको कार्यक्षमता तथा वित्तीय क्षमताले यी सबै व्यवस्थापन गर्न निकै कठिनाई भए । त्यसपछि क्वारेन्टिन व्यवस्थापनमा खासै चासो दिएर काम गर्न अग्रसरता कसैले देखाएन । जसको नतिजा छिमेकी मुलुकमा पहिलो लहरको उच्च अवस्था भएको एक डेढ महिनामा सो अवस्था हामीकहाँ आएकोमा दोस्रो लहरमा दुई हप्ताभित्रै छिमेकी मुलुकमा देखिएको चुनौतिपूर्ण अवस्थाको भोगाई हामीले गर्न पुग्यौं । सङ्क्रमण पुष्टि भएकाहरूलाई सुरुवाती अवस्थामा व्यवस्थित तरिकाले संस्थागत आइसोलेशनमा राख्ने कार्यहरू भए तर पछि स्थान अभाव हुँदै जाँदा होम आईसोलेशनमा राखेर निगरानी गरियो । संक्रमित यति धेरै हुँदै गए कि एक स्वास्थ्यकर्मीले पचास जनालाई निगरानी गर्ने गरी मापदण्ड बनाइएको भएपनि हजारौंलाई गर्नुपर्ने अवस्था आएपछि व्यवस्थापन चुनौतिपूर्ण भयो ।

ड) खोप अभियान

विश्वव्यापीरूपमा समतामूलक तरिकाले सबैलाई कोभिड १९ विरुद्धको खोप पुऱ्याउन विश्व स्वास्थ्य सङ्गठन, गाभी, युनिसेफ लगायतका विभिन्न सङ्घसंस्थाहरूले प्रयास गरेर कोभ्याक्स सुविधा स्थापना गरे । खोपको आपूर्ति सीमित देशहरूको हातमा मात्रै रहेकोले योजनाअनुसार कार्यान्वयन हुन सकेन । परिणामतः विश्वभरिको खोपमा सीमित देशहरूको मात्रै पहुँच पुग्यो । सबै जना सुरक्षित नहुन्जेल महामारीमा कोही पनि सुरक्षित रहन सक्ने अवस्था हुँदैन । नेपालमा पनि जोखिम वर्ग क्षेत्र पहिचान गरी प्राथमिकता निर्धारण गर्दै खोप अभियानको सुरुवात गरियो र हाल पनि यो अभियान जारी नै छ ।

च) अस्पताल भर्ना उपचार

कोभिड १९ सबैका लागि नयाँ थियो । आम सर्वसाधारण नयाँ रोग भनेर जसरी डराएका थिए त्यसरी नै स्वास्थ्यकर्मी पनि सबै अन्योलमा थिए । जुन रोगका बारेमा न आफूले पढेको पाठयक्रममा थियो, न गुरुले सिकाउनु भएको थियो, न कुनै जर्नलमा लेख, अनुभव प्रकाशित थियो पढेर हेरेर जान्नेलाई । यस्तोमा स्वास्थ्यकर्मीले समाजलाई ढाडस पनि दिनुपरेको छ, परेका बेला परीक्षणबाट पुष्टि भए पनि नभए पनि उपचार गर्न तमत्तयार भएर बस्नुपरेको छ । रोग परीक्षण, र उपचारका लागि आवश्यक सामग्री, व्यक्तिगत सुरक्षा सामग्री लगायतका आधारभूत कुराहरू आफूसँग छैन, कार्यरत संस्थामा छैन, देशमा छैन, संसारभरिबाट भन्नेबित्तिकै ल्याउनै सकिने अवस्था छैन । हुँदाहुँदा पछि सङ्क्रमण देखापर्दै जाँदा समुदायले नै स्वास्थ्यकर्मीलाई यो त सङ्क्रमण सार्ने ठाउँमा काम गर्छ त्यसैले यसले नै हामीलाई सङ्क्रमण सार्न सक्छ भनेर आफ्नै घर, टोलमा आउन बस्न नदिने अवस्था आयो । सङ्क्रमित पुष्टि भएर अस्पतालमा

भर्ना गर्दा आफन्त डराएर कुरुवा बस्नसमेत तयार भएनन् । कुरुवा बस्ने कुरालाई सङ्क्रमण फैलाउन सक्ने जोखिमलाई हेरेर बस्न निरुत्साहित पनि गरियो । अनि कुरुवाका काम पनि स्वास्थ्यकर्मीले गर्नुपर्‍यो । एकातिर कोभिड १९ को सङ्क्रमण बढ्दै जान्छ र संक्रमितहरू स्वास्थ्य जटिलतासहित अस्पताल आउने क्रम पनि बढ्न जान्छ । अर्कोतिर कोभिड १९ बाहेकका अन्य बिरामीहरूलाई पनि उपचार गर्नुपर्नेछ । अस्पतालमा भएकै शैया, उपकरण, नर्स, डाक्टरले दुवै थरी बिरामीलाई व्यवस्थापन गर्न पक्कै पनि सहज थिएन । कोभिड १९ सङ्क्रमितकै स्वास्थ्य जटिलता भइहाल्यो भने के गरेर उपचार गर्ने थाहा छैन । सबै बिरामी स्वास्थ्यकर्मीका लागि महत्त्वपूर्ण हुन्छन् तर पनि परिवारका सदस्य/आफन्तको स्वास्थ्य जटिलतामा निरीह भई केही गर्न नसक्दा र आफ्नै अगाडि ज्यान गएको हेर्नुपर्दा अरु बिरामीको उपचार कुन मनले र कसरी गरे होलान् स्वास्थ्यकर्मीहरूले ? उपचार गर्न कुनै पनि औषधि उपाय नहुँदा आफूले पढे, जाने र अनुभव गरेको अन्य प्रसङ्गहरूका आधारमा ज्वरो बढे यो गर्ने, श्वास फेर्न गाह्रो भए यसो गर्ने भन्दै एकपछि अर्को आफ्ना ज्ञान र अनुभवलाई कोभिड बिरामीको उपचारमा प्रयोग गर्दा कसैलाई राम्रो भए कसैलाई राम्रो भएनन् । कहिले प्लाज्माथेरापीले हुन्छ कि ? कहिले रेम्डेसिभिरले हुन्छ कि ? कहिले स्टेरोइडले हुन्छ कि ? भन्दै प्रयास गरिरहे । जटिल प्रकृतिका दीर्घ बिरामीलाई कोभिड १९ को सङ्क्रमण भएमा बचाउन भन्ने कठिन थियो । मृतकमा कोभिड १९ थियो भनेपछि दाहसंस्कार गर्न सबै डराउने नै भए । त्यस किसिमका मृतकलाई शववाहनसम्म लगेर राखी दिने काम पनि स्वास्थ्यकर्मी र त्यसपछि सुरक्षाकर्मीले लगेर उपयुक्त विधिअनुसार अन्येष्टि गर्ने कार्य भयो ।

अन्त्यमा

कोभिड-१९ महामारी मानव इतिहासमा सयौं वर्षहरूमा आउने ठूला महामारीमध्ये एक हो । यो आधुनिक पुस्ताले देखेको भोगेको निकै ठूलो विश्वव्यापी महामारी हो । यसमा आधुनिक चिकित्सा विज्ञान तथा अन्य विविध प्रविधिहरूले सफलता पाउन नसकिरहेको यथार्थ छ । यस किसिमको विपद्ले कुनै वर्ग, तह, तप्का नभनी सबैलाई ग्रसित गरेको छ । यसको रोकथाम तथा नियन्त्रणका लागि सबैले जिम्मेवार भएर अघि बढी कार्य गर्नुपर्दछ । त्यसैले सबैले सङ्क्रमण रोकथाम नियन्त्रणका लागि आफन्त, साथीभाई, सहकर्मी सबै एक अर्काको सङ्क्रमणको आशङ्कामा राख्ने, भौतिक दूरी कायम गर्ने, मास्कको समुचित प्रयोग गर्ने र हातको सरसफाइमा विशेष ध्यान दिने, भिडभाडमा नजानेजस्ता बानीको विकास गर्नु गराउनुपरेको छ । यी सबै कार्यहरू गर्दा गराउँदा हाम्रो स्वतन्त्रता र अधिकारको विषयहरूमात्रै भन्दा पनि यो अप्ट्यारो परिस्थितिमा हाम्रो दायित्व र जिम्मेवारी बोध नै सबैभन्दा महत्त्वपूर्ण रहन्छ । मित्रराष्ट्र चीनमा रहेका नेपालीलाई उद्धार गरेर त्यहाँबाट नेपाल ल्याउने बेलामा सो उद्धारमा खटिने स्वास्थ्यकर्मीहरू, क्वारेन्टिनमा निगरानी उपचार र व्यवस्थापनमा खटिने स्वास्थ्यकर्मी लगायत सबैको कामको जति प्रशंसा गरे पनि कम हुन्छ । हामी सबैलाई थाहै छ, कोभिडको त्यो त्रासलाई खरिपाटीका स्थानियबासीहरूले घरै ताल्चा लगाएर हिँडेको, विभिन्न तरिकाले जनप्रतिनिधिकै अगुवाइहरूमा विरोधहरू प्रदर्शनहरू भएका आदि घटना सम्झँदा कसले कसको अधिकारको कुरा गर्ने ? आफ्नै देश आइसकेर सुरक्षित राख्न खोज्दा त्यो अवस्था ! व्यवस्थापनमा

चुनौती भएर आफ्नो देश आउन महाकालीमा पौडी खेलेर तर्नुपरेको घटना ! सिमापारिबाट आफ्नो देश हेरेर व्यथितपूर्ण तरिकाले बास बस्दै आउन नपाएको वा आइहालेपनि व्यवस्थित तरिकाले घरसम्म जान नपाएको, कि अस्पतालमा ठाँउ पाउन गाह्रो भएको ! दिनरात उपचारमा खटिरहँदा पनि स्वास्थ्यकर्मीहरूले कामै गरेनन् भनेर कुटपिट भएका घटनाहरू । स्वास्थ्यकर्मीले म सुरक्षित छैन, मलाई काम धेरै नै भयो आदि भनेर पेसागत धर्म छोड्ने ! व्यवसायीले मेरो व्यवसाय धरापमा पच्यो भनेर व्यवसाय छोड्ने ! अनि सबै आन्दोलन गरेर सडकमा आउने ! अनि समाधान कसले कहाँबाट कसरी दिने ? सङ्क्रमण कसैले चाहे पनि नचाहे पनि हामीले नै फैलाएको हो । हामीले अवस्था परिस्थितिअनुसार व्यवहारिक हुँदै कर्तव्यबोध गरी मानव भएर व्यवहार गर्नसके महामारीको कठिन अवस्थालाई पनि सहज बनाउँदै क्षति कम गर्न सकिन्छ ।

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कोरोना कालमा मानव अधिकार संरक्षणमा देखिएका चुनौती र सर्वोच्च अदालतको भूमिका

रोशनकुमार भा

सारांश

कोभिड-१९ महामारीको कारण नेपालभित्र रहेका हरेक व्यक्तिको सम्मानपूर्वक बाँच्न पाउने हक, पेसा रोजगारीको हक, खाद्यसम्बन्धी हक, स्वास्थ्यसम्बन्धी हक, आवासको हक, सामाजिक सुरक्षाको हकसमेत प्रभावित भइरहेको अवस्था छ। विद्यमान परिस्थितिको कारण महिला, बालबालिका, विपन्न, अशक्त र असहाय, अपाङ्गता भएका व्यक्तिहरूको हक संरक्षणको कुरा थप चुनौतीपूर्ण बन्न पुगेको छ।

नेपालको संविधानको धारा १६ (१) मा प्रत्येक व्यक्तिलाई सम्मानपूर्वक बाँच्न पाउने हक हुनेछ भनी बाँच्न पाउने हक अर्थात् *Right to Life* मौलिक हकको रूपमा प्राप्त छ। धारा ३५ (१) मा प्रत्येक नागरिकलाई कानूनमा व्यवस्था भएबमोजिम आधारभूत स्वास्थ्य सेवा निःशुल्क रूपमा पाउने हक हुनेछ भन्ने व्यवस्था भएको देखिन्छ। उक्त धारामा प्रदत्त हकहरू राज्यको विरुद्ध प्राप्त हुने र यस अदालतले धारा १३३ को असाधारण अधिकार अन्तर्गत प्रचलन गराउने हक हुन्। नागरिकहरूका ती मौलिक हकहरूलाई साकार बनाउन राज्यको दायित्व, निर्देशक सिद्धान्त तथा नीतिहरू संविधानको भाग ४ मा उल्लेख छ। हुन त भाग ४ का दायित्व, निर्देशक सिद्धान्त र नीतिहरू यस अदालतबाट आदेश गरी कार्यान्वयन गरिने विषय होइनन् तर नेपाल सरकारले आफ्नो *Governance* मा भाग ४ का व्यवस्थालाई मध्यनजरमा राखेर कार्यक्रम बनाउने, नीति बनाउने, रकमको व्यवस्था गर्ने र कानून निर्माण गर्ने गर्नुपर्दछ। अर्थात् सरकारले भाग ४ को व्यवस्थाबाट *Guided* भएर राज्य सञ्चालन गर्नुपर्छ।

कुनै पनि देशको नागरिकहरू नै त्यस्तो देशको महत्त्वपूर्ण शक्ति मानिन्छ। त्यसैले व्यक्तिगत स्तर र सरकारीस्तर दुवैस्तरमा स्वस्थ नागरिक र रोगमुक्त समाज नै देशको महत्त्वपूर्ण सम्पत्ति हुने हुँदा *Epidemic* को कारण नागरिकहरूले ज्यान गुमाउन नपरोस भनी सचेत रहनुपर्दछ।

यो सिर्जित परिस्थितिको सामना गर्न सर्वोच्च अदालतले आफ्नो फैसला तथा निर्देशनात्मक आदेशमार्फत राज्यका संयन्त्रहरू तथा सङ्घ, प्रदेश र स्थानीय तहलाई आफ्नो कर्तव्यको बोध गराउन महत्त्वपूर्ण भूमिका खेलेको देखिन्छ। प्रस्तुत लेखमा कोरोना कालमा मानव अधिकार संरक्षणमा सर्वोच्च अदालतले खेलेको भूमिकाबारे सङ्क्षेपमा चर्चा गरिएको छ।

मुख्य शब्दावली : कोभिड -१९ मानव अधिकार, मौलिक हक, मा.अ. संरक्षण सर्वोच्च अदालत

पृष्ठभूमि

नोभल कोरोना भाइरस (CoV) कोरोना भाइरसकै एक नयाँ प्रजाति हो।¹ नोभल कोरोना भाइरसका कारण सुरु भएको रोग चीनको वुहानमा पहिलो पटक पहिचान गरिएको थियो। यसलाई हाल कोरोना भाइरस रोग २०१९ (अर्थात कोभिड-१९) नामाकरण गरिएको छ जसमा को ले कोरोना र भि ले भाइरस भन्ने जनाउँछ। यस भन्दा पहिले यो रोगलाई '२०१९ नोभल कोरोना भाइरस वा २०१९-एन-कोभि (2019-nCoV)' भन्ने गरिएको थियो। कोभिड-१९ भाइरस एक परिवर्तित स्वरूपको भाइरस हो, जसलाई सिभियर एक्युट रेस्पिरेटोरी सिन्ड्रोम (सार्स) र सामान्य प्रकारका रूघाखोकीसँग पनि सम्बन्धित मानिएको छ। कोरोना सङ्क्रमण, रोकथाम तथा नियन्त्रण उच्चस्तरीय समन्वय समितिले विभिन्न चरणमा पूर्ण र आंशिक रूपमा लकडाउन गरेको थियो।

नेपालको संविधान, को धारा ५० (१) अनुसार नेपाल राज्यलाई जनकल्याणकारी राज्यमा अभिवृद्धि गर्ने राज्यको लक्ष्य हुने व्यवस्था भएको छ र जनकल्याणकारी राज्यमा नागरिकको कल्याण Welfare नै Supreme हुनुपर्ने हुँदा नागरिकको स्वास्थ्य सेवा पाउने मौलिक हक अर्थात् नागरिकको Right to medical care का सम्बन्धमा प्रत्येक अस्पतालमा आवश्यकताअनुसारको आवश्यकीय औषधि एवं स्वास्थ्य कर्मीहरूको सुविधा पुऱ्याउने सरकारको संवैधानिक कर्तव्य हो। विभिन्न मौलिक हक र विभिन्न मानव अधिकारहरूमध्ये धारा १६(१) को Right to life with dignity उतिकै महत्वपूर्ण मौलिक हक हो र धारा १६ (१) Right to life with dignity को उक्त हक धारा ३५ को Right to Medical Care को अभावमा सम्भव हुँदैन। त्यसैले नागरिकको धारा १६ (१) को मौलिक हकसँग गाँसिएको धारा ३५ को हकको प्रचलनको लागि सरकारले आवश्यक व्यवस्था गर्नुपर्छ। अकस्मात देखा पर्ने Epidemic प्रकारको जुनसुकै रोगबाट पनि नागरिकले उपचारको अभावमा Right to Life को हकबाट बञ्चित नहुन स्वास्थ्योपचारसम्बन्धी औषधिलगायत सरकारले अन्य आवश्यक व्यवस्था गरी सम्भावित जुनसुकै प्रकारको Epidemic लाई Cope गर्न सरकार सदा तयारी हालतमा रहन पर्छ। यस्तो संवैधानिक कर्तव्यबाट सरकार पन्छिन सक्दैन।

सर्वोच्च अदालतबाट संविधानको धारा १३३ लाई टेकेर दायर भएका आमसरोकार र विवादको विषयमा कोरोनासँग सम्बन्धित धेरै फैसला भए, प्राय ती सबै मानव अधिकारसँग सम्बन्धित रहेका छन्। सर्वोच्च अदालतले कोरोना कालमा मानव अधिकार संरक्षणमा महत्वपूर्ण भूमिका खेलेको छ।

कोरोना कालमा मानव अधिकार संरक्षणमा सर्वोच्च अदालतले गरेका आदेश तथा फैसलाहरूको सार सङ्क्षेप अधिवक्ता पूर्ण राजवंशी वि. प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालय, सिंहदरबार²

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश श्री तेजबहादुर के.सी.को एकल इजलासले, “यो रोगको सङ्क्रमणले भौगोलिक क्षेत्र विस्तार गरिरहेको र नेपालमा पनि यो सङ्क्रमणको प्रवेशको सम्भावनालाई कुनै पनि

1 <https://www.unicef.org/nepal/ne>. Accessed on October 5, 2021.

2 अधिवक्ता पूर्णराजवंशी वि. प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालय, सिंहदरबार, काठमाडौंसमेत, आदेश मिति : २०७६।११।१९ रिट न.०७६-WO-०८५४, विषय : परमादेश।

अवस्थामा नजरअन्दाज गर्न नहुने र यसबाट अगावै सुरक्षित हुन र राज्यले पनि गरिदिन नेपालको संविधानको धारा १६(१) (३०) (३५) द्वारा प्रदत्त मौलिक हक, सङ्क्रामक रोग ऐन, २०२० को दफा २, विपद जोखिम न्यूनीकरण तथा व्यवस्थापन ऐन, २०७४ को दफा ५, ८, ११ जनस्वास्थ्य सेवा ऐन, २०७५ को दफा ४८, ४९ लगायतका कानून प्रदत्त हकहितलाई संविधानको धारा १३३(२) (३) को आधारमा संरक्षण एवं रक्षा गर्ने हेतु कोरोना भाइरस (कोभिड-१९) को सम्भावित सङ्क्रमण र त्यसबाट फैलिने सक्ने महामारी जस्तो विपद जोखिम न्यूनीकरणको निमित्त विपदपूर्वको जोखिमको विश्लेषण, मूल्याङ्कन, विपद रोकथाम र व्यक्तिको न्यूनीकरण सम्बन्धी पूर्वतयारीका कामहरू गरी नसकेको भए तत्काल गरी र गर्न लगाई सङ्क्रमण फैलिए विपद प्रति कार्य र व्यवस्थापनका कार्यहरू प्रभावकारी ढङ्गले गर्नुगराउनु, देशको उत्तर र अन्य सीमाबाट नेपालमा प्रवेश गरिने स्थलमार्ग र त्रिभुवन अन्तर्राष्ट्रिय विमानस्थलबाट व्यक्तिहरू प्रवेश गर्ने नागरिक (विदेशीसमेत) हरूको अनिवार्य रूपमा कडाईका साथ दक्ष जनशक्ति सहितको स्वास्थ्य जाँचको प्रभावकारी उपकरणको व्यवस्था, कोरोना भाइरस (कोभिड-१९) को गम्भीर सङ्क्रमण फैलिएका देशहरू (चीन, जापान, दक्षिणकोरिया, बहराइन, इरान आदि) बाटसोभै र ट्रान्जिट भएर त्रिभुवन अन्तर्राष्ट्रिय विमानस्थलमा अवतरण हुने अन्तर्राष्ट्रिय उडानका अवस्था र परिस्थितिको गम्भीरताको सूक्ष्म मूल्याङ्कन गरी आमजनताको स्वास्थ्यसम्बन्धी राष्ट्रिय हितलाई ध्यानमा राखी केही दिन र महिनाको लागि अन्तर्राष्ट्रिय विमानस्थलमा अवतरण हुने अन्तर्राष्ट्रिय उडानमा रोक लगाउने र ती देशका नागरिकलाई स्वास्थ्य परीक्षण विना प्रवेशमा रोक लगाउनुको साथै शङ्कास्पद स्वदेशी तथा विदेशी नागरिकलाई तत्कालै आइसोलेशन र क्वारेन्टइनमा राखी छुट्टै उपचारको व्यवस्था मिलाउने लगायत सङ्क्रमण लाग्न र फैलिन नदिन र साथै यसको कारणबाट बजारमा दैनिक उपभोगका अत्यावश्यक खाद्यान्न लगायतका चिज वस्तुहरूको अभाव हुन नदिन र त्यस सम्बन्धमा नियमित निगरानी राखी रहने लगायतका अन्य आन्तरिक व्यवस्थापनका साथै त्यससम्बन्धी सूचना सङ्कलन गरी त्यसलाई प्रवाह र सम्प्रेषण गर्ने व्यवस्थाहरू तत्काल गर्न गराउनको लागि अन्तरिम आदेश” जारी गरेको थियो ।

अधिवक्ता विष्णु लुईटेल वि. प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालय, सिंहदरबार, काठमाडौंसमेत^३

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश श्री विश्वम्भरप्रसाद श्रेष्ठको एकल इजलासले, “COVID-19 को महामारीको कारण देश बन्दाबन्दी (Lockdown) को स्थितिमा राख्ने नेपाल सरकारबाट निर्णय भएको आज ७ दिन व्यतित भएको छ । यसबाट अतिविपन्न दैनिक ज्याला मजदुरी गरी जीवन निर्वाह गर्ने व्यक्तिहरू खान पाउने अधिकारबाट वञ्चित हुनपरेको स्थितिको सिर्जना हुन जाने देखिन आएको छ । यस्तो विषम परिस्थितिमा त्यस्ता व्यक्तिहरू राहत लिन सम्पर्क राख्न आफैँ आउनु भन्दा राज्यका संयन्त्रबाटै त्यस्ता व्यक्तिहरूको पहिचान गरी राहत उपलब्ध गराइ निजहरूको खाद्यसम्बन्धी मौलिकहकको व्यवहारिक प्रचलन गराउन वाञ्छनीय देखिएको हुँदा सबै तहका सरकारका बीच समन्वय गरी आवश्यक पर्ने विशेष प्रबन्ध मिलाउनु भनी आदेश” जारी भएको थियो ।

3 अधिवक्ता विष्णु लुईटेल वि प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालय, सिंहदरबार, काठमाडौंसमेत, आदेश मिति : २०७६।१२।१७, रिट न. ०७६-WO-०९३३, मुद्दा :परमादेश ।

अधिवक्ता मुकुन्द अधिकारी वि. प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालय, सिंहदरबार, काठमाडौंसमेत⁴

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश श्री हरिप्रसाद फुँयालको एकल इजलासले, मूलतः स्वास्थ्य संस्थाबाट प्रवाहित हुने (क) आकस्मिक स्वास्थ्य सेवाको नियमित प्रवाह गर्नु, (ख) COVID-19 को परीक्षण गराउन चाहने व्यक्तिहरूको परीक्षण ४८ घण्टाभित्र गरी प्रतिवेदन दिनु, (ग) देशका सातैवटा प्रदेशबाट COVID-19 को परीक्षणको व्यवस्था मिलाउनु, (घ) ३७.३ FH भन्दा बढी ज्वरो आएका व्यक्तिहरूको परीक्षण गर्नु र एकान्तवास (Isolation) मा राख्नु, (ङ) ३७.३ FH भन्दा कम ज्वरो आएका बिरामीलाई सम्बन्धित स्वास्थ्य संस्थामा नै जाँच परीक्षण गर्ने व्यवस्था मिलाउनु र (च) नियमित उपचारको क्रममा स्वास्थ्य संस्थामा उपचार गराउन आएका बिरामी फिर्ता पठाउने कार्य रोक्नु भन्ने विषयमा अन्तरिम आदेश जारी गरिपाउँ भनी माग गरेको देखियो। साथै बहसको क्रममा उपस्थित विद्वान् वरिष्ठ अधिवक्ता तथा अधिवक्ताहरूले १९ March २०२० मा जारी भएको WHO को Interim Guidance को कार्यान्वयन तथा नेपालको परिप्रेक्ष्यमा सम्भावित महामारी रोक्न विपक्षी स्वास्थ्य तथा जनसंख्या मन्त्रालयले लिएका Non-Medical प्रक्रिया र Medical प्रक्रियाको तयारी र कार्यान्वयन तथा ऐनको दफा २(थ) बमोजिमका स्वास्थ्य संस्थाहरूले दफा ४ बमोजिमको आकस्मिक उपचार दफा ६ बमोजिमको प्रेषण (रिफरल) सेवा, दफा १० बमोजिमको सेवाग्राहीलाई स्वास्थ्य उपचारको जानकारी दिनुपर्ने व्यवस्था, दफा १६ बमोजिमको स्वास्थ्य संस्थाको दायित्व, दफा १३ बमोजिमको पेसागत आचरण तथा NMC को Code या ethics को प्रभावकारी कार्यान्वयनका सम्बन्धमा विपक्षीहरूबाट भएगरेका कामहरूको प्रभावकारिताका बारेमा प्रश्न उठाएको पाइयो। यसै सम्बन्धमा उक्त ऐनको दफा ५२ मा भएका कसुरहरू मूलतःस्वास्थ्य संस्थाहरूले उपचार सेवा प्रदान गर्न इन्कार गरेमा स्वास्थ्य तथा जनसङ्ख्या मन्त्रालयले के कदम चालेको छ भन्ने प्रश्नहरू समेत उठेको पाइयो। यस अदालतमा यसै प्रकृतिका ०७६-WO-०९३३ र ०७६-WO-०९३४ का निवेदनहरू परी उक्त निवेदनहरूमा माग भएका अन्तरिम आदेशहरूको छलफलका सम्बन्धमा मिति २०७६।१२।२३ को मिति तोकेको पाइयो। यस निवेदनमा केही फरक विषयहरू समावेश भएता पनि मूलतः COVID-19 सँग सम्बन्धित नै पाइयो। तसर्थ माथि उल्लेख भएका रिट निवेदकले निवेदनमा उठाएका र बहसको क्रममा उठेका विषयहरूको अवस्थाका बारेमा विपक्षी स्वास्थ्य तथा जनसंख्या मन्त्रालयका प्रवक्तालाई र अर्का विपक्षी स्वास्थ्य सेवा विभाग, टेकुका महानिर्देशकले तोकेको प्रतिनिधिलाई उल्लिखित विषयको कार्यविवरण र योजना प्रतिवेदनसहित छलफलमा उपस्थित हुन” आदेश गरेको थियो।

अधिवक्ता विष्णु लुइँटेल वि प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालय, सिंहदरबार, काठमाडौंसमेत⁵

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश श्री हरिकृष्णकार्की र न्यायाधीश डा. श्रीआनन्दमोहन भट्टराईको

- 4 अधिवक्ता मुकुन्द अधिकारी वि प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालय, सिंहदरबार, काठमाडौंसमेत, आदेश मिति: २०७६।१२।२१, रिट नं ०७६-WO-०९३६, विषय: उत्प्रेषण।
- 5 अधिवक्ता मिना खड्का बस्नेतसमेत वि प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालयसमेत, आदेश मिति: २०७६।१२।२५, रिट नं ०७६-WO-०९३५, ०७६-WO-०९३२, मुद्दा उत्प्रेषण।

संयुक्त इजलासले, “अदालत सरकारद्वारा भएका ती कार्यहरूको सराहना सर्दछ । सरकारी कदमहरू प्रति जनस्तरबाट भएको सहयोगको पनि अदालत प्रशंसा गर्दछ । तर यो रोगको नियन्त्रणमा समय अत्यन्त महत्त्वपूर्ण छ र समय भित्र नियन्त्रणका कार्यहरू हुन नसकेमा भयावहपूर्ण स्थिति सिर्जना हुनसक्ने कुरालाई मध्यनजर गर्दै नेपालको संविधानको धारा १३३ अन्तर्गत देहाय बमोजिमको आदेश जारी गरिएको छ :

- (क) राहत सम्बन्धमा हाल स्थानीय तहबाट कार्यहरू भएको देखियो । राहत वितरण गर्दा श्रम गरेर जीवन निर्वाह गर्ने, लकडाउनको कारण आय आर्जन रोकिएका व्यक्तिहरूलाई केन्द्रित गरी र राहतको दुरुपयोग नहोस् भनी पारदर्शिता समेत कायम गरी वितरण गर्ने । ‘नेपालमा कोही भोको बस्न पर्दैन, कोही भोको मर्दैन’ भन्ने सरकारद्वारा घोषित नीतिलाई व्यवहारमा कार्यान्वयन गर्न त्यस्ता लक्षित व्यक्ति तथा परिवारको सही पहिचानमा कमी नआओस भन्नेतर्फ ध्यान केन्द्रित गर्नु ।
- (ख) क्वारेन्टाइनको लागि देशको विभिन्न भागमा हाल २७८१८ बेड खडा गरिएको भन्ने जानकारी प्राप्त भयो । क्वारेन्टाइनको स्थापनामा WHO को मापदण्ड अनुशरण भए नभएको अनुगमनको व्यवस्था गर्नु साथै विदेशबाट हवाईजहाज र स्थलमार्ग हुँदै नेपाल प्रवेश गरेका सबैलाई क्वारेन्टाइनमा राखेको नपाइँदा स्थानीयतहमाफर्त तिनीहरूलाई पत्ता लगाइ उनीहरूलाई आवश्यकताअनुसार क्वारेन्टाइनमा राख्ने या त होमक्वारेन्टाइनमा निगरानीसहित राख्ने बारे घनीभूत प्रयास गर्नु ।
- (ग) परीक्षणको हकमा हाल सो कार्य प्रदेश तहमा विस्तार गरिएको पाइयो तर हालसम्म १६४५ जनाको मात्र परीक्षण गरेको पाइयो । यो संख्या अत्यन्त न्यून देखिँदा परीक्षण केन्द्रहरू उपत्यकाबाहिर अन्य सहरि केन्द्रहरूमा समेत बिस्तार गरी परीक्षणमा धेरैभन्दा धेरै जनताको सहज पहुँच पुर्याउनु ।
- (घ) नेपालको ग्रामीण परिवेश र विकटता समेतलाई दृष्टिगत गर्दा सङ्क्रमणको सम्भावना भएका व्यक्तिहरूको परीक्षण, आइसोलेसन र उपचार समेतको लागि स्थानीय तह र प्रशासनसमेत सँग समन्वय गरी छिटोभन्दा छिटो उपचार केन्द्र/अस्पतालमा पुर्याउन हेलिकप्टरद्वारा एयरलिफ्ट हुने व्यवस्थासमेत गर्नु ।
- (ङ) कोभिड-१९ बाहेकका अन्य बिरामीहरूको आकस्मिक स्वास्थ्य सेवाका साथै तत्कालै गर्नुपर्ने आवश्यक उपचार प्रभावित नहुने व्यवस्था मिलाउनु ।
- (च) निजी तवरमा सञ्चालित अस्पतालमा कार्यरत स्वास्थ्यकर्मीहरूलाई समेत सुरक्षित ढंगबाट सेवा सुचारू गर्न सक्ने वातावरण सिर्जना का लागि PPE लगायतका आवश्यक स्वास्थ्य सामग्रीको उपलब्धताको सुनिश्चितता गरी निजी अस्पताललाई सेवा सुचारू गराउने व्यवस्था गर्नु र निजी अस्पतालद्वारा प्रदान गरिएको सेवाको हकमा मिति २०७६।१२।१८ को आदेशको कार्यान्वयनको अवस्था लिखित जवाफ पेस हुँदा स्पष्ट गर्नु ।
- (छ) कृषिजन्य कार्य कहिल्यै नरोकिने निरन्तरको कार्य हुँदा कृषिक्षेत्रमा संलग्न किसानहरूको सुरक्षा र राहतको व्यवस्था गर्नु ।

(ज) हाल मुलुकमा रहेका ICU Bed र भेन्टिलेटर समेतलाई दृष्टिगत गर्दा सो सङ्ख्या नपुगारहेको र सो को बिस्तार गर्न सरकार प्रयासरत रहेको जानकारी प्राप्त भयो । महामारीको प्रकोपलाई दृष्टिगत गर्दा भेन्टिलेटर र ICU Bed स्वास्थ्य विज्ञान प्रतिष्ठान, प्रदेश तहमा रहेका अस्पतालमा समेत विस्तार गर्नु र त्यहाँका जनताको पहुँच शीघ्र बढाउनु” । भनी आदेश जारी भएको थियो ।

अधिवक्ता मिना खड्का बस्नेतसमेत वि प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालय समेत⁶

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश श्री दीपककुमार कार्की र न्यायाधीश डा.श्री मनोजकुमार शर्माको संयुक्त इजलासले, “कोभिड-१९ का कारण नेपाल लगायत विश्वनै लकडाउनको अवस्थामा रहेको समयमा नेपाल आफ्नो नागरिकको सुरक्षामा प्रयत्नशील रहे पनि त्यो प्रयास प्रयाप्त रहेको देखिन आएन । यस लकडाउन (Lockdown) को अवस्थामा नेपालका नागरिकहरू विश्वको जुनसुकै कुनामा रहेको भएता पनि निजहरूले खान, बस्न र स्वास्थ्य उपचारको अभावमा बस्नु नपरोस् भन्ने कुरालाई मध्यनजर राख्दै यस लकडाउन (Lockdown) को अवधि सम्मका लागि विदेशमा रहेकानेपाली नागरिकहरूको संरक्षणका सम्बन्धमा तत्काल देहायबमोजिम गर्नुगराउनु भनी नेपालको संविधानकोधारा १३३ अन्तर्गत नेपाल सरकारको नाममा देहाय बमोजिमको आदेश जारी गरिदिएको छ ।

१. विदेशमा खान, बस्न र स्वास्थ्य उपचारको अभाव भेलिरहेका वा विपद्मा परेका नेपाली नागरिकहरूको पहिचान गरी नेपाल फर्कन चाहने इच्छुक नेपाली नागरिकहरूलाई सम्बन्धित मुलुकसँग कुटनीतिक माध्यमबाट समन्वय गरी नेपाल ल्याउने आवश्यक व्यवस्था गर्नु गराउनु, उक्त कार्य सम्भव नभएको अवस्था मानिसहरूलाई तत् तत् स्थानमा खान, बस्न र स्वास्थ्य उपचारको यथोचित प्रबन्ध गरी नागरिक हरूको हकहितको रक्षा गर्ने व्यवस्था मिलाउन आवश्यक पहल गर्नु ।
२. यसरी सो बमोजिम नेपालीहरू विदेशबाट नेपाल आएको अवस्थामा आएका सम्पूर्ण व्यक्तिहरूको नाम, थर, वतनसहितको अद्यावधिक लगत राखेर मात्र नेपाल प्रवेश गराउने व्यवस्था मिलाउनु । निजहरूलाई क्वारेन्टाइनमा राख्नु ।
३. नेपाल भारतको सीमामा रहेका नेपाल आउन इच्छुक नेपाली नागरिकहरूलाई नेपालमा ल्याई निश्चित समय क्वारेन्टाइनमा राख्ने व्यवस्था मिलाउनु त्यस्तो प्रबन्ध गर्न तत्काल सम्भव नभएमा भारत सरकारसँग समन्वय गरी लकडाउन अवधिसम्मका लागि निजहरूलाई खाने, बस्ने तथा उपचारको यथोचित व्यवस्था मिलाउन पहल गर्नु ।
४. क्वारेन्टाइनमा रहेका व्यक्तिहरूलाई WHO को मापदण्डअनुसार स्वास्थ्य उपचारलगायतका सेवा प्रदान गर्ने व्यवस्था गरी क्वारेन्टाइनलाई व्यवस्थित तवरले सञ्चालन गर्ने व्यवस्था मिलाउनु ।
५. विदेशमा रहेका नेपालीहरूको भिसा समाप्त भएको वा राहदानीको म्याद समाप्त भएको कारणबाट कुनै समस्या पर्ने अवस्था भएमा त्यस्ता नेपाली नागरिकहरू रहेको मुलुकसँग समन्वय गरी नेपाली नागरिक हरूको बसाइँ नियमित गर्ने व्यवस्था मिलाउनु ।” भनी आदेश जारी भएको थियो ।

6 अधिवक्ता मिना खड्का बस्नेतसमेत वि प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालयसमेत, आदेश मिति: २०७६।१२।२५, रिट नं ०७६-WO-०९३५, ०७६-WO-०९३२, मुद्दा उत्प्रेषण ।

दिपक मिरिडसिड वि. महानगरीय प्रहरी वृत्त गौशालासमेत⁷

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश श्री इश्वर प्रसाद खतिवडा र न्यायाधीश श्री हरिप्रसाद फुँयालको संयुक्त इजलासले, “अहिले COVID-19 को सङ्क्रमणबाट उत्पन्न असहज परिस्थिति रहेको कुरामा विवाद छैन। यस अवस्थामा कुनै व्यक्तिलाई पक्राउ गरी बन्दी बनाउँदा कसुरको गम्भीरता तर्फ पनि विशेष रूपमा संवेदनशील भई दृष्टि पुर्याउनु आवश्यक देखिन्छ। गम्भीर प्रकृतिका कसुरमा अभियुक्तलाई पक्राउगरी थुनामा राखेर कानुन बमोजिम कारबाही चलाउनुपर्ने अवस्था अवश्य नै रहन्छ। केवल रोग सङ्क्रमणको कारण देखाएर गम्भीर प्रकृतिका कसुर गर्नेले कानूनी परिणाममा छुट वा सुविधा पाउन सक्दैन तर सामान्य प्रकारको कसुरको विषयमा भने व्यावहारिक किसिमको कार्यप्रणाली अपनाउनु वर्तमान समय-सान्दर्भिक र मनासिब देखिन्छ। मुलुकी फौजदारी कार्यविधि संहिता, २०७४ को दफा १५ (१) मा” यस ऐन बमोजिम अनुसन्धानको सिलसिलामा हिरासतमा रहेको कुनै व्यक्तिलाई हिरासतमा राखिरहनु आवश्यक वा उपर्युक्त नदेखिएमा अनुसन्धान अधिकारीले सरकारी वकिलको सहमति लिई वा तत्काल त्यस्तो सहमति लिन सकिने अवस्था नभएमाकारण सहितको पर्चा खडागरी त्यस्तो व्यक्तिबाट धरौट वा जमानत लिई वा निजलाई कुनै माथवर व्यक्तिको जिम्मामा हाजिर जमानीमा छाड्न वा तारिखमा राख्न सक्नेछ” भनी उल्लेख भएको छ। यसको तात्पर्य सबै प्रकारका अभियुक्तलाई अनुसन्धानको सिलसिलामा हिरासतमा नै राख्नुपर्दछ भन्ने पनि कानूनी अनिवार्यता देखिँदैन। “हिरासतमा राखिरहनु आवश्यक वा उपर्युक्त नदेखिएमा त्यस्तो व्यक्तिबाट धरौट वा जमानत लिएर वा हाजिर जमानीमा राखेर पनि अनुसन्धानको कार्यगर्न सकिने।” भनी सिद्धान्त प्रतिपादन भएको छ।

अधिवक्ता सोमप्रसाद लुइँटेल वि. प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालयसमेत⁸

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश श्री सपना प्रधान मल्लको एकल इजलासले, “सरकारले तत्काल केही नगर्दा वैदेशिक रोजगारमा रहेका नेपाली नागरिकको मानसिक, शारीरिक स्वास्थ्य तथा जीवनमात्र जोखिममा नरही निजमा आश्रित रहेका परिवारको समेत जीवन जोखिममा पुग्न जाने हुँदा नेपाल बाहिर वा नेपालभित्र जहाँ रहेबसे पनि उनको जिम्मेवारी राज्यको प्राथमिकताको विषय रहेको हुन्छ। तसर्थ कोरोना प्रभावित (COVID-19) महामारी फैलिएको मुलुकहरूमा वैदेशिक रोजगारीमा रहेका नेपाली नागरिकको नेपाली राजदूतावास वा श्रम सहचारीमार्फत कोरोना भाइरस संक्रमित नेपाली नागरिकको स्वास्थ्य स्थिति प्रतिवेदन तत्कालै तयार गर्न लगाई WHO को मापदण्डबमोजिम स्वास्थ्यसेवा/उपचार भेदभावरहित तरिकाले प्राप्त गर्न परराष्ट्र मन्त्रालयमार्फत कुटनीतिक सञ्चार र समन्वय गर्न तथा वैदेशिक रोजगारी मा रहेको अत्यन्त जोखिममा रहेको नेपाली नागरिकको अनिनयन्त्रित र अव्यवस्थित नेपाल प्रवेशबाट हुने थप जोखिमताबाट संरक्षण गर्न नागरिकको व्यक्तिगत अधिकार (Individual Right of Citizen) तथा

7 दिपक मिरिडसिड वि. महानगरीयप्रहरीवृत्त गौशालासमेत, आदेश मिति : २०७६।१२।२७, रिट न ०७६-WH-०३२९ विषय :बन्दीप्रत्यक्षीकरण।

8 अधिवक्ता सोमप्रसाद लुइँटेल वि. प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालयसमेत, आदेश मिति : २०७७।१।४, रिट न. ०७६-WO-०९४०, विषय :परमादेश।

बहुसंख्यक जनताको (Interest of ALrger population) “जीवन, स्वास्थ्य र सुरक्षाको हितलाई समेत सन्तुलित तरिकाले संरक्षण गर्दै सूक्ष्म, गम्भीर एवं संवेदनशील तरिकाले विना भेदभाव, विना स्वच्छाचारी, विवेकपूर्ण तरिकाले नियमन र नियन्त्रणको सर्त बन्देज सहित फिर्ता ल्याउने/उद्धारको लागि आवश्यक प्रशासनिक, आर्थिक र व्यवस्थापकीय पहल गर्न अन्तरिम आदेश” जारी गरिएको थियो ।

अधिवक्ता प्रकाशमणि शर्मा समेत वि. प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालय समेत⁹

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश डा.श्रीआनन्द मोहनभट्टराई र न्यायाधीश श्री सपना प्रधानमल्लको संयुक्त इजलासले, “ क. विकल्पको अभावमा बाध्यतामा परेका र हाल काठमाडौँ लगायत अन्य विभिन्न सहरी क्षेत्रहरूबाट आफ्नो स्थायी बसोबास रहेको गाउँ/नगरको निमित्त पैदलै प्रस्थान गरिसकेका जनताहरूलाई सुरक्षित रूपमा उनीहरूको गन्तव्यमा पुऱ्याउने राज्यको प्राथमिक कर्तव्य हो । यी वर्गको तथा समूहको व्यक्ति र बृहत् समाजको हितलाई समेत ध्यानमा राखी स्थानीय रूपमा हाल परिचालित स्वास्थ्य परीक्षण सम्बन्धी जनशक्तिको मोबाइल समूहहरू परिचालन गरी उनीहरूको च्यापिड टेस्ट गर्दै सुरक्षाको लागि अपनाउनुपर्ने सबै आवश्यक उपायहरू अवलम्बन गर्दै अत्यन्त प्राथमिकताको साथ उनीहरूलाई सरकारको कार्यमा आस्वस्थ हुने गरी अविलम्ब सबै राजमार्गहरूबाट सवारी साधनहरूको निःशुल्क व्यवस्था गरी उनीहरूको गन्तव्य स्थानमा पुऱ्याइदिनु । सो गर्दा महिला, बालबालिका, ज्येष्ठ नागरिक, शारीरिक रूपमा अस्वस्थ व्यक्तिहरूको विशेष सुरक्षा गर्नु र प्राथमिकता क्रममा राख्नु । यी व्यक्तिहरूको परीक्षण गर्दा कोभिडको आशङ्का भएका व्यक्तिहरूलाई आवश्यकता अनुसार तत्काल क्वारेन्टाइन/आइसोलेसनमा राख्ने व्यवस्था गरी निको भएपछि वा शङ्काबाहिर आएपछि मात्रै उनीहरूको गन्तव्यमा सुरक्षित तवरले पुऱ्याईदिने व्यवस्था गर्नु, गराउनु । ख. हाल प्रस्थान गरी नसकेका काठमाडौँ उपत्यका लगायत सहरी क्षेत्रमा रहेका माथि उल्लिखित समूहका आफ्नो स्थायी बसोबास भएको जिल्ला, गाउँ/नगरपालिकामा जान चाहने व्यक्तिहरूको हकमा निजहरू हाल रहेको वडाद्वारा टेलिफोन मार्फत जान चाहने जिल्ला, गाउँ/नगरपालिका र वडासमेत खुल्ने गरी पृष्ठभूमि समेत प्रमाणित हुने किसिमबाट लगत संकलन गर्नु गराउनु । तत्पश्चात् च्यापिड टेष्टको माध्यमद्वारा निजहरूको स्वास्थ्य परीक्षण गरी र सुरक्षा संयन्त्रसमेतको संलग्नतामा विश्व स्वास्थ्य सङ्गठनको मापदण्ड बमोजिम सवारी साधनलाई स्यानिटाइज गरी अन्य आवश्यक स्वास्थ्य सुरक्षाको उपायहरू अपनाई सम्बन्धित वडा-वडाबाट निजहरू जान चाहने प्रदेश, जिल्ला र पालिका समेतसँग समन्वय गरी सो स्थानहरूमा पुगेपछि आवश्यकता अनुसार क्वारेन्टाइनमा राख्ने प्रबन्धसमेत मिलाउनु ।

ग. कोभिड-१९ को सङ्क्रमणमा परेका, जोखिममा रहेका र पेसा रोजगार गुमाई तनावमा रहेका जनताहरूलाई केन्द्रित गरी उनीहरूको मानसिक स्वास्थ्यसमेतलाई विचार गरी उपयुक्त माध्यमद्वारा सघन मनोसामाजिक परामर्शको व्यवस्था गर्नु, गराउनु ।

9 अधिवक्ता प्रकाशमणि शर्मा समेत वि. प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालयसमेत, आदेश मिति: २०७७।१।५ रिट नं ०७६-WO-०९३८, मुद्दा :उत्प्रेषण ।

घ. यसरी आफ्नो स्थायी बसोबास भएको क्षेत्रमा पुगेका तत्काल राहतको आवश्यकता हुने व्यक्तिहरूलाई राहत प्रदान गर्न र क्वारेन्टाइन समेतका स्वास्थ्य सेवाहरू प्रदान गर्न आवश्यक पर्ने स्रोत, साधन स्थानीय तहलाई उपलब्ध गराउनु । साथै हालको महामारीलगायत स्थानीय जनताको स्वास्थ्यसम्बन्धी हक सुनिश्चित गर्न जिल्ला अस्पतालमा समेत आई.सी.यु. बेड र स्तरीय स्वास्थ्य सेवा प्रदान गर्न सक्ने जनशक्ति विस्तार गर्नु । जनताको स्वास्थ्यसम्बन्धी हकको प्रभावकारी कार्यान्वयनको लागि जनस्वास्थ्य सेवा ऐन, २०७५ अन्तर्गत निर्माण गर्नुपर्ने नियमावली तत्काल निर्माण गरी लागू गर्नु, गराउनु ।

ङ. कोभिड-१९ को सङ्क्रमणको संख्या हाल पनि नियन्त्रणबाहिर रहेकोसमेत सन्दर्भमा सम्भावित जोखिमलाई मध्यनजर गरी भरपर्दो परीक्षणको दायरा तत्काल बढाउनु आवश्यक देखिन्छ । पिसिआर (PCR) मेसिनद्वारा परीक्षण गर्ने हाल स्थापित केन्द्रहरू बाहेक पनि जनघनत्व बढी भएका र स्वास्थ्य सेवाको पहुँचको हिसाबले समेत आवश्यक र उपयुक्त देखिएका सहरी क्षेत्रहरूमा परीक्षण केन्द्रहरू थप गर्नु आवश्यक देखिँदा प्राथमिकताका साथ परीक्षण केन्द्रहरू स्थापना गर्नु । स्वास्थ्यसम्बन्धी मेसिन, सामग्री र औषधीसमेत खरिद गर्दा विश्व स्वास्थ्य सङ्गठनको मापदण्ड अनुकूल हुने गरी खरिद गर्नु, गराउनु ।

च. हाल उद्योग, कलकारखाना बन्द रहेको र रोजगारी गुमेको कारण ग्रामीण क्षेत्रमा फर्किएका जनताहरूको उपलब्धतालाई कृषि क्षेत्रको पुनर्जागरणको अवसरको रूपमा प्रयोग गर्न सकिने हुँदा स्थानीय तहमा बिउ बिजन, मल, कृषि औजार आदि अवस्थाअनुसार निःशुल्क वा सहूलियत दरमा सहज रूपमा उपलब्ध गराउने र कृषि बाली र पशुधन समेतको बिमामार्फत ग्रामीण अर्थतन्त्रलाई स्वाबलम्बी अर्थतन्त्रको रूपमा विकास गर्न प्रदेश र स्थानीय तहसमेतको समन्वयमा आवश्यक कार्य अविलम्ब गर्नु, गराउनु ।

छ. आफ्नै गाउँ समाज र परिवारको सदस्यहरू सहरबाट फर्की आएकोमा सङ्क्रमित भएको वा नभएको हेरी थप सङ्क्रमण नहुन र सुरक्षाको निमित्त तोकिएको नियमन एवम् नियन्त्रणको सर्त पालन भएको छ वा छैन हेरी पालना हुने कुरा सुनिश्चित गरी सहरबाट फर्किएका आफ्नो समुदायका सदस्यहरूलाई सम्मानपूर्ण सामाजिक पुनःएकीकरणको वातावरणको सुनिश्चितता गर्न प्रदेश र स्थानीय सरकारसँग समन्वय गरी कार्यान्वयन गर्नु, गराउनु^{१०} । भनी अन्तरिम आदेश जारी गरिएको थियो

अधिवक्ता अजयशंकर झा “रूपेस” वि.कैलाली जिल्ला अदालत समेत¹⁰

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश श्री सपनाप्रधान मल्ल र न्यायाधीश डा. श्री मनोजकुमार शर्माको संयुक्त इजलासले, “ महामारीको कारणले व्यक्तिको वैकल्पिक उपचारको हक पनि अवरुद्ध भई बन्दीप्रत्यक्षीकरणको रिटअन्तर्गत आएको निवेदनको सन्दर्भमा विचार गर्दा वैकल्पिक उपचारको हकसमेत अवरोध भएको आजको बन्दाबन्दीको परिणाम न्यायमा पहुँचमा समेत अवरोधको स्थिति सिर्जना भएको छ । बन्दाबन्दी (Lockdown)को अवस्थामा कुनै पनि मौलिक हक निलम्बित नभई उपचारको हक (Right to Remedies) समेत जीवन्त रहेको अवस्था छ । उपचारको हक जीवन्त रहने तर

10 अधिवक्ता अजयशंकर झा “रूपेस” वि.कैलाली जिल्ला अदालतसमेत, फैसला मिति : २०७७।१।१४ ०७६-WH-०३२९, मुद्दा:- बन्दीप्रत्यक्षीकरण ।

बन्दाबन्दीले तत्काल न्यायको पहुँचमा अवरूद्ध हुँदा बाँच्न पाउने व्यक्तिको अन्तरनिहित मानव अधिकारमा नै हनन हुने स्थिति आउँदछ । यसर्थ कोभिड-१९ को सन्त्रासबाट बृहत् जनताको हित, जीवन र स्वास्थ्यको संरक्षण गर्न आवश्यक सतर्कता अपनाउनु पर्दछ । यो जवाफदेहिता राज्यको हरेक अङ्ग र निकायमा रहेको छ । यो जवाफदेहिताबाट अदालत अलग रहन सक्दैन । त्यसैले अदालतकै आदेशबाट थुनामा, कारागारमा वा सुधारगृहमा रहेका थुनुवा बन्दीहरूको हकमा अदालतमा आएको बन्दी प्रत्यक्षीकरणको रिट निवेदनलाई विचार गरी उपयुक्त आदेश गर्नुपर्ने नै देखियो । संविधानको धारा १३३ (३) ले असाधारण अधिकारअन्तर्गत बन्दीप्रत्यक्षीकरण, परमादेश, उत्प्रेषण, प्रतिषेध, अधिकारपृच्छा लगायत अन्य उपयुक्त आदेश जारी गर्न सक्ने व्यवस्थासमेत रहेकै देखिन्छ । यस्तो अवस्थामा सुधार गृहमा रहेका बालबालिकाको पनि संविधानको धारा १६ द्वारा प्रदत्त जीवनको अधिकार तथा स्वास्थ्य संरक्षणको अधिकार राख्दछन्, जसको संरक्षण गर्नुपर्ने दायित्व राज्यमा रहेको छ । हाल सुधार गृहको क्षमताभन्दा बढी बालबालिकाहरू रहेको कारण सुधार गृहमा सामाजिक शारीरिक दुरी राखी सुरक्षित व्यवस्थापनको अवस्था नरहेको र बन्दाबन्दीको उद्देश्यअनुरूप सुरक्षित स्वास्थ्यको उपयोगिताको सुनिश्चितता हुन नसक्ने अवस्थामा कैलाली जिल्ला अदालत, धनगढीबाट भएको मिति २०७७।१।९ को निर्णय बालबालिकाको जीवन, स्वास्थ्य र सर्वोत्तम हित संरक्षणको निमित्त न्यायोचित भएको नदेखिँदा उत्प्रेषणको आदेशले बदर गरिदिइएको छ । कुनै पनि व्यक्ति जो थुना, सुधारगृह वा कारागारमा रहेका छन्, यिनीहरूलाई सजाय भोग्न पठाउनुको अर्थ जीवन नै जोखिममा राख्न वा मर्न पठाइएको नभई आफूले गरेको गल्तीमा कसुरको मात्रा अनुरूप गल्ती अनुभूत गर्न सजाय भोग्नसम्म पठाइएको हो । बालबालिकाको हकमा बाल सुधार गृहमा पठाउनुको अर्थ सुधारका निश्चित उपायहरू समेत अवलम्बन गर्नु हो । कैदको सजाय भनेको अन्तिम विकल्प हो । कानूनले कैद सजायबाहेक अन्य विकल्पहरू पनि दिइएको छ । निर्णयकर्ताले महामारीको विषम परिस्थितिमा सन्त्रास छाएको अवस्थामा सङ्क्रमणको रोकथाम र जोखिम न्यूनीकरणको निमित्त कानूनबमोजिमको उपयुक्त विकल्प खोज्नुपर्ने” भनी सिद्धान्त प्रतिपादन भएको छ ।

अधिवक्ता तेजप्रसाद खराल वि. जिल्ला अदालत बागलुङ¹¹

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश श्री सपना प्रधान मल्ल र न्यायाधीश डा.श्री मनोजकुमार शर्माको संयुक्त इजलासले, “सिङ्गे देश बन्दाबन्दी (Lockdown) को स्थितिमा रहेको अवस्थामा कारागारमा रहेको थुनुवा/कैदीको पनि अन्य नागरिक सरह जीवनको सुरक्षा, स्वास्थ्यको सुरक्षा तथा संक्रमणको जोखिमबाट सुरक्षित राख्नु पर्ने दायित्व राज्यमा रहेको छ । थुनुवा/कैदीको हकमा पनि न्यूनतम मानवीय व्यवहार गर्नुपर्ने हुन्छ । कारागारको क्षमताभन्दा बढी कैदी रहेको भनी निवेदनमा नै उल्लेख भएको र बहसको क्रममा तथा सम्बन्धित कार्यालयको आधिकारिक स्रोतबाट समेत प्राप्त तथ्याङ्कबाट पनि

11 अधिवक्ता तेजप्रसाद खराल वि. जिल्ला अदालत बागलुङ, फैसला मिति : २०७७।१।१४, ०७६-WH-०३३०, मुद्दा:- बन्दीप्रत्यक्षीकरण ।

देखिएको अवस्थामा बन्दाबन्दी (Lockdown) मा भीड कम गर्दै शारीरिक दुरी कायम गरी संक्रमणको जोखिमबाट बच्नको लागि स्वास्थ्यको सुरक्षाको उपयोगितालाई ध्यानमा राखेर मुलुकी फौजदारी कार्यविधि संहिता, २०७४ को दफा १५५ अन्तर्गतको उपयुक्त आदेश गर्नु भनी बागलुङ जिल्ला अदालत तथा उच्च अदालत पोखरा, बागलुङ इजलासको नाममा परमादेशको आदेश” जारी गरेको थियो ।

अधिवक्ता ईन्द्रप्रसाद अर्याल वि. जिल्ला प्रशासन कार्यालय ललितपुर, मानभवन, ललितपुर¹²

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश श्री पुरुषोत्तम भण्डारी र डा. श्री मनोजकुमार शर्माको संयुक्त इजलासबाट, “मिति २०७६।१२।११ देखि कोरोनाको महामारीका कारण पूरै देश लकडाउनमा रहेको अवस्थामा निवेदकहरूले मिति २०७७।०१।०७ का दिन ललितपुर महानगरपालिकाको वडा नं. १३ मा नागरिकता विहीन मजदुर, गरिब, दुःखी, असहाय र विद्यार्थी लगायतलाई राहत वितरण गरेको र विपक्षीहरूले सो राहत वितरण गर्ने कार्य एकद्वार प्रणाली अन्तर्गत गर्नुपर्ने भनी जिकिर लिएको भए पनि रिट निवेदकहरूले लकडाउनका समयमा खान नपाएका नागरिकता विहिन उल्लिखित वर्गहरूलाई त्यसरी राहत वितरण गर्नु भनेको मानवीय दृष्टिकोणले परिस्थिति अनुकूल मान्नुपर्ने नै हुन्छ । मलुकी फौजदारी कार्यविधि संहिता, २०७४ को दफा १४(९) मा “मुद्दा हेर्ने अधिकारीले हिरासतमा राख्ने आदेश दिँदा कारण सहितको पर्चा खडा गर्नुपर्नेछ” भन्ने कानूनी व्यवस्था रहेको छ । मिसिल संलग्न कागजातहरू हेर्दा रिट निवेदकहरूलाई अनुसन्धानको लागि थुनामै राखी अनुसन्धान गर्नुपर्ने कारण, अवस्था खुलेको देखिँदैन भने साधिकार निकायबाट म्याद थप हुँदासमेत म्याद थप गर्नुपर्ने, थुनामै राख्नुपर्ने उचित कारण र कारणसहित पर्चा खडा भएको समेत देखिन आउँदैन । कानूनको उचित प्रक्रिया अवलम्बन नगरी तथा कानून बमोजिम औचित्यपूर्ण कारण र आधारबाहेक नागरिकको स्वतन्त्रताको हक अपहरण गर्न मिल्दैन । संविधानद्वारा प्रत्याभूत गरेको अधिकारको उपभोग गर्नबाट वञ्चित गर्न कानूनद्वारा निषेधित कार्य गरेको तथ्यगत आधार देखिनु पर्ने हुन्छ । कानूनद्वारा निषेधित कसुर गरेको देखिने भरपर्दो र विश्वसनीय आधारबिना व्यक्तिलाई स्वतन्त्रताको हक उपभोग गर्नबाट वञ्चित गर्नु कानूनी राज्यको अवधारणा विपरीत हुन जान्छ । यसरी उचित र पर्याप्त आधारबिना गैरकानूनी थुनाबाट नागरिकको संविधान प्रदत्त मौलिक हकको संरक्षण गर्नु यस अदालतको कर्तव्य र दायित्वसमेत हुन आउँछ । यस स्थितिमा निवेदकहरूलाई तारेखमा राखेर पनि मुद्दाको बाँकी अनुसन्धान हुनसक्ने अवस्था विद्यमान हुँदाहुँदै कानून बमोजिमको प्रक्रिया नै पूरा नगरी थुनामा नै राख्नुपर्ने सम्मको कारणबिना नै निजहरूलाई प्रवृत्त धारणाबाट थुनामा राखेको देखिएबाट कुनै पनि नागरिकले केही कुरामा असहमति जनाउनु र आफ्ना कुरा व्यक्त गर्नु आफैँमा विचारणीय प्रश्न रहेको सन्दर्भमा प्रक्रिया पूरा नगरी भएको विपक्षीहरूको सो कार्यले कानूनी मान्यता प्राप्त गर्नसक्ने नदेखिँदा यी रिट निवेदकहरूका हकमा बन्दीप्रत्यक्षीकरणको आदेश जारी गर्नुपर्ने देखिन आयो ।” भनी सिद्धान्त प्रतिपादन भएको छ

12 अधिवक्ता ईन्द्रप्रसाद अर्याल वि. जिल्ला प्रशासन कार्यालय ललितपुर, मानभवन, ललितपुर, आदेश मिति: २०७७।१।१६, ०७६-WH-०३३६, मुद्दा: बन्दीप्रत्यक्षीकरण ।

अधिवक्ता मणिराम उपाध्याय वि. प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालय समेत¹³

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश श्री दीपककुमार कार्की र न्यायाधीश श्री हरिप्रसाद फुयालको संयुक्त इजलासले, “भारत लगायत अन्य देशहरूबाट आयात हुने फलफूल तथा तरकारी जस्ता वस्तुहरूमा पाइने विषादि तथा COVID-19 को उपलब्ध भएसम्मका परीक्षण सुविधा प्रयोग गरी मात्र आयात गर्नु । साथै आन्तरिक रूपमै उत्पादन भएका फलफूल तथा तरकारीहरूको विषादि तथा COVID-19 को समेत उपलब्ध भएसम्मका परीक्षण सुविधा प्रयोग गरी वितरणको व्यवस्था गर्नु । उपभोक्ता संरक्षण ऐन, २०७५ को दफा ३१ समेतको अधिकार प्रयोग गरी उपभोक्तासम्म पुग्ने गरी उत्पादक तथा उत्पादन स्थलहरूबाट उपभोक्तासम्म वितरणको व्यवस्था गर्नु गराउनु भनी अन्तरिम आदेश” जारी भएको थियो । ।

अधिवक्ता शैलेन्द्रप्रसाद हरिजन समेत प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालय समेत¹⁴

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश श्री दीपककुमार कार्की र न्यायाधीश श्री हरिप्रसाद फुयालको संयुक्त इजलासले, “मिति २०७६ चैत्र १९ गतेबाट लागू हुने गरी नेपाल सरकारले असंगठित क्षेत्रमा कार्यरत श्रमिक वर्ग तथा असहायहरूलाई उपलब्ध गराइने राहतसम्बन्धी मापदण्ड, २०७६ जारी गरी उक्त मापदण्ड लकडाउन घोषणा गरेको अवधिसम्म मात्र लागू हुने भन्ने व्यवस्था गरेको पाइन्छ । सोही मापदण्डको दफा ३ सँग सम्बन्धित अनुसूची १ को बुँदा नं. ८ मा राहत पाउने व्यक्तिसँग नेपाली नागरिकताको प्रमाणपत्रको प्रतिलिपि वा गरिब घरपरिवार परिचयपत्रको प्रतिलिपि वा सवारी चालक अनुमतिपत्रको प्रतिलिपि वा अन्य भन्ने उल्लेख भएको पाइन्छ । महामारी परेको अवस्थामा पनि राज्यले प्रत्येक व्यक्तिको सम्मानपूर्वक बाँच्न पाउने अधिकारको सम्मान गर्नुपर्ने र यस्तो अवस्थामा दिने कुनै राहत बिना भेदभाव दिनु पर्ने भन्ने सम्बन्धमा कुनै विवाद रहेको देखिँदैन । यस परिप्रेक्ष्यमा उक्त मापदण्डको बुँदा नं. २ को परिभाषा खण्डको (क) र (ख) मा उल्लेख भएका असंगठित क्षेत्रमा कार्यरत श्रमिक वर्ग तथा असहायको परिभाषाभित्र परेका व्यक्तिहरूलाई नेपालको संविधानको धारा १६(१) तथा १८(२) को आर्थिक अवस्था को आधारमा समेत भेदभाव गरिने छैन भन्ने प्रावधान तथा धारा ३६ को खाद्यसम्बन्धी हक तथा सम्बन्धित व्यक्तिमा अन्तरनिहित मानवीयता निजको आवश्यकता र परिस्थिति समेतलाई मध्यनजर गरी अनुसूची १ को बुँदा नं. ८ को (क) (ख) र (ग) मा उल्लेख गरेको कागजात नभए तापनि तत्काल राहत उपलब्ध गर्नु गराउनु” भनी अन्तरिम आदेश जारी भएको थियो ।

डा. शितलकाजी श्रेष्ठ वि. प्रधानमन्त्री तथामन्त्रिपरिषद्को कार्यालयसमेत¹⁵

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश श्री सपना प्रधानमल्ल र न्यायाधीश श्री हरिप्रसाद फुयालको संयुक्त इजलासले, “कृषि तथा पशुपंक्षी विकास मन्त्रालयको लिखित जवाफमा नै मिति २०७७/०१/२८

13 अधिवक्ता मणिराम उपाध्याय वि. प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालयसमेत, आदेश मिति : २०७७।२।४, ०७६-WO-०९४५, विषय :उत्प्रेषण ।

14 अधिवक्ता शैलेन्द्रप्रसाद हरिजन समेत प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालयसमेत, आदेश मिति :२०७७।२।४ ०७६-WO-०९४८, विषय :उत्प्रेषण ।

15 डा. शितलकाजी श्रेष्ठ वि. प्रधानमन्त्री तथामन्त्रिपरिषद्को कार्यालयसमेत, आदेश मिति : २०७७।२।८, ०७६-WO-०९४७, मुद्दा:- उत्प्रेषण ।

गते मन्त्रिस्तरीय निर्णय गरी भेटेरीनरी सेवालार्ई आवश्यक सेवामा समावेश गर्नका लागि गृह मन्त्रालयमा पत्र पठाइसकिएको भनिए तापनि हालसम्म आवश्यक सेवाको सूचीमा भेटेरीनरी सेवालार्ई समावेश गरेको नदेखिएकोले बन्दाबन्दीको समयमा पनि पशु स्वास्थ्य प्रयोगशालाको सञ्चालनको लागि भेटेरीनरी सेवालार्ई आवश्यक सेवाको सूचीमा राख्न आवश्यक व्यवस्था तत्कालै मिलाउनु भनी विपक्षीहरूका नाममा अन्तरिम आदेश ” जारी भएको थियो ।

अधिवक्ता अजयशंकर भा “रूपेस” वि. भोजपुर जिल्ला अदालत¹⁶

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश श्री तेजबहादुरके.सी .र न्यायाधीश श्री हरिप्रसाद फुयालको संयुक्त इजलासले, “कोभिड १९ को महामारीका कारण अहिले पूरै देश नै बन्दाबन्दी (Lockdown) बाट गुञ्जिएको अवस्थामा भिडभाड कम गर्दै शारीरिक दुरी कायम गरी कोरोना सङ्क्रमणको जोखिमबाट संरक्षणको लागि बाल सुधार गृह, सानोठिमी, भक्तपुरमा स्वास्थ्य सुरक्षाको उपयोगितालाई ध्यानमा राखी मानवीय संवेदनशीलतालाई समेत दृष्टिगत गरी आदेश गर्नुपर्नेमा सोतर्फ विचार नै नगरी भोजपुर जिल्ला अदालतबाट मिति २०७१।१।८ मा यी निवेदक प्रतिवादी परिवर्तित नाम तुङ्गेछा 'एस' लाई गम्भीर प्रकृतिको कसुर ठहर भई सजायसमेत निर्धारण भएकोले यी निवेदक प्रतिवादी ठहर भएको सजाय भुक्तानको लागि बाल सुधार गृहमा बसिरहेको देखिँदा मुद्दाको गाम्भीर्य, यी प्रतिवादीले गरेको कसुरसमेतलाई मध्यनजर गरी हेर्दा हाल निवेदकको निवेदन मागबमोजिम यी निवेदकलाई अभिभावकको जिम्मा लगाई पठाउन मिल्ने अवस्था देखिएन भनी भोजपुर जिल्ला अदालतले मिति २०७६।१२।२८ मा गरेको आदेशलाई सदर गर्ने गरेको उच्च अदालत विराटनगर, धनकुटा इजलासको मिति २०७७।०१।१४ मा भएको आदेश मिलेको देखिन आएन । यस परिस्थितिमा निवेदक बाल सुधार गृह, भक्तपुरमा रहेको र सो बाल सुधार गृहमा क्षमताभन्दा बढी बालबालिकाहरू रहेको भन्ने तथ्य समेत स्थापित हुन आएको छ । निवेदकको निवेदनमा उल्लिखित वर्तमान विषम परिस्थितिलाई मध्यनजर गर्दा बन्दाबन्दी (Lockdown) मा भिडभाड कम गर्दै शारीरिक दुरी कायम गरी बाल सुधार गृहमा रहने बालबालिकालाई पनि कोरोना भाइरसको सङ्क्रमणको जोखिमबाट बचाउन तिनीहरूको संरक्षणको लागि उनीहरूलाई आवश्यक पर्ने स्वास्थ्य सुरक्षाको उपयोगितालाई ध्यानमा राखी मानवीय संवेदनशीलतालाई समेत दृष्टिगत गर्दा त्यस्ता बालबालिकाको समेत न्यूनतम मानवीय व्यवहार गर्नुपर्ने ” सिद्धान्त प्रतिपादन भएको छ ।

अधिवक्ता अजय शंकर भा “रूपेस” वि प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालयसमेत¹⁷

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश डा. श्री मनोजकुमार शर्माको एकल इजलासले, “COVID-19 रोगबाट संक्रमित व्यक्ति स्वयम् मानसिक रूपमा प्रताडित रहने भएकोले त्यस्ता व्यक्तिहरूलाई राप्ती व्यवहार गरी उनीहरूको उच्च मनोबल बढाउन सहयोग गर्नुपर्ने अवस्था रहेको छ । यस्तो अवस्थामा रोगबाट संक्रमित

16 अधिवक्ता अजयशंकर झा “रूपेस” वि. भोजपुर जिल्ला अदालत, आदेश मिति : २०७७।२।१४, ०७७-WH-०३५९, मुद्दा: बन्दीप्रत्यक्षीकरण ।

17 अधिवक्ता अजय शंकर झा “रूपेस” वि प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालयसमेत, आदेश मिति: २०७७।२।१४ ०७६-WO-०९५६, मुद्दा:उत्प्रेषण ।

व्यक्तिहरूमा त्रास उत्पन्न गर्ने तवरबाट हिंसात्मक काम कारबाही हुने वा हुलदङ्गा हुने आशङ्का भएको कार्य रोक्न बनेको कानून स्थानीय प्रशासन ऐन, २०२८ को दफा ६ को प्रयोग गरी संक्रमित व्यक्ति भाग्न खोजेमा आवश्यकता अनुसार बल प्रयोग गर्दै नियन्त्रणमा लिने भनी विपक्षी जिल्ला संकट व्यवस्थापन केन्द्र पर्साको मिति २०७७।२।१ को बैठकको निर्णय नं.३ लाई संशोधन गर्दै मिति २०७७।२।२ मा उक्त केन्द्रबाट भएको निर्णय कार्यान्वयन नगर्नु नगराउनु तथा कोरोना भाइरस (COVID-19) सम्बन्धी क्वारेन्टाइन सञ्चालन तथा व्यवस्थापन गर्न बनेको मापदण्ड-२०७६ बमोजिम सम्पूर्ण क्वारेन्टाइनको व्यवस्थापन प्रभावकारी रूपमा कार्यान्वयन गर्नु गराउनु भनी अन्तरिम आदेश¹⁸ जारी गरिएको थियो ।

प्रतिवेदक : सर्वोच्च अदालत, मुद्दा तथा रिट महाशाखा, ०७६-RE-०३९२, निवेदक अधिवक्ता टिकाराम भट्टराई¹⁸
बन्दाबन्दी (Lockdown) को अवधिमा हदम्याद, म्याद, तारेख लगायतका विषयमा परेको अडबडको निकास दिन सर्वोच्च अदालत, बृहत्पूर्ण इजलासले गरेको निर्णयको सारांश बुँदागत रूपमा यस्तो छ :

- (क) सर्वोच्च अदालतको फुलकोर्टको गत चैत ७ को निर्णयानुसार सेवाप्रवाह बन्द भएको मिति (चैत ९) देखि बन्दाबन्दी खुलेको मितिसम्मको अवधिलाई शून्य समय मानी कानुनी प्रयोजनका लागि सो अवधिलाई गणना नगर्ने ।
- (ख) बन्दाबन्दी खुलेको मितिदेखि ३० दिनभित्र आएमा गुज्रेको हदम्याद, म्याद र तारेख थाम्न पाउने ।
- (ग) गत चैत ९ भन्दा अघि तारेख गुजारेको र थमाउन पाउने म्याद बाँकी नरहेकोमा यो आदेश बमोजिमको सुविधा प्रदान नगरिने ।
- (घ) बन्दाबन्दीको अवस्था भएकाले अदालत स्वयंले न्यायिक जानकारीमा लिनुपर्ने रपक्षले काबुबाहिरको परिस्थिति परेको प्रमाण पेस गर्नु नपर्ने ।
- (ङ) आर्थिक असमर्थताका कारण तत्काल कानूनबमोजिम लाग्ने कोर्ट फी दाखिल गर्नसक्ने पक्षहरूको हकमा कुनै निकायबाट सिफारिस नभए पनि मुद्दामा फैसला भएपछि ठहरेबमोजिम हुने गरी कोर्ट फी दाखिल गर्नु नपर्ने सुविधा दिन सकिने ।
- (च) यो आदेश सबै प्रकृतिका मुद्दा (देवानी, फौजदारी, रिट) मा एवं सबै न्यायिक तथा अर्धन्यायिक निकायमा लागू हुने ।
- (छ) सजाय निर्धारणका सन्दर्भमा बन्दाबन्दी खुलेको ३० दिनभित्र कार्य सम्पन्न गर्नुपर्ने ।
- (ज) बन्दाबन्दी खुलेपछि अदालतमा आउनुपर्ने व्यक्ति आफैं संक्रमित भएमा प्रमाणसहित फुर्सद पाएको मितिले १५ दिनको म्याद पाउने ।
- (झ) विद्युतीय माध्यमबाट पनि फिरादपत्र, प्रत्युत्तरपत्र, निवेदनपत्र पेस गर्न तारेख दिन सक्ने व्यवस्था मिलाउने जिम्मा र निर्देशन अदालत प्रशासनलाई दिने निर्णय गरिएको थियो ।

18 प्रतिवेदक :सर्वोच्च अदालत, मुद्दा तथा रिट महाशाखा, ०७६-RE-०३९२, निवेदक अधिवक्ता टिकाराम भट्टराई, ०७६-WO-०९४४ विषय :परमादेश , आदेशमिति : २०७७।२।१५ ।

अधिवक्ता डा.पुण्यप्रसाद खतिवडासमेत वि. प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालय, सिंहदरबार काठमाडौं¹⁹

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश श्री प्रकाशमानसिंह राउत र न्यायाधीश श्रीकुमार रेग्मीको संयुक्त इजलासले, “कोरोना भाइरसले मुलुक आक्रान्त भएको कठिन र असहज अवस्थामा आम नेपाली नागरिकको जीवन रक्षाको खातिर अविलम्ब देहाय बमोजिमको कार्य सम्पादन गर्नु भनी सर्वोच्च अदालत नियमावली, २०७४ को नियम ४९ बमोजिम विपक्षीहरूको नाउँमा यो अन्तरिम आदेश जारी गरिदिएको छः

१. विश्व स्वास्थ्य सङ्गठनले निर्धारण गरेको मापदण्डअनुसार प्रत्यक्ष र अग्रिम पङ्क्तिमा रहेर स्वास्थ्य सेवा उपलब्ध गराउने चिकित्सक, नर्स, स्वास्थ्य सेवामा खटिएका कर्मचारीहरू, सफाइकर्मीहरू तथा आम जनसमुदायसँग प्रत्यक्ष सम्पर्कमा रहने सुरक्षाकर्मीलाई आवश्यक पर्ने पोसाक, वस्तु, उपकरण लगायतका सम्पूर्ण सामग्रीहरू पर्याप्त मात्रामा निःशुल्क अविलम्ब उपलब्ध गर्ने व्यवस्था गर्नु, गराउनु ।
२. क्वारेन्टाइनमा रहेका सम्पूर्ण व्यक्तिहरूको अविलम्ब PCR विधिबाट निःशुल्क स्वास्थ्य परीक्षण गर्नु, क्वारेन्टाइनमा राखिएको व्यक्तिहरूको हकमा निजहरूलाई आवश्यक पर्ने स्वास्थ्य सेवा र सुरक्षाको यथोचित प्रबन्ध मिलाउनु र सामाजिक दुरीको मान्यतालाई कायम राखी गर्मीको मौसम भएकाले लामखुट्टे लगायतबाट हुन सक्ने सङ्क्रमणबाट जोगाउन आवश्यक व्यवस्था गर्नु एवं क्वारेन्टाइनको अवधिभर क्वारेन्टाइनमा बसेका व्यक्तिहरूलाई निःशुल्क भोजन, पानीको अतिरिक्त सामाजिक दुरी कायम गरी उचित तवरले बस्ने, सुत्ने र शौचको प्रबन्ध अविलम्ब मिलाउनु ।
३. आधारभूत स्वास्थ्य सेवा संविधानमा नै मौलिक हकको रूपमा रही निःशुल्क भएको, सरूवा रोगलाई आधारभूत सेवाभित्र पारी निःशुल्क रहेको भन्ने कुरा जनस्वास्थ्य सेवा ऐन, २०७५ को दफा ३ (४) (ग) मा पनि उल्लेख भएको र कोरोना भाइरस सरूवा रोग भएको हुँदा अत्यावश्यक सिटामोल लगायतका औषधीहरू, मास्क र चिकित्सकीय मास्कहरू, गुणस्तरीय हान्ड स्यानिटाइजरहरू निःशुल्क रूपमा आवश्यक पर्ने व्यक्तिलाई अविलम्ब उपलब्ध गर्नु, गराउनु ।” भनी आदेश जारी गरिएको थियो ।

चक्रबहादुर खत्रीको हकमा प्रतिकचन्द वि. जिल्ला प्रहरी कार्यालय सिराहासमेत²⁰

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश श्री प्रकाशमानसिंह राउत र न्यायाधीश श्रीकुमार रेग्मीको संयुक्त इजलासले, “प्रवृत्त भावना राखी निवेदक बन्दीलाई गैरकानूनी थुनामा राखिएको देखिएको र यस अदालतबाट पटकपटक यी बन्दीलाई थुनाबाट मुक्त गर्न आदेश जारी हुँदा पनि निरन्तर थुनामा राखिएको देखिँदा निवेदक बन्दीलाई जिल्ला प्रहरी कार्यालय, सिराहा वा निज जहाँ थुनामा रहेको भए पनि राष्ट्रिय मानव अधिकार आयोग, केन्द्रीय कार्यालय, हरिहरभवन, ललितपुर समक्ष मिति २०७७।२।२५

19 अधिवक्ताडा. पुण्यप्रसाद खतिवडासमेत वि. प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालय, सिंहदरबार काठमाडौं, आदेश मिति : २०७७।२।१८, ०७६-WO-०९५८, मुद्दा :उत्प्रेषण ।

20 चक्रबहादुर खत्रीको हकमा प्रतिकचन्द वि. जिल्ला प्रहरी कार्यालय सिराहा समेत, आदेश मिति : २०७७।२।२३ ०७६-WH-०३७९, विषय :बन्दीप्रत्यक्षीकरण ।

मा उपस्थित गराई मानव अधिकार आयोगका माननीय अध्यक्ष वा माननीय सदस्यको रोहवरमा बन्दी चक्रबहादुर खत्रीलाई थुना मुक्त गर्नु भनी विपक्षीको नाउँमा यो बन्दीप्रत्यक्षीकरणको आदेश जारी गरिएको थियो ।

अधिवक्ता दलबहादुरधामी वि. कैलाली जिल्ला अदालत समेत²¹

यस रिटउपर सुनुवाइ गर्दै प्रधानन्यायाधीश श्री चोलेन्द्र शम्शेर ज.ब.रा.र न्यायाधीश श्री सपना प्रधान मल्लको संयुक्त इजलासले, “बाल सुधार गृहमा कोभिड-१९ को संक्रमणको जोखिम रहेकाले सुरक्षित रहनका लागि खोजेका बखत उपस्थित गराउने गरी अभिभावकको जिम्मा लगाई पाउँ भनी निज नाबालक परिवर्तित नाम ७१ (ङ) को अभिभावक भाउजूले कैलाली जिल्ला अदालतमा निवेदन गरेको देखिन्छ । तथापि प्रस्तुत निवेदनमा चार जना नाबालक कसुरदारमध्ये तीन जनालाई अभिभावकको जिम्मा लगाउने आदेश हुने र एक जनाको हकमा निवेदन नपरेको कारण मुद्दा पुर्पक्षका लागि थुनामा बस्नु पर्ने अवस्था आएमा निजको हकमा नेपालको संविधानको धारा १८ द्वारा प्रदत्त समानता हुने संवैधानिक हक कुण्ठित हुने देखिन आयो । समानहरूका बीच असमान व्यवहार गर्न मिल्दैन । उक्त संविधानको धारा १८ द्वारा प्रदत्त संवैधानिक हक प्रचलन र संरक्षणका लागि समेत यस अदालतले अभिभावकीय भूमिका निर्वाह गर्नुपर्ने हुँदा परिवर्तित नाम ७१ (ङ) ले निवेदन नगरेको भए पनि न्यायको रोहमा निजको हकमा समेत हेर्न मनासिब देखिएकाले निज प्रतिवादीको हकमा समेत पुनः आदेश गर्न कैलाली जिल्ला अदालतको नाउँमा परमादेशको आदेश जारी गर्न न्यायोचित नै देखियो” । भन्ने फैसला भएको देखिन्छ ।

अधिवक्ता अजयशंकरभा "रूपेस" वि. खोटाङ जिल्ला अदालत²²

यस रिटउपर सुनुवाइ गर्दै प्रधानन्यायाधीश श्री चोलेन्द्र शम्शेर ज.ब.रा. र न्यायाधीश श्री सपना प्रधान मल्लको संयुक्त इजलासले, “ महामारीको कारणले व्यक्तिको वैकल्पिक उपचारको हक पनि अवरूद्ध भई बन्दीप्रत्यक्षीकरणको रिट अन्तर्गत आएको प्रस्तुत निवेदनको सन्दर्भमा विचार गर्दा वैकल्पिक उपचारको हकसमेत अवरोध भएको आजको बन्दाबन्दीको परिणाम न्यायको पहुँचमा समेत अवरोधको स्थिति सिर्जना भएको छ । बन्दाबन्दीको अवस्थामा कुनै पनि मौलिक हक निलम्बित नभई उपचारको हकसमेत जीवन्त रहेको अवस्था छ । उपचारको हक जीवन्त रहने तर बन्दाबन्दीको कारणले न्यायको पहुँच अवरूद्ध हुँदा बाँच्न पाउने व्यक्तिका अन्तरनिहित मानव अधिकारकै हनन हुने स्थिति आउँदछ । यसर्थ कोभिड-१९ को सन्त्रासबाट बृहत् जनताको हित, जीवन र स्वास्थ्यको संरक्षण गर्न आवश्यक सतर्कता अपनाउनु पर्दछ । यो जवाफदेहिता राज्यको हरेक अंग र निकायमा रहेको छ । यो जवाफदेहिताबाट अदालत अलग रहन सक्दैन” । भनी सिद्धान्त प्रतिपादन भएको छ ।

21 अधिवक्ता दलबहादुरधामी वि. कैलाली जिल्ला अदालतसमेत आदेश मिति : २०७७।२।२६, ०७६-WH-०३६८, मुद्दा:बन्दीप्रत्यक्षीकरण ।

22 अधिवक्ता अजयशंकरभा "रूपेस" वि. खोटाङ जिल्ला अदालत, आदेश मिति : २०७७।२।२६, ०७६-WH-०३६४, मुद्दा: बन्दीप्रत्यक्षीकरण ।

अधिवक्ता रोशनी पौडेल समेत वि. प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालयसमेत²³

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश डा.श्रीआनन्द मोहन भट्टराई र न्यायाधीश श्री सुष्मालता माथेमाको संयुक्तइजलासले,

“क. कोभिड १९ को महामारीको सन्दर्भमा यसअघि विभिन्न मितिहरूमा यस अदालतबाट विभिन्न आदेशहरू जारी भएका छन्। ती आदेशहरूको मुख्य प्रयोजन महामारीबाट प्रभावित जनताहरूको के कसरी प्रभावकारी रूपमा रक्षा गर्न सकिन्छ भन्ने नै हो। संविधान प्रदत्त हकहरूको रक्षा गर्नु यस अदालतको कर्तव्य हो। संविधानको रक्षा गर्दा नै संविधानले हामी सबैको रक्षा गर्न सक्छ भन्ने मान्यतामा आदेशहरू जारी भएका हुन्। ती कुनै न्यायिक महत्वाकांक्षा वा लहडका उपज होइनन्। यसै क्रममा मिति २०७७।१।५ मा आदेश जारी हुँदा पैदलै घर फर्किरहेका व्यक्तिहरूलाई सुरक्षापूर्वक र निःशुल्क यातायातको व्यवस्था गरी घर पुर्याउनु भनी आदेश गर्ने क्रममा “महिला, बालबालिका, ज्येष्ठ नागरिक, शारीरिक रूपमा अस्वस्थ व्यक्तिहरूको विशेष सुरक्षा गर्नु र प्राथमिकतामा राख्नु” भन्नेसमेत उल्लेख भएकै छ। यसो भन्नुको मुख्य कारण कोभिड भाइरसले कसैलाई नछाड्ने भए पनि यसको प्रभाव भने सबैमा बराबर नहुने भएर नै हो। महामारीबाट महिला र विशेषतः सुत्केरी, गर्भिणी वा स-साना बालबालिका सहितका महिला, वृद्ध तथा अस्वस्थ अवस्थामा रहेका व्यक्तिहरूको विशेष रूपमा रक्षा गर्नुपर्ने हुँदा त्यस्ता व्यक्तिहरूलाई नेपालको सीमामा प्रवेश गर्दाको अवस्थादेखि क्वारेन्टिन वा आइसोलेसमा रहँदा सुरक्षा साथ अलग राखी विशेष हेरचाहको व्यवस्था गर्नु। ख. बन्दाबन्दीको अवस्थामा महिलाहरूले विशेष रूपमा घरेलु र अन्य प्रकारका हिंसाहरू भोग्नुपरेका कुरा उठेका छन्। नेपालको संविधानको धारा ३८ को उपधारा (३) ले हिंसाजन्य कार्य र शोषणलाई दण्डनीय घोषित गरेको छ। यो हकको उपयोग महिलाहरूलाई न्यायमा सहज पहुँच सुनिश्चित हुँदा मात्र हुन सक्ने हुन्छ। तसर्थः बन्दाबन्दीको कारण देखाई घरेलु हिंसा (कसुर र सजाय) ऐन, २०६६ को दफा ४ बमोजिम पर्ने उजुरी लिन र त्यसमा गर्नुपर्ने कानूनबमोजिमको अनुसन्धान कारबाही आदि नरोक्नु भनी विपक्षीहरूलाई सूचित गर्नु। साथै सोही ऐनको दफा ५ को उपदफा (२) बमोजिम उजुरी पर्न आए तत्काल दर्ता गरी कानूनबमोजिम तत्कालै आवश्यक कार्य गर्नु भनी सबै जिल्ला अदालतहरूलाई सर्वोच्च अदालतबाट लेखी पठाउनु।

ग. महिला उपर हुने हिंसाका सन्दर्भमा राष्ट्रिय महिला आयोगमा एउटा ११४५ नं. को हेल्प लाइन टेलिफोन रहेको तर सो हेल्प लाइनबाट कुनै कारबाही हुन नसकेको भन्ने जिकिर बहसमाउठ्यो। तसर्थ यसमा के कसो भएको हो हेर्नु र महिलाहरूको सुरक्षा, हित रक्षामा कुनै पनि प्रतिकूल प्रभाव पर्न नदिनु र मन्त्रालयको तहबाट थप हेल्प लाइनको व्यवस्था गर्नु भनी विपक्षी महिला बालबालिका तथा ज्येष्ठ नागरिक मन्त्रालयलाई लेखी पठाउनु।

घ. कोभिड-१९ को कारण महिलाहरूको प्रजनन स्वास्थ्यमा प्रतिकूल असर परेको भन्ने कुरा निवेदनमा उठाइएको छ। नेपालको संविधानको धारा ३८(२) ले सुरक्षित मातृत्व र प्रजनन स्वास्थ्यलाई महिलाको

23 अधिवक्ता रोशनी पौडेल समेत वि प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालयसमेत, आदेश मिति : २०७७।२।२७ ०७६-WO-०९६२, मुद्दा :परमादेश।

हकको रूपमा प्रत्याभूत गरेको छ । यो हकको प्रचलन सहज रूपमा हुनुपर्छ र कुनै पनि हालतमा रोकिनु हुँदैन । गर्भवती महिलाहरूको समय समयमा गरिनुपर्ने स्वास्थ्य परीक्षण र उनीहरू तथा नाबालक शिशु बालबालिकाहरूले लिनुपर्ने खोप तथा सुइहरू प्राप्त गर्ने कुरालाई कुनै रूपमा पनि प्रभावित हुन नदिनु ।

ड. निवेदनमा प्रभावित व्यक्तिको गोप्यताको हकको कुरा पनि उठेको छ । एकातर्फ व्यक्तिको गोप्यताको हक अनतिक्रम्य छ भने अर्कोतर्फ सरकारद्वारा जनहितमा सूचनाहरू जारी गर्नुपर्ने हुन्छ । तसर्थ प्रभावित व्यक्ति तथा निजको परिवारमा पर्न सक्ने असरसमेतलाई विचार गरी सम्बन्धित व्यक्तिको सहमतिले मात्र व्यक्तिगत सूचनाहरू प्रचार प्रसार गर्नु, गराउनु ।“ भनी आदेश भएको देखिन्छ ।

अधिवक्ता सिर्जना अधिकारी वि. अर्थ मन्त्रालय समेत²⁴

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश श्री अनिलकुमार सिन्हा र न्यायाधीश डा. श्री मनोजकुमारशर्माको संयुक्त इजलासले, “नेपाल सरकार, अर्थ मन्त्रालय, आन्तरिक राजस्व विभागबाट २०७७ असार ७ र १५ गते भित्र कर तथा विवरण बुझाउने सम्बन्धमा भनी जारी भएको सूचना बन्दाबन्दीको अवधिसम्म कार्यान्वयन नगरी बन्दाबन्दी पूर्णरूपमा खुलेपश्चात् बाटोको म्यादबाहेक ३० दिनभित्र सम्बन्धित विवरण र कर बुझाउन सक्ने गरी आवश्यक व्यवस्था मिलाउनु । बन्दाबन्दीपश्चात् पनि केही अवधिसम्म सामाजिक दुरीलगायत अन्य विभिन्न सुरक्षित रहने उपायहरू अवलम्बन गर्नुपर्ने अवस्था परिस्थितिलाई विचार गरी विवरण र कर राजस्व दाखिल गर्ने प्रक्रिया र कार्यविधिलाई सरलीकृत गर्नु ।

बन्दाबन्दी पूर्णरूपमा खुलेपश्चात् पुनः नयाँ परिस्थिति सिर्जना भई देशभर वा कुनै खास क्षेत्रमा प्रतिकूल अवस्था देखिएको कारण करदाताहरूले आ-आफ्नो पेसा, रोजगार, उद्योग, व्यापार तथा व्यवसायको सञ्चालनमा कठिनाई देखिन आएमा न्यायोचित तवरले उपर्युक्त बमोजिमको अवधिहरू पुनरावलोकन गरी नयाँ समयवाधि तोक्नेतर्फ आवश्यक व्यवस्था मिलाउनु ।” भनी आदेश गरिएको थियो ।

अधिवक्ता अजयशंकरभा "रूपेस" वि. काठमाडौंजिल्ला अदालतसमेत²⁵

यस रिटउपर सुनुवाइ गर्दै प्रधानन्यायाधीश श्री चोलेन्द्र शम्शेर ज.ब.रा. र न्यायाधीश श्री सपना प्रधान मल्लको संयुक्त इजलासले, “कुनै पनि व्यक्ति जो थुना, सुधारगृह वा कारागारमा रहेका छन् यिनलाई सजाय भोग्न पठाउनुको अर्थ जीवन नै जोखिममा राख्न वा मर्न पठाइएको नभई आफूले गरेको गल्तीमा कसुरको मात्राअनुरूप गल्ती अनुभूत गर्न सजायसम्म भोग्न पठाइएको हो । बालबालिकालाई सुधार गृहमा राख्नको अर्थ सुधारका निश्चित उपायहरू अवलम्बन गर्न पनि हो । कैदको सजाय भनेको अन्तिम विकल्प हो । कानूनले कैद सजायबाहेक अन्य विकल्पहरू पनि दिएको छ । निर्णयकर्ताले महामारीको विषम परिस्थितिले सन्त्रास छाएको अवस्थामा सङ्क्रमणको रोकथाम र जोखिम न्यूनीकरणमा कानून बमोजिमको उपयुक्त विकल्प खोज्नु पर्दछ भनी यसअघि यस सम्मानित अदालतबाट ०७६-WH-०३२९ को मुद्दामा २०७७/०१/१४ गते रिट जारी समेत भइसकेको छ” । भनी सिद्धान्त प्रतिपादन भएको छ ।

24 अधिवक्ता सिर्जना अधिकारी वि. अर्थ मन्त्रालयसमेत आदेशमिति : २०७७।२।२८, मुद्दा :उत्प्रेषण, ०७६-WO-०९६६, ०७६-WO-०९७४ ।

25 अधिवक्ता अजयशंकरभा "रूपेस" वि. काठमाडौं जिल्ला अदालतसमेत, आदेश मिति : २०७७।२।३२, ०७६-WH ०३६९, ०७६-WH-०३७०, मुद्दा:बन्दीप्रत्यक्षीकरण ।

रामसुन्दर राय वि. उच्च अदालत पाटन²⁶

यस रिटउपर सुनुवाइ गर्दै प्रधानन्यायाधीश श्री चोलेन्द्रशम्शेर ज.ब.रा र न्यायाधीश श्री सपना प्रधान मल्लको संयुक्त इजलासले, “मुलुकी फौजदारी कार्यविधि संहिता, २०७४ दफा ६८ ले दफा ६७ को अवस्थामा बाहेक कुनै अभियुक्त उपरको अभियोग प्रमाणित हुने मनासिब आधार भएमा अदालतले धरौटी जमानत लिई तारेखमा राख्न सक्ने व्यवस्था गरेको छ । यस्तो विषयमा विशेष अदालत ऐन, २०५९ को दफा ७ (ड) बमोजिम राजस्व चुहावटको मुद्दामा यी निवेदकहरूलाई पुर्पक्षका लागि थुनामा राख्ने गरी काठमाडौं जिल्ला अदालतबाट भएको मिति २०७६।०७।२८ को आदेश र सो आदेश सदर गर्ने गरी उच्च अदालत पाटनको मिति २०७६।०९।१० को आदेश यी निवेदकहरूको हकमा मिलेको देखिएन । तसर्थ उक्त दुवै आदेश उत्प्रेषणको आदेशले बदर” गरिदिने गरी फैसला भएको थियो ।

सोमप्रसाद लुईटेलसमेत वि. प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालयसमेत²⁷

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश डा. श्री आनन्दमोहन भट्टराई र न्यायाधीश श्री हरिप्रसाद फुयालको संयुक्त इजलासले, “वैदेशिक रोजगारमा रहेका व्यक्तिहरूको हकमा श्रम गन्तव्यको मुलुकले नै कोभिड-१९ को सङ्क्रमणबाट जोगाउन र सङ्क्रमण भइहालेको अवस्थामा निजलाई औषधोपचार गरी सुरक्षा प्रदान गर्नुपर्छ । सो गर्दा नागरिक र गैरनागरिक बीच वा भिसाको अवस्था र बसोबासको वैधता जस्ता कुनै पनि आधारमा भेदभाव गर्न मिल्दैन । यस्तो कुनै पनि कार्य आप्रवासी कामदारहरूको आधारभूत मानव अधिकार तथा अन्तर्राष्ट्रिय मानव अधिकार कानूनको विरुद्ध हुन्छ । यस सन्दर्भमा अन्तर्राष्ट्रिय श्रम सङ्गठन, विश्व स्वास्थ्य सङ्गठनसमेतका मार्गदर्शनहरू र विशेषतः UNITED NATIONAL NETWORK ORGANIZATION को १४ मे २०२० को विज्ञप्ति समेतलाई मध्यनजर गर्दै वैदेशिक रोजगारमा रहेका नेपाली मजदुरहरूको हित रक्षाको लागि सम्बन्धित सरकारहरूलाई नेपाली कुटनीतिक नियोगमार्फत पत्राचार गरी नेपाली श्रमिक/कामदारको सुरक्षा गर्नु” भनी नेपाल सरकारको नाममा अन्तरिम आदेश जारी गरिएको थियो ।

प्रकाशमणी शर्मा वि. प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालयसमेत²⁸

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश श्री कुमार रेग्मीको एकल इजलासले, “बंगलादेशमा अध्ययनरत ६५० जना जति नेपाली विद्यार्थीहरूले कोभिड-१९ को महामारी फैलिन सुरुवात भएदेखि नै आफ्नो दूतावासलाई आफूहरूलाई उद्धार गर्न माग गरिएको भन्ने उल्लेख पाइयो । मिति २०७७।१।१६ गते बंगलादेशका प्रधानमन्त्रीले इ.सं.२०२० को सेप्टेम्बरसम्म शैक्षिक संस्थाहरू बन्द गर्ने घोषणा गरे । साथै बंगलादेशमा पढ्न बसेका नेपाली विद्यार्थीहरू के-कसो गर्ने स्थितिमा आकुलब्याकुल भई निज विद्यार्थीहरू र नेपालमा

26 रामसुन्दर राय वि. उच्च अदालत पाटन, आदेश मिति : २०७७।२।३२, ०७६-WH-०३७३, मुद्दा:बन्दीप्रत्यक्षीकरण ।

27 सोमप्रसाद लुईटेलसमेत वि. प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालयसमेत, आदेश मिति : २०७७।३।१०७६-FN-०५५८ / ०७६-WO-०९४०, मुद्दा:विविध / परमादेश ।

28 प्रकाशमणी शर्मा वि प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालयसमेत, आदेश मिति : २०७७।३।२,०७६-WO-०९९५, मुद्दा :उत्प्रेषण ।

रहेका उनीहरूका परिवारका सदस्यहरू तनावको स्थितिमा रहेको, उनीहरूले आफूहरूले नै न्यूनतम खर्च बेहोर्नु भन्दा पनि नेपाल ल्याउनेतर्फ केही नगर्नु संविधानले प्रदत्त गरेको समानताको हकसमेतको प्रतिकूल रहेको भन्नेसमेतको बेहोरा रिट निवेदनमा उल्लेख गरी उनीहरूको सुरक्षित र छिटो स्वदेश फिर्ताको लागि अन्तरिम आदेश माग गरेको पाइयो । कोभिड-१९ को महामारीबाट विदेशमा आक्रान्त भइरहेका आफ्ना नागरिकलाई छिटोभन्दा छिटो उद्धार गरी आफ्नो देश फिर्ता लैजाने कार्यमा विश्वका धेरै राष्ट्रहरूले कार्य गरिरहेका छन् । नेपालले समेत चीन लगायतका केही राष्ट्रहरूबाट आफ्ना नागरिकहरूलाई फिर्ता ल्याउने कार्य गरेको छ । बंगलादेशमा वा जहाँसुकै अध्ययनरत नेपाली विद्यार्थी उनीहरूको परिवारको लागि मात्र नभएर नेपाल राष्ट्रका भविष्यका कर्णधार र अमूल्य निधि हुन् । उनीहरूको जीवन र स्वास्थ्यको सुरक्षा गर्नु राज्यको कर्तव्य हो । नेपालको संविधानले प्रत्याभूत गरेको सम्मानपूर्वक बाँच्न पाउने अधिकार, कानूनको दृष्टिमा समानताको अधिकार, स्वतन्त्रताको अधिकार र आधारभूत स्वास्थ्यसम्बन्धी अधिकारको उपभोगबाट बंगलादेशमा अष्टयारोमा परी बसेका नेपाली विद्यार्थीहरूलाई वञ्चित गर्न मिल्दैन । नागरिकको मौलिक हक हननको प्रश्न उठे हक अधिकारको अपूरणीय क्षतिको अवस्थामा सर्वोच्च अदालतले असाधारण अधिकार क्षेत्रको प्रयोग गरी तत्काल उपचारको मार्ग प्रशस्त गर्नुपर्ने हुन्छ । यस्तो अवस्थाको विद्यमानता प्रस्तुत रिट निवेदनमा देखिएको हुँदा बंगलादेशमा रहेका कोभिड-१९ का कारण अष्टयारोमा परी घर फर्कन चाहने नेपाली विद्यार्थीहरूलाई स्वदेश फर्कने आवश्यक व्यवस्था तत्काल मिलाई विश्व स्वास्थ्य सङ्गठनको मापदण्डअनुसार स्वास्थ्य जाँच गरी क्वारेन्टाइनमा राख्नु र सो समय व्यतित भएपछि निजहरूको अभिभावकको जिम्मा लगाउनु” भनी अन्तरिम आदेश जारी भएको थियो ।

विकाश चौधरीको हकमा अधिवक्ता दलबहादुर धामी वि. उच्चअदालत दिपायल, राजपुर दिपायल डोटी²⁹

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश श्री सपना प्रधान मल्ल र न्यायाधीश श्री सुष्मालता माथेमाको संयुक्त इजलासले, “हाल कोभिड-१९ को महामारीको अवस्थामा अत्यन्त भिडभाड रहेको सुधार गृहमा कानूनसँग विवादमा रहेका बालबालिकाको सजाय स्थगनको अर्थ शारीरिक सामाजिक दुरी कायम गर्नु हो । शारीरिक दुरीको अर्थ सुधार गृहमा रहेको सबैको सजाय स्थगन गरी सुधार गृह खाली गर्ने नभई सुधार गृहको क्षमताअनुसार शारीरिक दुरी कायम गरी बालबालिका स्वस्थ र सुरक्षित भई रहने वातावरणको सिर्जना गर्नु हो ।

त्यसैगरी निवेदकले घटाएको वारदातको प्रकृतिसमेतलाई हेर्दा, अपहरण तथा जबरजस्ती करणी जस्तो गम्भीर प्रकृतिका मुद्दामा निवेदकको सजाय स्थगन गर्न उचित देखिँदैन । कानूनसँग विवादमा रहेका बालकलाई अभिभावकको जिम्मा लगाउँदा सँगै समाजमा रहेका पीडितलाई त्रासको स्थितिमा बाच्नुपर्ने स्थिति आउँदछ । पीडितलाई भयबाट संरक्षण गर्नु पनि राज्यको दायित्व रहन्छ । सजाय स्थगन गरी अभिभावकसँग निवेदकलाई पठाउँदा समाजमा भयको स्थिति नआओस् भन्ने कुराको सुनिश्चितता गर्नु पर्दछ । साथै विवादमा रहेका बालकले उन्मुक्ति र स्वच्छताको अनुभूति नहोस् भन्ने सुनिश्चितता पनि गर्नु

29 विकाश चौधरीको हकमा अधिवक्ता दलबहादुर धामी वि. उच्चअदालत दिपायल, राजपुर दिपायल डोटी, आदेश मिति : २०७७।३।५, ०७६-WH-०३७५, विषय:- बन्दीप्रत्यक्षीकरण ।

पर्दछ । रिट निवेदकको संविधानद्वारा प्रदत्त सम्मानपूर्वक बाँच पाउने हक सम्बन्धमा विचार गरिरहँदा वारदातबाट पीडित बालिकाको सम्मानपूर्वक बिना डर बाँच पाउने हकको समेत ख्याल गर्नु पर्ने हुन्छ । यसै सम्बन्धमा “क” कुमारको जाहेरीले वादी नेपाल सरकार प्रतिवादी पवनकुमार यादवसमेत भएको जबरजस्ती करणीसम्बन्धी मुद्दा (ने.का.प.२०६७, नि.नं.८४९४, पृष्ठ १८०२, पूर्ण इजलास) मा “बालबालिकासम्बन्धी ऐनको परिभाषाभित्र पर्ने दुवै पक्ष बालक भएको अवस्थामा घटित जबरजस्ती करणीको अपराधमा बिज्याइँ गर्ने बालकको अधिकार मात्र हेर्ने हो भने पीडित बालिकाको हकको संरक्षण हुन सक्ने अवस्था नदेखिँदा यस प्रकारको अपराधमा पीडितका विरुद्ध तर्क गर्दै जाने हो भने बालकहरूका हकमा जबरजस्ती करणीको अपराधले समाजमा विकृति र विसङ्गति ल्याउन सक्ने” भनी सिद्धान्त प्रतिपादन भएको अवस्था छ । यसर्थ समाजमा विकृति र विसङ्गति फैलन नदिन दुवै पक्ष बालक भएको जबरजस्ती करणी कसुरमा कानूनसँग विवादमा रहेका बालकको मात्र नभई वारदातबाट पीडित बालिकाको हकको समेत संरक्षण गर्नुपर्ने देखिन्छ । न्यायिक सन्तुलनबाट अदालत विचलित हुन सक्दैन ।” भनी सिद्धान्त प्रतिपादन भएको छ ।

अधिवक्ता सन्तोष भण्डारी समेत वि. स्वास्थ्य तथा जनसंख्या मन्त्रालय समेत³⁰

यस रिटउपर सुनुवाइ गर्दै न्यायाधीशडा.श्रीआनन्द मोहन भट्टराई र न्यायाधीश श्री टंकबहादुर मोक्तानको संयुक्त इजलासले, “हाल Isolation मा रहेका बिरामीहरूको संख्या र सरकारको परीक्षणको क्षमता हेर्दा Isolation मा रहेका बिरामीहरूको पुनः PCR गर्न सकिँदैन भन्ने नदेखिएको समेतबाट Isolation मा राखिएका बिरामीहरूलाई निश्चित अवधिपछि बिना परीक्षण घर पठाउन सकिने भनी नेपाल सरकार स्वास्थ्य तथा जनसंख्या मन्त्रालयको मिति २०७७।२।२० को निर्णयद्वारा जारी निर्देशिकाको दफा ६ हाल कार्यान्वयन नगरी Isolation मा रहेका बिरामीहरूको PCR परीक्षण गरी रोगमुक्त भएपछि मात्र घर पठाउनु भनी अन्तरिम आदेश” जारी गरिएको थियो ।

अधिवक्ता पुष्पराज पौडेल वि. सुर्खेत जिल्ला अदालत³¹

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश डा. श्री आनन्दमोहन भट्टराई र न्यायाधीश श्री सुष्मालता माथेमाको संयुक्त इजलासले, “सुधार गृहमा रहेका बालबालिकाहरूको चाप र कोभिड-१९ को महामारीको सन्दर्भमा वैकल्पिक व्यवस्थाबारे बालबालिकासम्बन्धी ऐन, २०७५ लगायत अन्य विषयगत कानूनको रोहमा हेर्दा: (क) आरोग्य कसुर जघन्य, गम्भीर वा सामान्य कुन प्रकृतिको कसुर हो, (ख) प्रतिवादीलाई के कति सजाय भएको छ र भएको सजायमध्ये के कति भोगिसकेको छ । कैद भोगेको हिसाबबाट हेर्दा “जघन्य” वा “गम्भीर” कसुरको सजायको अवधि समाप्त भई वा “सामान्य कसुर” गर्दा हुने सजायको अवधिमा कैदको अवधि प्रवेश गरी सो कैद भोगिरहेको अवस्था छ वा छैन, (ग) सो मुद्दामा पीडित छ वा छैन, छ भने पीडितको उमेर के कस्तो छ, निजलाई के कस्तो हानि पुगेको छ, निवेदकलाई पुनः समाजमा पुर्‍याउँदा

30 अधिवक्ता सन्तोष भण्डारीसमेत वि. स्वास्थ्य तथा जनसंख्या मन्त्रालय समेत, आदेश मिति : २०७७।३।८, ०७६-WO-०९७३, मुद्दा :उत्प्रेषण ।

31 अधिवक्ता पुष्पराज पौडेल वि. सुर्खेत जिल्ला अदालत , आदेश मिति : २०७७।३।११, ०७६-WH-०३७७, मुद्दा :बन्दीप्रत्यक्षीकरण ।

पुनः पीडितउपर हानि पुन्याउने, त्रासको स्थिति सिर्जना गर्ने अवस्था छ वा छैन । संविधानको धारा २१ तथा अपराध पीडित संरक्षण ऐन, २०७५ र बालबालिकासम्बन्धी ऐन, २०७५ मा उल्लिखित पीडितको अधिकार र सुविधाहरूको सम्मान भएको छ वा छैन, (घ) निवेदकले कसुर स्वीकार गरेको हो वा होइन, सुधारबारे निजको भनाइ के छ, (ङ) मुद्दा अन्तिम भएको अवस्था हो वा होइन, (च) कसुर पहिलो पटक गरिएको हो वा होइन, सुधारको स्थिति र सम्भावनाबारे बाल सुधार गृहको के राय छ, (छ) बालबालिकासम्बन्धी ऐन, २०७५ को दफा ३६ को व्यवस्था बमोजिम सजाय स्थगन गरेको हो वा सजायको स्वरूप परिवर्तन गर्न खोजिएको हो । (ज) सजाय स्थगन वा सजायको स्वरूप परिवर्तन गर्दा सोही दफा ३६(५) (घ) बमोजिम निगरानीमा जिम्मा लिन दिनको लागि आचरण सुधार समेतका के कस्ता सर्तहरू आवश्यक हुन्छन् र (झ) अदालतबाट तोकिएका सर्तहरूको उल्लङ्घन हुँदाको परिणाम के हुन्छ भन्नेबारे स्पष्ट गरी आदेश हुँदा अदालतले बालबालिकासँग सम्बन्धित मुद्दामा एउटा सन्तुलित दृष्टिकोण कायम हुन जाने हुन्छ । त्यसैले यी समस्त कुराहरूतर्फ विचार गरेर मात्र अदालतले सजाय स्थगन गर्ने वा स्वरूप बदल्ने निर्णय गर्नुपर्छ” । भनी सिद्धान्त प्रतिपादन भएको छ ।

अधिवक्ता अजयशंकर भा “रूपेस” वि. काठमाडौं जिल्ला अदालत³²

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश श्री सपना प्रधान मल्ल र न्यायाधीश श्री हरिप्रसाद फुयालको संयुक्त इजलासले, “कोरोना भाइरस (COVID-19) को महामारीको कारणले विषम परिस्थिति सिर्जना भई देश बन्दाबन्दी (Lockdown) को अवस्थामा रहेको छ । बन्दाबन्दीको उद्देश्य सङ्क्रमणको जोखिमलाई न्यून गर्न प्रत्येक नागरिकको, समूहको तथा बृहत् नेपाली र नेपालको हितको सुरक्षाको निमित्त शारीरिक सामाजिक दुरी राख्नु रहेको देखिन्छ । यस्तो महामारीको सङ्क्रमणको जोखिमबाट सुधार गृहमा रहेको बालबालिकालाई पनि जोगाउनु पर्ने देखिन्छ । कोभिडको सङ्क्रमण रोकथाम गर्न र जोखिम न्यूनीकरण गर्न रणनीति मूलक ढङ्गबाट राज्यको हरेक निकायले हेर्नु आवश्यक छ । यस अवस्थामा अत्यन्त जोखिममा रहेका वर्गहरू जस्तै कैदी, थुनुवा तथा सुधार गृहमा रहेका व्यक्तिहरूको सामाजिक दुरीको पनि सुनिश्चितता गर्न आवश्यक देखिन्छ ।

महामारीको कारणले व्यक्तिको वैकल्पिक उपचारको हक पनि अवरूद्ध भई बन्दीप्रत्यक्षीकरणको रिट अन्तर्गत आएको निवेदनको सन्दर्भमा विचार गर्दा, वैकल्पिक उपचारको हकसमेत अवरोध भएको आजको बन्दाबन्दीको परिणाम न्यायमा पहुँचमा समेत अवरोधको स्थिति सिर्जना भएको छ । बन्दाबन्दी (Lockdown) को अवस्थामा कुनै पनि मौलिक हक निलम्बित नभई उपचारको हक (Right to remedies) समेत जीवन्त रहेको अवस्था छ । उपचारको हक जीवन्त रहने तर बन्दाबन्दीले तत्काल न्यायको पहुँचमा अवरूद्ध हुँदा बाँच्न पाउने व्यक्तिको अन्तरनिहित मानव अधिकारमा नै हनन हुने स्थिति आउँदछ । यसर्थ कोभिड-१९ को सन्त्रासबाट बृहत् जनताको हित, जीवन र स्वास्थ्यको संरक्षण गर्न

32 अधिवक्ता अजयशंकरभा “रूपेस” वि. काठमाडौं जिल्ला अदालत फैसला मिति : २०७७।३।१५, ०७६-WH-०३८४, विषय:- बन्दीप्रत्यक्षीकरण ।

आवश्यक सतर्कता अपनाउनु पर्दछ । यो जवाफदेहिता राज्यको हरेक अङ्ग र निकायमा रहेको छ । यो जवाफदेहिताबाट अदालत अलग रहन सक्दैन । त्यसैले अदालतकै आदेशबाट थुनामा, कारागारमा वा सुधार गृहमा रहेका थुनुवा बन्दीहरूको हकमा अदालतमा आएको बन्दीप्रत्यक्षीकरणको रिट निवेदनलाई विचार गरी उपयुक्त आदेश गर्नुपर्ने “भन्ने सिद्धान्त प्रतिपादन भएको छ ।

अधिवक्ता अजयशंकर झा “रूपेस” वि. ललितपुर जिल्ला अदालत³³

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश श्री सपना प्रधान मल्ल र न्यायाधीश श्री हरिप्रसाद फुयालको संयुक्त इजलासले, “कैदको सजाय भनेको अन्तिम विकल्प हो । निवेदक रहेको सुधार गृह नै अहिले कोभिड-१९ को महामारीको कारणले असुरक्षित छ र बालबालिकाको हकमा अभिभावकले जिम्मा लिई सजाय स्थगन गर्न सक्ने कानूनी व्यवस्था छ भने बालबालिकाको हित र जीवनको रक्षार्थ सजायको अन्य कानून बमोजिमको विकल्पहरूमध्ये हालको कोभिड-१९ को महामारीको सन्दर्भमा उपयुक्त विकल्पहरू रहेकै देखिन्छ । सुधार गृहमा बस्नुपर्ने जोखिममा रहेको बालबालिकाको सर्वोत्तम हित तथा समग्र बालबालिकाको स्वास्थ्य र जीवन संरक्षणको लागि साङ्केतिक नाम बनेपा (क) लाई खोजेको बखत उपस्थित गराउन मन्जुर गरेमा आवश्यक प्रक्रिया पुऱ्याई अभिभावकको जिम्मा लगाउन सक्ने कानूनी व्यवस्था बालबालिका सम्बन्धी ऐन, २०७५ कोदफा ३६(५) अन्तर्गत रहेभएको देखिँदा यी निवेदकको सम्बन्धमा कानून बमोजिमको उपयुक्त विकल्प सहित पुनःउपयुक्त निर्णय गर्नु भनी प्रत्यर्थीहरूको नाममा परमादेशको आदेश” जारी भएको थियो ।

OBC महासङ्घको केन्द्रीय अध्यक्ष गजेन्द्रठाकुर समेत/मुख्यमन्त्री तथा मन्त्रिपरिषद् कार्यालय प्रदेश १, विराटनगर वि. प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालय, काठमाडौंसमेत³⁴

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश श्री तेजबहादुर के.सी. र न्यायाधीश श्री कुमार रेग्मीको संयुक्त इजलासले, “घरबहालमा बस्नेले घरबहाल कर तिरेको रसिद नभई वडा कार्यालयबाट राहत पाउने अवस्था नभएको भन्ने जिकिर हुँदा बन्दाबन्दीको अवधिभर घरबहाल कर नतिरेको अवस्थामा पनि राज्यले दिने राहत र अन्य सुविधाहरू पनि दिने कार्य नरोक्नु नरोकाउनु र साथै घरभाडाको विषय भाडामा दिने र बस्नेबीचको आपसी सम्झौता, सहमति र मानवीय सोच विचारको आधारमा निर्णय गर्नुपर्ने विषय हुँदा घरबहालमा बसेका व्यक्तिहरूलाई बन्दाबन्दीको अवधिभर तत्काल बहाल दिन नसकेको अवस्थामा पनि बहालमा बस्ने र व्यवसाय गर्नेहरूलाई घरबाट निस्कन बाध्य नपार्ने, निकलन नभन्ने र सो आधारमा दुर्व्यवहार नगर्ने र नगराउने विषयमा स्थानीय वडा कार्यालयले अनुगमन र सुपरीवेक्षण गर्ने गरी व्यवस्था मिलाउन सर्वोच्च अदालत नियमावली, २०७४ को नियम ४९ (२) (क) बमोजिम विपक्षीहरूको नाममा अन्तरिम आदेश” जारी गरेको थियो ।

33 अधिवक्ता अजयशंकर झा “रूपेस” वि. ललितपुर जिल्ला अदालत, फैसला मिति : २०७७।३।१५, ०७६-WH-०३८५, विषय:- बन्दीप्रत्यक्षीकरण ।

34 OBC महासङ्घको केन्द्रीय अध्यक्ष गजेन्द्रठाकुर समेत/मुख्यमन्त्री तथा मन्त्रिपरिषद् कार्यालय प्रदेश १, विराटनगर वि. प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालय, काठमाडौंसमेत, आदेश मिति : २०७७।४।१५, ०७६-WO-१०७२, विषय:उत्प्रेषण ।

गोपाल सिवाकोटी (चिन्तन) वि. प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालय, सिंहदरबार, काठमाडौं समेत³⁵

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश श्री सपना प्रधान मल्ल र न्यायाधीश श्री प्रकाशकुमार ढुंगानाको संयुक्त इजलासले, “आज विश्वले नै थुनुवा कैदी उच्च जोखिममा रहेको वर्गको रूपमा मान्यता दिई Prison health is public health को रूपमा हेरी कोभिड-१९ को महामारीसँग लड्न शारीरिक दुरी कायम गर्ने एउटा रणनीतिको रूपमा स्वीकार गरेको अवस्थामा हालको कारागारको भिडभाडको स्थिति रहेकोमा सङ्क्रमणको थप फैलावटको रोकथाम गर्न कैदी बन्दीको विना भेदभाव स्वास्थ्यको हेरचाह र उपचारको पहुँचको सुनिश्चित गर्दै जीवनको रक्षा गर्न अत्यन्त आवश्यक देखिन्छ । तसर्थ आजको विषय उच्च जोखिममा कैदी बन्दीको जीवन संरक्षणको लागि तत्काल नै कारागारको भिडभाड (Overcrowding) कम गर्न नाजुक अवस्थामा रहेका बालबालिका, गर्भवती महिला, दुध खुवाइरहेको महिला तथा जटिल स्वास्थ्य समस्या भएका कैदीहरूलाई प्राथमिकताको आधारमा उनीहरूको अवस्थाको अत्यन्त सतर्कतापूर्वक (Carefully) पहिचान गरी निजहरूको स्वास्थ्यमा हुने जोखिमतासँग कसुरको प्रकृति र सार्वजनिक सुरक्षा समेतलाई ध्यानमा राखी दुवैबीच सन्तुलन कायम गरी (Balancing Vulnerability of Detainees/ Prisoners and Public Safety) संक्रामक रोग ऐन, २०२० को दफा २ प्रयोग गरी अहिले महामारी रोकथामको लागि नेपाल सरकारबाट आदेश तथा निर्णयहरू भइरहेको सन्दर्भमा तत्काल छोड्ने वा सजाय कम वा छुट गर्ने वा अन्य कुनै उपयुक्त विशेष निर्णय लिनको लागि निर्देशनात्मक आदेश” समेत जारी गरिएको थियो ।

अधिवक्ता रोशनी पौड्याल वि. नेपाल सरकार, प्रधानमन्त्री तथा मन्त्रीपरिषद्को सचिवालय, सिंहदरबार, काठमाडौं³⁶

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश श्री सपना प्रधान मल्ल र न्यायाधीश श्री प्रकाशकुमार ढुंगानाको संयुक्त इजलासले, “नेपालको संविधानले सुरक्षित मातृत्व र प्रजनन स्वास्थ्यसम्बन्धी मौलिक हकको कार्यान्वयनार्थ सुरक्षित मातृत्व र प्रजनन स्वास्थ्यसम्बन्धी ऐन, २०७५ जारी भई प्रारम्भमा आइसकेको सन्दर्भमा महिलाको सुरक्षित मातृत्व तथा प्रजनन स्वास्थ्य सुनिश्चित गर्नु, Quarantine/Isolation मा बसेका गर्भवती महिला, सुत्केरी महिला, नवजात शिशुहरूको संरक्षण, हेरचाह, औषधी तथा पौष्टिक आहारको व्यवस्था मिलाउनु, गर्भवती महिलाको समय-समयमा गरिनुपर्ने स्वास्थ्य परीक्षण र उनीहरू तथा शिशु बालबालिकाहरूले लिनुपर्ने खोप, तथा सुइहरू प्राप्त गर्ने कुरालाई असहज हुन नदिनु, कोभिड-१९ को समयमा राहत वितरण गर्दा महिला संवेदनशील भई यौन तथा प्रजनन स्वास्थ्य सेवाहरूमा पहुँच पुर्याई स्वास्थ्य सेवाको आवश्यक प्याकेज (essential package) मा प्रजनन स्वास्थ्य सामाग्रीहरू समावेश गर्नु भन्ने परमादेश जारी गरिएको छ । साथै संविधानले नै प्रजनन स्वास्थ्यको हकलाई मौलिक हकको रूपमा कायम गरी सुरक्षित

35 गोपाल सिवाकोटी (चिन्तन) वि. प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालय, सिंहदरबार, काठमाडौंसमेत, आदेश मिति : २०७७।४।१९, ०७६-WO-०९३९, विषय : परमादेश ।

36 अधिवक्ता रोशनी पौड्याल वि. नेपाल सरकार, प्रधानमन्त्री तथा मन्त्रीपरिषद्को सचिवालय, सिंहदरबार, काठमाडौं, आदेशमिति : २०७७।४।२१, ०७६-WO-०९६२, विषय:उत्प्रेषण / परमादेश ।

मातृत्व र प्रजनन स्वास्थ्यसम्बन्धी ऐन, २०७५ समेत प्रारम्भमा आइसकेको तर नियमावली नबनेको कारण संवैधानिक र कानूनी अधिकारसमेत धरापमा पर्न जाने हुँदा सुरक्षित मातृत्व र प्रजनन स्वास्थ्यसम्बन्धी ऐन, २०७५ सँग सम्बन्धित नियमावली समेत यथाशीघ्र बनाउनु भनी नेपाल सरकारको नाउँमा परमादेश” जारी गरिएको थियो ।

परिवर्तित (ख) वि. उच्च अदालत पाटन, हेटौँडा इजलास मकवानपुर, हेटौँडा समेत³⁷

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश श्री अनिलकुमार सिन्हा र न्यायाधीश श्री बमकुमार श्रेष्ठको संयुक्त इजलासले, “आधुनिक फौजदारी विधिशास्त्रमा कैदको सजायलाई अन्तिम विकल्पको रूपमा विकास भएको छ । कानूनले कैद सजाय बाहेक अन्य विकल्पहरू पनि दिइएको छ भने अन्य विकल्पको प्रयोग गर्नु पर्ने हुन्छ । यस महामारीको विषम परिस्थितिमा सन्त्रास छाएको अवस्थामा सङ्क्रमणको रोकथाम र जोखिम न्यूनीकरणको निमित्त कानून बमोजिमको उपयुक्त विकल्प खोज्नुपर्ने” सिद्धान्त प्रतिपादन भएको छ ।

अधिवक्ता केशरजंग के.सी वि. नेपाल सरकार, स्वास्थ्य तथा जनसंख्या मन्त्रालय, काठमाडौँ³⁸

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश डा. श्री आनन्दमोहन भट्टराई र न्यायाधीश श्री टंकबहादुर मोक्तानको संयुक्त इजलासले, “सार्वजनिक सरोकारको निवेदनको रूपमा नेपालको संविधानको धारा १३३ (२) (३) अन्तर्गत दर्ता भएको प्रस्तुत निवेदनको मूल माग निःशुल्क परीक्षण भएपनि यो माग कोभिड-१९ महामारीको सन्दर्भमा आएको भई भुईँ सतहको अवस्थालाई पूर्व आदेशहरूको रोहमा समेत हेरी उपयुक्त आदेश गर्नुपर्ने अवस्था रहेको छ । कोभिड महामारीकै सन्दर्भमा संवैधानिक र कानूनी हकको प्रचलनको विषयलाई लिएर यस अदालतमा सार्वजनिक सरोकारका निवेदनहरू परी विभिन्न आदेशहरू भइरहेको कुरा माथि उल्लेख गरिएको छ । ती समस्त आदेशहरूको सकारात्मक रूपमा समिक्षा र पुनरावलोकन भई सरकारबाट कार्यान्वयन हुने अपेक्षा यस अदालतले गरेको छ । यो रोगले नेपालमा कुन रूप लिन्छ, के कस्तो क्षति पुऱ्याउँछ अझै पनि स्पष्ट हुन सकेको छैन । तर रिट निवेदनमा छलफल गर्न बस्दा मुलुकमा संक्रमणको प्रकोप विस्फोटक अवस्थातर्फ बढिरहेको देखिन्छ । यसको औषधि वा खोप बनी उपलब्ध नभएसम्म यो महामारीको कारण सिर्जित स्वास्थ्य र मानवीय संकटबाट सजिलै पार पाउन सकिने स्थिति देखिँदैन । त्यसैले पनि बढीभन्दा बढी स्रोत र साधनको परिचालन गर्नुपर्ने, स्वास्थ्य सम्बन्धी पूर्वाधारहरू विकास गरिनु पर्ने अपरिहार्यता हाल बनेको छ । स्वास्थ्य सम्बन्धी महासंकटको यस घडीमा यस अदालतले दिएका पूर्व आदेशहरू अझ बढी सान्दर्भिक बनेका छन् भन्ने यस इजलासको ठम्याइ छ । स्वास्थ्यसम्बन्धी प्रमुख निकाय (Nodal agency) को रूपमा काम गर्ने गराउने दायित्व विपक्षी मन्त्रालयकै भएबाट प्रस्तुत रिट निवेदनमा लिइएको मागको सन्दर्भमा माथि उल्लेख गरेबमोजिम परमादेशको आदेशसहित विपक्षी स्वास्थ्य तथा जनसंख्या मन्त्रालयलाई निर्देशित गरिएको” फैसला समेत भएको देखिन्छ ।

37 परिवर्तित (ख) वि. उच्च अदालत पाटन, हेटौँडा इजलास मकवानपुर, हेटौँडासमेत, फैसला मिति : २०७७।५।२४ ०७७-WH- ००१६, विषय :- बन्दीप्रत्यक्षीकरण ।

38 अधिवक्ता केशरजंग के.सी वि. नेपाल सरकार, स्वास्थ्य तथा जनसंख्या मन्त्रालय, काठमाडौँ, आदेश मिति : २०७७।६।१५, ०७७-WO-०१३०, मुद्दा:उत्प्रेषण / परमादेश ।

शैलेन्द्रप्रसाद अम्बेडकर समेत वि.लोक सेवाआयोग, अनामनगर, काठमाडौंसमेत³⁹

यस रिटउपर सुनुवाइ गर्दै न्यायाधीश श्री सपना प्रधान मल्लको एकल इजलासले, “संक्रमित लक्षणविहीन (Asymptomatic) व्यक्ति पनि हुनसक्ने हुँदा संक्रमणको अवस्था नखुलेका व्यक्तिहरू पनि परीक्षा केन्द्रमा हुनसक्ने र परीक्षामा आएका परीक्षार्थी, कर्मचारी तथा निजको सम्पर्कमा आउने व्यक्ति पनि संक्रमणको जोखिममा पुगी प्रत्येक व्यक्तिको बाँच्न पाउने संवैधानिक अधिकारमा समेत असर पर्ने देखिँदा यसले महामारीको स्थितिमा थप भयावहता ल्याउने र सम्पूर्ण परीक्षार्थी तथा कर्मचारीहरूलाई अपुरणीय क्षति हुने हुँदा सुविधा सन्तुलनको दृष्टिकोणले समेत प्रस्तुत निवेदनको अन्तिम टुङ्गो नलागेसम्म लोक सेवा आयोगले जारी गरेको संक्रमणको विशेष अवस्थामा परीक्षा (सञ्चालन तथा व्यवस्थापन) सम्बन्धी मापदण्ड, २०७७ को बुँदा ८(१) को कार्यान्वयन नगर्न नगराउन तथा सबै परीक्षार्थीलाई र परीक्षा लिने वा व्यवस्थापनमा संलग्न हुने व्यक्तिले सुरक्षित तरिकाले परीक्षा लिने र परीक्षा व्यवस्थापन गर्ने वातावरण निर्माण गर्नु गराउनु तथा स्वघोषित संक्रमित व्यक्तिहरूलाई निजको गोपनीयता र आत्मसम्मानको संरक्षण गर्दै आवश्यक वैकल्पिक सुरक्षित व्यवस्थासहित परीक्षा सञ्चालन गर्ने व्यवस्था गर्नु भनी अन्तरिम आदेश” जारी गरिएको थियो ।

स्वास्थ्य सम्बन्धी हकको सन्दर्भमा अन्तराष्ट्रिय कानून

Right to medical care वा स्वास्थ्योपचार सम्बन्धी र स्वास्थ्य सम्बन्धी हकका सम्बन्धमा हेर्दा मानव अधिकारको प्रसँगबाट पनि हेर्नुपर्ने हुन्छ । त्यसरी हेर्दा स्वास्थ्योपचार सम्बन्धी हक र स्वास्थ्यसम्बन्धी हक Basic मानव अधिकार मानिन्छ । सन् १९४६ मा Draft भएको विश्व स्वास्थ्य सङ्गठन अर्थात् World Health Organization (WHO) को Charter मा “The right to the enjoyment of the highest attainable standard of physical and mental health” भनियो र WHO को Charter को प्रस्तावनामा “The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition” भनिएको छ । नेपाल पक्ष भएको International covenant on economic social and cultural right –ICESCR,1966 को धारा १२ मा पनि right to health को सम्बन्धमा व्यवस्था भएको देखिन्छ । ICESCR 1966 को धारा १२ यस प्रकार छ :

39 शैलेन्द्रप्रसाद अम्बेडकर समेत वि.लोक सेवाआयोग, अनामनगर, काठमाडौंसमेत, आदेशमिति : २०७७।६।२९ ०७७-WO-०२९८, मुद्दा :उत्प्रेषण ।

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - (b) The improvement of all aspects of environmental and industrial hygiene;
 - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

ICESCR 1966 को नेपाल पक्ष बनेको छ । नेपाल सन्धि ऐन, २०४७ को दफा ९ को व्यवस्था अनुसार सन्धिको व्यवस्था नेपाल कानून सरह लागू हुन्छ । यदि सन्धिको व्यवस्था कुनै नेपाल कानूनसँग बाझिएमा बाझिएको हदसम्म नेपाल कानून लागू नभई सन्धिको व्यवस्था लागू हुन्छ । यस प्रसँगमा हेर्दा ICESCR को धारा १२(२) ले उक्त महासन्धिको व्यवस्था नागरिकहरूले Full realization गर्न पाउन उपधारा (अ) मा कुनै रोग फैलिई Epidemic को रूप लिनसक्ने अवस्था भएमा त्यसको Prevention (रोकथाम गर्न), Treatment (उपचार गर्न) र Control (नियन्त्रण) गर्न र उपधारा (म) मा Epidemic फैलिएकोले नागरिकहरू विरामी परेको कारण स्वास्थ्य सेवा प्रदान गर्न यथासक्य चाँडो उपयुक्त व्यवस्था गर्न पर्ने कुरामा जोड दिएको देखिन्छ ।

नेपाल पक्ष भएको अर्को महासन्धि Convention on the Elimination of all forms of Discrimination Against Women – CEDAW, 1979 ले पनि Right to Health र स्वास्थ्योपचार सेवाको हकका सम्बन्धमा व्यवस्था गरेको देखिन्छ । CEDAW को धारा ११(१)(f) मा The right to protection of health and to safety in working conditions including the safeguarding of the function of reproduction भनिएको छ । सो धाराले working condition मा महिलाहरूको स्वास्थ्यको safety का सम्बन्धमा व्यवस्था गरेको छ भने धारा १२(१) मा महिलाहरूको Right to Health / Right to medical Treatment का सम्बन्धमा व्यवस्था गरेको देखिन्छ । धारा १२ (१) यस प्रकार छ :

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning. भनिएको छ ।

धारा १४(२) (द) मा “To have access to adequate health care facilities, including information, counseling and services in family planning” भनिएको छ ।

यस्तै व्यवस्था Convention on the Rights of the Child (CRC) 1989 को धारा २४ र Convention on the Right of Persons with Disabilities को धारा २५ मा पनि भएको देखिन्छ । तत् तत् सम्बन्धित Instrument / Covenant अर्थात् महिलासम्बन्धी, बालबालिका सम्बन्धी र सबैलाई लागू हुने मानव अधिकारसम्बन्धी र सबैलाई लागू हुने ICESCR ले पनि सबैलाई स्वास्थ्य सेवाअन्तर्गत उच्चतम स्तरको उपचारमार्फत् उच्चतम स्तरको जिवन यापन गर्न पाउने अधिकार मानव अधिकार हुने व्यवस्था गरेको देखिन्छ ।

स्वास्थ्य सम्बन्धी हकको सन्दर्भमा अन्तराष्ट्रिय अभ्यास

दक्षिण अफ्रिकाको संविधान र इक्वेडरको संविधानमा Right to Health Care लाई मौलिक हक मानिएको देखिन्छ ।

दक्षिण अफ्रिका

दक्षिण अफ्रिकाको संविधानको धारा २७ (१) मा Everyone has the right to have access to:

1. Health care services including health care
2. The state must take reasonable legislative and other measures within its available resources to achieve the progressive realization of each of the rights.
3. No one may be refused emergency medical treatment भन्ने व्यवस्था भएको देखिन्छ ।

Ecuador

Ecuador को संविधानको धारा ४२ मा “The state guarantees the right to health its promotion and protection through the development of food security the provision of drinking water and basic sanitation the promotion of a healthy family work and community environment and the possibility of permanent and uninterrupted access to health services in conformity with the principles of equity, universality, solidarity,

quality and efficiency” भनी दक्षिण अफ्रिका र Ecuador ले संविधानमा Right to health र Right to medical care लाई मौलिक हकमा समावेश गरी उक्त दुवै हकलाई enforceable हकको रूपमा राखेको देखिन्छ ।

कोरोना कालमा मानव अधिकार संरक्षणमा देखिएका चुनौतीहरू

कोरोना कालमा मानव अधिकारको संरक्षण र सम्बर्द्धनमा हरेक निकायले महत्वपूर्ण भूमिका निर्वाह गरेपनि केहि चुनौतीहरू देखिएका छन् ।

- सर्वोच्च अदालतको फैसला तथा संविधान प्रदत्त मौलिक हकहरूको प्रचलन गराउन आवश्यक कानून तथा पूर्वाधार नहुनु ।
- सर्वोच्च अदालतद्वारा प्रतिपादित सिद्धान्त तथा निर्देशनात्मक आदेशहरूको शीघ्र कार्यान्वयनमा सम्बन्धित निकाय उदाशीन हुनु ।
- विपद्मा मानव अधिकारको सन्दर्भमा सम्बन्धित कर्मचारीहरूमा मानव अधिकारको मूल्य, मान्यता र सिद्धान्तको बुझाईमा एकरूपता नहुनु ।
- कोरोनाबाट आयआर्जन गर्ने अभिभावक गुमाएका बालबालिकाहरूको संरक्षण, शिक्षा, दिक्षा पालनपोषणको जिम्मेवारी राज्यले लिन नसक्नु ।
- राष्ट्रिय मानव अधिकार आयोगका सुभावहरू सरकारले कार्यान्वयन गर्ने बाध्यकारी व्यवस्था नहुनु ।
- आर्थिक, सामाजिक तथा सांस्कृतिक अधिकारसम्बन्धी अन्तर्राष्ट्रिय महासन्धिमा उल्लेखित दायित्व पूरा गर्न ठोस कार्ययोजना नहुनु र बजेट विनियोजन तथा कार्यान्वयन हुन नसक्नु ।
- कतिपय मौलिक हकहरू कार्यान्वयनको लागि आवश्यक पर्ने नियमावलीहरू तर्जुमा नहुनु ।
- समयानुकुल कानूनमा सुधार हुन नसकेको र विपद् एवम् सङ्क्रमण सम्बन्धी एकीकृत कानूनको अभाव हुनु ।
- विपद्को समयमा तीनै तहका सरकार, कर्मचारी संयन्त्रमा समन्वय, सूचनाको व्यवस्थापन तथा सुशासनमा अभाव देखिनु ।

निष्कर्ष

नेपालको संविधानको धारा ३५ मा स्वास्थ्य सम्बन्धी हकको व्यवस्था गरिएको छ । Right to health अन्य हकभन्दा पनि महत्वपूर्ण र Basic (आधारभूत) हक हो । स्वास्थ्यको अभावमा अन्य हक अर्थहीन हुन पुग्छ । Right to health साकार हुन अस्पताल, डाक्टर, नर्स लगायत अन्य स्वास्थ्यकर्मी र उपकरण एवं औषधिले सुसज्जित अस्पताल आवश्यक हुन्छ । ICESCR लाई Monitor गर्न गठित Committee on Economic Social and Cultural Rights ले Right to Health को लागि आवश्यक डाक्टर नर्स, स्वास्थ्यकर्मी, औषधि र उपकरणले Equipped अस्पताललाई Extend / Expand गरी :-

- a) Safe drinking water
- b) Adequate sanitation
- c) Safe food
- d) Healthy working environment
- e) Health related education and information
- f) Gender equality समेत समावेश गरी यी समेत समावेश भएको सुविधा र सेवाले मात्र Right तय Health को हक प्राप्त हुनसक्छ भनेको देखिन्छ । Committee on Economic Social & Cultural Rights भनेको पक्ष राष्ट्रहरूले महासन्धिमा पक्ष भएपछि ICESCR का व्यवस्थाहरू लागू गरे नगरेको मूल्याङ्कन र समीक्षा गर्न International Covenant on Economic Social and Cultural Right ले गठन र स्थापना गरेको Committee हो । यो Committee को प्रतिवेदन र Opinion लाई Soft Law को रूपमा लिनपर्छ । नेपालको संविधानको भाग ४ को राज्यको दायित्व, निर्देशक सिद्धान्त र नीति अदलतबाट लागू गरिने र तत्काल प्राप्त हुने होइन । भाग ४ को व्यवस्था राज्यको लक्ष्य हो । उक्त लक्ष्य प्राप्त गर्न सरकारले नीति एवं कार्यक्रम बनाई क्रमश लागू गरी जनताले Progressive Realization गर्ने विषय हो । त्यसैगरी ICESCR का कतिपय विषय राज्यले आफ्नो नागरिकहरूलाई Progressive Realization गराउँदै जाने विषय भएतापनि नेपालको संविधानको धारा ३५ को हक र ICESCR को धारा १२(१), CEDAW को धारा ११(१)(f), CRC 1989 को धारा २४ समेतको हकहरू तुरुन्त प्राप्त गर्ने हकहरू हुन । पक्ष राष्ट्रले मानिसको Right to life सँग प्रत्यक्ष सम्बन्धित र प्रत्यक्ष गाँसिएको उक्त हकहरू प्राप्तीका लागि प्रत्येक अस्पतालमा न्यूनतम् संख्यामा डाक्टर नर्स र स्वास्थ्य कर्मी अत्यावश्यक औषधि एवं उपकरण उपलब्ध गराउन पर्छ । ICESCR मा पक्ष बनेपछि सन्धिको व्यवस्था लागू गर्दै जाने पक्ष राष्ट्रको प्रमुख कर्तव्य हुन आउँछ । ICESCR को धारा २ ले पक्ष राष्ट्रलाई कर्तव्य बोकाउँछ । धारा २ यस प्रकार छ

ICESCR को धारा २ :-

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures भनिएको छ ।

उक्त धारा २ अनुसार महासन्धिको व्यवस्था Progressive Realization गर्न कानून बनाउन पर्ने भए कानून बनाउने, प्रशासनिक व्यवस्था गर्नपर्ने भए गर्ने, रकमको अभाव भए आउँदो आर्थिक वर्षमा बजेट रकमको व्यवस्था गर्ने आदि जे गर्नुपर्छ थालनी गरी हालन पर्ने हुन्छ ।

Committee on Economic Social and Cultural Rights ले आफ्नो General Comment 14, मा The right to the highest alterable standard of health ESC/12/2000/4 Aug 2000 मा “Health is also a fundamental right and a right whose realization is necessary for the exercise of other human rights and freedoms भनेको देखिन्छ । सोही Committee ले right to health को प्रभावकारी कार्यान्वयनको लागि “.....The right requires governments to take measures to develop and complement policies and action plans which will lead to available and accessible health care for all in the shortest possible time. it requires them to make available and accessible functioning public health and health care facilities goods and services and programmes to everyone without discrimination भनेको देखिन्छ । उक्त committee ले Universal Declarations of Human Rights 1948 को धारा २५(१) लाई उल्लेख गर्दै nutrition, housing, access to safe and potable and adequate sanitation safe and healthy working conditions and a healthy environment समेतलाई right to health को लागि पूर्वाधारको रूपमा आवश्यक तत्व भनेको देखिन्छ ।

वास्तवमा Right to Health अन्य अधिकारहरूसँग प्रत्यक्ष सम्बन्धित हुन्छ । मानव जीवनको अन्य न्यूनतम मानव अधिकारहरू अर्थात् अन्य Basic Necessities हरू जस्तै स्वस्थ रहनको लागि पौष्टिक खाना अर्थात् right to food, right to food को अधिकारलाई साकार पार्न रोजगार अर्थात् Right to Work, शुद्ध पिउने पानी लगायत अन्य न्यूनतम सफाइ अर्थात् Basic Hygiene आदि आवश्यक पर्दछ । त्यसै गरी धारा १६ (१) को Right to Life with Dignity को Right to Health तथा धारा ३५ को निःशुल्क स्वास्थ्य सेवा पाउने हकसँग एकअर्को प्रत्यक्ष सम्बन्धित छ ।

कोरोना कालमा मानव अधिकारको संरक्षण र सम्बर्धनमा न्यायपालिकाको अलावा सरकार र सार्वजनिक निकाय, नागरिक समाज, राष्ट्रिय मानव अधिकार आयोग तथा राष्ट्रिय अन्तर्राष्ट्रिय गैर सरकारी सङ्घ संस्था तथा सञ्चार माध्यमले महत्वपुर्ण भूमिका निर्वाह गरेको थियो । स्वास्थ्य सम्बन्धी मानव अधिकार नागरिकको रक्षा कवचको रूपमा रहेको सन्दर्भमा संविधान, कानून र अन्तर्राष्ट्रिय प्रतिवद्धता अनुरूप आम नागरिकलाई मानव अधिकारको पूर्ण प्रत्याभूति दिलाउन सरकारका निकायहरू अग्रसर हुनुपर्दछ ।

कोरोना महामारीबाट पाठ सिकेर मानव अधिकारको अवस्था सुदृढ गर्नको लागि सुभावहरू :

- सर्वोच्च अदालतको फैसला तथा संविधान प्रदत्त मौलिक हकहरूको प्रचलन गराउन आवश्यक पूर्वाधार तयार गर्ने ।
- सर्वोच्च अदालतद्वारा प्रतिपादित सिद्धान्त तथा निर्देशनात्मक आदेशहरूको शीघ्र कार्यान्वयनमा सरकार अग्रसर हुनुपर्ने ।
- विपद्मा मानव अधिकारको सन्दर्भमा सम्बन्धित कर्मचारीहरूमा मानव अधिकारको मूल्य, मान्यता र सिद्धान्तको बुझाईमा एकरूपता ल्याउन अभिमुखीकरण गरिनुपर्ने ।
- विपद् र सङ्क्रमण सम्बन्धी एकीकृत कानूनको निर्माणका साथै समयानुकूल कानून निर्माण गरिनुपर्ने ।
- कोरोनाबाट आयआर्जन गर्ने अभिभावक गुमाएका बालबालिकाहरूको संरक्षण, शिक्षा, दिक्षा पालन-पोषणको जिम्मेवारी राज्यले लिनुपर्ने ।
- सम्मानित सर्वोच्च अदालतको आदेश बमोजिम राष्ट्रिय मानव अधिकार आयोगका सुभावहरू सरकारले कार्यान्वयन गर्ने बाध्यकारी व्यवस्था गर्नुपर्ने ।
- तीनै तहका सरकारको सुशासन कायम गर्न, एकीकृत सूचना प्रणालीको व्यवस्थापका साथै, समन्वय र सहकार्य अभिवृद्धि गर्नुपर्ने ।

Safeguarding Rights of Indigenous People in the Face of Climate Change

Dr. Ghana S. Gurung
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Abstract

Often referred to as custodians of nature, Indigenous People have been sustainably managing the ecosystem and conserving biodiversity for centuries. By protecting around 80% of world's biodiversity, they play a critical role in carbon sequestration. While their contribution to greenhouse gas emissions is minimal due to traditional lifestyles, they remain on the frontlines in terms of facing the impacts of climate change. As indigenous settlements are primarily located close to nature, for instance forests and riverbanks, they are easily exposed to climate change related hazards such as flood, forest fire and acute water shortages etc. Furthermore, lack of access to information, emerging knowledge, technology, services, and support networks increases their vulnerability. Climate change adaptation and mitigation programs should therefore take into consideration voices, knowledge, needs and expertise of Indigenous People. It is important to ensure that carbon sequestration and adaptation projects does not hamper the lifestyle/culture and/or impede rights on the utilization of natural resources of these communities. There have been efforts at both a global and national level to safeguard the rights of Indigenous People, however translating commitments and policies into practice is critical. Increased access to climate finance at the international level; inclusion of Indigenous People while designing national level plans and policies; improving emerging knowledge and access to climate resilient technologies, and strict implementation of Free, Prior and Informed Consent at the local level before execution of climate change projects are essential to safeguard rights of Indigenous People and improve their resilience to climate change.

Keywords: Indigenous People, Climate Change, Safeguarding rights

1. Background

Climate change has emerged as one of the prominent issues globally over past few decades. For instance, head of states from nearly 200 countries, and 30,000 participants participated in the recent Conference of Parties (COP) held in Glasgow, UK, October-November 2021 to find solutions to the climate crisis and with the aim to keep increasing temperatures under 1.5°C.

This was the 26th COP to the United Nations Framework Convention on Climate Change (UNFCCC)—an international environmental treaty adopted and implemented by countries all around the world to address the issues of climate change.

The Intergovernmental Panel on Climate Change (IPCC), an international body of United Nations was established in 1988 by the World Meteorological Organization (WMO) and United Nations Environment Programme (UNEP) to assess the science related to climate change. In its various reports, IPCC has claimed that the main cause of global warming is the result of massive consumption of fossil fuels (coal, petrol, diesel etc.); especially during the industrial revolution (1700 to 1800), resulting in the release of a huge amount of greenhouse gasses into the atmosphere. G20¹ countries are found to be primarily responsible for approximately 80% of greenhouse gas emissions (UNDP & Oxford, 2021). It has been estimated that the earth's temperature has increased by approximately 1.0°C above pre-industrial (1850–1900) levels and will continue to increase, on the current trajectory of development (Hoegh-Guldberg, 2018). With global warming, temperature minimums are increasing faster than maximums all over the world; increasing the frequency, intensity, and duration of extreme events such as typhoons, heat waves etc. Meanwhile precipitation has decreased in frequency but increased in intensity. As a result, the composition, structure, and function of the natural ecosystem is changing and humans are facing loss of lives and property from climate induced hazards such as droughts, landslides, floods etc.

The nature of vulnerabilities varies across regions and communities over time and depends on the local physiographic and socio-economic conditions. In terms of geographical regions, it is anticipated that small islands and high mountain ranges will face increased vulnerabilities. Meanwhile, at the country level, least to middle income countries are more likely to be affected by climate change (IPCC, 2018). Climate change is projected as poverty multiplier that makes poor people poorer. With increase in temperatures, a statistically significant effect on outmigration is predicted for agriculture-dependent communities (Hoegh-Guldberg, 2018). This estimation generates concerns for countries like Nepal, which apart from being mountainous with a high dependence on agriculture, also has low Human Development Index (HDI) values at only 0.602, positioning the country at 142 out of 189 countries

1 The Group of Twenty (G20) is the international forum that brings together the world's major economies. The member countries account for more than 80 percent of world Gross Domestic Product, 75 percent of global trade and 60 percent of the population of the planet. The member countries of the G20 are: Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Republic of Korea, Mexico, Russia, Saudi Arabia, South Africa, Turkey, the United Kingdom, the United States, and the European Union.

(UNDP, 2020). Moreover, Nepal lies in the top 10 countries most affected by climate change in terms of number of fatalities, number of climate disasters, and loss in GDP accounted from climate hazards in 2000-2019 (Eckstien, 2021). Being a Least Developed Country (LDC), Nepal has fewer resources and capacity to mitigate or adapt to the changing climate. A combination of the above factors makes Nepal disproportionately affected by climate change compared to other countries. Studies have shown even within different countries, the magnitude and scale of the impact is differential, i.e., marginalized people from socially, economically, culturally, politically, or institutionally vulnerable backgrounds often bear the brunt of the effects of climate change (Pauchari, et al., 2014). In most parts of the world as well as in Nepal, Indigenous People have been found to be more vulnerable to the effects of climate change (ILO, 2017; Allen, 2018; IWGIA, 2014; NEFIN & CEPRID, 2016; Galloway-McLean, 2009).

2. Indigenous people: one of the most vulnerable groups to climate change

Indigenous nationality is defined as distinct communities having their own mother tongues, traditional cultures, written and unwritten histories, traditional homeland and geographical areas, plus egalitarian social structures (NFDIN, 2003). Although indigenous communities contribute very less to greenhouse gas emissions, they are at the forefront of being affected by climate due to myriad of reasons. Often, indigenous people are found to reside in regions and areas close to nature such as forests, wildlife, riverbanks etc. and have traditional livelihoods ranging from rotational agriculture, hunting, and gathering, pastoralism, etc. Therefore, they are easily exposed to floods, forest fires, increased pests and diseases, acute water shortages etc. Furthermore, lack of access to information, knowledge, technologies, services, and support networks due to socio-structural inequalities, limit their ability to respond to climate-related challenges (NEFIN & CEPRID, 2016). This can force the outmigration of Indigenous Peoples which can consequently lead to loss of traditional, economic, social, and cultural activities (ILO, 2017), and most importantly, their traditional and spiritual relationship with natural and cultural landscapes.

In Nepal, the government has legally recognized 59 indigenous groups (NFDIN, 2002) that cover 35.6% of the population (CBS, 2012). These populations are scattered across all physiographic zones, but mostly in fragile areas and isolated villages in the mountain and hill landscape; or the flood prone areas and riverbeds of Terai. There is much evidence on how communities are frequently facing different impacts of climate change under changing and extreme weather patterns, impacting both lives and livelihoods. For instance, in the high Himalayas, water levels are formed in lakes formed due to the increasing glacial melt; almost 20 lakes are potentially

dangerous (Sharma, et al., 2006). In 1985, the Glacial Lake Outburst Flood (GLOF) from Dig Tsho lake caused more than USD 3 million worth of damage and disrupted the downstream communities of Khumbu for several months (ICIMOD, 2011). Likewise, many villages in the high mountains are under relocation due to shortage of water resources.

In some cases, climate change has brought positive impacts such as increased production of apples in Upper Mustang. Normally, apples take 42 days to ripen in cold weather but as temperatures continue to rise, apples are maturing faster, at 36 days in Mustang (Baral, Triphatee, & Khadka, 2017). This has increased the income of farmers and boosted tourism.

Picture 1: Apple Orchard in Yara village where apples did not fruit in mid 1970s



Note : © Ghana S. Gurung/WWF Nepal

At the same time, indigenous settlements in Mustang have also been forced to migrate from their native villages due to their vulnerability to climate change. In 2010, more than half of the 16 families in Samjung and 22 families in Dhey village of Upper Mustang migrated downstream and other areas as village springs dried out, pasture degraded, and staple agriculture products such as wheat, buckwheat and potatoes failed to grow properly (NEFIN & CEPRID, 2016). For example, shortly after the COP 26, a deadly avalanche struck Nepal's Mustang district injuring at least 11 people in Kobang village.

Food security is also a chronic problem, particularly among hill populations and indigenous groups, directly linked to water scarcity. A study has predicted that the total water availability in the country will increase from the present 176 km³/yr to 178 km³/yr in 2030, and then drop to 128 km³/yr by 2100 (Sharma, et al., 2006). This could have significant consequences for wetlands at lower elevations and the plains that depend largely on runoff from upstream areas.

In southern plain (Terai), the livelihood of Majhi (fishermen) and Bote (boatmen), two of Nepal's highly marginalized indigenous communities, is at stake due to drying of rivers and wetlands coupled with pollution. Not only their livelihoods, but also their culture and rituals are at severe risk of being lost due to climate change.

These are just a few examples; and the statistical impacts on indigenous people in terms of numbers affected (injured/killed/relocated), property damaged, etc. is yet to be accounted for. To safeguard the basic right to live and perform cultural and religious acts that exhibit indigenous

identities and preserves their integrity, climate change impacts should be well documented and adaptation activities implemented.

3. Indigenous people: custodians of nature and possible stewards in climate action

Indigenous People comprise of 5% of the world's population, and yet manage around 80% of the planet's biodiversity. Over 70 million Indigenous People are dependent on forests to meet their livelihood needs (ILO, 2017). Whereas, around 35% of

Picture 2: Dhey Villagers settling and growing apples in Dhey Tsang riverbed



Note: © Ghana S. Gurung / WWF Nepal

Picture 3: Fisherman sewing net (used for fishing) in its poorly constructed sheds near riverbank, Madi.



Note : Chitwan © Arati Khadgi/WWF Nepal

protected areas across the world fall within indigenous territories, with these areas found to be more successful in conservation due to the specific cultural, religious, social, economic, and spiritual relationships of Indigenous People with the natural environment (Galloway-McLean, 2009). Indigenous People have been managing the ecosystem and maintaining its integrity and complexity in a sustainable and culturally appropriate way for centuries. Their customary resource management systems based on their endemic traditional knowledge and skills have proven to be ecologically sustainable and efficient, due to which they are referred to as custodians of nature and biodiversity (IFAD, 2016; UN, 2009). One of the finest living examples of indigenous people living in harmony with nature can be seen in Tsum Valley within Manaslu Conservation Area of Nepal. Due to the strong Buddhist non-violence faith followed by local communities, people don't kill even domestic animals and conserve all forms of diversity. However, impacts of climate change is being observed in this area for instance, fruits are getting ripe about a month earlier than in the past, and mountains are losing snow and glaciers fast.

As indigenous communities are native to the region, they have witnessed the changes to their environment, and thus possess knowledge on shifting weather patterns, loss of plant/animal species, increase/decrease in surface water, increasing trends of climate induced hazards etc., associated with climate change (Nakashima, Galloway, Thulstrup, Ramos, & Rubis, 2012). It has also been affirmed by many scientists that this kind of information can complement and validate the results of scientific studies and modelling (Allen, 2018). IPCC's fifth Assessment Report (AR5) on Impacts, Adaptation, and Vulnerability has also acknowledged that integrating indigenous, local, and traditional knowledge systems and practices, including indigenous peoples' holistic view of community and environment with existing practices can increase the effectiveness of adaptation (IPCC, 2014).

In Nepal, many indigenous communities live in isolated patches rich in biodiversity with little disturbance from development activities. The close and intricate relationship between Indigenous People and nature has helped them develop survival instincts in the wilderness, and consequentially develop their knowledge and skills for sustainable use and management of natural resources. Such local knowledge and cultural practices can be very helpful in addressing impacts of climate change. According to a study conducted across 18 districts of Nepal, indigenous, traditional, and local knowledge/practices such as maintenance of greenery, protection of traditional ponds, construction of bamboo wall in riverbanks etc. has proven to help communities adapt to climate change (MoSTE, 2015). This has been possible due

to tried and tested knowledge that has evolved through generations, in adjustment to stress, thereby improving adaptive capacity.

There is general consensus among scientists all over the world that unless we protect indigenous knowledge and customary practices for sustainable management of forest and biodiversity, addressing the impacts of climate change will be challenging (NEFIN & CEPRID, 2016). The role of Indigenous Peoples should therefore not be categorized just as victims of global climate change but as custodians of nature and stewards for climate action by sharing their local knowledge and practices.

4. Safeguarding Indigenous People’s right: from impacts of climate change and from climate change related interventions

According to United Nations Convention on Biodiversity; Article 14-16 of International Labor Office’s (ILO) Indigenous and Tribal Peoples Convention No. 169; and Article 10, Article 11, Article 19, Article 26, Article 28, Article 29, and Article 32 of United Nation Declaration on the Rights of Indigenous Peoples (UNDRIP), indigenous peoples have rights to collective identity, collective ownership and control over ancestral land, territories, forests and other natural resources, language, indigenous knowledge, and customary practices. In the face of climate change, indigenous people are often unable to exercise such rights as their dwelling areas are severely impacted from climate induced hazards and disasters. Furthermore, while planning and implementing adaptation projects, it is critical to analyse if any of the activities might force Indigenous People to relocate or change their traditional practices. In an opening statement for COP 26, the Peoples' Forum on Climate Change; also known as the Indigenous Peoples' Caucus, expressed deep concern on so-called nature-based solutions developed without their input and Free, Prior, and Informed Consent which has undermined self-determination and land tenure rights of Indigenous People. Safeguarding rights of Indigenous People in climate change related projects should also be considered which is often neglected, except for a few multilateral funds such as Global Environment Facility (GEF) and Green Climate Fund (GCF) etc.

4.1. Efforts at Global Level

In a guideline prepared by UN-REDD Program, it is stipulated that *“In order to respect diverse and peculiar ways of living and the collective rights of Indigenous Peoples, any external entity and or actor of climate change such as the government, corporations, institutions, organizations and project proponents, need to seek an*

agreement, authorization and consent with/from Indigenous Peoples, as they are the rights holders of local natural resources” (UN, 2013). The ILO convention and UNDRIP decaLration propound to follow **Free** (independent process of decision making), **Prior** (right of indigenous peoples to follow their own decision-making process for any conduct prior to the implementation of any program or project), and **Informed** (right to have accurate, accessible, sufficient, and culture-friendly information on matters for the decision- making process) **Consent** (a collective and independent decision of affected indigenous peoples after following their own process of decision making) of Indigenous People before implementation of any project in an area inhabited by them. To avoid any negative impacts on the already vulnerable indigenous communities, screening of the projects following Environment and Social Safeguard Framework (ESSF) should be done and mitigation measures should be planned beforehand and implemented if any risk is identified.

At the global level, the discourse on the importance of Indigenous People’s role in climate change adaptation (using local knowledge) and mitigation (by protecting the world’s remaining forests with rich biodiversity which in turn, helps to sequester greenhouse gases) is already making a case for the importance of protecting rights of Indigenous People. Since 2000, Indigenous People have started to take part in the dialogues held by UNFCCC.

During UNFCCC’s COP 13 held in Bali, Indonesia, 2007, the issues and concerns of Indigenous People were raised for the first time when the agreement for mitigating impacts of climate change through Reducing Emission from Deforestation and Forest Degradation (REDD) was made. An International Indigenous Peoples' Forum on Climate Change (IIPFCC), a representative body of indigenous people urged UNFCCC to incorporate their traditional knowledge and their cultural practices into a sustainable solution to climate change and its impacts (IWGIA, 2014).

Finally in COP 16, the Cancun Agreement was adopted in 2010 that recognizes the rights of Indigenous Peoples and other local communities in reducing emissions from deforestation and forest degradation, conservation of forest carbon stocks, sustainable management of forests, and enhancement of forest carbon stocks (REDD+) activities. As per the Agreement, parties are obliged to implement the agreed safeguard standards including FPIC. In line with the Agreement, the Forest Carbon Partnership Facility (FCPF) of the World Bank and United Nations’ REDD Programme have included safeguard policies to ensure FPIC compliance in REDD related projects.

Many multilateral funds available under climate finance have also made it mandatory to follow ESSF to identify any possible impact on indigenous people from implementation of the project and implement mitigation measures accordingly. For instance, Green Climate Fund has established Environmental and Social Policy to integrate environmental and social considerations into its decision making. For all climate adaptation and mitigation projects supported by GCF, it is necessary to properly screen and assign appropriate environmental and social risk categories. Category A includes activities that are anticipated to have significant environmental and social impacts, a full and comprehensive Environment and Social Impact Assessment (ESIA) and Environment and Social Management Plan (ESMP) will be required with mitigation measures to avoid, minimize, or mitigate adverse impacts, and to compensate for residual impacts. Category B includes activities with limited impacts, a fit-for-purpose ESIA and an ESMP that describes the potential impacts, as well as appropriate mitigation, monitoring and reporting measures will be enough. Category C includes activities that should have no expected significant environmental and social impacts, hence may not require any assessments, although a pre-assessment or screening should confirm that the activities belong to Category C.

Although, the negotiations at COP have left Indigenous Peoples on the side-lines in terms of climate finance, COP 26 has been inclusive to some extent. For the first time in the history of the UNFCCC, twenty-eight indigenous peoples were nominated from each of the seven UN indigenous socio-cultural regions, to engage directly as knowledge holders and share experiences as indigenous experts with governments. Further, several governments and private funders in the conference have pledged USD 1.7 billion in support of Indigenous People and Local Communities' (IPLC) tenure rights in recognition of their global contributions to climate change mitigation (Sutherland, 2021). This is the largest public-private commitment to support Indigenous peoples and local communities till date. This new stream of funding will run between 2021 and 2025 and is separate to the broader climate finance pledges going to poorer nations. It will be important to monitor and track that the funds benefit the Indigenous People, as many forest conservation projects have failed to do so in the past. For instance, according to a study only about 2% of REDD+ funding has been directed to indigenous lands and few of these funds reach IPLCs, with most of the fund going to large intermediary organizations and consulting firms (Veit, 2021). Although, climate finance focusing on Indigenous People has been decided in COP 26, there is still dissatisfaction among many Indigenous People leaders as the amount pledged is insufficient for safeguarding rights of Indigenous People all around the world.

4.2. *Efforts at National Level*

Nepal ratified ILO Convention No. 169, Convention on Biological Diversity (CBD), and adopted UNDRIP in 2007, which guarantees fundamental indigenous peoples' rights and demand to follow the processes of FPIC in every step of the implementation as the basis of safeguards in climate change adaptation and mitigation activities (NEFIN & CEPRID, 2016). Nepal, as a party to the UNFCCC, is obliged to follow safeguard measures while undertaking initiatives on climate change mitigation and adaptation and in line with the signed agreements. For effective participation in COP 26, Ministry of Forests and Environment (MoFE), the focal ministry for climate change identified four key areas of engagement, out of which engaging vulnerable and marginalized communities to raise and bring forth their issues through public discussions was among the top priorities (MoFE, 2021).

Being a LDC member, Nepal prepared and subsequently submitted, the National Adaptation Programme of Action (NAPA) in 2010. NAPA has prioritized promotion of community-based adaptation to improve the adaptive capacity and empower vulnerable communities. Further, in line with the Climate Change Policy 2011 reappealed in 2019, a high-level Climate Change Council is envisioned to take decision on climate change related actions at the national level. Meanwhile, to expedite the implementation of NAPA, Multi-stakeholders Climate Change Initiatives Coordination Committee (MCCICC) has been formulated. To safeguard the rights of Indigenous People in the context of climate change, representation in such high-level committees is necessary.

However, it has been observed that engagement of Indigenous People in the adaptation planning process is still very limited. There are no strict provisions for representation of Indigenous People in the high-level advisory body. Without ensuring representation and participation of Indigenous Peoples at such national level institutional mechanisms and in planning and decision-making processes, the issues and priorities will remain unheard, and eventually the adaptation program planned and implemented will not be able to cater to the needs and rights of Indigenous Peoples, rendering them vulnerable in the face of climate change.

Nepal has made some progress in REDD+ readiness process initiated in 2007 by making it a relatively inclusive and participatory process. As mentioned in the Readiness Preparation Proposal (R-PP), the Government of Nepal is committed to developing a national REDD+ strategy compliant with the international safeguard measures of REDD+. The R-PP of Nepal has proposed to adopt multiple safeguard

measures: Strategic Environmental and Social Assessment (SESA)/ Environmental Social Management Framework (ESMF) and REDD+ Social and Environmental Standard (SES). Also, as required in many multilateral funds, many projects are being prepared following the ESSF. WWF Nepal in accordance with the WWF Network's Environmental and Social Safeguards Framework adopted in 2019, is also committed to make sure that indigenous peoples do not suffer adverse impacts from WWF projects, and that they receive culturally appropriate benefits from conservation.

However, this effort is limited to few organizations and projects. Nepal has still not been able to fully ensure the rights of Indigenous People in all rules and regulations, policies, plans, programs, strategies, and activities relating to climate change.

While implementing climate change adaptation projects, a blanket approach has been seen to be undertaken. Indigenous People are inappropriately impacted by climate change; hence, positive discrimination is required by identifying and prioritizing adaptation options such as locally appropriate nature-based solutions that is compatible with indigenous practices. In many places, where indigenous tools and technologies are already in place, but further strengthening and upscaling can be done. Local Indigenous People could also be engaged in many adaptation activities, for instance as informers in early warning system or as experts of indigenous tools. While development partners have supported in implementation of adaptation plans in different places of Nepal, it is important that the local government mainstreams climate change adaptation focusing on indigenous knowledge and practices into its annual plans and policies to ensure sustainability.

5. Conclusion

Indigenous People are perceived as one of the most vulnerable groups to climate change. However, they are also observers and informants of changes in local climatic conditions and patterns, important actors for sustainable management of natural resources, and could possibly be stewards in climate change mitigation and adaptation actions. Thus, it is important to shift our perspective of considering indigenous people just as victims of climate change and recognize their positive contributions to climate change adaptation and mitigation.

Scientific communities have realized the important role played by indigenous people in addressing the climate emergency. Discourse at national and international arena has helped gain certain momentum to protect the rights of Indigenous People in the

face of climate change. Nature-based solutions to climate change adaptation present significant opportunities for Indigenous People to account their contribution and to engage them in adaptation and mitigation interventions. However, such solutions should not inhibit their usual practices of natural resource management and/or alter their cultural relationship with nature. Thus, while implementing climate actions, it is imperative to follow FPIC, avoid activities that inhibits their rights and implement mitigation measures so that they are not pushed further towards vulnerability.

Many conventions, agreement, and multilateral funds such as GEF, GCF etc., have strongly urged FPIC as the basis of safeguard measures of climate change mitigation and adaptation interventions. Nepal has taken a stride in implementing the obligatory social and environmental safeguards of Indigenous People while applying such multilateral funds and as required by donor organizations. Nevertheless, it is also imperative to consider FPIC and ESSF in other climate related projects undertaken by government and developing partners.

Nepal in its Climate Change Policy 2019 has given emphasis on mobilizing national and international financial resources for climate change mitigation and adaptation in a just manner, prioritizing specific groups including Indigenous Peoples for adaptation activities. This sends a positive message on how the country has understood the interlinkages of climate change with human rights and rights of indigenous people. However, for safeguarding the rights of Indigenous Peoples, the government must take urgent actions for implementation of plans and policies all at levels that protect the rights of Indigenous People, and if required come up with stringent laws in line with the national context and as abided by the conventions and agreement signed by the government. Without financing of projects that specifically addresses the issues of Indigenous People, the plans and commitments would not be fulfilled. Hence, government should strengthen its capacity to access climate finance which is now pledged targeting most climate-vulnerable countries and communities, especially for women, youth, low-income and marginalized people, and Indigenous Peoples.

At the same time, government should also ensure full and effective participation of indigenous people in overall development processes including climate change adaptation and mitigation related programs at local and national level by building their capacity and creating enabling environment for their meaningful participation because “Leaving No One Behind” for the greater cause of people and nature is a need not a choice.

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Assessing the Processes of Dignified Returns and Sustainable Reintegration of Migrant Workers: The Context of Covid-19 Pandemic in Nepal

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Abstract

This article envisioned to understand how Government of Nepal responded to the returnee migrant workers during the first and second wave of Covid-19 pandemic. Utilizing the Governmental and non-governmental secondary sources of information including from the news and views of media published during the period of pandemic, this article attempted at answering the research questions: how far the return process can be said to be dignified? To what extent the measures adopted to response to the returnees during the pandemic period can be said to be effective to ensure their rights to safely return to their own country and promote sustainable reintegration? Findings of the article showed that there were more than 3.2 million migrant workers abroad including one million in India and on the average more than 360,000 migrant workers were expected to return the country immediately after the first lock-down imposed in the country. And, on the average, 1200 migrant workers visa was expired daily and they turned to be illegal migrant workers in many destination countries. In this context, the Government of Nepal failed to timely response to the problem of migrant workers – by collecting their information and issuing the white paper daily or at a certain period internal, and there was denial of their rights to enter into the own country without any huddle. While the Government's imposition of the lock-down and travel restriction was said to be in the wider public health interest in the country, the measures adopted to rescue, returns and reintegration did not enable the returnees to reach their home destination safely and timely, but rather measures appeared to be more bureaucratic, time consuming, and in some cases stigmatized the migrant workers and even not guided by humanitarian principle. All these findings lead us to conclude that the Government of Nepal has aLrgely lost its legitimacy from the commoners that the state is their protector during the pandemic period.

Key Words: Pandemic, migrant workers, return, reintegration and governance.

Introduction

Migration for foreign employment has become an increasingly common in Nepal. Unlike in the past where migration was sex selective - male being the migrant workers and women a largely dependent migrants, migration of women for employment has also tremendously increased in Nepal. Migration of marginalized groups has also considerably increased. Women migration has been facilitated due to the demographic transition taking place in Nepal, a fall in fertility rate with the increased use of contraception. Poverty, lack of employment, domestic violence and dysfunctional families evolve as the broad push factors while increasing a large number of young men and women have been attracted by the dreaming of better work and income, demand for caring work, opening up the international labor market are the prime pull factors (Subedi, 2020). Data from the Department of Foreign Employment (DoFE) suggested that the extent of migration for foreign employment beyond India has been rapidly increasing since the early 1990s. As of Mid-March 2021, the Government of Nepal has permitted 125 countries for foreign employment and more than 4.46 million Nepalese citizens left the country for foreign employment by taking labor permit from the Government since open up the foreign employment of early 1990s. In the fiscal year 2020/21, the size of the remittance inflow from foreign employment was Rs. 91484.9 million (or equivalent to US Dollar of 769 million) – accounting for more than 27% of the GDP of the country and the Covid-19 did not have much impact on the inflow of remittance in the country (Ministry of Finance, 2021) as compared to the pre-Covid-19 years of 2017/18.

This has not only give rise to the migration to overseas for employment but it has also generated a sizable stream of returnee migrant workers voluntarily or involuntarily daily in the country. What was the expected size of return during the Covid-19 period? How far the returns have become dignified and ended as sustainable reintegration? How the rights to return to the country of the Nepalese citizens was protected in the context of Covid-19 pandemic? Understanding responses of these questions are vitally important to formulate and learn the migration policy especially in the context of global crisis like pandemic, disaster or war. Drawing upon the different secondary sources including media reports, this article critically reviews the rescue mechanism adopted by the Government of Nepal during the Covid-19 context and measures adopted for reintegration of returnee migrant workers.

Expected Number of Returnee Migrant Workers during the First Wave of Covid-19

In March 2020, the National Planning Commission (2020) estimated 3.2 million stock of Nepali migrant workers including other migrants such as students spread

across more than 125 countries. India occupied the largest share of Nepali emigrants with around one million – constituting of 30% of the total emigrants in the country. This is followed by Qatar (360,000), Malaysia (325,000), Saudi Arabia (320,000) and United Arab Emirates (275,000). It is estimated that only about 30% or about one million Nepali emigrants are beyond these five countries. The estimate shows that daily, on the average, there are 1200 Nepalese leaving the country for foreign employment and 500 returning during the pre-Covid-19 pandemic period. The annual number of returnee migrants to Nepal was estimated to be 618 hundred thousand, and 360 hundred thousand was estimated to come soon in Nepal due to the effect of Covid-19 in the destination countries. The share of returnees expected to return soon was far higher from India compared to any other countries such as Qatar, Malaysia, Saudi Arabia and United Arab Emirates. Of the total number of expected returnees of 360,000, nearly 70% were estimated to be from India, 11% from Qatar, 6% from Saudi Arabia, 3% from UAE and nearly 2% from Malaysia.

Another study conducted by ILO and CESLAM (2020) during the April-June 2020 provides the estimates of migrant workers who need immediate rescue during the first wave of Covid-19 pandemic (Table 1). According to this study, on the average, every day 1,500 Nepali migrant workers' visa would be expired and it was estimated that that number reached about 125,000 in between 22 March and 12 June of 2020. Of those whose labor permits had already expired, nearly 81% was estimated to be in Gulf Cooperation Council (GCC) countries, 13% in Malaysia and rest 6% in other countries. Proportionately, the highest number of laborers expiring labor permit was from Qatar (23%), followed by United Arab Emirates (22%) and Bahrain (5%). In terms of origin of the migrant workers, the highest proportion was from Province 2 (25%), followed by Province 1 (23%), Lumbini Province (17%), Gandaki Province (15%) and the least was estimated to be in the Karnali Province (2.8%) and the Sudurpaschim Province (2%).

Table 1

Labor permits expiring per day by countries of destination (22 March to 21 June 2020)

Destination countries	No. of MWs whose labor permit expiring per day	No. of MWs whose labor permit expired since the lock-down in Nepal (22 March-12 June 2020)	% of total MWs whose labor permit already expired
Qatar	422	35,026	28.2
Saudi Arabia	327	27,141	21.8
UAE	347	28,801	23.1
Bahrain	24	1,992	1.6

Sambahak

Kuwait	74	6,142	4.9
Oman	16	1,328	1.1
Malaysia	195	16,185	13.0
Others	94	7802	6.3
All countries	1499 or 1500 (rounding)	124,417 or 125,000 (rounding)	100.0
Total	1526	126,658	

Note: MW refers to 'migrant workers'.

Source: ILO and CESLAM (2020).

However, because of the chaotic circumstances and lock-down to contain the virus in both the destination countries and Nepal, hundreds of thousands of migrant workers have lost their jobs and they could not return to the country. The regular flights between countries were restricted for indefinitely and only the reserved flights could be possible. On top of this, the migrant workers did not afford to stay in the destination countries without work and the fair of flights was also reported to be quadrupled than that of the pre-Covid-19 fair. Migrants had to wait in the destination countries without proper accommodation, food and health care services.

Daily In-Flow and Out-Flow During the Covid-19 Pandemic: The Case of Two Important Border Points of Far-Western Nepal

The in-flow to Nepal and out-flow from Nepal has been evident even during the second wave of Covid-19 and lock-down period. The Government of Nepal imposed the countrywide lock-down from 29 April 2021 and there was also restriction to cross the border to India. The Government of Nepal only opened the restriction from the land from 27 September 2021. The Kanchanpur District Administration Office (DAO)¹ has maintained the data records of Nepalese citizens crossing the Nepal-India border from the district's two official border points: Gaddachauki and Gauriphanta from April to August 2021. While searching the website of the Kanchanpur DAO, a total of 11 days' records were posted in the DAO's website which have been summarized in Table 2. On the first day of the lock-down, that is, 29 April 2021, a total of 1629 Nepalese entered into Nepal from these two border points while only 111 Nepalese went to India. Net-migration has been found positive till May 2021 then after net migration becomes negative – meaning that more Nepalese people were crossing Nepal border to go to India. The six days (April-May) average daily

1 We have also searched the websites of following Kailai DAO, Baitadi DAO, Darchula DAO and Banke DAO whether they have maintained the daily records of Nepalese people crossing the border to India, but none of these DAOs has maintained records. While there is high inflow and outflow from these districts as well.

in-flow comes out to be 1,128 while it was only 236 in case of outflow. Among the Nepalese entering to Nepal, nearly one-fifth constituted of females and another 7 per cent were children. In case of outflow, the share of females and children comes out to be very considerable (33% of the total out-flows). After 10 June 2021 when the net migration becomes negative, the average daily inflow was merely 288 while outflow was 1470. The share of females and children in the total outflows was 22.5 percent and 11.3 percent, respectively.

Table 2

Average daily in-flow and out-flow from Kanchanpur district during the second wave of Covid-19 and border restriction period, April-August, 2021

	In-flows to Nepal		Out-flows from Nepal	
	Number	%	Number	%
April-May (6 days average)				
Male	836	74.1	121	51.3
Female	211	18.7	80	33.9
Children	81	7.2	37	15.7
Total	1128	100.0	236	100.0
June-August (5 days average)				
Male	179	62.2	973	66.2
Female	68	23.6	331	22.5
Children	41	14.3	166	11.3
Total	288	100.0	1470	100.0

Source: Kanchanpur District Administration Office, Website: <https://daokanchanpur.moha.gov.np/page/aava-gamana-abha-l-kha-2> (accessed on 16 November 2021).

Denial of Rights to Return to Own Country: Government's Less Priority to Rescue and Returns of Nepali Citizens from India

During the first wave of Covid-19 pandemic and the consequent lock-down period, there has been several cases of denial of rights to return to own country. The Government appeared to be detached from the hundreds of thousands of returnees by not allowing them to safely return to their own country and their proper management. Initially, the governing political elite blankly called on people 'stay in the same place where you are staying'. Although this slogan might have important to contain the virus, people could not stay in the same place for days and nights in the context of lock-down and having lost of their job. Through the greater public pressure, the Government of Nepal was forced to adopt a Bill on 25 May 2020 to facilitate the Nepali citizens abroad to return to Nepal during the period of restriction of travel.

The Bill makes different provisions of entry border points from the land and from air, management of holding centers and quarantine facilities, repatriation of dead bodies and provision of spending for return. Across the open border of about 1850 Kilometers between Nepal and India – in the South, East and West of Nepal, the Nepalese Government formally opened the following 18 border entry points for those Nepalese citizens coming to Nepal via on land from India. Here, we have arranged them from east to westwards as follow:

Pasupatinagar (Illam), Kakarbhitta (Jhapa), Rani (Morang), Kunauli (Saptari), Thadi (Siraha), Madar (Siraha), Vittamod (Mahottari), Malangania (Sarlahi), Gaur (Rautahat), Birgunj (Parsa), Maheshpur (Nawalparasi West), Belhiya (Rupandehi), Taulihawa (Kapilbastu), Kirishnagar (Kapilbastu), Jamunah (Banke), Gauriphanta (Kailali), Jhaulaghat (Baitadi) and Darchula (Darchula).

While being the open border between Nepal and India, there are hundreds of unofficial border points which have not been well managed and people have to walk miles of miles to reach the nearest officially open entry points to enter into Nepal. The India Government had announced the lock-down in 24 March 2020 and Nepal imposed the lock-down to contain the spread of corona virus in 22 March 2020. Nepal banned the international flights coming to Nepal as well. This made a chaos not only among Indian workers but also to hundreds of thousands of Nepali workers in India. They were also reportedly forced to leave their rented rooms, houses, factories and settlements by the household owners, factory owners, employers and local people to contain the spread of virus. As a result, a huge number of men, women and children, who were especially seasonal migrants or temporary migrants and who did not have their own house or permanent job in India, were forced to return to Nepal for safe shelters. They had to travel even more than 7 days to reach to border between India and Nepal from more than 2000 kilometers away walking on foot and on riding of trains from Mumbai, South India, and Gujarat, from Kashmir, New Delhi and Haryana to Nepal's borders. On route, they had to pass through the several Indian security check-points, making them unnecessary inquiry, harassment and humiliation and sometimes at risk of abuse and violence by the hooligans. Once the migrant workers approached to Nepal-India border points with the greatest hope of survival, security and reunion with the beloved ones who were separated for years – the fathers, mothers, husbands, wives and children - got frustrated with the Nepalese Government's decision that they were not allowed to enter their own country. It was told that they may be the vector of transmission of Covid-19 in the community.

There has been greater stigmatization of Nepalese returning from India. The High Level Coordination Committee for the Prevention and Control of Covid-19 took

much longer time to manage the situation. At the initial stage of Covid-19 lockdown period, the Federal Government was appeared to be reluctant to response the Covid-19 by giving lexical priority to public health with the mobilization of country's resources. As a result, hundreds of thousands of returnees had to spend their days and nights under the open sky in the border points without food, clean drinking water and safe sleeping places. When the Indian Government partially allowed to run the trains to carry out the workers across India on May 2020, the caravans Nepali citizens was reported to coming mainly from the borders of Darchula, Jhulaghat (Baitadi), Gauriphanta (Kailali) and Jamunah (Banke). On 1 April 2020 media like Al Jazeera reported that about 800 Nepalese stranded at the bank of Mahakali River – in the opposite of Darchula district. They were trying to enter to Nepal but they were stopped by the Nepalese security forces and they had to spend nights and days in the river bank in the open sky. One of the returnees, Mr. Ramesh Bista, 29, jumped into the high current water of the Mahakali River, swam on it and crossed the river with brevity. Once he crossed the river, he was arrested by Nepalese Police. He says, 'you can take me anywhere from here. Hundreds of like me are stuck on the other side of the river, sleeping like animals on the grounds and no food for days. The country needs to save them'. Human Rights Watch charged the Government of Nepal that it denied the rights to return of its citizens. It is said that the Indian Police fired warning sorts at them when Nepali tried to cross the border but the Indian police denied it. On the other hand, the Government of Nepal did not allow the Nepalese citizens to enter into the country and making it trouble to remain in the border points. This happened in many border points especially from the Sudurpaschim province and Lumbini Province.

Returnee migrants not only met the problem in the border points but they also encountered the difficulty when they entered into the country. The Kathmandu Post on 26 May 2020 wrote that 'thousands of Nepalese without food or shelter await entrance at the Karnali border'. Deepak BK including other 24 came from Himachal Pradesh travelling for 5 days on foot. He along with thousands headed to Karnali Province were stopped in the border between these two Provinces. Since the beginning of May 2020, the Indian Government started deploying trains to rescue migrant workers stranded in different parts of the country and Nepalese working in different parts of India have utilized this service to get to the border. And, according to the Karnali's Minister, around 20,000 migrants entered the Karnali province within two days and the Karnali Government was not prepared how to manage them.

Drawing upon the *Monitoring and Observation Report of Human Rights Commission, Sudurpaschim Province Office*², the people crossing the border in November 2020 reduced compared to the earlier months. Looking at the latest one week data of that month, there were on the average 250 to 500 Nepalese crossing the borders. Among those who daily crossed the border, the ratio of entering to Nepal and going to India was about 70% and 30%, respectively. India has opened the border up to 10:30 a.m., after that border was only opened when there was a serious patient to be taken to hospital. The observation team noted that from the border points of Kanchanpur district, mainly people of Sudurpaschim and even people from Karnali Province used the border. Many were reported to be going for work in Kumaon and Himachal Pradesh of India. They comprised of fairly young in the age range of 18-50 years. Of the migrants, nearly 75% comprised of males while 20% and 5% were females and dependents, respectively. Those going to India were the holders of Indian ration cards and those who had recommendation letters from the Indian companies or employers. In the border points, there was medical check desk where people's fever was measured, malaria test was conducted and also provided the counseling for Covid-19 pandemic. Many Nepalese who came to the border points from across the hills and mountains did not, however, know the timetable in which the border crossing was allowed by the Indian Police and because of this they had to wait even more than 12 hours in border – sleeping on the open sky, without food and clean drinking water.

In Kailali district, the Nepali border police had developed the negative perception towards Nepalese entering to Nepal. They viewed that many returnee migrant workers have developed the habit of not working at home and they do not often use their own skills, creativity and experiences. They have developed the habit of excessive drinking and often talkative. The Kailali Chief District Officer (CDO) reported that they have maintained the data of people coming to Nepal and those going to India daily in their official website. The CDO office also reported to the National Human Rights Commission (NHRC) monitoring team that there is no any complaint filed in the CDO office stating that they have faced any problems while they were crossing the border. While on the other hand, several media reported that the Nepalese coming

- 2 NHRC – Sudurpaschim Province Office conducted monitoring and observation in border areas between Nepal and India during 30 November- 04 December, 2020. The monitoring team visited the border area of Kanchanpur and Kailali districts and interacted with the concerned Government Officials, NGOs personnel including border security forces of Nepal Police and Indian Border Police. In Kanchanpur border points, there are 12 temporary and 2 proposed BOP and among them, the monitoring team physically visited in 7 BOP and took information through phone calls from other 5 BOP.

to Nepal and even going to India faced several problems from India Police.

The NHRC monitoring and observation team noted that there were three types of Nepali migrants to India. One, the family migration to India for a relatively long-period. Two, temporary migration occurs and in this case, the migrants go for earning and send remittance back home and the migrant may come back home once or twice a year. Three, seasonal migration – people go for work in India for 3 to 6 months when there is off-agriculture season in Nepal. Among these three types of migration, the third one is reported to be prominent one. Further, the observation team noted that some of the Nepalese youths who went for employment in India have been missing for years, there is no contact to the families. Despite this, there were no complaint filed in the NHRC Office of Sudurpaschim Province.

Delay and Slackly Process of Rescue and Returns of Nepali Citizens from Abroad

Narratives of the returnees cited in different national media during the first quarter of the 2020 indicate that many of Nepalese citizens' abroad especially migrant workers did not feel that they have their state and they felt stateless because of the delay in rescue and return process. In case of Nepalese citizens returning from overseas expect from India, the Bill adopted by the Federal Government in 25 May 2020 made provision of return on the basis of following priority:

those granted amnesty from the punishment; those in detention centers permitted to come to Nepal; those with the exit visa of any reason; those whose relatives died and have to come Nepal for the death rituals; those whose labor contract period has terminated and no job; those with serious health situation expect Covid-19; pregnant and lactating women; children, senior citizens and persons with disabilities; those government staff went for the study and training; students whose study completed; students on study but need to come Nepal; those went for family reunion; those in employment in a company and leave granted; those working in international organizations and those having tourist and business visa.

The Bill directed the local governments to establish the holding centers closed to the border points for those who come from India. Holding centers were to be establish in public schools, community buildings, covertly halls, party' palaces and even in open places. Those coming from International Airport of Kathmandu were placed in the holding centers established around the Ring-Road of Kathmandu valley and the responsibility of management of holding centers was given to the Nepal Army. In case of management of quarantine centers, local governments were made responsible and they have to manage logistic and safe drinking water. People have to maintain the

standard and safety measures while in the quarantine centers according to the health protocol of Ministry of Health and Population. According to the Bill, the Federal Government would allocate Rs. 175 (about 1.5 US DolaLr) per person/day for food and water to those persons in quarantine centers for 14 days to the concerned local government. The rent of holding centers would be paid by the Federal Government, and the Federal Government expenditure was managed from three sources: i) Central District Disaster Management Fund, ii) Corona Infection Prevention Control Treatment Fund and iii) Foreign Employment Fund. The Ministry of Foreign Affairs and Ministry of Labor, Employment and Social Security were to make arrangement to bring the dead bodies and remains of Nepali citizens who died at overseas and could not be brought timely due to Covid-19 pandemic. The Federal Government allocation of Rs. 175 for food and water for a person was extremely low compared to the price index of the goods and services that it was inadequate to buy the two meals. On 20 July 2020, the Ministry of Foreign Affairs and Ministry of Labor, Employment and Social Security brought the Guideline³ to rescue the migrant workers at abroad who had been at abandoned situation in destination countries due to the effects of Covid-19 pandemic. The Guideline establishes standard criteria and priority for rescue of migrant workers, rescue process, management of expenditure and role of Foreign Missions and licensee agencies at abroad. As per the provision, expenditure for rescuing the migrant workers has been provisioned from the Foreign Employment Welfare Fund in case the migrant workers who went overseas by taking labor permit from the Government and who are currently at the abandoned situation.

However, as per the rescue process, it was rather lengthy and no first-track procedure was employed. A migrant worker who is required rescuing and the air ticket need to apply to the concerned Embassy of Nepal. The Embassy, then, requires to write to the licensee that sends the worker to the employer/company and ask to prepare the details of the worker's saaLry, benefits and contract period. The licensee then shall submit the details about the workers to the Embassy and the Embassy has to verify the documents to the workers and upload on the Foreign Employment Information Management System (FEIMS) database portal. The Embassy also requires to write to the Foreign Employment Board via Minister of Foreign Affairs for the release of money for air ticket and other expenditure. Upon verification of the documents, the Foreign Employment Board reimburses the airfare to the name of the worker in the concerned Embassy. The airfare to the worker shall be paid on the basis of the following:

3 The Guideline has been published in Nepal Rajpatra (Section 10, No. 14) on 20 July, 2020.

Description of worker	Of the total airfare, Fund shall pay:
1 If the worker has < 1 year contract period	100%
2 If the worker has more than 1 year contract period	50%
3 If the worker went by re-approval labor permit	50%
4 If the worker released from a jail and granted the amnesty	100%
5 Charges from Kathmandu Airport to the quarantine facilities	100%

Some positives aspects of the Guideline are that it grants maintaining the privacy of the workers and brings the licensee on board for the rescue of the workers. If a licensee does not support the process, its license may not be renewed for the next five-years. However, the Guideline has some fundamental weaknesses from which the rights of the migrant workers have to be compromised. The Guideline has not clarified how an undocumented worker was to be rescued as a Nepali citizen and as a humanitarian ground. It is stated that Foreign Employment Fund's money is only applicable for those workers who went abroad by taking labor permit and are in the work contract period. The application process appears to be lengthy and lousily in the context of humanitarian crisis that the workers were facing in the destination country due to lock-down, short-down of factory or company and lost the job and restriction of mobility in destination country. The expenditure management for supporting for air ticket also appears to be faulty. It is assumed that those workers who have more than one year contract period and who have gone overseas through re-approval can pay the airfare without considering their nature of work, earning capacity and country of destination.

Despite the provisions made for rescue and safe return during the Covid-19 pandemic period from the land and from air, aggregated data on the number of migrant workers actually rescued and provided safe returns has not been available. Neither the website of the Prime Minister Office nor the websites of National Planning Commissions; of Ministry of Labor, Employment, and Social Security and of the Ministry of Foreign Affairs has maintained the data of the returnee migrant workers. Thus, there is little scope to examine to what extent the Federal Government was successful in implementation of the Guidelines and Bills it has brought to rescue and safe return of Nepali migrant workers at abroad. Some workers even lost their life not rescuing on time in many destination countries including in Malaysia. The Kantipur Daily on 30 June 2021 wrote, '42 death bodies were at abandoned situation' and many of deaths could have been prevented had there been effective mechanism to rescue them during the lock-down period in Malaysia. One of the victim was Karna Bahadur, 37, of Janaki Rural Municipality of Banke district who was suspected to commit suicide

because of not able to return to the country on 19 May 2020 and even his death body was not brought to Nepal for funeral by his family members, and after two weeks of his death, his funeral was performed in Malaysia without the present of family members.

Arena of Violation of Rights of Migrant Workers: Learning from the NRNA Experiences

During the September 2020 and May 2021 – the pandemic spread period, Non-Resident Nepali Association (NRNA, 2021) compiled different complaints and grievances of migrant workers that indicate how the Nepali migrant workers have been denied the basic labor rights and including rights to life. These complaints can be grouped as:

Complaints related to violation of basic labor rights - No work provided as said in Nepal; no salary/remuneration provided as said in Nepal by the agent; forced to work long hours without overtime benefits, workers not paid for 6 to 10 months; and breaching of contract of employment by the companies without informing to the workers.

Complaints related to not getting Covid-19 prevention and test - Workers had to beg money from relatives and friends for their PCR test as companies did not pay the cost for it.

Complaints related to violation of rights to health - Companies returned the workers to Nepal who has health problems and wounded during work without their medical treatment. Some workers lacked food and accommodation – and were forced to end up in the street during the Covid-19 pandemic. Workers were also the victims of physical violence by the employers and company personnel.

Complaints related to not compliance by the companies - Due to no support to renew the visa by the Company, workers had become illegal and were forced to pay the fines of overstay. As the Company failed to support the workers to obtain the legal Identity Card of workers and when there was investigation by the respective Governments police, the workers were arrested and changed the case of illegally residing in the country. Further, some workers were abandoned in the airports without air-ticket and money.

Complaints related to violation of rights to access to justice - Workers faced threats and fear if they had filled the complaints against companies. There was gross lacking of access to justice from the labor courts including from the Nepalese Embassies at abroad. Workers who had not committed any crimes were also taken in Public Custody from 2 days to 10 days, and they were physically and mentally torture in the custody.

NRNA Responses on Rescue and Relief

Non-Resident Nepali Association (NRNA) in coordination of concerned Nepalese foreign diplomatic mission launched relief and rescue initiatives to the Nepalese migrant workers affected by Covid-19 pandemic from September 2020 to May 2021. The program was initially started from Malaysia, Qatar and United Arab Emirates and later it was extended to Bahrain, Kuwait, and Oman and other countries. The program aimed at providing food and shelter, pay the partial airfare to return to Nepal, PCR service, psychosocial counseling services, outreach services, legal aids to those in detention center, transportation and food cost from Tribhuvan International Airport to home of the affected migrant workers. According to the NRNA records, by 25 March, 2021 from September 2020, a total of 15,384 Nepali migrant workers from 10 countries including from Nepal have been provided some types of relief and rescue services by the NRNA (Table 3). Altogether, migrant workers were covered from nine countries but the majority were mainly from Gulf countries as Qatar (22%), Saudi Arabia (21%), United Arab Emirates (18%) and Malaysia (21%). According to the Report of NRNA, a total of 22 Nepali migrant workers were also rescued from Cambodia who were being smuggled and left behind without food and money.

Table 3

Distribution of Nepali MWs provided relief and rescue services by NRNA, 2020

Country	Number	%
Qatar	3,371	21.9
Kathmandu, Nepal	3,217	20.9
Saudi Arabia	3,200	20.8
Malaysia	2,778	18.1
UAE	2,743	17.8
Kuwait	27	0.2
Cambodia	22	0.1
Oman	19	0.1
Bahrain	6	0.0
Russia	1	0.0
Total	15,384	100.0

Source: NRNA (2021).

The affected migrant workers were provided multiple relief services. An overwhelmingly majority received psychosocial counseling services (64%). This is followed by support to prepare documentation and networking to return to the country (26%), immediate food and shelter (18%), support of local transport in Nepal (7%). Other supports reported were get re-employment in the destination country (1.6%),

Polymerase Chain Reaction (PRC) test⁴ (2.1%), partial airfare support (1.3%) and legal support (1.3%).

NPC's Policy Response to Address the Impact of Covid-19 on Migrant Workers

The National Planning Commission (NPC) of Nepal (2020) examined the effects of Covid-19 on foreign employment and the economy and recommended the policy responses to address the impact of Covid-19 on migrant workers at abroad. It has outlined the policy responses in three stages.

For the first stage, *immediate rescue and relief strategy* have been suggested. Under this strategy, a number of policies were recommended. They include:

i) updating of the data base of migrant workers of different destination countries who require support including for repatriation of dead body; ii) preparing a rescue Guideline to bring the migrant workers giving priority to the those in most vulnerable situation (allocating 60%

financial cost from the Federal Government for the management); iii) initiating online registration of all returnee migrants including from India to ensure proper follow-up, livelihoods and skill development support; iv) adopting the alternative measures to rescue the undocumented migrant workers and v) increasing the diplomatic efforts to the major destination countries to make employers accountable for the rights of migrant workers during the Covid-19 crisis.

In the second stage, *the survival and recovery strategy (3 to 12 months)* has been suggested. The NPC recommends several policies to achieve this strategy. They include:

i) conducting a comprehensive study on labor supply and demand and strengthen the Local Employment Center better know about the demand and supply; ii) emphasizing programs related to cash for public work, food for work in collaboration with different line Ministries including private sectors; iii) creating a conducive policy and program environment for self-employment for returning migrant workers; iv) easing gradually in lock-down situation to resume economic activities; v) emphasizing on skill training, testing and certification programs; vii) conducting a nationally representative survey of returnee migrant workers; viii) updating Foreign Employment Policy to address the evolving context and setting the priorities of Nepal; ix) establishing a research unit under the Ministry of Labor, Employment, Social Security to accelerate the evidence-based dialogue and policy discourse on foreign employment and x) emphasizing the recovery of

4 PCR test is carried out to detect the Corona virus – Covid-19 pandemic.

wages and benefits of migrant workers who have returned without being adequately reimbursed from the destination country.

In the third stage, *the rebound and revival strategy (1-3 years)* has been recommended. For this, the NPC sets the following policy:

i) establishing the 'National Employment Promotion Authority' to integrate various employment generation programs; ii) formulating a comprehensive human resource development plan to match the demand and supply of labor force for the five-years; iii) updating the curriculum of secondary school to include vocational training especially in manufacturing, agribusiness, transportation and to replace the foreign workers in Nepal; iv) emphasizing joint skill training initiatives with the collaboration of destination countries' public and private sectors and v) introducing policy and programs making house-keeping and caregiving into formal sector by conducting research or collection of data of returnee female domestic workers.

It is difficult to assess how many of NPC's policies have been implemented to prevent the effect of Covid-19 on migrant workers. But our review suggests that many of the policies have not been implemented. For example, the Ministry of Labor, Employment and Social Security has failed to issue a white paper regularly stating the situation of the Nepalese migrant workers abroad either during the first or the second wave of the Covid-19 pandemic. How many migrant workers have been infected by the Covid-19? How many died? How many rescued? Such information was very essential to protect the migrant workers at abroad by making pressure to the concerned destination countries through the diplomatic channels. The NPC recommends online registration of the returnee migrant workers including from India. However, our visits of the websites of the concerned line Ministries and Departments confirmed the fact that migrant workers' information has not been properly maintained in the border security points and in the Immigration offices. Strategies such as establishing special research unit under the Ministry of Labor, Employment, Social Security and conducting a nationally representative survey of the returnee migrant workers fall under the exclusive scope of the Ministry of Labor, Employment, Social Security but the Ministry has yet to initiate these efforts.

Too Bureaucratic Provisions in the Context of Humanitarian Crisis

The Federal Government as well as some Local Governments have adopted several measures in order to encourage the returnee migrant workers to engage on the economic activities within the country that they have learnt while they were at the destination countries.

The MoLESS has brought the *Reintegration Program Implementation Directive 2076* (2019). This Directive makes the provision of establishing safe houses to provide the remedy and counseling services to those distress migrant workers who have been the victims of physical, psychological and sexual violence. The safe houses have been funded by the Government and can operate in partnership with non-Governmental Organization (NGOs) and private sectors. With the consent of the victims, victims shall be provided at most 3 months shelter in the safe house. The reintegration program also incorporates activities of capacity development of returnees such as by providing entrepreneurship development training, providing seed money to establish the business, marketization, networking and leadership development programs.

Foreign Employment Board has the loan facilitation scheme of returnee migrant workers from foreign employment. The eligibility of this scheme is that the workers will have to stay at least 6 months at abroad and they have not exceeded 3 years of their return at home. The returnee migrant workers shall be provided up to Rs. one million (equivalent to US DolaLr 8,400)⁵ soft loan through the bank and financial institutions for at most 5-years period. The aim of the intervention is to contribute to utilize the skills and professional capacity of the returnee migrants that they have learnt at abroad and also generate the self-employment within the country. For this intervention activity, the Foreign Employment Board prepares the list of returnee migrant workers, conducts the examination of the skills of the returnee migrant workers on the free basis and provides certificates and recommends to the soft loan to the bank or financial institutions. According to the Annual Report of Foreign Employment Board 2017/18, there were 18,767 returnee migrants listed in the Board. However, there is no information about how many of them have received the soft loan for establishing the business.

Economic support to the family of deceased and those critically injured is the another important provision for welfare measure of migrant workers. The Foreign Employment Board provides the compensation of the deceased family members and those who have been critically injured. However, this provision is only valid to those who went abroad by taking labor permit from the Department of Foreign Employment and who lost their lives or got injured during their employment contract period. In FY 2018/19 and 2019/20, the number of deceased families provided compensation by the Foreign Employment Board were 753 and 656, respectively (Table 4). Data reveal that these migrant workers were working in more than 20 destination countries. The total number of districts from which the compensation of the death of the migrant workers demanded was 69. Although these figures show the number of death of

5 The exchange rate between US DolaLr 1 = Nepali Rupees 119.0 (on the month of November, 2021).

migrant workers compensation provided by the Foreign Employment Board, it also indicates the fact that the death of migrant workers have been widely occurring across many destination countries and the victims have also widely distributed across the country. The fifth amendment of the Foreign Employment Regulation 2008 makes it provision that the application for the compensation of the deceased can be submitted to the Foreign Employment Board via the concerned Local Levels.

Table 4

Number of deceased and injuries compensation provided by Foreign Employment Board, FY 2018/19 and 2019/10

	2018/19			2019/20		
	Male	Female	Total	Male	Female	Total
Death of MWs						
Number of deceased	730	23	753	639	17	656
Number of countries in which the MWs died	21	7	21	20	8	20
Number of districts	-	-	-	69	13	69
Amount of cash compensated	-	-	-	-	-	-
Per capita cash compensated	-	-	-	-	-	-
Injury or disabled						
Number of MWs critically injured or disabled	321	12	333	-	-	-
Number of destination countries of MWs from where claims made	15	6	15	-	-	-
Amount of cash claimed						
Per capita support						

Source: Foreign Employment Board (2018).

Foreign Employment Board is responsible for the repatriation of the dead body or remains from abroad to Nepal and to transport them from Kathmandu International Airport to the house of the victims in Nepal on free basis. Two provisions are made for repatriation: one, repatriation of dead body with the collaboration with the employer and company in case the migrant worker died was in the contract period; and two, repatriation of the dead body in collaboration with the foreign mission to Nepal in case the deceased was not affiliated to any employer and company. In FY 2018/19, a total of 782 number of dead bodies was repatriated and transported to houses of the victims by Foreign Employment Board. These dead bodies were brought from

13 countries.

Another reintegration scheme of the returnee migrant workers is the financial literacy program. Foreign Employment Board in collaboration with Nepal Rastra Bank, commercial Banks and Agricultural Development Bank and with the management of Returnee Migration – an NGO – has conducted financial literacy class to the returnee migrants to make them more aware on utilization of remittance in productive and human capital formation. According to the Annual Report of Foreign Employment Board of 2018/19, a total of 775 returnee were provided financial literacy class in that year.

The Ministry of Labor, Employment, Social Security issued *Guideline for the Management of National Honor and Award to the Returnees from Foreign Employment Engaged as Entrepreneur, 2076 (2019)*. This guideline aiming to encourage returnee migrant workers to establish enterprises in the country and use the skills, knowledge and capital learnt abroad to promote entrepreneurship in the country. It is assumed that this policy would contribute to stop the foreign labor migration and appeal the returnee migrant workers to engage in self-employment income generating activities and entrepreneur skills and services. According to the provision, the Ministry awards one the best entrepreneur of Rs. 100,000 (equivalent to US DolaLr 840) and other seven best entrepreneurs of Rs. 50,000 each (one each from 7 Provinces of Nepal). The selection criteria were outlined giving the weightage in i) capital investment 30%, ii) use of local resources and technology 20%, iii) export of products 10%, iv) social responsibility 10% and v) environment-friendly 10% and vi) place of residence of the enterprise 10%. But looking at the criteria of selection, it appears that the award mainly targets to relatively big entrepreneurs, no the small ones. For example, for generation of employment, at least 6 workers to be employed; for capital investment, the enterprises should have at least Rs. one million investment and promotion of export.

Failure of Local Governments to Effectively Response to Returnee Migrant Workers

During the first wave of Covid-19, Local Governments aLrgely ended with the failure in providing appropriate, effective and timely rescue and relief packages for the commoners returning from India including from other countries. Many of the Local Governments were not prepared to response the humanitarian crisis like Covid-19 pandemic. They had not only dearth of knowledge on mitigation of pandemic but they were not equipped with financial and human resources including the health workers and political will. Many of the Local Governments aLrgely

depended upon the instruction and resources from the Federal Government although the Constitution of Nepal envisioned the specific function of the Local Governments for the management of migration, reintegration and disaster management. An evidence based study such as by IOM (2020)⁶ confirmed the fact that many Local Governments were hardly prepared to response the pandemic and they were aLrgely dumbfounded. They could not properly establish and manage the holding sites and quarantine facilities, prevent rumor against the migrant workers that they were the carriers of the virus, maintaining the data of the returnees and identifying their needs, and handling the request to return to their home safely.

Following the findings of the IOM study (op cit.), until the 8th July 2020, the total number of confirmed cases of Covid-19 infection among the returnee migrants was 12,510 and number of deaths associated with Covid-19 was 27 across from the 730 Local Levels of the country, and more than 90% of the infected people had returned from India. The number of persons infected who had returned from other destination countries such as Kuwait, United Arab Emirates and Saudi Arabia constituted of 2% of the total infected cases.

In relation to establishing and management of holding sites and quarantine facilities, the survey found that 124 Municipalities had established holding sites where returnee migrants were kept for few hours before being sent them to their respective quarantine centers. Holding sites were established in schools, public buildings, open space with tents, hotels, rental houses, institutional buildings, community buildings, Municipality buildings including in health clinics. The Government decaLred that there should be a mandatory 14-day quarantine period. The survey found 6,747 quarantine facilities across the country where there were 45,018 people in the quarantine facilities. The quarantine facilities were to provide multiple facilities according to the Ministry of Health and Population's (MoHP) *Quarantine Center Management Guideline*. Such facilities include: proper food, safe drinking water, and maintaining the personal hygiene, isolated bed facilities including hygiene kits, masks, sanitizers and toilets. The IOM survey (op cit.) revealed that many quarantine facilities, however, did not have the standard criteria determined by the MoHP. The missing was mainly in relation to recreational facilities, *yoga* provision, safe drinking water, toilet facilities, separate beds, 24-hours ambulance services and emergency medical equipment. The Government of Nepal also allowed the Home Quarantine to

6 IOM conducted a telephone survey of 730 Local Levels out of total 753 in the country. They have interviewed the chief administrative officers, health coordinators, deputy health coordinators, information and technology officers, Covid-19 focal persons and a few Chairpersons/Mayors of the Local Levels.

those returnee migrants who had no symptom of Covid-19 after keeping them few hours in holding centers and checking their body's temperature. The survey found that by 8 July 2020, there were 34,134 people under Home Quarantine. The survey found 11,660 health workers working in these quarantine facilities.

With regard to the stigma and discrimination associated with Covid-19, the IOM survey (op cit.) revealed that as the uncertainty grew, there was a large-scale fear, anxiety among the community people. As a result, stigma and discrimination against Covid-19 cases was widely reported across the country. In the sample of 730 Local Levels, 32% reported that there was some forms of stigma and discrimination against the Covid-19 infected persons or returnee migrants. In some quarantine centers, an attempt was made to fight against stigma and discrimination such as disseminating right information about Covid-19, counseling, using people in the front-line, engaging social influencers, mobilizing female community health volunteers (FCHV), disseminating information, education and communication (IEC) materials, using mass media and awareness program. In Banke district, in Rapti area, the community people protested against establishing quarantine facility closed to their community and many of the returnee migrants from India who were kept in the quarantine facility were reported to have fled from the quarantine or in some cases, it is also reported that they used to sleep at night in their houses and in the day in the quarantine facilities.

With regard to maintaining the data of the returnees, 56% of Local Levels reported that there was no provision to systematically retain migration data while 22% reported they had maintained data of returnee migrants. It is reported that 321,941 people had migrated to India from 131 Local Levels after lifting of lock-down in Nepal. Of them, there were 197,122 from Sudurpaschim Province, 68,884 from Karnali Province and 8925 from Bagmati Province. Further, the survey found that 72,133 migrants from 209 Local Levels had requested assistance during Covid-19 pandemic for returning to their home. The request was often made to their concerned elected representatives such as Ward Chairperson, Deputy Mayor/Chair or Mayor/Chairperson of the Local Levels.

Agenda of Returnee Migrant Workers: An Emerging Public Concern

Realizing the need of dignified return and sustainable reintegration of returnee migrants, migration networks comprising of Government of Nepal, UN agencies, development partners, I/NGOs⁷ organized the *National Conference on Returnee*

7 The conference was organized collectively by USAID, UK aid, Solidarity Center, WINROK International, SaMi project, Swiss Agency for Development and Cooperation, Paurakhi, PNCC, AMKAS Nepal, ILO, National Network for Safe Migration, Women Rehabilitation Center and Foreign Employment Board.

Migrant Workers in Kathmandu on October 27 and 28, 2021. The outcome of the conference was the Kathmandu DecaLration with 19 points. The conference rightly came with the conclusion that addressing the issue of migrants' return and their reintegration should be the integral part of the migration cycle for which a range of stakeholders should be mobilized. The DecaLration urges the concerned stakeholders in bringing of coherent and unified policy measures, establishing the institutional mechanisms, setting the agenda in all layers of Governments, making the migrant workers and returnees as an agenda for social movement, and managing the social security schemes for the migrant workers, returnees and family members and respecting the rights of migrant workers, making responsible the Local Governments for the reintegration programs; maintaining the disaggregated data of the returnee migrant workers; making responsible the employers and governments of the destination countries for sustainable reintegration of the returnee migrant workers, and incorporating this issue in the Bilateral Labor Agreement and Memorandum of Understanding. Further, the DecaLration urges to ensuring the rights to information to migrant workers, returnees and their family members on matters like access to employment, self-employment, entrepreneurship development, loan availability. The DecaLration also recommends for formulation of the gender-friendly policies and programs for the returnee woman migrant workers and establishing the temporary safe houses and ensuring non-discrimination. The DecaLration realizes the need of public-private partnership for the dignified return and sustainable reintegration.

Conclusion

The central argument of this article is that the issue of rescue, return and reintegration of the migrant workers is to be considered as one of the key components of migration cycle. This is because of two reasons: one from the point of view of the magnitude of the daily returns that has been taking place in Nepal. Every day, more than 500 migrant workers return to the country from different destination countries excluding from India. Second, this issue is also important from the rights of migrant workers and their family members. Dignified return is one of the human rights principles of Office of the High Commissioner Human Rights of Migrant Workers at the Vulnerable Situation and it also enters as an important objective of the Global Combat for Migration as well as in Sustainable Development Goals.

Having examined the flow of the returns to the country during the first wave of Covid-19 especially from India, it came to know that hundreds of thousands of Nepalese citizens returned to their home for their security, life and survival. The Government has failed to response the Covid-19 crisis timely and hundreds of thousands of migrant workers were denied their rights to enter into their own country

on timely. While the Federal Government brought the measures to contain the virus, its implementation appears to be rather low because of lack of institutional mechanisms, no proper management and lack of political commitment that the political leadership failed to mobilize the whole nation to contain the situation and protect the rights of returnee migrant workers. In Nepal, migrant workers' agenda has yet to be the political agenda in the context that more than 3.2 million youth have been working abroad, and inflow of remittance from the foreign employment has very substantial. In the context of denial of the rights of migrant workers including returnees, the role of human rights institutions come as the major one to respect, promote and achieve the rights of returnee migrant workers by creating greater pressure and lobby to the concerned Government agencies.

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Human Rights Perspective of Disaster Risk Reduction and Management in Nepal

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Abstract

Nepal is exposed to multi-hazard risk due to its unique geographic condition, diverse climate, and distinct topography. Floods and landslides are common hazards in the country. Furthermore, Glaciers are melting, species ranges are shifting towards higher altitudes, frequencies of precipitation and thunderstorms are increasing. The severity and intensity of these climate induced disasters are making lives and livelihoods vulnerable of those living in poverty, and operating subsistence agriculture, who are disadvantaged, marginalised, excluded, and vulnerable.

Based on desk review and experience of authors in the sector of climate change and disaster risk reduction, this analysis revealed that there has been number of policies and strategies introduced, set up of number of institutions for reducing risk of disaster, and build resilience. Furthermore, these policies have limited or no explicit provision of human rights, and accountability, which could have significant implication on implementation of these policies and strategies as expected.

Effective Disaster risk reduction is closely linked with the effective implementation of the policies ensuring people's right to live in a secure infrastructure, right to live in a clean environment, and access to early warning of any possibility of disaster risk. Therefore, deep collaboration & synergy among institutions, increased investment in climate actions, and integration of climate risk into regular development planning and building capacity of local institutions is felt crucial for securing lives and livelihood of people living at risk. This would ultimately contribute to developing accountable institutions, fostering good governance and ensuring human rights for effective disaster risk reduction, management building resilience.

Key words: Human rights, local people, risk, vulnerabilities, disaster, hazards

1. Introduction

Climate change impacts have already profoundly affected enjoyment of human rights for people throughout the world, and these impacts are rapidly increasing (Germanwatch, 2020). Increasing number of hydro-meteorological as well as other disaster events since the last two decades has been making lives and livelihoods vulnerable, and these impacts mostly affect individuals and groups who are already disadvantaged, marginalised, excluded, and vulnerable. These disaster events occurring every year have been increasing since the 1980s with more devastation after 2000. These impacts include the growing frequency and severity of flood and landslide, cold-waves and heat-waves, lightning and thunderstorm as well as slower onset hazards such as drought, decrease of agriculture productivity, extinction of medicinal, and aromatic plants, and drying of spring sources. It is expected to grow more as a result of climate change, and other socio-economic factors such as population growth, urbanization and the degradation or loss of natural ecosystems. Thus, climate change impacts affect socio-ecological as well as economic sectors putting peoples and their means of living at risk. It started affecting human & livestock health, nutrition and food security, ecosystems and biodiversity, peace and stability, and migration. Climate change threatens to drive increases in maternal and child malnutrition, is an increasing threat to national security, and contributes to migration, and displacement. Climate change also exacerbates inequalities, increasing the vulnerability of marginalized and underrepresented populations to gender-based violence, dispossession, and disempowerment which ultimately hit hard to basic human rights of people.

The people around the globe are confronted with these numbers of disasters posing a threat to the social, economic, and cultural development as well as achieving the sustainable development goals, as a result, it destroys long development efforts and investment. The challenges are particularly the huge loss and damage in infrastructure, loss of lives, and livelihoods, and forced migration of community people due to mega disaster leaving no space for living after disaster. A natural or human-made disaster can undo years of development progress in a matter of hours and can stall future development for the next generation. The implementation of the right to development is, therefore, closely interlinked with disaster risk reduction. Hazards cannot be fully avoided; however, disasters to a large extent can be averted by reducing the exposure of communities to the hazard, increasing their capacities to withstand it and/or reducing their vulnerability.

Disaster risk reduction and management is an integral part of sustainable development

including socio-economic development as well as environmental development. In the 2030 Agenda for Sustainable Development, Sendai Framework for Disaster Risk Reduction (SFDRR), Paris Agreement 2015 & Glasgow Pact 2021 recognised and reaffirmed the urgent need to act on climate actions, and reduce the risk of disasters. Likewise, the national policies and strategies introduced in Nepal such as the Disaster Risk Reduction and Management Act 2017, DRRM policy 2018, DRRM strategic Action Plan 2018-2030, Climate change Policy 2019 and National Adaptation Plan 2021 do also recognise the timely action to reduce risk of hazards on people and their livelihoods.

Disasters and extreme weather events directly and indirectly affect the enjoyment of a range of human rights, including the right to life, water and sanitation, food, health, housing, self-determination and culture, as well as the right to development (OHRC, 2019). The increasing number of natural disasters is one of the adverse global trends that pose a serious challenge to the realization of the right to development. Disaster risk reduction is therefore closely interlinked with the implementation of the policies ensuring people's right to live in secure infrastructure, clean environment, and access to early warning of any possible disaster risk.

The paper is based on desk review and experience of authors in the sector of climate change and disaster risk reduction. The aim of this paper is to analyse disaster risk reduction and management from human right perspective focusing particularly on how communities are exposed to various hazards, risk of these hazards on lives and livelihood and provision made in getting early warning information of any possible disaster and the possibilities of the impacts on people's right to live secure and dignified life.

2. Risk of Climate change and human security from the perspectives of human rights

According to the World Health Organisation, 24 percent of global deaths are linked to the environment each year – eight million of which are caused by forms of air pollution. Between 2030 and 2050, an extra 250,000 deaths are anticipated globally directly due to climate-induced risks, such as heat stress, malnutrition and malaria. Climate change is part of a deeper environmental crisis, which has the destruction of human rights and health at its core. Climate variability poses enormous costs to people's life, livelihood, property, and Nepal's economy as a whole (Sapkota, 2016). For example, severe winter droughts in 2006 and 2009, compounded by El

Niño, highly impacted Nepal's agriculture sector. It led to food deficits of 400,000 tons, which increased food prices by 117-300 percent in various locations (UNDP, 2013; Wang et al., 2013). In 2017, extreme monsoonal rains caused inundation in 80% of southern Nepal, which resulted in US\$ 585 million in damages (National Planning Commission, 2017). In 2019, Nepal also experienced the country's first-ever recorded Tornado in the Southern Bara and Parsa districts, which killed 28 people, injured more than 1,100, and damaged about 2600 buildings (Nature, 2019). Between 1990 and 2020, a total of 1408 natural disasters have been reported in the South Asia region, which affected over 1.8 billion people and led to 541,245 deaths and close to US\$ 213 billion in damages (RIMES, 2021).

Variations in weather patterns and hydrological regimes could intensify floods, droughts, water availability, and thus alter farming systems. Projections suggest that annual temperatures will increase between 1.3-3.8°C by 2060 (AR-5-IPCC). The IPCC Working Group I sixth assessment report published in 2021 shows that the world will probably reach or exceed 1.5 degrees C (2.7 degrees F) of warming within 2040. Monsoon summers are projected to be wetter and winters are estimated to be drier. Reduced water availability during dry periods could exacerbate agricultural water needs, as an estimated 64% of the country's farmers rely on water from rains of the monsoon season. Furthermore, projected reductions in winter snow, as well as increased temperature, could reduce available snowmelt levels during spring and summer and could result in greater winter runoff. In the long term, increased melting of Himalayan glaciers will reduce Nepal's water supply, rendering many of the country's irrigated lands vulnerable (CCKP, 2021).

As a country with diverse topography, complex geology and highly varying climate, Nepal is exposed to many natural and human-induced hazards. The trend of frequency and intensity of hazards, especially climate induced hazards such as flood, landslides, cloudburst, drought, hailstorm, cold wave, heatwave, lightning, and tornado has increased because of climate change. In the business as usual scenario, it is estimated that annually 10% of the GDP will be lost directly and indirectly by the year 2100 due to climate induced disasters. Flood disasters alone account for 100 deaths/ year in Nepal with huge loss and damage of properties as well as lives and livelihoods. The country's varied geo-climatic system, poor infrastructure, and social vulnerability, including natural resources-dependent livelihoods and widespread poverty levels make the country highly vulnerable to climate-related induced disasters (The World Bank Group, 2012; IFAD, 2019). Floods and landslides, triggered with heavy monsoon during June and September, bring huge disasters; resulting in loss of

millions of agricultural products, physical properties, lives, and livelihood. Between 2008 to 2017, flood damage caused economic losses of more than NRs 85,666 million (713.86 billion USD) (MoHA, 2019). The estimated economic losses by disasters in a single year 2017 to 2018 was NRs 6.8 billion (5.6 million USD) which includes NRs 252 million (2.1 million USD) losses incurred only from flood and landslides (MoHA, 2018). In 2017, the central and eastern part of Terai suffered high rainfall and flash floods causing damage of NRs 17.9 billion (149 million USD) in the agriculture sector (NPC 2017). There were recorded 901 incidents of flood and landslide directly affecting 17,279 families in 2017/18 (NEOC, MoHA, 2018). Besides, there are huge non-economic impacts due to these disasters which are often less considered. As per the National Disaster Risk Reduction portal, flood induced disasters alone claim 100 lives per year. Nepal Disaster Report, 2019 elucidates a total of 6,381 - small and aLrge disaster incidents were reported during the period 2017 to 2018. The total incidence of flood and landslide occurring in between 2011-2020 were 1592 flood and 2068 landslide.¹ The lives and livelihood of the people were affected badly with no or limited support that people got. It was also realised that the right to information on such devastating risk of flood was hardly rich to communities with adequate lead time for preparation.

Three major climate risk areas, agriculture, hydroelectricity and water-induced disasters have already accounted for an annual cost of 1.5 to 2 % of GDP in 2013 (IDS-Nepal, PAC and GCAP, 2014). Agriculture, which is the mainstay of livelihood for more than 65.5 percent of population and contributes 26.98 percent to national GDP, is highly fragile and sensitive to water induced hazards (too much and too less water) with much less practices of protected agricultural systems in Nepal (International Business 2016). Hazards such as drought, hailstones and heavy storms have also a huge impact on agriculture and livelihood of poor and vulnerable people. In 2009, more than 2 million people were at risk of food insecurity in western regions due to less rainfall- the drought impacts (less than 60mm) (MOAC 2009). While in 2021, due to post monsoon rainfall, and resulted flood has damaged huge amount of paddy rice in Sudurpaschim, and Lumbini Provinces (see table 2)

Climate induced disaster risk management seeks serious attention in Nepal in terms of policy, finance, and institutional governance, however, there has been a gap looking at these disaster risks from the human rights perspectives. In recent years, Nepal has made significant achievements in terms of developing various legal and institutional arrangements to reduce and manage disaster risks. The Ministry of

1 <http://drrportal.gov.np/> access on 19 August-2021

Home Affairs (MoHA) via the National Disaster Risk Reduction and Management Authority (NDRRMA), and National Emergency Operation Center (NEOC), and other ministries such as the Ministry of Federal Affairs and General Administration Development (MoFAGA), the Ministry of Urban Development (MOUD), Ministry of Industry, Commerce and Supply via the Department of Mine and Geology are the key stakeholders working in disaster risk reduction and management. Likewise, the Ministry of Forest and Environment (MOFE), looking into climate change and acting as a focal point for United Nations Framework Convention on Climate Change (UNFCCC) for climate change. Disaster Risk Reduction and Management (DRRM) Act 2017 is in place with more focus on preparedness, prevention and mitigation, together with relief and recovery. The Act has mentioned roles and responsibilities for the Federal, Provincial and Local level government in DRRM, but it has limited or no explicit provision about accountability in terms of human rights in the course of DRRM. Nepal has also endorsed National Disaster Risk Reduction Policy 2018, the DRRM Strategic Action Plan for 2018-2030, with targets and priority of actions to make disaster resilient Nepal. However, investment and other financing instruments required for implementing these strategies and action plans are not well mapped for the financial resilience and from the perspectives of human rights.

3. Climate change, Sustainable Development goals and Human rights

It is increasingly recognized that human rights are essential to achieve sustainable development. Human rights principles and standards are strongly reflected in an ambitious global development framework - the 2030 Agenda for Sustainable Development. The Agenda covers a broad set of 17 Sustainable Development Goals (SDGs) and 169 targets. Grounded in international human rights law, the agenda-2030 offers critical opportunities to further advance the realization of human rights for all people around the world, without discrimination. Furthermore, the governments around the world committed to a blueprint for a more just and sustainable path for people, planet and prosperity that “seek to realize the human rights of all” (UN 2015).

Based on the SDGs endorsed through the UN Summit in September 2015 and it came into force on January 2016, the Government of Nepal has also prepared and is implementing a fifteen-year Sustainable Development Agenda for Nepal (2015-2030), in which DRM has been prioritized aiming to reduce risk of hazards on people and their means of living. Disaster Risk Reduction is a cross cutting issue which should be considered in all sectors of development. Considering of the fact, DRR is considered in 10 of the 17 Sustainable Development Goals viz, (1) No Poverty, (2)

Zero Hunger, (3) Good Health and Well-being, (4) Quality Education, (5) Gender equality, (6) Clean Water and Sanitation, (9) Industry, Innovation and Infrastructure, (11) Sustainable Cities and Communities, (13) Climate Action, (15) Life on Land, (17) Partnerships for the Goals.

Many international deliberation such as Conference of Parties (COP), IPCC physical science report 2021, forecasted that the coming decades are expected to threaten human security in many parts of the world as rise of temperature beyond 1.5 degree along with rise of greenhouse gases mainly Carbon dioxide and methane. The impact of climate change affecting least development and small island countries disproportionately posing economic, social, and environmental sectors that would challenge achieving the Sustainable Development Goals (SDGs). Climate change threatens not only economic growth (SDG 8) but it will also act as a poverty multiplier by increasing the number of poor people and by making poor people even poorer (SDG 1), as well as inequality (SDG 10).

The IPCC 2018 Special Report on 1.5 °C and IPCC report 2021 gives us a stark warning of the climate crisis that we have only about 12 years to save the planet. Current plans of developed countries to limit global heating take us to more than 3°C of warming - a precipice for consequences beyond the coping capacity of most of humanity and the ecosystem. The impacts of climate change are reversing our development, increasing poverty and vulnerability. If warming exceeds 2°C, the consequences will be severe including ecosystem breakdown, increases in the severity and frequency of extreme weather events leading to socio-economic stress and potentially a large-scale youth migration increased in search of livelihood options.

Nepal is already facing dire consequences of climate impacts on different sectors such agriculture and livelihood, forest, biodiversity, and watershed, critical infrastructure and public health. Agriculture, which is the mainstay of livelihood for more than 65.5% of population and contributes 26.98% to national GDP, is highly fragile and sensitive to water induced hazards (too much and too little water) impacting the agricultural system in Nepal (International Business, 2016). The Terai is the flat land in Nepal where the majority of agricultural productivity takes place, but is severely impacted by the monsoon flood every year with heavy loss in some specific flood return periods. In 2017, the central and eastern part of Terai suffered high rainfall and flash floods causing damage of NPR 17.9 billion in the agriculture sector (NPC, 2017). The extreme rainfall reached a peak of 250 mm to 500mm in 24 hour causing

massive flooding as the rain of such intensity crossed the current thresholds.² Due to the increasing impact of climate change, the frequency and severity of extreme weather events are increasing. Loss of lives, livestock, and damages to crops, assets, and other public and private infrastructure due to flood occurs every year in Nepal's Terai. Loss and damage of income has direct implication on the livelihood system of subsistence-based economy, which put smallholder farmers and micro-entrepreneurs most at risk. This has led the ultra-poor and vulnerable households entrenched in poverty due to deepening cycles of debt due to recurrent flood impacts. Similarly, the impact of climate change has been seen in many other sectors such as forest and biodiversity. Climate change will likely alter the frequency and intensity of forest disturbances, including wildfires, storms, insect outbreaks, and the occurrence of invasive species.

4. Loss and damage due to climate induced disaster- what is lacking from a human right perspective?

The (UNFCCC, 2013) has classified and defined economic loss and damage as the loss of resources, goods and services that are commonly traded in markets, whereas non-economic loss and damage can be understood as the remainder of items that are not commonly traded in markets. It describes five types of economic loss and damage – business operations, agricultural production, tourism, infrastructure and property – which directly impact income and physical assets. Non-economic loss and damage, as UNFCCC puts it, are of nine types that lead to direct incidences at individual and society levels and in the area of environment. They include (loss of) life, health and human morbidity at individual level; human mobility, territory, cultural heritage, indigenous knowledge and societal/cultural identity at society level; and biodiversity and ecosystem services in the area of environment.

Loss and Damage implies those impacts of climate change that are minimized through adaptation and mitigation actions – is already a lived reality for people around the world, violating their human rights and displacing more than 30 million people in 2020 alone (CAN, 2020). Poor and vulnerable countries and communities are least responsible for climate change but are already facing the majority of its negative impacts, in the form of both extreme weather events like landslide, flood, and droughts and slow onset processes such as melting of glaciers.

The DRRM Strategic Plan of Action (2018-2030) of Nepal mentions that one of the causes for high risk of poor and marginalised families and groups to disasters is

² The threshold for rain stipulated by the Department of Hydrology and Meteorology (DHM) is 1 hour=600MM; 3 hours: 80MM; 6 hours=100 MM, 12 hours= 120 MM, and 24 hours= 140MM

absence of risk sharing and compensation mechanisms which is yet to institutionalise in Nepal. Between January 1, 2010 to 19 August 2021, Nepal has lost about NPR 40,000 million due to climate induced and other disaster occurred. These include landslide, flood, thunderbolt, wild-fire, heavy rainfall, wind-storm, cold wave, snow storm, drought, soil erosion together with 2015 earthquake. loss and damage of lives and infrastructure and its consequences on economy over the period of 10 years is provided in table 1

Table-1:

Loss and Damage resulted from disaster in 10 years (2010-2020)

S. No.	Loss and Damage area	Total loss and Damage
1	People Death	14,315
2	Livestock death	27,672
3	Infrastructure damaged	800,000
4	Number of incidents occurred	27,361
5	Total economic loss	Nrs 40,000 million

Source: <http://drrportal.gov.np/> MOHA 2021

Post-monsoon extreme rainfall of 2021 has also resulted in huge loss of lives and properties in Nepal. Heavy rainfall hit hard to Sudurpaschim and Lumbini Provinces at a time when farmers were harvesting their paddy rice. The loss and damage caused by the post monsoon rain is given in table 2. The monsoon rain normally enters Nepal on 10th June and exits 30th September each year. The trend of rainfall however has been changing and shifting to both enter date together with exit date. The monsoon of 2021, entered Nepal on 11 June, 2021 and exited officially on 11 October, 2021. After the official declaration of the exit of the monsoon on 11 October, by the Department of Hydrology and Meteorology (DHM), farmers assumed that no further heavy rain could be expected. This unseasonal, heavy rainfall has left a wake of deaths, missing people, damage to roads, bridges, hydropower stations and other physical infrastructure as well as heavy agricultural losses due to flooding and landslides across the country. The incessant rainfall induced flood, damaged the paddy worth of Nrs 8,27,80,00,000 (Table given below provides the details of loss of rice according to the provinces of the country). The poor farmers whose livelihood depends on agriculture and who were about to harvest their paddy from their farmland, were the ones affected the most. The country could have reduced the loss and damage if the local people including farmers could have gotten the information about the possible

rainfall. The DHM had predicted the possible rainfall, but the concerned authorities failed to disseminate the information widely to the local level. This is because of the weak coordination among the institutions that are responsible for DRRM. In this, roles and responsibilities as assigned were not effective in responding to disaster events, despite the number of institutions responsible for it. Earlier study has reflected that prevalence of blaming games among the institutions has the weekend response to the climate risk (Joshi et al. 2016). Taking four interrelated aspects: power and authority, accountability, representation and knowledge, the authors analysed how the institutions interact in relation to understanding and responding to the development process, climate change adaptation and climate induced disasters.

The National Disaster Risk Reduction and Management Authority (NDRRMA) is to work in disaster preparedness, mitigation and adaptation measures including risk communication. But, while listening the response from NDRRMA in post monsoon rainfall 2021 induced disaster that hit hard to people, the spokesperson of the NDRRMA in his Television interview has said, “There are some weaknesses that we realised in terms of risk communication, and NDRRMA failed to estimate the impact of post-monsoon rain of such scale, which could be reduced if timely communication would have been made.” The spokesperson in his television interview further added that NDRRMA was expecting more clarity on forecast messages, which they said they received just a day before of the disaster occurred in many western parts of Nepal. In this case, the DHM could have issued a letter in the name of NDRRMA with site specific impacts of rainfall in possible flood and landslide, which the NDRRMA was expecting, however, the DHM has only issued a bulletin about the consequences of the heavy rainfall and posted the same message on its official website. The question that emerges here is that the people's right to get the right information at the right time has failed in this case, which is a clear violation of human rights.

Table-2:

Loss and Damages of rice caused by 2021 heavy unseasonal rainfall of Nepal

Province	Affected Area (Ha)	Loss of Rice (Ton)	Loss Amount (NRs)
Province 1	7492	28469	800000000
Province 2	5355	20350	560000000
Bagmati	530	2068	58000000
Gandaki	1192	4530	130000000

Lumbini	42427	161223	4510000000
Karnali	10584	40219	300000000
Sudurpaschim	18000	68400	1920000000
Total	85580	325259	8278000000

Source: Ministry of Agriculture and Livestock Development, 2021

Despite the fact that the developing countries have been facing huge loss of lives, and damage of critical infrastructure due to severity of climate change, Nepal together with other developing countries via G77 and China alliance demanded to bring new facility to address such unexpected loss and damage. But the Glasgow Climate Pact, after resistance from the United States, the European Union and some other rich nations, failed to secure the establishment of a dedicated new loss & damages fund for climate vulnerable countries like Nepal. Nepal has witnessed mega Melamchi flood disaster, Manag Urban flood disaster and Sudurpashim together with Lumbini flood disaster on crops in 2021 justify the demand of Nepal to bring loss and damage facility for developing countries.

5. Provision of Human rights in national and International DRR and climate change policies, strategies

Addressing issues embedded with climate change means reducing the risk of hazards, minimise loss and damage in disaster, and transfer of risk to save lives and livelihoods of poor and vulnerable people. Increasing severity and intensity of climate induced disaster in the last few decades, it has brought an international attention to secure fundamental human rights of people those suffering from the impact of climate change.

Nepal has signed various international policies and frameworks related to climate change and DRR which includes Paris Agreement 2015, SFDRR 2015, Glasgow Pact 2021, and Disaster Risk Reduction and Management. Some of the key international initiatives where Nepal has signed, and also has started their localisation aiming to reduce risk of disaster, and build resilience of people, environment and infrastructure.

5.1 Sendai Framework for Disaster Risk Reduction (2015-2030)

The Sendai Framework for Disaster Risk Reduction (SFDRR) 2015-2030 was adopted at the Third UN World Disaster Risk Reduction Conference held in Sendai, Japan, on March 18, 2015. It is the successor instrument to the Hyogo Framework

for Action 2005-2015. It intends to ensure the substantial reduction of disaster risk and losses in lives, livelihoods and health and in the economic, physical, social, cultural and environmental assets of persons, businesses, communities and countries over the next 15 years. SFDRR has four priorities for action: 1) Understanding disaster risk; 2) Strengthening disaster risk governance to manage disaster risk; 3) Investing in disaster risk reduction for resilience; 4) enhancing disaster preparedness for effective response and to “Build Back Better” in recovery, rehabilitation and reconstruction. The government of Nepal has prepared a Disaster Risk Reduction National Strategic Action Plan (2018-2030) in which DRR activities have been prioritized corresponding to the four priorities of the SFDRR.

The key outcomes of SFDRR 2015-2030 was “the substantial reduction of disaster risk and losses in lives, livelihoods and health and in the economic, physical, social, cultural and environmental assets of persons, businesses, communities and countries”. This implies that the right to live dignified lives, and the right to get early warning of the risk information prior to disaster is provisioned in the SFDRR 2015.

5.2 The Paris Agreement on Climate Change-2015

Nepal ratified the Paris Agreement in December 2015 stressing to keep global temperature 1.5 degree, and increase of climate finance for Nepal and Nepal like developing countries. Addressing the needs of poor and climate vulnerable people, the right perspectives was also got adequate space in the COP-21 discussions and was highly raised while endorsing the Paris Agreement on Climate Change in 2021. The UN Human Rights Council appointed to serve as Independent Expert in 2015 considering the COP-21 as Special rapporteur, on the issue of human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment to be incorporated in Paris Agreement-2015. The Council requested Mr. Knox, a professor of international law at Wake Forest University in the United States, to clarify the application of human rights norms to environmental protection, and to identify best practices in the use of human rights obligations in environmental policy-making. where he has stressed to ensure human rights obligations urged parties to adopt a rights perspective in tackling environmental issues. Similarly, the Glasgow Pact 2021 has also stressed incorporating human rights in all aspects of decision making range from mitigation, adaptation, climate finance and other negotiations on tackling climate change. This indicates that the human rights perspective has been emerging in all international and national policy making processes, but yet emphasis on their implementation has remained in question.

The Paris Agreement (COP 21) stresses the need for accelerated action to build

resilience through risk-sensitive planning and implementation of national policies and plan. The Article 8 of the agreement emphasizes the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events. It states areas of cooperation and facilitation to enhance understanding, action and support for EWS; emergency preparedness; comprehensive risk assessment and management; risk insurance facilities, climate risk pooling and other insurance solutions; non-economic losses; and resilience to communities, livelihood and ecosystems.

5.3 National Policies and strategies on climate change and Disaster risk reduction

The Government of Nepal (GoN) has initiated various actions ranging from policy formulation to action for addressing climate change and disaster risk reduction. There are a number of legal, institutional and policy frameworks that exist in Nepal.

The new Constitution of Nepal 2015 has promulgated shared responsibilities of disaster risk management at all levels of governance. Part-3, Article 16- states that every citizen has the right to live with dignity, article 27-right to information, and article 30- right to clean environment. Based on the constitution, the federal Ministries have introduced policies, strategies, and framework to address climate change and disaster risks that people of communities have been facing, but still human basic human rights such as right to get early warning, right to know disaster risk, knowledge on hazards in which communities are exposed are overlooked. The Ministry of Federal Affairs and General Administration has endorsed a guideline on Local Disaster and Climate Resilient Plan 2021 to formulate the same at local government level. The aim of such policy formulation was to integrate climate and DRR into the local planning process which could foster resilience building at local level. The Ministry of Forest and Environment has formulated Climate Change Policy 2019, the National Adaptation Plan (NAP) 2021, and National Determinant Contribution 2020.

The Climate change Policy 2019 has the objectives of advancing capacity on climate change adaptation, developing ecosystem resilience, promoting green economy by adopting low carbon economic development concept, mobilising national and international financial resources, making effective the information service, mainstreaming climate change into relevant sectors and institutions. Nepal also identified adaptation priorities and actions across thematic areas that are in line with its National Climate Change Policy (2019) and incorporated into its national Adaptation Plan (NAP)-2021.

The nation's adaptation priorities include agriculture and food security; forests, biodiversity and watershed conservation; energy; health; and disaster risk reduction and management. The NDC considers the principle of common but differentiated responsibilities and respective capabilities, in light of national circumstances. Nepal's technically sound 2020 NDC includes quantifiable targets for the short-term (by 2025) and medium-term (by 2030) and spans energy, waste, and agriculture, forestry and other land use (AFOLU).

Likewise, as per the DRRM Act, 2017, the National Disaster Risk Reduction and Management Authority (NDRRMA) has been established with aims to reduce disaster risk, and effective management of post disaster actions including relief, recovery actions. As per the national policy, framework, and Act as mentioned above, the provincial, and the municipal governments have drafted policies and strategies related to climate change and DRR.

The 15th National Plan (2019-2023) has prioritized disaster risk management and disaster risk reduction as an inherent character of sustainable development goals. This plan aims at safe and resilient Nepal by focusing all aspects of DRR including response and relief together with effective preparedness and response, an early warning system that includes an assessment of possible disasters based on geographical information systems (NPC, 2020). There are few regulations, guidelines, frameworks and directives, which are already being practiced at provincial, district and local levels. Local Disaster and Climate Resilience Plan (LDCRP) is being prepared by all local governments based on Local Disaster and Climate Resilience Plan (LDCRP) guidelines 2017. Likewise, the revised Framework for Local Adaptation Plan of Action (LAPA 2019) has been introduced. The LAPA Framework was designed to support decision-makers at local-to-national levels to identify the most climate vulnerable communities and their adaptation needs.

These policy instruments provide the basis of living dignified lives, right to information on risk that communities are exposed to, knowledge on risk and skills on adaptation as well as mitigation actions which also build the basis of human rights at local level to federal level. The effective implementation of these plans, policies and strategies "living no one behind" can be instrumental to ensure human rights at all levels.

6. Conclusion and way forward

The increasing number of disasters is one of the adverse global trends that pose a serious challenge to the realization of the right to development. Disasters and extreme weather events directly and indirectly affect the enjoyment of a range of human rights, including the right to life, water and sanitation, food, health, housing, self-determination and culture, as well as the right to development. Disaster risk reduction is therefore closely interlinked with the implementation of the right to live in risk-informed development infrastructure, the right to live dignified lives by reducing risk of hazards and reducing vulnerabilities by introducing adaptation actions where risk threatens people's life. The focus of any international and national actions, policies and plans should be aligned with the basic rights of people. Thus, the rights to protection of lives and livelihoods should be taken into high consideration in the pre-disaster context, and equitable and justifiable relief and recovery in the post disaster context. As such, adequate measures towards disaster risk reduction, prevention and mitigation are the crucial elements for ensuring the rights to live a dignified life.

Thus, DRM laws and policies should adopt an integrated approach which recognises human rights principles before, during and after disasters as guiding principles for disaster risk reduction and disaster management. This demands a strong and effective implementation of national, provincial, and local policies related to climate and DRR. Effective implementation of such policies and strategies can help in fostering of risk informed development, risk communication, risk informed settlement planning, and other mitigation and prevention measures. Implementation of any plan and strategy required investment, and hence there is a dire need to increase investment on disaster preparedness, prevention and mitigation actions, which could save 5 to 7 folds post disaster investment, and contribute to save lives and livelihoods.³ To reduce risk of hazards, and prevent loss and damage, there is a strong need to strengthen the multi-hazard early warning system, link it with local government and local communities. The early warning message on risk generated from authorities are to be localized to reach to risk at communities. Adaptation and mitigation options with more emphasis on adaptation to be integrated into regular planning, and allocation of adequate finance to implement the adaptation plan prepared at local, and national level to achieve the roadmap of net zero emission by 2030 to keep our stand on 1.5 °C global temperature rise.

³ 1 dollar investment in preparedness implies that 5 to 7-fold of saving in investment into post disaster relief and recovery.

By means of Conferences of Parties (COP), a strong advocacy and skilful negotiation is required for influencing international government delegates for increasing climate & DRR finance for climate actions and urge the developed countries to present a clear blueprint on fulfilling their global commitment of USD 100 billion/year by 2022 with dedicated and equal share for adaptation actions as agreed in Glasgow Pact 2021. Negotiate for a simplified process of GCF to make an equitable financial distribution system for climate actions both adaptation and mitigations that could help support communities that have been facing the impacts of climate induced disaster. All policies and plans, while rolling out at community level, the needs of poor and vulnerable people should be incorporated, and benefits should be reached directly to the affected households. National laws and policies should also incorporate the basics of human rights while formulating new policies or making amendments of the existing policies.

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Human Rights Before, During and After Disaster in Nepal

Dr. Subodh Dhakal

Abstract

Undergoing mountain building process, unstable steep slopes, weak geological formations, severe climate change impact along with heavy monsoon rainfall make Nepal one of the most hazardous countries in the world that can easily turned into disaster. In Nepal, generally the disasters are brought by different hazards like epidemics; landslides, floods, earthquake, fire, thunderstorm and accident. These disasters are sometimes triggered by natural causes but in many cases they are triggered by human induced factors. In both the cases, people; community, country and sometimes the entire world have to face severe loss, damage and hardship. Since, disasters are complex phenomena with life threatening consequences; the widely accepted norms and provisions of human rights can be easily violated unless the proper research, planning and other endeavors are kept intact. It is the responsibility of the individuals, concerned authorities and the state to ensure the principles, norms, provisions and guidelines of human rights to be followed and implemented in any situations. This paper reviews the human rights principles, norms, provisions and guidelines that should be followed in disaster management cycle and quickly evaluate the human rights situations during few recent disasters in Nepal.

Keywords : Disaster, human rights international laws

1. Introduction

Undergoing mountain building process, unstable steep slopes, fragile geological formation, severe climate change impact along with heavy monsoon rainfall make Nepal one of the most hazardous countries in the world. The Nepal Himalaya is the outcome of the collision between the southern Indian plate and the northern Tibetan plate and the collision process is still going on. The dynamics of a collision between such a huge lithospheric plates resulted in the formation of numbers of tectonic faults and the highly deformed rocks. Because of the cyclic process of store of energy and its release after certain interval, Nepal is most hazardous country for earthquake

and has been experiencing many small and numbers of big scale earthquake time and again. This process is also the reason for the formation of very high elevation difference (climbing from just 60 m to over 8,800 m above sea level) and hence the topographical variation as well as the diversified geological characteristics within very short width of the country. Because of such a topographical variation and geological characteristics, together with torrential rain during the monsoon season, the country frequently experiences landslides, debris flows and floods. High grade of weathering of rocks in the mountains, intense erosion and bank scouring by the high gradient rivers in the mountains have severe negative impact in the productivity of the land and have enhanced the hazard of flood and debris flows in the Terai zone of Nepal. In addition to this, Nepal is one of the most hazardous countries in the world with respect to climate change because of the high rate of temperature rise¹. Recently, the impact of global climate change has intensified the disaster risk as the rate of temperature rise in the Himalaya is significantly high compared to the global average. Numbers of demographic factors such as rapid population growth, improper land use, economic underdevelopment and poverty are other reasons for increasing the frequency and size of the natural disasters in the country.

However, not all hazards turn into disasters. Risks, hazards, and preparedness are the key factors that determine whether or not a hazard becomes a disaster. If there is no risk to human life and property, even though the area is extremely hazardous, there will be no disaster; e.g., a large-scale landslide in an uninhabited area poses no risk to human life and property although the area may be extremely hazardous. However, the risk of each of the hazards in Nepal is in the highly populated and economically active area. For example Kathmandu is at high risk for earthquake, Terai of Nepal which is highly populated and consists of most productive agriculture land, is at high risk for flood and mountains are at high risk for debris flows, landslides and soil erosion. In summary, the natural hazard in Nepal and its consequence like disasters is controlled by the following major factors²:

- Ongoing mountain building process as a result of the dynamics of the collision between the southern Indian plate and northern Tibetan plate
- High degree of topographical variation within very short distance

1 Icimod (2007). Disaster Preparedness for Natural Hazards: Current Status in Nepal, International Centre for Integrated Mountain Development (ICIMOD), Kathmandu Nepal.

2 Dhakal (2015). Evolution of Geomorphologic Hazards in Hindu Kush Himalaya, In: H.K. Nibanupudi, R. Shaw (eds.), Mountain Hazards and Disaster Risk Reduction, Disaster Risk Reduction, Springer Japan

- Deformed rocks in the mountains, variation in rock types and the presence of very weak rocks
- High rate of deforestation
- Heavy torrential rainfall in monsoon
- High amount of debris within the flood water, debris-debris collision and sedimentation in the Terai
- Irregualr and unpredictable precipitation pattern
- High rate of temperature rise in the Himalaya and consequently high rate of glacial melting, formation of glacial lakes and their breaching
- Lack of awareness, weak institutional arrangements and preparedness for mitigating hazards

The improper planning, poor technology, lack of useful research and poor governance in the country all have also exacerbated the frequency of disasters and the overall loss signifying that many of the disasters in Nepal are human induced. This latest statement also indicates that human rights of different types and sectors have been violated as people are not able to entertain their rights of living without danger and threat. According to the concept of human rights, every single human being is entitled to enjoy his or her human rights without discrimination to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status³. All the member nations of UN are obliged to respect, protect and promote human rights. Constitution of Nepal, 2015 also provides various human rights through fundamental and constitutional rights of citizens. Despite of these provisions, there are reports of violation of human rights in different situations and cases. One of these cases to evaluate is the human tight situations before, during and after various types of disasters like earthquakes, landslides, floods etc.

Disasters bring serious disruption of the functioning of a community or a society involving widespread human, material, economic or environmental losses and impacts, which exceeds the ability of the affected community to cope using its own resources⁴. They cause widespread hardship and are evolved due to different hazards that are considered as dangerous phenomenon, substance, human activity, or condition that may cause loss of life, loss of livelihoods, social and economic disruption, or environmental damage. Epidemics, landslides, floods, fire,

3 ICJ (2016). Nepal: Human Rights Impact of the Post-Earthquake Disaster Response - A Preliminary Report, International Commission of Jurists.

4 UNISDR (2009). Terminology on Disaster Risk Reduction, United Nations International Strategy for Disaster Reduction.

thunderstorm, accident, and earthquake are some of the common hazards in Nepal. They contribute significantly to the total annual loss of life and damage to property. It has been identified that flood, fire and epidemics are major disasters in terms of number of disaster records whereas epidemic, landslides and floods are major disasters in terms of deaths due to natural disasters in Nepal⁵. In this paper, the human right situations in different types of disasters on Nepal are evaluated. To evaluate the situations of human rights in different types of disasters, past studies and reports related to the main objective of this paper is reviewed and synthesized.

2. Disaster and human rights

Disaster brings serious disruption of the functioning of a community, many communities and sometimes the whole nation. These extreme events can be natural or human induced; and they can exceed the tolerable magnitude in certain areas and within certain time bringing the normal functioning to halt thereby posing threat of violation of basic human rights. Right to food, right to clean drinking water, right to proper shelter, right to clean environment and right to survive are some of the basic human rights that could be easily violated during disaster. If a nation tries to stop the violation of human rights only after the occurrence of disastrous events, it cannot be successful because proper planning and worst case scenario analysis is most essential to avoid such problems. The level of violation of human rights in disaster depends upon number of factors like the understanding of disaster as well as human rights by the citizens and the nations; awareness level of the citizens, preparedness for disaster, involvement of the communities in disaster management, planning and activities of disaster management authority, planning and activities of human rights authorities and activists; technical and financial capacity of the nations, policy and priorities of the citizens and the state etc. Also the terrain conditions, infrastructures like facility of transportation and communication system, availability of tools, equipments and technology etc. are also other factors controlling the level of human right violation in disaster.

Governments and intergovernmental humanitarian aid agencies both have an obligation under international law and human rights norms to ensure that human rights are fully integrated in the different phases of disaster. In the context of Nepal, we have a general duty under its international human rights treaty obligations to ensure equal protection of the law and of human rights, without discrimination with

5 NSET (2007). Disasters in Nepal: Inventory of Events and Analysis of Impacts (Period Covered 1971-2006), Preliminary Analysis (In-house unpublished report under the DesInventar Project of NSET), National Society for Earthquake Technology – Nepal, Kathmandu.

respect to religion, ethnic origin, language, gender, color, race, sexual orientation, disability, religion, language, political ideology, national origin, property or other status. Such obligations under international law are particularly important in the disaster process.

When we talk about the disaster, it has generally three phases namely: pre-disaster phase, during disaster phase and post disaster phase. Out of these three phases, proper planning before disaster, also called pre-disaster phase, is most important to solve the issue of human right violation during any type of disaster. For the purpose of reducing the magnitude and frequency of disaster; and to reduce any type of impact from the disasters, the concept of Disaster Risk Management has been evolved. It includes sum total of all activities, programmes and measures which can be taken up before, during and after a disaster with the purpose to avoid a disaster, reduce its impact or recover from its losses. Before 1990s, disaster was considered as event and responded by government and other agencies with response and relief as main component of DRM. Until this time disaster was taken as unavoidable “acts of God”. The scientific and effective DRM was initiated after the international decade for natural disaster reduction (IDNDR) practice during 1990s. Nowadays, the focus of DRM has changed from response/relief to risk reduction and cover all three stages of disaster cycle i.e. pre-disaster, during disaster and post-disaster

2.1. Pre-disaster phase

Pre-disaster phase is the most important among three stages of disaster as the best planning during this phase covering all different types of hazards and analyzing the potential risks and providing timely solution to minimize the high risk can work to avoid the potential disaster as well as reduce its future risk. In this phase, we can do very important works to reduce the disaster risk like identifying the hazards present in any area of interest, ranking the possibility of these hazards to occur, carrying out awareness campaigns, identifying the line agencies to work for it, strengthening the existing organizational structures and co-ordination mechanisms, preparation of the disaster management plans at different level, etc. Early Warning, preparedness and contingency planning and emergency management (e.g. shelter facilities, evacuation plans) all are important activities during pre-disaster phase. These works under the pre-disaster phases are also called mitigation activities. Right to live for all the human beings and all living beings without any risk of survival should be addressed by the careful and scientific studies as well as planning in this stage.

2.2. During Disaster Phase

This phase is also equally important stage of disaster risk management in terms of saving the lives and maintaining the human right norms and principles. These include initiatives taken to ensure that those in life threatening risk and urgently in need of support to save their lives during disaster are rescued or saved. This is also the stage where emergency health facilities and treatment to the victims are made easily and timely accessible to all that are in urgent need. Therefore, this phase can also be called response and relief. Activities taken under this stage are also called emergency response activities. In this stage, priority is to be given to the dependent population including women, children, elderly and disabled persons. During this process, consideration should be there to protect the right of life with dignity of victims. Search and rescue, preliminary loss and damage assessment, immediate distribution of relief materials, establishment and management of temporary shelter and management of clean drinking water, sanitation and hygiene condition are crucial aspects of during disaster phase.

2.3. Post-Disaster Phase

This phase is very crucial in bringing the lives of victims to normal and will have long time consequences. The main aim of this stage is to achieve the early recovery and rehabilitation of affected communities, immediately after a disaster strikes. These are called as response and recovery activities. The activities in this phase are to be focused in order to recover the life of affected people and bring them back at least to the simiaLr condition as it was before any disaster. Various activities are needed to recover the situation after disaster like psychological treatment, rehabilitation; reconstruction of building etc. along with appropriate livelihood options to the affected families or communities .If such activities could not be done properly and timely, then we can say that there is the violation of human rights.

3. International Laws and Human Right Clauses in Disaster Management

3.1. International and National Provisions

Nepal is a party to different human rights treaties and their protocols, and is therefore obliged to protect a range of civil, cultural, economic, political and social rights. It should be noted that these human rights standards are equally applicable for disaster management from preparedness to the times of emergencies because of disasters. Guidelines in international human rights preservation have given emphasize that persons affected by disasters should enjoy the same rights and freedoms under

human rights law as others in their country and not be discriminated on any ground. Similarly, states have the primary duty and responsibility to provide assistance to persons affected by disasters and to protect their human rights. The principles of human rights also state that every human being has the inherent right to life, which shall be protected by law. It has protected the rights of citizens by mentioning that everyone has the right to be protected against acts of violence threatened or committed by private parties and other non-state actors⁶. Also, children shall be protected against economic exploitation and hazardous or harmful work. It has been reported in different disaster and human right provisions that disaster response will be adequate and more scientific only through the adoption of a human rights approach, including in national laws and policies on disaster management, and the implementation of the principles of: indivisibility of human rights; non-discrimination; equality; meaningful participation; inclusion; transparency and accountability; cooperation; non-retrogression; and, environmental sustainability⁷. This will also help to enable affected persons and communities to restore their lives and livelihoods, to return to normal situation, and to live with dignity. Some of the important provisions and guidelines related to human rights in disaster management are appended here.

- i. Protection against the negative impacts of natural hazards
- ii. Protection against violence including gender based violence
- iii. Access to goods and services and humanitarian assistance
- iv. Provision for adequate food, water, shelter, housing, clothing, health services and sanitation
- v. Protection of human rights to education
- vi. Protection of human rights to work and livelihoods
- vii. Protection of human rights to information and participation
- viii. Protection of economic, cultural and social rights
- ix. Protection of other civil and political rights
- x. Protection of specific group of persons including internally displaced persons, women, children and adolescents, old age persons, persons with disabilities etc.

6 Brookings-Bern Project on Internal Displacement (2008). Human rights and natural disasters Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster.

7 Housing and Land Rights Network (2015). Protecting Human Rights in Disaster Response: Guidelines for State and Non-state Actors.

- xi. Provisions for disaster risk reduction, preparedness, mitigation and protection

Some of the Articles related to the human rights in disaster management are worthwhile to mention here. Article 1 of Universal Declaration of Human Rights (UDHR) says all human beings are equal in dignity and rights. Article 5 of UDHR is related to the provision against torture or cruel, inhuman or degrading treatment or punishment.

Constitution of Nepal (2015) has also provisioned the different rights under fundamental rights of citizens. It has incorporated Article 16, which is related to Right to Live with Dignity, Article 18, which is related to Right to Equality, Article 29 which is related to the Right against Exploitation, Article 30 which is related to Right to Clean Environment, Article 38 which is related to (Rights of Women, Article 39 which is related to Right of Child, Article 41 which is related to the Right of Senior Citizens, and Article 43 which is related to Right of Social Security⁸.

3.2 Gender and dependent population Issues in disaster

Gender indicates the socially determined differences between women and men such as roles, attitudes, behaviors and values, as opposed to sex that identifies the biological differences between women and men. It has been experienced that women are the main care takers of the dependent population including children and old age people during disaster. Disasters are extremely complex phenomena in which gender and dependent population analysis plays a critical role in identifying and understanding vulnerable communities or individuals within the community, in managing resources to those most in need, and in helping to mobilize the capacities of those whose contributions are often overlooked because they are deemed to be ‘helpless’. It has been reported that without a gender-sensitive lens a great deal of important information about disasters is likely to be overlooked to the great detriment of people and their recovery. It has also been experienced that women are affected more severely than men when a disaster strikes and, subsequently, when recovery begins. Additionally, women are often subjected to domestic and sexual violence and generally do not have access to female aid workers in the field to express their gender specific needs and concerns. Women can do more when given opportunities and their views and opinions are taken into consideration in all phases of disaster management. Despite this fact, women are rarely taken into account in disaster management,

8 Paudel, S., Regmi, R. (2018). Human Rights Issue in Disaster Management: Lesson from Gorkha Earthquake 2015, Asian Political Science Review Vol. 2 (1).

because they lack influence due to gender inequality and disempowerment and consequently have less decision making power and control over their lives. They have no voice in reconstruction planning and marginalized in their access to relief resources. The following section describes the gender issues in different phases of disaster as identified in APEC, 2009⁹.

3.2.1. Gender and dependent population issues in preparedness phase

Communication determines the ability to response early warning system; however it does not take into account women in their social roles. The same is true for the dependent population including children, old age people and differently able persons. Local wisdom needs to be considered in formulating policy and program in building preparedness. Coping mechanism develops among the people in disaster prone areas and coping mechanism should be taken into consideration in disaster management. Women and the concerns of other dependent population are neglected and not included in decision making to build preparedness, while they have important knowledge and capacities. Data segregated by sex and age is not available and normally women organizations are not involved in preparedness phase.

3.2.2. Gender and dependent population issues in emergency phase

Women, children and the elderly are more vulnerable in disaster and women affected differently from men during disasters. Lack of measures on gender issues lead to women not being able to gain adequate, appropriate or equitable access to assistance. The administrative concept or head of household concept used in disaster relief supplies distribution always marginalize women. Additionally, women's specific needs such as clothing, sanitary napkins, needs under their care e.g. babies' food, are not provided adequately. Temporary housing, sleeping arrangements, bathrooms, kitchens, lighting and security that fulfill the needs of women and them under her care failed to be addressed during emergency phases. In general, safety of temporary shelter including those against sexual violence is not adequately maintained. Moreover, psychological trauma and legal protection are not adequately provided. All these imply that data disaggregated by sex and age is necessary.

3.2.3. Gender and dependent population issues in rehabilitation and reconstruction phase

Men and women are affected differently in terms of economic consequences and women have less access to compensation and discrimination. The same is true for the dependent population including children, old age people and differently able

9 APEC (2009). Women in Times of Disaster: The Integration of Gender Issues and Gender Perspectives in Disaster Management, Asia-Pacific Economic Co-operation.

persons. Livelihood and skills development failed to address the specific concerns of women and dependent population; and community-level initiatives proceeded in directions which were not necessarily appropriate to women. Until recently, data on men and women economic activities and their civil status is not available. It is generally experienced that women are not represented in decision making that make the livelihood interventions.

4. Human Rights during recent disasters in Nepal

The rights of people in recent few disasters in Nepal are discussed here. Three disaster events namely Seti Flood, 2012; Jure Landslide 2014 and Gorkha Earthquake 2015 has been discussed based on the field assessment, interviews and the secondary data. Human Right issues from right of people to live safely without any threat, right of people to get timely and complete information, right of people to migrate in the safe places during emergency situation, right of people to get timely relief, rehabilitation and reconstruction have been found violating or weakly followed. This does not necessarily mean that all the provisions of Human Rights were violated, but those which people felt violated or weakly addressed are described here.

4.1. Seti Flood 2012

On 5th of May 2012, most probably a landslide near Machhapuchre Mountain in the Kaski District triggered a massive flash flood in the Seti River, sweeping settlements downstream with major damages occurring in Kharapani village in Sardikhola Village Development Committee and Sadal village in Machhapuchre VDC¹⁰. With flood heights reaching 30ft, the flood killed 17 people, with at least 50 people missing, many of whom were having picnics along the river. In addition, the flood caused major damages to infrastructure and livelihoods, including damages to two suspension bridges, water supply systems to Pokhara and electric poles. It was later informed that the avalanche created a temporary block that restricted the flow of water in the Seti River. The water broke through this block, causing the flash flood that has devastated downstream areas. Field assessment revealed that the loss was dominant near Kharapani where there is natural hot water and people used to visit the place for picnic and entertainment purpose. Due to touristic place, number of riverside restaurants and food shops were established on the recent flood plains very close to Seti River. It was found that local people were informed about the possible flooding in the area but people were reluctant to leave the place thinking that the information should be fake because it was not the monsoon season; and flood without rain was impossible.

10 <https://reliefweb.int/report/nepal/devasting-flood-seti-river>

It is evident that the disaster was unprecedented for the general people since they think that flooding was not possible without rainfall. Although, the information was spread in the most affected area, it was not proper and complete. The information should have included the fact that the flood is not because of the rainfall but it was because of the landslide or the snow avalanche in the snow fed areas which is near the origin of Seti river. The right for correct and complete information was not followed in this disaster though it was attempted. Simialrly, the most affected area near Kharapani was very close to the river channel in recent flood plain; and disaster risk reduction component seemed weak as the authorities should have assessed the site before providing permission to the business conducted in this area. Further, there was difference of opinion about the cause of this flood; which was not officially sorted out from the reliable research for long time.

4.2. Jure Landslide 2014

On 2 August 2014, a massive landslide with approximate volume of 5.5 million cubic metres occurred at the Sunkoshi river after continuous rainfall, killing 156 people and blocking the Sunkoshi River forming an artificial lake. The complete blockage in the Sunkoshi River formed an estimated 8 million cubic meter lake of 3 km length and on an average 325 m width upstream. Two dozens houses were swept by this landslide. Araniko Highway, the main (and only) artery of goods and people flow to China, was blocked by the landslide ripping out 5 km of highway, and causing huge traffic jam.¹¹ The landslide occurred most probably in the old landslide area, which is considered as most vulnerable areas for next landslide; but the prior information about this fact was not provided to the people and community. Also, the weakness of the state in giving permission to settle in such a vulnerable area was also evident.

Field assessment revealed that the landslide dam could not be breached immediately after the event forcing the nearby communities and the communities below the dam site in continuous threat for nearly a month. The search and rescue of the victims took longer time. The displaced people were brought to the temporary shelters but they were kept there for long time instead of providing them permanent shelters timely. Those households and communities which were not directly damaged by the landslide event but were present close to the site; and are clearly vulnerable, were not treated timely or given due consideration to resettle them. Under the circumstances of no clear support and plan of the authorities to them, they were forced to live in continuous threat with high risk of disaster. It was reported that the rehabilitation and reconstruction process was complicated and time consuming. Right of people

¹¹ https://en.wikipedia.org/wiki/2014_Sunkoshi_blockage

for the prior information to disaster, preparedness; and right of people to live without continuous threat was also violated in this event. Right of people to migrate or to be transferred into the safer places was also violated.

4.3. Gorkha Earthquake 2015

A major devastating earthquake with moment magnitude Mw of 7.8 struck Nepal on 25th of April 2015. The epicenter of this devastating earthquake was Barpak of Gorkha district and the hypocenter was at a depth of about 15Km. Nearly 10000 people lost their lives, more than 25000 people injured and more than 6000 buildings completely collapsed mostly in Kathmandu and other earthquake impact districts like Gorkha, Dhading, Nuwakot, Sindhupalchowk, Dolakha etc. The loss was increased after the major aftershock of this earthquake occurred on 12th May 2015 with magnitude Mw 7.3 and epicenter was 18km southeast of Kodari¹². Further, this devastating earthquake triggered many landslides in the highly affected districts as mentioned above; and caused further losses. Many people at different places faced the shortage of drinking water as the springs and taps became dry due to the movement of the land and change of ground water flow direction.

The loss of lives and property was mostly by the collapse of buildings where the people were trapped. However, the people, authorities and the nation all are to be blamed for such a big loss as they were unable to prepared and reduce the risk of earthquake despite the expert's warning that it is high time that another big earthquake will hit Nepal at any time now. It was also reported that some people lost their lives because of the lack of the correct and complete information on how to save life if suddenly earthquake strike. For example: couple of children in earthquake affected district lost their lives while they run inside the house from open space to hide under the table thinking that they will be safe under the table as they were informed that they have to sit under the table during earthquake to save their lives, The information was incomplete, as they should have been informed that they have to sit under the table if they are inside the house, but they can go to open spaces if they are outside the house.

Gorkha earthquake 2015 was a big disaster that required lots of reconstruction of buildings and shelters as it destroyed thousands of buildings partly or fully. In the reconstruction phase, the formation of high level body (later named National Reconstruction Authority, NRA) to look for the entire activities of reconstruction after Gorkha Earthquake 2015 was delayed which caused the sufferings of the people

12 Dhakal, S. (2015). Disaster in Nepal, In: Disaster Risk Management: Concept, Policy and Practices in Nepal, Central Department of Environmental Science, Tribhuvan University.

more intense indicating the high possibility of human rights violation. During the filed assessment, it was identified that people are deprived of getting the assistance from the state because of the complexities in providing the required documents as described in the provisions for getting support. Many people could not get the assistance because they were unable to show the required documentation, including proof of Nepali citizenship or residence or land ownership in a particular affected area. It created the human right violation in terms of the right to recognition and right to humanitarian aid. Importantly, many people reconstructed their collapsed buildings in the same site where their buildings were collapsed even before the formation of NRA and also later it was formed. They didn't considered or were not informed by the authorities about the reason of the collapse of their buildings; whether it was due to structural problem or it was due to the problem in the land or foundation where the buildings were constructed. This is still creating the questions whether the newly constructed buildings are safe or not.

Similarly, there were reported issues while distributing the Earthquake Victim Identity Cards. The issue was unwise and biased distribution of such cards based on the political influence or based on the approach to the local authorities. At the same time, based on field assessment, it was observed that the information regarding the procedure for getting these cards was also not widely and easily distributed. This indicates the violation of Article 19 (2) of the International Covenant on Civil and Political Rights (ICCPR), which states that the freedom of expression includes "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers". Also, it was reported that there were not adequate consultation and participation during the entire reconstruction phases. In addition, many people mostly in Kathmandu were in regular threat for days due to lack of reliable and authentic assessment of their buildings, whether they are to be completely demolished, retrofitted or fine to live in. Many experts, engineering geologists and structural engineers voluntarily assessed the buildings on request and provided feedback but they were not fully satisfying for the citizens as it was not from the authentic government agencies. Though the reconstruction and other activities related to Gorkha Earthquake 2015 was relatively successful in the long run, there were limitations of the entire process initially when people were in high need reflecting discrimination and lack of equal protection.

5. Conclusions

Disaster brings serious disruption of the functioning of a community, many communities and sometimes the whole nation. These extreme events can exceed the tolerable magnitude in certain areas and within certain time bringing the normal functioning to halt. As consequences, it can easily pose threat of violation of basic human rights. Right to food, right to clean drinking water, right to proper shelter, right to clean environment, right to survive, right to timely, correct and complete information, getting equal rights without discrimination in any ground etc. are some of the basic human rights that could be easily violated during disaster. The level of violation of human rights in disaster depends upon number of factors including the understanding of disaster as well as human rights by the citizens and the nations; awareness level of the citizens, preparedness for disaster, involvement planning and activities of disaster management authority, planning and activities of human rights authorities and activists; technical and financial capacity of the nations, the terrain conditions, infrastructures like facility of transportation and communication system, availability of tools, equipments and technology etc. Women, children and other dependent population are highly vulnerable compared to other groups of people on disaster and therefore they need to provide due care while planning and executing. In this paper, the human right conditions during recent three events in Nepal namely Seti Flood 2012, Jure Landslide 2014 and Gorkha Earthquake 2015 were reviewed, analyzed and summarized. The most common human right violations in all three events are: the right to live without threat, right to timely, correct and complete information, right to equal access to humanitarian aid, getting rights without discrimination in any ground. Some other human right issues during these disasters include right of people for the prior information to disaster, preparedness; and right of people to live without continuous threat. These are some of the cases of disaster but they can easily reflect our weaknesses which can be corrected in the future to ensure the human rights of every citizen before, during or after disaster.

Concept of Human Rights, Environment, Disaster Management and Interrelationship and Condition of Nepal: An Analysis

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Abstract

Various efforts have been made by humans for a long time for the conservation of environment and management of disasters created by human activities to live a decent life. The concepts of human rights, environment and disaster began to be mentioned as interrelated issues since the 1950s. These issues are further reinforced by the concept of sustainable development. Along with the prevailing policies in the international level, institutional efforts and the efforts of globalization, these issues are intermingled in national law, structure and local levels which have been raised as the agenda of development. The concepts of Millennium Development Goals and Sustainable Development Goals have further contributed to unify these issues. As directed by the present constitution, laws are formulated and institutional efforts have been made. It seems that expected success may be achieved if the concerned entities work in a coordinating manner.

Keywords: Disaster, Human Rights, Sustainable Development Goals, Environment, Millennium Development Goals.

Introduction

The matter that respects human life, individual property and freedom in general is the human right. The concept of human right includes political, civil, economic, social, cultural, material, natural and psychological rights of an individual, family and society. The state ensures the rights of citizens or individuals. Moreover, it is the responsibility of the state and right of citizens. Generally, all the rights that can be enjoyed by birth are called human rights. Everyone should get a chance to enjoy such rights irrespective of their class, religion, region, gender, race, caste, belief and nationality. It includes all the rights required for overall development of humans.

At the same time, it advocates the activities of non-violence day by day, and it is being developed as a natural right. It is the concept opposite to the totalitarianism of the state. It further advocates the interest of the victim. Universally accepted norms are included within human rights. The constitution of the nation, other laws and international treaties have mentioned the lists of human rights in a written form. Human right has been the chief means of measuring the standard of democratization, rule of law and the responsibility of the state. The role of the court is being increased day by day. The concept of human rights is interrelated with natural law and philosophical concept of natural rights.¹ The scope of human rights at present is vast in itself. The issues of environment and freedom from disaster are also connected with it.

Evolution

It is seen that Aristotle in his book entitled “The Politics”, he has attempted to associate the issues of environment and disaster stating that justice, virtue and rights keep on changing in accordance with different types of constitutions and situations.² Stotic used such a moral concept to designate the optimum conduct of natural law which had maintained intimacy with nature and practiced a civilized society and government. In England, Magna Carta was issued on 15th June, 1215 which limited the totalitarian activities of the government. There was a provision of preventing unauthorized infringement over the land and property where traders had the right to freedom of movement within and out of England. After the enactment of Magna Carta, various countries formulated different laws for the protection and development of human rights.

Various international treaties were developed; however, World War I and World War II could not be prevented in reality. The United Nations Organization, a global organization, was established for preventing further wars in the world. In the same way,

Universal Declaration of Human Rights (UDHR) was issued in 1948 that included the provisions of life, property and freedom. Among them, the following are the provisions related to environment and disaster management: Article (2)- Everyone is entitled to all the rights and freedoms set forth in this declaration without distinction of any kind such as race, colour, sex , language, religion, political or other opinion,

1 D. N.Parajuli and Others.(2018). *International Organization and Human Rights*, Sanarab Publication, Kathmandu, Page no.121

2 D. N.Parajuli and Others, (2018). *International Organization and Human Rights*, Sanarab Publication, Kathmandu, Page no.121

national or social origin, property, birth or other statuses. Article (13)- Everyone has the right to freedom of movement and residence within the borders of each state. Article (16) (3)- The family is the natural and fundamental group unit of society and is entitled to protection by society and the state. Article (25) (1)- Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Article (27) (1)- Everyone has the right to freely participate in the cultural life of the community to enjoy arts and to share in scientific advancement and its benefits.³ UDHR had begun to take human rights in terms of human health, food security and natural rights.

International Covenant On Economic, Social And Cultural Rights (ICESCR) 1966- Article (1) (1)- All peoples have the rights of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic social and cultural development. Article (1) (2)- All the people, may for their own ends freely, dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit and international law. In no case, may people be deprived of its own means of subsistence. Article (11) (2)(A)- 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 so as to achieve the most efficient development and utilization of natural resources. (B) Taking into account the problems of both food importing and food exporting countries to ensure an equitable distribution of world food supplies in relation to need. Article (12) (2) (B)- The improvement of all aspects of environmental and industrial hygiene (c)- The prevention, treatment and control of epidemic, endemic, occupational and other diseases. Article (25)- Nothing in the present covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.⁴

International Covenant on Civil And Political Rights, 1966 (ICCPR)- Article (26)- All persons are equal before the law and are entitled without any discrimination to the

3 Ministry of Law, Justice and Parliamentary Affairs. 2064 (2007).Collection of International Convention on Human Rights, Kathmandu, page no. 305, 306, 307

4 Ministry of Law, Justice and Parliamentary Affairs. 2064 (2007). Collection of International Convention on Human Right , Kathmandu, page no. 78, 81, 84

equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other statuses. Article (47)- Nothing in the present covenant shall be interpreted as improving the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.⁵

Ramsar Convention 1971 (The convention on wetlands of international importance especially as waterfowl habitat, 1971)- This convention provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources.⁶

Convention Concerning the Protection Of The World Cultural And Natural Heritage-1972 -This convention emphasized for the establishment of efficient system and establishment of natural and cultural heritages permanently in a modern and scientific manner by preserving the natural and cultural heritages.⁷

Vienna Convention on Ozone Layer Depletion, 1985- Pay attention against the human activities that have caused the depletion of ozone layer and work for the preservation of environment and security of human health.⁸

Montreal Protocol for the Protection of the Ozone Layer- 1987- Control in the production and protection of ozone layer caused by chemicals and emphasize on administrative management, implementation of ozone layer protection and pre-assessment of the provision of protocol control and regular supervision.

Convention On the Control of Transboundary Movements of Hazardous Wastes and Their Disposed (Basel Convention) - 1989- Effectively ensure human health and environment conservation and manage harmful pollution and garbage by reducing the quantity of harmful elements.

Framework Convention on Climate Change (FCCC) 1992- Ultimate objective of the framework agreement is to stabilize the concentrations of green-houses gases at a level which would prevent dangerous interference with the climate system. The broad and general phasing provides participating countries with the flexibility in implementation strategies.

5 Ministry of Law, Justice and Parliamentary Affairs. 2064 (2007). Collection of International Convention on Human Right , Kathmandu, page no. 103, 109

6 Dr Bijay Singh Sijapati. (2074). Environmental Law, Pairavi Publication Page no. -34

7 Dr Bijay Singh Sijapati. (2074). Environmental Law, Pairavi Publication Page no. -35

8 Dr Bijay Singh Sijapati. (2074). Environmental Law. Pairavi Publication Page no. -36

Convention on Biological Diversity 1992- Its main objective is to protect biodiversity and sustainable utilization of its components and fair and coordinating distribution of the benefit of genetic sources.

Agenda-21 1992- The interrelationship between environment and human beings defined comprehensively. It was concluded that the main reason of poverty is the result of environmental degradation⁹ and all the countries have implemented it.

Convention Against Desertification 1994- Provide international assistance to the regions affected by desertification for achieving the objective of sustainable development, reduce the effect of drought in all levels, fight the war against desertification, and provide special priority to African people victimized by desertification. Although this Convention was organized mainly focusing the continent of Africa, it became successful in imparting positive message around the world.

Treaty Banning Nuclear Weapon Tests 1963 (CTBT)- Even though this treaty was made to completely disarm all the nations of the world, discourage the signatory nations of the treaty by the competition of armaments, impose a ban on the production or manufacturing of weapons and all kinds of weapons including the nuclear ones in accordance with the Charter of the United Nations Organization, it could not become notably successful.

Outer Space Treaty, 1967- Use of external spaces like the moon and other natural groups and provides guidelines for the its inventions and the activities of the state.

Fourth World Conference on Women in Beijing, 1995- In this conference, the following are the provisions related to women: women and poverty, women and health, women and human rights, women and armed struggle, women and environment. On the same basis, national policies and programmes finally came into implementation.

International Environment Institutions:-

United Nations Environment Programme (UNEP) was established in 1972 AD and it has prioritized the programmes related to environment. Its main objectives are to examine fundamental changes seen in environment and encourage programmes related to security on environment.¹⁰ Nepal, as a member, has also done various works in this field.

9 Kiran Kumar Baram. (2077). SAMBAHAK Human Rights Journal, Nepal, Vol-17 Page no. 71

10 Gyaneshwar Bhattarai. (1999). Encyclopedia General Knowledge and Social Studies, Ashish Pustak Bhandar, Kathmandu, Page no. 863.

Commission on Sustainable Development (CSD) was established in 1992 AD. AS per the provision of Agenda-21, this Commission implements, reviews and assesses the international environmental policy and law.

Global Environment Facility (GEF) was established in 1991 AD. Brundtland Report of 1987 states the poor and underdeveloped nations cannot fulfil their responsibilities in the field of environmental conservation, its management and sustainable development as per the expectation due to their widespread poverty, therefore, such economically poor nations should be helped for their sustainable development. Therefore, this fund provides financial assistance for the conservation of environment in the developing nations in association with WB, UNDP and UNEP.

International Union for the Conservation on Nature and National Resources (IUCN) was established in 1948. It has emphasized for maintaining harmony between human activity and environment. Further it aims to preserve the natural integrity and diversity and ensure the bases of coordination and ecological sustainability.¹¹ It publishes the red lists of the endangered species. It is an international non-government organization. However, it is highly capable and efficient in the accomplishment of its works.

Concept of Environment

The interaction and interrelationship among natural, cultural and social systems, economic and human activities and their components in the universe is called environment. The right to clean environment means the right of people to live naturally in nature which is the right of the present and future generation and it is the duty of everyone to protect it. Nature and human society are inseparable with each other. Human civilization cannot be imagined without nature, but all the species including humans are dependent in nature, therefore, the protection of environment is very important for the security of animal species. It is required to show justice over nature for the respect of human life so that environment could save the people from disaster.

Efforts to Protect the Environment in Nepal

In various ruling periods in Nepal, laws were formulated accepting the natural aspects that we can understand as the practical form of human rights, environment and disaster management. The efforts made in various time periods are as follows: among the Kirants, there was a practice of worshipping *dubo*, the cynodon dactylon,

11 Dr. Bijay Singh Sijapati. (2074) . Environmental Law. Pairavi Publication Page no. 50, 51

and stone as the incarnation of God Vishnu in the scripture Mundhum.¹²

In addition to this, the Kiranti rulers had formulated rules to keep villages clean, prevent and properly manage the garbage. It shows that they were the protectors and lovers of nature. Like Kirantis, Gautam Buddha was also the protector of nature. When he came to Kathmandu, he had given a great message regarding the protection of environment and further educated the people to protect living beings and plant trees. The Lichchhabhi rulers had formulated rules for the conservation of royal canals and forests.¹³ They had legally banned the selling of forests and trees from such forests. Jayasthiti Malla had formulated rules on various disciplines for the purpose of protecting environment. He had formulated rules regarding canals, utilization, classification and measurement of the land. He had formulated such rules in the 14th century. At the same time, he had ensured the provisions of roads, irrigation and soil conservation under the jurisdiction of rural administration. Ram Shah had emphasized on the management of meadows for grazing, conservation of forest and prevention of soil erosion. In the same way, he had banned the deforestation in the nearby public taps and he had also made a rule for collecting 5 hundred rupees as a fine from those who fell the trees from the jungle. It is also seen that Prithvi Narayan Shah had given the responsibility to the local people for the protection and management of government owned forests.

There was a proper provision of utilization of the land, clean road and the management of forest in the *Muluki Ain (Code of the Nation), 1910 (1853)*. In number 8 under the Chapter, the land of this code, there was a provision of utilization of the land and conservation of public taps. Similarly, number 1 of the Chapter, Felling Trees, it was prohibited to fell trees in the places closed by order. No. 4 of this code stated that trees in the Terai region that were associated with the *Birta* should not be felled without the order or permission of *Shree Teen Maharaj*. No. 20 of Code had a provision of maximum of 12 years of life imprisonment in charge of the crime of felling trees. No. 1 of cleaning the lane had provisioned that the owner of the house would clean the alley by taking one *anna* from the person who threw the garbage. In the same way, in 3 of the Chapter, there was a warning not to throw garbage on the main street where pedestrians walked and around the water resources, also there was a provision of imposing fine in the cases of throwing garbage. Likewise, in the cases where trees are felled from closed forests, the prohibited animals and birds are preyed and so purchased, such issues become the cases of the government under no. 1 of the

12 A.P. Pant. (2000). Environmental Law in Nepal; An Overview in K. Regmi (ed.) Annual Survey of Nepalese Laws, Vol.1. Page no. 5

13 D.B Bachracharya. (1971). Lichhavi Kalin Avilekha. Page no. 183

Chapter of the court management. There was a provision of conservation of forest, land, water and taps including the sanitation around the house and management of the prey. In 1934 BS (1877 AD), Forest Checkpoint was established that used to work for the conservation and promotion of forests.¹⁴

Article 19 of the *Government of Nepal Act, 2004 (1948)* had made a provision of the responsibility of Panchayat Assembly to keep the local areas clean, uplift and develop roads, drains, bridges and inns,¹⁵ but this constitution could not be enforced.

The Directive Principles of Politics provisioned in Article 4 (b) of Part 2 of the Interim *Government of Nepal Act, 2007 BS (1951)*, had mentioned to distribute the material property having in the ownership and control of the community so as to be helpful for the optimum benefit of the public. It seems to have emphasized on social justice.

Essential Goods Protection Act, 2012 (1955), has made a provision of protecting goods that are required for general public.

Ancient Monument Preservation Act, 2013 (1956) has made a provision of preservation of ancient monuments and trade of archeological goods.

Private Forest Nationalization Act, 2013 (1957) has made a provision for preventing the forest from being destroyed since it is one of the parts of national property, and preserving and utilizing forest for the optimum benefit of the nation and people. It had accepted and comprehended forest as the national property and it should be preserved for the benefit of the people in general.

In the royal proclamation, while promulgating the *Constitution of the Kingdom of Nepal, 2015 (1959)*, the phraseology used as our pleasant kingdom located between the two rivers Mechi and Mahakali on the lap of the Himalayas indicates the environmental cleanliness.¹⁶

Aquatic Animal Protection Act, 2017 (1960) has provided legal security for the habitat of aquatic species. In the cases where poisonous substance and explosives are mixed or thrown in water resources and aquatic animals are caught or canals or passages for irrigation or bridges are destroyed with the purpose of killing such animals, there is a provision of punishment pursuant to the Act.

14 Dr. Bijay Singh Sijapati.(2074). Environmental Law, Pairavi Publication, Page no. 60

15 Top Bahadur Singh. (2008). The Constitutional Development of Nepal and Constitutional Records, Kathmandu, Pairavi Prakashan. Page no. 127

16 Top Bahadur Singh. (2008). The Constitutional Development of Nepal and Constitutional Records, Kathmandu, Pairavi Prakashan Page no. 205

Essential Commodities (Control) Right Act, 2017 (1960) has a provision to make strict control from time to time for daily activities and for the sale and trade of required food grains and goods for maintaining facilities of the people in the society as per their requirement.

In the Explosives Act, 2018 (1961),¹⁷ it seems that there is a provision of protecting the people from the danger created by productions, uses and sales of explosives, supply daily requirements of the people, manage the explosives and emphasize on the protection of environment at that time.

In the *Constitution of Nepal, 2019 (1962)* there was no clear provision of conservation of environment and disaster management

Muluki Ain (Code of the nation) of 2020 (1963) had the following provisions regarding the conservation of environment and disaster management: in the number 1 of Chapter of Setting Fire, it was prohibited to anyone to commit a crime of setting fire to the property of other people with evil intention. Likewise, in accordance with no. 4 of the Chapter, Cultivation of the Land, the route being used for the purpose of walking from the ancient time, public ground, banks of rivers or streams, meadows and such public places and the government owned land prohibited by the government of Nepal, shall not be used (cultivated) and no. 12 of this very Chapter states that in the cases where the unauthorized land is cultivated, such land shall be left cultivated after paying the land revenue. No. 3 of the Chapter of Building Houses prohibits building houses by encroaching roads and drains.¹⁸

Food Act, 2023 (1967) states for maintaining health and facilities of the general public, undesirable mixing in the food item should be prevented and it is not allowed to reduce or remove the natural quality or utility contained in food items and reasonable quality of the food items should be maintained.

The main objective of *Forest Conservation (Special Management) Act, 2024 (1968)* is to especially preserve and manage the forest. According to this, without the prior permission of the officer, felling trees from the forest, extracting the barks of trees and setting fire in the forest cannot be done.

National Parks and Wildlife Conservation Act, 2029 (1973) focuses for the preservation, promotion, development, utilization and management of wildlife and conservation of their habitat, conservation of bio-diversity and conservation of the

17 Collection of Nepal Act, Part 5 (2073). Law Books Management Board, Kathmandu Page no. 22

18 Muluki Ain)Code of the nation(2017, Law Books Management Board, Kathmandu Page no. 114 185

places of great importance from the point of view of natural beauty.

Pasture Land Nationalization Act, 2031 (1974) has a provision of the nationalization of the land used by the poor for grazing their cattle.

National Trust for Nature Conservation Act, 2039 (1982) has a provision for the conservation and management of natural heritages.

Soil and Watershed Conservation Trust Act, 2039 (1982) has a provision for the conservation of land and watershed areas, the source of water and the prevention of deforestation, flooding, landslides, soil erosion, and other natural calamities since the nation is being affected by such factors.

International Center for Integrated Mountain Development Act, 2040 (1983) had a provision of making research and doing other necessary works for the integrated development of the Hindu Kush Himalayan region in accordance with the agreement made between the Government of Nepal and United Nations, Educational, Scientific and Cultural Organization (UNESCO).

Nepal Petroleum Act, 2040 (1983) had a provision of keeping consideration on the lives and property of the people in the course of production of petroleum in the manner so as to protect forests and natural heritages and avoid the loss.

Mine and Minerals Act, 2042 (1985)¹⁹ states the excavation of mine and mineral shall be conducted without creating notable adverse effect on the environment. For this, the authorized person to run the mining industry shall have to adopt reasonable and effective measures for environmental conservation. In excavating minerals, it is likely that there may be deflection in the utilization of the land and surface of the land, the forest and wildlife may extinct, water resources may be polluted by the liquid derived from the processing of water flowing through the minefield, the dust and smoke may pollute the air but such problems should not be created and there should not be unfavorable impact in the environment.

Town Development Act, 2045 (1998)²⁰ focuses on the restructure, expansion and development of towns in the context of growth of population and urbanization in addition to the formation of new towns to provide essential services and facilities to the people living in the city and maintain healthy facilities and ensure economic benefits of the general public.

19 Nepal Act Collection, Part 8 2072 (2015) Law Books Management Board, Kathmandu Page no.98

20 Nepal Act Collection, Part 11 2072 (2015) Law Books Management Board, Kathmandu Page no.27

*Tourism Act, 2035 (1978)*²¹ provides certain rules to abide by the mountaineering teams for the prevention of pollution in the process of climbing mountains. Specified conditions should be followed while climbing mountains in order to avoid pollution and specified fee should be paid for the management of garbage.

*Nepal Drinking Water Corporation Act, 2046 (1989)*²² has made a provision of providing regular clean drinking water in various parts of the country and proper management of drainage system. The issues of human rights and environment seem to have been connected at that time. In the same way, the legislature seems to be conscious in the manner so as to avoid disaster.

In Sub-article (4) of Article 26 of *Constitution of the Kingdom of Nepal, 2047 (1990)*²³, there is a provision of Policies of the State in which it is stated that the state will prioritize for the conservation of the environment through physical development by means of creating awareness among the people regarding clean environment with a view to avoid unfavorable impacts in the environment and there is also a special provision for the preservation of endangered wildlife, forest and vegetation. In the same way, the Supreme Court, under the dispute of public concern, has also contributed to some extent by means of legal action. Some of the representational awards are as follows: Issuance of order for required management for the distribution of clean drinking water²⁴ pursuant to Water Resources Act, 2049 (1992), to properly utilize, preserve, manage, develop and determine the beneficial utilization of water resources available in any form and keep the water resources free from environmental pollution and by the prevention of other harmful effects while utilizing them. In taking the permission for the production, transmission and distribution of electricity pursuant to Electricity Act, 2049 (1992), environmental study report is to be submitted as a prior condition. It has internalized the concept of assessment of environmental impact and sustainable development too. Directive order was issued for the formulation of law to preserve environment and further it was ordered to do the required works for the preservation of environment of Godavari.²⁵ Issuance of order to publicize the reason of felling the *peepal tree* existing in the premises of Maya Devi temple in Lumbini, the birthplace of Gautam Buddha has given emphasis for the preservation of the resources of natural heritages.²⁶ At the same time, another order was issued for the

21 Nepal Act Collection, Part 9 2070 (2013) Law Books Management Board Kathmandu Page no.54

22 Nepal Act Collection, Part 11 2074 (2017) Law Books Management Board, Kathmandu Page no.62

23 Top Bahadur Singh. (2008). The Constitutional Development of Nepal and Constitutional Records, Kathmandu, Pairavi Prakashan. Page no. 381

24 Prakash Mani Sharma and others Versus Nepal Drinking Water Corporation, 2047 (1990), Writ no. 2237

25 Surya Prasad Sharma Dhungel Versus Godavari Marble and Others 2049 (1992) Writ no.35

26 Kashi Dahal Versus Secretariat and Others 2052 (1996) Writ no. 2779

management of treatment plant to scientifically process urine and stool mixed in the Bagmati River in order to maintain its cleanliness.²⁷ These awards seem to have made the government responsible for the preservation of environment.

Nepal Tourism Board Act, 2053 (1997)²⁸ has aimed to develop Nepal as an attractive and reliable tourism spot in the international level and develop, expand and promote tourism related businesses by preserving and promoting natural and cultural heritages and environment of the country.

Animal Slaughter and Meat Inspection Act, 2055 (1998)²⁹ has paid attention to human health with the intention to prevent mixing in meat and other food items made from meat to maintain health and benefit of general public.

The Building Act, 2055 (1998) has aimed to regulate the construction of buildings for keeping them safe from earthquake, fire and other natural disasters as far as it is practicable. The law was formulated for the management of disasters; however, the part of implementation is very weak. At the same time, directive order was given for the implementation of recommendation regarding the impacts created by the use of firing range as indicated by the court in its study report³⁰. The order issued by the Court indicates that all the entities of the state are responsible for the conservation of environment and management of disaster. Order was issued by the court to give the permission of vehicles by determining the standard and continue its monitoring as well.³¹ This Order has been effective for the prevention of sound pollution and air pollution. In the cases where the Narayani River and the areas around it are polluted due to the harmful substances produced by industries and such pollution invites unfavorable effects and, as a result, the animal species in the Narayani River are in the verge of death, order is issued by the Court to set up the treatment plant according to the appeal regarding prohibition to control such pollution.³² This order has emphasized for keeping rivers clean, maintaining systematic industrialization and protection of animal species in the river.

Water Supply Management Board Act, 2063 (2006)³³ has aimed to provide reliable services to the people of municipality regions with drinking water and sanitation services in a regular, systematic, qualitative and convenient manner. It has

27 Prakash Mani Sharma and others Versus Nepal Drinking Water Corporation, 2052 (1996), Writ no.3017

28 Nepal Act Collection, Part 9 2070 (2013) Law Books Management Board, Kathmandu Page no. 191

29 Nepal Act Collection, Part 12 2072 (2015) Law Books Management Board, Kathmandu Page no. 202

30 Bhimsen Thapa Versus Secretariat of Council of Ministers and Others 2056 (1998) Writ no.3024

31 Bharat Mani Gautam Versus Secretariat of Council of Ministers and others 2057(1999) Writ no. 2791

32 Thaneshwor Acharya Versus Bhrikuti Paper Factory, 2057 (1999) Writ no.3098

33 Nepal Act Collection, Part 11 2074 (2017) Law Books Management Board, Kathmandu Page no.146

emphasized for the systematic urbanization.

In the *Interim Constitution of Nepal, 2063 (2006)*,³⁴ there was a provision of environment and fundamental rights to health and article 35 had a provision of maintaining clean environment, creating awareness, preserving bio-diversity and making a judicial distribution of the available benefit. It shows that the concept of sustainable development has been included under fundamental rights and policy of the state.

*Solid Waste Management Act, 2068 (2011)*³⁵ has aimed to reduce solid waste in the sources, reuse, process or dispose waste for the systematic and effective management and maintain clean and healthy environment by reducing the unfavorable impacts over public health and environment due to solid waste.

Earthquake Affected Restructuring Act, 2072 (2015) has been provisioned to accomplish the restructuring of damaged structures due to the devastating earthquake of 2072 (2015) in a sustainable, resilient and systematic manner and to promote national interest and provide social justice by rehabilitation and transfer of displaced people aftermath of the earthquake.

Millennium Development Goal (MDGs) and Sustainable Development Goals (SDGS)

Millennium Development Goal is the list of the first 15-year development plan of the 21st century prepared by 200 member countries under the initiative of the UNO in September, 2000 to make the world free from hunger, diseases, and insecurity for maintaining a prosperous, justifiable and well cultured society.³⁶ There were 8 goals that included the eradication of poverty and hunger, all-pervasive education, gender equality, women empowerment, reducing child mortality rate, improvement on the health of children including the epidemic like HIV/AIDS, ensuring environmental sustainability, and world partnership in development. Sustainable Development Goals were introduced as its second form that includes 17 objectives:³⁷ (1) End poverty in all its forms everywhere, (2) End hunger, achieve food security and improved nutrition and promote sustainable agriculture (3) Ensure healthy life and promote well-being for all at all ages, (4) Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all, (5) Achieve gender equality and

34 Top Bahadur Singh. (2008). The Constitutional Development of Nepal and Constitutional Records, Kathmandu, Pairavi Prakashan. Page no 467, 474

35 Nepal Act Collection, Part 17 2072 (2015) Law Books Management Board, Kathmandu Page no.36

36 Gopi Nath Mainali, Foundations of State Operation, 2009 Sopan Monthly, Kathmandu, Page no. 455

37 Sustainable Development Goals, 2017, National Planning commission, Kathmandu Page no 37

empower all women and girls, (6) Ensure availability and sustainable management of water and sanitation for all, (7) Ensure access to affordable, reliable, sustainable and modern energy for all, (8) Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all, (9) Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation (10) Reduce inequality within and among countries, (11) Make cities and human settlements inclusive, safe resilient and sustainable, (12) Ensure sustainable consumption and production patterns, (13) Take urgent action to combat climate change and its impacts, (14) Conserve and sustainably use the oceans, seas and marine resources for sustainable development, (15) Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss, (16) Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institution for all levels (17) Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development. For the period from 2016 to 2030, 17 Goals of Sustainable Development, 169 quantitative goals and more than 230 indices are proposed for the measurement and monitoring of Sustainable Development Goals. Goal-1, goal-5, goal-6, goal-11, goal-12, goal-13 and goal-15 are particularly related to the civil rights to clean and healthy environment. Quantitative goals were fixed for the upliftment in the manner so as to make the people tolerate negative strokes and disasters caused by economic, social and environmental factors. Under these goals, it is stated to achieve all-pervasive and justifiable access of drinking water. In the cases of maintaining sanitation and healthy/restorative condition, ensure sufficient and justifiable access to all and end the practice and habit of using open public places for the excretion of stool and urine, improve the quality of drinking water by reducing pollution, ending the habit of throwing garbage into water resources and reducing the disposal of harmful dirt and chemicals, substantially improve the capacity of the use of water in all sectors, execute the unified water resource management programmes in all levels, and the qualitative goals like conservation and restoration of ecological systems related to water in the hills, forests, swamps, rivers, underground water including lakes. The quantitative goal of providing safe, inclusive, accessible and all-pervasive approach in green public places is taken. The quantitative goal includes the management of chemical substances and all garbage effectively in all its life style from environmental point of view, essentially reducing the production of garbage by recycling and reusing it, ensuring that notices are maintaining consistency/harmony between sustainable development and nature. In addition to fatal/harmful factors

related to climate, reinforcement of the upliftment and adaptation capacity, integrating measure of climate change in the national policies, strategies and planning and reduction on the climate change, adaptation, reduction of impact, creation of prior awareness regarding it, the qualitative goals including improvement in education, consciousness, and individual and the institutional capacity are proposed. Preserve, restore and ensure the sustainable use of the circumference of the land and ecosystems of clean water in the land and their services, especially forest, marshland areas, Himalayas and dry areas, effectively systematize the execution of sustainable management of all kinds of forests and the quantitative goals like increasing the capacity of providing benefit required for fighting against desertification including ensuring the promotion/preservation of mountainous ecosystem are determined.

The Fifteenth Plan (Fiscal Year 2019/20-2023/24)

Nepal has also included in its main planning (F.Y.2019/20-2023/24) and brought it into implementation. As determined by Sustainable Development Goals, policy wise institutional programmes are implemented. Mainly three dimensions- social, economic and environmental dimensions are included in the Sustainable Development Goals. Implementing the goal of sustainable development according to the economic, social and environmental context of the nation, Nepal had started to internalize the goal of sustainable development. In preparing budget and programmes, provision was made to symbolize the programmes and projects in accordance with the goals of sustainable development. With the objective of internalizing it in the provincial and local planning and programmes, capacity development programmes are conducted.³⁸

The Constitution of Nepal

The Constitution of Nepal has made the following provisions:³⁹ Article 30- Right to clean environment: (1) Every citizen shall have the right to live in a clean and healthy environment. (2) The victim shall have the right to obtain compensation, in accordance with law, for any injury caused from environmental pollution or degradation. (3) This Article shall not be deemed to prevent the making of necessary legal provisions for a proper balance between the environment and development, in development works of the nation. Article 35- Right relating to health: (1) Every citizen shall have the right to free basic health services from the state, and no one shall be deprived of emergency health services. (2) Every person shall have the right to get information about his or her medical treatment. (3) Every citizen shall have

38 The Fifteenth Plan (Fiscal Year 2019/20-2023/24) 2076, National Planning commission, Kathmandu, Page no. 15

39 The Constitution of Nepal, 2072. Law Book Management Board, Kathmandu, Page no. 13, 14, 15, 18, 24, 25

equal access to health services. (4) Every citizen shall have the right of access to clean drinking water and sanitation. Article 36- Right relating to food: (1) Every citizen shall have the right relating to food. (2) Every citizen shall have the right to be safe from the state of being in danger of life from the scarcity of food. (3) Every citizen shall have the right to food sovereignty in accordance with law. Article 37- Right to housing: (1) Every citizen shall have the right to an appropriate housing. Article 44- Rights of the consumer: (1) Every consumer shall have the right to obtain quality goods and services. (2) A person who has suffered injury from any substandard goods or services shall have the right to obtain compensation in accordance with law.

Article 51- (g) Policies relating to protection, promotion and use of natural resources: (1) to protect, promote, and make environmental friendly and sustainable use of natural resources available in the country in consonance with national interest and adopting the concept of inter-generational equity and make equitable distribution of fruits according to the priority and preferential right to the local communities, (2) to make multi-purpose development of water resources, while according to the priority to domestic investment based on public participation, (3) to ensure reliable supply of energy in an affordable and easy manner and make proper use of energy, for the fulfilment of the basic needs of citizens, by generating and developing renewable energy, (4) to develop sustainable and reliable irrigation by making control of water-induced disasters and river management, (5) to conserve, promote, and make sustainable use of forests, wildlife, birds, vegetation and bio-diversity by mitigating possible risks to environment from industrial and physical development while raising awareness of general public about environment cleanliness. Article 251 (2)- The National Natural Resources and Fiscal Commission shall carry out necessary study and research work about environmental impact assessment required in the course of distribution of natural resources and make recommendations to the Government of Nepal. The Constitution has included the matters such as environment, human health, sustainable development and the matters related to the preplanning of disaster management as the fundamental right. In the same way, it has included issues of bio-diversity, environmental balance and preservation of nature under the policy of the state for implementation with priority. The provision of submitting the report to federal parliament regarding the condition of implementation has provided further certainty.

Disaster is a serious disruption of the functioning of a community or a society causing widespread human, material, economic or environmental, losses with exceeds the ability of the affected community or society to cope using its own resources. Disaster

is an event either natural or human induced that causes great distress or destruction. It is a social crisis which occurs when a hazard coincides with a vulnerable situation resulting in significant loss of life, threatening disruption and substantial physical damage.⁴⁰

Various types of disasters may occur from time to time in the society due to any natural causes and human activities. Such disasters lead the community, nation or even the whole world to difficult situation. In the situation where life is going on normally as usual, such disasters seriously affect the community, nation or even the whole world community. Abruptly created disasters may ruin the human life and in this difficult situation, management style or structure operated on a daily basis cannot function.

We have made a number of structures in the earth of natural form. We have installed nuclear plants. We have also established industrial factories emitting smoke of pollution that has made a hole in the green house. The main objective of disaster management is to remain safe from it. Movement in nature, sea storms, unsystematic settlement, random use of natural resources, formation of weak infrastructures, unscientific consumption of the land, flooding, landslides and rise of water level in the rivers, installation of nuclear plants, outbreak of new diseases, starvation, drought, dry weather, earthquake, epidemic, fire, road accidents, etc. are the main causes of disaster. For the disaster management, some efforts have been made from the ancient time. Rules were formulated and orders were issued for disaster management but they were not sufficient, rather they were reactive in nature. Along with the norms of modern governance philosophy after the political change of 2007 (1950), policy structure and programmes related to disaster management were run. Effective management could not take place since Nepal being a country prone to risk.

Considering this situation, *Natural Calamity Relief Act, 2039 (1982)* was formulated. In accordance with the Act, natural calamity relief committees and sub-committees were active in central/regional/district levels, however, there was no detailed planning for pre preparation regarding the earthquake.

In Article 115 of the *Constitution of the Kingdom of Nepal, 2047 (1990)* there was a provision of emergency power as (1) If any crisis arises in regard to the sovereignty or integrity of the kingdom of Nepal or the security of any part thereof, whether by war, external aggression, armed rebellion or extreme economic disarray, His Majesty

40 Rajan Khanal. (2066). *Contemporary Debates on Public Affairs Management*, Sopan Monthly, Kathmandu, Page no. 303

may, by Proclamation, declare or order a State of Emergency in respect of the whole Kingdom of Nepal or of any specified part thereof. In the same way, in Article 143 of the Interim Constitution of Nepal, 2063 (1990) there was a provision of emergency power as (1) If a serious emergency arises in regard to the sovereignty or integrity of Nepal or the security of any part thereof, whether by war, external aggression, armed rebellion or extreme economic disarray, the Council of Ministers of the Government of Nepal may, by Proclamation or Order, declare a state of emergency to be enforced in Nepal or any specified part thereof. Both of the constitutions have made a provision of disaster management created by human beings and nature. Since people become the victim of addiction to smoking either knowingly or unknowingly, so order is issued to promote awareness against smoking, make the tobacco products manufacturing company include the colored pictures in the smoking promoting materials, boxes, wrappers, packets and parcel packaging and outside the label indicating with a warning that smoking is injurious to health, and at the same time, it is also ordered that the state has a responsibility to prohibit the consumption of smoking in the public places and it should be publicly stated that smoking is injurious to health.⁴¹ This order has further made the state responsible. Article 267 (6) of the Constitution of Nepal⁴² states: The President shall, on recommendation of the National Security Council and pursuant to the decision of the Government of Nepal, Council of Ministers, declare the mobilization of the Nepal Army in the cases where a serious emergency arises in regard to the sovereignty or territorial integrity of Nepal or the security of any part thereof, by war, external aggression, armed rebellion or extreme economic disarray. The provision of emergency power in accordance with Article 273 (1), if a serious emergency arises in regard to the sovereignty, territorial integrity of Nepal or the security of any part thereof, by war, external aggression, armed rebellion, extreme economic disarray, natural calamity or epidemic, the President may declare or order a state of emergency in respect of the whole of Nepal or of any specified part thereof. If there arises a serious emergency in a state by a natural calamity or epidemic, the concerned state government may request the Government of Nepal to declare or order a state of emergency in respect of the whole of the state or of any specified part thereof in accordance with this Article. For the management of disaster, state of emergency can be declared, the army can be mobilized, and provincial government may also request the federal government for the declaration of the state of emergency and such state of emergency may be declared all over the country or only in a single part thereof.

41 NKP, 2071, Vol. 3, D.No. 9132

42 The Constitution of Nepal, Law Books Management Board, Kathmandu Page no.138,141

Regarding national restructuring, Section 4 of *Earthquake Affected Restructuring Act, 2072 (2015)*⁴³ has made a provision to fix the loss caused by earthquake, determine the priority of restructuring, approve the required programme along with the policy, planning, budget and schedule, approve the project relating to restructuring, recognize a suitable place for the restructuring of integrated settlement and development of integrated housing, development of integrated settlement, development of integrated housing, rehabilitation and transfer and prepare planning and execute and get such planning executed.

Industrial Enterprises Act, 2073 (2016) has made a provision of promoting national productivity and employment opportunity by creating convenient investment friendly industrial environment and also has emphasized environment friendly industries. The order issued to maintain healthy and clean environment by controlling environmental pollution during the fair of Gadimai, to maintain the quality of meat, to test and control, to implement Animal Slaughter and Meat Inspection Act, 2055 (1998) and to maintain clean and healthy environment in the Gadimai temple⁴⁴ and in the nearby areas has concurrently assimilated the environment and human health.

*Disaster Risk Reduction and Management Act, 2074 (2017)*⁴⁵ has emphasized on the disaster risk reduction and management to preserve the lives of the general public, and public, individual and personal property, natural and cultural heritages and physical infrastructures from natural and non-natural disasters by managing all the activities in a coordinating and effective manner. There is a provision of National Council on disaster risk reduction and management under the Chairmanship of the Prime Minister. The main functions of this council are to approve the national policy and planning related to disaster management, provide necessary directives to executive committee and the center, give policy related directives to the province and local level and make necessary management of financial resources accordingly. In the same way, there is provision of Executive Council under the Chairmanship of the Minister for Home Affairs, its main function is to prepare the national policy and planning on disaster management and submit it to the council, reduction of disaster risk subject to the national policy and programmes approved by the council, implement the planning and programmes by approving them in integrated and area wise policy on disaster countermeasures and recovery, determine the roles to played by the public, private and non-government including all the entities or organizations

43 Nepal Act Collection, Part 11 2074 (2017) Law Books Management Board, Kathmandu Page no.194

44 NKP, 2073, Vol. 9, D.No. 9686

45 Nepal Act Collection, Part 4 2075, Law Books Management Board, Kathmandu Page no. 237

and make such organizations or organizations include the matters relating to disaster management in their policies, projects and programmes thereof. There shall be National Disaster Reduction and Management Centre in the Ministry of Home Affairs. It implements and gets the approved planning, programmes and constructions from Council and Executive Committee, works as a central entity on disaster risk reduction and management, studies and makes a research on the matters climate change, utilization of the land and possible causes of various outbreaks and disasters, provide economic and provide required technical assistance to the provincial and local levels for the making planning regarding periodic planning, involve and make the non-government organizations, private sectors and local communities involve, make a proper search by forming a search and relief groups and provide relief in the federal, provincial and local levels and developing the capacity, as long as the disaster takes place, rescue the people from the disaster affected areas, coordinate with the concerned entities for the proper management of the security of the people in the area affected by disaster and make a proper management of the national and international rescue team and the cash and relief material received for humanitarian purpose aftermath of the disaster. In the same way, there are Disaster Management Committees in the provincial, district and local levels too. Such committees are active within their areas. Likewise, there is a provision of mobilizing security forces for the search, rescue and relief purpose and non-governmental organizations and civil society, private sectors and community also shall be active in the disaster management activities as per the provision. Internalizing the fundamental aspects of human rights, this Act has specified the coordinating role and responsibility of environment and disaster management, however, the aspect of implementation seems to be weak.

There is a provision of local market management, environment conservation and bio-diversity in Section of 11 (j) of the ***Local Government Operation, Act, 2074***⁴⁶ that includes the local trade, the demand of goods, supply and monitoring, policy related to consumer rights and benefits, law, criteria, implementation and regulation, and management of market and weekly organized market, production, supply and export projection, price determination and monitoring, examination of the quality of local goods and services, local policy, law, criteria, planning formation regarding environment conservation and bio-diversity and its implementation, monitoring and regulation, environmental risk reduction in the local level, control of sales and consumption of goods that cause adverse effects in the health of the people in the local level and control, monitoring and regulation of environmental pollution and harmful substances, management of sanitation and solid waste management in the

46 Nepal Act Collection, Part 17 2074 (2017) Law Books Management Board, Kathmandu Page no.80, 81, 87, 88

local level, adoption of low carbon oriented and environment friendly development in the local level, conservation and promotion of green areas in the local level, determination and management of environment conservation area in the local level and doing the works like environment conservation and bio-diversity. In the same way, Section 11 (y) of the Act includes the local policy, law, criteria, implementation, monitoring and regulation of the planning, disaster preplanning and countermeasure in the local level, pre-information system, search and rescue operation, pre-storage and coordination of relief materials, local embankment, control of rivers and landslide and management and regulation of rivers, mapping of disaster risk area and recognition of settlements and transfer, coordination and cooperation in disaster management, planning formation, implementation, monitoring and regulation, post disaster rehabilitation and restructuring in the local level, organizing programmes relating to disaster management based on the local level. Likewise, Section 11 (z) of the Act includes the provision of local policy, law, criteria regarding the conservation of watershed, wildlife, mines and mineral substances under watershed, wildlife, mines and mineral substances and implementation and regulation of the planning, conservation of the source of water, income generation, conservation of public land and income generating programme based on such land; soil conservation and watershed management related community adaptation, information and data collection relating to mine and mineral substances, assistance in the preservation and promotion of precious metals and stones, survey and excavation of the materials like stone, gravel, sand, salt, soil and slate and registration for consumption, license, renewal, repealing and management, publication of geological map, etc. This Section of the Act has included overall issues of disaster management.

The Right to Housing Act, 2075 (2018) has been enacted to make necessary provisions on providing the homeless Nepali citizens with appropriate and safe housing facility.

The Consumer Protection Act, 2075 (2018)⁴⁷ has been formulated for the consolidation of the legal provisions relating to consumer protection in order to protect and promote constitutional rights of the consumers obtain quality goods and services, provide judicial remedy for the enforcement of the rights obtained by the consumers, and provide compensation for harm and injury likely to be caused to the consumers.

The Right to Food and Food Sovereignty Act, 2075 (2018) has made a provision on the implementation of fundamental rights relating to food, food security and food

47 The Act enacted for the Implementation of Fundamental Rights Included in the Constitution of Nepal, 2075 (2018) Law Book Management Board, Kathmandu, Page No. 114

sovereignty of the citizens and making appropriate mechanism, and ensuring access of citizens to foods.

The Public Health Service Act, 2075 (2018) has made necessary legal provisions for implementing the right to get free basic health service and emergency health and establishing access of the citizens to health service by making it regular, effective, qualitative and easily available.

*Environment Conservation Act, 2076 (2019)*⁴⁸ is the main legal base for the conservation of environment in Nepal. This Act has clarified the scope and rights of environmental structure including the Department of Environment. It has made a provision of preparation of environment conservation planning; prohibition may be made on the import of risky garbage, monitoring and evaluation of abiding by environment related criteria, polluted area may be declared, provision relating to climate change, adaptation planning may be made, works can be done for the reduction and also the provision of taking part in carbon trade. Jurisdiction is specified in accordance with the federal system including the environment study report and its test. In addition to this, there is a provision of investigating the environment study report. Likewise, there is a provision of Environment and Climate Change Management Council. It has encouraged the pioneers and experts on environment in the policy level regarding environment. Since it is said that disaster is an emergency situation created in any area with adverse effects in the livelihood and environment followed by the loss of lives and property,⁴⁹ it is required to manage the disaster and environment simultaneously.

In addition to the above mentioned efforts, it has been difficult to move forward three issues simultaneously in Nepal. There are challenges regarding the amendment of old laws and policies on the issues of human rights, environment and disaster management so as to work in a coordinating manner, increase the structural coordination, make the laws and structures conducive to sustainable development goals, increase coordination among the governments of all levels, implement the common list of the constitution, systematize urbanization, make the preparation for disaster management, make the community based disaster effective, effective implementation of utilization of the land, development and expansion of integrated settlement, challenges of increasing the roles of civil society are still prevalent.

48 Kiran Kumar Baram. 2077 (2020). *SAMBHAK, Human Rights Journal*, VOLUME 17, Page no. 79

49 Kul Chandra Parajuli and Others, *Shrot Sanjibani*, 2077 (2020), Pragyan Publication Pvt. Ltd. Kathmandu Page no. 490

Conclusion,

The practice of connecting the issue of disaster and its management with human rights is not so old. Although it was included along with the concept of sustainable development, it has been the major agenda of the development of modern world at present. World organization and international charters and treaties are directly or indirectly involved with it. In the present age of globalization, almost all the countries have internalized it one way or the other. These issues have been included in the constitution, laws and development plans and programmes in Nepal and also have been the constitutional and legal organs for implementation. Civil society and the sector of non-governmental organization seem to have been active in this regard. However, expected return has not been achieved. To change the above mentioned challenges to opportunities, there should be implementation of laws and policies, coordination among the governments and further activity of the civil society is also essential.

The End

Promoting/Advancing Human Rights in the COVID 19 Pandemic and Recovery in Nepal

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Abstract:

This article tries to highlight the overall situation of human rights during pandemic, issues/challenges as well as opportunities and more importantly the way forward. Under the way forward, the article offers few immediate, inter-mediate and long terms approaches and interventions that the National Human Rights Institutions (NHRIs) and rule of law actors could think of to act. The way forward also details out with innovate approaches to make sure that the activities being carried out by the NHRIs reached out to the targeted communities at the ground. In addition, the article also focuses more on the remote engagement, continue coordination and collaboration among the multiple partners of human rights and justice and also strategic engagement with all the development partners, national international agencies, private sectors, CSOs and human rights defenders. One of the key message that article wants to give is about ICT induced innovation and work approaches. If the human rights communities are able to embrace it and implement, it could help enormously to reach out to the targeted communities even during such critical timing.

Keywords : Pandemic, Covid-19 human rights, justics, human rights defenders, NHRIs, CSOS, ICT

“Human rights put people center-stage. The responses that are shaped by and respect human rights result in better outcomes in beating the pandemic, ensuring healthcare for everyone and preserving human dignity. But they also focus our attention on who is suffering most, why, and what can be done about it. They prepare the ground now for emerging from this crisis with more equitable and sustainable societies, development and peace.”

- António Guterres, Un Secretary General, COVID-19 and Human Rights

Introduction:

The Covid-19 has globally been a critical challenge. It has been affecting multiple aspects of development including human rights, justice and rule of law. Addressing COVID-19 is foremost a public health concern; however, the impact of the crisis as well as the legal and policy responses developed by states to counter the spread of COVID-19 have much wider ramifications that affect a broad range of human rights, including people's to access justice in a timely, fair, and effective manner¹. As we have been countering, the crisis also presents specific justice 'needs', such as addressing the rise in gender-based violence, caste-based discriminations, vulnerability, hunger/starvations, exploitations and suppressions, and job insecurity. Consequently, making additional institutional reforms to strengthen the effectiveness of the justice chain in a radically shifted social context is urgently needed.

While commitment to human rights standards has increasingly been one of the focused areas of human rights all over the continent for several years, the COVID-19 pandemic has accelerated the erosion of the democratic fabric of our society, on which protection of human rights ultimately depends². The need to address many long-standing human rights issues such as discrimination, disparities, exclusions, disparities and suppressions have been recognized already. The pandemic has exacerbated these inequalities and violations of human rights, and the government is now expected to contribute substantially to these long-standing human rights issues.

Above mentioned injustices have immediate and long term impact not only on the right to health and services as well as civil and political rights vis-a-vis personal liberties but also on economic, social and cultural rights. It will ultimately jeopardize the right to development of people at a large. The right to equality, right to freedoms³, and all other rights associated with the wellbeing of humanity will also be affected massively. The persons who are already marginalized will have very difficult time in days to come. The economic crisis will put these groups society further behind, including children, women, Dalits older persons, persons with disabilities, indigenous peoples, lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons, displaced populations, stateless people, migrants, asylum seekers, victims of human trafficking, day laborer, and people living at or below the poverty line. The pandemic

1 Guidance Note; ensuring access to justice in the context of Covid 19 at 6, 2020

2 <https://www.coe.int/en/web/commissioner/-/the-impact-of-covid-19-on-human-rights-and-how-to-move-forward>

3 Right to freedoms of expression, assembly, speech, press and publications

is making inequalities more visible, such as acute disparities in wealth, access to health, employment and livelihood, and in the ability to adopt⁴. For example, the UN Secretary-General's Policy Brief: Impact of COVID-19 on Women shows a dramatic increase in domestic violence and child abuse and lack of protection for women and children due to measures requiring people to remain confined to their homes. It is vital that these women have access to justice and protection especially in the changed circumstance.

Furthermore, as the Committee on the Elimination of Racial Discrimination⁵ pointed out in August, the pandemic has seen "a significant increase in stigmatization, labelling and scapegoating – which often results in discriminatory acts, and even violence... in particular, against people of Asian and African descent; migrants; members of the Roma community; and those who are regarded as belonging to lower castes⁶.

Overview of the situation during Covid- 19 in Nepal:

Due to the COVID 19 crisis, the Government of Nepal (GoN) was bound to impose a lockdown or other prohibitory order to combat the outbreak of the pandemic. Although the government was very much conscious of the importance of making essential services available during the lockdown, there were some essential services that are often overlooked. Legal services are one of the services that are not adequately provided. The continued lockdown also created many issues amongst the poor and workers. They had to either abandon their job under the new government orders or pursue less/partial payment.

The prohibitory orders or lockdown are justified to safeguard the public health. However, they need to be managed in a way that also secures the basic liberties and freedoms. In general, emergency measures should incorporate five essential features in order to strike a proper balance between liberty and security. They should be in accordance with the law; based on a legitimate objective; strictly necessary in a democratic society; the least restrictive and intrusive means available; and not arbitrary, unreasonable, or discriminatory⁷.

Rule of law is an important element of democracy and needs to be ensured at any cost. There should not be any compromise in due process of law, equality before the

4 Ibid

5 . Committee on the Racial Discriminations as per the Convention on the Elimination of all forms of discriminations against racism.

6 Addressing the disproportionate impact of COVID-19 on minority ethnic communities; tatement by Michelle Bachelet, UN High Commissioner for Human Rights, 24 November 2020

7 Accountable Governance and Covid 19 Pandemic, World Justice Project 2020,

law, and promotion as well as protection and enforcement of basic human rights. The rule of law, as the new Constitution⁸ has recognizes as the backdrop of democracy, should be in full compliance and followed as a *mantra*. Likewise, the Constitution has provisioned 31 categories of human rights as fundamental rights. The list of the fundamental rights⁹ includes the important rights in regard to life, liberty, equality, dignity and prosperity. The continued lockdown and prohibitory order issues harmed directly and/or indirectly the enjoyment of freedoms¹⁰ enshrined in the Constitution as fundamental rights. On the other hand, as mentioned above, women, and other marginalized communities faced more vulnerability and found hundreds of cases of critical human rights violation of these communities.

Daily-wage laborers are facing many challenges. People working in private sectors are forced either to abandon the jobs or to be remunerated partially. INSEC, human rights organization in Nepal, reported that there were 1119 victims of human rights violations and abuses during the first lockdown period of 2020. The nature of the cases includes 64 victims of human rights violations, 1055 victims of human rights abuses induced by non-state actors, 476 victims of GBV, 284 victims of child rights, 11 cases of inhumane behavior, five victims of threats and intimidation, 112 victims of injuries, 102 victims of beatings, six victims of abductions, 31 victims of arbitrary arrest, 72 murder victims, two victims of state custody torture, and 12 victims of caste-based ethnic discrimination¹¹.

Justice service delivery in crisis:

Due to the continued lockdown and lack of innovative means to receive and handle abuses, people were deprived of access to legal remedy against the violations. All the formal, semi-formal and informal institutions were closed to provide necessary legal remedies nor there was an environment to receive and handle the cases. Hence, the access to justice part of survivors became one of the critical issues and many issues were not even heard at all. The courts nor traditional justice actors are in full operation. The human rights oversight bodies¹² with all other bodies are also closed

8 The preambulaLr provision of the Constitution of Nepal states; being committees to socialism based on democratic norms...impartial and competent judiciary and concept of the rule of law in order to build a prosperous nation.

9 Part third of the Fundamental Rights, Constitution of Nepal.

10 Article 17 of the Constitution unfolds this right with; freedoms of; expression, assembly without arms, form political parties, form unions and association, move the reside in any part of country and freedom to practice any profession etc.

11 Situation of Human Rights within Three Months of Lockdown, (From March 24 2020 to June 24 2020) <https://www.forum-asia.org/?p=32282>

12 Oversight bodies like National Human Rights Institutions including of the thematic commissions

or not fully in operations. Though the human rights networks¹³ were initiated and still in place to monitor the situation, due to lack of effective operations and secretariat supports and the lack of viable proximity, there was no substantial outcome received. The networks of course contributed fairly in terms of overseeing the situation and supplying necessary information and data to the commission. However, there was a huge expectation from the citizens from the network which was not the case unfortunately. Hence, it is time to think innovatively to address these issues and envision alternative means of continuing necessary legal services.

The commission has also initiated to develop an innovative way to receive and handle the cases on human rights. The app has also been envisioned to impart information about the crisis. However, the effective implementation of this component seems very imperative to reach out to the targeted population and achieve the outcomes.

Regarding the access to the legal recourse, due to the continued lockdown and prohibitory orders, the courts were either closed or under reduced operation. This negatively affected the overall access to justice on one hand and on other, it affected the provision of timely and fair hearings. Due to the long lockdown and slim operations of the courts, the pending cases were further stocked, aLrgely impacting the backlog cases. It is likely to affect the overall management of the backlogs in long run and further lingering the judicial and administrative proceedings. More importantly, it has affected the confidence of people at aLrge about the justice system. The Supreme Court realized this effect and decided to sort out the current procedural difficulties in relation to administration of justice and started to roll out the virtual case management system.

The immediate and priority cases (i.e. writ jurisdiction and on the applications for habeas corpus) are being heard by the court. Thousands of backlog cases already are pending at the court. People have been already disappointed with the delayed justice. The case management system is likely to be a critical issue in the days to come. In this regard, there is a need to have robust online case management system and coordination among different actors to address the backlog case. The NHRIs should also be part of continue coordination with justice sector actors.

in Nepal.

- 13 The National Human Rights Commission rolled out the idea of collaborative approach of human rights monitoring in partnership with other CSOs and commissions. The networks initially were comprised of Nepal Bar, Federations of Journalists and NGOs federation and recently revamped with the representation from different networks from federal to local level.

Impacts of the crisis on human rights and right to remedy:

In health crises, we heavily focus on health services only. Other issues as mentioned above are considered as the secondary and even not paid attention. It must be taken into account that certain groups are more vulnerable than others during such crisis. For example, women, Dalits, children, detainees, marginalized communities, persons with disability (PWD), sexual minorities, senior citizens, daily-wage workers, and migrant workers are the ones who directly/ indirectly become more vulnerable. It puts these groups further behind in the society and been subject to various forms of violence, discrimination, even mass killing and deprivation of livelihood and access to justice.

One of the groups highly affected is detainees and prisoners. Though the government has already released hundreds of prisoners, there is already a lack of robust system or criteria in this regard. There is a need to develop a comprehensive emergency plan for the detention center and prisons. Another group is women. News reports and public health analysis suggest that COVID-19 is disproportionately affecting women in many ways (i.e. increased vulnerability to domestic violence and increased psychological and physical stress due to disproportionate distribution of household work among family members). In this situation, there is even a need to have more vibrant and active remedial mechanisms to mitigate gendered impacts and ensure that crisis responses do not perpetuate gender inequity.

Equally, access to the information is crucial in times of crisis as it affects the health and life of the citizens. Again, due to the continued lockdown, dissemination of information to communities and targeted groups of society has become critical. All information about COVID-19 and relief packages as well as information regarding legal rights should be accessible and available in multiple languages, including for those with low or no literacy.

As mentioned above, the government had already imposed the lockdown as a preventive measure. The federal, provincial, and local governments have been managing the crisis through necessary measures as well. However, there are many confusions and overlaps which hinder the effective management of issues and challenges associated with such natural calamities. This confusion negatively affected the smooth delivery of services and management of the transition in this difficult time in Nepal.

In the federal context of Nepal, disaster management is an exclusive competency of local government, but also a concurrent area for all three levels of government. Nepal

enacted its Disaster Risk Reduction and Management Act 2017 (DRRM) as one of the first sectoral federal laws after the promulgation of the Constitution. The Act defines a pandemic (such as COVID-19) as a non-natural disaster. The Act sets out the institutional mechanisms for disaster management from the federal to the local level, with very clear roles and responsibilities given to each level of government. Several sub-national governments have enacted their own disaster management laws, with their highest leadership usually chairing disaster management committees.

The response to COVID-19 in Nepal was substantially led and controlled by Federal Government. The role of the province and local governments was very limited to implementing the decisions made by the mechanisms (i.e. Covid-19 Crisis Management Center (CCMC) established at the federal level). As a decentralized mechanism, there was also a replica of CCM led by the Chief Minister in each province.

In discharging the roles and responsibilities, the province and local governments were focused more on establishing their own testing labs and managing medicines and other essential services. Likewise, as the outcome of the federalism, the local and provincial governments are extensively engaged in developing necessary plans and programmes for the relief and recovery packages. The intergovernmental relationship act which has just been enacted can also guide all the government to facilitate necessary level of coordination on such issues like disaster management.

Opportunity and Challenge:

Every crisis comes with an opportunity. If we recall, the Judiciary of Nepal started with an open bench under the tents during the last earthquake in 2015. In partnership with UNDP, the Ministry of Law and Justice along with the Nepal Bar Association (NBA)¹⁴ started to set the mobile legal aid clinics to provide legal services to the needy and vulnerable. Apart from these, the National Human Rights Commission (NHRC) introduced the mobile human rights camps to monitor and provide necessary human rights counselling to the poor and vulnerable. This is a time to think differently to introduce measures and means to continue the court and legal operations for the needy and vulnerable even during and post COVID-19.

National Human Rights Institutions (NHRIs) started handling human rights issues proactively during the pandemic. Like the Human Rights Commission in Nepal,

14 The mobilize legal clinics mobilized massively in the provinces and have reached out to the communities. The young lawyers were basically deployed to gather the information, make analysis and provide necessary services to sort those out far far as possible

the NHRIs of Nigeria has also developed an app for the electronic monitoring, documentation and reporting of human rights violations in collaboration with other stakeholders. In Armenia, the NHRIs has set up a 24-hour hotline for victims of domestic abuse to receive and handle the complaints including intimate partner violence. The Georgian NHRIs have also called for special attention to the issues of domestic violence and taken concrete actions to make sure that the victims of violence have information and necessary assistance to have access to justice. The common framework of the NHRIs called the Global Alliance for the National Human Rights Institutions (GANHRI) has provided NHRIs with an extensive support and has found ways to collaborate and exchange practice for example through interactive webinars and learning communities for inspiration and mapping of good practice. It has been providing support to more than 100 national human rights institutions to share information and resources, develop partnership and identify good practices.

In a nutshell, Information, Communication, and Technology (ICT) is one of the means that law enforcement agencies should be aware of and be active in introducing and institutionalizing in forms of online and remote court systems. It also requires the digitalization of the case management and online hearing for which all the justice sectors need to work together. The court and law enforcement agencies, clients and witnesses also need basic support on ICT. Client should also have access to the online case management system. ICT is applicable not only in court but also in all the key actors of law enforcement agencies. Hence, a joint strategy to address crisis might be a useful framework to bring all the stakeholders on board as we know that it requires integrated efforts.

Personal protective equipment (PPE) should have been provided to all justice sector actors, as well as defendants and accused, who had to attend court hearings or in closed settings as far as possible. Necessary policies and procedures must be established for remote hearings, including processes to determine priority cases.

The human rights defenders and CSOs do also have extensive responsibilities to provide necessary information, monitoring and assessment of the situation, coordination with different actors and stakeholders and more importantly holding the concerned government agencies accountable of their roles and responsibilities for service delivery and empowerment of the poor and vulnerable communities.

The role of the private sector is often overlooked. They have also an enormous role to promote and respect human rights. In the context of pandemic like COVID-19, they play an essential role not only in respecting the human rights but also advancing human rights. Workers had witnessed many issues during the lockdown. A study

conducted by the Access to Justice Project, UNDP showed that many of the workers were deprived of opportunities of virtual management of work and other benefits introduced by the companies.

Furthermore, a study also found a very dark role of the private sector globally. Overall, it states that the majority of companies, across all sectors, have failed so far to demonstrate a meaningful response to the crisis, and still have a long way to go to adequately manage the risks and impacts of COVID-19. Given the amount of public financial support provided by governments around the world since the beginning of the crisis, the fact that two thirds of companies failed to describe steps taken to avoid redundancies is particularly concerning. The study further says that certain basic steps to manage the human rights risks and impacts of the crisis have been widely adopted by companies, with a few also demonstrating leading practices. This shows that business can place human rights at the heart of their response to the crisis if they choose to¹⁵.

Lawyers have an important role in representing different groups of people when they are unable to secure access to essential services. The paralegals can support the efforts on legal empowerment by providing access to information on their rights and guidance on how to access benefits. NBA needs to introduce necessary hotlines and should be well-equipped with up-to-date information on the solutions and protection measures. The Attorney General Office can also introduce remote monitoring of prisons, correction centers, and detention centers.

Under the recovery packages, the justice sector institutions should develop a recovery plan and consider reinforcing capacities of justice sector actors to respond to the situation in a way that renews trust in institutions. The legal empowerment strategy must be developed to address the impact of the crisis.

Take Away:

Under the international law, it is also said that “public health may be invoked as a ground for limiting certain rights in order to allow a state to take measures dealing with a serious threat to the health of the population or individual members of the population. These measures must be specifically aimed at preventing disease or injury or providing care for the sick and injured.” More recently, in the context of COVID-19, the UN Human Rights Committee and other bodies have underscored

15 COVID-19 and human rights Assessing the private sector’s response to the pandemic across five sectors, Corporate Human Rights Benchmark (CHRB), World bench Marking Alliance, 2021

the importance of strictly limiting the scope of emergency measures in substance, time, and geographical space to allow a return to normalcy as soon as possible, with full respect for rights to life, non-discrimination, and other non-derogable rights¹⁶

The deep-rooted flaws in the justice system and class-based service delivery system have been fully laid bare by the COVID-19 crisis. Kindly be noted that the pandemic has not created an entirely new set of risks and impacts, rather it exacerbated risks and impacts that have existed for a long time, many of which are deep-rooted and systemic. It has also made them more visible.

The ongoing crisis has demonstrated the crucial importance of social justice, equality and inclusion, and the human rights which underpin them, in the achievement of a sustainable recovery from the pandemic and of the Sustainable Development Goals (SDGs). The targets and milestones set in the localization plan of SDGs of the Government of Nepal can only be met if there is no one left behind (LNOB) in the process and no respect for human rights by companies. The LNOB is all about human rights of those who are far behind from the development and realization of rights.

Respecting, protecting and fulfilling human rights is primarily the responsibility of state authorities. In particular, the state authorities are expected to protect/respect the human rights even during the extra-ordinary situation. During the emergency situation, some of the rights are derogated; however, in the democratic context, people do expect much from the government to come up with necessary means and measures for the people to enjoy the basic rights. In the current context, it is crucial to ensure that emergency legislation remains in place only for the time necessary to stop the pandemic and to introduce the least intrusive measures possible, and to ensure that all this is rolled back as soon as authorities have the pandemic under control. The government must think of a special umbrella programme to address next crisis and prepare accordingly.

Defending and promoting human rights is about the big and the small actions we all take every day; however, if we want the society to function more in line with human rights standards and principles, we must all make an extra effort and move out of

16 UN Human Rights Committee, Statement on Derogations from the Covenant in Connection with the COVID-19 Pandemic, 30 April 2020, <https://www.ohchr.org/Documents/HRBodies/CCPR/COVIDstatementEN.pdf>; Venice Commission, Report - Respect for democracy, human rights and the rule of law during states of emergency, reflections, taken note of by the Venice Commission on 19 June 2020 by a written procedure replacing the 123rd plenary session, 19 June 2020 [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)014-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)014-e) (“[Emergency] measures are ... subject to the triple, general conditions of necessity, proportionality and temporariness.”)

our comfort zones. The government and other machineries should be more proactive and assertive in terms of creating necessary amicable environment to deal with such situation and protect and promote human rights. Not only the state authorities, but also all other stakeholders including private sectors, CSOs, human rights defenders and international communities have to do more.

For a start, the human rights community – including international organisations - should take a long hard look at itself. It seems that we have not been sufficiently effective in ensuring that everybody understands why human rights are important for all. It is also perceived that violations of certain human rights, especially some economic and social rights, should probably be given more prominence on our agenda but not equally on other human rights which are more linked with human well-being (i.e. liberties and freedoms). We must become more inclusive in the way we defend human rights. We deliver public service in the interest of society, but we do not own that service. We talk for and sometimes with people who have suffered human rights violations. But we rarely empower them to speak for themselves.

The lawyers, scholars, intellectuals and concerned citizens must enter the arena of public debate on human rights and engage with society at a large scale to overcome misrepresentations and dispel prejudice. The lawyers have more to do on access to justice by offering free legal aid services. As one of the key stakeholders of private sectors, they have to stand ready to offer the services for poor and vulnerable communities in pro bono basis. The Nepal Bar, association of lawyers in Nepal, has come up with a separate guideline to roll out the free legal aid services as a corporate duty for all individual lawyers in Nepal¹⁷.

In regard to the information and communication at local level, the media has a huge role. They must be part of the solution by using precise terms that inform the public factually and objectively on all matters of public interest and try to avoid sensitivities, improper language, or reporting in ways that may raise the alarm unnecessarily or provide a platform for divisive views to spread.

The United Nations Declaration of Human Rights (UDHR) has set the overall standards and it is important we protect and promote the idea grounded in it. We should work to defend not only our rights but of those who are far behind and ‘unheard’. Hence, we really need to engage with all concerned stakeholders and need to make clear that human rights are not an abstract concept, but very concrete issues

17 Nepal Bar Association has introduced a guideline on pro bono legal aid services. Though the free legal aid services from the lawyers are still considered as the volunteer services, however it has been able to convey that message that lawyers are bound to offer free services for the society.

and it is our liability to work for it.

The Constitution of Nepal contains many rights as the fundamental rights and establishes independence for the Judiciary and established a localized version of the justice system in the name of Judicial Committee.

Despite these provisions, people still have less access to justice during the crisis. There is no preparedness in terms of normative frameworks to deal with such an unexpected and unpredictable crisis. The online system is not yet internalized into the government administrations.

At the community level, oversights and interventions are needed to make the law enforcement agencies more accountable towards legal duties and obligations. The paralegals can play an important role to impart legal information to the people and empower people to claim their rights even during the crisis.

The law enforcement agencies should work towards developing a business and continuity plan and an ICT system to introduce online and virtual court system. It requires huge resources and technical expertise. However, such efforts are important in demonstrating commitment and crisis response plan so that it can initiate a dialogue/discourse towards making the justice system modernized.

Finally, If the strategic coordination and collaboration are well strengthened and handline, many of the issues highlighted above are handled. And also, the innovate approach in terms of handling the cases and reaching out to the communities has been imperative to run the business in an active even during disaster like Corona.

संवाहकमा अङ्क १ देखि १७ अङ्कसम्म प्रकाशित लेखका शीर्षक र लेखकहरू

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जर्नलको लागि लेखहरूमा अबलम्बन गर्नु पर्ने ढाँचा

विभिन्न अनुसन्धान पद्धतिहरूमध्ये हामीले पाद टिप्पणी (Foot notes) मा एक रूपताको लागि APA सैलीलाई अपनाएका छौं । आदरणीय लेखकज्यूहरूलाई यसै विधिलाई अबलम्बन गरिदिनुहुन हार्दिक अनुरोध छः

शीर्षक (Heading)

Bold or *Italicized* and Centered गरी पेजको सबैभन्दा माथि तर शीर्षकभन्दा तल राख्ने ।

सार-सङ्क्षेप (*Abstract*)

- ◆ The First line of the paragraph is not indented.
- ◆ पेजको चारैतिर एक/एक इन्च खाली छोड्नुपर्ने ।
- ◆ लेखको शीर्षकलाई **Bold** and Centered गर्ने ।
- ◆ First line of each paragraph is indented .5 inch
- ◆ Paragraph Format, set 'Before & After' to 0.

Font Size :

Article in English :

Times New Roman : 12 pt

नेपाली लेखको लागि :

प्रीति फन्ट

साइज : १६

Heading Level Format

Use title case for all headings. This means that the first letter of all major words should be Capitalized. The formatting from the Heading Level 1 to 5 is given below.

1. Centered, Bold, Title Case

Paragraph text begins one line below the heading (with 0 Spacing before and after)

2. Flush left, Bold, Title Case

Paragraph text begins a double - spaced line below the heading.

3. Flush Left, Bold Italicized, Title Case

Paragraph text begins a double - spaced line below the heading.

पाद टिप्पणी गर्दा लेखकको नाम, थर, कृतिको नाम, प्रकाशक, प्रकाशित मिति, पृष्ठ आदि उल्लेख पाद टिप्पणीको प्रयोग गर्दा पृष्ठको अन्त्यमा गर्न अनुरोध छ । सो सिधा रेखामुनि अङ्कित गर्न पनि अनुरोध छ ।

जस्तै : डा. विजय सिंह सिजापतिको पुस्तकमा^१ बाल अधिकारको संरक्षणको विषयमा विशेष चर्चा गरिएको छ ।

क) पाद टिप्पणी गर्दा ध्यान दिनुपर्ने कुराहरू

१) एक लेखक भए

लेखकको नाम थर, शीर्षक, प्रकाशनसम्बन्धी विवरणहरू, प्रकाशन मिति, पृष्ठ

उदहारण : डा. विजय सिंह सिजापति, बाल अधिकार र न्याय, (काठमाडौं : पैरवी प्रकाशन वि.स. २०७०), पृ. १० ।

सीके प्रसाईं, आजको सरल राजनीति तथा व्यवहारिक राजनीतिको रूपरेखा, (काठमाडौं : पैरवी बुक हाउस प्रा.लि. : २०७७

कैलाशकुमार सिवाकोटी, आधारभूत मानव अधिकार (दोस्रो सं.), (काठमाडौं : पैरवी बुक हाउस प्रा.लि., २०७७)

प्रा.डा. जगदीशचन्द्र रेग्मी, नेपालको वैधानिक परम्परा (तेस्रो सं.), (काठमाडौं : पैरवी बुक हाउस प्रा.लि., २०७७)

२) दुई लेखक भए

केदारप्रसाद शर्मा र माधवप्रसाद पौडेल, नेपाली भाषा र साहित्य शिक्षण,

(काठमाडौं : एम.के. पब्लिसर्स एण्ड डिस्ट्रिब्युटर्स, २०६०), पृष्ठ १२-१५ ।

३) तीन लेखक भए

पारसमणी भण्डारी, रामनाथ ओझा र डोलराज अर्याल, भाषिक अनुसन्धान विधि, (काठमाडौं :

पिनाकल पब्लिकेशन, २०६८) ।

४) तीनभन्दा बढी लेखक भए : तीन लेखकको लागि जस्तो हो, त्यस्तै गर्नु अनुरोध छ । त्यसैगरी २० जनाभन्दा

बढी भए पहिले मूल लेखकको नाम थर लेख्ने र पछि अन्य लेख्ने, अरू विवरणहरू यथावत् नै रहने छन् :

हरेराम काजी र अन्य, कानूनको शासन र मानव अधिकार, (भक्तपुर, पौडेल प्रकाशन, २०७०) ।

५) सम्पादित पुस्तक वा अन्य लेख : सम्पादित गरिएका रचनाहरूमा नाम थर(सम्पा., शीर्षक, प्रकाशनसम्बन्धी विवरण, वर्ष र पृष्ठ ।

जस्तै : श्रीधरप्रसाद लोहनी र रामेश्वरप्रसाद अधिकारी (सम्पा.), एकता बृहत् नेपाली-अङ्ग्रेजी कोश,

(काठमाडौं : एकता बुक्स, २०६७) ।

६) कुनै सम्पादित पुस्तकभित्रको निबन्ध वा लेख :

जस्तै : जगन्नाथ अधिकारी, खाद्य सुरक्षा : विश्वव्यापीकरणको सन्दर्भमा, भित्र, मेरी डेशन वा प्रत्यूष वन्त

(सम्पा.), नेपालको सन्दर्भमा समाजशास्त्रीय चिन्तन, (ललितपुर: सोसल साइन्स बहाः, सन् २००४),

पृ.२१७-२४९।

७) कुनै संस्थाले निकालेको प्रकाशन :

संस्थाको नाम, प्रकाशित डकुमेण्टको नाम, प्रकाशनसम्बन्धी विवरण, प्रकाशन वर्ष ।

जस्तै : नेपाल सरकार कानून, न्याय, संविधानसभा तथा संसदीय मामिला मन्त्रालय, मानव अधिकारसम्बन्धी

१ डा. विजय सिंह सिजापति, बाल अधिकार र न्याय, (काठमाडौं : पैरवी प्रकाशन, वि.स. २०७०) ।

अन्तर्राष्ट्रिय महासन्धिहरूको संगालो , (काठमाडौं : नेपाल सरकार कानून, न्याय, संविधानसभा तथा संसदीय मामिला मन्त्रालय, वि.सं. २०७२) ।

८) अनुदित पुस्तक वा अन्य सामग्री :

१) यदि लेखक थाहा भए :

लेखकको नाम थर, कृतिको नाम लेखिसकेपछि अनुवादकको नाम थर लेखेर अन्य विवरण यथावत राख्नुपर्नेछ ।

जस्तै : नारायण वाग्ले, पाल्पासा क्याफे (Palpasa Cafe), अनु. विकास संग्रौला, (काठमाडौं : नेपालया, सन् २००५) ।

२) यदि लेखक थाहा नभए :

जस्तै : ढुण्डिराज कोइराला (अनु.), नेपाली भाषामा श्रीमद्भागवत् रहस्य (दोस्रो सं), (काठमाडौं : मञ्जरी पब्लिकेशन, वि.सं २०७३) ।

नारायण ज्ञवाली (अनु) धम्मपद: सन्दर्भ, शब्दार्थ र भावार्थसहित नेपालीमा पद्यानुवाद, (काठमाडौं जनता प्रशारण तथा प्रकाशन लिमिटेड, २०७५)

९) पत्रिकाको सम्पादकीय लेख:

माटोको स्पन्दन बुझ्ने कवि सम्पादकीय, गोरखापत्र, (१२० (१०७), २०७७ भदौ ४), पृ.५ ।

१०) पत्रिकाको लेख :

तारा वाग्ले, 'पर्यटन उकास्न 'प्याकेज', गोरखापत्र, भदौ ७ (वर्ष १२०, अङ्क ११०, २०७७), पृ. ५, काठमाडौं : गोरखापत्र संस्थान ।

११) सरकारी प्रकाशन :

सरकारी संस्थाको नाम, शीर्षक, प्रकाशकसम्बन्धी विवरण, प्रकाशन वर्ष, पृष्ठ पनि उल्लेख गर्न सकिन्छ । नेपाल सरकार अर्थ मन्त्रालय, आर्थिक सर्वेक्षण २०७६/०७७, (काठमाडौं : नेपाल सरकार अर्थ मन्त्रालय, २०७७) । राष्ट्रिय मानव अधिकार आयोग, वार्षिक प्रतिवेदन २०७५-२०७६, (ललितपुर : राष्ट्रिय मानव अधिकार आयोग, २०७६) ।

१२) पत्रपत्रिका वा जर्नलको लेख :

महेश शर्मा पौडेल, राष्ट्रिय मानव अधिकार आयोगको अनुसन्धानसम्बन्धी अधिकार, संवाहक : मानव अधिकार जर्नल, (वर्ष ५ अङ्क १३, २०७६, पुष्प) पृ.९२-१११ ।

पूर्णचन्द्र भट्टराई, वैदेशिक रोजगार र नेपाल, संवाहक : मानव अधिकार जर्नल (वर्ष ५, अंक १४, २०७६), पृ. ७९-८८, ललितपुर : राष्ट्रिय मानव अधिकार आयोग ।

१३) शोधपत्र तथा अप्रशित दस्तावेजहरू:

हरे राम आचार्य, नेपालमा लोकभाका र पप गीत बीचको तुलनात्मक अध्ययन, अप्रकाशित शोधपत्र स्नातकोत्तर तह, नेपाल : सङ्गीत विश्वविद्यालय, २०७६) ।

प्रित शुक्ला, नेपालमा चिया खेती : एक अध्ययन, अप्रकाशित, २०७४ ।

१४) इन्टरनेटबाट लिइएका लेख :

राष्ट्रिय मानव अधिकार आयोग, राष्ट्रिय मानव अधिकार आयोगबाट भएका मानव अधिकारसम्बन्धी महत्त्वपूर्ण निर्णयहरू, (वर्ष ४ अङ्क ६, २०७६) ललितपुर: राष्ट्रिय मानव अधिकार आयोग, मिति २०७७ भदौ १२ मा https://www.nhrcnepal.org/nhrc_new/doc/newsletter/Importation_Nirnayharu_NHRCNepal_2077_compressed.pdf बाट पुन:प्राप्ति

यदि कुनै लेखको Digital Object Identifier (DOI) (डिजिटल अब्जेक्ट आईडेन्टिफायर) भए त्यसको <https://doi.org/10.1080/28937/2070>

१५) टेलिफोन वार्ता

कल्पना नेपाल आचार्य, टेलिफोन अन्तरवार्ता, (२०७७ भदौ १०) ।

१६) टेप रेकर्ड सामग्री

सुदूरपश्चिम लोक नृत्य, मिमिरी रेकर्डिङ, (काठमाडौं : शिव डिजिटल ल्याब, २०७०) ।

१७) दोस्रो पटक सोही लेखकको सोही कृति प्रयोग गर्नुपरेमा ऐजन/पूर्ववत् शब्दको प्रयोग गरिन्छ । (खतिवडा, २०७५) कुनै पहिले नै सन्दर्भाङ्कन भइसकेको लेखलाई लगतै नभइ अझ पछि पुनः सन्दर्भाङ्कन गर्ने परेमा पूर्ववत्को प्रयोग गर्न अनुरोध छ ।

उदहारण :

१) प्रा. कृष्ण पोखरेल, राजनीतिशास्त्रको सिद्धान्त, (काठमाडौं : एम.के पब्लिशर्स एण्ड डिष्ट्रीब्यूटर्स, २०७२), पृ.७३ ।

ऐ.ऐ । (लगतै सन्दर्भाङ्कन गर्नु परेमा)

Ibid (पूर्ववत्) वा (ऐ) प्रा. कृष्ण पोखरेल । (लगतै नभइ अझ पछि पुनः सन्दर्भाङ्कन गर्नु परेमा)

२) जगन्नाथ अधिकारी, खाद्य सुरक्षा : विश्वव्यापीकरणको सन्दर्भमा, मेरी डेशन वा प्रत्युष वन्त (सम्पा.), नेपालको सन्दर्भमा समाजशास्त्रीय चिन्तन, (ललितपुर: सोसल साइन्स बहाः, सन् २००४), पृ.२१७-२४९ ।

ऐ.ऐ. (पृ.२१२)

१८) *supra note* / *infra note* को प्रयोग : *supra note* पूर्वाक्त भन्नाले यदि कुनै प्रसङ्ग वा लेख वा अन्य कुनै लेखको अंशलाई पुनः सन्दर्भाङ्कन गर्नुपर्ने भएमा विशेषतः कानूनका विषयमा यसको प्रयोग गरिन्छ तर मुद्दा, ऐन र संविधानजस्ता विषयहरूको पुनः सन्दर्भाङ्कन गर्दा *supra note* प्रयोग गर्नुहुँदैन ।

महेश शर्मा पौडेल, राष्ट्रिय मानव अधिकार आयोगको अनुसन्धानसम्बन्धी अधिकार, संवाहक : मानव अधिकार जर्नल, (वर्ष ५ अङ्क १३, २०७६, पुस) पृ.९२-१११

जस्तै : उल्लिखित पाद टिप्पणीलाई पुनः प्रयोग गर्दा *supra note* १ भनी गर्नपर्दछ ।

infra note अनुरोक्त को प्रयोग पछाडिको लेखलाई अगाडि सन्दर्भाङ्कन गर्नु परेमा गरिन्छ । *infra note* को प्रयोग गर्दा पुस्तकको लागि भने प्रयोग गर्न पाइँदैन । यसको प्रयोग *supra note* जस्तै गरिन्छ ।

ख) सारांश लेख्दा ध्यान दिनुपर्ने कुराहरू :

लेख पूर्णरूपमा तयार भएपछि त्यसको पाठकलाई थोरै वा सारमात्र पढेर लेख सम्बन्धमा दिशानिर्देश गर्न सारांश लेख्नु आवश्यक हुन्छ । सारांश १५०-२५० शब्दको हुनुपर्दछ । सारांशमा निम्न कुराहरू समावेश गरिदिनुहुन अनुरोध छ:

- परिचय वा पृष्ठभूमि (Introduction or Background)
- अनुसन्धानात्मक लेखको उद्देश्य (Research Objectives)
- विधि (Methodology)
- महत्वपूर्ण खोजहरू (Important Findings)
- निष्कर्ष (Conclusion)

आयोगका केही प्रकाशनहरू

१. वार्षिक प्रतिवेदन, आ. व. २०७०/७१, २०७१/७२, २०७२/७३, २०७३/७४, २०७४/७५
२. विद्यालय शिक्षकहरूका लागि मानव अधिकार स्रोत पुस्तिका, २०७१
३. रणनीतिक योजना (२०१५-२०२०), २०७१, दोस्रो संस्करण २०७३, तेस्रो संस्करण २०७४
४. राष्ट्रिय मानव अधिकार आयोगको आर्थिक प्रशासनसम्बन्धी नियमावली, २०७१
५. भूकम्प (२०७२) प्रारम्भिक अनुगमन प्रतिवेदन, २०७२
६. नेपालको संविधान घोषणाअघि र पछि भएका आन्दोलनको क्रममा मानव अधिकारको अवस्था अनुगमन प्रतिवेदन, २०७२
७. राष्ट्रिय मानव अधिकार आयोगका कर्मचारीको सेवा, शर्त र सुविधासम्बन्धी नियमावली, २०७२, दोस्रो संस्करण २०७४, तेस्रो संस्करण २०७४
८. संवाहक, अङ्क-१, २०७२, अङ्क-२, २०७३, अङ्क-३, २०७३, अङ्क-४, २०७४, अङ्क-५, २०७४, अङ्क-६, २०७४, अङ्क-७, २०७४, अङ्क-८, २०७५, अङ्क-९, २०७५, अङ्क-१०, २०७५, अङ्क-११, २०७६, अङ्क-१२, २०७६, अङ्क-१३, २०७६, अङ्क-१४, २०७६, अङ्क-१५, अङ्क-१६, २०७७
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२१. भूकम्प प्रभावितहरूको अनुगमन प्रतिवेदन, २०७४
२२. निर्वाचन अनुगमन भाग -१ (२०७४) भाग-२ (२०७५)

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५१. अनौपचारिक क्षेत्र विशेषगरी मनोरञ्जन तथा सत्कार सेवाका कार्यरत महिला तथा बालबालिकाहरूको अवस्था र वैदेशिक रोजगारीमा गएका पुरुषहरूको श्रीमतीहरूले भोग्नुपरेको सामाजिक मुल्य (आर्थिक हिंसा, पारिवारिक हिंसा, सामाजिक लान्छना, घरायसी कार्यबोझ) सम्बन्धमा अध्ययन अनुसन्धान प्रारम्भिक प्रतिवेदन ।
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६७. अपाङ्गता भएका व्यक्तिहरूको अवस्था, २०७७
६८. कोभिड १९ र महामारीमा नेपाली अप्रवासी श्रमिकहरूको अधिकार प्रतिवेदन, २०७७
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संवाहकका लेखकहरू

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- (१) राजुप्रसाद चापागाई (+अङ्क ४)
- (२) विष्णुप्रसाद तिमिल्सेना (+अङ्क ५)
- (३) बिनोदकुमार वि.क. (+अङ्क ४)
- (४) डा.शङ्करकुमार श्रेष्ठ
- (५) ओमप्रकाश अर्याल (+अङ्क ७)
- (६) डा. हरिहर वस्ती
- (७) डा. रंजीतभक्त प्रधानाङ्ग
- (८) डा. श्रीप्रकाश उप्रेती (+अङ्क ७)
- (९) डा. लोकनाथ भुषाल
- (१०) विशाल खनाल (+अङ्क १३)
- (११) माधव रेग्मी (+अङ्क ३)
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- (१३) जायश्वर चापागाई
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- (१५) ललितबहादुर बस्नेत
 - (१६) तेजमान श्रेष्ठ (+अङ्क ६)
 - (१७) माधवकुमार बस्नेत
 - (१८) सूर्यबहादुर देउजा (+अङ्क १३)
 - (१९) महेश शर्मा पौडेल (+अङ्क ३, ५, ८, १२, १३, १५, १७)
 - (२०) डा. गोविन्द सुवेदी
 - (२१) टेकनारायण कुंवर (+अङ्क ५)
 - (२२) सलिना काफ्ले (+अङ्क ६)
 - (२३) उदयन रेग्मी
 - (२४) डा. चन्द्रकान्त ज्ञवाली (+अङ्क ४)
 - (२५) सोम लुईटेल (+अङ्क ७, १४)
 - (२६) लोकेन्द्र पनेरु (+ अङ्क ८)
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- (२७) मोहन बन्जाडे
 - (२८) संजीवराज रेग्मी (+ अङ्क ८)
 - (२९) गोविन्द शर्मा वन्दी

- (३०) कृष्णजीवी घिमिरे (+अङ्क ७, १२)
- (३१) श्रीराम अधिकारी
- (३२) डा. टीकाराम पोखरेल (+अङ्क ११)
- (३३) डा. अश्वस्थामा खरेल (+अङ्क ६, १२, १५)
- (३४) शोभाकर बुढाथोकी (+अङ्क ११)
- (३५) रेवतीराज त्रिपाठी (+अङ्क ९)
- (३६) नवराज थपलिया
- (३७) करुणा पराजुली
- (३८) रामकान्त तिवारी (+अङ्क ६)

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- (३९) सुदर्शन रेग्मी
- (४०) मनिष प्रसाइ
- (४१) कैलाशकुमार सिवाकोटी (+अङ्क ८, १७)
- (४२) डा. महेन्द्रजंग शाह
- (४३) शारदा तिमिल्सेना
- (४४) शिवप्रसाद पौडेल
- (४५) नीतु पोखरेल
- (४६) सोम निरौला

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- (४७) राष्ट्रिय जेष्ठ नागरिक महासङ्घ
- (४८) लिप्तबहादुर थापा
- (४९) भक्त विश्वकर्मा
- (५०) ऋषिकेश वाग्ले (+अङ्क ९)
- (५१) डा. हरिवंश त्रिपाठी

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- (५२) डा. नारायणप्रसाद घिमिरे
- (५३) कोषराज न्यौपाने
- (५४) वीरबहादुर बुढा मगर
- (५५) श्यामबाबु काफ्ले (+अङ्क ७, १३)
- (५६) बुद्धिनारायण श्रेष्ठ
- (५७) घनश्याम खड्का (+अङ्क ११)
- (५८) सूर्यप्रसाद पराजुली (+अङ्क ९)

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(५९) बेद भट्टराई (+अङ्क १३, १४)

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(६०) प्रा.डा. श्रीरामप्रसाद उपाध्याय

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(६९) विनोदकुमार विश्वकर्मा

(७०) डा. हरिवश त्रिपाठी

(७१) डा. हरिहर वस्ती

(७२) प्रेमबहादुर थापा

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(७६) दिनेश रेग्मी

(७७) होम कार्की

(७८) रामेश्वर नेपाल

(७९) शरु जोशी

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(८१) नेहा चौधरी

(८२) अनुराग देवकोटा

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(८५) रविन्द्र आचार्य

(८९) केदार कोइराला

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(९१) नितु पोखरेल

(९२) Akhila Kolisetty

(९३) अनिशकुमार पौडेल

(९४) दिनेशप्रसाद जोशी रतला

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(९६) बासुदेव बजगाईं

(९७) डा. टिकाराम पोखरेल

(९८) डा. दिव्य देवाडी

(९९) रघुनाथ अधिकारी (निलमशेखर)

(१००) श्यामबाबु काफ्ले

(१०१) राजेश भ्रा अहिराज

(१०२) महेन्द्र विष्ट

(१०३) डा. लेखनाथ पौडेल

(१०४) डा. हेमन्तराज दाहाल

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(१०५) किरण बराम

(१०६) समिक्षा पौडेल

(१०७) अच्युतमणि न्यौपाने

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(१०९) विजय प्रसाद मिश्र

(११०) यज्ञ प्रसाद अधिकारी

(१११) वासुदेव बजगाईं

(११२) कृष्णजीवी घिमिरे

(११३) डा. श्रीजनाकुमारी भण्डारी

(११४) मोहन काफ्ले

(११५) दिपेन्द्र बहादुर सिंह

(११६) राजेन्द्र बहादुर सिंह

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यस अङ्कमा योगदानकर्ताहरू

डा. समीरकुमार अधिकारी

1. जनस्वास्थ्यमा स्नातकोत्तर
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