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SAMBAHAK

Human Rights Journal

Vol.24

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मुन्दुम र बालअधिकार

चन्द्रकुमार राई

सार-सङ्क्षेप

मुन्दुमको महत्त्व किराती (लिम्बू, राई, सुनुवार र राई) जनजीवनमा सर्वाङ्गीन रहँदै आएको छ । मुन्दुम ज्ञानको रूपमा दर्शनशास्त्र, समाज मार्ग निर्देशनको लागि संविधान तथा कानुनको रूपमा र समाज नैतिक आचरणको लागि आचार संहिताको रूपमा यसको बहुआयमिक महत्त्व रहेको पाइन्छ । यसैको परिधि, परिवेश, विधि तथा प्रक्रियाभित्र रहेर किरातीहरूको दिनचर्या चल्दछ । मुन्दुमको यिनै अभिन्न विषयहरू मध्येमा बालअधिकारसम्बन्धी मुन्दुमी व्यवस्था पनि रहेको पाइन्छ । यो व्यवस्थाले एउटा योग्य मानव बन्नको लागि सर्वप्रथम बालबालिकाको शारीरिक, मानसिक तथा व्यक्तित्व विकास गर्ने अवसरको व्यवस्था गरेको छ, जसलाई नै मुन्दुमी बालअधिकारसम्बन्धी व्यवस्थाको रूपमा लिन सकिन्छ । यसरी मुन्दुममा व्यवस्था गरिएका बालबालिकाका हक, अधिकार र यसका मूल्य मान्यता तथा सिद्धान्तहरू र उपादेयताको बारेमा यहाँ अध्ययन गरिएको छ । यहाँ गरिएको व्यवस्थाले बालबालिकाको भ्रूण संरक्षण गर्दै जन्मन पाउने अधिकारसँगै व्यक्तित्व प्राप्त गर्ने अधिकारको समेत व्यवस्था गरेको छ । यसभित्र बालबालिकाको जन्म भइ सकेपछि नाम राख्ने अधिकार, संरक्षण, सुरक्षित पोषण र लत्ताकपडासँगै व्यक्तित्व विकासजस्ता अन्य अधिकारहरू प्रदान गरेको पाइन्छ । यस अर्थमा मुन्दुममा यथेष्ठ बालअधिकारहरूको व्यवस्था भएको पाइन्छ ।

प्रमुख शब्दकुञ्जीहरू: किरात, मुन्दुम, बालबालिका, अधिकार, बालअधिकार, मुन्दुमी कानुन

१. परिचय

बालबालिकाको अधिकार उमेर निर्धारित अधिकार हो । उमेरको आधारमा मानवका आवश्यकता, चाहाना तथा भूमिकाहरू फरक फरक हुन्छन् । त्यसैले मानवको लागि उमेरअनुसारको भूमिका तथा व्यवस्था निर्धारण हुन आवश्यक हुन्छ । आम मानव समुदायमा मानवलाई बालबालिका, कोशोरकिशोरी, युवायुवती साथै प्रौढमा विभाजन गर्ने प्रचलन अधिकांश समाज, राष्ट्र र अन्तर्राष्ट्रिय क्षेत्रमा रहिआएको छ । उमेर अनुसार नै मानवको शारीरिक, मानसिक अवस्था, स्वभाव, आवश्यकता तथा सोच, भूमिका र व्यवहारहरू निर्माण हुने गर्दछन् । यसको लागि उचित वातावरण र अवसरको आवश्यकता पर्दछ । यिनै तथ्यहरूलाई आधार मान्दै राज्यले कानुन निर्माण गरी संबोधन गर्ने गर्दछ अर्थात् उमेर अनुसार मानिसको शारीरिक वृद्धि, व्यक्तित्व विकास, अवसर साथै जीवन सुरक्षाको प्रत्याभूति गर्दछ । यसरी कानुनले सामान्य मानव प्राणीलाई सामाजिक दायित्व साथै भूमिकाहरू निश्चित गरी दिएर मानिसलाई प्राणी जगतको सर्वोच्च सामाजिक प्राणीको रूपमा स्थापित गरेको पाइन्छ (वाग्ले, वि.सं.२०६१, पृ.१) । उमेरको आधारमा मानवको शारीरिक अवस्था, चेतनास्तर साथै स्वभावको विकास हुने

भएकोले समय र उमेर सापेक्ष पोषणतत्व, लत्ताकपडासँगै अवसरहरूमा शिक्षा, स्वास्थ्य र शान्ति सुरक्षासम्बन्धी आदि विभिन्न अधिकारहरू कानुनमा प्रत्याभूत गरिएको हुन्छ । यी अधिकार तथा अवसरहरूले बालबालिकाको व्यक्तित्व विकास, सामाजिक भूमिका र प्रतिष्ठामा प्रत्यक्ष असर गर्दछ । त्यसैले उमेरको आधारमा कानुनहरूको तर्जुमा गर्न आवश्यक भएको हो ।

उमेरको आधारमा व्यक्तित्व विकासको प्रारम्भिक चरण भनेको नै बालबालिका हो । यो उमेरमा प्राप्त हुने सुविधा, अवसर, मेहेनत र क्षमताको आधारमा भावी व्यक्तित्व निर्माण हुन्छ । राष्ट्र, राज्य र विश्वको भविष्यको मुख्य जनशक्ति भनेको नै बालबालिका हुन् । सबल बालबालिकाको क्षमतामा नै परिवार, समाज र देशको उज्ज्वल भविष्य निर्धारित हुन्छ । त्यसैले बाल्यकालमा नै बालबालिकाको शारीरिक तथा मानसिक विकास तीव्रतर हने भएकोले उनीहरूको लागि विशेष र निश्चित अवसर तथा सुविधाहरूको आवश्यकता पर्दछ । बालबालिकाहरूको आवश्यकताहरू पूरा गर्नु अविभावक, समाज साथै राष्ट्रको पहिलो दायित्व हुन आउँछ । यस्ता जिम्मेवार व्यक्ति र निकायहरू दायित्व पूरा गर्नबाट पन्छिएमा बालबालिकाको भविष्यमाथि नै बाधाव्यावधान खडा भइ परिवार, समाज साथै राष्ट्रले जटिल परिस्थिति भोग्नुपर्ने अवस्था आइपर्दछ । यस्तो अवस्था सिर्जना नहोस् भन्नाको लागि संविधान र कानुनमा महत्त्वका साथ बालबालिकाको अधिकारसम्बन्धी व्यवस्था गरिएको हुन्छ । जस्तै : नेपालको संविधान २०७२ को धारा ३९ (१) मा प्रत्येक बालबालिकालाई पहिचान सहितको नाम र जन्मदर्ताको हक हुने, धारा ३९ (२) मा परिवार तथा राज्यको तर्फबाट शिक्षा, स्वास्थ्य, पालनपोषणलगायतका अन्य हक र अधिकारहरूको व्यवस्थाहरू गरिएको पाइन्छ (नेपाल सरकार, वि.सं. २०७६, पृ.३१) ।

मुन्दुम, किरातहरूको जीवनदर्शनको स्रोत हो । यसभित्र किरातहरूको आस्था, विश्वास, दैनिक क्रियाकलाप आदि बारेमा व्यवस्था भएको हुन्छ । उनीहरूका हरेक क्रियाकलापहरू मुन्दुमद्वारा निर्धारित र परिचालित हुन्छन् । यस आधारमा मुन्दुम किरात जनजीवनको मूल आधार हो । त्यसैले मुन्दुममा बालअधिकार तथा कर्तव्यको बारेमा व्यवस्था हुनु स्वभाविक मानिन्छ । मुन्दुमले बालकलाई नै यो धर्ती, समाज धान्ने मानव मानेको पाइन्छ । तसर्थ परिपक्व, परिश्रमी साथै दिग्गज मानव तयार पार्नको लागि मुन्दुमले पनि बालबालिकालाई विभिन्न प्रकारका संस्कार र सांस्कृतिक अधिकारमार्फत पारङ्गत तुल्याएको पाइन्छ । तथापि मुन्दुममा व्यवस्था भएका मुन्दुमी बालअधिकारहरूका बारेमा उजागर हुन सकेको देखिँदैन । यस अर्थमा मुन्दुमी बालअधिकारको बारेमा अध्ययनको आवश्यक रहेको छ । यो लेख मुन्दुममा बालअधिकार बारेमा के कस्ता प्रावधानहरू तर्जुमा गरिएका छन् ? किन मुन्दुममा यस्तो अधिकारहरूको व्यवस्था गर्नुपरेको हो ? यिनै प्रश्नहरूको समाधान गर्ने कार्यमा नै यो लेख केन्द्रित छ ।

यस अनुसन्धानको निष्कर्ष प्राप्त गर्नको लागि अध्ययनलाई गुणात्मक तथा आगनात्मक अनुसन्धान विधि अपनाइएको छ । आवश्यक तथ्याङ्कहरू प्राथमिक र द्वितियक स्रोत दुवैबाट प्राप्त गरिएका छन् । तथ्याङ्कहरू प्राप्त गर्नको लागि उद्देश्यमूलक र स्नोबल नमूना छनोट पद्धति अपनाइएको छ, जसको लागि अन्तर्वार्ता, सामूहिक छलफल विधि अवलम्वन गरिएको छ । यसरी प्राप्त तथ्याङ्कहरूलाई सामान्यीकरण गरेर विश्लेषणमार्फत निष्कर्ष प्रस्तुत गरिएको छ ।

२. मुन्दुममा बालअधिकार

लेख, बालअधिकारसँग सम्बन्धित भएकोले सर्वप्रथम बालबालिका भन्नाले कसलाई भनिन्छ ? यसका मुख्य आधारहरू केके छन् ? बालअधिकार भनेको के हो ? साथै विश्व परिवेश तथा नेपालमा बालअधिकारको बारेमा कानुनी व्यवस्थाहरू के कस्ता छन् र किन बालअधिकारको व्यवस्था गर्नुपरेको हो ? भन्ने बारेमा उल्लेख हुन आवश्यक छ । उल्लिखित प्रश्नहरूले बालबालिका र बालअधिकारसम्बन्धी कानुनी व्यवस्थाको बारेमा बुझ्न मद्दत गर्दछ, जसले मुन्दुममा भएको बालअधिकारसम्बन्धी व्यवस्था बुझ्न मार्ग प्रशस्त गर्दछ ।

बालअधिकारसम्बन्धी आधुनिक अवधारणा र तयारी पहिलो विश्वयुद्धपछि भएको हो। यो युद्धमा भएको नरसंहारकारी आक्रमणले अथाहा मानवीय क्षति पुग्दा बालबालिकाहरू पनि यसको चपेटामा पर्न पुगेका थिए । यसपछि नै मानवले मानव भएर बाँच्न पाउने मानव अधिकारको बारेमा विमर्श प्रारम्भ भएको थियो । यस मानव अधिकारको चर्चा परिचर्चासँगै बालअधिकार बारेमा पनि चर्चा आरम्भ भएको थियो । पहिलो विश्वयुद्धले विश्वलाई पुऱ्याएको क्षति साथै अशान्ति सिर्जना भएबाट सचेत भई विश्वमा शान्ति स्थापना गर्ने उद्देश्यले १० जनवरी १९२० मा राष्ट्रसङ्घको स्थापना भएको थियो । यही राष्ट्रसङ्घले बालअधिकारसम्बन्धी जेनेभा घोषणा, १९२४ जारी गर्दै पहिलो पटक बालअधिकारको बारेमा व्यवस्था गरेको थियो । यस घोषणाको धारा नं.२३ मा व्यवस्थित बालबालिकाका अधिकारहरूमा १.सामान्य विकासका लागि बालबालिकालाई भौतिक र आध्यात्मिक दुवै रूपमा चाहिने आवश्यक साधनहरू प्रदान गर्ने, २.भोक लागेकोलाई खाना दिनुपर्ने; बिरामीको लागि मद्दत गर्नुपर्ने; अपराधमा फसेका बालबालिकालाई माफ गर्नुपर्ने, ३.सङ्कटको समयमा राहतको पहिलो प्राधिकार बालबालिकालाई प्राप्त हुनु पर्ने, ४. बालबालिकालाई जीविकापार्जनको सुविधा प्राप्त हुनुका साथै प्रत्येक प्रकारको शोषणबाट सुरक्षा गर्नुपर्ने, ५.बालबालिकाहरूको प्रतिभालाई साथीहरू साथै मानव सेवामा समर्पित गर्ने वातावरणमा हुर्किन दिनुपर्ने उल्लेख छ (United Nation, 2007, p.3) । तर दोस्रो विश्वयुद्धबीचमा नै प्रारम्भ भएकोले राष्ट्रसङ्घले भूमिका निर्वाह गर्ने अवसर नपाइकन नै निस्क्रिय हुन पुग्यो । परिणामतः राष्ट्रसङ्घको निस्क्रियताले बालअधिकारसम्बन्धी जेनेभा घोषणा, १९२४ कार्यान्वयन हुन सकेन तथापि यस घोषणाले आगमी दिनमा बालअधिकारको लागि कानुनी तर्जुमा गर्नको लागि मार्ग प्रशस्त गर्ने काम गरेको थियो ।

दोस्रो विश्वयुद्धपछि स्थापित संयुक्त राष्ट्रसङ्घले बालअधिकारसम्बन्धी संयुक्त राष्ट्रसङ्घीय महासन्धि, १९८९ तर्जुमा गर्दै बालबालिकाको परिभाषा र बालअधिकारको बारेमा सुनिश्चित व्यवस्था गरेको थियो । यसपछि भने विभिन्न राष्ट्रहरूले राष्ट्रिय कानुनमार्फत बालबालिकासम्बन्धी कानुनको तर्जुमा गर्न प्रारम्भ गरेको देखिन्छ । यस बालअधिकारसम्बन्धी संयुक्त राष्ट्रसङ्घीय महासन्धि, १९८९ को धारा १ मा बालबालिकाको परिभाषा प्रष्ट पारिएको छ । यस परिभाषाअनुसार १८ वर्षभन्दा कम उमेरका प्रत्येक मानवजातिलाई बालबालिका सम्झनु पर्दछ (वाग्ले, वि.सं. २०६१, पृ.१२४) । नेपालको संविधान, २०७२ को धारा ३९ बालबालिकाको हकको बारेमा व्यवस्था गरेको छ (नेपाल सरकार, वि.सं.२०७६, पृ.३१) । यसपछि तर्जुमा गरिएको बालबालिकासम्बन्धी ऐन, २०७५ को दफा २ (ञ) का अनुसार १८ वर्षभन्दा कम उमेरको व्यक्तिलाई बालबालिका भनिने प्रष्ट पारेको छ । यो परिभाषा पनि बालअधिकारसम्बन्धी संयुक्त राष्ट्रसङ्घीय महासन्धि, १९८९ को परिभाषासँग समान रहेको देखिन्छ । यसले के देखाउँदछ भने राष्ट्रिय कानुनहरूले अन्तर्राष्ट्रिय कानुन अर्थात् बालअधिकारसम्बन्धी संयुक्त राष्ट्रसङ्घीय महासन्धि, १९८९ को अनुशरण गरेका छन् ।

आधुनिक राष्ट्रिय तथा अन्तर्राष्ट्रिय कानुनमा बालबालिकाको अधिकारलाई विशिष्ट मान्दै बेग्लै कानुनमार्फत बालअधिकारको संरक्षण गर्दै आएको पाइन्छ । यस बारेमा संविधान तथा कानुनमा प्रष्ट पारिएको हुन्छ । Oxford Dictionary of Law का अनुसार अधिकार भन्नाले १. कुनै विषय वा कुनै सम्पत्तिप्रतिको चासो, २.कुनै चासो वा विशेषाधिकारको रूपमा मान्यता जुन कानुनद्वारा दिइएको हुन्छ ३. कानुनद्वारा दिइएको कुनै शक्ति अभ्यासको लागि प्रदान गरिएको स्वतन्त्रता हो । त्यसरी नै Black's Law Dictionary का अनुसार स्वतन्त्र रूपमा कुनै काम गर्ने अधिकार हो । नेपाली बृहत् शब्दकोशका अनुसार अधिकार भन्नाले "कानुनी, परम्परागत वा नैतिक रूपमा प्राप्य न्यायोचित दाबी, स्वतन्त्रता, हक, अख्तियार अधिकार हो (पराजुली, वि.सं.२०७०, पृ.२६) । यस अर्थमा अधिकार भन्नाले कुनै वस्तुमाथि दाबी गर्न सक्ने शक्ति हो ।

बालअधिकारसम्बन्धी संयुक्त राष्ट्रसङ्घीय महासन्धि, १९८९ ले बालअधिकारसम्बन्धी विभिन्न अधिकारहरू जस्तै : बाँच्न पाउने अधिकार, जन्मका साथ नाम र नागरिकता प्राप्त गर्ने अधिकार, बालकको विचारले सम्मान पाउने अधिकार लगायत अरू धेरै अधिकारहरूको व्यवस्था गरेको छ (वाग्ले, वि.सं.२०६१, पृ.१२४—१४५) । नेपालको संविधान, २०७२ को धारा ३९ बालबालिकाको हकको बारेमा व्यवस्था गरेको छ (नेपाल सरकार, वि.सं.२०७२, पृ.३१) । यस व्यवस्थाअनुसार धारा ३९ (१) बालबालिकाले नाम प्राप्त गर्ने र जन्मदर्ताको अधिकार, ३९ (२) परिवार, शिक्षा, स्वास्थ्य, पालनपोषण, उचित स्याहार, खेलकूद, मनोञ्जन तथा सर्वाङ्गीण व्यक्तित्वको विकास गर्ने लगायतका अधिकारहरूको व्यवस्था भएको पाइन्छ (नेपाल सरकार, वि.सं.२०७२, पृ.३१—३३) । त्यसरी नै बालबालिकासम्बन्धी ऐन, २०७५ बालबालिकाको अधिकारको सम्मान, सरक्षण, प्रवर्द्धन र परिपूर्ति गरी बालबालिकाको सर्वोत्तम हित कायम गर्न बालबालिकासम्बन्धी ऐनको तर्जुमा गरिएको हो । यस ऐनको दफा ४. नाम, राष्ट्रियता र पहिचानको अधिकार, दफा ५. भेदभावविरुद्धको अधिकार, बाबुआमासँग बस्ने र भेटघाट गर्ने अधिकार, दफा ७. संरक्षणको अधिकारलगायत अरू धेरै अधिकारको व्यवस्था भएको पाइन्छ । क्रमिक रूपमा बालअधिकारको व्यवस्थामार्फत बालबालिकाहरूलाई सबल साथै सक्षम बनाइ राष्ट्रको नागरिक तुल्याइन्छ ।

मुन्दुमलाई मुन्धुम पनि भनिन्छ । यसको शाब्दिक अर्थ विभिन्न रूपमा दिएको पाइन्छ । मुन्दुम, मना+दुम/धुम् मिलेर बनेको हो, जसको अर्थ मानवको खोजी वा मान्छेका कुरा भन्ने हुन्छ (राई, वि.सं.२०४९, पृ.९), (खम्बु, वि.सं.२०५२, पृ.१२) । मना भन्नाले मानिस र दुम भन्नाले कुरा, शब्द या वाणी अर्थात् माङद्वारा सिर्जित ज्ञानको भण्डारलाई मुन्दुम भनिन्छ (राई, ये.दो.५०८३, पृ.३८) । यो किरात पुर्खाहरूले दीर्घकालीन समयमा आर्जन गरेको अतुलनीय बौद्धिक निचोड हो, महान् बौद्धिक सम्पदा र किरातहरूको जीवन—दर्शन पनि हो । यसको क्षतिपूर्ति आधुनिक ज्ञानले गर्न सक्तैन (चाम्लिङ, वि.सं.२०७१, पृ.१७) । यो एक अथाहा ज्ञानको भण्डार हो ।

नेपाली बृहत् शब्दकोशमा मुन्धुमलाई मन्दुम पनि भनिने र यो लिम्बु जातिको धर्मशास्त्र हुनुका साथै लिम्बू जातिको मौखिक परम्परामा जीवन्त रहेको शास्त्र एवं ज्ञानको भण्डार वा दार्शनिक वचनहरूको सङ्ग्रह भनेर अर्थ दिएको पाइन्छ (पराजुली, वि.सं.२०७७, पृ.१०४७) तर वास्तविक र व्यवहारिक रूपमा भने मुन्दुम लिम्बूहरूको मात्र नभएर किरातभित्रका राई, याक्खा र सुनुवारको पनि जीवन दर्शनशास्त्र हो । अर्कोतिर मिना

(मान्छे) को दुम (बोली) नै मुन्दुम हो (राई, वि.सं.२०७५, पृ.७५) । यो मानिस र मानिसको सेरोफेरो विषयवस्तुको बारेमा समेटिएको समग्र जानकारी नै मुन्दुम हो ।

मुन्दुमले मानव सृष्टि पहिल्याउनु, मानवको उत्पत्ति र त्यसको ऐतिहासिक विकासक्रमको पहिचान गर्नु, मानव समाजमा विद्यमान विभिन्न सङ्गति विसङ्गतिहरूको खोजी र व्याख्या गर्नु, आध्यात्मिक चिन्तन र वैज्ञानिक जीवन पद्धतिको अतकरेक्वालाई एकसाथ व्याख्या गर्नु नै मुन्दुम् वा (मुन्धुम्) हो । यहीं मुन्दुम् (मुन्धुम्) कै आधारमा किरात राई लिम्बूको शुरुदेखि आजसम्म समाज र जीवन शैली अनुबन्धित भई सञ्चालन हुँदै आएको छ (राई, वि.सं.२०४९, पृ.९—१०) । मानवलाई केन्द्रमा राखेर मानवसँग सम्बन्धित वस्तु, सोंच र व्यवहारको मुख्य माध्यम नै मुन्दुम हो । त्यसैले मानवभन्दा भिन्न मुन्दुम रहन सक्तैन भने मुन्दुमबिनाको किरात र किरात धर्मावलम्बी हुन सक्दैन ।

मुन्दुमलाई प्रष्ट पार्न र परिभाषा दिने क्रममा उल्लेख गरिएको छ कि मुन्दुम किरात जातिको त्यो श्रुति परम्परा हो, जसमा सृष्टिदेखि आजसम्म भएका घटनाको सबिस्तार वर्णन, विधि—निषेधका कुराहरू र व्यक्ति, परिवार तथा समाज कल्याणका लागि गरिने अनुष्ठानहरूको वर्णन पाइन्छ (वैरागी, १९९९, पृ.२५१) । मुन्दुम श्रुति परम्परामा आधारित हुनुका साथै यसभित्र किरातीहरूको जीवनमा घटेका विभिन्न अवस्थाहरूको बारेमा साथै समाजलाई सकारात्मक मार्गतिर डोर्याउँने विधिहरू समाविष्ट गरिएको हुन्छ । यसरी नै मुन्दुमभित्र किरातहरूको विचार, अनुभव र अनुभूतिका आधारमा सिर्जित वा निर्मित दर्शन, चिन्तनसमेत प्राप्त गर्न सकिन्छ । यसैले मुन्दुम किरातीहरूको जीवन दर्शनको स्रोत हो । किरातहरूको दार्शनिक आधार मुन्दुम हो (राई, वि.स.२०७४, पृ.७५) । मुन्दुम राईहरूको मात्र नभएर सम्पूर्ण किरात (राई, लिम्बू, सुनुवार याक्खा र अन्य) हरूको जीवन दर्शनको स्रोत हो ।

मुन्दुममा मानवीय जीवनको सृष्टि, निरन्तरता र अन्त्यबारे साथै आचार, विचार, मूल्य, मान्यता लगायतका व्यवहारहरूको बारेमा पूर्णतः व्यवस्था गरिएको छ। यही आधारमा किरातीहरूले आफ्नो सोंच विचारको निर्माण गरेर जीवन व्यवहारमा लागु गरेको पाइन्छ। यस्तै व्यवस्थाहरू मध्येमा बालअधिकारसम्बन्धी मुन्दुमी प्रावधानहरू पनि हुन्। मुन्दममा मानवको आचरण अर्थात् जीवन अवधिमा गरिने व्यवहारको बारेमा व्यवस्था गरिएको हुन्छ भने विशेष विशेषताको कारण बालबालिकाको बारेमा भिन्न व्यवस्था गर्न आवश्यकत भएको हो। यस व्यवस्थाले बालबालिकाको व्यक्तित्व विकास र संरक्षणमा मद्दत पुगेको देखिन्छ।

मुन्दुममा बालबालिकाको उमेर बारेमा किटानी व्यवस्था गरिएको छैन तर उनको शारीरिक अवस्थामा देखापर्ने विशेषतालाई आधार मानेर बालबालिकाको उमेर निर्धारण गरिने व्यवहारिक अभ्यास रहेको पाइन्छ।[१] मुन्दुमी अभ्यास अनुसार छोरी भएमा महिनावारीपछि र छोरा भएमा दाह्री जुँगाको रेखी बसेपछि उमेर पुगेको मानिन्छ अर्थात् यो उमेर नपुगेसम्म बालबालिका मानिन्छ, त्यसपछि युवायुवती मानिन्छ । यसरी उमेरको विभाजनसँगै युवायुवती भएपछि विवाहको लागि योग्य मानिन्छ । यसरी मुन्दुममा व्यवस्था गरिएको बालबालिकासम्बन्धी विभिन्न व्यवस्थाहरूलाई नै मुन्दुमी बालअधिकार भन्न सकिन्छ । यहाँ तिनै बालअधिकारहरूको बारेमा क्रमशः चर्चा गरिएको छः

१. तेह्रथुम जिल्ला निवासी दधिप्रसाद लिम्बू पंधाकसँग भएको अन्तर्वार्ताबाट प्राप्त जानकारीअनुसार ।

२.१. गर्भ संरक्षण तथा जन्मन पाउने अधिकार

भौतिक वा शारीरिक विज्ञानको मान्यताअनुसार महिला र पुरुषबीचको शारीरिक सम्बन्धपछि महिलाको शरीरभित्र भ्रूण (गर्भ) को सिर्जना हुन्छ, जुन मानव जीवनको पहिलो आधार हो । यही भ्रूण नै क्रमिक रूपमा वृद्धि र विकसित हुँदै जाँदा निश्चित समय पुगेपछि मानवाकृति लिई मानवको रूपमा यस धर्तीमा पदार्पण हुन पुग्दछ, जसलाई हामी बुबाआमाको सन्तान र उत्तराधिकारी भनेर चिन्दछौं । मानव बन्नको लागि सर्वप्रथम भ्रूणको संरक्षण हुन आवश्यक छ । यही मान्यतासँग मुन्दुमको मान्यता समान रहेको पाइन्छ । मुन्दुमले पनि यही परिस्थितिलाई मध्येनजर गरेर मानव भ्रूणको संरक्षण गर्ने मात्र होइन, वृद्धिलाई समेत पहिलो प्राथमिकता दिएको छ अर्थात् भ्रूणले मानव आकार लिई सकुशल जन्मने अधिकारको व्यवस्था गरेको छ ।

मुन्दुम अनुसार गर्भ रहेको थाहा हुने बित्तिकै गर्भवती महिलाको स्वास्थ्यलाई ध्यान दिनु पर्दछ । आमालाई हुने शारीरिक र मानसिक असरले भ्रूणलाई क्षति नपुगोस् भनेर सचेत भइ व्यवहार गरिन्छ । पहिला पहिला किरातहरूमा गर्भ रहने बित्तिकै आमा र गर्भको सुरक्षा र स्वस्थ्य अपेक्षा गरेर गर्भवती महिला र गर्भ संरक्षण गर्नको लागि शक्ति मागदै पितृहरूलाई जानकारी दिने संस्कार गरिन्थ्यो, तर अहिले लोप भएर गएको छ। [२] किरातहरूमा पितृभन्दा शक्तिशाली केही नहुने विश्वास रहेको पाइन्छ । उनीहरूको प्रगति, अधोगति, संरक्षण र विनास सबै परिणाम प्राप्तिमा पितृहरूको भूमिका हुन्छ । त्यसैले हरेक कार्यको अग्रिम जानकारी पितृहरूलाई दिन आवश्यक ठानिन्छ । यसरी पितृहरूले अग्रिम जानकारी पाएपछि गर्भ र आमाको संरक्षणमा सशक्त भूमिका निर्वाह गर्दछन् । अहिले भने पितृहरूलाई अग्रिम जानकारी दिने मुन्दुमी परम्परा हराए पनि कुनै अवसर पारेर गर्भको बच्चा सकुशल जन्मन सकोस् भनेर बान्तावा राईहरूले होङ्लुमाङ[३] (हतुवाली, मिति उल्लेख नभएको, पृ.३) । त्यसरी नै लिम्बू किरातहरूले आमाको पेटमा बच्चा चल्न थालेपछि साप्पोक चोमेन[४] (सुब्बा, वि.सं.२०७४, पृ.४६, ४७) गर्दछन् भने याक्खा किरातहरूले चेलाङ्माच्याङ पूजा (कोङरेन, वि.सं.२०६४, पृ.६४) र सुनुवार किरातहरूले बुलुच् च्वोचा संस्कार गर्दछन् (मुखिया, वि.सं.२०७४, पृ.५६) । यो संस्कार गरेपछि गर्भ र गर्भवती महिला स्वास्थ्य रहनुका साथै बच्चा सकुशल जन्मन्छ भन्ने विश्वास रहेको छ ।

गर्भवती महिला र गर्भको स्वास्थ्य अवस्थालाई संरक्षण गर्नको लागि मुन्दुमले केही निषेधित अवस्थाहरूको पनि व्यवस्था गरेको छ । यस्ता अवस्थाहरूमा गर्भवती महिलालाई अशुभ समाचार सुनाउन नहुने, चिन्ता हुने खालको बचन दिन नमिल्ने, दुर्घटना भएको ठाउँमा जान साथै लास हेर्न निषेध गरिएको हुन्छ । यी कार्यहरूले गर्भवती महिलालाई मात्र होइन बच्चाको शारीरिक र मानसिक विकासमा समेत असर गर्दछ भन्ने मुन्दुमी मान्यता रहेको छ (चाम्लिङ, २००५, पृ.३३) । त्यति मात्र होइन गर्भपतनको सम्भावना पनि प्रबल रहन्छ भन्ने छ। त्यसरी नै गर्भवती महिलालाई मूलको पानी सिधै खान, छिपछिपे पानी भएको ठाउँबाट निस्कने पहेंलो तथा रातो लेदो भएको ठाउँमा जान र हेर्न साथै सिमसार क्षेत्रमा प्रवेश गर्नको लागि निषेध गरेको हुन्छ। यी ठाउँहरूमा

२ भोजपुर जिल्ला, हतुवागढी गाउँपालिका, वडा नं.२, दितेनी निवासी राजकुमार राईसँग लिइएको अन्तर्वार्तामा आधारित ।

३ खोला देव ।

४ कोख पूजा ।

जाँदा गर्भवती महिलाको शरीरमा असर गरेर गर्भपतन हुने व्यवहारिक अनुभव प्राप्त भएकोले त्यस्ता ठाउँहरूमा जान मुन्दुमले सशक्त निषेध गरेको हुन्छ। [५]

आधुनिक कानुनले गर्भपतनको बारेमा प्राकृतिक गर्भपतन, कानुनी गर्भपतन र गैरकानुनी गर्भपतन भनेर बिभाजन गरेर गर्भपतनसम्बन्धी कानुनी व्यवस्थाहरू गरेको पाइन्छ (भण्डारी, वि.सं.२०५०, पृ.५०६, ५०७) । तर मुन्दुमले भने गर्भ बसेपछि गर्भले मानव भएर सकुशल जन्मनुपर्ने बाध्यात्मक मान्यता राखेको छ। गर्भपूजाको अवसरमा गर्भ सुस्वास्थ्य र सकुशल रहोस् भन्नको मुन्दुम बाचन गरिन्छ। [६]

यसरी गर्भलाई सुरक्षित र स्वास्थ्य रहन साथै सकुशल जन्मनको लागि मुन्दुमी व्यवस्था गरिएको छ। यस व्यवस्थालाई गर्भ सुरक्षित राख्ने अधिकारको रूपमा लिन सकिन्छ।

२.२. गर्भमा रहेको बच्चाको पोषण अधिकार

गर्भ सुस्वास्थ्य रहन र बन्नको लागि आमा र गर्भको बच्चा दुवैलाई पौष्टिक आहाराको आवश्यकता हुन्छ। गर्भ र गर्भवती दुवै स्वास्थ्य रहेमा मात्र बच्चा सकुशल, सबल र सशक्त जन्मन सक्ने साथै आमा पनि सकुशल र सशक्त बन्ने मुन्दुमी मान्यता रहेको छ। त्यसैले मुन्दुमले गर्भमा रहेको बच्चाको मात्र संरक्षणको बारेमा मात्र व्यवस्था गरेको छैन कि सुस्वास्थ्य तथा उपयुक्त पोषण अधिकारको पनि व्यवस्था गरेको छ। गर्भमा रहेको बच्चा सुस्वास्थ्य बन्न र आवश्यक पोषण प्राप्त गर्न सकोस् भनेर गर्भ रहेदेखि नै उनको पनि भाग छुट्याएर आमालाई दिने प्रचलन छ। यस्तो गरिएन भने बच्चाको चित्त दुख्छ भन्ने विश्वास रहेको छ। यो भाग आमाले नै खानुपर्दछ (चाम्लिङ, वि.सं.२०७३, पृ.४१) वास्तबमा चित्त दुख्नु भनेको पोषणको अभावमा गर्भ कुपोषित हुनु हो र रोगी बन्छ भन्ने मान्यता हो। यसरी मुन्दुमले गर्भको बच्चालाई समेत व्यक्तित्वको रूपमा स्वीकार गरेर पोषणको अधिकार प्रदान गरेको छ। यस कार्यले गर्भवती आमा र गर्भमा रहेको बच्चा दुवैलाई प्रशस्त पोषण प्राप्त हुन्छ। यो अवस्थामा पोषणको अभाव भएमा बच्चा जन्माउन कठिन हुनुका साथै जन्मिने बच्चा पनि अपाङ्ग जन्मने हुन्छ भन्ने हो। यसरी गर्भ वा गर्भमा रहेको बच्चाको लागि पोषणको अधिकारको व्यवस्था मुन्दुममा गरिएको पाइन्छ।

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५ भोजपुर जिल्ला हतुवागढी गाउँपालिका, वडा नं.२, दितेनी बस्ने धिरेन्द्र राई र कृष्ण कुमारी राईसँगको अन्तर्वार्ताबाट प्राप्त जानकारीमा आधारित।

६ *तपाईंहरूले नै सृष्टि गर्नु भएको कायालाई*
प्रकाश दिएर उज्यालो बनाउनु होस्
सातो दिनुहोस्, शक्ति दिनुहोस्
सौन्दर्य दिनुहोस्, बढ्ने गति दिनुहोस्
उनको आमाको पेटमा रहुञ्जेल खान पिउन दिनुहोस्।
बढ्ने फैलने शक्ति दिनुहोस्
लागु सेसेन्दरका आँखाबाट छलेर राख्नुहोस्
दुर्घटनाको कुनै दुश्प्रयास नरहोस्।
रोगव्याधिको बाटो रोकेर राखिदिनुहोस्
यो कायालाई हराउन बिलाउन नदिनुहोस्
जतनले माया गरेर राखिदिनुहोस् (मुखिया, वि.सं.२०७४, पृ.५८)।

२.३. बालबालिकाले नाम पाउने अधिकार

बालबालिकाले प्राप्त गर्ने नामको महत्त्व हुने भएकोले नै नेपालको संविधान २०७२ को धारा ३९ (१) मा प्रत्येक बालबालिकालाई आफ्नो पहिचानसहित नामकरण र जन्मदर्ताको हक हुने व्यवस्था गरेको छ (नेपाल सरकार, वि.सं.२०७२, पृ.३१)। बालबालिकासम्बन्धी ऐन, २०७५ को दफा ४ मा नाम, राष्ट्रियता र पहिचानको शीर्षकको उपदफा १ मा प्रत्येक बालकलाई आफ्नो पहिचानसहित नामकरण र जन्मदर्ताको हक हुने र उपदफा २ मा बालबालिकाको बुबाआमाले सन्तानको नाम राखेर जन्मदर्ता गराइ दिनुपर्ने वाध्यात्मक व्यवस्था गरेको छ। नामले बालबालिकालाई व्यक्तित्व प्रदान गर्नुका साथै चिनारी दिने र यसैको आधारमा जात, वंश, नागरिकता तथा अधिकारजस्ता कार्यहरू निर्धारण हुने भएकोले एउटा बालक र एउटा मानवको लागि नामको महत्त्व रहेको हुन्छ (हतुवाली, मिति उल्लेख नभएको, पृ.३)। तसर्थ बालबालिका जन्मेपछि नाम प्राप्त गर्ने अधिकारको व्यवस्था गरिएको हो ।

आधुनिक राज्य व्यवस्थाको मूल आधार संविधान र कानुनले जसरी बालबालिकाको नामको महत्त्व दिएर व्यवस्था गरेका छन्, मुन्दुमले पनि नामको महत्त्वको बारेमा त्यसरी नै जोड दिएको छ। मुन्दुमले नामविहीन मानवमात्र होइन, अन्य कुनै पनि वस्तु हुन सक्तैन भन्ने कल्पना गरेको छ। त्यसैले नाम राख्ने संस्कारको क्रममा मुन्दुम बाचन गर्दै भनिन्छ "तिमीलाई चिन्नको लागि तिम्रो नाम आजदेखि फलना भनी राखिदिएका छौं (राई, वि.सं.२०५५, पृ.४७) ।" नाम चिनारी हो । नामसँगै चिनारी आरम्भ हुने र मानवीय, सामाजिक, भाषिक, संस्कार तथा संस्कृतिका विषयहरू जोडिएर आएका हुन्छन्। मुन्दुमले बालबालिकाको नाम राखुपर्ने अनिवार्य व्यवस्था गरेको छ। बच्चा जन्मेपछि मुन्दुम निर्देशित विधिविधानको अनुसरण गर्दै नयाँ बालबालिकाको नाम राखिन्छ। बालबालिकाको नाम संस्कार गर्दा बाचन गरिने मुन्दुममा नामको महत्त्व बारेमा प्रष्ट पारिएको छ।[७]

मुन्दुमका अनुसार पृथ्वीमा मानवसँगै जति पनि जीवजन्तु, बनस्पतिलगायतका वस्तुहरू छन्, ती सबैको नाम हुन्छ। यस अर्थमा बालबालिकाको नामको बारेमा मुन्दुमले विशेष जोड दिनु स्वभाविक देखिन्छ। त्यसरी नै बच्चाको नामको महत्त्वबारेमा पनि मुन्दुममा उल्लेख भएको पाइन्छ।[८]

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७ *नेसे नीनीनाप्चादमी सेन्तीयाला दा: सोमामी भक्पा, सीइखे, जीम, लुइदके दा आनी निइ पाचो पाना वक्ता ने । आना ईसुपुम् पे: सइ गुकी यो की, पीदमी पाना, सो:ना खइ ईनीइ फलाना (जुरेको नाम) पात्ती गीना व (राई, वि.सं. २०८०, पृ.३६) ।*

अनुवाद

उहिले पुर्खाहरूले चिन्नको लागि जइगली जनावर, चराचुरुङ्गी, कसिङ्गर, पतकरहरूको त नाम राख्ने गरेका थिए रे । आज हामीले पनि पुर्खाहरूले गरे भने जसरी तिम्रो फलाना (जुरेको नाम) नामकरण गरेका छौं ।

८ *लौ है लौ !*
आमाको पेटबाट
मनुष्यको जन्म भयौ
छोरा/छोरी भई हाम्रो घरमा आयौ
यहाँ हामीले नाम जुराउँदैछौं
मनुष्य बनाउनको लागि
साँचो मान्छे बनाउनको लागि
हामीले संस्कारमा बाँध्दैछौं (राई, वि.सं.२०७७, पृ.१४०) ।

मुन्दुममा उल्लिखित रिसियाले समाजमा मानव भएर बस्नको लागि नामको आवश्यकता पर्ने उल्लेख गरेको छ। नाम दिएपछि मात्र मनुष्य बन्दछ। नाम नभएसम्म स्वरूप मानवकै भए तापनि मानव मानिदैंन, अन्य जीव समान हुन्छ भन्ने मान्यता रहेको छ। त्यसैले बालबालिका जन्मेपछि नाम राख्नुपर्ने मुन्दुममा अनिवार्य व्यवस्था गरिएको हो। यसै नामको माध्यमबाट बालबालिकाले आफ्नो चिनारी तथा व्यक्तित्व निर्माण गर्दछ। यस अर्थमा नामको महत्त्व रहेको देखिन्छ ।

२.४.भेदभाव विरुद्धको अधिकार

अधिकारको आदर्शवादी सिद्धान्तअनुसार समाजको महत्त्वपूर्ण तत्त्व भनेको मानिस हो । त्यसैले मानिसले आफ्नो व्यक्तित्वको विकास गर्न पाउनु पहिलो अधिकार हो (शर्मा, वि.सं.२०५१, पृ.१०) । हिन्दु धर्मशास्त्रहरूमा गर्भको बच्चा छोरा नै होस् भनेर पुंशवान संस्कार गरिने उल्लेख पाइन्छ (क्षेत्री, खतिवडा, वि.सं.२०५४, पृ.२३७)। यस प्रावधानले छोरीलाई भन्दा छोरालाई प्राथमिकता दिएको देखिन्छ तर मुन्दुममा यस्तो व्यवस्था गरिएको छैन। छोराछोरी दुवैलाई समान मानिन्छ र बालबालिका दुवैको व्यक्तित्व विकासलाई पहिलो प्राथमिकता दिएको हुन्छ। यसको पहिलो आधार भनेको छोराछोरीमा विभेद नगर्नु नै हो। न्वारन संस्कारको समयमा "आज तिमी हाम्रो छोरा/छोरी, नाति/नातिनी भएर यो धर्तीमा जन्म लिएका छौ" भनिन्छ (राई, वि.सं.२०८०, पृ.३६)। यसरी छोरा/छोरीबीचमा मुन्दुमले कुनै विभेद गरेको मानिन्न। मागेर, भागेर, जारी गरेर वा अन्तरजातीय विवाहबाट जन्मिएका सन्तान होस् वा धर्मपुत्र/धर्मपुत्री होस्, कसैबीच पनि विभेदको व्यवहार गरिँदैन। सबैबीच माया, ममता तथा अन्य अधिकारहरू समान रूपले प्राप्त गर्दछन् भने सांस्कृतिक कार्यहरूमा पनि समान व्यवहार गरिन्छ (थामरोस्, वि.सं.२०५७, पृ.६९)।

२.५. समान भाग पाउने अधिकार

हुन त मुन्दुमले गर्भ बसिसकेपछि नै गर्भको बच्चालाई व्यक्तिको मान्यता दिएर गर्भमा रहुन्जेल पनि सुरक्षित, स्वास्थ्य रहने र पोषणको अधिकार दिएको छ। त्यसै गरेर बालबालिका जन्मिने बित्तिकै हरेक सांस्कृतिक अधिकारहरू प्राप्त हुने मुन्दुमी व्यवस्था रहेको छ। बच्चा जन्मने वित्तिकै उनलाई पोषणको अधिकार प्राप्त गर्ने व्यवस्था गरेको छ। उनले खाना ग्रहण गर्न नसक्ने भए तापनि उनको अनिवार्य भाग छुट्याइन्छ। अझ सांस्कृतिक भोज आदि कार्यहरूमा बढी ख्याल गरिन्छ। त्यसैले कोक्रीमा रहेको बालबालिकाको पनि भाग छुट्याउने गरिन्छ। यस्तो भाग अविभावकले जति पाउँछ, त्यति नै उनलाई पनि दिइन्छ। कसैले भाग दिने क्रममा यस्तो विभेद गरेमा सचेत गराइन्छ। यसको मुख्य ध्येय भनेको व्यक्ति वा मानव सबै समान हुन्छन् भन्ने हो।

२.६. धर्मपुत्र/पुत्रीसम्बन्धी प्रावधान

बालबालिकासम्बन्धी ऐन, २०७५ को दफा ५(२) अनुसार छोराछोरी र धर्मपुत्र/पुत्रीबीच भेदभाव गर्न मिल्दैन। यो कानुनी व्यवस्थाजस्तै मुन्दुममा पनि धर्मपुत्र/पुत्री सम्बन्धमा व्यवस्था गरिएको छ। मुन्दुममा धर्मपुत्री/पुत्रीलाई जनाउने भिन्न शब्द छैन, छोराछोरी नै भनिन्छ।[९] त्यसैले आफुले जन्माएको सन्तान र सन्तान

९ *भोजपुर जिल्ला, टेम्केमैयुङ गाउँपालिका, वडा नं. , दिल्पा निवासी तीर्थराज मुकारुङ राईसँगको अन्तर्वार्ताबाट प्राप्त जानकारी ।*

बनाउनलाई ल्याएको छोराछोरीबीच कुनै विभेद गरिँदैन। मुन्दुममा धर्मपुत्र/पुत्री राख्ने अवस्था र राख्ने शर्तहरू यसप्रकार रहेका छन्।[१०]

१. कसैको सन्तान भएन भने धर्मपुत्र/पुत्री दुवै राख्न सक्दछन्।

२. सन्तान भएर पनि बाँच्न सकेनन, धर्मपुत्र/पुत्री राख्न मिल्दछ।

३. छोरा हुनेले छोरा धर्मपुत्र र छोरी हुनेले छोरी धर्मपुत्र राख्न मिल्दैन।

४. धर्मपुत्र/पुत्री अपनाउँदा आफ्नै वंश दाजुभाइभित्रबाट मात्र लिन मिल्छ ।

५. अविवाहित पुरुष र महिलाले पनि धर्मपुत्र/पुत्री राख्न मिल्छ ?

मुन्दुमले सन्तान नभएका किरात दम्पतिहरू साथै अविवाहित महिला र पुरुषहरूलाई धर्मपुत्र/पुत्री राखेर सन्तानको चाहाना पूरा गर्ने अवसर प्रदान गरेको छ। विवाहित दम्पतिहरूले धर्मपुत्र-पुत्री राखी सकेपछि आफ्नै कोखबाट सन्तान भएमा र अविवाहितहरूले पछि विवाह गरेर सन्तान जन्माएमा पहिल्यै राखेको धर्मपुत्र/पुत्रीलाई फिर्ता गर्न वा आफुले जन्माएको सन्तान र धर्मपुत्र/पुत्री बीच विभेद गर्न मिल्दैन। [११] धर्मपुत्र/पुत्री राख्दा सकेसम्म वंश दाजुभाइकै सन्तान हुनु पर्ने मान्यता छ। दाजुभाइभित्रको धर्मपुत्र/पुत्री प्राप्त नभएको खण्डमा वंश दाजुभाइसँग विमर्श गरेर गैरकिराती बाहेकको बालबालिकालाई धर्मपुत्र/पुत्री राख्न मिल्छ। यसरी धर्मपुत्र/पुत्री राख्दा निश्चित मुन्दुमी विधिविधान अवलम्बन गरिन्छ। धर्मपुत्र/धर्मपुत्री राखेको बच्चाले आफुलाई जन्माउने बुबाआमा भेट्न चाहेमा भेटघाट गर्न दिने व्यवस्था रहेको छ भने जन्म दिने आमा र बुबाको काजक्रिया गर्न चाहेमा उनले पनि अन्य दाजुभाइ र दिदी बहिनी सरह बस्न मिल्ने अधिकार दिएको छ।

२.७. बालबालिकालाई अभिभावकत्व दिनुपर्ने

बालबालिकासम्बन्धी ऐन, २०७५ को दफा ७ मा बालबालिकाको संरक्षणको अधिकारको व्यवस्था गरेको छ। यस दफाको उपदफा १ मा बालबालिकाको उचित हेरचाह, संरक्षण, पालनपोषण तथा माया प्राप्त गर्ने अधिकारको व्यवस्था गरेको छ। उपदफा १ मा व्यवस्था गरिएको अधिकारको पालना गर्नुपर्ने कर्तव्य उपदफा २ मा बुबा र आमाको हुने व्यवस्था छ। बुबा र आमा नभएको सन्दर्भमा भने परिवारको हुने अर्थात् परिवारमा को-को छन्, उनीहरूले गर्नुपर्ने व्यवस्था गरिएको छ।

मुन्दुममा पनि बालबालिकालाई बेवारिसे बनाएर राख्न नमिल्ने व्यवस्था छ। यस व्यवस्था अनुसार बालबालिकाको आमा र बुबा दुवैको मृत्यु भएमा, बुबाको मृत्यु भएर आमाले अर्कोसँग विवाह गरेको अवस्थामा बालबालिकाको अविभावकत्व वा संरक्षण, हेरचाह र माया पाउने अधिकार शून्य हुँदैन। यस्तो अवस्था आएमा मुन्दुमले पहिलो प्राधिकार आमालाई दिएको छ। यस्तो अवस्था आइ परेमा सकेसम्म बालबालिकालाई आमाले बिहे गरेको घरमा लगेर हुर्काउने र आत्मानिर्भर भएपछि घर पठाउने मुन्दुमी परम्परा रहेको छ। अझ यदि बितेका लोग्नेतिरका दाजुभाइले स्वीकृति दिएमा र आमाले जोसँग बिहे गरेर गएको हो, नयाँ लोग्नेले

१० भोजपुर जिल्ला, हतुवागढी गाउँपालिका, वडा नं.२, दितेनी निवासी राजकुमार राईसँग भएको कुराकानीमा आधारित ।

११ भोजपुर जिल्ला, हतुवागढी गाउँपालिका, वडा नं.२, दितेनी निवासी थामवहादुर राईसँगको अन्तर्वार्ताबाट प्राप्त जानकारी ।

स्वीकार गरेमा आफ्नो थर, पाछा दिएर सन्तान बनाएर हुर्काउँछन्।[१२] तर उल्लिखित दुई विकल्पहरू नभएमा बालबालिकाको संरक्षण गर्ने कर्तव्य घरको बाजेबज्यै, बडाबडी, काकाकाकीको हुन्छ। बडाबडी र काकाकाकीले संरक्षण गरेनन् भने मामा माइजूले भान्जाभान्जीको संरक्षण गर्ने जिम्मेवारीको व्यवस्था गरेको छ। यस्तो अवस्था आइपरेमा बडाबडी र काकाकाकी वा मावलीहरूले भतिज, भतिजी वा भान्जाभान्जीहरूलाई बेवास्ता गर्न मिल्दैन। कसैले बेवास्ता गरेमा समाज मिलेर उनीहरूलाई पालनपोषण गर्न बाध्य पार्दछ । व्यवहारमा किराती समाजमा यस्ता बालबालिकाहरू धेरैजस्तो आमासँगै हुर्कने र आमाले नहुर्काएमा मामाघरमा हुर्केर मावलीहरूले नै भान्जाभान्जीको विवाह गरिदिने चलन रहेको देखिन्छ। चेलीबेटीको सन्तानलाई पनि आफ्नो सन्तानसरह मान्ने परम्परा रहेको पाइन्छ।

२.८. उचित मृत्यु संस्कारसम्बन्धी अधिकार

कुनै पनि बालबालिकाको मृत्यु भएमा उचित मृत्यु संस्कारको मुन्दुमी विधिविधान रहेको छ। मृत्यु भइसकेको बच्चाको लाशलाई मुन्दुममा व्यवस्थाअनुसार उमेरका आधारमा कोक्रो वा थुन्चेमा राखेर ओडारमा राखी आउने वा जमिनमा दफन गर्ने गरिन्छ। बालबालिकाको लास हो भनेर जथाभावी गर्न मिल्दैन।

२.९. थर[१३], पाछा[१४] र सामेत[१५] प्राप्त गर्ने अधिकार

मुन्दुमअनुसार यौन सम्बन्ध राख्न मिल्ने पहिलो शर्त भनेको नै विवाह हो तर कसैको विवाह नहुँदै लुकिछिपी यौन सम्बन्ध राखेर गर्भ रहन पुग्यो। गर्भ रहेको बच्चा यौन सम्बन्ध राख्ने भनेर आरोपित पुरुषले स्वीकार गरेमा सांस्कृतिक मूल्य मान्यताहरू पुरुषको तर्फबाट नै प्राप्त गर्दछ अर्थात् बालबालिकाले पुरुषको परिवारको सदस्य बनेर थर, पाछा, समेत प्राप्त गर्दछ तर आरोपित पुरुषले गर्भमा रहेको बच्चा नस्वीकारेमा र समाजले पनि सप्रमाण निश्चित व्यक्तिको सन्तान हो भनेर किटान गर्न नसकी जन्मेको बच्चा बेवारिसे बन्न पुग्दछ। मुन्दुमी व्यवस्थाअनुसार कुनै पनि बच्चालाई बेवारिसे बनाएर राख्न मिल्दैन। यस्तो अवस्था सिर्जना भएको अवस्थामा मुन्दुमले वैकल्पिक व्यवस्था गरेको छ। त्यसैले यस्तो अवस्था आइपरेमा मावली र १० समाज सभा बसेर चेलीबेटीको सन्तानलाई मावलीको थर, पाछा, सामेत र सुप्तुलुङ[१६] दिएर आफ्नै वंशमा अँगाल्ने वा छुट्टै थर, पाछा र सामेत दिएर सांस्कृतिक पहिचान दिने गरिन्छ। भान्जाभान्जीहरूलाई सांस्कृतिक पहिचान दिइसकेपछि चेली र भान्जाभान्जीहरूलाई गरिखानको लागि जग्गा जमिन लगायतका सम्पत्ति दिइ साथमै पनि राख्ने प्रचलन छ ।

२.१०. सम्बन्ध विच्छेदपछि बालबालिकासम्बन्धी व्यवस्था

सम्बन्ध विच्छेदलाई किराती राई भाषामा मनाफेक्मा भनिन्छ। मनाफेक्मा गर्दाको अवस्थामा पनि बालबालिकाको हेरचाह, संरक्षण, पालनपोषण गर्ने र माया प्राप्त गर्ने अधिकारको प्रश्न उठ्दछ। बालबालिका

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१२ भोजपुर जिल्ला, टेम्केमैयुङ गाउँपालिका, वडा नं. ३, दिल्या निवासी तीर्थराज मुकारुङ राईसँगको अन्तर्वार्ताबाट प्राप्त जानकारी ।

१३ थर भन्नाले भिन्न भाषी राई भन्ने जनाउँछ ।

१४ पाछा थरको उपशाखा वा अंश हो भने बाबुको सन्तान भन्ने जनाउँछ । गोत्र

१५ सामेत हिन्दू धर्मावलम्बीहरूमा जनाउने गोत्र जस्तै अर्थ लाग्छ ।

१६ सुप्तुलुङलाई सामान्य रुपमा बुझ्दा यो एक चुला हो जहाँ पितृहरू बस्नुका साथै ती सुप्तुलुङलाई पितृहरूको प्रतीक पनि मानिन्छ । यसलाई किरातहरू आफ्नो आस्थाको केन्द्र मान्दछन् । त्यसैले किरातहरूमा सुप्तुलुङ दिने र राख्ने कार्यले महत्व राख्दछ ।

ऐन, २०७५, दफा ७(२) यस्तो अवस्थामा बालबालिकालाई हेर्ने कर्तव्य बुवाआमा दुवैको हुन्छ। उनीहरूले आफ्नो आर्थिक क्षमताअनुसार दुवैले बच्चाको लागि आर्थिक व्यय व्यहोर्नुपर्ने व्यवस्था गरेको छ (नेपाल सरकार, २०७५, पृ.५)।

मुन्दुमी कानुनमा भने आर्थिक व्ययभार मात्र नभइ बालबालिका कोसँग बस्ने, थर, पाछा र सामेत के हुने ? भन्ने विषयले पनि महत्त्व राख्दछ। मुन्दुमले पनि सम्बन्ध विच्छेदपछिको बालबालिकाको अवस्थाबारेमा व्यवस्था गरेको छ। मुन्दुमले बालबालिका बुबाकै हुने मान्यता राखेको पाइन्छ। यस आधारमा सम्बन्ध विच्छेदपछि बालबालिका माथिको अग्राधिकार बुबाले पाउने र सम्पूर्ण दायित्व बुबाले नै व्यहोर्ने दायित्व दिएको छ । आमा सम्बन्ध विच्छेदपछि विवाह नगरी एक्लै बसेको अवस्थामा बालबालिकाले आमासँगै बस्छु र आमाकै थर, पाछा, सामेत पनि ग्रहण गर्छु भनेर इच्छा व्यक्त गरेमा बालबालिकाको मागलाई प्राथमिकता दिइन्छ। यो अवस्थामा आमासँगै बस्न पाउनुका साथै आमाकै थर, पाछा, सामेत ग्रहण गर्ने स्वतन्त्रता दिएको छ। यस्तो अवस्था सिर्जना भएमा आमाले माइतीमा सल्लाह गर्दछन्। सल्लाहअनुसार चेली र भान्जाभान्जीहरूको अनुरोध माइतीहरूलाई ठीक छ भन्ने लागेमा मावली र समाज छलफल गरेर मुन्दुमी विधिविधानअनुसार भान्जाभान्जीहरूलाई थर, पाछा, सामेत र सुसुलुङ दिनुपर्दछ। यसरी मुन्दुमले सन्तान पुरुषकै हुने अग्राधिकार दिए तापनि बालबालिकाले आमासँगै बस्न चाहेमा सो बारेमा छनोट गर्ने अधिकार बालबालिकालाई नै स्वतन्त्रता दिएको छ। यसरी छोरीचेली साथै भान्जाभान्जीहरूलाई थर र संस्कार संस्कृतिविहीन बन्न मुन्दुमले दिँदैन।[१७]

३. निष्कर्ष

मुन्दुममा भएको बालअधिकारसम्बन्धी व्यवस्था बालअधिकार सम्बन्धमा बनेका अन्तर्राष्ट्रिय कानुन, आधुनिक संविधान तथा कानुनको बालअधिकारसम्बन्धी व्यवस्थाभन्दा कुनै पनि सवालमा भिन्न र कमजोर देखिँदैन। अझ यी कानुनहरूभन्दा एककदम अगाडि रहेको देखिन्छ। यस मुन्दुमी व्यवस्थाले यौन सम्बन्धबाट भ्रूण (गर्भ) सिर्जना भएबाट यसलाई मानवको सृष्टि मानेर संरक्षण गर्दै मानवको रूपमा जन्म दिनुपर्ने मान्यता राखेको पाइन्छ। भ्रूण वा गर्भका साथै गर्भवती आमा दुवै सक्षम र स्वास्थ्य रहनको लागि पोषणको अधिकारको समेत व्यवस्था गरेको पाइन्छ। यसरी नै सकुशल जन्मने अधिकारको व्यवस्था गर्दै पूर्ण रूपमा गर्भपतनलाई निषेध गरेको पाइन्छ। यतिमात्र होइन आधुनिक बालअधिकारसम्बन्धी कानुनहरूले गरेका बालअधिकारसम्बन्धी व्यवस्था, जस्तै: बालकले नाम प्राप्त गर्ने अधिकार, पोषणको अधिकार, शिक्षा तथा स्वास्थ्यको अधिकारजस्ता अधिकारहरू पनि मुन्दुममा निहित छन् भने अर्कोतिर बालबालिकाले इच्छाएमा आमाको थर, पाछा र सामेत समेत अवलम्वन गर्न सक्ने व्यवस्था गरेको देखिन्छ। यसरी मुन्दुम अलिखित भए पनि प्रथागत कानुन तथा मुन्दुमी कानुनको रूपमा समाजमा सशक्त लागु हुँदै बालबालिकालाई एक सशक्त व्यक्तित्वको निर्माण गरेर राज्य र राष्ट्रको लागि जनशक्ति निर्माण गर्न मद्दत पुऱ्याएको पाइन्छ।

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१७ भोजपुर, टेम्केमैयुङ गाउँपालिका, वडा नं. २, पुख्यौंली घर भइ हाल टोखा नगरपालिका, वडा नं.८, गोइगबु बस्ने दुर्गा राईसँगको अन्तर्वार्ता प्राप्त जानकारी आधारित ।

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नेपालको सन्दर्भमा मानव अधिकारका मुद्दामा राजनीतिक प्रभाव

डा. टिकाराम पोखरेल

सार-सङ्क्षेप

मानिसले सभ्यताको इतिहासमा राजनीतिक अधिकार प्राप्तिका लागि गरेका सङ्घर्षलाई नै मानव अधिकारको पनि इतिहास भनेर अध्ययन गर्ने गरिएको छ। विभिन्न धर्मग्रन्थहरूमा मानव अधिकारसम्बद्ध विषयवस्तु उठान भए पनि पूर्व र पश्चिम दुवै सभ्यतामा मानव अधिकारका सवाल लामो समयसम्म छायाँमा नै रहे। इतिहासमा नेपाल पनि राजनीतिक रूपमा लामो समयसम्म अनुदार रह्यो। विश्वका अन्य मुलुकमा राजनीतिक क्रान्तिहरू हुँदै गर्दा समेत नेपाल भने राजनीतिक रूपमा चेतनाविहीन रह्यो। चेतनाको अभावमा मानव अधिकारको बहस पनि भएन। विश्वमा राजनीति र मानव अधिकारको विकास सँगसँगै भएको हो। नेपालमा पनि राजनीति र मानव अधिकारको विकास सँगसँगै भएको छ। राणा शासनको अन्त्यको केही दशकपछि मानव अधिकारसम्बन्धी सङ्घ संस्थाहरूको स्थापना भए। त्यसपछि राजनीतिक अधिकारका बहस गर्दा मानव अधिकारका विषयहरू स्वतः समेटिए। विकासका क्रममा राजनीतिमा मानव अधिकारको प्रभाव र मानव अधिकारमा राजनीतिको प्रभाव परिरहेको छ। नेपालको मानव अधिकारमा राजनीतिको सकारात्मक र नकारात्मक दुई किसिमको प्रभाव परेको छ। मानव अधिकारको चेतना वृद्धि, संविधान र ऐनमा मानव अधिकारसम्बन्धी व्यवस्था, मानव अधिकारसम्बन्धी आयोगहरूको स्थापना, राजनीतिक दलहरूको मानव अधिकारप्रति प्रतिबद्धता, नेपालको मानव अधिकारप्रति अन्तर्राष्ट्रिय प्रभाव र चासो, नागरिक अधिकारको प्रत्याभूति राजनीतिक विकासको परिणामस्वरूप नेपालको मानव अधिकारमा परेको सकारात्मक प्रभाव हो। यसैगरी राज्यको अनुदार दृष्टि, मानव अधिकारप्रति दलहरूको उदासिनता, मानव अधिकारमाथि राजनीतिक छायाँ, राजनीतिक द्वन्द्वमा मानव अधिकार उल्लङ्घन, आर्थिक सामाजिक सांस्कृतिक अधिकारप्रति राज्यको उदासिनता, राज्यको स्वच्छाचारी चरित्र मानव अधिकारमाथि राजनीतिले पारेका नकारात्मक प्रभाव हुन्। राजनीतिक क्रियाकलापबाट बन्ने सरकारको पहिलो दायित्व नै मानव अधिकारको सम्मान, संरक्षण, प्रवर्द्धन र परिपूर्ति हुने हुँदा मानव अधिकार स्वतः राजनीति निरपेक्ष हुन सक्दैन। मानव अधिकार र राजनीति दुवैमा एकआपसी प्रभाव परेकै हुन्छ।

प्रमुख शब्दकुञ्जीहरू: मानव अधिकार, राजनीति अधिकार, आर्थिक अधिकार, सामाजिक अधिकार, सांस्कृतिक अधिकार, चेतना,

१. राजनीतिक अवधारणा

परम्परागत रूपमा राजनीति भनेको समूहमा प्रतिस्पर्धा गर्ने, समूहबाट शक्ति प्राप्त गर्ने र शक्तिलाई प्रयोग गरी समूहलाई नियन्त्रण गर्ने क्रियाकलाप हो। राजनीति शक्तिको खेल हो। शक्ति व्यक्तिगत स्वार्थ र समूहबाट

प्राप्त हुने विषय भएकोले समाजमा हरेक व्यक्तिको राजनीतिमा चासो रहने गर्दछ। आधुनिक युगमा प्रत्यक्ष परोक्ष राजनीतिबाट कोही पनि व्यक्ति र कुनै पनि क्षेत्र निरपेक्ष रहन सक्तैन।

राजनीतिको अध्ययन राजनीतिशास्त्रले गर्दछ तर आज राजनीति विशुद्ध राजनीतिशास्त्रको मात्र विषय नभएर समाजको अभिन्न अङ्ग बनिसकेको छ। समाजका क्रियाकलापमा राजनीतिक भाष्य जोड्न थालिएको छ। समाजिक क्रियाकलापहरूमा राजनीति खेल्यो, राजनीति गर्यो, राजनीतिक भाषा बोल्यो जस्ता शब्दहरू प्रयोग हुन थालेको छ। समाजको अभिन्न अङ्ग भएर पनि राजनीति आज सबैले बुझ्ने तर कसैले नबुझ्ने विषय बनेको छ। राजनीतिकै कारण मानिस अरू मानिसभन्दा भिन्न भएकाले पश्चिमा दार्शनिक अरस्तुले मानिसलाई राजनीतिक जनावर (Political Animal) को संज्ञा दिएका छन्।

राजनीति 'राज' र 'नीति' दुई पदावली मिलेर बनेको छ । 'राज'को अर्थ शासन र 'नीति'को अर्थ उचित काम गर्ने कला हो । शाब्दिक रूपमा राजनीति ग्रिक भाषाको पोलिस (Polis) शब्दबाट उत्पत्ति भई त्यसबाट पोलिटिकल साइन्स (political Science) बनेको र पोलिटिकल साइन्सको भाषिक अनुवादित रूप राजनीतिशास्त्र भएको हो। पोलिसको अर्थ नगरराज्य भन्ने बुझिन्छ। पूर्वीय आचार्य कौटिल्यले राजनीतिलाई अर्थशास्त्रसँग तादाम्यता गर्दै राजनीतिशास्त्रको व्याख्या गरेका छन् भने मनुले राजनीतिशास्त्रलाई मानवशास्त्रको रूपमा व्याख्या गरेका छन्। मनुकृत मनुस्मृतिको सातौं अध्याय मूलतः राजनीतिसँग सम्बन्धित छ। याज्ञवल्क्यको याज्ञवल्क्यस्मृतिको प्रभाव त नेपालको संविधान र मुलुकी ऐनमा देखिएको छ (सिवाकोटी, २०६४, पृ.४) भन्ने मत पनि देखिन्छ।

समयको अन्तरालसँगै राजनीतिक चिन्तन र विचारमा परिवर्तन आएको छ। प्राचीन युनानमा राज्यशास्त्रको अर्थमा परिभाषित गरिने राजनीतिशास्त्र अहिले विज्ञानको रूपमा स्थापित भएको छ। परम्परागत राज्यशास्त्रले राजनीति के हो भन्नेभन्दा बढी कस्तो हुनुपर्छ भनी शास्त्रीय व्याख्या गर्दथ्यो। प्लेटोको आदर्श गणराज्य, पूर्वीय दर्शनको रामराज्य, कौटिल्यका राजनीतिक विचार, चिनियाँ राजनीतिक दर्शनको आदर्श युग सबै व्यवहारमुखीभन्दा बढी आदर्श र भावनात्मक थिए। राजनीतिमा आदर्शको खोजीले राजनीति यथार्थबाट विमुख भएको थियो।

प्राचीन पूर्वीय आचार्यहरूले राजनीतिलाई मानव धर्मको रूपमा पनि परिभाषा गरेको पाइन्छ। मनुले राजनीतिलाई मानवधर्म भनेका छन् भने सामवेदमा राजनीतिलाई शासकको कर्तव्यको रूपमा परिभाषा गरिएको छ। कौटिल्यले राजनीतिलाई राज्य सञ्चालनको कला भनेका छन्। पश्चिमा चिन्तक गार्नरले राजनीतिलाई राज्यसञ्चालनसँग जोडेका छन् भने राजनीतिशास्त्रका जनक मानिने एरिस्टोटलले राजनीतिलाई 'मास्टर साइन्स' अर्थात् विज्ञानहरूको पनि विज्ञान भनेका छन्।

विगतमा राजनीतिशास्त्रको केन्द्र राज्य र सरकार भए पनि आधुनिक युगमा खासगरी दोस्रो विश्वयुद्धपछि राजनीतिशास्त्रको बुझाइमा परिवर्तन आएको छ। आज राजनीतिशास्त्रले राज्य र सरकारको मात्र नभएर समग्र मानवीय क्रियाकलाप, शक्ति, राजनीतिक प्रणाली तथा निर्णय-प्रक्रियाको समेत अध्ययन गर्दछ (सिवाकोटी, २०६४, पृ.८) ।

२. पूर्वीय राजनीतिक चिन्तन

पूर्वीय परम्परामा लेखिएको वेद र पुराणहरूमा राजनीतिक चिन्तन र दर्शनको पर्याप्त प्रभाव रहेको छ। समग्र राज्यप्रणाली र शासनप्रणाली निरङ्कुश भएमा मानव अधिकारको अवस्था दयनीय हुन्छ। ऋग्वेदका अनुसार वैदिक कालमा राष्ट्रप्रमुख वा राजा जनताबाट चुनिने गर्थे। राष्ट्र प्रमुखमा जनताले रुचाउने काम गर्नुपर्ने कर्तव्य थियो। राष्ट्र प्रमुखका कारण राष्ट्रको गौरव क्षीण हुनु हुँदैनथ्यो। उनले राष्ट्रका निम्ति अविचल भई काम गर्नुपर्दथ्यो। स्थिर शासन र राष्ट्रको नेतृत्व गर्नुपर्दथ्यो। सुशासन प्रदान गर्नपर्दथ्यो। दुःख दिने मानिसलाई अलग गर्नुपर्दथ्यो । जनतालाई शत्रुहरूबाट जोगाउनु पर्दथ्यो। राज्यलाई सुदृढ बनाउनु पर्दथ्यो (डा.प्रपन्नाचार्य, २०३७)।

महाभारतलाई धार्मिक ग्रन्थको रूपमा लिइन्छ। तर महाभारत धार्मिक कम राजनीतिक बढी हो। यसको कथानक संरचना, चरित्र, पर्यावरण पूर्णतः राजनीतिक छ। आजको हिन्दु राजनीति महाभारतबाट प्रभावित छ। महाभारतको समय आजभन्दा करिब पाँच हजार वर्षपहिलेको मानिन्छ। यो मात्र पौराणिक कथा हो वा यथार्थ घटना भन्ने बहस र विवाद गर्न सकिन्छ। कृष्णका कतिपय लीला मायावी प्रकृतिका छन्। भक्ति र आस्था निरपेक्ष भएर हेर्नेले समग्र भागवतलाई पौराणिक आख्यान भनेर पनि लिन सक्छन्। तथापि त्यसमा खासगरी महाभारतमा वर्णित समाज र भूगोललाई कसैले नकार्न सक्तैन (खनाल २०७४), ।

महाभारत वास्तवमा एक राजनीतिक दस्तावेज हो। एक सुझबुझपूर्ण राजनीतिको पूर्ण नैतिक शिक्षाको दस्तावेज हो। विचार गर्दा महाभारतको कथा र अहिलेको नेपालको राजनीतिको कतिपय पक्ष उस्तैउस्तै रहेको भान हुन्छ। यसमा कौरव र पाण्डव पक्ष को को हुन्, त्यो आआफ्नो बुझाईमा भर पर्ने कुरा हो। महाभारतको सुरुवातलाई धृतराष्ट्रको अति पुत्रमोह जसले अप्रत्यक्ष रूपले दुर्योधनलाई दम्भी, घमण्डी र आफ्नो जितको लागि जस्तोसुकै अनैतिकतासम्म उत्रन सक्ने चरित्र निर्माण गर्न मद्दत गरेको हुन्छ। .... यसमा भीष्मको प्रतिज्ञा जसले गर्दा युद्ध रोक्न नसक्ने बाध्यता अनि धर्मराजको रूपमा सम्मानित युधिष्ठिरको जुवाको लत पनि उतिकै जिम्मेवार देखिन्छ। त्यसका साथै सबैभन्दा महत्त्वपूर्ण पाण्डवहरूको अस्तित्व, सम्मान र न्याय राज्यपक्षले दिन नसक्दा महाभारत हुन पुगेको भनिन्छ र अन्त्यमा न्यायको जित भए पनि असङ्ख्य मानव जीवनको क्षति भएको इतिहास छ (झा, २०१९)।

भनिन्छ— दुनियाँमा भएको सबै कुरा महाभारतमा छ। यसैलाई उल्ट्याएर भनिन्छ— महाभारतमा नभएको कुरा दुनियाँमा केही छैन। बाह्य रूपमा हेर्दा महाभारत मानव जीवनमा नित्य घटित भइरहने दृश्यावलीको विश्वकोश हो। यसरी हेर्ने हो भने महाभारत राजनीतिक दर्शन र व्यवहारिक पक्ष हुवै भएको शास्वत कृति रहेको छ (गिरि, २०७९) ।

महाभारत कथा मात्र होइन, बृहत सन्देशसहितको एउटा राजनीतिक र कूटनीतिक दस्तावेज पनि हो। त्यसैले राजनीतिक घटनाक्रम, सत्ता, राजनीतिज्ञबारे कुरा स्पष्ट पार्न वा कुनै सन्देश प्रवाह गर्न महाभारतका किस्सा उक्काउने गरिन्छ (कुँवर, २०७८)। महाभारतका कथाहरू धार्मिक सन्दर्भमा भन्दा बढी राजनीतिक सन्दर्भमा पुकारिनु भनेको यसको राजनीतिक दर्शनको कारण हो।

पूर्वीय राजनीतिक दर्शनका चिन्तक मनुले मूलतः राजधर्मको व्याख्या गरेका छन्। मनुरचित मनुस्मृतिको सातौँ अध्याय राजनीतिसँग सम्बन्धित छ। उनले हिन्दू सम्राटका गुणहरूको चर्चा गर्दै राजाको जनताप्रतिको उत्तरदायित्व, राजाको स्थान, राजाको नीति र स्वभावको चर्चा गरेका छन्। मनुस्मृतिमा उनले राज्यको सप्ताङ्ग सिद्धान्तको चर्चा गर्दै स्वामी, मन्त्री, पुर, राष्ट्र, कोष, दण्ड र मित्रलाई राज्यका सप्ताङ्ग भनेका छन् (लुइँटेल, अनुः तिलकप्रसाद)।

भारतीय राजनीतिक चिन्तनमा यथार्थवादी धारणा प्रस्तुत गर्ने आचार्य कौटिल्यको राजनीतिक विचार ज्यादै महत्त्वपूर्ण छ। चन्द्रगुप्त मौर्यका महामन्त्री समेत रहेका चाणक्य आदर्श र व्यवहारिक दुवै राजनीतिका सङ्गम हुन्। उनले आफ्नो पुस्तक अर्थशास्त्रमा आर्थिक विषय मात्र नभएर राजनीतिक, कुटनीतिक र मानव जीवनसँग सम्बन्धित विषयमा धारणा राखेका छन्। यस ग्रन्थमा राजाको जीवन, व्यवहार, राज्यका निकायहरूको कर्तव्य, न्यायिक व्यवस्था, दण्ड विधान, सत्रु राज्यलाई वशमा पार्ने उपाय, राज्यमा आएको आपत्ति विपत्तिबाट बच्ने उपाय, युद्ध सम्बन्धी नियम, भेद नीति, जादू टुनामुना, राज्यको अर्थ नीति आदि विषय उल्लेख छ (प्रा डा.दाहाल, रामकुमार, पृ.७)। मनुले झैं कौटिल्यले पनि राज्यका सप्ताङ्ग सिद्धान्त स्वीकारेका छन्। कौटिल्यले वर्णाश्रम धर्म कायम गर्नु, दण्डको व्यवस्था गर्नु, आयव्ययको हिसाब गर्नु, प्रमुख पदहरूमा नियुक्त गर्नु, लोकहित र सामाजिक कल्याण सम्बन्धी कार्य गर्नु र युद्ध गर्नुलाई राजाका प्रमुख कर्तव्यहरू भनेका छन् (प्रा डा.दाहाल, रामकुमार, पृ.१०)।

३. मानव अधिकारको अवधारणा

मानव भएको कारण प्राप्त अधिकार नै मानव अधिकार हुन्। मानव अधिकार मानव जीवनसँग अभिन्न छ। जन्मपूर्वदेखि मृत्युपर्यन्तसम्म मानिसलाई अधिकार चाहिन्छ। मानवलाई अन्य प्राणीभन्दा भिन्न देखाउने मुख्य आधार नै मानव अधिकार हो। मानव अधिकार सभ्य समाजको सूचक पनि हो। मानव अधिकारले व्यक्तिको जीवन स्वतन्त्रता, समानता, मर्यादा, गोपनीयता, अविभेद, समानता जस्ता आधारभूत कुराहरूलाई निर्विवाद आत्मसाथ गर्दछ।

मानव अधिकार कसैले लिने वा दिने विषय होइन, मानव भएर जन्मेपछि प्राकृतिक रूपमा स्वतः प्राप्त हुने विषय हो। त्यसैले मानव अधिकारलाई प्राकृतिक अधिकार (Natural Rights) पनि भनिन्छ। मानिसलाई आवश्यक पर्ने शिक्षा, स्वास्थ्य, खाद्यान्न, राजनीति, पहिचान, बसोबास, धर्म, संस्कृति, परम्परा, आवतजावत, बोल्ने, हिँड्ने, खेल्ने, घुम्ने जस्ता सबै आधारभूत आवश्यकता र मानव गतिविधि मानव अधिकारभित्रै पर्दछन् ।

सबै अधिकार सबैका लागि मानव अधिकारको मूल मन्त्र नै हो। एउटा व्यक्ति जहाँ जन्मे पनि, जुन भूगोलमा रहे पनि जुनसुकै अवस्थामा भए पनि उसको मानव अधिकार सुरक्षित हुनुपर्दछ। भनिन्छ— मानव अधिकारको कुनै सीमा हुँदैन। तर आफ्नो अधिकारको प्रयोग गर्दा अरूको अधिकारमा असर पर्यो भने त्यहाँ सीमा लाग्छ (पोखरेल, २०८०, पृ.२)।

मानव अधिकारको उपभोगमा अवरोध भएमा मानव अधिकार उल्लङ्घन भनिन्छ। मानव अधिकार उल्लङ्घन विश्वमा नै हुने गर्छ, तर समयसन्दर्भमा उल्लङ्घनका स्वरूपहरू परिवर्तन भैरहेका छन्। नव अधिकारको

उल्लङ्घन रोक्ने पहिलो जिम्मेवारी राज्यको हो, तर गैरराज्यपक्षको समेत मानव अधिकारको संरक्षण संवर्धनमा भूमिका हुन्छ। मानव अधिकारको संरक्षण र संवर्धनमा काम गर्ने व्यक्ति वा संस्थालाई मानव अधिकार रक्षक भनिन्छ। मानव अधिकार रक्षकहरूले मानव अधिकारको संरक्षणमा महत्त्वपूर्ण भूमिका निर्वाह गर्न सक्दछन्।

४. आधुनिक मानव अधिकारको विकास

मानव अधिकारको अवधारणा आधुनिक भए पनि यसको जन्म मानिससँगै भएको अनुमान गर्न सकिन्छ। यद्यपि पहिलो मानव कहिले उत्पत्ति भयो भनेर किटान गर्न नसकिए जस्तै पहिलो पटक मानव अधिकारको उत्पत्ति वा सुरुवात कहाँबाट भयो भनेर एकीन गर्न सकिन्नँ । मानवको उत्पत्ति हुँदा मानव अधिकारको बारेमा मानिसमा बोध थिएन। बोध नभएकाले उपभोग र सुनिश्चितताको सवाल नै थिएन। सभ्यताको लामो अन्तरालमा मानिस सामाजिक, राजनीतिक जीवनमा प्रवेश गर्यो। राजनीतिक विकाससँगै समानान्तर रूपमा मानव अधिकारको विकास भयो। राजनीतिक सङ्घर्षमा मानव अधिकारका सवाल जोडिन थाले।

आजको मानव अधिकारको बहस जुन कोणबाट भएको छ, त्यो मानव अधिकारको आधुनिक अवधारणा हो । त्यसैले मानिसले आधुनिक र सभ्य हुँदै गर्दा राजनीतिक अधिकार प्राप्तिका लागि गरेका सङ्घर्षलाई नै मानव अधिकारको इतिहास भनेर अध्ययन गर्ने गरिएको छ । सन् १२१५ मा बेलायतमा निरङ्कुश राजतन्त्रको विरुद्ध नागरिक अधिकारको लागि आन्दोलन भयो । परिणमस्वरूप राजा जोनले जनप्रतिनिधिमूलक संसदको अधिवेशन नियमित बोलाउनुपर्ने, कानुन संसदले मात्र बनाउनुपर्ने, राजाले स्वच्छाचारी कर लगाउन नपाउने, कानुनको सर्वोच्चता, स्वतन्त्र न्यायालयको व्यवस्था, कानुनबमोजिम मात्र थुनामा राख्न पाइने व्यवस्था गरेर राजाका असीमित अधिकार कटौती गरिएको दस्तवेज (म्याग्नाकार्ता) मा हस्ताक्षर गरे । यसैलाई पश्चिमा मानव अधिकारको प्रारम्भ विन्दु मानिन्छ । सन् १६८८ बेलायमा जारी भएको बिल अफ राइट्स (Bill of Rights), सन् १७७६ को अमेरिकी स्वतन्त्रता सङ्ग्रामको घोषणापत्र, सन् १७८९ को फ्रान्सको स्वतन्त्रता क्रान्तिको घोषणापत्र पनि पश्चिमा मानव अधिकारको विकासमा महत्त्वपूर्ण रहे ।

प्रथम विश्वयुद्ध (सन् १९१४-१९१८) मा भएको मानवतामाथिको वर्वरता पछि सन् १९२० मा राष्ट्रसङ्घ (League of Nations) को स्थापना भयो। प्रथम विश्वयुद्धमा असङ्ख्य धनजनको क्षति हुनुका साथै मानवीय कानुनको समेत उल्लङ्घन हुन पुग्यो। राष्ट्रसङ्घबाट मानव अधिकारको विकास र पालनाका लागि केही प्रयासहरू भएता पनि उद्देश्यबमोजिम प्रभावकारी कार्य गर्न नसकेकोले उक्त सङ्घ असफल भयो। फलस्वरूप दोस्रो विश्वयुद्ध भयो र राष्ट्रसङ्घ विघटन हुन पुग्यो । विघटनपूर्व राष्ट्रसङ्घले सन् १९२६ मा दासत्व महासन्धि जारी गर्यो। उक्त महासन्धि विश्वबाट दासत्वको अन्त्यका लागि महत्त्वपूर्ण रह्यो।

सन् १९४०-१९४५ मा भएको दोस्रो विश्वयुद्धको घाउमा मलम लगाउन १९४५ मा संयुक्त राष्ट्रसङ्घको स्थापना भयो। भविष्यमा हुनसक्ने युद्धबाट विश्वलाई बचाउन तथा मानव अधिकारको रक्षा गर्नको लागि राष्ट्रसङ्घ स्थापना भएको हो । राष्ट्रसङ्घको बडापत्रमा मानव अधिकारको संरक्षण र विश्व शान्तिको परिकल्पना छ। जाति, लिङ्ग, भाषा र धर्मको भेदभावविना सबैको लागि मानव अधिकार र मौलिक स्वतन्त्रता भन्ने मान्यता र सिद्धान्तलाई बडापत्रमा स्वीकार गरिएको छ।

मानव अधिकारको विश्वव्यापी घोषणापत्र, १९४८ विश्व मानव अधिकारको इतिहासमा सबैभन्दा महत्त्वपूर्ण चरण हो। १० डिसेम्वर १९४८ मा जारी भएको यो घोषणापत्रलाई मानव अधिकारको विश्वव्यापी मापदण्डको रूपमा लिइन्छ। यो घोषणापत्रले विश्वमा स्वतन्त्रता, न्याय र शान्तिको आधार नै मानवमा अन्तरनिहित प्रतिष्ठा, सम्मान र अविच्छिन्न अधिकारहरूको सम्मान नै हो भन्ने कुरा स्वीकार गरेको छ। विश्व्यापी मान्यताको रूपमा रहेको मानव अधिकार र मौलिक स्वतन्त्रताहरूप्रति सम्मान गर्दै मानव अधिकारको विश्वव्यापी घोषणापत्र जारी भएको हो (पोखरेल, २०८०, पृ.४३)।

युद्धको समयमा मानव अधिकारको उल्लङ्घन रोक्न र मानवोचित व्यवहार गर्न सहयोग पुगोस् भन्ने हेतुले सन् १९४९ मा ४ वटा महासन्धिहरू जारी भए। यिनीहरूलाई मानवीय कानुन वा युद्धको कानुन पनि भनिन्छ। जेनेभा महासन्धि युद्धमा हुने मानव अधिकारको उल्लङ्घन रोक्न महत्त्वपूर्ण रहेको छ। यसपछि पनि मानव अधिकारसम्बन्धी महासन्धिहरू धमाधम जारी भए। अहिले संयुक्त राष्ट्रसङ्घबाट २०० भन्दा बढी महासन्धि जारी भैसकेका छन्।

मानव अधिकारसम्बन्धी दस्तावेजहरूसँगै त्यसको कार्यान्वयनका लागि राष्ट्रसङ्घअन्तर्गत विभिन्न निकायहरूको स्थापना भयो। मानव अधिकार परिषद्, मानव अधिकार उच्चायुक्तको कार्यालय, सन्धिजनित समितिहरू बन्नुका साथै राष्ट्र सङ्घीय समाधीक्षकहरू र विशेष प्रतिनिधिहरूको नियुक्ति भयो। राष्ट्रसङ्घले आह्वान गरे अनुरूप संयुक्त राष्ट्रसङ्घका सदस्य राष्ट्रहरूले आफ्नो देशमा मानव अधिकारसम्बन्धी राष्ट्रिय संस्थाहरू स्थापना गरे। देशभित्रको मानव अधिकार संरक्षणका लागि यो महत्त्वपूर्ण कदम हो। यसैगरी एम्नेष्टी इन्टरनेशनल, ह्युमन राइटस वाच, रेडक्रसजस्ता संस्थाहरूले मानव अधिकार र मानवीय कानुनको कार्यान्वयमा महत्त्वपूर्ण कार्य गरेका छन् । देशभित्र खुल्ने गैरसरकारी संस्थाहरूको मानव अधिकारको विकासमा महत्त्वपूर्ण योगदान रह्यो। नेपालकै सन्दर्भमा भन्ने हो भने सरकारीभन्दा गैरसरकारी क्षेत्रले मानव अधिकारको बहस धेरै पहिले सुरु गरेको हो।

५. पूर्वीय चिन्तनमा मानव अधिकार

पूर्वीय चिन्तन र दर्शनमा मानव अधिकारको अध्ययन गर्दा ऋग्वेद, सामवेद, अथर्ववेद, यजुर्वेद, मनुस्मृति, याज्ञवल्क्यस्मृति, शुक्रनीति, कौटिल्यको अर्थशास्त्र, बुद्धका उपदेश ग्रन्थहरू आदि उल्लेखनीय छन्।

पूर्वीय सनातन दर्शनसँग मानव अधिकारलाई जोडेर हेर्दा अधिकार र कर्तव्य अभिन्न देखिन्छन्। कर्तव्यको माध्यमबाट नै अधिकारको सुनिश्चितामा जोड दिइएको पाइन्छ। अधिकार भनेको शक्ति हो। शक्तिले मानिसलाई भ्रष्ट बनाउँछ तर कर्तव्यले मानिसलाई नम्र बनाउँछ। एउटाले कर्तव्य पालना गर्दा अर्काको अधिकार सुरक्षित भइरहेको हुन्छ। त्यसैले अधिकारको स्रोत कर्तव्य हो।

पूर्वीय चिन्तन परम्परामा मानव अधिकार भन्ने भिन्न दर्शनशास्त्र वा विधाको विकास नभए पनि पूर्वीय शास्त्रका विभिन्न कथा, उपकथा र सन्दर्भहरूमा मानव अधिकारसँग सम्बन्धित विषयहरू पाउन सकिन्छ। वेद तथा पुराणमा मानव अधिकारसँग जोडेर व्याख्या गर्न सकिने विषयहरू यत्रतत्र छन्। शिवलाई अर्धनारीश्वरको रूपमा चित्रण गरिएको पौराणिक कथाहरू छन्। अर्धनारीश्वरको अवधारणाले लैङ्गिक समानताको विचारलाई बढावा दिन्छ। लैङ्गिक समानतामा समसामयिक मानव अधिकारको बहसलाई प्रतिध्वनित गरेको छ।

शिवको तेस्रो नेत्र प्रायः अन्तरदृष्टि र धारणाको प्रतीकको रूपमा देखिन्छ। न्यायको खोजीमा, अज्ञानता र अन्यायको विनाशकर्ताको रूपमा शिवको भूमिका निष्पक्ष व्यवहार, स्वच्छ सुनुवाइ, जवाफदेहिता, भेदभाव र उत्पीडनबाट व्यक्तिहरूको सुरक्षा सुनिश्चित गर्ने मानव अधिकारको सिद्धान्तसँग मेल खान्छ। अझ सरल शब्दमा भन्नुपर्दा एक वैश्विक न्यायाधीशको रूपमा शिवले न्यायको सिद्धान्तलाई मूर्तरूप दिएका छन्। उनले निष्पक्षता र स्वच्छ सुनुवाइलाई सुनिश्चित गर्दछन् । शिवलाई प्रायः पीडित र सीमान्तकृतहरूको भगवान्को रूपमा हेरिन्छ। उनी सामाजिक असमानताको विनाश र न्यायपूर्ण र समतामूलक समाजको निर्माणसँग अप्रत्यासित रूपमा जोडिएका छन् (खनाल, सचिन, २०८०)।

लैङ्गिकताको सन्दर्भमा हेर्ने हो भने वेदले महिला र पुरुष दुवैलाई समान देखेको छ। वेदमा लिङ्गका आधारमा कुनै भेदभाव गरिएको छैन। ऋग्वेदकालमा महिला समाज पूर्ण विकासको स्वरूपमा रहेको पाइन्छ। वेदका अनुसार वैदिककालिक महिला समाज पढ्न, लेख्नमात्रै होइन, राष्ट्र-समाज निर्माण वा आपतकालीन अवस्थामा पुरुष वर्गजस्तै कस्सिएर लाग्थे। नारी वीरत्वकै कारण समाज सभ्य भएको हो, राज्य चलयमान भएको हो प्रकृतिले गति लिएको हो र आजको विज्ञानले विकास गर्न सकेको हो (घिमिरे, २०७६)।

ऋग्वैदिक कालमा जनताको प्रतिनिधित्व प्रणाली व्यवस्थित गर्न सङ्गठित प्रणाली थियो। त्यस्तो समितिमा मत प्रतिमत राख्ने, खण्डन मण्डन गर्ने, बहुमत वा सर्वसम्मतका आधारमा टुङ्गोमा पुग्ने, सकेसम्म समाज कर्म, समान हृदय र समान मन बनाएर राष्ट्रका लागि एक भएर काम गर्नपर्ने र राष्ट्रको रक्षाको लागि सङ्गठित भएर रहनुपथ्यो ।

ऋग्वेदका विभिन्न ऋचामा विभिन्न प्रकारका मुक्तिको चर्चा छ, जसको सम्बन्ध मानव अधिकारसँग रहेको मान्न सकिन्छ। ती हुन् (अ) भयबाट मुक्ति, (आ) बन्धनबाट मुक्ति, (इ) रोगबाट मुक्ति, (ई) भोकबाट मुक्ति, (उ) अपराध र हिंसाबाट मुक्ति, (ऊ) सङ्कटबाट मुक्ति, (ए) अन्यायबाट मुक्ति, अर्थात् ऋग्वेदमा प्रार्थना वा कामना गर्दा व्यक्ति, परिवार, समाज र राज्यले बन्धनको समस्या भोग्न नपरोस् भनी कामना गरिएको देखिन्छ। ती कुनै प्रत्यक्ष, कुनै प्रतीक र कुनै दृष्टान्तका रूपमा उल्लिखित छन्। आजको मानव अधिकार भनिने कुरा पनि मूलतः भोक, रोग, बन्धन, शोषण, भय, हिंसा, सङ्कट र अन्यायका विषयवस्तुसँग नै सम्बन्धित छन् (बन्जाडे, २०७३, पृ.४) ।

ऋग्वेद बालविवाह, अनमेल विवाह, अनिच्छित विवाह र पारिवारिक हिंसा विरुद्ध देखिन्छ। यो वेदले वर्ण र वर्गका आधारमा कसैले पनि विभेदयुक्त व्यवहार गर्न नहुने कुरा उल्लेख गरेको छ। व्यापारीले ग्राहकको शोषण गर्न नहुने र गरेमा दण्ड दिनुपर्ने व्यवस्था छ। यस अर्थमा ऋग्वेद मानव अधिकारको पक्षमा देखिन्छ (बन्जाडे, २०७३, पृ. ५—७)।

बन्धन मानव अधिकार उपभोगको सबभन्दा ठूलो अवरोध हो। सामवेदमा बन्धन विरुद्ध विभिन्न कामना गरिएको छ। बन्धनमा राख्ने खालका दुष्ट प्रवृत्तिको विनास, पीडाबाट मुक्ति, ऋणबाट मुक्ति, शत्रुको परास्त, सबैको संरक्षण र पालना, अपराधिलाई दण्ड, मातापिता र महिलाको स्थान उच्च, अहिंसा, कर्तव्य, सबैप्रति समान व्यवहारका कुरा रहेको उल्लेख छ (बन्जाडे, २०७३, पृ. ८—९)। अथर्ववेदमा अपराध नियन्त्रण र

दण्डहीनताको अन्त्य, कन्याले रुचाएको पतिले विवाह गर्नुपर्ने, महिलाको स्वास्थ्य सम्बन्धी कुरा, बालबालिकाको दीर्घायुका कुरा, सुशासन, कर्तव्य र अहिंसाका विषय उल्लेख छन्। यजुर्वेदमा पनि अपराध नियन्त्रण, दण्डहीनता, महिलाको उच्च स्थान, अहिंसा, समानता, स्वास्थ जस्ता मानव अधिकारसम्बद्ध विषयहरू उल्लेख छन् (बन्जाडे, २०७३, पृ. ९—१२)।

पूर्वीय दर्शनमा धेरै स्मृति र नीतिहरू छन्। तीमध्ये मनुस्मृति, यज्ञवल्क्यस्मृति, पराशरस्मृति, शुक्रनीति, विदूर नीति आदि चर्चित छन्। आजको मानव अधिकारको आँखाले हेर्दा यी स्मृतिहरूमा उल्लेखित केही विषयहरू मानव अधिकारमैत्री नलागे पनि तत्कालीन समाज सापेक्षतामा पनि हेर्नुपर्ने हुन्छ। फेरि व्याख्याको नियम सकारात्मक पक्ष मात्र खोजेर बखान गर्ने पनि होइन र नकारात्मक पक्ष मात्र खोजेर आलोचना मात्र गर्ने पनि होइन। सबै पक्ष बुझेर समग्रतामा मूल्याङ्कन गर्ने हो।

मनुस्मृतिमा पराधीनतालाई दुःखको बीऊ भनिएको छ। शब्दको चोरीलाई सबैथोक चोरी गरेको मानिने भनिएको छ। वातावरण नष्ट गर्नेलाई कठोर सजाय दिने कुरा छ। उपभोक्ता ठगी गर्नेहरू दण्डको भागी हुनुपर्ने कुरामा जोड दिइएको छ। याज्ञवल्क्यस्मृतिमा राजामा असल गुण हुनुपर्ने, घुस लिन नहुने, कानुनसम्मत दण्डको प्रयोग हुनुपर्ने, गलत दण्ड गरिएमा पीडितबाट लिएको रकम फिर्ता गरिदिने र सजायमा प्रायश्चित गरिनुपर्ने, राजिखुसी केटाकेटी विवाह गर्न पाउने जस्ता मानव अधिकारसम्बद्ध कुराहरू रहेका छन्। शुक्रनीतिमा खुला न्यायासन (इजलास) मा सुनुवाइ हुनुपर्ने, उपभोक्तालाई ठग्न नहुने, घुस खान नहुने, दण्ड सजाय अन्यायपूर्ण गर्न नहुने, सूचना प्रवाह, सामाजिक आचारणको पालना गर्नुपर्ने जस्ता विषय उल्लेख छन् (बन्जाडे, २०७३, पृ. १३—२२)।

कौटिल्यको अर्थशास्त्रमा मूलतः राज्यप्रणाली, सामाजिक सम्बन्ध र व्यवहार, न्यायप्रबन्ध, दण्डनीति, प्रकृति र मानव तथा राज्यको सुरक्षासँग सम्बन्धित विषयहरू भए पनि यी विषयहरूको उल्लेख गर्दा मानव अधिकारसँग सम्बन्धित भएका छन्। मनुस्मृतिमा उल्लेखित राजाका गुणहरू, नियुक्तिमा योग्यता र क्षमता, लेखा प्रणालीको पारदर्शीता, अपराधअनुसारको दण्ड, उपभोक्ताका हीत, सामाजिक धर्म, संस्कृति र परम्परा, महिलाको संरक्षण, वातावरणको संरक्षण मानव अधिकारका सवाल नै हुन् (बन्जाडे, २०७३, पृ. २२—२६)।

विभिन्न धर्महरूमध्ये बुद्ध धर्मलाई विशेष धर्मको रूपमा ग्रहण गरिएको पाइन्छ । यस धर्मले सबै व्यक्ति, वर्ग र समुदायलाई समान ठान्दछ। कुनै पनि आधारमा कसैलाई पनि विभेद गर्न नपाइने कुरामा जोड दिएको छ। हिंसा र शान्ति, अपमान र सम्मान, विभेद र अविभेद, समानता र असमानता एक साथ रहन सक्दैनन्। महिला र पुरुष समान हुन्। साना हुन् वा ठूला, गरिब हुन् वा धनी सबैलाई बाँच्ने अधिकार छ। मानव अधिकारले स्वीकार गरेका शान्ति, अहिंसा, स्वतन्त्रता, समानता, अविभेद, मानव मूल्य आदि यस धर्मका आधार वा धरातल हुन्। बुद्ध धर्मले मानव अधिकार शब्द र त्यसभित्रका विषयलाई धार्मिक ग्रन्थमा प्रत्यक्षतः उल्लेख नगरिए पनि परोक्षतः यथोचित स्थान दिएको पाइन्छ। विशेषतः कर्तव्यमार्फत अधिकारको प्रयोगमा जोड दिइएको छ (सिवाकोटी, २०७४, पृ. ७३)।

मानव अधिकारले हिंसालाई स्वीकार गर्दैन। वृद्ध धर्म हिंसाविरुद्धको अहिंसात्मक हतियार हो। मानव अधिकारको विश्वव्यापी घोषणापत्रमा उल्लिखित भावी पुस्तालाई युद्धको विभिषिकाबाट बचाउने .... कुरालाई

बुद्ध धर्मले आत्मसात गरेको छ। मानवताभन्दा बाहिर बुद्ध धर्म छैन। बाँच र बचाउको भावनाबाट अभिप्रेरित यस धर्ममा सेवाको भावलाई उच्च स्थान दिइएको पाइन्छ। महिलाहरूको अलग भिक्षुणी सङ्घ स्थापना हुनु र त्यसमा ठूलो सङ्ख्यामा महिला भिक्षुणीको रूपमा आवद्ध हुन पाउने गरी अधिकार दिनु सामान्य कुरो थिएन। बुद्ध सङ्घमा सबै जातिको निर्वाध प्रवेश थियो। आमाबाट जन्मनाले नै कोही ब्राह्मण हुँदैन, अपरिग्रही र त्यागी जो छ त्यो ब्राह्मण हो (सिवाकोटी, २०७४, पृ. ८५) भन्ने जस्ता समानता र अविभेदका कुरा बुद्ध धर्मग्रन्थहरूमा पाउन सकिन्छ। जुन आजको मानव अधिकारले सबैभन्दा बढी वकालत गर्ने विषय पनि हुन्।

बुद्धले भोकलाई सबैभन्दा ठूलो रोग भनेका छन्। छोराछोरीको कर्तव्य, बाबुआमाको कर्तव्य, शिष्यको कर्तव्य, गुरुको कर्तव्य, लोग्नेको कर्तव्य, स्वास्नीको कर्तव्य, मित्रको कर्तव्यलाई सूक्ष्म ढङ्गले व्याख्या गरेको छ। अधिकारमार्फत व्यक्तिले आफ्नो हितका लागि सुविधा खोजेको हुन्छ भने कर्तव्यमार्फत अरूको हितको लागि सहायता गर्दछ। मानिस सामाजिक प्राणी भएकाले जुन समाजले उसलाई अधिकार प्रदान गर्दछ, त्यसप्रति उसले कर्तव्य पनि पालना गर्नुपर्दछ। कर्तव्यको दुनियाँमा मात्र अधिकारको अस्तित्व संभव छ (सिवाकोटी, २०७४, पृ. ८६)। कर्तव्यलाई निषेध गरी खोजिने अधिकारबाट मात्र कसैको अस्तित्व सम्भव छैन। मानव अधिकारका मूल्य, मान्यता वा सीमाभन्दा बाहिर धार्मिक मान्यता पनि रहन सक्दैनन्। अहिंसा, सहअस्तित्व, भातृत्व, विश्व शान्ति, मानवता आदि पक्षलाई आत्मसात गरेको बुद्ध धर्मलाई मानव अधिकारको आधारस्तम्भ भन्नुमा अन्यथा नहोला (सिवाकोटी, २०७४)।

जो व्यक्तिले पूर्वीय दर्शनको रसपान गर्न सक्छ, उसले जीवन र जगतलाई बुझ्दै मानवीय जीवन जिउन सिक्दछ। पूर्वीय दर्शनका अनुसार मानिसले कुनै पनि कर्म गर्दा यी उल्लिखित सम्बन्ध र कर्तव्यबाट टाढा हुनु हुँदैन। जुन व्यक्तिले आफ्नो अधिकार, कर्तव्य र सम्बन्ध बिच त्रिकोणात्मक सन्तुलन कायम गर्न सक्छ, ऊ सदाचारको पथमा सजिलै हिँड्न सक्छ।

पूर्वीय दर्शनले केवल मानिसको दिनचर्या, आश्रम प्रबन्ध र कानुनको पालनाजस्ता विषयमा मात्र मार्गदर्शन गरेको छैन। कुनै पनि मुलुकको शासन व्यवस्था कस्तो हुनुपर्दछ, नागरिक र राज्यबीचको सम्बन्ध, राज्यले नागरिकका लागि पूरा गर्नुपर्ने दायित्व र नागरिकले मुलुकको हित तथा राष्ट्रिय उन्नति र समृद्धिका लागि पूरा गर्नुपर्ने कर्तव्य समेतलाई व्याख्या गरेको छ। सबैले व्यक्तिगत रूपमा कर्तव्य निर्वाह गर्दा अरूको अधिकार पनि सुरक्षित हुनुपर्दछ भन्ने मान्यता लिएको सनातन दर्शनले सदाचार नीतिलाई राज्य सञ्चालनको मुख्य आधार मानेको पाइन्छ। अधिकार, कर्तव्य, अनुशासन, विधिको पालना, असल कर्म, सामाजिक मर्यादा, सबैप्रतिको सम्मान भाव र राष्ट्रिय हितलाई सदाचारिताको पूर्वसर्तका रूपमा पूर्वीय दर्शनले व्याख्या गरेको छ (घिमिरे, २०७६)।

६. नेपालमा मानव अधिकारको विकास

इतिहासको कालखण्डमा नेपाल राजनीतिक रूपमा लामो समयसम्म अनुदार रह्यो। विश्वका अन्य मुलुकमा राजनीतिक क्रान्तिहरू हुँदै गर्दा नेपाल भने राजनीतिक रूपमा चेतनाविहीन रह्यो। चेतनाको अभावमा मानव अधिकारको बहस पनि भएन। राणा कालमा शासकको विरोध गर्नेलाई मृत्युदण्ड दिने, देशनिकाला गर्ने, चारपाटा मुड्ने जस्ता मानव अधिकार र मानवता विरोधी क्रियाकलाप भए। राणाहरूको विरोध गर्दा वि. सं.

१९९७ मा सहिदकाण्ड भयो। धनीहरूले दासदासी राख्ने, जातीय विभेद गर्ने, वर्गीय विभेद गर्ने जस्ता काम भए। वि. सं. २००४ सालमा पदम शमशेरले लिखित संविधान जारी गरी केही नागरिक अधिकारका कुरा उल्लेख गरे तापनि उक्त संविधान कार्यान्वयन हुनै सकेन।

वि. सं. २००७ सालमा प्रजातन्त्रको उदय भयो। अन्तरिम शासन विधान २००७ जारी भयो। राजनीतिक रूपमा केही स्वतन्त्रता भए पनि मानव अधिकारको बहस भने यसबेला पनि हुन सकेन। वि. सं. २०१५ सालमा जारी भएको नेपालको संविधानले पनि मानव अधिकारको बहसलाई तीव्रता दिन सकेन। वि सं. २०१५ सालमा आमनिर्वाचन त भयो, तर जननिर्वाचित सरकार नै अपदस्थ भएर प्रजातन्त्रको हरण भयो। अभिव्यक्ति स्वतन्त्रतामा नै अङ्कुश लाग्यो। पञ्चायती व्यवस्था लादियो। पञ्चायतमा व्यवस्थाको विरोध गर्न नपाइने अवस्था रहयो। अभिव्यक्ति स्वतन्त्रतामा नै अङ्कुश लागेको बेला मानव अधिकार पनि छायाँमा परेको थियो।

पञ्चायती व्यवस्थाको अन्त्यतिर आइपुग्दा भने मानव अधिकारको बहस प्रारम्भ भयो। वि. सं. २०३६ सालमा भएको विद्यार्थी आन्दोलन र जनमत सङ्ग्रह पछि राजनीतिक गतिविधिसँगै जोडेर मानव अधिकारको पनि बहस सुरु हुन थाल्यो। विभिन्न भूमिगत सङ्गठन र राजनीतिक गतिविधिहरू हुन थाले। मानव अधिकारसम्बन्धी केही गैरसरकारी संस्थाहरू पनि खुले। वि. सं. २०४६ को जनआन्दोलनपछि प्रजातन्त्रको पुनस्र्थापना भयो। त्यसपछि मात्र नेपालमा मानव अधिकारको बहसले तीव्रता पायो। वि. सं. २०४७ मा नयाँ संविधान जारी भयो। मौलिक हकहरूको व्यवस्था भयो। मानव अधिकारसम्बन्धी गैरसरकारी संस्थाहरूको स्थापनामा लहर आयो। वि. सं. २०५२ बाट सुरु भएको सशस्त्र विद्रोहमा मानव अधिकारको व्यापक उल्लङ्घन भयो। नेपालको मानव अधिकारको अवस्थाका बारेमा अन्तर्राष्ट्रिय मञ्चहरूमा समेत प्रश्न उठ्यो।

यही सेरोफेरेमा वि. सं. २०५७ जेठ १३ मा राष्ट्रिय मानव अधिकार आयोगको स्थापना भयो। द्वन्द्वको चरम अवस्थामा स्थापना भएपछि आयोगले द्वन्द्वमा भएको मानव अधिकार उल्लङ्घनका घटनाको अनुसन्धान र अनुगमन सुरु गर्यो। वि. सं. २०६३ मा लोकतन्त्र स्थापनाको आन्दोलनमा समेत मानव अधिकारको उल्लङ्घन भयो। वि. सं. २०६३ मा अन्तरिम संविधान जारी र वि. सं. २०७२ मा वर्तमान संविधान जारी भए। संविधानमा थुप्रै मौलिक हकहरूको व्यवस्था गरियो। यसले पनि नेपालको मानव अधिकारको अभियानलाई केही टेवा भने पुगेको छ। तथापि मानव अधिकार उल्लङ्घन भने रोकिएको छैन।

यसपछि पनि राष्ट्रिय महिला आयोग, राष्ट्रिय दलित आयोग, राष्ट्रिय समावेशी आयोग, आदिवासी जनजाति आयोग, मधेशी आयोग, थारु आयोग र मुस्लिम आयोगहरू जस्ता मानव अधिकारसम्बद्ध विषयगत संवैधानिक आयोगहरूको स्थापना भयो। नेपालको मानव अधिकारको अभियानमा गैरसरकारी क्षेत्र र नागरिक समाजले समेत विशेष भूमिका खेले। तर पनि नेपालमा धनी र गरिब बीच ठूलो खाडल रेहेको छ। मानव अधिकारको पूर्ण प्रत्याभूति हुन सकेको छैन। कानुनी रूपमा थुप्रै अधिकार प्राप्त भए पनि व्यवहारमा भने लागू हुन नसक्दा नेपालको मानव अधिकारको अवस्था सन्तोषप्रद भने छैन।

७. राजनीति र मानव अधिकार सहयात्रा

राजनीति र मानव अधिकार आपसी सहयात्री हुन्। राजनीतिक विकास विना मानव अधिकारको विकासको कल्पना हुँदैन। मानव अधिकारको लेपन विना राजनीतिको सौन्दर्य हुँदैन। राजनीतिक विकासले मानव अधिकारको विकास हुन्छ र मानव अधिकारको लेपनले राजनीति थप जिम्मेवार हुन्छ। तर राजनीतिले एकातर्फ मानव अधिकारको विकास गर्छ भने अर्कोतर्फ मानव अधिकारमाथि नकारात्मक प्रभाव पनि पार्दछ ।

राजनीति र मानव अधिकार एकै नदीका दुई किनारा हुन्, जो समानान्तर रूपमा अगाडि बढ्दछन्। राजनीतिक अधिकारको प्रत्याभूतिसँगै व्यक्तिले मानव अधिकारको प्राप्ति गर्दछ। लोकतन्त्रलाई मानव अधिकारको मेरुदण्ड पनि भन्ने गरिन्छ। लोकतन्त्र र मानव अधिकार एकअर्काका परिपूरक पनि हुन्। लोकतन्त्र, विकास र मानव अधिकार तथा आधारभूत अधिकारहरूको सम्मान एक आपसमा अन्तर्निहित र पारस्परिक पनि हुन्छन्। जनताले स्वतन्त्रपूर्वक आफ्नो राजनैतिक गतिविधि, आर्थिक गतिविधि तथा सामाजिक र सांस्कृतिक परम्पराहरूको पूर्ण रूपमा उपभोग गर्न पाउनु नै मानव अधिकार हो र त्यो नै लोकतन्त्र हो (पोखरेल, २०७९, पृ.३)।

राजनीतिक व्यवस्था जति खुला हुन्छ त्यति नै मानव अधिकारको विकास तीव्र र उपभोग गर्न पाइने अवस्थाको सिर्जना हुन्छ। राजनीति धुमिल हुँदा मानव अधिकार सङ्कटमा पर्ने र राजनीति सफा भए मानव अधिकारको सम्मान हुन्छ। राजनीतिक सङ्कट भएका मुलुकमा मानव अधिकार उल्लङ्घनले व्यापकता पाउँछ।

विश्वमा राजनीति र मानव अधिकारको विकास सँगसँगै भएको हो। नेपालमा पनि राजनीति र मानव अधिकारको विकास सँगसँगै भएको छ। राजनीतिक चेतनाको दियो राणा शासनको अन्तिमतिरबाट प्रारम्भ भएको हो। त्यसको केही दशकपछि मानव अधिकारसम्बन्धी सङ्गसंस्थाहरू खुले। त्यसपछि राजनीतिक अधिकारका बहस गर्दा मानव अधिकारका विषयहरू स्वत समेटिए।

८. आदर्श राजनीतिको सूचक : मानव अधिकार

राजनीति र मानव अधिकारको विकासको इतिहास लामो भए पनि आजको मानव अधिकारको बहस विश्वयुद्धपश्चात् नै भएको हो। लोकतन्त्रको विकास पनि पछिल्लो उपलब्धि हो। आज विश्व राजनीतिमा कतिपय अनैतिक क्रियाकलाप पनि देखिएका छन्। राजनीतिलाई नैतिक बनाउने काम मानव अधिकारले गर्छ। मानव अधिकारले नै राजनीतिको शुद्धिकरण गर्छ। मानव अधिकारको जगमा नै सुसंस्कृत राजनीति हुन्छ। विगतमा राजनीतिलाई राजा र राज्यको आदर्श क्रियाकलापको रूपमा हेरिने गरे पनि आज प्रत्येक व्यक्ति र समाजको अभिन्न अङ्ग बनेकोले राजनीति प्रत्यक्ष मानव अधिकारको विषय भएको छ।

राजनीतिक क्रियाकपलाप जति धेरै मानव अधिकार निरपेक्ष हुन्छन्, त्यो राजनीतिक व्यवस्था र अवस्था अनुत्तरदायी हुन्छ। राजनीतिलाई आदर्श बनाउने भनेकै मानव अधिकारले हो। राजनीति मानव अधिकार सापेक्ष हुनुपर्छ। दलहरूका हुन् वा व्यक्तिको राजनीतिक क्रियाकलापले मानव अधिकारको संरक्षण र संवर्धन गर्नुपर्छ, सङ्कुचन गर्नु हुँदैन।

केही विश्लेषकले राजनीतिलाई फोहोरी खेलको संज्ञा दिएका छन्। राजनीति आफैंमा फोहोरी खेल होइन, आदर्श खेल हो। खेलाडीले खेललाई फोहोर बनाउने हो। सफा खेलमा नियमको पालना हुन्छ। सफा राजनीतिमा मानव अधिकारको प्रत्याभूति हुन्छ। राजनीति फोहोरी खेल होइन, बरु स्वच्छ प्रतिस्पर्धाको खेल चाहिँ हो।

सत्ता र शक्ति प्राप्त गर्न चाहनु राजनीतिको पहिलो विशेषता हो। राजनीतिमा सत्ता र शक्ति प्राप्त गर्ने दौड चलिरहन्छ। जहाँ दौड हुन्छ, त्यहाँ त्यो दौड जित्ने चाहना सबैले राख्नु स्वाभाविक हो। प्रतिस्पर्धीलाई सबैले उछिन्न चाहन्छन्। तर दौड जित्ने तरिका दुईवटा हुन्छन्। पहिलो, आफू धेरै दौडेर आफू अगाडि पुग्ने, दोस्रो आफू दौडन नसके पनि अरूलाई पनि दौडन नदिएर आफूभन्दा पछाडि पारिदिनु। पहिलो खालको खेल प्राकृतिक खेल हो भने दोस्रो प्रकारको खेल अप्राकृतिक खेल हो। जुन खेल हेर्दा खेलजस्तो देखिए पनि यथार्थमा खेल होइन। तर यस्तो अप्राकृतिक खेललाई पनि नेपालको राजनीतिमा यदाकदा खेलको रूपमा बुझ्ने गरिएको हुन्छ (पोखरेल, २०७९, पृ. १४५)। यस्तो राजनीतिक क्रियाकलाप चाहिँ मानव अधिकार विरोधि हो।

९. नेपालको मानव अधिकारमा राजनीतिक प्रभाव

मानव अधिकार र राजनीतिले सँगसँगै यात्रा गर्ने भएकाले एकअर्कासँग निरपेक्ष हुँदैनन्। मानव अधिकारमा राजनीतिक प्रभाव हुन्छ तर कति सकारात्मक हुन्छ र कति नकारात्मक हुन्छ भन्ने बहस नै आजको प्रमुख बहस हो। मानव अधिकारको प्रत्याभूतिका लागि राजनीति नभई पनि नहुने हुनाले सकारात्मक प्रभावहरू मानव अधिकारका लागि स्वीकार्य छन्। नकारात्मक प्रभाव मानव अधिकारका बाधक हुन्। नेपालको सन्दर्भमा राजनीतिको मानव अधिकारमा पर्ने सकारात्मक र नकारात्मक प्रभावहरू निम्न छन्:

९.१. सकारात्मक प्रभाव

१. मानव अधिकारको चेतना वृद्धि : मानव अधिकारको प्रत्याभूतिका लागि नागरिक चेतना अभिवृद्धि अपरिहार्य छ। चेतनाको अभिवृद्धि मानव अधिकार शिक्षा, औपचारिक शैक्षिक उपलब्धि, सामाजिक क्रियाकलाप र राजनीतिक गतिविधिबाट हुन्छ। यीमध्ये सबैभन्दा प्रभावकारी माध्यम भनेको राजनीतिक क्रियाकलाप नै हो।

२. संविधान र ऐनमा मानव अधिकारसम्बन्धी व्यवस्था : नेपालको संविधानमा मानव अधिकारयुक्त प्रस्तावना, मौलिक हक, राज्यका निर्देशक सिद्धान्त तथा विभिन्न मानव अधिकारसम्बद्ध आयोगहरूसम्बन्धी व्यवस्था छ। संविधान राजनीतिक उपलब्धि भएको हुँदा संविधानमा भएको मानव अधिकारसम्बन्धी व्यवस्था राजनीतिले मानव अधिकारमा पारेको सकारात्मक प्रभाव हो। राष्ट्रिय मानव अधिकार आयोग ऐन तथा अन्य संवैधानिक आयोगसम्बन्धी ऐन तथा अन्य मानव अधिकारसम्बन्धी ऐनहरू राज्यले मानव अधिकारका लागि गरेका सकारात्मक कार्य हुन्।

३. आयोगहरूको स्थापना : संविधानले राष्ट्रिय मानव अधिकार आयोगलगायत अन्य मानव अधिकारसम्बन्धी आयोगहरूको स्थापना गरेको छ । मानव अधिकारसम्बन्धी गैरसरकारी संस्थाहरूसमेतलाई राज्यले कानुनद्वारा संरक्षित गरेको छ ।

४. राजनीतिक दलको मानव अधिकारप्रति प्रतिबद्धता : दलहरूले आफ्ना घोषणापत्रमा मानव अधिकार सवालहरूलाई समेट्नुका साथै मानव अधिकारप्रति प्रतिबद्धता जनाएका छन्।

५. अन्तर्राष्ट्रिय प्रभाव र चासो : नेपालको अन्तर्राष्ट्रिय सम्बन्धमा कुनै न कुनै रूपमा मानव अधिकारको प्रभाव देखिन्छ। संयुक्त राष्ट्रसङ्घको सदस्य राष्ट्र नेपालको मानव अधिकारप्रति राष्ट्रसङ्घको चासो छ । अन्तर्राष्ट्रिय सम्बन्ध राजनीतिक र मानव अधिकार दुवै विषय पनि हो ।

६. नागरिक अधिकारको प्रत्याभूति : नागरिक अधिकारको प्रत्याभूतिका लागि नेपालको राजनीतिक आन्दोलनको योगदान छ। अभिव्यक्ति स्वतन्त्रता, राजनीतिक स्वतन्त्रता, बालिग मताधिकार, आवधिक निर्वाचन जस्ता विषयहरू राजनीतिक मात्र नभएर मानव अधिकारका विषय पनि हुन्।

९.२. *नकारात्मक प्रभाव*

१. राज्यको अनुदार दृष्टि : नेपालको मानव अधिकारको सवालमा जे जति प्राप्त भएको छ, त्यो राजनीतिक गतिविधि र राज्यको योगदान हो । कानुनी दस्तावेजमा बाध्यतावश कतिपय प्रावधान व्यवस्था गरिए पनि व्यवहारतः मानव अधिकारप्रति राज्यको दृष्टि अनुदार छ।

२. मानव अधिकारप्रति दलको उदासिनता : राजनीतिक दल मानव अधिकारका संवाहक हुनुपर्ने हो तर मानव अधिकारमाथि सबैभन्दा बढी नकारात्मक प्रभाव राजनीतिक दलको अप्रजातान्त्रिक क्रियाकलापकै पर्छ। राजनीतिक दलहरूले भाषणमा मानव अधिकारप्रति प्रतिबद्धता जनाए पनि व्यवहारिक क्रियाकलापमा भने दलहरू मानव अधिकारप्रति उदासीन छन्।

३. राजनीतिक छायाँ : मानव अधिकार र राजनीतिको यात्रा समानान्तर भए पनि मानव अधिकार राजनीतिको छायाँ जस्तो मात्र छ। जसरी मानिसको छायाँ मानिससँगै हुन्छ, तर अस्तित्व मान्छेको मात्र हुन्छ। नेपालको राजनीतिसँग मानव अधिकारसँग सँगै यात्रा गरेको भए पनि मानव अधिकारचाहिँ राजनीतिको छायाँजस्तो मात्र देखिन्छ।

४. राजनीति द्वन्द्वमा मानव अधिकार उल्लङ्घन : राजनीतिक आन्दोलनले मानव अधिकारको विकासमा भूमिका खेलेको भए पनि राजनीतिक द्वन्द्वको चपेटामा सर्वसाधारणको मानव अधिकारको हनन पनि हुन पुगेको छ। राणाकालको अन्त्य, पञ्चायतकाल, बहुदलीय शासनव्यवस्थाको बहालीको आन्दोलन, १० वर्षे द्वन्द्व, मधेश आन्दोलन र जनआन्दोलन -२ मा समेत मानव अधिकारको हनन हुन पुगेको छ।

५. आर्थिक सामाजिक सांस्कृतिक अधिकारप्रति उदासिनता : नागरिक तथा राजनीतिक अधिकारको सवालमा राज्यले केही हदसम्म सम्बोधन गरे पनि आर्थिक, सामाजिक तथा सांस्कृतिक अधिकारको सवालमा राज्यको ध्यान छैन। त्यसलाई सरकारले मानव अधिकार बुझेको पनि छैन। मानव अधिकारको उल्लङ्घन नगर्नु मात्र राज्यको दायित्व होइन, बरु मानव अधिकारको प्रत्याभूति पनि राज्यको दायित्व हो भन्ने कुरा राजनीतिक नेतृत्वको चेतनामा घुसेन।

६. राज्यको स्वच्छाचारी चरित्र : नेपालको राजनीतिमा पछिल्लो समय यस्तो मानसिकताको विकास भएको छ कि राजनीति नै सबै कुरा हो। राजनीतिक नेताले जे भन्छ, सरकार जे गर्छ, संसद्ले जे कानुन बनाउँछ,

अदालतले जे फैसला गर्छ, त्यो नै मानव अधिकार हो भन्ने भाष्य सिर्जना गर्न खोजिँदैछ। सरकारले गलत पनि गर्न सक्छ, नेताको बुझाइ गलत हुन सक्छ । सरकारले मानव अधिकार विरोधि कानुन पनि बनाउन सक्छ र अदालतका फैसला पनि मानव अधिकारमैत्री नहुन सक्छन्। राज्यका निकायका यस्ता स्वेच्छाचारी चिन्तन र क्रियाकलापले मानव अधिकार सङ्कटमा परेको छ।

१०. निष्कर्षः

आजको युग लोकतन्त्रको युग हो। लोकतन्त्र राजनीतिक व्यवस्था हो। लोकतन्त्रमा मात्र मानव अधिकार फस्टाउँछ। लोकतन्त्र, मानव अधिकार र विधिको शासनलाई एकअर्काका परिपूरकका रूपमा समेत लिने गरिएको छ। लोकतन्त्रको सुन्दरता भनेकै मानव अधिकार हो। उदार राजनीतिक प्रणाली आफैमा मानव अधिकारको प्रतिबिम्ब हो।

मानव अधिकारको विषय हरेक व्यक्तिको नैसर्गिक र जन्मसिद्ध अधिकारको विषय भए पनि यसको संरक्षण र प्रत्याभूतिको विषय राज्यसँग जोडिन्छ। अर्थात् नागरिकको मानव अधिकारको सम्मान, संरक्षण, संवर्धन र प्रत्याभूतिको दायित्व राज्यको हो। भूगोल, जनता, सरकार र वैधता राज्यका अवयव भए तापनि मानव अधिकारको संरक्षणमा प्रमुख भूमिका सरकारकै हुन्छ।

राज्य राजनीतिक एकाइ हो। सरकार राजनीतिक क्रियाकलापबाट बन्छ । राजनीतिक कारणबाट बन्ने सरकारको पहिलो दायित्व नै मानव अधिकारको सम्मान, संरक्षण, प्रवर्द्धन र परिपूर्ति हुने हुँदा मानव अधिकार स्वतः राजनीति निरपेक्ष हुन सक्दैन। सरकार नै मानव अधिकारको पहिलो रक्षक भएकोले यथार्थमा राजनीति नै मानव अधिकारको रक्षक हो र मानव अधिकार नै राजनीतिको शुद्धिकरणको साधन हो भन्दा पनि अत्युक्ति हुँदैन।

आज कुनै पनि देशको अन्तर्राष्ट्रिय सम्बन्ध मानव अधिकारको जगमा बनेको हुन्छ। देशहरूका बीच सम्बन्ध सुमधुर छ कि समस्या छ, त्यो सम्बन्धको मियो मानव अधिकार हुन्छ। अन्तर्राष्ट्रिय महासन्धिहरू मानव अधिकार र राजनीतिक दुवै विषय हुन्। लोकतान्त्रिक व्यवस्थामा देशको निर्वाचन प्रणाली, मताधिकार, न्यायिक प्रणालीमा पनि मानव अधिकार जोडिन्छ।

आदर्श राजनीतिको जग भनेकै मानव अधिकार हो। अहिले कतिपय राजनीतिक क्रियाकलापमा जनताको असन्तुष्टि देखिन्छ, त्यो सबै सरकार र राजनीतिक दलहरू मानव अधिकारमैत्री हुन नसक्दाका परिणाम हुन्।

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मानव अधिकार रक्षकको पहिचान र सुरक्षा

दिपेन्द्रबहादुर सिंह

सार-सङ्क्षेप

एक्लै वा एकअर्कासँग मिलेर शान्तिपूर्ण रूपमा मानव अधिकार संरक्षण र प्रवर्द्धनको लागि कार्य गर्ने व्यक्ति वा समूह वा संस्था मानव अधिकार रक्षक हुन। मानव अधिकार रक्षकहरूले स्थानीय तथा राष्ट्रियरूपमा मानव अधिकार उल्लङ्घनका घटनाहरूको सूचना, तथ्य र जानकारीहरू सङ्कलन र सम्प्रेषण गर्दछन्। मानव अधिकार हननका पीडितहरूलाई सम्भव भए सम्म उद्धार, संरक्षण, न्याय र पुनर्स्थापनाका लागि सहयोग, समन्वय र सहकार्य गर्नुका साथै जवाफदेहिता बहन गर्नका लागि सम्वन्धित पक्षलाई जिम्मेवार बनाउने कार्यमा पनि अग्रपंक्तमा रहेर आफ्नो भूमिका निर्वाह गर्दै आएका छन्। विश्वका अन्य राष्ट्रको आँकडा हेर्ने हो भने पनि आवाजविहीनको आवाज र पीडितहरूको न्यायका लागि कार्य गर्नुपर्ने भएकोले पनि मानव अधिकार रक्षकहरू खतरामा रहने गरेको पाइन्छ। मानव अधिकार रक्षकहरूले भौतिक, सामाजिक तथा कानुनी सुरक्षाका चुनौतीहरूको प्रत्यक्ष तथा अप्रत्यक्ष रूपमा सामना गर्नुपरेको यथार्थता एकातिर छ भने, अर्कोतर्फ मानव अधिकार रक्षकहरूको भूमिका र पहिचानलाई बेवास्ता गर्ने, मानव अधिकार रक्षकहरूले गरेका मानव अधिकार संरक्षण तथा संवर्धनसम्बन्धी कार्यहरूलाई स्वीकार नगर्ने अर्थात मान्यता नदिने र उनीहरूको सुरक्षाका लागि सम्बन्धित पक्ष संवेदनशील हुन सकेको पाइँदैन तथापि मानव अधिकार रक्षकहरूको सुरक्षा उनीहरूका अधिकार संरक्षणका लागि अन्तर्राष्ट्रिय स्तरमा पनि प्रयासहरू भइरहेका छन्। नपालमा पनि राष्ट्रिय मानव अधिकार आयोगले मानव अधिकार रक्षकहरूको क्षमता सवलीकरण गर्नका साथै उनीहरूका अधिकार सुरक्षा र रक्षक काम तथा भुमिकालाई स्वीकार्य बनाइ पहिचान दिलाउन कार्य गरिहेको छ । विशेषतः मानव अधिकार रक्षकहरूको सुरक्षा र उनीहरूका लागि काम गर्ने वातावरण सिर्जना गर्ने दायित्व राज्य तथा सार्वजनिक निकायहरूको हो, यसका लागि राष्ट्रिय कानुनको अपरिहार्यता पनि महसुस अवस्था गरिएको छ।

प्रमुख शब्दकुञ्जीहरू: मानव अधिकार प्रवर्द्धन, पहिचान, स्वतन्त्रता, कानुन, अन्तर्राष्ट्रिय, विशेष समाधिक्षक, मानव अधिकार रक्षक

पृष्ठभूमिः

एक्लै वा एकअर्कासँग मिलेर शान्तिपूर्ण रूपमा मानव अधिकार संरक्षण र प्रवर्द्धनको लागि कार्य गर्ने व्यक्ति वा समूह वा संस्था मानव अधिकार रक्षक हुन्। यस सम्बन्धमा राष्ट्रिय मानव अधिकार आयोगको मानव अधिकार रक्षकको मार्गनिर्देशिका, २०६९ ले गरेको परिभाषामा "मानव अधिकार रक्षक" भन्नाले व्यक्तिगत

रूपमा, समूहमा वा संस्थागत रूपमा मानव अधिकारको संवर्धन, संरक्षण, सम्मान तथा पालनासम्बन्धी काममा संलग्न व्यक्ति सम्झनुपर्दछ भनिएको छ। सो शब्दले पूर्णकालीन वा आंशिक रूपमा वैतनिक वा अवैतनिक रूपमा उक्त काममा संलग्न व्यक्तिलाई समेत जनाउँछ (रा.मा.अ.आ.. २०६९)। व्यक्ति तथा समुहको मानव अधिकारको सम्वोधनका लागि भूमिका निर्वाह गरेको आधारमा मानव अधिकार रक्षकको पहिचान र परिभाषा गर्न सकिन्छ।

यस्तै संयुक्त राष्ट्रसङ्घबाट सन् १९९८ मा मानव अधिकार रक्षकको घोषणापत्र जारी भएको थियो (General Assembly Resolution A/RES/५३/१४४) (विश्वव्यापी रूपमा स्वीकार गरिएका मानव अधिकार र मौलिक स्वतन्त्रताको संवर्धन र संरक्षण गर्ने व्यक्ति, समूह तथा संस्थाको अधिकार तथा दायित्वसम्बन्धी घोषणापत्र, १९९८) उक्त घोषणापत्रले मानव अधिकार रक्षकहरूको अधिकार, भूमिका, सुरक्षा र पहिचानलाई सशक्त बनाउने प्रयास गरेको छ।

Human rights defenders act "individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms" at the local, national, regional and international levels. They recognize the universality of human rights for all without distinction of any kind, and they defend human rights by peaceful means (United Nations, 1998).

मानव अधिकार रक्षकहरूको भूमिकालाई बेवास्ता गर्न मिल्दैन। मानव अधिकार रक्षकहरूले मानव अधिकार उल्लङ्घनलाई उजागर गर्नुका साथै त्यस्ता उल्लङ्घनहरूको निवारणका लागि वकालत, खवरदारी र ध्यानकर्षण गर्दै आएका छन्। मानव अधिकार उल्लङ्घनका घटनाको पहिलो र नजिकको सूचना स्रोतको रूपमा मानव अधिकार रक्षक रहेका हुन्छन। मानव अधिकार रक्षकहरूले स्थानीय तथा राष्ट्रिय रूपमा मानव अधिकार उल्लङ्घनका घटनाहरूको सूचना, तथ्य र जानकारीहरू सङ्कलन र सम्प्रेषण गर्दछन्। मानव अधिकार हननका पीडितहरूलाई सम्भव भएसम्म उद्दार, संरक्षण, न्याय र पुनर्स्थापना लागि सहयोग, समन्वय र सहकार्य गर्दछन् साथै जवाफदेहिता बहन गर्नका लागि सम्वन्धित पक्षलाई जिम्मेवार बनाउने कार्यमा पनि अग्रपङ्तिमा रहेर आफ्नो भूमिका निर्वाह गर्दै आएका छन्। मानव अधिकार हननका पीडितलाई सहयोग गर्ने, मानव अधिकार अवस्थाको अनुगमन गर्ने, दस्तावेजीकरण गर्ने र सिफारस गर्ने, जवाफदेहिता पद्धतिको विकास र दण्डहीनताको अन्त्य गर्न कार्य गर्ने, सुशासन र सरकारी नीतिमा सहयोग गर्ने मानव अधिकारका अन्तर्राष्ट्रिय महासन्धिको कार्यान्वयनमा सहयोग गर्ने, मानव अधिकार शिक्षा र क्षमता विकासका कार्यहरूमा अग्रणी भूमिका खेल्दै आएका छन्।

मानव अधिकार रक्षकहरू मानव अधिकारको संरक्षण र संवर्धनसम्बन्धी आफ्ना भूमिका र जिम्मेवारीका कारण जोखिममा पर्दै आएको सम्बन्धमा मानव अधिकारको क्षेत्रमा क्रियाशील सङ्गसंस्थाहरूको अध्ययनले उजागर गरेको विषय हो। विश्वका अन्य राष्ट्रको आँकडा हेर्ने हो भने पनि आवाजविहीनको आवाज र पीडितहरूको न्यायका लागि कार्य गर्नुपर्ने भएकोले पनि मानव अधिकार रक्षकहरू खतरामा रहने गरेको पाइन्छ। मानव अधिकार रक्षकहरूले भौतिक, सामाजिक तथा कानुनी सुरक्षाका चुनौतीहरूको प्रत्यक्ष तथा अप्रत्यक्ष रूपमा सामना गर्नुपरेको यथार्थता एकातिर छ भने अर्कोतर्फ मानव अधिकार रक्षकहरूको भूमिका र पहिचानलाई बेवास्ता गर्ने,

मानव अधिकार रक्षकहरूले गरेका मानव अधिकार संरक्षण तथा संवर्धनसम्बन्धी कार्यहरूलाई स्वीकार नगर्ने अर्थात मान्यता नदिने र उनीहरूको सुरक्षाका लागि सम्बन्धित पक्ष संवेदनशील हुन सकेको पाइँदैन।

उद्देश्य

१. मानव अधिकार रक्षक को हुन भनी प्रष्ट पार्ने र उनीहरूको भूमिकाको अपरिहार्यतासम्बन्धी चर्चा गर्नु।

२. मानव अधिकार रक्षकहरूको सुरक्षा र संरक्षण सम्बन्धमा राष्ट्रिय तथा अन्तर्राष्ट्रिय तहमा भएका प्रयासहरू उजागर गर्नु।

विधि तथा पद्धति

यो अनुसन्धानमुलक लेख तयार पार्न संयुक्त राष्ट्रसङ्घका घोषणापत्र, प्रतिवेदन तथा सिफारिसहरूबाट जानकारीहरू लिइएको छ। त्यस्तै नेपालमा मानव अधिकार रक्षकको अवस्थाका सम्बन्धमा राष्ट्रिय मानव अधिकार आयोगबाट प्रकाशन गरिएका प्रतिवेदनलाई पनि महत्त्वपूर्ण सन्दर्भ सामग्रीको रूपमा राखिएको छ।

मानव अधिकार रक्षक

मानव अधिकार रक्षकका बारेमा स्पष्ट परिभाषा गरेको पाइँदैन। व्यक्ति तथा समुहको मानव अधिकारको सम्बोधनका लागि भूमिका निर्वाह गरेको आधारमा मानव अधिकार रक्षकको पहिचान र परिभाषा गर्न सकिन्छ। सबै किसिमको लैङ्गिक पहिचान भएका मानिसहरूको मानव अधिकार संरक्षण र प्रवर्द्धनका लागि क्रियाशील महिला र महिलाको मानव अधिकार संरक्षण र प्रवर्द्धन तथा लैङ्गिक समानताका लागि क्रियाशील सबै किसिमको लैङ्गिक पहिचान भएका व्यक्तिहरू महिला मानव अधिकार रक्षक हुन् (United Nations, 1998)। अन्य मानव अधिकार रक्षकहरूभन्दा महिला मानव अधिकार रक्षकहरू जोखिममा रहेका हुन्छ। संयुक्त राष्ट्सङ्घीय घोषणापत्रले मानव अधिकार रक्षकहरूका अधिकारहरू महिला मानव अधिकार रक्षकहरूका लागि पनि उतिकै महत्त्वपूर्ण रहेको कुरालाई उजागर गरेको छ।

मानव अधिकारको प्राप्तिका लागि प्रवर्द्धन गर्ने तथा अन्य विभिन्न प्रयासहरू गर्ने जोकोही पनि मानव अधिकार रक्षक हो, जसमा कानुनव्यवसायी, ट्रेड युनियन, राष्ट्रसेवक कर्मचारी, राष्ट्रिय मानव अधिकार संस्था, गैरसरकारी संस्थाहरू, पत्रकार, चिकित्साव्यवसायी, विद्यार्थीहरू, मानव अधिकार रक्षकहरू हुन् सक्छन्। मानव अधिकार रक्षकको दायरालाई फराकिलो पार्दै संसदमा विपक्षीदलका नेताहरू जस्ले सरकारका मानव अधिकार बिरोधी कार्यहरूको विरोध गर्दछन् उनीहरूलाई पनि मानव अधिकार रक्षकको रूपमा स्वीकारिनुपर्दछ भन्ने पनि रहेको छ।

"Defenders working on business and human rights may also be government officials and civil servants or members of the private sector, including company employees such as trade unionists and whistle-blowers. Human rights defenders are often ordinary people living in remote areas, who may not even be aware that they are acting as human rights defenders (A/71/281, para. 8). What

members of this broad and diverse group have in common is the exercise of peaceful activities to address adverse business-related human rights impacts and seeking remedy (Frost, 2017)".

मानव अधिकार रक्षकको काम, कर्तव्य र अधिकारः

मानव अधिकार रक्षकहरू मानव अधिकारको अवस्था सुदृढ गर्न र पीडितहरूको मानव अधिकार संरक्षण गरी न्यायमा पहुँच पुऱ्याउन क्रियाशील रहन्छन् । मानव अधिकार शिक्षा प्रवर्द्धन, मानव अधिकारको अवस्थाको अनुमगन तथा पीडितको संरक्षण, न्यायमा पहुँच, पुनःस्थापना मानव अधिकार रक्षकहरूका मुख्य काम हुन् । मानव अधिकार रक्षकहरूले मानव अधिकार संरक्षणको भूमिका निर्वाह गर्नेक्रममा विभिन्न समस्या तथा चुनौतिहरूको सामना गर्नुपर्दछ। मानव अधिकार रक्षकहरूले आफ्नो कार्य गर्ने क्रममा केही सजगता अपनाउनुपर्दछ । आफ्नो कार्यबाट स्वयं मानव अधिकार रक्षक नै जोखिममा पर्नुहुदैन र मानव अधिकार रक्षकले गरेका कार्यहरूबाट अरूलाई हानी हुनुहुदैन । यसै कुरालाई मध्येनजर गरी समाजमा मानव अधिकारको संवर्धन, संरक्षण, सम्मान र पालना गर्ने/गराउने राज्यको जिम्मेवारीलाई पर्याप्तता, प्रभावकारिता र गुणस्तरीयताको दृष्टिकोणले अनुगमन गर्ने मानव अधिकार रक्षकहरूको भूमिकालाई सबल, उत्तरदायी र पारदर्शी बनाउन सहयोग गर्ने उद्देश्यसहित मानव अधिकार रक्षकहरूसम्बन्धी मार्ग-निर्देशिका, २०६९ जारी गरिहको थियो । उक्त निर्देशिकामा मानव अधिकार रक्षकहरूका काम, कर्तव्य र अधिकारहरूको व्यवस्था गरेको छ (रा.मा.अ.आ.. २०६९, पृ.३-९)।

➢ ***मानव अधिकारको संवर्धनसम्बन्धी कामः***

- वकालत (Advocacy)
- विचारविमर्श/छलफल (Dialogue)
- अभियान तथा पैरवी (Campaigning and Lobbying)
- परामर्श (Consultation)
- सचेतना (Awareness and Sensitization)
- सुझाव र टिप्पणी (Suggestion and Feedback)
- प्रकाशन र सूचना प्रवाहीकरण (Publication and Dissemination Information)
- अनुगमन र अवलोकन (Monitoring and Observation)
- प्रलेखीकरण (Documentation)
- सार्वजनिक सुनुवाइ (Public Hearing)
- संयुक्त राष्ट्रसङ्घ सन्धिजनित वैकल्पिक प्रतिवेदन तयारी र प्रस्तुति
- ऐन—कानुन, नीति, कार्यक्रम र कार्ययोजनाहरूको पुनरावलोकन
- मानव अधिकार रक्षकका अन्य अधिकारहरू अन्य नेपाल कानुन, अन्तर्राष्ट्रिय कानुन तथा घोषणापत्रमा व्यवस्था गरेबमोजिम हुनेछन्

➢ ***मानव अधिकार शिक्षासम्बन्धी कामः***

- मानव अधिकार शिक्षाको प्रचारप्रसार,
- अनुसन्धान तथा विकास,
- तालिम तथा प्रशिक्षण,
- प्रकाशन तथा प्रसारण,
- शैक्षिक तथा अन्य पाठ्य सामग्री (IEC Material) को उत्पादन,
- विद्युतीय पाठ्य तथा श्रव्यदृश्य सामग्रीको उत्पादन र वितरण र
- मानव अधिकारको नयाँ सिद्धान्त र विचारको विकास ।

➢ ***मानव अधिकारको संरक्षणसम्बन्धी कामः***

- अनुगमन गर्ने (Monitoring),
- तथ्य सङ्कलन र विश्लेषण गर्ने (Fact Finding and Analysis),
- अनुसन्धान (सत्यतथ्य सङ्कलन) गर्ने
- उद्दार र राहत प्रदान गर्ने (Rescue and Relief),
- पुनःस्थापना तथा पुनःएकीकरणको व्यवस्था गर्ने,
- उजुरी दर्ता गर्ने गराउने लगायतका विषयमा सहजीकरणको कार्य गर्ने,
- निःशुल्क कानुनी सहायता उपलव्ध गराउने,
- पीडितलाई न्यायिक तथा प्रशासनिक उपचार प्राप्त गर्न सहयोग गर्ने,
- कानुनी तथा नीतिगत सुधारको लागि प्रस्ताव/सिफारिस गर्ने,
- मानव अधिकार संरक्षणको कार्यमा सहकार्य गर्ने,
- मानव अधिकार उल्लङ्घन भएकोमा उपचारको निमित्त सफारिस गर्ने,
- ताकेता तथा दबाब (Insistence and Pressurizing),
- मानव अधिकारसम्मत विषयहरूमा मेलमिलाप गराउने (Mediation and Conciliation),
- सार्वजनिक सुनुवाइ कार्यक्रम गर्ने,
- पीडित र प्रभावितहरूलाई निःशुल्क सहायता, मनोसामाजिक परामर्श (Psycho-social Counseling), राहत, औषधी उपचार इत्यादिको व्यवस्था गर्ने,
- दण्ड विहीनताको अन्त्यको लागि काम गर्ने र
- अन्य मानव अधिकार संरक्षणसम्बन्धी कार्य गर्ने ।

➢ ***मानव अधिकारको सम्मानसम्बन्धी कामः***

- संविधान, कानुन तथा न्यायका सर्वमान्य सिद्धान्तको पालना भए नभएको सम्बन्धमा निगरानी गर्ने,
- कानुनी तथा नीतिगत सुधारको लागि प्रस्ताव सिफारिस गर्ने,
- मानव अधिकार शिक्षाको प्रचारप्रसार गर्ने,
- मानव अधिकारको संवर्धन र संरक्षणको निमित्त जवाफदेही निकाय तथा पदाधिकारी उपर निगरानी गर्ने,
- मानव अधिकारसम्बन्धी अन्तर्राष्ट्रिय अभिसन्धि र अन्य संयन्त्रहरूको पालना र तिनीहरूको घरेलुकरणको लागि परामर्श र दबाब गर्ने,
- मानव अधिकार मैत्री नीति निर्माण गर्न पहल गर्ने,
- मानव अधिकारको सम्मानार्थ न्यायसम्बन्धी अधिकार सुनिश्चित गर्न कानुनी सहयोग उपलव्ध गराउने,
- विकासमा मानव अधिकारमुखी अवधारणाको पैरवी र प्रचार—प्रसार गर्ने,
- सामाजिक न्याय र सामाजिक सुरक्षासम्बन्धी सरकारी नीति, कार्यक्रम र कार्यान्वयनको अनुगमन र समीक्षा गर्ने र
- मानव अधिकार रक्षकहरूको क्षमता सबलीकरण गर्ने ।

➢ ***मानव अधिकारको पालनासम्बन्धी कामः***

- सुशासनको निमित्त वकालत गर्ने,
- समाजमा सबै प्रकारको (लैङ्गिक, धार्मिक, सांस्कृतिक, आर्थिक, भौगोलिक, जातीयलगायत) भेदभाव रोकथाम र अन्त्यको लागि विविध कार्य सञ्चालन गर्ने,
- समाजमा समन्याय (Equity) कायम गर्न योगदान गर्ने,
- मानव अधिकारसम्बन्धी राष्ट्रिय तथा अन्तर्राष्ट्रिय कानुनको विषयमा छलफल, बहस र कार्यान्वयनको लागि प्रयास र योगदान गर्ने,
- मानव अधिकारसम्बन्धी अन्तर्राष्ट्रिय अभिसन्धिहरूको अनुमोदनको लागि पहलकदमी गर्ने,
- मानव अधिकारको संवर्धन, संरक्षण र सम्मानको निमित्त आवश्यक सूचना तथा स्रोतहरूको व्यवस्थापन गर्ने,
- आवश्यकताअनुसार मानव अधिकारसम्बन्धी निकाय (National Human Rights Institutes - NHRIs) को स्थापना र संस्थागत विकासको लागि वकालत र पहलकदमी गर्ने,
- सबै किसिमको शैक्षिक तालिम कार्यक्रममा मानव अधिकारको सवाललाई मूल प्रवाहीकरण गर्ने सम्बन्धमा काम गर्ने,

- सार्वजनिक शासन व्यवस्था (Public Order) तथा सार्वजनिक हितको निमित्त मानव अधिकारमा लगाइने सीमा अन्त्यन्त न्यून हुनुपर्ने सन्दर्भमा वकालत गर्ने,
- दण्डहीनताको अवस्था र विकृतिलाई रोकथाम र अन्त्य गर्ने दिशामा काम गर्ने,
- अहरणीय अधिकार (Non-derogable Rights) जस्तैः यातना, हत्या, बलात्कार, मानव बेचबिखनजस्ता अपराध र मानव अधिकार उल्लङ्घनका विषयमा क्षमादान दिन नहुने सम्बन्धमा दबाबमूलक कार्यक्रम र वकालत गर्ने,
- मानव अधिकारका अन्तर्राष्ट्रिय मापदण्डको स्वीकार र कार्यान्वयनको निमित्त काम गर्ने,
- सशस्त्र द्वन्द्वबाट हुनसक्ने मानवीय हानीनोक्सानी रोकथाम गर्न प्रयास गर्ने,
- समाजमा शान्ति र न्यायशील वातावरण कायम गर्न योगदान गर्ने,
- मानवीय कानुनको निर्माण, सुधार र कार्यान्वयनको लागि वकालत गर्ने,
- बन्दीहरूको हक र हितको पक्षमा यथोचित काम गर्ने,
- सबैको लागि सबै मानव अधिकार (All Human Rights for All) को सर्वव्यापी मान्यतालाई सबैले अनुभूत गर्ने वातावरण सिर्जना गर्नको निमित्त विविध काम गर्ने,
- बालबालिका, महिला, अशक्त, अपाङ्गता भएका, अल्पसङ्ख्यक समुदाय, जेष्ठ नागरिक, मानसिक स्वास्थ्यमा समस्या भएका व्यक्ति र सिमान्तकृत वर्गको मानव अधिकारको रक्षालाई प्राथमिकतामा राख्ने,
- प्राकृतिक प्रकोप वा महामारी, भोकमरी आदि कारणबाट विस्थापन र जोखिममा परेकाहरूको लागि राहत, सहयोग र सेवा प्रदान गर्ने,
- संयुक्त राष्ट्रसङ्घीय संस्थाहरू समक्ष मानव अधिकारसम्बन्धी अभिसन्धिहरूको विषयमा गरिने राष्ट्रिय प्रतिवेदनको छायाँ प्रतिवेदन वा त्यस्तै किसिमको अन्य प्रतिवेदन तयार गरी पेश गर्ने ।

मानव अधिकार रक्षकहरूमा हुनुपर्ने गुणहरू

मानव अधिकार रक्षकहुनका लागि मानव अधिकारसम्बन्धी ज्ञान तथा जानकारी भएरमात्र पुग्दैन । मानव अधिकार रक्षकमा आवश्यक गुण पनि हुनुपर्दछ । मानव अधिकार रक्षकसम्बन्धी मार्गनिर्देशिकामा मानव अधिकार रक्षकहरूका गुणसम्बन्धी निम्न व्यवस्था गरिएको छ (रा.मा.अ.आ.. २०६९, पृ.९) ।

- क्रियाशीलता,
- व्यवसायगत प्रतिबद्धता,
- सेवाभाव र सरल जीवनशैली,
- व्यवसायिक सीप,
- मानव अधिकारसम्बन्धी ज्ञान (महिला, बालबालिका, अल्पसङ्ख्यक, आदिवासी/जनजाति, दलित, अपाङ्गता भएका व्यक्तिहरूको अधिकार आदि),

- इमान्दारिता/विश्वसनियता/नैतिकता,
- जोखिम अवस्थासँग सामना गर्नसक्ने खुबी,
- धैर्यता र सहनशीलता,
- अवधारणात्मक सुष्पष्टता,
- योजनावद्ध ढङ्गले काम गर्न सक्ने खुबी,
- अपेक्षित परिणाम हासिल गर्ने क्षमता,
- पीडितहरूप्रति संवेदनशील भई निजहरूको हितमा काम गर्ने,
- मानव अधिकारको अधिकतम सम्मान र
- लैङ्गिक संवेदनशीलता ।

मानव अधिकार रक्षकहरूले पालन गर्नुपर्ने आधारभूत आचारसंहिता (रा.मा.अ.आ., २०६९, पृ.१०)

अभिव्यक्ति र संस्थागत स्वतन्त्रताको रक्षा गर्न, लैङ्गिक समानता र विविधतालाई प्रवर्द्धन गर्न र विधिको शासन कायम राख्रका लागि मानव अधिकार रक्षकहरूको भूमिका महत्त्वपूर्ण हुन्छ। मानव अधिकार रक्षकहरूलाई उनीहरूले सुरक्षित र सहयोगी वातावरणमा काम गर्न सक्छन् भन्ने कुरालाई सुनिश्चित गर्नका लागि मानव अधिकार रक्षकहरूका लागि पनि आचार संहिताहरूको आवश्यकता पर्दछ। मानव अधिकार रक्षकहरूले आक्रमण, प्रतिशोध र अनुचित प्रतिबन्धहरूको सामना गर्न सक्छन्। आचार संहिताले उनीहरूलाई त्यस्ता जोखिम तथा खतराहरूबाट जोगाउन मद्दत गर्न सक्छ। आचार संहिताले मानव अधिकार रक्षकहरूले राष्ट्रिय र अन्तर्राष्ट्रिय मानव अधिकारसम्बन्धी निम्न मापदण्डहरूको पालना गर्ने कुरा सुनिश्चित गर्न मद्दत गर्दछः

- कसैको पनि प्रतिष्ठा र सम्मानमा आँच पर्याउन नहुने,
- कसैलाई हानी गर्न नुहुने (Do No Harm) सिद्धान्तको पालना गर्ने,
- मानव अधिकार,कानुनको शासन, न्याय तथा लोकतान्त्रिक मूल्य र मान्यताको पालना गर्ने
- राजनैतिक, धार्मिक, सांस्कृतिक, जातीय, साम्प्रदायिक, लैङ्गिक आदि पूर्वाग्रह राखी कार्य गर्न नहुने,
- कार्य सम्पादनको शीलसिलामा कुनै किसिमको पूर्वाग्रह (Biasness and Prejudice) राख्र नहुने,
- अन्तर्राष्ट्रिय रूपमा मान्य जस्तैः संयुक्त राष्ट्रसङ्घीय मानव अधिकार रक्षकसम्बन्धी घोषणापत्र र अन्य सम्बन्धित आचारसंहिता पालना गर्ने,
- कार्यसम्पादनको शीलसिलामा उच्चतम विवेकको उपयोग गर्ने,
- मानव अधिकार रक्षकको लागि तोकिएका पहिचान जस्तैः पहिरन, पोशाक, प्रतीक वा परिचयात्मक चिन्हको दुरूपयोग नगर्ने र हुन नदिने,
- विपन्न वर्ग र दुर्गमक्षेत्रका वासिन्दालाई मानव अधिकारको सेवा उपलव्ध गराउने नीति लिने,

- मानव अधिकार संवर्धन र संरक्षणलाई सेवागत विषयको रूपमा आत्मसात गर्ने,
- पीडित तथा प्रभावितहरूप्रति सम्मानपूर्वक सेवा र सहयोग गर्ने,
- पीडितलाई मानव अधिकारको सेवा जुनसुकै बखत आवश्यक परेपनि उपलव्ध गराउन तत्पर रहने,
- कानुनको शासनको मूल्य र मान्यताको अभिवृद्धि गर्नमा सहयोग गर्ने र
- मानव अधिकारको ज्ञान र सीप विस्तारमा क्रियाशील रहने ।

मानव अधिकार रक्षकहरूले व्यक्तिगत सुरक्षासम्बन्धी सर्वदा ध्यानमा राखुपर्नेछ विषयहरू (रा.मा.अ.आ., २०६९, पृ.१०)

संसारभरि, मानव अधिकार रक्षकहरूले नियमित रूपमा धम्की, जोखिम, झुटो अभियोजन र स्वतन्त्रतामाथि बन्देज, कतिपय अवस्थामा हिंसात्मक आक्रमण वा हत्याको सामना गरिरहेका छन् । शक्तिमा रहेको व्यक्ति तथा सङ्गठनले मानव अधिकार संरक्षणका अभियानहरूलाई कमजोर बनाउन र रक्षकहरूमा डर फैलाउन नियमित रूपमा यस्ता रणनीतिहरू प्रयोग गर्ने गर्छन्। मानव अधिकार रक्षकहरूको काम महत्त्वपूर्ण हुन्छ । मानव अधिकार रक्षकहरूको भूमिकाकै कारणले हामीमध्ये धेरैले वर्तमानमा आफ्ना अधिकार र स्वतन्त्रताको उपभोग गरिरहेका छौं । मानव अधिकार रक्षकहरूले मानव अधिकारको संरक्षण, न्याय, समानता र शान्तिसम्बन्धी काम गर्दा आफ्नो जीवन र सुरक्षालाई जोखिममा पारेका हुन्छन। राज्य तथा सार्वजनिक निकायहरू उनीहरूको पूर्णसुरक्षाका लागि सफल हुनसकेका छैनन्। कतिपय अवस्थामा त कानुन कार्यान्वयन गर्ने निकायहरूबाट नै मानव अधिकार रक्षकहरूको सुरक्षा जोखिममा पर्ने अवस्था आउँछ। यस परिवेशमा मानव अधिकार रक्षकहरूले व्यक्तिगत सुरुक्षा सम्बन्धमा सर्वदा ध्यान राखुपर्दछ। यस तथ्यलाई मध्येनजर राख्दै मानव अधिकार रक्षक मार्गनिर्देशिकामा नै निम्न सिद्धान्तहरूको व्यवस्था गरिएको छः

- आफ्नो बसोबास र कार्यक्षेत्र वरिपरिको अवस्थामा सदैव जानकारी राख्ने, (Be aware of your Surroundings) ।
- जोखिमको बेला यथासम्भव एउटै समयमा एकै किसिमले एउटै बाटोबाट आवागमन नगर्ने, (Avoid routine when possible) (यथासम्भव एउटै समयमा एकै किसिमले एउटै बाटोबाट आवागमन गर्दा मानव अधिकार रक्षकउपर आक्रमण गर्न चाहने व्यक्तिलाई सजिलो हुने) ।
- सुरक्षासम्बन्धी नियमलाई अनुशासित र व्यवहारिकरूपमा अवलम्बन गर्ने, , (Be methodical and Disciplined in security procedures) ।
- आपसमा सूचना आदानप्रदानलाई चुस्त बनाउने र यथासम्भव एक्लै हिँडडुल नगर्ने, (Maintain good communication and do not travel alone)।
- व्यक्तिगत सुरक्षासम्बन्धी कार्यविधिलाई नित्यकर्मजस्तै पालन गर्ने र सदैव ख्याल राख्ने, (Adhere to procedures, but exercise initiative and common sense) ।

➢ ***मानव अधिकार रक्षकहरूले आफ्नो सुरक्षाको लागि देहायका नियमहरू पालन गर्नुपर्दछ ।***

- मानव अधिकार रक्षकहरूले सुरक्षा आफैबाट सुरु हुन्छ (Safety Start from the Self) भन्ने मान्यतालाई आत्मसात गर्ने ।
- मानव अधिकार रक्षकको रक्षा गर्नु अर्को मानव अधिकार रक्षकको प्राथमिक र नैतिक कर्तव्य हुने ।
- सर्वसाधारण सरह भई काम गर्दा सुरक्षाको दृष्टिले न्यून लक्षित (Low Target) वर्गमा परिने सम्भावना भएकोले सर्वसाधारणको हैसियतमा (Low Profile) रहने ।
- अत्यधिक र अनाधिकृत सञ्चार माध्यमसँगको सम्पर्कलाई न्यून गर्ने ।
- सामान्यतयाः स्थानीय जनसमुदाय र मानव अधिकार रक्षकहरूप्रति आदरभाव र नम्र स्वभावबाट व्यवहार गर्ने ।
- अनावश्यक रूपमा सर्वसाधारणको ध्यानाकर्षणको पात्र नहुने ।
- उत्तेजक अवस्थाबाट बच्न स्थानीय रहनसहन र वातावरण अनुकुल हुने ।
- कुनै स्थानको सुरक्षा अवस्थाको कारण सामान्यरूपमा काम गर्न नसकिने अवस्था रहेमा सुरक्षा तथा सञ्चारलगायतका उपयुक्त व्यवस्था मिलाई कार्य सम्पादन गर्ने ।
- आफ्नो गतिविधिउपर कोही कसैले निगरानी गरेको सम्बन्धमा सदैव सजग रहने ।
- मुठभेडको अवस्थामा आफू आक्रामक नहुने । त्यस्तो अवस्थामा तुरुन्त प्रहरी केन्द्रमा वा सुरक्षित स्थानमा जाने वा कसैको शरण लिई सुरक्षित रहने ।
- आफ्नो परिचयसम्बन्धी लिखत सर्वदा साथमा राख्ने ।
- दैनिक गतिविधिमा पर्नसक्ने सम्भावित जोखिमहरूउपर सधैं ध्यान दिने ।
- आफ्नो कामको सम्बन्धमा कार्यालय र सहकर्मीहरूसँग नियमित सम्पर्कमा रहने ।
- आपतकालीन अवस्थामा तुरुन्त (बढीमा एकदुई मिनेटभित्र) सुरक्षित स्थानमा जान सकिने गरी अत्यावश्यक सामग्रीसहितको झोला चुस्त-दुरुस्त राख्ने ।
- आफूप्रति सम्भावित आक्रमण र निगरानी (Surveillance) सम्बन्धमा जानकारी प्राप्त गर्ने समेत प्रयोजनको लागि छरछिमेकी, मित्रहरू तथा सहकर्मीहरूको निरन्तर सम्पर्कमा रहने र त्यसलाई यथासम्भव सञ्जाल (Network) को रूपमा उपयोग गर्ने ।
- आफ्नो आवास र कार्यालयको सुरक्षाको उचित प्रबन्ध गर्ने तथा आक्रमणको अवस्थामा आफू वा कार्यालयको रक्षाको लागि आक्रमणकर्ताहरूलाई परास्त गर्न सकिने किसिमको कार्ययोजना बनाइ लागू गर्ने व्यवस्था मिलाउने ।
- यथासम्भव कार्यालय तथा आवासको भवनमा बाहिरबाट सजिलै प्रवेश गर्नको लागि उपयोग हुने सक्ने सामग्री (भर्याङ्ग, डोरी, लामा काठ, बाँस वा डण्डीहरू) नराख्ने ।

- काम (काम)मा जाँदा उपलव्ध भएसम्म आवश्यक सामग्रीहरू जस्तैः मोबाइल फोन, आवश्यक टेलिफोन नम्बरहरू, सलाई तथा मैनबत्ती, पानी, हल्का खाद्यसामग्री, प्राथमिक उपचार सामग्री, अग्नी निरोधक सामग्री, मौसमअनुसार उपयुक्त कपडा, टर्चलाइट, आवश्यक पैसा, हिँड्न सजिलो हुने जुत्ता, सम्बन्धित मानव अधिकार रक्षकको पहिचान खुल्ने पोशाक आदि साथमा राख्ने ।
- गोप्य सूचनाहरू थाहा पाउनै पर्ने सम्बन्धित व्यक्तिबाहेक अरूलाई नदिने ।
- विशेष सावधानीको रूपमा भ्रमणबाट फर्किने अनुमानित समय उल्लेख गरी निरन्तर रूपमा कार्यालय तथा आफन्तको सम्पर्कमा रहने र
- विशेष परिस्थिति उत्पन्न भई कसैले कब्जामा लिई जीवन जोखिममा पर्ने सम्भावना भएमा आत्मरक्षाको लागि आत्मसमर्पणलगायतका हरेक प्रयास गर्ने

मानव अधिकार रक्षकका अधिकार

संयुक्त राष्ट्रसङ्घबाट सन् १९९८ मा मानव अधिकार रक्षकहरूको अधिकारसम्बन्धी विश्वव्यापी रूपमा स्वीकार गरिएका मानव अधिकार र मौलिक स्वतन्त्रताको संवर्धन र संरक्षण गर्ने व्यक्ति, समूह तथा संस्थाको अधिकार तथा दायित्व सम्बन्धी घोषणापत्र, १९९८ (United Nations, 1998) जारी गरेको थियो । उक्त घोषणापत्रले मानव अधिकार रक्षकहरूको अधिकार, भूमिका, सुरक्षा र पहिचानलाई सशक्त बनाउने प्रयास गरेको छ । मानव अधिकार रक्षकसम्बन्धी घोषणापत्रको धारा १, ५, ६, ७, ८, ९, ११, १२ र १३ तथा विभिन्न समयमा मानव अधिकार रक्षकसम्बन्धी प्रतिवेदकले गरेका सिफारिसअनुसार मानव अधिकार रक्षकहरूका अधिकारहरू निम्नानुसार रहेका छन्:

- मानव अधिकार हननका पीडितलाई सहयोग गर्ने, मानव अधिकार अवस्थाको अनुगमन गर्ने, दस्तावेजीकरण तथा सिफारिस गर्ने ।
- जवाफदेहिता पद्धतिको विकास र दण्डहीनताको अन्त्य गर्न कार्य गर्ने मानव अधिकार हननका पीडितलाई सहयोग गर्ने ।
- मानव अधिकार अवस्थाको अनुगमन गर्ने, दस्तावेजीकरण गर्ने र सिफारिस दिने ।
- जवाफदेहिता पद्धतिको विकास र दण्डहीनताको अन्त्य गर्न कार्य गर्ने ।
- मानव अधिकारको सचेतना जगाउनका लागि गतिविधीहरू सञ्चालन गर्ने ।
- असल शासनको प्रवर्द्धन र सरकारी नीतिमा सहयोग गर्ने मानव अधिकारका अन्तर्राष्ट्रिय महासन्धिको कार्यान्वयनमा सहयोग, मानव अधिकार शिक्षा र क्षमता विकासका लागि कार्यक्रमहरू गर्ने गराउने ।
- राष्ट्रिय र अन्तर्राष्ट्रिय स्तरमा मानव अधिकार संरक्षणसम्बन्धी कार्य गर्ने ।
- एक्लै वा अरूसँग मिलेर मानव अधिकारसम्बन्धी काम गर्ने ।
- संस्था बनाउने वा संस्थामा सहभागी हुने ।

- शान्तिपूर्ण रूपमा भेला हुने ।
- मानव अधिकारसँग सम्बन्धित सूचना प्राप्त गर्ने, प्रवाह, सम्प्रेषण गर्ने ।
- मानव अधिकारसँग सम्बन्धित नयाँ सोचको विकास र वकालत गर्ने ।
- मानव अधिकार हननका विषयमा आलोचना गर्ने र सुधारको लागि सुझाव दिने ।
- मानव अधिकार हननका विषयमा उजुरी गर्ने ।
- मानव अधिकार संरक्षणको लागि कानुनी परामर्श र सहायता दिने ।
- मानव अधिकारको राष्ट्रिय र अन्तर्राष्ट्रिय दायित्वको बारेमा सार्वजनिक सुनुवाइ र बहस गर्ने ।
- मानव अधिकार संरक्षणको लागि सरकारी नियकासँग संवाद गर्ने ।
- मानव अधिकार हनन्विरुद्ध शान्तिपूर्ण कार्यक्रमको सञ्चालन गर्ने ।
- मानव अधिकार संरक्षणका लागि स्रोत प्राप्ति र विकास गर्ने ।

रक्षकहरूको संरक्षण र सुरक्षाको अवधारणा

प्रत्येक व्यक्तिको, व्यक्तिगत रूपमा अरूसँग मिलेर राष्ट्रिय र अन्तर्राष्ट्रिय तहमा मानव अधिकार र मौलिक स्वतन्त्रताहरूको संरक्षण र प्राप्तिका लागि प्रयत्नशील हुन पाउने अधिकारलाई मानव अधिकार रक्षकको अधिकारसम्बन्धी घोषणापत्रको धारा १० ले अन्तर्राष्ट्रिय रूपमा नै सुरक्षित गरेको छ (United Nations, 1998) । जसअनुसार मानव अधिकार रक्षकलाई सुरक्षित र सबल वातवरणमा विना त्रास, प्रतिशोध, अनुचित बन्देजविना काम गर्न कानुनी मान्यता र संरक्षण प्राप्त रहेको हुन्छ। मानव अधिकार रक्षकको संरक्षणले मानव अधिकारको सम्मान, लोकतन्त्र, सुशासन, कानुनी शासन र दिगो विकासमा टेवा पुगेको हुन्छ।

कानुनी, आर्थिक, सामाजिक तथा राजनीतिक शक्तिको आडमा मानव अधिकारको संरक्षण र संवर्धनका लागि क्रियाशील मानव अधिकार रक्षकहरूले आघात तथा जोखिमको सामना गर्नुपरोस्, मानव अधिकार रक्षकहरूले आफ्नो भूमिकाकै कारण आफ्ना अधिकारबाट वञ्चित हुनुनपरोस् र मानव अधिकारको संरक्षण संवर्धनका लागि क्रियाशील मानव अधिकार रक्षकको समग्र सुरक्षा र उनीहरूका अधिकारको संरक्षणका लागि राज्य तथा सरकारलाई जिम्मेवार हुनपर्छ भन्ने उद्देश्यले मानव अधिकार रक्षकका अधिकारसम्बन्धी घोषणापत्र १९९८ जारी गरिएको हो। मानव अधिकार संरक्षण र संवर्धनको जिम्मेवारीका साथै मानव अधिकार रक्षकहरूको संरक्षण र सुरक्षाका लागि राष्ट्रिय मानव अधिकार आयोगलाई पनि घोषणापत्रले दायित्ववान बनाएको छ। पछिल्लो समयमा मानव अधिकार रक्षकविरुद्ध भइरहेका ज्यादती तथा अपराधिक घटनाहरूको आँकडा हेर्दा मानव अधिकार रक्षकहरूको संरक्षणको विषय झनै टड्कारो आवश्यकता भएको छ।

रक्षकविरुद्ध हुने ज्यादतिः प्रवृत्ति र ढाँचा

मानव अधिकार रक्षकहरूले शान्तिपूर्ण माध्यमबाट मानव अधिकारको संरक्षण र संवर्धनका लागि अभियान सञ्चालन गर्ने गरेको भएपनि यस क्रममा विभिन्न जोखिम,आघात तथा अवरोधहरूको समाना गरिरहनुपरेको छ। त्यस्ता जोखिम, आघात तथा अवरोधहरूमध्ये मुख्य गरी मानव अधिकार रक्षक स्वयंले जातीय विभेद, लैङ्गिक विभेद, मानव अधिकार रक्षकको रूपमा स्वीकार नै नगर्ने मानव अधिकार रक्षकको पहिचान नै

नस्वीकार्ने अवस्थाको सामना गरिरहेका छन्। समग्रमा मानव अधिकार रक्षकहरूलाई बिचौलियाको आरोप लाएर निरुत्साहित बनाउने, शारीरिक क्षति पुऱ्याउने धम्कि, यौनजन्य अपराधको धम्की, बोलि वा बचनले अपमानित गर्ने, झुठा लाञ्छना लगाई सामाजिक मानप्रतिष्ठामा हानी गर्ने तथा हानी गर्ने प्रयासहरू गरिने गरेको छ। कतिपय अवस्थामा शारीरिक तथा भौतिक आक्रमण गरिने, झुठा मुद्दा लाउने वा लाउने धम्की दिइने, मानव अधिकार रक्षक तथा निजको संस्थासँग सम्बन्धित निजि सम्पती क्षतिगर्ने वा गर्ने धम्की पनि आउने गर्दछन् (United Nations, 2022)।

सार्वजनिक रूपमा रक्षकहरूको पहिचान स्वीकार नगर्दा मानव अधिकार रक्षकको रूपमा सार्वजनिक निकायहरूमा प्रवेशमा असहज अवस्था सिर्जना हुने गरेको, जिम्मेवार तथा जवाफदेही व्यक्तिले कुराकानी गर्न नखोज्ने, सूचना तथा जानकारी दिंदै नदिने वा अपूर्ण दिने अवस्थाको समाना गर्नुपरेको छ । साथै, सूचना तथा जानकारी प्राप्त गर्न जटिलता देखाउने वा अलि बढी प्राविधिक हुने, पीडित सम्बन्धी वा व्यक्तिगत गोप्य सूचनाहरू सार्वजनिक गर्ने धम्की तथा सार्वजनिक नै गरिदिने जस्ता थुप्रै कार्यहरू मानब अधिकार रक्षकविरुद्ध हुने गर्दछन् । कतिपय अवस्थामा सञ्चारकर्मीले समाचार सम्प्रेषण गरेकै आधारमा फौजदारी अपराधको दायित्व बहन गर्नुपर्ने अवस्थाको विद्यमानता पनि रहेको छ ।

मानब अधिकार रक्षकलाई डिजिटल सुरक्षाको जोखिम पनि बढदो छ । विश्वव्यापी रुपमा मानव अधिकार रक्षकको अवस्थाका सम्बन्धमा भएका प्रतिवेदनको अध्ययन गर्दा, डिजिटल प्लाटफर्मको दुरूपयोग गरी झुठा अफवाह फैलाइने तथा अपराधका नवितम उपायहरूबारेमा थाहा पाएर मानव अधिकार रक्षकहरुविरुद्ध पनि बिभिन्न अपराधिक घटना भईरहेका छन । त्यस्तै सामाजिक सञ्जालमा नक्कली प्रोफाइल बनाएर सामाजिक रूपमा बेइज्जत गर्ने, ब्लयाकमेलिंग गर्ने, भ्रमात्मक तथा तथ्यहीन समाचारहरूबाट मानब अधिकार रक्षक पीडित भएका छन । मानव अधिकार रक्षकका अन्तरंग तस्वीर तथा कुराकानी सार्वजनिक गरेर पारिवारिक तथा सार्वजनिक जीवनमा नकारात्मक असर गर्ने, फोटोसपमार्फत अश्लिल फोटोहरू बनाइ सामाजिक सञ्जालमा राखेर सामाजिक मानप्रतिष्ठामा आँच पुऱ्याउने कार्यजस्ता हुने गर्दछन् । साथै मानव अधिकार रक्षकविरुद्ध जातीय तथा साम्प्रदायिक शान्ति खलबल्याउने किसिमका अफवाहहरू फैलाइने पनि गर्दछन ।

नेपालमा मानव अधिकार रक्षकले सामना गर्नुपरिरहेका समस्याहरू

नेपालमा मानव अधिकार रक्षकहरूको भूमिकालाई बेवास्ता गरिएको पाइन्छ। मानव अधिकार रक्षकहरू पीडितको अधिकार संरक्षण र न्याय प्राप्तिका लागि अहोरात्र क्रियाशील रहदा पनि उनीहरू मानव अधिकार रक्षक हुन भन्ने कुरालाई नीतिगत रूपमा संबोधन गरेको छैन। अझ, महिला मानव अधिकार रक्षक, यौनिक तथा लैङ्गिक अल्पसङ्ख्यकहरुका अधिकार रक्षकहरू तथा वातावरण अधिकार रक्षकहरूको अवस्था अन्य मानव अधिकार रक्षकहरू भन्दा थप जोखिमयुक्त रहेको छ। उनीहरूको भूमिकालाई सार्वजनिक निकायहरूबाट पहिचान तथा मान्यता दिई प्रोत्साहित गर्नुको सट्टा हतोत्साहित गरिने गरिन्छ (रा.मा.अ.आ. २०७९)।

महिला मानव अधिकार रक्षकहरूलाई लैङ्गिकता तथा उनीहरूले गर्ने कार्यहरूकै आधारमा अनलाइन आक्रमणहरू भइरहेका छन् (Forum Asia, 2019)। "महिला मानव अधिकार रक्षकहरूले सामान्यतया अन्य मानव अधिकार

रक्षकहरू जस्तै सबै खाले जोखिम र उल्लङ्घनहरूको सामना गर्छन्। यद्यपि, प्रचलित सामाजिक र सांस्कृतिक मान्यताहरूका कारण यी उल्लङ्घनका परिणामहरू प्रायः महिला मानव अधिकार रक्षकहरूका लागि लैङ्गिक रूपमा विशिष्ट किसिमका हुन्छन्। महिला मानव अधिकार रक्षकहरूले सार्वजनिक र निजी क्षेत्रहरूमा लैङ्गिक मौखिक दुर्व्यवहार अनलाइन र अफलाइन यौन उत्पीडन, बलात्कार र यौन हिंसाअतिरिक्त सामाजिकरूपमा कलंकित बनाउने लैङ्गिक विशिष्ट खतराहरू र हिंसाको सामना गर्न सक्छन् (OHCHR, 2020)।"

"९० प्रतिशत महिला मानव अधिकार रक्षकहरू सहित उनीहरूको परिवारका सदस्यहरू, नजिकका साझेदारहरू र सहकर्मीहरूलाई उनीहरूको काम गर्नबाट रोक्नको लागि धम्कीको सामना गर्छन्। ९५ प्रतिशत महिला मानव अधिकार रक्षकले घरेलु हिंसा र दुर्व्यवहारको परिणामस्वरूप मानसिक उत्पीडनको सामना गरेका छन्। ७० प्रतिशत महिला मानव अधिकार रक्षकहरूले घरेलु हिंसा, मौखिक दुर्व्यवहार र उत्पीडनको माध्यमबाट यौन दुर्व्यवहारको समेत सामना गरेका छन् (नयाँ पत्रिका, २०७७)।"

मानव अधिकार रक्षकको अवस्थाका सम्बन्धमा राष्ट्रिय मानव अधिकार आयोगले २०२२ मा एक अध्ययन गरेको थियो । त्यसबाट पनि मानव अधिकार रक्षकहरूको अवस्था कस्तो छ भन्ने आँकलन गर्न सकिन्छ । मानव अधिकार रक्षकको अवस्था अध्ययनबाट मानव अधिकार संरक्षण, संवर्धन तथा न्यायका लागि क्रियाशील रहँदा तथा सरोकार देखाउँदा अत्याधिक असहजता तथा कठीनाइहरूको सामना गर्नुपरिरहेको, मानव अधिकारको संरक्षणको जिम्मेवारी भएका सार्वजनिक निकायहरूको नै पीडितमैत्री व्यवहार नपाइएको, मानव अधिकार रक्षकहरूलाई मानव अधिकार रक्षकको रूपमा नै स्वीकार्न नसकेको, उनीहरूले मानव अधिकार संरक्षण, संवर्धन तथा न्यायका लागि खेलेको भूमिकालाई सार्वजनिक निकायहरूबाट स्वीकार्य हुन नसकेको, मानव अधिकार रक्षकहरूसँग परिचयपत्र माग्ने गरेको, कतिपय अवस्थामा मानव अधिकार रक्षकहरूले नै धम्की, भौतिक आक्रमण तथा कानुनी समस्याहरूको सामना गर्नुपरेको समस्याहरू उजागर भएका छन् । त्यस्तै उक्त अध्ययनले मानव अधिकार रक्षकहरूको अवस्था सुधारका लागि केही सुझावहरू पनि दिएको छ । जसमा, मानव अधिकार रक्षकहरूका अधिकारको निर्बाध प्रयोगका लागि कानुनी र व्यवहारिक उपायहरू अवलम्वन गर्नुपर्ने, मानव अधिकार रक्षकहरूको सुरक्षा, संरक्षण र पहिचानका लागि कानुन निर्माण गरी कार्यानन्वय प्रभावकारी बनाउनुपर्ने, महिला मानव अधिकार रक्षक लगायत अत्यधिक जोखिममा पर्न सक्ने मानव अधिकार रक्षकहरूका लागि बहुआयामिक सुरक्षाका उपायहरू अवलम्वन गुर्नपर्ने, मानव अधिकार रक्षकहरूको क्षमता सबलीकरणका लागि राष्ट्रिय मानव अधिकार आयोगले पहल गर्नुपर्ने विषयमा जोड दिइएको थियो ।

साथै स्थानीय तहमा रहेका कुनै पनि संस्था तथा सञ्जालसँग आबद्ध नभएका तर मानव अधिकार संरक्षण, संवर्धन र न्याय प्राप्तिका लागि क्रियाशील मानव अधिकार रक्षकहरूको पहिचान, सुरक्षा र संरक्षणका लागि नीतिगतरूपमा नै सरकारलाई जिम्मेवार बनाउनुपर्ने रहेका छन् (रा.मा.अ.आ..२०७९)। इन्सेकको अभिलेख सन् २०२२ जनवरीदेखि अक्टोबरसम्म १ सय ३५ जना मानव अधिकार रक्षक पीडित पीडित भएका, यो अवधिमा दुईजना मानव अधिकार रक्षकको हत्यासमेत भएको, सबैभन्दा बढी पत्रकारमाथि दुर्व्यवहार भएको अभिलेख छ । त्यस्तै, सन् २०२३ को जनवरीदेखि सेप्टेम्बरसम्म मानव अधिकार संरक्षण र प्रवर्द्धनमा संलग्न एक सय ४३ जना मानव अधिकार रक्षक पीडित भए । यस अवधिमा सबैभन्दा बढी मानव अधिकारकर्मी ५३ जना पीडित भए ।

त्यसैगरी ३२ जना पत्रकार, २० जना शिक्षक, १५ जना स्वास्थ्यकर्मी र १३ जना सामाजिक कार्यकर्ता पीडित भएका इन्सेकले अभिलेख गरेको छ । इन्सेकको अभिलेखअनुसार एक जना मानव अधिकार रक्षकको यस अवधिमा हत्या भयो । गिरफ्तारीका घटनामा ३७ जना, कुटपिटका घटनामा ४८ जना, अमानवीय व्यवहारका घटनामा आठ जना, कुटपिटबाट घाइते १४ जना, जातीय विभेदका घटनामा दुई जना, धम्कीका घटनामा १० जना, अभिव्यक्ति, भेला तथा सङ्गठित हुने अधिकारबाट २१ जना र आर्थिक, सामाजिक तथा सांस्कृतिक अधिकारबाट दुई जना मानव अधिकार रक्षक पीडित भए (पौडेल, २०२३, पृ.२६-६१) ।

मानव अधिकारको अवस्था सम्बन्धी इन्सेक वर्ष पुस्तकले मानव अधिकार रक्षकहरुको बारेमा सन २०२४ को तथ्यांक पनि सार्वजनिक गरेको छ ।

तालिका १.४ सन् २०२४ मा मानव अधिकार रक्षकको अवस्था

घटनाको प्रकार	राज्यपक्षबाट			अन्यपक्षबाट			कुल जम्मा
	महिला	पुरुष	जम्मा	महिला	पुरुष	जम्मा	
गिरफ्तार	२	३	५				५
कुटपिट	३	५	८	१८	३३	५१	५९
अमानवीय व्यवहार	२	४	६	१३	१३	२५	३१
घाइते	३	४	७	१४	५	१९	२६
हत्या				१	९	१०	१०
जातीय विभेद					१	१	१
अभिव्यक्ति, भेला तथा सङ्गठित हुने अधिकार	५	७	१२				१२
धम्की		३	३	११	१६	२७	३०
जम्मा	१५	२६	४१	५७	७६	१३३	१७४

(श्रोतः इन्सेक २०२४)

तालिका १.५ सन् २०२४ मा पेसागत आधारमा पीडित भएका मानव अधिकार रक्षकहरुको सङ्ख्या

घटनाको प्रकार	राज्यपक्षबाट			अन्यपक्षबाट			कुल जम्मा
	महिला	पुरुष	जम्मा	महिला	पुरुष	जम्मा	
इन्जिनियर				१	३	४	४
स्वास्थ्यकर्मी				२४	६	३०	३०
मानव अधिकार रक्षक	१४	११	२५	६	१	७	३२
पत्रकार		११	११	७	३५	४२	५३
कानुन व्यवसायी					१	१	१
सामाजिक कार्यकर्ता	१	३	४	७	१३	२०	२४
शिक्षक		१	१	१२	१७	२९	३०
जम्मा	१५	२६	४१	५७	७६	१३३	१७४

(स्रोत : इन्सेक, २०२४।)

नेपालमा मे ३ सन् २०२३ देखि अप्रिल २६ सन् २०२४ प्रेस स्वतन्त्रता हननका ६२ वटा घटना भएका छन् । गतवर्ष यही अवधिमा प्रेस स्वतन्त्रता हननका ५५ वटा र मे ३ सन् २०२१ देखि २०२२ को अवधिमा ७५ वटा घटनाहरू अभिलेख भएका थिए । ६२ वटा घटनामा १६८ जना पत्रकार र २ सञ्चारसंस्था गरी १७० पीडित भएका छन् । नेपाल पत्रकार महासङ्घ, सञ्चार अनुगमन एकाइमा अभिलेख भएअनुसार यी घटनाहरूमा यो एक वर्षको अवधिमा पत्रकार गिरफ्तारका दुई घटना भएका छन् । कब्जा तथा अवरोधका तीन, पत्रकारमाथि दुर्व्यवहार तथा धम्कीका २९, आक्रमणका १४ वटा घटना भएका छन् । यस्तै पेशागत असुरक्षाका १४ वटा घटना भएका छन् । यसबाट ९३ जना पत्रकार र आठ सञ्चारसंस्था गरी १०१ पीडित भएका छन् । महासङ्घको सञ्चार अनुगमन एकाइमा अभिलेख भएअनुसार यी घटनाहरूमा यो एक वर्षको अवधिमा पत्रकार गिरफ्तारका २ घटना भएका छन् । कब्जा अवरोधका सात, दुर्व्यवहार तथा धम्कीका २४, आक्रमणका ११ वटा घटना भएका छन् । यस्तै लैङ्गिक हिंसाका दुई, विस्थापन एक र पेशागत असुरक्षाका ५५ वटा घटना भएका छन् (नेपाल पत्रकार महासङ्घ, २०८१).।

मानव अधिकार रक्षकका सम्बन्धमा राज्य तथा सार्वजनिक निकायको दायित्व

राज्यका निकायहरू विशेष गरी सरकारले शान्ति र न्यायपूर्ण समाजको लागि मानव अधिकार रक्षकहरूले दिंदै आएको योगदानको कदर गर्नुपर्दछ। सरकारका निकायहरूले मानव अधिकार रक्षकहरूलाई बेवास्ता गर्ने वा उनीहरूका कार्यमा असहयोग गर्ने तथा बाधा अवरोध सिर्जना गर्नुको सट्टा न्यायपूर्ण र हिंसारहित समाज स्थापनाका लागि उनीहरूको अपरिहार्यतालाई स्वीकार्नु पर्दछ । मानव अधिकार रक्षकको अधिकारसम्बन्धी घोषणापत्र १९९८ को धारा २,९,१२, १४ र १५ ले घोषणापत्रको कार्यान्वयन र सम्मान गर्ने राज्यको भूमिका र दायित्व हुने कुराको सुनिश्चितता गरेको छ (United Nations, 1998)।

मानव अधिकार रक्षकहरूको अधिकार हनन् हुने कुनै पनि प्रकृतिको क्रियाकलाप गर्नबाट राज्यका निकायहरू टाढा बस्नु पर्ने,

- कुनै पनि तेस्रो पक्षबाट मानव अधिकार रक्षकमाथि हुन सक्ने आक्रमण, ज्यादती तथा अन्य मानव अधिकार उल्लङ्घन (अपराधिक कार्य)हरू बाट मानव अधिकार रक्षकलाई संरक्षण गर्ने,
- मानव अधिकार रक्षकहरूका अधिकारको पूर्ण उपभोगका लागि सहजीकरण गर्ने र संरक्षणसम्बन्धी कानुनको निर्माण गर्ने स्पष्ट जिम्मेवारीसहित राष्ट्रिय संयन्त्रको निर्माण गर्ने,
- मानव अधिकार रक्षकका अधिकारको सम्मान, संरक्षण एवं परिपालना गर्ने, गराउने, मानव अधिकार रक्षकका गतिविधि र कामलाई सहजीकरण गर्नुपर्ने
- मानव अधिकार र मौलिक स्वतन्त्रता सम्बन्धी सामग्रीमा निःशुल्क पहुँच प्रदान गर्ने,
- गोपनीय स्रोतहरू नखुलाउने दायित्व,
- मानव अधिकार रक्षकविरुद्ध हुने त्रास वा प्रतिशोध विरुद्ध सुरक्षा सुनिश्चित गर्ने,
- स्वेच्छाचारी वा गैरकानुनी घुसपैठ र हस्तक्षेपविरुद्ध संरक्षण सुनिश्चित गर्ने,

- मानव अधिकार रक्षकहरूविरुद्ध हुने घटनाहरूको अनुगमन तथा अनुसन्धान गरी प्रभावकारी उपचार र पूर्ण परिपूरण सुनिश्चित गर्ने,
- मानव अधिकार रक्षकविरुद्ध हुने त्रास वा प्रतिशोधजन्य कार्यलाई अपराधीकरण गर्ने,
- मानव अधिकार शिक्षाको प्रवर्द्धन र सहजीकरण गर्ने,
- मानव अधिकार रक्षकको संरक्षण र तत्काल सुरक्षा उपायहरू कार्यान्वयन गर्ने,
- विदेशमा रहेका मानव अधिकार रक्षकहरूलाई सहयोग गर्ने ।

अन्तर्राष्ट्रिय कानुन, संयन्त्र तथा प्रयास

मानव अधिकार रक्षकको विषय संयुक्त राष्ट्रसङ्घको एजेण्डामा धेरै वर्षसम्म छलफल कै बिचमा रह्यो । संयुक्त राष्ट्रसङ्घमा भएको लामो छलफल र प्रयासपश्चात संयुक्त राष्ट्रसङ्घबाट सन् १९९८ मा मानव अधिकार रक्षकहरूको अधिकारसम्बन्धी घोषणापत्र विश्वव्यापी रूपमा स्वीकार गरिएका मानव अधिकार र मौलिक स्वतन्त्रताको संवर्धन र संरक्षण गर्ने व्यक्ति, समूह तथा संस्थाको अधिकार तथा दायित्वसम्बन्धी घोषणापत्र, १९९८, (General Assembly Resolution A/RES/53/144) जारी गरेको थियो । मानव अधिकार रक्षकका अधिकार सुरक्षित गर्ने सवालमा यो एक ऐतिहासिक उपलब्धिको रूपमा रह्यो । घोषणापत्र विशेष गरी मानव अधिकार रक्षकहरूको कामको वैधता, महत्त्व र उनीहरूको सुरक्षाको आवश्यकतालाई मान्यता दिने संयुक्त राष्ट्रसङ्घको पहिलो दस्तावेज थियो । मानव अधिकारको विश्वव्यापी घोषणापत्र १९४८ को धारा १९, २० र २८ मा विचार र अभिव्यक्ति स्वतन्त्रता, स्वतन्त्रपूर्वक भेला हुनपाउने र सङ्गठिन हुन पाउने अधिकारका साथै प्रत्येक व्यक्तिलाई घोषणापत्रमा उल्लिखित अधिकार स्वतन्त्रतापूर्वक प्राप्त गर्न सकिने कुरा सुनिश्चित गरिएको छ । मानव अधिकार रक्षकहरूको अधिकारलाई विश्वव्यापीरूपमा संरक्षण प्रदान गर्न विभिन्न मानव अधिकारसम्बन्धी महासन्धिहरूका अतिरिक्त पक्ष राष्ट्रहरूलाई जिम्मेवार बनाउने उद्देश्यले मानव अधिकार र मौलिक स्वतन्त्रताको संरक्षण र संवर्धन गर्ने व्यक्ति, समूह तथा संस्थाको अधिकार तथा दायित्व सहितको मानव अधिकार रक्षकको अधिकारसम्बन्धी घोषणापत्र, १९९८ जारी गरिएको थियो ।

संयुक्त राष्ट्रसङ्घीय घोषणापत्रको व्यवस्था

मानव अधिकार रक्षकको अधिकारसम्बन्धी घोषणापत्र, १९९८ को धारा १,३,४,५,७,८,९,१२,१३ र १८ मा मानव अधिकार रक्षकका अधिकारहरूको व्यवस्था गर्नुका साथै मानव अधिकार रक्षकहरूको विशेष संरक्षणका व्यवस्था गरिएको छ । घोषणापत्रको धारा २,९,१२, १४ र १५ ले घोषणापत्रको कार्यान्वयन र सम्मान गर्ने राज्यको भूमिका र दायित्व हुने कुराको सुनिश्चितता गरेको छ । मानव अधिकार रक्षकसम्बन्धी संयुक्त राष्ट्रसङ्घीय घोषणापत्र कडा कानुन (Hard Law) होइन । तर यस घोषणापत्रका सिद्धान्त र अधिकारहरूसम्बन्धी प्रावधानहरू कानुनी रूपमा बाध्यात्मक मानव अधिकारसम्बन्धी अन्तर्राष्ट्रिय महासन्धिका मापदण्डबमोजिम राखिएको हुनाले यसको परिपालना र कार्यान्वयन राष्ट्रहरूका लागि अनिवार्य हुन्छ । यस घोषणापत्रलाई संयुक्त राष्ट्रसङ्घको महासभाले सर्वसम्मत रूपमा स्वीकृत गरेको थियो। राज्यले यस घोषणापत्रलाई बाध्यकारी राष्ट्रिय

कानुनको रूपमा घरेलुकरणसमेत गर्नुपर्दछ। घोषणापत्रको धारा १०, ११ र १८ मा व्यक्ति तथा समुदायको दायित्व पनि तोकेको छ । जसमा मानव मानव अधिकार रक्षकहरूको अधिकार, मान्यता र संरक्षणसम्बन्धी राष्ट्रिय र अन्तर्राष्ट्रिय कानुनी व्यवस्था अधिकार संवर्धन गर्ने, लोकतन्त्र र यसका संस्थाहरूको संरक्षण गर्ने र अरूका मानव अधिकारको हनन् नगर्ने दायित्व र जिम्मेवारी तोकेको छ। त्यसैगरी नागरिक तथा राजनीतिक अधिकारसम्बन्धी अन्तर्राष्ट्रिय महासन्धि, १९६६ को धारा १९, २१ र २२ ले विचार र अभिव्यक्तिको स्वतन्त्रताका साथै शान्तिपूर्ण रूपमा भेला र सङ्गठिन हुन पाउने अधिकारको सुनिश्चितता गरेको छ।

मानव अधिकार रक्षक विशेष समाधिक्षकको व्यवस्था

मानव अधिकार रक्षकका अधिकारसम्बन्धी घोषणापत्रको प्रभावकारी कार्यान्वयनलाई प्रभावकारी बनाउनका लागि मानव अधिकार रक्षकहरूको संरक्षणका लागि समन्वय र सहकार्य अभिवृद्धि गर्ने अख्तियारी सहित संयुक्त राष्ट्रसङ्घ मानव अधिकार आयोगले सन् २००० मा मानव अधिकार रक्षकसम्बन्धी कार्यदिशसहित विशेष समाधिक्षकको स्थापना गरेको थियो । मानव अधिकार परिषद्ले मानव अधिकार रक्षकसम्बन्धी विशेष समाधिक्षकको कार्यदिश तथा जिम्मेवारीलाई सन् २०११, २०१४, २०१७ र २०२० मा अझ व्यापक र बिस्तृत बनाएको थियो । मानव अधिकार रक्षक विशेष समाधिक्षकको कार्यदिशहरू (United Nations, 2020)

- विभिन्न राष्ट्रका सरकार र अन्य पक्षहरूसँगको सहकार्य र रचनात्मक संवादका माध्यमबाट मानव अधिकार रक्षकसम्बन्धी संयुक्त राष्ट्र घोषणापत्रको प्रभावकारी कार्यान्वयनको प्रवर्द्धन गर्ने ।
- मानव अधिकारको संरक्षण र संवर्धन गर्ने अधिकारको प्रवृत्ति, विकास र चुनौतीहरूको अध्ययन गर्ने ।
- मानव अधिकार रक्षकहरूको राम्रोसँग संरक्षण गर्न प्रभावकारी रणनीतिहरू सिफारिस गर्ने र ती सिफारिसहरूको पालनाको अवस्था अनुगमन गर्ने ।
- मानव अधिकार रक्षकहरूको अवस्थाबारेमा जानकारी तथा सूचनाको खोजी गर्ने, प्राप्त गर्ने, परिक्षण तथा जाँच गर्ने र सो सम्बन्धमा प्रतिक्रिया दिने ।
- महिला मानव अधिकार रक्षकहरूमा विशेष ध्यान केन्द्रीत गर्दै आफूलाई प्राप्त कार्यदिशको सम्पूर्ण गतिविधि तथा कार्यहरूमा लैङ्गिक परिप्रेक्षलाई एकीकृत गर्ने ।
- संयुक्त राष्ट्रसङ्घको मुख्यालय र विभिन्न देशमा रहेका सम्बद्ध निकायहरू तथा अन्य विशेष कार्यविधीहरूसँग समन्वय गर्ने ।
- मानव अधिकार परिषद् र महासभालाई वार्षिक रूपमा प्रतिवेदन दिने ।

मानव अधिकार रक्षकको अवस्था सम्बन्धमा भएका अन्य प्रयास

सन २०११ मा मानव अधिकार रक्षकसम्बन्धी विशेष समाधिक्षक मार्गरिट सेकागायाले संयुक्त राष्ट्रसङ्घ मानव अधिकार परिषदमा पेश गरेको प्रतिवेदनमा महिला अधिकार तथा लैङ्गिक समानतका सवालहरूमा क्रियाशील महिला मानव अधिकार रक्षकहरूको अवस्था र लैङ्गिक संरक्षणको सवाललाई जोडदिँदै उनीहरूविरुद्ध हुन सक्ने

गम्भीर उल्लङ्घनहरूविरुद्ध विशिष्ट सुरुक्षाको आवश्यकतालाई मुख्यरूपमा जोडदिएको थियो। महिला मानव अधिकार वा लैङ्गिक सवालहरूमा क्रियाशील महिला मानव अधिकार रक्षकहरूले आफ्ना कामको प्रकृतिको कारण सामना गर्ने असाधारण जोखिमबारेमा चिन्ता व्यक्त गरिएको थियो। त्यस्ता जोखिमहरूमा गैरकानुनी गिरफ्तारी, दुर्व्यवहार, यातना, अपराधीकरण, सामाजिक लाञ्छना, आक्रमण, धम्की, ज्यान मार्ने धम्की, हत्या र यौनहिंसा तथा बलात्कारलाई औंल्याइएको थियो । यस्ता उल्लङ्घनमा महिला मानव अधिकार रक्षकहरूका परिवारका सदस्यहरूलाई पनि लक्षित बनाइएको हुन्छ, भन्ने विषयलाई पनि प्रतिवेदनमा उल्लेख गरिएको थियो (United Nations, 2011)।

सन् २०१८ मा मोरक्कोको माराकेचमा भएको विश्वका मानव अधिकार राष्ट्रिय संस्थाहरूको सम्मेलनले मानव अधिकर रक्षकहरूको संरक्षण, संवर्धन, सहयोग, साझेदारी र क्षमता अभिवृद्धिका लागि महिलाहरूको सहभागिता र सुरक्षामा विशेष ध्यान केन्द्रित गर्दै नागरिक क्षेत्रको बिस्तार र मानव अधिकार रक्षकहरूको संरक्षण र संवर्धनमा राष्ट्रिय मानव अधिकार संस्थाहरूको भूमिकाको घोषणा गरेको थियो (GANHRI, 2018)।

सन् २०१८ मा फ्रान्सको पेरिसमा भएको मानव अधिकार रक्षक विश्व शिखर सम्मेलनले राष्ट्रहरूलाई मानव अधिकार रक्षकहरूको संरक्षण र सुरक्षाका लागि राष्ट्रिय कार्ययोजना बनाउन आग्रह गरेको छ (HRDWS, 2018)।

संयुक्त राष्ट्रसङ्घीय महासभाको तेस्रो समितिले पहिलो पटक २७ नोभेम्बर सन् २०१३ मा महिला मानव अधिकार रक्षकहरूको संरक्षणका लागि विश्वव्यापीरूपमा मान्यता प्राप्त मानव अधिकार र मौलिक स्वतन्त्रको संरक्षण र संवर्धन गर्ने व्यक्ति, समूह र समाजका अंगहरूको अधिकार र जिम्मेवारी सम्बन्धी घोषणापत्रको संवर्धन गर्न प्रस्ताव पारित गरेको थियो (United Nations, 2013)।

मानव अधिकारको उपभोग, वातवरण संरक्षण र दिगो विकासका लागि वातावरणीय मानव अधिकार रक्षकहरूको योगदानलाई मान्यता दिदैं मानव अधिकार परिषद्द्वारा २१ मार्च २०१९ मा प्रस्ताव पारित गरिएको थियो (Right Docs, 2019)।

एसिया प्रशान्त क्षेत्रका राष्ट्रहरूमा मानव अधिकार रक्षकहरूको संरक्षण र संवर्धनका लागि एसिया प्रशान्त मञ्च र यसका सदस्य राष्ट्रिय मानव अधिकार संस्थाहरूको सामूहिक प्रतिबद्धता प्रदर्शन गर्न मानव अधिकार रक्षकसम्बन्धी क्षेत्रीय कार्य योजना जारी गरेको छ । कार्ययोजनाले एपिएफ तथा यसका सदस्यहरूले GANHRI declaration on "Expanding the civic space and promoting and protection rights defenders, with a specific focus on women the role of National Human Rights Institutions" (The Marrakesh Declaration) को कार्यान्वयन गर्न गरेको मुख्य प्रतिबद्धतालाई सम्मान गरेको छ । यो कार्ययोजना सरकारहरूका लागि निर्देशित होइन, बरु राष्ट्रिय मानव अधिकार संस्थाहरूले गरेका प्रतिबद्धताहरूको सङ्कलन हो (APF, 2021)।

व्यवसाय र मानव अधिकार सम्बन्धमा मानव अधिकार रक्षकहरूको भूमिकालाई व्यवसाय र मानव अधिकारसम्बन्धी संयुक्त राष्ट्रसङ्घीय मार्गनिर्देशक सिद्धान्त २०११ ले महत्त्वपूर्ण रूपमा स्वीकार गरेको छ । जसमा मानव अधिकार रक्षकहरूलाई व्यावसायिक क्षेत्रले मानव अधिकारको विशेषज्ञको रूपमा सहयोग लिन सक्ने तथा मानव अधिकार रक्षकहरूको सुरक्षाको दायित्व राज्यको हुने व्यवस्था गरेको छ (United Nations, 2011)।

राष्ट्रिय मानव अधिकार संस्थाहरूको भूमिका र दायित्व

मानव अधिकार रक्षकहरूको सुरक्षा उनीहरूका अधिकारको संरक्षण गर्ने सरकारको दायित्व र कर्तव्य रहेको हुन्छ । मानव अधिकार रक्षकसम्बन्धी सरकारको कर्तव्य तथा दायित्वको कार्यान्वयन अवस्थाको अनुगमन गरी निर्देशन, सल्लाह, सिफारिस र मार्गदर्शन दिने तथा मानव अधिकार रक्षकहरूको क्षमता अभिवृद्धि गर्ने महत्त्वपूर्ण र विशेष भूमिका राष्ट्रिय मानव अधिकार संस्थाको रहेको हुन्छ ।

संयुक्त राष्ट्रसङ्घका मानव अधिकार रक्षक विशेष प्रतिवेदकको सिफारिसमा मानव अधिकार रक्षकहरूको संरक्षणका लागि राष्ट्रिय मानव अधिकार संस्थाहरूले प्रमुख र बिस्तृत भूमिका निर्वाह गर्न सक्छन । राष्ट्रिय मानव अधिकार संस्थाहरूले मानव अधिकार रक्षकहरूको अधिकार सम्बन्धमा ब्यापक सचेतिकरण गर्न प्रवर्द्धनका अभियानहरू सञ्चालन गर्न सक्दछन् यसबाट मानव अधिकार रक्षकहरूको संरक्षणसम्बन्धी राष्ट्रिय कानुन निर्माणमा महत्त्वपूर्ण योगदान दिन साथै मानव अधिकार रक्षकहरूको अवस्थाका सम्बन्धमा अनुगमन गरी वास्तविकता उजागर गर्न सक्दछन् । नागरिक समाज संस्थाहरूका सरोकारहरूलाई राष्ट्रिय तथा अन्तर्राष्ट्रिय स्तरमा उजागर गर्ने र मानव अधिकार रक्षकहरूविरुद्ध हुनसक्ने सम्भावित मानव अधिकार उल्लङ्घनबाट संरक्षण गर्ने तथा मानव अधिकार उल्लङ्घनका घटनाहरूको अनुसन्धान गरी आवश्यक उपचारका लागि पहल गर्ने जिम्मेवारी मुख्य रूपमा रहेका छन् ।

राष्ट्रिय मानव अधिकार संस्थाको रूपमा मानव अधिकार रक्षकहरूको सुरक्षा, उनीहरूका अधिकारको संरक्षण, पहिचान र मान्यताका लागि राष्ट्रिय मानव अधिकार आयोग महत्त्वपूर्ण भूमिका निर्वाह गर्दै आएको छ । राष्ट्रिय मानव अधिकार आयोगका सिफारिस तथा मार्गनिर्देशनहरूको कार्यान्वयनको अवस्था सन्तोषजनक नभए पनि मानव अधिकार रक्षकहरूका लागि देशभित्र सहज र सुरक्षित बातावरणको सिर्जना गर्नका लागि महत्त्वपूर्ण भूमिका खेल्दै आएको छ ।

दिगो विकास लक्ष्यको लागि राष्ट्रिय मानव अधिकार संस्थाहरूले के गर्न सक्नेछन् भन्ने सन्दर्भमा राष्ट्रिय मानव अधिकार संस्थाको अन्तर्राष्ट्रिय समन्वय समितिको १२औं अन्तर्राष्ट्रिय सम्मेलन मेक्सिकोको मेरीडामा सन २०१५ मा आयोजना भएको थियो । उक्त सम्मेलनले दिगो विकास लक्ष्य २०३० कार्यान्वयनमा राष्ट्रिय मानव अधिकार संस्थाहरूको भूमिकासम्बन्धी घोषणापत्र जारी गरेको थियो । घोषणापत्रमा सम्मेलनले दिगो विकास लक्ष्य ऐजेण्डा ३० को प्राप्तिका लागि नागरिक समाजको प्रमुख भूमिका तथा योगदान रहेको कुरालाई दृढतापूर्वक दोहोर्‍याउदै सहकार्य, साझेदारी तथा सहयोगका अवसरहरू खोल्दै अनुगमन र कार्यान्वयनमा नागरिक समाजको पूर्ण सहभागिता सुनिश्चित गर्ने कुरालाई स्वीकार गरिएको छ (ICC, 2015) ।

यसै सन्दर्भमा राष्ट्रिय मानव अधिकार संस्थाहरूको विश्वव्यापी एलायन्स (Global alliance of National Human Rights Institution, GANHRI) को १३ औं अन्तराष्ट्रिय सम्मेलन सन २०१८ अक्टोर १० देखि १२ सम्म मोरक्कोको माराकेचमा आयोजना गरिएको थियो । उक्त सम्मेलनले मानव अधिकार रक्षकको सुरक्षा र नागिरक स्थानलाई मूल मुद्दाको रूपमा स्वीकार गर्दै घोषणापत्र जारी गरेको थियो (The Marrakaesh Declaration "Expanding the civic space and promoting and protecting human rights defenders, with a specific

focus on women: The role of national human rights institutions") । सम्मेलनले सिविक स्पेस (civic space) लाई संरक्षण गर्न र मानव अधिकार रक्षकहरूका लागि संरक्षण, संवर्धन, सहकार्य र साझेदारी निर्माण गर्न राष्ट्रिय मानव अधिकार संस्थाहरूले व्यवहारिकारूपमा नै रणनीतिहरूको निर्माण गर्न प्रतिबद्धता गरेको छ । मुख्य गरी राष्ट्रिय मानव अधिकार संस्थाको जिम्मेवारीलाई माराकेच घोषणापत्रले निम्नलिखित रूपमा स्वीकार गरेको छ (GANHRI, 2018)।

- मानव अधिकार रक्षक, नागरिक समाज, संघ संस्था तथा अन्य सरोकारवालाहरूसँगको परामर्श र विमर्शमार्फत मानव अधिकार रक्षकको संरक्षणसम्बन्धी राष्ट्रिय संयन्त्रको स्थापनाका लागि पहल गर्नुपर्ने ।
- मानव अधिकार रक्षकसम्बन्धी संयुक्त राष्ट्र घोषणापत्र UN Declaration on Human Rights Defenders को कार्यान्वयनसहित सबै अन्तर्राष्ट्रिय मानव अधिकार उपकरणहरूलाई अनुमोदन गर्न राज्यलाई प्रोत्साहित र सो को कार्यान्वयनका लागि सहयोग अभिवृद्धि गर्ने ।
- नागिरक स्थान (civic space) तथा मानव अधिकार रक्षकहरूको अधिकार, सहभागिता, समानता, स्वतन्त्रता, सुरक्षालगायत नागरिक अधिकारहरूको अनुगमन गरी प्रतिवेदन सार्वजनिक गर्ने *(जसमा मानव अधिकार रक्षकहरूको हत्या, झुठा कानुनी अभियोगहरू, कानुनको दुरुपयोग तथा आक्रमणहरू पर्दछन्।)*
- राष्ट्रिय मानव अधिकार संस्थाभित्र मानव अधिकार रक्षकसम्बन्धी प्रभावकारी र बलियो संयन्त्रको स्थापना गर्ने ।
- लैङ्गिक समानता प्रवर्द्धन गर्न र महिला मानव अधिकार रक्षकहरूविरुद्ध हुने भेदभावका सबै स्वरूपहरूविरुद्ध रणनीतिहरूको विकास गर्ने ।
- मानव अधिकार रक्षक तथा नागरिक समाजसँग नियमित अन्तरक्रिया र मानव अधिकार रक्षकसम्बन्धी स्थानीय, प्रादेशिक तथा राष्ट्रिय सञ्जालको विकास र सुदृढीकरण गर्न सहयोग गर्ने ।
- मानव अधिकार रक्षकहरूको समर्थनमा अन्तर्राष्ट्रिय तथा क्षेत्रीय प्रणालीसँग अन्तक्रिया र संवाद गर्ने र मानव अधिकार रक्षकसम्बन्धी सिफारिस कार्यान्वयनको निरन्तर अनुगमन तथा निगरानी गर्ने ।

राष्ट्रिय मानव अधिकार संस्थाहरूको एसिया प्रशान्त मञ्च (Asia Pacific forum on NHRIs)ले यसका सदस्य राष्ट्रहरूमा मानव अधिकार रक्षकको अवस्थालाई सुरक्षित र प्रभावकारी बनाउन क्षेत्रीय कार्ययोजना (२०२१-२५) निर्माण गरी कार्यान्वयनमा ल्याएको छ । यस कार्ययोजनाले माराकेच घोषणा २०१८ अन्तर्गत गरिएका मुख्य प्रतिबद्धताहरू एसिया प्रशान्त मञ्च र यसका सदस्यहरूलाई महसुस गराएको छ । जसले राष्ट्रिय मानव अधिकार संस्थाहरूका लागि मानव अधिकार रक्षकहरूको अधिकार संरक्षण गर्न विश्वव्यापी रूपरेखा स्थापना गरेको छ । उक्त कार्ययोजनाअनुसार निम्न उल्लिखित कार्यहरू राष्ट्रिय मानव अधिकार संस्थाहरूले जुन, २०२५ सम्म लागु गरेको हुनुपर्ने दायित्व सिर्जना गरेको छ (APF, 2021, p. 24-31) ।

१. ***मानव अधिकार रक्षकहरूको सुरक्षा र अधिकार प्रचलनका लागि राष्ट्रिय सुरक्षा प्रणालीको स्थापनाका लागि पहल र वकालत गर्न***

- मानव अधिकार रक्षकको सुरक्षासम्बन्धी राष्ट्रिय सुरक्षा प्रणालीको समीक्षा गर्ने,
- मानव अधिकार रक्षकहरूसम्बन्धी राष्ट्रिय कानुनको वकालत गर्ने,
- मानव अधिकार रक्षकका अधिकारसम्बन्धी सरकारी नीति र कार्यक्रमका लागि सहयोग अभिवृद्धि गर्ने.

२. ***लैङ्गिक समानताको प्रवर्द्धन र महिला मानव अधिकार रक्षकहरूको पहिचान, स्वीकार्यता र मान्यताको मूल प्रवाहीकरण गर्न***

- मानव अधिकार संरक्षण तथा संवर्धनसम्बन्धी महिला मानव अधिकार रक्षकहरूको भूमिका तथा क्रियाकलापहरूलाई स्वीकार्य बनाउन पहल गर्ने र आवश्यक सहयोग अभिवृद्धि गर्ने,
- मानव अधिकार रक्षकहरूविरुद्ध हुने हिंसा तथा उल्लङ्घन सम्बन्धमा सङ्कलन गर्दा लैङ्गिक आधारमा खण्डिकृत तथ्याङ्कको सुनिश्चितता गर्ने र
- पृथक लैङ्गिक पहिचान भएका, लैङ्गिक पहिचान नखुलेका तथा यौनिक तथा लैङ्गिक अल्पसङ्ख्यक मानव अधिकार रक्षक तथा सम्बन्धित सोसँग सम्बन्धित संस्थाहरूको सुरक्षा र पहिचान सुनिश्चितता गर्ने,

३. ***मानव अधिकार रक्षकहरूका अधिकार सम्बन्धमा सचेतना अभिवृद्धि गर्न***

- आयोगका मानव अधिकार शिक्षा संवर्धनसम्बन्धी नीति, कार्यक्रम तथा क्रियाकलापहरूमा मानव अधिकार रक्षकका अधिकारहरूको मूल प्रवाहीकरण गर्ने,
- मानव अधिकार रक्षकहरूका अधिकारसम्बन्धी विशेष अभियानहरू सञ्चालन गर्ने,
- मानव अधिकार रक्षकहरूका बीचमा पनि सचेतना अभिवृद्धिसम्बन्धी अभियान सञ्चालन गर्ने र
- मानव अधिकार रक्षकहरूको अधिकारसम्बन्धी संवर्धनात्मक सामग्रीहरू स्थानीय भाषामा उपलब्ध गराउने ।

४. ***आयोगभित्र "पूर्वसूचना प्रणाली" को स्थापना तथा विकास गर्न,***

- आयोगभित्र मानव अधिकार रक्षक अधिकृतको व्यवस्था गर्ने,
- पर्याप्त स्रोत साधनसहित द्रुत प्रतिक्रिया टिम स्थापना गर्ने र
- जोखिम तथा खतरामा रहेका मानव अधिकार रक्षकहरूको लागि राष्ट्रिय हटलाइन सेवा र सञ्चारका अन्य आवश्यक प्रक्रियाहरूको स्थापना गर्ने ।

५. *मानव अधिकार रक्षकहरूविरुद्ध हुने उल्लङ्घनहरूको अनुगमन गर्ने*

- उजुरी ग्रहण गर्ने प्रणाली भित्र मानव अधिकार रक्षकलाई पनि पहिचान गर्ने गरी व्यवस्था गर्ने,
- मानव अधिकार रक्षकका अधिकारसम्बन्धी सयुक्त राष्ट्रसङ्घीय घोषणापत्र १९९८ को सरकारी निकायबाट भएको कार्यान्वयनको अनुगमन गर्ने र
- मानव अधिकार रक्षकहरूका सञ्जालहरू, समुदाय तथा अन्य सम्बन्धित पक्ष लगायत स्रोतहरूबाट मानव अधिकार रक्षकहरूका अधिकार उल्लङ्घन सम्बन्धी खण्डिकृत तथ्याङ्क सङ्कलन गर्ने ।

६. *मानव अधिकार रक्षकविरुद्ध हुने उल्लङ्घनको प्रतिवेदन गर्ने*

- मानव अधिकार रक्षकहरूका विरुद्ध हुने उल्लङ्घन सम्बन्धी विभिन्न विषयहरूमा राष्ट्रिय जाँचबुझ सञ्चालन गर्ने,
- मानव अधिकार रक्षकविरुद्ध हुने उल्लङ्घनको अवस्थासम्बन्धी विशेष प्रतिवेदन तयारी गर्ने र
- आयोगको वार्षिक प्रतिवेदनमा मानव अधिकार रक्षकसम्बन्धी विषय समावेश गर्ने ।

७. *मानव अधिकारसम्बन्धी अन्तर्राष्ट्रिय प्रणालीसँगको संलग्नता गर्ने*

- मानव अधिकार रक्षकहरूविरुद्ध हुने उल्लङ्घनका सम्बन्धमा अन्तर्राष्ट्रिय मानव अधिकार संयन्त्रमा प्रतिवेदन पेश गर्ने,
- संयुक्त राष्ट्रसङ्घीय मानव अधिकार संयन्त्रहरूका सिफारिस तथा सुझावहरूको कार्यान्वयनको अवस्था अनुगमन गर्ने र
- संयुक्त राष्ट्रसङ्घ मानव अधिकार परिषद्अन्तर्गतका विशेष कार्यविधि (Special Procedure) अधिकार प्राप्त प्रतिनिधि विशेष गरी मानव अधिकार रक्षक विशेष समाधिक्षक (UN Special Rapporteur on the situation of human rights defenders) सँग प्रभावकारी ढंगले संलग्न हुने ।

८. *मानव अधिकार रक्षकहरूको राष्ट्रिय सञ्जाल सुदृढीकरण गर्ने,*

- मानव अधिकार रक्षकहरूको सञ्जाल निर्माणका लागि सहजीकरण र स्रोतसाधन स्थापना गर्ने,
- मानव अधिकार रक्षकहरूका सञ्जालहरू जो जहाँ छन्, उनीहरूको पहुँच् बिस्तार कार्यक्रम विकास गर्ने,
- मानव अधिकार रक्षक सञ्जालहरूसँग सहकार्य तथा साझेदारीमा कार्यक्रमहरू सञ्चालन गर्ने र
- मानव अधिकार रक्षक सञ्जाल र अन्य सरोकारवालाहरूका बीचमा अन्तरसम्बन्ध विस्तार गर्ने ।

मानव अधिकार रक्षकका अधिकार संरक्षणमा नेपालमा भएका प्रयासहरू

- नेपालको संविधानको भाग ३ मा ३१ वटा मौलिक हक सम्बन्धी व्यवस्था,
- मौलिक हकहरूको प्रचलनका लागि कानुन निर्माण भई कार्यान्वयनको चरणमा, मौलिक हक उल्लङ्घन भएको अवस्थामा संवैधानिक उपचारको हकको व्यवस्था,

- संवैधानिक तथा कानुनी हकको प्रचलनका लागि सक्षम अदालतको व्यवस्था,
- मानव अधिकारको संरक्षण र संवर्धनको प्रचलनका लागि काम, कर्तव्य र अधिकार सहितको राष्ट्रिय, मानव अधिकार आयोगको व्यवस्था,
- विभिन्न विषयगत आयोगहरूको स्थापना,
- सूचना, सञ्चार र प्रेस सम्बन्धी कानुनहरूको व्यवस्था र
- नेपाल सरकार, गृहमन्त्रालयबाट मानव अधिकारकर्मीहरूको सुरक्षा र संरक्षण गर्ने सम्बन्धी आदेश, २०७७ जारी

राष्ट्रिय मानव अधिकार आयोगबाट गरिएका प्रयासहरू *(रा.मा.अ.आ..२०७९, पृ.२०).*

- मानव अधिकार रक्षकसम्बन्धी पहिलो राष्ट्रिय सम्मेलन २०६९ साल, असोज २२ र २३ गते
- मानव अधिकार रक्षकहरूसम्बन्धी मार्ग-निर्देशिका, २०६९ जारी
- मानव अधिकार सहकार्य तथा समन्वयसम्बन्धी मार्ग-निर्देशिका, २०६९ जारी
- मानव अधिकार रक्षक दोस्रो राष्ट्रिय सम्मेल २०७४ कार्तिक २६ र २७ गते मानव अधिकार रक्षकसम्बन्धी दोस्रो राष्ट्रिय सम्मेलनले रक्षकसम्बन्धी २१ बुँदे घोषणापत्र जारी,
- मानव अधिकार मानव अधिकार रक्षकहरूको अवस्था अध्ययन प्रतिवेदन २०७९
- क्रियाशील मानव अधिकार रक्षकहरूका लागि वि.सं. २०६८ सालदेखि स्व. दयाराम स्मृति मानव अधिकार पुरस्कार वितरण
- मानव अधिकार आयोगका कर्मचारीहरूका लागि वि.सं. २०७५ सालदेखि उत्कृष्ट मानव अधिकार पुरस्कार वितरण
- मानव अधिकार रक्षकहरूको अधिकार संरक्षण र संवर्धनलाई मुख्य विषयको रूपमा प्रस्तुत गरी २०७८ फागुन २० र २१ गते देशका सात वटै प्रदेशहरूमा मानव अधिकार रक्षक प्रादेशिक सम्मेलन आयोजना
- मानव अधिकार रक्षक प्रादेशिक सम्मेलनमा मानव अधिकार रक्षकका अधिकार संरक्षण र संवर्धन तथा उनीहरूको सुरक्षा र मान्यताका सवाललाई समेटी सातै प्रदेशबाट घोषणापत्र जारी
- मानव अधिकार रक्षकहरूको अवस्थाको लेखाजोखा र विश्लेषण गर्ने उद्देश्यले मानव अधिकार
- रक्षकहरूको अवस्थाको अध्ययन
- मानव अधिकार रक्षकका अधिकारको संरक्षण र उनीहरूको सुरक्षालाई प्रभावकारी बनाउने
- मूल उद्देश्यसहित मानव अधिकार रक्षक तेस्रो राष्ट्रिय सम्मेलन २०७९ जेठ ९ र १० गते सम्पन्न
- मानव अधिकार रक्षक तेस्रो राष्ट्रिय सम्मेलनबाट विभिन्न प्रतिबद्धतासहित ११ बुँदे घोषणापत्र जारी
- सातै प्रदेश सम्मेलबाट आएका सुझावहरूका आधारमा मानव अधिकार रक्षकहरूको संरक्षण र संवर्धनका लागि नमूना कानुन मस्यौदा गरी छलफल र सुझावका लागि राष्ट्रिय सम्मेलनमा प्रस्तुत
- समय समयमा मानव अधिकार रक्षकहरूको अवस्था अनुगमन

- मानव अधिकार रक्षक तथा नागरिक समाज, संस्थाहरूसँग विभिन्न सवालहरूमा निरन्तर सहकार्य र मानव अधिकार रक्षकविरुद्ध हुने मानव अधिकार हनन्का घटनाहरूको उजुरी लिई अनुसन्धान गर्दै आएको ।

मानव अधिकार रक्षकहरूद्वारा २५ वर्षको उपलब्धिहरू

मानव अधिकार रक्षकहरूसम्बन्धी घोषणापत्र १९९८ मा जारी भयो, घोषणापत्र जारी भए पश्चिात मानव अधिकार संरक्षण र प्रवर्द्धनका लागि मानव अधिकार रक्षकहरूले गरेको योगदानबाट भएका उपलव्धीहरूका कारण मानव अधिकार रक्षकहरूको भूमिका महत्त्वपूर्ण रहँदै आएको छ । मानव अधिकार रक्षकहरूले विभिन्न जोखिम, आघात तथा चुनौतीका बावजुद आफ्नो जिम्मेवारीलाई मानवतावादी दृष्टिकोणबाट अगाडि बढाउदै आएका छन् । मानव अधिकार रक्षकहरूको भूमिकाका विगत २५ वर्षमा प्राप्त उपलव्धीहरूलाई संयुक्त राष्ट्रसङ्घ मानव अधिकार रक्षकसम्बन्धी समाधिक्षक प्रतिवेदन सार्वजनिक गरेको छ ।

मानव अधिकार रक्षक विशेष समाधिक्षक मेरी ललर (Special Rapporteur on the situation of human rights defenders, Mary Lawlor) ले मानव अधिकार रक्षकसम्बन्धी घोषणापत्र १९९८ मा जारी भएपश्चात् २०२३ अर्थात २५ वर्ष सम्म मानव अधिकार संरक्षण र संवर्धनमा मानव अधिकार रक्षकहरूको भूमिका कस्तो रह्यो भन्ने सन्दर्भमा एक प्रतिवेदन मानव अधिकार परिषदको ५२ औं बैठक (२७ फ्रेबुवरीदेखि ३१ मार्च २०२३) मा छलफलका लागि प्रस्तुत भएको थियो । उक्त प्रतिवेदनमा, मानव अधिकार रक्षकहरूको अवस्थासम्बन्धी विशेष प्रतिवेदक, मेरी ललरले विश्वव्यापी मान्यता प्राप्त मानव अधिकार र मौलिक स्वतन्त्रताहरू (मानव अधिकार रक्षकहरूसम्बन्धी घोषणा) को प्रवर्द्धन र संरक्षण गर्न व्यक्ति, समूह र समाजका अङ्गहरूको अधिकार र उत्तरदायित्व सम्बन्धी घोषणापत्र अपनाएको २५ वर्ष बितिसकेको सन्दर्भमा मानव अधिकार रक्षकहरूले साझा गरेका उपलब्धिहरू र सफलताका कथाहरू प्रस्तुत गरिएको छ । प्रतिवेदनले न्यायमा पहुँच, कानुन परिवर्तन तथा सुधारका लागि मानव अधिकार रक्षकहरूको योगदान, कमजोरबर्गको सुरक्षा गर्ने र व्यवसायीहरूलाई जवाफदेही बनाएका सफल उदाहरणहरू समावेश गरेको छ ।

उक्त प्रतिवेदनले लैङ्गिक तथा यौनिक अल्पसङ्ख्यक मानव अधिकार रक्षकहरूले आफ्ना अधिकारका लागि गरेका प्रयास र सफलताहरू समावेश गरेको छ,किसानहरूको अधिकारका लागि भएका कानुनी उपचार, महिला अधिकारका लागि मुस्लिम राष्ट्रमा भएका उपलव्धीहरू, महिलाहरूको यौन तथा प्रजनन स्वास्थ्यलाई संरक्षण गरिएको, मानव अधिकार संरक्षणका लागि राज्यका निकायहरूलाई जिम्मेवार र जवाफेदही बनाउन भएका प्रयासहरू समेटिएका छन्। मङ्गोलियामा मानव अधिकार रक्षक, नागरिक समाज, संस्थाहरू, मङ्गोलियाको राष्ट्रिय मानव अधिकार आयोग र अन्तर्राष्ट्रिय समुदायद्वारा गरिएको वर्षौंको वकालत तथा प्रयासपश्चात मानव अधिकार रक्षकहरूको सुरक्षा र संरक्षणसम्बन्धी कानुन तर्जुमा गरी अप्रिल २०२१ देखि लागु गरिएको छ। यस बिचमा मानव अधिकार रक्षकको संरक्षण र सुरक्षासम्बन्धी कानून तर्जुमा गरी लागू गर्नेमा मंगोलिया एसियामै पहिलो राष्ट्र भएको छ (UN General Assembly, 2023)।

विश्लेषण तथा निष्कर्ष

मानव अधिकार रक्षकहरूले मानव अधिकारहरूको संरक्षण तथा संवर्द्धनका लागि महत्त्वपूर्ण भूमिका खेल्दछन् । रक्षकहरूले नागरिक, राजनीतिक, आर्थिक, सामाजिक र सांस्कृतिक अधिकारहरूसहित राष्ट्रिय र अन्तर्राष्ट्रिय स्तरमा मानव अधिकारहरूको संरक्षा र प्रवर्द्धन गर्ने कार्य गर्दछन्। मानव अधिकार रक्षकहरूले मानव अधिकारको विश्वव्यापकता र अपरिहार्यताको प्रवर्द्धन गर्दछन् । रक्षकहरूको भूमिकाले समाज सुधार तथा रुपान्तरणका साथै शान्ति र लोकतन्त्रमा योगदान पुऱ्याउँछ। मानव अधिकार रक्षकहरूले स्वतन्त्र, निश्पक्ष तथा प्रभावकारी रूपमा आफ्नो अधिकार प्रयोग गर्न सकेको खण्डमा द्वन्द्व, हिंसामा परिणत हुने जोखिमलाई कम गर्न मद्दत पुग्दछ । यसको साथै मानव अधिकार रक्षकहरूले स्वतन्त्र रूपमा आफ्नो अधिकार प्रयोग गर्न सकेमा, यसले संवाद र साझेदारीका लागि अवसरहरू पनि सिर्जना गर्न सक्दछ।

मानव अधिकार रक्षकहरूले शान्तिपूर्ण माध्यमबाट मानव अधिकारको संरक्षण र संवर्धनका लागि अभियान सञ्चालन गर्ने गरेको भए पनि यस क्रममा विभिन्न जोखिम, आघात तथा अवरोधहरूको समाना गरिरहनुपरेको छ । त्यस्ता जोखिम, आघात तथा अवरोधहरूमध्ये मुख्य गरी मानव अधिकार रक्षक स्वयंले जातीय विभेद, लैङ्गिक विभेद, मानव अधिकार रक्षकको रूपमा स्वीकार नै नगर्ने मानव अधिकार रक्षकको पहिचान नै नस्विकार्ने अवस्थाको सामना गरिरहेका छन् ।

मानव अधिकार रक्षकहरूका अधिकारहरूको उपभोग गर्ने वातावरणको सिर्जना गर्ने कार्य राज्यका निकायहरूको हो । मानव अधिकार रक्षक तथा नागरिक समाजको भूमिकालाई अझै प्रभावकारी बनाउनका लागि मानव अधिकार तथा सार्वजनिक सरोकारका सवालहरूमा उनीहरूको अर्थपूर्ण संलग्नतालाई महत्त्वपूर्ण रूपमा हेरिनु पर्दछ। नेपालमा मानव अधिकारको संरक्षण, संवर्धन, विकास तथा लोकतान्त्रिक पद्धतिको स्थापनाका लागि मानव अधिकार रक्षक तथा नागरिक समाज संस्थाहरूको भूमिकाको सहाना गर्नुपर्दछ ।

मानव अधिकार रक्षकहरूको संरक्षण, सुरक्षा, पहिचान र उनीहरूको भूमिकालाई स्वीकार्य बनाउनका लागि नेपालको संविधानमा व्यवस्था गरिएका मौलिकहरूको प्रभावकारी कार्यान्वयन गरिनुपर्दछ । साथै मानव अधिकारको विश्ववयापी घोषणापत्र, १९४८ प्रतिको नेपालको प्रतिबद्धता र सो घोषणालाई बाध्यकारी बनाउने नागरिक तथा राजनीतिक अधिकारसम्बन्धी अभिसन्धि १९६६ को अनुमोदन नै नेपालका लागि यसको कार्यान्वयनको बाध्यात्मक जिम्मेवारी हो ।

तसर्थ, मानव अधिकार रक्षकहरूका अधिकारहरूको संरक्षण, ती अधिकारहरूको उपभोग गर्ने क्रममा आउन सक्ने जोखिमहरूबाट सुरक्षा, मानव अधिकार रक्षकहरूले मानव अधिकार संरक्षण र संवर्धनका लागि खेल्दै आएको भूमिकाको पहिचान, स्वीकार्यता र मान्यताका लागि राष्ट्रिय कानुनको अपरिहार्यता खडकिएको छ। अतः मानव अधिकार रक्षकहरूको संरक्षण र संवर्धनका लागि मानव अधिकार रक्षकका अधिकारसम्बन्धी संयुक्त राष्ट्रसङ्घ घोषणापत्र १९९८ को घरेलुकरण गरी नीतिगतरूपमा नै संबोधन गर्नुपर्ने देखिन्छ ।

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Role of Judiciary on Right to Privacy

Barsha Kumari Jha

Abstract

Privacy is one of the most valued human rights in the present context. It is crucial for the fullest development of the physical and mental growth of human beings. Judiciary is very effective to protect and promote Right to Privacy in a country through judicial activism or public interest litigation, the role of non-governmental organizations (NGOs) is also important in Nepal. This context requires the examination of existing judicial regime of Nepal to identify whether it adequately protects citizens' rights to privacy. This paper aims at disclosure of this aspect of judicial interventions. The findings will enlighten all stakeholders to understand the existing legal framework for privacy in Nepal. It will further facilitate them to map and design their future policies and strategies encompassing privacy. It evaluates the role of judiciary in protecting, promoting and reinforcing the right to privacy with a descriptive and qualitative method of inquiry.

***Keywords*:** Human Rights, Privacy, Right to Privacy, Judiciary, Protection and Promotion

Introduction

Privacy incorporates, from the rights perspective, an individual's life, residence, property, documents, correspondence, and private information Self-dignity is the inherent right of human beings. Self-dignity is essential for a human being to be ensured of freedom. Therefore, various international Human Rights instruments are there to protect and promote equality and self-dignity of a human being. In the Constitution of Nepal of 2015 the articles relating to right to freedom (*Article 17*), equality (*Art.18*) and privacy (*Art.28*), explicitly, ensure the freedom, equality and self-dignity of a human being.

In a society shaped by established values and norms, both men and women in Nepal face varying degrees of vulnerability regarding their privacy, though the implications are different. Traditionally, cultural and religious biases place significant pressure on women to uphold their chastity, often restricting their freedoms and requiring them to navigate life within the confines of societal expectations. Conversely, men may find themselves expected to embody ideals of strength and dominance, which can also challenge their expression of vulnerability and privacy. This

environment creates a complex dynamic in which women are often compelled to shield themselves behind a curtain of privacy to preserve their public dignity, while men, too, may feel constrained in their behaviors by societal pressures. Ultimately, both genders navigate a landscape influenced by deep-rooted prejudices, though the impacts of those prejudices manifest in distinct way for each.

The constitution of Nepal includes the right to privacy as a fundamental right but the right as such is not absolute that needs a specific law to be effectively implemented. Some existing laws have some legal provisions to maintain the privacy of individual, but they are not sufficient.

The study aims to find the judicial trend in the recognition of Right to Privacy. Similarly, it has an objective to study the role of Nepalese Judiciary in implementing the Right to Privacy.

Methodology

The paper is qualitative in nature and based on secondary sources of published fact like book, journal articles and Nepal 'Kanoon Patrika'. Information is also gathered through internet browsing. The Articles has viewed judicial precedent established by the Supreme court Nepal regarding the protection of human rights relating to right to privacy.

Meaning of Right to Privacy

'Privacy' is concerned with a human being's dignity and liberty. It is a fundamental human right guaranteed by international laws. It has been an inalienable and integral part of human life since long time. Initially, it had a very narrow scope as such thought to be included only 'right to be let alone (and Deshta, 2004).

Later, the increasing maturity levels of the democratic systems, rapid strides in science and technology, made its scope wider. Now the right to privacy covers many aspects such as, freedom of thought, control over one's body, identity, solitude in one's home, control over self-information, freedom from surveillance, protection of one's reputation, and freedom from searches and seizures etc.

Privacy's origin can be traced back to an article written by Warren and Brandy published in 'Harward Law Review' in 1890, in which the concept of Right to Privacy was discussed in detail for the first time. The popular pioneer cases on the Right to Privacy i.e., Plessey vs. Fergusson -1896 May 18 and Paolo Pavesich vs. New England Mutual Life Insurance company-1905 of the USA reflect the nascent stage and represent the foundations of right to privacy.

It is often contended that the legal safeguard of privacy right is a reaction to the level of technological and economic development (Ghose & Chatterjee, 2002). However, it is not technology alone that determines the nature and extent of the safeguard of privacy. Social needs as well as

cultural and political circumstance also have a bearing on citizens' concern for the recognition of privacy rights. The term "privacy" has been described as the rightful claim of the individual to determine the extent to which he wishes to share him/herself with others and his/her control over the time, place and circumstances to communicate with others. It means his right to withdraw or to participate as s/he sees fit. It also means the individual's right to control dissemination of information about him/herself; it is his own personal possession.

Black's Law Dictionary defines Right of Privacy as ' the right to personal autonomy.' The dictionary further defines right of privacy as the right of a person and the person's property to be free from unwarranted public scrutiny or exposure (Garner, 2007). Justice Thomas Cooley defined the Right to Privacy as "the right to be let alone" for the first time.

The concept of Right to Privacy is used to describe not only rights purely in the private domain between individuals but also constitutional rights against the State. The former deals with the extent to which a private citizen (which includes the media and the general public) is entitled to personal information about another individual and the latter is about the extent to which government authorities can intrude into the life of the private citizen to keep a watch over his movements through devices such as telephone-tapping or surveillance. Hence, the concept of the Right to Privacy is multifaceted, encompassing both personal and constitutional dimensions. On the one hand, it pertains to the extent to which private citizens, including the media and the general public, are entitled to personal information about another individual. On the other hand, it involves constitutional rights that protect individuals from state intrusion into their private lives.

2. Right to Privacy: International Human Rights Perspectives

Right to Privacy is one of the human right components, various international instruments have given it a prominent place. More specifically, Article 17 of ICCPR protect everyone from arbitrary or unlawful interference with their "privacy, family, home, or correspondence." It encompasses the protection of personal information, private communications, family life, and one's home arbitrary or unlawful interference. Right enshrined in the international human right instrument can be traced out as follows:

2.1 Universal Declaration of Human Rights (UDHR), 1948

Article 12 of the Universal Declaration Human Rights, 1948 covers the right of Privacy in one's family, home or correspondence. And it also includes the right to be protected, by law, from arbitrary interference or attacks in one's privacy.[1] This provision has ensured a person's dignity and liberty.

1 No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attack (Article 12, UDHR)

2.2 International Covenant on Civil and Political Rights (ICCPR), 1966

A person's privacy of family, home or correspondence is protected by the convention. Arbitrary or unlawful interference over an individual's privacy is prohibited. The convention recognized that everyone has the right to the protection of the law against arbitrary or unlawful interference on one's privacy.[2]

2.3 Convention on Rights of the Child (CRC), 1989

This convention prohibits arbitrary or unlawful interference on child's privacy, family, home or correspondence (CRC, 1989, Art. 16). The convention further provides the provision that no child is to be subjected to unlawful attack on his or her honor and reputation. The child has the right to the protection of the law against such interference of attacks. Similarly Optional Protocol to the Convention of Rights of Child on the Sale of the Children, child Prostitution and Child Pornography, 2000 includes the provision that inappropriate dissemination of information that led to the identification of child victim should be regulated by the national law (United Nations, 2000).

2.4 Other Regional Instruments

In addition to international human rights instruments, there are some regional human rights instruments that also speak about the Right to Privacy. They are, Article 8 of the European Convention, Articles 11 and 14 of the American convention on Human Rights 1978, Articles V, IX and X of the American Declaration on Rights and Duties of Mankind.

3. Right to Privacy in National Legal Framework

The Constitution of the Kingdom of Nepal, 2047 (1990) had included the right to privacy under Article 23. The Interim Constitution of Nepal, 2063 (2007) has included right to privacy under Article 28. The Interim Constitution has covered more facets than the previous constitution which protects the statistics and reputation of the person[3].

Similarly, Article 28 of the Constitution of Nepal, 2072 BS, explicitly outlines the right to privacy. It stipulates that the privacy of an individual's life, residence, property, document, statistics, correspondence and character-related matter shall be inviolable, except when constrained by the law. The Privacy Act of 2075 acknowledges the right to privacy in

2 (1). No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation. (2) Everyone has the right to the protection of the law against such. (Article 14, ICCPR)

3 The Article 28 states that 'Except in circumstances provided by law, privacy in relation to the person, and to their residence, property, documents, records, statistics and correspondence, and their reputation are inviolable. (Article 28)

electronic communication. It states that individuals have the right to privacy regarding their personal information, writings, correspondence data, or character related to them in electronic form. The act explicitly prohibits the use of mechanical devices to eavesdrop on electronic communications or conversation among two or more people without proper authorization or legal orders (Government of Nepal, 2075).

Similar provision safeguarding the right to privacy can also be found in other laws such as the National criminal code, new privacy outlined in the codes say violation of any individual's Right to privacy would result in up to three years imprisonment and fine in thousands of rupees. According to the provision, listening to or recording a conversation between two or more people and photographing someone without their consent is a criminal offence. Anyone found violating these rules faces one year in prison and a fine of Rs.10000 or both, (Government of Nepal, 2074). Similarly, District Court Regulation, 2075 B.S., High Court rule 2073 B.S. and the Supreme Court Regulation, 2074 have the provision to use in-camera hearing in the cases such as rape, trafficking, children, *Natakayam,* divorce and the other case to which the court declares as sensitive one. Similar provision has been enacted in the prevention of Organized Crime Act 2070. These laws are designed to protect individual privacy rights and prevent unauthorized intrusion into their personal communication and information. The Privacy Act of 2075 and Privacy Regulations of 2077 were enacted to actively implement the right to privacy, guarantee the proper and secure use of personal information held by public institutions, and prevent any infringement on personal privacy. These laws are instrumental in ensuring data protection and safeguarding the privacy of individual in Nepal. Additionally, the National Panel Code 2074 focuses on protecting personal privacy by prohibiting action such as secretly recording conservation, taking pictures without permission, and stealing data. Violations of these provisions can result in jail or be hit with a hefty fine. Everyone in Nepal needs to be aware of these codes and follow them. Nepal's commitment to privacy protection is further demonstrated by Data Act of 2079, which sets out clear guidelines for data collection, utilization and sharing within country. This act aims to streamline and strengthen data management practice, ensuring that personal information remains protected and secure.

Thus, the Right to privacy in Nepal is a comprehensive framework that protects individuals from both private and state intrusions, ensuring their personal information and private lives are safeguarded.

4. Role of Supreme Court of Nepal

The constitutions of Nepal have been considering the Right to Privacy as fundamental rights. But there is no specific legal provision regarding the right to privacy in specific law. There are some legal provisions related to the right to privacy in scattered forms in different Acts and Regulations.

The Nepalese judiciary has established some landmarks in this matter. The judiciary has played a significant role in giving legal recognition to the right to privacy.

Relating to Privacy, three leading cases are dealt with. One of the cases is Trial court (District Court). Though the judgment of the trail court is not binding in nature, it is landmark to give legal recognition to right to privacy. Its judgment has successfully established some jurisprudence in the matter of right to privacy, so the judgment is included in the study. The other two cases are from Apex Court which is constitutionally binding in nature. The cases[4] are dealt with as following:

(a) Government of Nepal Vs Shree Prasad Upreti.

The case is about the rape, filed in trial court. The responsibility of investigation and prosecution falls under the domain of the Government (Government of Nepal, 2049). Therefore, the plaintiff of the case is Government of Nepal.

Fact of the Case: The defendant, Shree Prasad Upreti was accused of a ten years old girl child. The victim child had been residing in the hostel of a school founded by the defendant. The Plaintiff of the case had accused the defendant that he had regularly raped the victim child. So, the Plaintiff claimed to punish the accused according to the law of the land.

Judgment of the Court: The District Court had rendered the judgment to punish the defendant. The court had decided eight years imprisonment provided half of the partition of the defendant as compensation to the victim. And, the judgment has also forbidden disclosing the identity of the parties of the case.

Impacts of the Judgment : The judgment is remarkable one, since it not only punished the perpetrator but also set some standards for maintaining the right to privacy while hearing such sensitive case which affect the human dignity. Right to Privacy was first time recognized as a human right in the judiciary of Nepal by the judgment rendered by the District Court. Giving reference to various national and international provisions regarding right to privacy, the judgment has recognized that rape is violence against women and it is a matter of right to privacy and matter of human dignity and sanctity.

4 The Collection of Cases Related to the Gender Justice, (Kathmandu: Pro-Public/UNIFEM 2060 B.S.), 312

The judgment has recognized that privacy should be maintained in the hearing of such cases which impact the victims' psychological and physical aspects. In the judgment the disclosure of the victim's identity is prohibited. Here, the court is in initiation of the respect of the right to privacy as set in the international bill of human rights (Unitted Nations, 1966).

(b) Annapurna Rana Vs Kathmandu District Court and Others.

It is considered that Annapurna Rana Vs Kathmandu District Court and Others is the first case decided by the Apex Court that is related to right to privacy in Nepal. Despite some lacking, the case is leading one to establish the bench mark in the right to privacy.

Fact of the Case: The fact of the case is that Annapurna Rana, the petitioner, had filed a case of Maintenance *(Manachamal)* against her elder brother Gorakha Shamsher and mother Ambika Rana in the trial court (District Court) prior to file the writ petition in the Supreme Court of Nepal. The petitioner claimed that the respondents had not allotted maintenance and matrimonial expenses for the petitioner while executing partition of their property. The respondents argued that she had already got married and had given birth to a baby. Since she is not unmarried, they had no responsibility[5] to provide her maintenance. And, they produced the evidence of delivery. The respondents demanded the court to issue an order to examine the petitioner's vagina and uterus of petitioner Annapurna Rana to confirm their claim.

The Kathmandu district court issued order to examine her reproductive organs as demanded by the respondents. The petitioner challenged this order before the Supreme Court as violation of her right to privacy.

Judgment of the Court: The Supreme Court rendered its verdict giving the following reasoning:

(i) Examining virginity does not prove a girl's marital status.

(ii) Because of absence of law curtailing the claimed right, it is absolute.

(iii) If the court examines secret organs without her (party's) consent that is tantamount to violating it.

(iv) It would be unreasonable to presume a girl as married in absence of a ceremonial marriage in accordance with the consent of parents or marriage registered according to law. Giving birth of a baby is irrelevant for the determination of marriage.

5 Under the provision 'Of Partition' of National Code, 1963 maintenance and matrimonial expenses was not to be allotted to a married woman. But now the provision is amended.

Impacts of the Judgment: The judgment of the Supreme Court is observed by many scholars in many dimensions. In fact, the judgment is taken as a progressive and forward-looking one since it established some new principles of social relations in the traditional and patriarchal value based Nepali society. The judgment is appreciable in terms of protection of women's right to privacy. The court clearly says, in its verdict, that if the court examines secret organ without the consent of the person, it is tantamount to encroaching privacy of such person. It also establishes some new values in marriage and sex. And, the court clearly denied accepting 'virginity as a basis of marriage'.

Some scholars highly appreciated the judgment saying it is good attempt of the court to rectify the legal status of women based on 'sexuality'. However, there are some scholars who stand on the opposite of this argument. They argue that if the reasoning, given in the judgment, that the examining secret organs without the consent of the party is the encroachment of right to privacy is followed as precedent, no court will get consent of party and it will, certainly, fail to deliver justice. From legal point of view, which organ is secret? And how to determine the organs secrete or open? Is it the court or the party to distinguish this? Such genuine question is remained unanswered. On the other hand, this judgment is criticized that it encroached the tradition of the Nepalese society and encouraged the 'Western Style Promiscuity' in Nepali Society.

Though the parties and lawyer of the case have not included any international human rights instrument on women rights, the spirit of the judgment gives effect to such standards. The judicial reasoning ' a sexual relation cannot in itself change a woman's legal status' recognizes Article 1 and 15 of Convention on Elimination of all Forms of Discrimination against Women (United Nations, 1979). Similarly, the judgment also gives effect to the provision that is right to privacy under Article 17 (1) of International Covenant on Civil and Political Right and its General Comment. The decision also has a spirit of the individual freedom on marriage and sex which are recognized by the Article 16 of CEDAW.

The judgment is able to give new jurisprudence in right to privacy. And, the judgment gives legal recognition to the right to privacy.

(c) Advocate Sapana Pradhan Malla Vs. Government of Nepal.

Fact of the Case: The petitioner, Advocate Sapana Pradhan Malla for the Forum for Women, Law and Development claimed that freedom, equality and self-dignity are inherent right of human being. This right to equality and self-dignity are guaranteed by international human rights instruments including the Universal Declaration of Human Rights. And these rights are guaranteed by the Constitution of Nepal. Right to Privacy is the main basis of the guaranty of self-dignity of human being. Though the national legal provision and international human rights instruments accept right to privacy as fundamental right, there is no specific law to protect the identity of those

who are the party of special nature of cases such as rape, trafficking, incest, children involved cases and so on. Especially women, children and the HIV/ Aids infected persons are deprived of the economic, social, cultural and property rights because of lack of privacy maintaining in the legal proceedings. To maintain gender sensitivity and eliminate discrimination it is necessary to protect privacy in judicial proceedings. Similarly, the act of encroachment of right to privacy should be made punishable and the victims should be compensated. For this, specific law is needed to maintain privacy and guarantee the right to justice of women, children and HIV infected persons. On the basis of these arguments the petitioner requested the court to issue an appropriate order to the government to make appropriate law to guarantee the right to privacy in judicial proceedings.

Judgment of the Court: Realizing the need of protection of right to privacy in accordance with national and international legal provisions, the Supreme Court of Nepal sets some standards regarding right to privacy. The courts realize that women, children and the HIV infected persons as vulnerable and there is need of protection of right to privacy of their identity in the case to which they are party. The court states that the constitution of Nepal includes the right to privacy as a fundamental right but the right as such is not absolute that needs a specific law to be effectively implemented. It also realizes that existing legal provisions are not sufficient to maintain privacy of identity of women, children and HIV/Aids infected persons in the judicial proceedings and if such privacy is not maintained, those women, children and HIV/ Aids infected persons would be deprived of the right to justice. Therefore, the court considers the issue as a necessary legal issue in the national and international context.

Realizing and considering these all facts and situation the court issued a directive order in the name to defendant, Ministry of Law, Justice and Constitutional Assembly Management and others to introduce an appropriate Bill to Parliament with consultation of the committee comprising the representatives of court, Bar Association, Ministry of Women Children and Social Welfare, Organizations working with HIV/Aids infected persons or marginalized community, civil society and the Petitioner, FWLD.

The court also issued a Procedural Guideline for Maintaining Privacy in Special Nature of Cases (*The Procedural Guideline covers the persons who need the right to privacy in the judicial proceedings, duties of the concern officials, way to maintaining privacy, the things that are to be maintained privacy, way of dissemination of information, procedure of demanding and providing of information, punishment for breaching the Guidelines and so on)* for the period of until the specific law is made.

Impact of the Judgment: The judgment rendered by the Supreme Court of Nepal in the above-mentioned case has greatly impacted the various aspects of human right issues. It really gave

a new dimension to the right to privacy. The court, through its judicial activism, fulfilled the gap of legal provision regarding the privacy in the judicial proceeding, especially in the special nature of cases (*Such as the case of rape, sexual harassment, incest, relating children, HIV/Aids, trafficking, abortion, domestic violence and so on*). And the court also realized the spirit of the Constitution of Nepal and the international human rights of instrument on the issue of right to privacy. The judgment can be analyzed as following:

(i) Protection of right to privacy is an important part of the access to justice. It is realized by the court to protect the privacy of the party in the judicial proceedings.

(ii) The court also realizes that there are some constitutional and legal provisions to protect privacy of women and children in the course of judicial proceedings. But they are not sufficient. The Constitution includes right to privacy (Government of Nepal, 2063). as a fundamental right. But it is not absolute. It requires a specific law. And, no law is made for the purpose. Because of lack of law, the right to privacy is dependent on administration discretionary. Some existing laws have provisions of in-camera hearing. But these provisions do not contain the privacy of the identity since the investigation of the case. And, existing legal provisions, as such, are not implemented effectively. Hence, the court feels that some additional legal provisions are to be necessarily managed. This shows that the judiciary is in favor of the protection of human rights of the people.

(iii) The judgment is progressive and forward looking one since the court has studied various domestic and international judgments. It is appreciated by many scholars. It is the good initiation of the Nepalese judiciary.

(iv) The court has referred to various international human rights instruments that included the right to privacy and analyzed it in the context of Nepalese constitutional and legal system. The court efforts have given effect to Article 17 of ICCPR and its General Comment (ICCPR General Comment No.16: Article 17 (Right to privacy), Adopted at the thirty second session of the Human Right Committee on April 8, 1988).

Analysis: Recent surveys indicate a growing concern among individuals about their personal data and how it is used by companies and governments. People are increasingly aware of their privacy rights and demand better protection. The concept of privacy is not new; it simply needs legal recognition. Rooted in common law, it is deeply connected to individual liberty and dignity, making it a fundamental right that cannot be denied. In today's digital world, the right to privacy extends beyond just physical space like home, office or anywhere. It also encompasses our online presence, personal data, and communications. Protecting privacy ensures that people can maintain

control over their personal information and how it's used, which is crucial for upholding their dignity and freedom.

Privacy is a fundamental aspect of human dignity. It's essential for maintaining personal autonomy and creating a space where individuals can freely express themselves without fear of unwarranted intrusion or publicity.

'Privacy' is concerned with a human being's dignity and liberty. Realizing it, the constitution of Nepal has incorporated it as a fundamental right. But the constitutional provision provides no absolute right to privacy.

Some international human rights instruments have incorporated right to privacy as fundamental rights of human being and related the rights with the dignity of human being. So, it is needed to protect one's right to privacy to protect his/her dignity. Nepal, traditional, cultural, and religious norms often dictate that women must maintain their chastity and uphold family honor. This societal pressure makes women more vulnerable when it comes to privacy issues. Many women find themselves having to protect their dignity and sanctity by keeping their personal lives hidden and private. The right to privacy, therefore, plays a crucial role in shielding women from discrimination and societal judgment. It helps ensure that their personal space, autonomy, and dignity are respected, allowing them to live without fear of unwarranted intrusion or public scrutiny.

Conclusion

The judiciary, through its activism, has proved that it is really a guardian of people to protect their rights. It not only issued a directive order but also tried to fill the vacuum issuing a Guideline, in the case of Sapana Pradhan Malla Vs the Government of Nepal, to protect privacy of the identity of the women, children and HIV/AIDS infected persons in the judicial proceedings in the cases which are special in nature. It is the commendable job of the judiciary in protecting the rights of people.

But the Guideline itself a guideline, it cannot work as legislation. So, the government has to make law to abide the direction of the court as well as to fulfill the obligation created by international human rights treaties to which Nepal is a party.

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Rights of Armed Conflict Victims in Nepal

Bipana Chapagain

Abstract

The conflict affected victims are those people who are subject to enforced disappearance, killings of the people in the civil war, women from lower caste are exposed to sexual violence, children are subject to recruitment by the Maoist, torture survivors and the people displaced from the conflict affected area in the ten-year armed conflict in Nepal. The family of the conflict affected victims have right to know the status of their loved ones either they are alive or dead as per the Constitution of Nepal. The Government have ratified the several International Human Rights Conventions. This article aims to critically analyze the implementation status of the International Human Rights Instrument, Geneva Conventions, national legislations about the rights of armed conflict victims as well as the landmark judgment preceded by the Supreme Court of Nepal for advocating the guarantee of the justice to the armed conflict victims. Nepal is state party of the Geneva Conventions, 1949 but it has not ratified the Protocols of the Geneva Conventions, 1977. Nepal has not ratified the Convention on Protection of All Persons Against the Enforced Disappearance, 2006. The national legislations have addressed the rights of the victim of the armed conflict, but they are not implemented properly by the regulatory authorities such as Enforced Disappearance Enquiry, Truth and Reconciliation Commission, Attorney General and National Human Rights Commission etc. Despite of their institutionalization the voices of conflict affected victims of Nepal are not heard and they are not benefitted by the justice system.

Keywords: Armed Conflict, Transitional Justice, Investigation, Prosecution, Punishment, Reparation, Compensation.

1. History of Armed Conflict in Nepal:

The Maoist has declared the people's war. (Advocacy Forum, 2021) In the course of ten-year armed conflict, they have attacked the members of the political parties and landlords. (Adhikari, 2014) In the one hand the disappearances of the people, infliction of the torture and arbitrary detention were widely practiced by the security forces of Nepal. (Human Rights Watch, 2020) On the other hand, the Maoists has committed the numerous crime such as extortion, forcible

recruitment of the children into the combat etc. (Human Rights Watch, 2004). On February 1, 2005 the state of emergency was declared by the then King Gyanendra. (Human Rights Watch, 2014) The activists, journalists, and human rights defenders were kept on illegal detention. (Khatri & Hoena, 2023) Later on the Seven-Party Alliance and the Maoists adopted a 12-point Letter of Understanding on 2005. (Sharma, 2019) The election of the Constituent Assembly and the commitment of the Maoists to join the multi-party democracy was made for the protection of human rights. (Rajamohan, 2006) The Comprehensive Peace Agreement (CPA) between Nepal's government and the Maoist was signed on November 21, 2006. (Gellner & Hutt, 2004) The international community worked for the establishment of United Nations Mission to Nepal (UNMIN) (Bhattarai & Khatri, 2015).

Methodology:

The author has reviewed the several doctrinal resources such as the constitution, other legislative enactment as well as the articles, journals and reports published by the various national and international bodies relating to the rights of armed conflict victims in Nepal. The landmark precedents of Supreme Court are critically analyzed in this article. The author has cited the references materials in accordance with the American Psychological Association (APA) 7th edition citation rules.

2. Rights of Armed Conflict Victims in Nepal:

A. International Legal Framework:

The Government of Nepal has acceded the Geneva Conventions, 1949 which protects the soldiers, prisoner of war and civilians etc. (Geneva Conventions, 1949) However, the Protocols of the Geneva Conventions, 1977 is not ratified by Nepal. There is application of the Second Protocol for the armed conflict of non-international nature. The Government has ratified the several International Human Rights Convention due to which national legislation must be enacted. Similarly, there is code of conduct for the officials engaged in the law enforcement. There is certain standard principle for the force and firearms officials. The issues relating to the prisoners are addressed by the minimum rules for the treatment of the prisoners.

B. Universal Declaration of Human Rights, 1948:

Since Nepal is state party to this Declaration, it is stated that the right to life, liberty and security of the people are protected. The fundamental rights of the people were violated in ten years armed conflict (United Nations, 1948).

C. Twin Covenant for the Protection of Civil & Political Rights as well as Economic, Social and Cultural Rights, (1966):

The Government of Nepal has ratified this Covenant on 14th May 1991. The right to life, freedom of speech, opinion and press etc. were violated due to the armed conflict in Nepal. Similarly, the right to freedom of movement from one place to another place was restricted. Further, the right to privacy and right to assemble peacefully in an association was prohibited. There was wide practice of the kidnapping of the teachers and students for the recruitment in the Maoist combatants (Khanal, 2017). Under the international obligation, the infliction of the torture is prohibited by the state parties. As a consequence, the victims of the torture are entitled to the compensation within the right to an effective remedy (Ramírez v. Mexico, 2012).

In the course of armed conflict, there was violation of the right to food, right to employment, right to social security and the right to property etc. Most of the people are compelled to leave their origin and move to the foreign countries for the employment opportunities due to displacement caused by the armed conflict. There was practice of the forceful donation of the money from the citizens. The property right of the citizens was infringed. The child right was violated by the civil war of Nepal. It is evident that there is deprivation of the basic education to the children. Although, it is restricted by the international law to use the children for political purpose, the children are used by the political parties in the protest.

D. There is introduction of Convention for the Elimination of Discrimination Against Women on 1979:

It has guaranteed the special rights of the women. Whereas, it is evident that several rights of the women are violated during armed conflict. It is reported that the women are prone to sexual violence. It has created the obligation for its state parties for the implementation of the reproductive rights of the women in the national level. The violent activity against the women is strictly prohibited by the law. There is lack of the implementation of the property rights of the women in comparison to men (United Nations, 1979).

E. Convention Against Torture, Cruel, Inhumane, Degrading Treatment and Punishment (CAT) 1984:

The provision enshrined on Article 14.1 creates the obligation to the state parties for the assurance of the redress, fair and adequate compensation as well as full rehabilitation for the victims of torture as per the needs of the victim and the gravity of the human rights violations.

Basically, Article 32 has guaranteed the access to justice and mechanisms for obtaining the redress. The compensation must not depend on the financial capabilities of the perpetrator, otherwise there is discrimination between the victims of rich and poor perpetrators (United Nations, 1984).

F. Principles Relating to Reparation for the Victims of Violations of International Human Rights Law and International Humanitarian Law, 2005:

It requires state parties for the assurance of the domestic law is consistent with their international legal obligations by providing adequate, effective, prompt and appropriate remedies along with the reparation. Further, they should ensure the prevention of the re-traumatization of the victim during the legal procedures. The principle 18 establishes that victims of gross violations of international human rights and international humanitarian law must be awarded with the reparation as per the gravity of the violation of the human rights (Advocacy Forum Nepal, 2009).

G. The Convention is concluded for the protection of the rights of children on 2000.

This Convention was acceded by Nepal. The children were not safe during the armed conflict. The children were kidnapped by the Maoist. The children were employed as spy, porter and the combatants. The minors were recruited in the Maoist. As a consequence of the war, the rights of the children such as right to education, health and nutrition were badly affected (United Nations, 2000).

H. The Convention for the Protection of All Persons against the Enforced Disappearance is concluded on 2006:

This Convention is not ratified by Nepal. It is the responsibility of each state party to search, locate and release the disappeared person along with the remains of the dead body. It has created the obligation to provide the reparation and compensation to the victim. It must provide the rehabilitation to the victim and guarantees the non-repetition of the act of the enforced disappearance (United Nations, 2006).

I. There was Declaration made for the protection of all persons from enforced disappearance on 1992:

The state must take the legislative, administrative, judicial measures for the prevention of the enforced disappearance of the people even during the state of war or the public emergency. There must not be extradition where there is eminent danger of the enforced disappearance. The detained person must be produced before the judicial authority. There must be penalties for the officials acting without any legal justification of detention. The states are obliged for taking any

lawful action for providing the justice. The persons alleged for the commission of the offences as per the article 4, are not provided amnesty (United Nations, 1992).

3. National Legal Framework:

a. Constitution of Nepal 2072:

Every citizen has freedom to live with dignity. There is protection of the personal liberty of the citizens except in accordance with the law. All citizens are equal before law. The person is informed while detaining in the custody about the ground for his or her arrest. The detainee can consult with the lawyer of their choice. There must be court presence of the accused within twenty-four hours of the arrest. This Constitution has guaranteed the right to a fair trial. Any indigent party are entitled to free legal aid. The victim must be informed about their case and they are compensated via court. The accused must not be subject to physical or mental torture. The child must not be recruited in army, police or any armed group and exposed to abuse or physical, mental, sexual or other form of exploitation. The physical or mental torture in home or school is prohibited for the child. The families of the martyrs, disappeared persons, disabled and injured from the people's movements are given priority for the education, health, employment, housing and social security for. One can file case in the court as per the right to constitutional remedy for the infringement of the fundamental rights of the citizen (Government of Nepal, 2072).

b. Muluki Criminal Code 2074:

It has defined the several elements of the rape. The adult cannot have sex with the female without her consent. The sex is prohibited with the minor. The consent of the minor is not lawful. If the consent is sought by the coercion, undue influence, intimidation, threat, misrepresentation and kidnapping etc., it is invalid in the eye of law. The punishment is sixteen to twenty years for the rape of the girl below the ten years whereas, there is seven years punishment for the rape of adult woman above the age of eighteen years. The government employee must not have sexual intercourse with the person held in detention or facilitate another person for sexual intercourse. The offender is kept on prison for three years. The offender of the rape is not provided with the facility of the amnesty (Government of Nepal, 2074).

c. Enforced Disappearance Enquiry, Truth and Reconciliation Commission Act, 2071:

Reconciliation between Victim and Perpetrator: The perpetrator must apologize with the victim. The victim is entitled to the reasonable compensation. It organizes the reconciliation with the participation of the perpetrator, victim and their family. In case of the death of the victim

the Commission brings the reconciliation between the perpetrator and the family of the victim. If the recommendation is not made for amnesty, it would not make reconciliation between the victim and the perpetrator (Government of Nepal, 2071).

Reparation: The compensation includes the free education, medical treatment, skill-oriented training, loan facilities without interest, arrangement for settlement and facility of the employment etc. There are certain criteria and standard for the determination of the compensation, facility or concession. The compensation is provided to dependents, if the victim has died.

Return of the Property: If there is loss to the victim due to the forcible capture of the property, the adequate compensation must be provided to the victim.

Recommendation For Taking Action Against Perpetrator: It makes the recommendation to the Government of Nepal for taking the action against the person involved in the offence of gross violation of human rights. It does not make recommendation for taking the action against the perpetrators who has entered into reconciliation with the victim as well as who were recommended for amnesty. If the perpetrator is found guilty in more than one offence and is not recommended for amnesty for any one particular offence, such perpetrator is recommended for action with regard to that offence not recommended for amnesty. There is prosecution for the gross violation of human rights after getting the recommendation of the Commissions. If any person holding the public office is guilty, it must write to the concerned authority to take departmental action against such a person, along with the appropriate punishment.

Conditions of Granting Amnesty to The Perpetrator: There is exception to amnesty rule such as amnesty is not granted to the offence of rape and offence of grave nature. There is mandatory provision of application by the perpetrator to the Commission for receiving the amnesty. The perpetrator must provide the disclosure of truth and facts about the activities during the course of the armed conflict and must record the statement with the Commission. The application must include the confession of the offender about the crimes committed during the armed conflict. One must show regrets and apologize with the victim. One must commit for non-repetition of such act. It must decide to make recommendation for the amnesty. It asks the perpetrator for providing the reasonable compensation to the victim. If an amnesty is granted by the Government of Nepal, the name of such a person is published in the Nepal Gazette (Government of Nepal, 2071).

The amendment of Enforced Disappearance Enquiry, Truth and Reconciliation Commission Act 2071.

The tripartite agreement was concluded for the listing of intentional and arbitrary killings within the serious violations of human rights. In accordance with the agreement, there is reduction of seventy five percent while providing the sentence. There is right of the victim to visit the court who is unwilling to conclude the reconciliation with the perpetrators. There is arrangement of reparation and compensation to the disqualified Maoist combatants, including the families of security personnel who died or were injured during the armed conflict (Report on TRC Bill, 2024).

d. Enforced Disappearance Enquiry Commission Rules 2072:

The complaint may be filed by the victim or any person on behalf of the victim via email, post or appearing physically in the concerned authority. There is special provision of filing the complaint of women, children, senior citizen or disabled people through the office of Government of Nepal or local level with the help of women official. The detail investigation is carried by the investigating officer by coordinating with the concerned Ministry. There is arrangement of the closed hearing, sign language and the child psychologist. The investigating officer collect the information from the victim and it is kept confidential. The perpetrator must write apology while concluding the agreement of the reconciliation. The application must be filed to the Commission for the security, temporary safe home in co-ordination with the authority for the security. There are several grounds for the determination of the compensation, facilities and concession. There is provision relating to amnesty application which states regret of inhuman act and apology from victim. The amnesty is granted after getting written consent of the victim (Government of Nepal, 2072).

e. Compensation Relating to Torture Act 2053:

The government doctor examines the detainee. The complaint must clearly state the reason and time period of detention along with the amount of compensation to be provided to the victim. The Government of Nepal have to provide the compensation of one hundred thousand rupees to the victim, if there is order by the District Court. There is imposition of the fine of five thousand rupees, if the complaint is found to be fake. The departmental action is taken for government employee. If the physical or mental injury is incurable, the age factor of victim and their family obligation, expenses for the treatment are taken into consideration. If the victim died, the number of the family members dependent on their income and minimum expenses for their livelihood are taken into consideration for determining the compensation. The chief district officer must provide compensation within thirty-five days if the application is made within one year. If the request is

made by the concerned office In-charge, The Government Attorney must appear in the court for making defense on the complaint filed (Government of Nepal, 2072).

f. Crime Victim Protection Act 2075:

The victims of the crime are categorized into the first-grade victim, second grade victim and family victim. The first-grade victim is the dead person or person suffering from the damage due to the offence. The family victim includes the mother, father, husband, wife of the victim living in the joint family. The victims of the crime are entitled to several kinds of the rights such as right to get fair treatment, right against discrimination. The right to privacy is guaranteed to the victims of the rape, incest, human trafficking, sexual harassment etc. The victim must be updated about the hearings and the outcome of the case. The victim has the right to be protected from the attack of the accused. The victim has right to express their opinion about the charges against the suspect, agreement for the plea bargaining, for making additional claim in the chargesheet and for determining the sentence of the offender etc. The victim has right to appoint the lawyer of their choice. The appeal can be made in the High Court in case of dissatisfaction. There is provision of medical treatment or interim relief for the victim. The compensation is provided from the Fund. The court has right to attach the property of the offender for providing compensation to the victim. The compensation is determined on the basis of the financial loss, loss of income generation capacity, damage caused to physical, intellectual, sexual or reproductive capacity, negative effect of rape to family prestige of the victim and the mental damage borne by the victim are taken into consideration. If the victim died, the compensation is provided to the dependents of the victim (Government of Nepal, 2072).

g. National Human Rights Commission Act 2068:

The complaint can be filed within six months at the Commission. The investigation report must be prepared by the investigation team. The reconciliation cannot be conducted, if the joint petition of the victim and the perpetrator are not registered. The economic compensation is maximum three hundred thousand rupees. The Office of Attorney General must inform the commission if the case cannot be filed. There must be co-operative relation with the national and international organizations. The Commission give recommendation to the victim to file the case in the court for seeking the justice (Government of Nepal, 2068).

4. Concerned Authorities for the Protection of Victims of Armed Conflict:

a. Ministry of Peace and Reconstruction was established:

The requirement of the new law is decided by the Ministry. The Ministry make arrangement for the compensation to the victim.

b. Commission relating to Enforced Disappearance Enquiry, Truth and Reconciliation Commission:

It has a power to investigate the offences relating to the violation of human rights. There is provision of the reconciliation. It makes recommendation for legal action against the perpetrators to whom amnesty is not granted. It consults with the concerned court and investigate into the cases sub-judice under various courts. It investigates about the incidents of gross violations of human rights. It makes the separate arrangement for the facilitation of children, senior citizens, person with disability and the victim of sexual violence for filing the complaint with the Commission. If an investigation is conducted against any person holding public office, the Commission writes to the concerned authority in order to suspend the accused for three months in maximum. It has power to excavate the place systematically and find out the facts about the human remains and must test DNA or autopsy examination (Government of Nepal, 2071).

c. The Office of Attorney General:

The Ministry must inform the Attorney General for the prosecution in case of the gross violation of human rights. The Attorney General or the Government Attorney decides whether the perpetrator must be prosecuted or not. The Attorney General have to mention the basis and reason of the prosecution. The concerned Government Attorney bring the prosecution against the perpetrator in the Special Court (Government of Nepal, 2072).

d. National Human Rights Commission (NHRC) :

It is a Constitutional Body set up for the protection and the promotion of the human rights. It investigates the complaints of violations of human rights of an individual or group or abetment and make recommendation for the action against the perpetrators. It makes recommendation to the concerned authority to take departmental action against such official who fails to fulfil the responsibility. There is provision of departmental action against the human rights violators. It conducts monitoring of the implementation of the International Conventions. If it is required to take action immediately, the officials have right to enter any government office or elsewhere without notice and can rescue such person. The compensation is provided to the victim. (Government of Nepal, 2072). It inspects the prisons for the protection of human rights. It conducts investigations about the claims of the human rights violation. It monitors the implementation of the existing human rights legislations of Nepal. It recommends the Government to formulate new legislations or for amendments or to become a party to any International or Regional Conventions of Human Rights (Government of Nepal, 2068).

5. Judicial Response on Conflict Affected Victims:

Colonial Kumar Lama was arrested by United Kingdom on the basis of the Universal Principle on 2013. There was registration of charges of torture against him. On August 2016, he was acquitted from the charge of torture of Karam Hussain after conducting the long trial. The jury was unable to provide the judgment relating to the charges of Janak Raut (Bowcott, 2016). On September 2016, The Crown Prosecution Service informed the court that there is no retrial for the second charge (Massage & Sharma, 2018). The victims have right to plead for justice around the world, if the serious cases are not prosecuted in their home countries. The prosecutors may bring the cases of crimes committed long years back, if the allegations amount to international crimes for example the infliction of torture. The Nepali perpetrator Colonial Kumar Lama was kept on trial for the serious conflict era human rights violations (Lama, 2018).

Mira Dhungana v. Prime Minister, Council of Minister, states that the main objective of transitional justice is to prevent serious crimes against humanitarian law or violation of human rights during the conflict, to prevent the recurrence of those crimes, to create an atmosphere of national reconciliation that instills a sense of self-respect in the victims, and to contribute to the path of peace by restoring the rule of law. There should not be provision for granting the amnesty to the perpetrators of serious crimes (Mira Dhungana v. Prime Minister Council of Minister, 2072).

The case of Govinda Prasad Bandi v. Attorney General, Mukti Narayan Pradhan states that it cannot be said that the regular criminal justice system was suspended or inactive when the transitional justice system was not arranged to investigate and prosecute cases of human rights violations during the armed conflict. There is absence of a law regarding the formation of a high-level Truth and Reconciliation Commission. The regular criminal justice system cannot remain inactive for investigations and prosecutions of the crimes during the armed conflict. In a democratic country, law and justice system are never dormant (Govinda Prasad Bandi v. Attorney General, Mukti Narayan Pradhan, 2070).

In another case Madhav Kumar Basnet v. Office of the Prime Minister, states that the statute of limitations of filing the cases relating to the gross violations of international human rights law and humanitarian law are against the principles of the criminal law. The Supreme Court has issued the order of Mandamus in the name of Government of Nepal for the investigation of the enforced disappearances (Madhav Kumar Basnet et al v. Office of the Prime Minister, 2070).

In the case of Dev Maharjan v. Government of Nepal, the plaintiff was subjected to enforced

disappearance and torture during the conflict. It is suggested for the amendment of the national legislation in order to comply with the ICCPR. It is for the extension of the statutory limitations and repealing those laws which grants impunity to the alleged perpetrators of torture and enforced disappearance. The establishment of the Enforced Disappearance Inquiry Commissions and the compensatory measures are not sufficient for the effective remedies under the ICCPR (Dev Bahadur Maharjan v. Government of Nepal, 2069).

The case of Liladhar Bhandari v. Government of Nepal, is about the forceful eviction and confiscation of the land by the armed groups. The Supreme court has ordered the return of the unlawfully seized property and provide the compensation for the losses. The right to life and right to property are not suspended during the conflict. (Liladhar Bhandari v. Government of Nepal, 2065)

The Supreme Court of Nepal has stated the act of enforced disappearance has violated the right to life, right to freedom, and right relating to justice. In the case of Rajendra Prasad Dhakal v. Government of Nepal, the Supreme Court has issued the order for the incorporation of the international principles in the national legislation such as the remedial right. There is facility of the interim relief for the families of the victims of the armed conflict. The person convicted of the enforced disappearance are not provided with the facility of the Amnesty. (Rabindra Prasad Dhakal on behalf of Rajendra Prasad Dhakal v. Government of Nepal, Ministry of Home Affairs, 2064.)

6. Challenges of the Armed Conflict Victims in Nepal:

The majority of the crimes committed during the armed conflict are not addressed by the Transitional Justice. The criminals are granted amnesty which tarnishes the effectiveness of the transitional justice. It dissatisfies the victims of the armed conflict. The prevailing laws and policies of Nepal fails to incorporate the victim centric approach. The reconciliation approach is ineffective. The functions of the Truth Reconciliation Commission and the Enforced Disappearance Inquiry Commission are not carried out smoothly in the current scenario. There is non-fulfillment of the vacancies of the authoritative positions in the Commissions.

7. Conclusion and Suggestions:

It is concluded that the victims of the ten years armed conflict have not sense the justice. There is formation of the Truth and Reconciliation Commission and Enforced Disappearance Enquiry Commission by Nepalese government. These Commissions are unable to address the issues of the victim. As a consequence, it is very difficult to achieve the goals of Transitional

Justice. There must be educational and medical services to the family of the disappeared people. There must be enforcement of the laws by the Government of Nepal for holding the offenders accountable.

A. Suggestions To the Government of Nepal:

There must be enactment of the law for the establishment of the principle of command responsibility in criminal law. The transitional justice and criminal justice are separate mechanisms they must be independent. There must not be role of the ministries about the prosecutions or withdrawal of the cases. There must be incorporation of the reparation's mechanisms and proportionate sentences in the prosecution. The ratification of the Rome Statute must be done by the Nepalese Government. Similarly, it is suggested that the Government of Nepal must ratify the Convention Against the Enforced Disappearances, and the Optional Protocol of the Convention against Torture. The Government of Nepal is obliged for the amendment in the laws against the torture and enforced disappearances as per the international standards.

B. Suggestions To Commission of Investigation of Enforced Disappeared Persons (CIEDP) and the Truth & Reconciliation Commission (TRC)

There must be implementation of the directives of the Supreme Court. The appointment of the Commissioners must be transparent. The investigation of the rape and sexual violence in the course of armed conflict must be carried out. The right to privacy and the dignity of survivors must be taken into consideration. They must refer survivors and their families for the psychosocial counseling. The offender must be punished as per the gravity of the offences.

C. Suggestions For the National Human Rights Commission:

It must carry out the investigation and recomment to the Government of the human rights violations' cases. It must keep record of the list of human rights violators. There must be recommendation to the government and security forces for withholding the promotion of the alleged offender.

D. Suggestions To the Office of Attorney-General:

The police and the public prosecutors must strictly register the first information report and prosecute the cases of the enforced disappearance, torture, rape or other grave human rights violations. The disciplinary action must be taken against them in case of non-compliance with the orders of the court. The office of the Attorney General must form the special unit for the

investigation of ill-treatment in the custody. The Attorney General has duty to conduct the independent investigations and prosecutions for the international crimes.

E. Suggestions To the Judiciary:

The precedent must be on the basis of the International human rights treaty. There must be incorporation of the international standards for the punishment. The provision of the amnesty should not be implemented for the cases of the human rights violations and the crimes of international nature. There must be compulsory prosecution of the war crimes and crime against humanity.

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International-cum-National Legal Framework and Gender Pay Gap: A Comprehensive Study

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Abstract

The gender wage gap, a persistent issue across global labor markets, represents a significant challenge to achieving equality in remuneration for equal work. Despite international frameworks advocating for gender equality and equal pay, such as the UDHR, ICCPR, ICESCR, and CEDAW, alongside ILO Conventions No. 100 and No. 111, ILO, substantial disparities remain. Against this backdrop, this paper explores the intersection of labor rights, wage discrimination, and gender equality within the context of Nepal. The analysis highlights the entrenched global issue of wage discrimination, emphasizing that, despite legal advancements and constitutional guarantees in Nepal, the gender wage gap remains prevalent. Afterward, the article delves into the provision of the Labor Act of 2074 that aligns with these international principles and judicial precedents that underscore the principle of equal pay. Finally, the paper concludes with recommendations to address these challenges, including stricter enforcement of existing laws, increased gender equality initiatives, awareness campaigns, support for female trade unions, and the establishment of a dedicated Equal Remuneration Act. These measures aim to bridge the wage gap and foster a more equitable labor market in Nepal, reflecting a broader commitment to gender equality and economic justice.

Keywords: Labor Rights, Wage Discrimination, Equal Pay for Equal Work, Gender Equality. Etc.

Understanding the Gender Wage Gap

In labor jurisprudence, labor remains at the center of attraction as the entire jurisprudence revolves around the question of assuring services, facilities, and benefits to the labor. Section 2(x) of Labor Act, 2074 have defined "Labor" means a worker or employee or a person employed with any job title who performs a physical or intellectual work for the employer. The labor rights or workers' rights are a group of legal rights and claimed human rights concerned with labor relations between

workers and their employers, usually obtained under labor and employment law. In general, these rights are concerned with workers' pay, benefits, and safe working conditions.

Amongst numerous labor rights, equal pay for equal work remains one of the most popular and stressful rights in the labor jurisprudence. In the simplest sense, it means equal remuneration for work of equal value. Conversely, when there is no equal wage paid for performing equal work, it is referred to as Wage or pay discrimination. (Olez, Olney & Tomei, 2013, P.30) It is the practice of paying people differently for the same or similar work because of various factors such as gender, age, background, caste, religion, race, disability, or any other basis.

Specifically, Gender wage discrimination occurs when the differences in pay are caused due to gender differences. It means employers pay women lower wages than identically qualified male workers when they perform the same or virtually the same work in equivalent conditions. (European Union, 2023, p. 2) In International human rights law, the wage gap between men and women remains as a flagrant violation of labor rights. Moreover, unequal pay for the same work is also considered a form of direct gender-based discrimination.

Despite the massive incorporation of women into the labor market, equal pay for equal work remains a challenge globally. (Santero-Sánchez, 2022) Wage inequality has been increasing in many industrialized countries over the past decades. (Antonczyk, Fitzenberger & Sommerfeld, 2010) The problem of gender wage gap is rampant in all forms and types of labor market. There are pronounced and persistent wage differences between men and women in all parts of the world. A report released by the World Economic Forum (WEF) in 2023 mentioned that there is not a single country where women are paid as much as men. Moreover, the global pay gap between men and women will take more than two centuries to close, because it is so vast and the pace of change so slow, the reports. (World Economic Forum, 2023) This shows that the crisis of wage difference based on gender is deeply embedded in the patriarchy based social pattern due to the defective value system based on the wrongly construed value which does not accept independent existence, integrity and identity of woman.

Global Standards Against Gender Wage Discrimination

Though it may seem to be a recent concept, the right to equal remuneration for women and men for work of equal value has been acknowledged by the ILO since 1919. The principle is set out in the preamble of the ILO Constitution which recognizes the principle of equal remuneration for work of equal value as a key element of social justice. (ILO Constitution, n.d., p. 5) Afterward, the right to equal wages for equal work has been consolidated in several international human rights and

labor rights instruments. Some of them which are academically more vital to present and discuss have been stated below: -

a. **Universal Declaration of Human Rights (UDHR), 1948,** adopted by the United Nations General Assembly on 10 December 1948, includes provisions against wage discrimination. According to Article 26(3) of the declaration that everyone without any discrimination, has the right to equal pay for equal work.

b. **International Covenant on Civil and Political Rights (ICCPR),1966** *has not explicitly mentioned the principle of "equal wage for equal work." Yet, the right to equality and non-discrimination is a fundamental aspect of the ICCPR, particularly emphasized in Article 26, that all individuals are equal before the law and are entitled without any discrimination to the equal protection of the law.*

c. **International Convention on Economic, Social and Cultural Rights (ICESCR),1966** in article 7(b) obliges the States Parties to recognize the right of everyone to the enjoyment of just and favorable conditions of work ensuring fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men.

d. **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979** in article 11(1)(d) endow the member states with the obligation to take all appropriate measures to eliminate discrimination against women in the field of employment to ensure, on a basis of equality of men and women. Most specifically, the instrument has internalized the women's right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work. This provision has been supplemented by General Recommendation No. 13, which is made in order to fully implement the Convention in those States parties that have not yet ratified ILO Convention No. 100. It recommends the state parties to support, as far as practicable, the creation of implementation machinery and encourage the efforts of the parties to collective agreements, where they apply, to ensure the application of the principle of equal remuneration for work of equal value.

e. **Equal Remuneration Convention,1951 (ILO Convention No.100),** is one of the eight ILO fundamental conventions, ratified by 174 countries. Article 1(b) of the

Convention states that the term *equal remuneration for men and women workers for work of equal value* refers to rates of remuneration established without discrimination based on sex. As per article 2 of the convention, States parties are obliged to ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value. This principle may be applied utilizing national laws or regulations, legally established or recognized machinery for wage determination, collective agreements between employers and workers; or by a combination of these various means.

f. **The Discrimination (Employment and Occupation) Convention, 1958 (ILO Convention No. 111)** is closely linked to Convention No. 100. It has been ratified by 175 countries till 2024. This Convention No. 111 prohibits distinctions, exclusions or preferences made on various grounds, including sex, that have the effect of impairing equality of opportunity or treatment in employment or occupation. The convention under article 2 establishes the state obligation to pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, to eliminate any discrimination in respect thereof.

Besides these global human rights standards, the issues of equal wage for equal work without distinction on any basis, have been asserted in *Article 4 of the European Social Charter, 1961,* which states that all workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families and *Article 15 of the African Charter on Human and People's Rights* which have ensured every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work. Further, Sustainable Development Goals (SDG) No. 8.5 has mentioned full employment and decent work with equal pay. This goal is targeted to achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and ensure equal pay for work of equal value.

Nepali Constitutional and Statutory Regime

Based on the commitment of the state expressed in several international human rights instruments and the historic development of labor norms in Nepal, there have been some principles spelled out in the constitution and other sub-ordinate laws.

Constitutional Regime:

The constitution of Nepal, having a socialist orientation philosophically is very rich in matters of addressing labor rights. Regarding gender-based discrimination in wages, the Constitution of Nepal in article 19 guarantees the fundamental right to equality stating that there shall not be any gender discrimination regarding remuneration for the same work and social security. Similarly, the Right to labor has been acknowledged in article 34(2) of the constitution, which states that every labor shall have the right to appropriate remuneration which implicitly means there should be equal wages for the performance of equal work. Also, Article 51(i) (4) of the constitution makes commitment to end all forms of labor exploitation.

Statutory Regime: Labor Act, 2074:

Besides the constitutional guarantee, the provisions regarding equal wages for equal work have been accumulated in some of the legislative enactments. Most importantly, the Labor Act, of 2074 is the principal law regulating the labor market in Nepal. The labor act of Nepal recognizes the importance of fair and equal remuneration for work and prohibits discrimination in pay based on gender. The Act in section 7 mentions that no discrimination shall be made between the laborers in remuneration for equal value of work on the grounds of sex. However, the explanation clause mentions that whether the work is of equal value shall be determined based on the nature of the concerned work, the time required for its performance, labor, skill, and productivity. This leaves the room for interpreting several works to be unequal disproportionately benefiting the male as witnessed in the society. Exclusively, the works demanding comparatively more energy may fall under the categorization of unequal work favoring males.

The Labor Act requires employers to provide equal remuneration for work of equal value, regardless of the gender of the employee. The Department of Labor under the Ministry of Labor, Employment and Social Welfare, Government of Nepal (GoN) can impose a fine not exceeding one hundred thousand rupees if any person/employer/company discriminates against laborers while employing them inside their working area.

The Labor Act in section 116 grants workers the right to organize and collectively bargain for better wages and working conditions. This provision is critical for ensuring that workers can advocate for their rights and negotiate fair and equitable remuneration with their employers.

Supreme Court's Jurisprudence:

In several cases, the judiciary has stressed the importance of the equal pay principle. The Indian judiciary has applied and interpreted the doctrine of "equal pay for equal work" in

a series of decisions from the year 1980s. The court has initially given a wider interpretation to the phrase "same work or work of similar nature". In the landmark judgment of *Mackinnon Mackenzie (1987)*, the Supreme Court held that the principle of equal remuneration presupposed that the same level of pay is guaranteed not only to persons performing identical jobs but also to persons performing work that was different but was considered to be of equal value. In another case of *State of Madhya Pradesh v Pramod Bhartiya and others (1992)*, the Supreme Court held that Equal pay for equal work is implicit in the doctrine of equality enshrined in Article 14 because Article 39(d) did not cease to be a part of Article 14. But, Unlike the Indian Supreme Court, the court jurisprudence on the equal wage principle in Nepal has not been developed. The Supreme Court has appreciated and acknowledged the importance of the equal wage principle in these cases: -

Prakash Mani Sharma v. Government of Nepal, Ministry of Women, Children and Social Welfare, Singh Darbar, NKP 2065:

In this case Supreme Court of Nepal has propounded the principle that that all citizens will have the freedom to do any profession, employment, industry, and business and there will be no discrimination in wages and social security between men and women for equal work. Furthermore, the court has stated that unequal wage to females constitutes act of violence against women.

Bhubaneshwar Shahu Teli V. Sundarkanta Mandal, NKP 2077:

In this case, the apex court has ruled that every person is guaranteed the right to choose employment, to have a proper work environment, not to be unequally paid for the same job, and to be able to provide for himself and his family, and social security. The court has referred to several international instruments to justify that providing unequal wages to the females is wrong. The court has cited the Minimum Wage Fixing Convention 1970 (C131) passed by the ILO on 19 September 1974, which concerns the state's commitment to human rights.

Reena Bajracharya v. Royal Nepal Airline Corporation, NKP 2057:

The case was a landmark case relating to gender equality, though not directly concerning the issues of the gender pay gap. It concerned gender discrimination and retirement policies at the workplace. The petitioners claimed that the Royal Nepal Airlines Corporation (RNAC) Regulation Rule provided that crew personnel would retire at the age of 55, and non-crew personnel retire at the age of 60 years; whereas, air hostess' retirement was at the age of 30 years or once they have served over 10 years. The Supreme Court gave a decision stating that the rule could not establish the right to equality and such discriminatory provisions were against the fundamental rights guaranteed by the Constitution. This case set a reference for organizations that it is necessary to maintain consistency of rules or the by-laws with the Constitution.

The Situation of Equal Wages for Equal Work

The gender wage gap has long been a critical aspect of gender inequality. The issue is even more crucial for countries such as Nepal, where there are significant differences between men and women in educational attainment levels. (Yamamoto et al., 2019, p. 234) The social view that women are less productive due to their lower levels of education has led to this inequality in pay. Although improvement in women's education level has positive impacts on quality of life, including higher earnings, larger returns to education, national economic growth and development, and improvement in health and schooling of children, Nepalese women still receive lower wages for identical work. Education than men do in many developing regions. Despite the praiseworthy legal guarantee and judicial safeguards in the Nepalese labor market, the issue of equal wages for equal work remains a dream for many female workers. Different research findings reveal that the principles enumerated in several legal infrastructures have not been realized. Women often face numerous barriers in accessing formal employment opportunities and they are paid less than men for performing the same or similar work. This gap is even wider in certain sectors, including agriculture and other labor work.

According to the 2023 Global Gender Gap Report, Nepal has been ranked 116 out of 146 countries globally. (UNDP, 2023) The Global Gender Gap Index showed that Nepal was ranked high on political empowerment while placed at lower positions to guarantying labor rights. The gender wage gap in Nepal is significantly higher than the global average. According to the ILO Global Wage Report 2018/19, women earn on average about 20 percent less than men. (ILO, 2024)

In a comprehensive report published in 2019, the then Central Bureau of Statistics (now National Statistics Office) empirically revealed the pay disparity between men and women in Nepal was around 30 percent. This means, on average, women earn some 30 percent less than their male counterparts even if all other conditions are the same for both genders. (CBS, 2018) The above research reports that the biggest pay gap between male and female workers is in the "professional" category. In this category, for example, if a male earns Rs23,800 monthly, a female earns Rs12,000. Even in the “managers” category, which requires competency, if a male earns Rs32,000 per month, the pay for women averages Rs25,500. The pay gap in the “technicians and associated professionals” is comparatively less, the monthly salaries for men and women being Rs24, 000 and Rs22, 500 respectively. In the “agriculture, forestry and fisheries workers” category too, if a male earns Rs12,167 monthly, female workers earn Rs11,406.

The World Bank, in its Nepal Gender Brief, has also asserted that the equal pay law lacks enforcement in Nepal. The report states that Compared to other South Asian countries, Nepal has high rates of female labor force participation: *23.69% of women are in the labor force*, though there

is still a severe gender wage gap in earned income. (World Bank, 2019) This also shows women suffer to work according to their productive capacity.

The gender wage gap is even extended to Sports. The disparity in pay between male and female players is another problematic scenario depicting the blatant violation of gender equality. Men typically receive higher salaries, prize money, endorsements, and media coverage, reflecting long-standing societal norms and revenue disparities between men's and women's sports leagues. Such practices perpetuate inequality making women feel undervalued and underpaid simply because of their gender. Despite this woman have continued their participation in sports with immense talent and dedication. (Pantha, 2024)

In Nepal, the impact of wage discrimination has gone beyond just the financial aspect. It has led to a lack of representation of women in various sectors and limited their opportunities for growth and development. Moreover, wage discrimination has created an environment in which workers are afraid to speak out against other forms of exploitation and abuse in the workplace, such as unsafe working conditions or excessive working hours, as they are afraid of losing their jobs or facing retaliation.

Conclusion

In our country, this wage gap is a result of various factors, including the belief that men are the primary breadwinners, which leads to men being paid more because of their perceived value. Wage discrimination not only perpetuates economic disparities but also reinforces gender inequalities and social injustices. It restricts women's opportunities for growth and development, limits their representation in various sectors, and perpetuates a cycle of inequality. Moreover, it affects the overall well-being of workers and their families.

Ensuring equal wage rights is essential for the well-being and dignity of workers and for the advancement of sustainable and inclusive economic growth. When workers are treated fairly and with respect, they are more likely to be productive and motivated and to contribute to the overall success of the company and the economy.

The government has taken some steps to address unseen wage discrimination in the labor sector in Nepal, but there is still much work to be done to ensure that these laws are effectively enforced and that workers are protected from wage discrimination. Here are some recommendations to the government and the other concerned authorities to realize the application of the equal pay principle in action.

Recommendations

The government should fully implement enacted labor laws to protect the rights of workers, including provisions to prevent wage discrimination based on gender. Additionally, The government

should launch initiatives to promote gender equality in the workplace, including programs to increase the participation of women in the labor force and to address the gender pay gap. The huge gender pay gap in Nepal is because of the deeply rooted patriarchal spirit in society that falsely assumes that men are physically and mentally stronger than women. This kind of baseless and illogical misogynist thought should be outlawed.

The awareness-raising campaigns to educate female workers about their rights and to raise awareness about the issue of wage discrimination should be organized. Also, the labor inspectorate should play a meaningful and result-oriented role in enforcing labor laws and monitoring compliance with labor standards. Similarly, the government should encourage female workers to form trade unions and engage in collective bargaining to improve their working conditions and wages. It is the duty of government to ensure that women who experience wage discrimination have access to legal aid and complaint mechanisms to seek redress.

The state must provide funds and promote research and studies on wage discrimination in various sectors to identify specific challenges and develop targeted solutions. In addition, there should be dialogue and cooperation between employers, workers' unions, and government bodies to address gender-based wage discrimination collaboratively. The concerned bodies should promote programs that offer training and skill development opportunities to women to enhance their employability and bargaining power in the job market.

Last but not least; Nepal should make material efforts to enact a separate Equal Remuneration Act as in India. In India, The Equal Remuneration Act of 1976 was enacted to bring pay parity among men and women. The main objective of the Act was to eliminate discrimination in the workplace based on gender and provide equal remuneration for equal work to employees irrespective of their gender. The notable point of this Act is that if the rate of remuneration before this Act were high, then the employer cannot reduce the rate of remuneration to comply with the provisions of this Act and the highest of the rates are payable. The Indian parliament has made the Equal Remuneration Act, 1976 which provides for the payment of equal remuneration to female and male workers and for the prevention of discrimination on the grounds of sex, against women in matters of employment. These recommendations, if implemented effectively, can contribute to reducing wage discrimination in Nepal and promoting a more equitable and inclusive workforce. Collaboration among government agencies, civil society organizations, and the private sector is essential for this meaningful progress.

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Evaluating the effectiveness of Nepal's Disaster Management Policies in protecting life and Property

Rohan Yadav

Abstract

This article critically evaluates the effectiveness of Nepal's disaster management policies in safeguarding life and property, with a focus on the alignment of these policies with international human rights standards. Using a qualitative doctrinal approach, the study analyzes legal documents, government reports, and case studies of recent disasters, particularly the 2015 Gorkha earthquake. It highlights the evolution of Nepal's disaster management framework, notably the Disaster Risk Reduction and Management Act 2017, which shifted the country from a reactive to a proactive approach. Key areas assessed include early warning systems, emergency response coordination, and post-disaster rehabilitation, alongside protection for vulnerable populations. The study identifies gaps in policy implementation and enforcement, particularly at local levels, and suggests improvements to enhance resilience. It emphasizes the importance of integrating human rights into disaster management and offers recommendations for strengthening Nepal's disaster preparedness, response, and recovery mechanisms to better protect life, property, and rights amidst increasing disaster risks due to climate change.

Key Words: Disaster, Disaster Management Policy, Human Right, Life, Property.

Background

On 12 July 2024 in Chitwan along the Narayanghat-Mugling highway, about 100km (60 miles) from the capital Kathmandu, a massive landslide swept away two buses. (Wong, 2024) 60 peoples died in the tragic incident. A total of 38 fatal landslides has been recorded in 2024 till 17 July, which have killed 135 people in total. (Petley, 2024) A powerful 7.8-magnitude earthquake struck Nepal in 2015, killing nearly 9,000 people and destroying more than 600,000 houses. (European Union, 2022) The frequency and intensity of these disasters are increasing due to climate change, further threatening lives and infrastructure.

Nepal is one of the most disaster-prone countries on the planet. The nation is a significant concern because it has unique geographic and climatic conditions that make it vulnerable to natural

disasters. Climate change exacerbates these risks caused by earthquakes, floods, landslides, glacier lake outburst floods (GLOFs), and so forth.

Nepal's diverse geo-climatic system, characterized by heavy monsoons, steep terrain, and remoteness, significantly contributes to its susceptibility to natural disasters. (World Bank, n.d.) The country experiences annual torrential rains that trigger landslides and floods, particularly during the monsoon season.

Many communities in Nepal are already marginalized and impoverished, making them more susceptible to the impacts of natural hazards. Vulnerability mapping indicates that a significant portion of the population lives in areas with moderate to high social vulnerability, particularly in the western mountain districts. (Aksha, Juran, Resler & Zhang, 2019)

So, it is imperative implementing comprehensive disaster risk reduction strategies helps to minimize the likelihood and impact of disasters. Disaster management policies that prioritize human rights can significantly improve the protection of vulnerable populations. Integrating disaster management into broader development strategies helps build resilience against future hazards. (UNDP, 2009) Ensuring access to resources, information, and support during disasters is essential for safeguarding the rights to life and property.

Understanding Nepal's vulnerability to natural disasters and the importance of effective disaster management is critical for protecting lives and property.

Methodology

The methodology for this paper involves a qualitative doctrinal analysis of Nepal's disaster management policies through a review of legal documents, government reports, and case studies of recent disasters. secondary data from academic literature will be used to assess the effectiveness of these policies in protecting life and property, with a focus on their alignment with international human rights standards.

Introduction

Disasters are disruptions. It is a natural catastrophe that causes great damage or loss of life. This is why it needs to be tackled very safely and cautiously. Therefore, Disaster management becomes one of the prime concerns of not just individual but also the state. Disaster management needs to be implemented as a comprehensive and continuous activity, not as a periodic reaction to individual disaster circumstances (Asian Development Bank, 2008). disaster management entails how one "prepare for, respond to and learn from the effects of major failures caused by disaster".

Nepal, a country uniquely situated in the seismically active Himalayan region, faces significant vulnerabilities to natural disasters. Its diverse topography and climatic variations make it prone to earthquakes, floods, landslides, and other hazards, which frequently result in substantial loss of life and property. Human rights are the standards that recognize and protect the dignity of all human being Therefore, Disaster management in a disaster-prone country is a pillar of realizing the human rights. A resilience and robust framework must be well enacted, not just limited to black letter of law but to every rural village of the nation.

The constitution of Nepal in article 16 and article 25 have guaranteed right to live with dignity and right to property respectively. This article seeks to examine how efficient is Nepal's Disaster Management policies in protecting life and property of the individual and suggest necessary recommendations and changes in the policy.

International Human Rights Frameworks in Disaster Management

The protection of human rights during disasters is anchored in several key international legal instruments. The Universal Declaration of Human Rights (UDHR), adopted in 1948, sets the foundation by affirming in Article 3 that "Everyone has the right to life, liberty, and security of person". This right is particularly relevant in the context of disasters, where the preservation of life and safety becomes a primary concern. The International Covenant on Civil and Political Rights (ICCPR), which came into force in 1976, further solidifies this principle, specifically under Article 6, which states that "Every human being has the inherent right to life" and that this right should be protected by law. The ICCPR obliges states to take necessary measures to protect lives, which implicitly includes disaster preparedness and response.

In addition to these foundational texts, the Sendai Framework for Disaster Risk Reduction 2015-2030, adopted at the Third UN World Conference on Disaster Risk Reduction, emphasizes the need to "prevent new and reduce existing disaster risk" as a means of protecting people and their assets. This framework, while not legally binding, serves as a guideline for states to enhance their disaster risk management systems, integrating human rights considerations by prioritizing the safety and dignity of individuals, especially the most vulnerable populations.

Globally, best practices in disaster management have increasingly recognized the importance of integrating human rights into Disaster Risk Reduction (DRR). The Hyogo Framework for Action (HFA) 2005-2015, the predecessor to the Sendai Framework, laid the groundwork by urging countries to develop strategies that emphasize the protection of people, property, and livelihoods. The HFA called for the systematic incorporation of risk reduction approaches into the implementation of emergency preparedness, response, and recovery programs.

The Sendai Framework builds on this by advocating for an "all-of-society engagement," which includes a human rights-based approach to disaster risk management. This involves ensuring that disaster management policies are inclusive, non-discriminatory, and equitable. The framework emphasizes the protection of not only physical lives and property but also the socio-economic rights of individuals, highlighting the need for comprehensive policies that consider the long-term recovery and well-being of affected populations.

Disaster Management Policies in South Asian Countries

India

India's disaster management framework, defined by the Disaster Management Act, 2005, integrates national, state, and district authorities under the National Disaster Management Authority (NDMA). Advanced early warning systems managed by the Indian Meteorological Department (IMD), alongside community initiatives like *Aapda Mitra*, ensure preparedness and mitigation. India's post-disaster response is supported by insurance schemes, public-private partnerships, and efficient recovery mechanisms, making it a regional leader in disaster management.

Bangladesh

Bangladesh's disaster management is spearheaded by the Ministry of Disaster Management and Relief (MoDMR) and the Standing Orders on Disaster (SOD). The country's Cyclone Preparedness Programme (CPP) is a global model for early warning and evacuation, significantly reducing fatalities during cyclones. Strong community engagement through local committees and volunteers enhances resilience, particularly in flood-prone areas. Bangladesh's emphasis on resilient infrastructure in post-disaster recovery sets an example for the region.

Sri Lanka

Sri Lanka's disaster management system is led by the Disaster Management Centre (DMC) under the Disaster Management Act, 2005. The policy emphasizes multi-hazard preparedness, community-based approaches, and climate adaptation. Early warning systems, particularly for tsunamis, have improved significantly after the 2004 Indian Ocean tsunami. However, challenges such as limited funding and inter-agency coordination persist, affecting the effectiveness of disaster response and recovery efforts.

Maldives

The Maldives, highly vulnerable to climate change and sea-level rise, has developed its National Disaster Management Act, 2006, emphasizing risk reduction and community-based

adaptation. Early warning systems for tsunamis and storms are effective, but the country faces challenges due to its dispersed geography. Collaboration with international partners for climate-resilient infrastructure has been crucial in mitigating disaster risks.

National Disaster Management Policies in Nepal

Nepal's disaster management framework has evolved significantly, particularly after the devastating 2015 Gorkha earthquake.

The Disaster Risk Reduction and Management Act, 2017

The Disaster Risk Reduction and Management Act, 2017, is a landmark legislation that replaced the outdated Natural Calamity Relief Act, 1982. The new Act reflects a shift from a reactive to a proactive disaster management approach, emphasizing preparedness, risk reduction, and resilience building. It mandates the creation of disaster management structures at the national, provincial, and local levels, aiming for a more coordinated and decentralized response.

Disaster Risk Reduction and Management Act, 2017 in its preamble mentions its objective as to o protect human lives and properties of the public, private and individual, to preserve natural and cultural heritage, and to keep physical infrastructures safe from natural and non-natural disasters by effectively coordinating and managing all activities on reduction of disaster risk and management The Key provisions of the act in protection of Life and property are:

- Establishment of Statutory bodies and committees:

    1. National Council for Disaster Risk Reduction and Management (section 3): The council is a 12 membered council whose ex-officio chairperson is the Prime Minister. The main function of the council as per section 5 is to lay down national policy and programs on disaster management and provide necessary directions to the Executive Committee and the Authority in relation to policy and plan on disaster management.
    2. Executive Committee (section 6): for the purposes of implementing policies and plans laid down by the Council.
    3. Expert Committee (section 9): to formulate policies, plans and programs on disaster management and to provide suggestions to conduct study and research on disasters.
    4. National Disaster Risk Reduction and Management Authority (section 10): to effectively carryout and manage disaster management activities.
    5. Provincial Disaster Management Council (section 13a)

6. Provincial Disaster Management Committee (section 14)
7. Provincial Disaster Management Committee (section 16)
8. Local Disaster Management Committee (section 17)

- Disaster Management Fund (section 22): A separate fund to be called a Disaster Management Fund shall be established at the central level. The fund comprises of Money from Government, amount donated or gifted by any organization or individual etc.
- Declaration of Disaster Threatening Area (section 32): The government can declare a disaster threatening area by notification in the Nepal Gazette, where situation created due to the disaster has not come under control for a certain duration.
- Minimum Standards for Relief Distribution (section 39(2)(a)): Accommodation, food, drinking water, health and sanitation to be provided to the disaster affected people while staying in temporary shelters should be provided.

Disaster Risk Reduction and Management Rules, 2076 (2019)

Disaster Risk Reduction and Management Rules, 2076 (2019) is the framework made by the Nepal government. a major legal framework that directs the entire disaster management process within the nation. It encompasses various elements, including both natural and non-natural disasters, District and Provincial Disaster Management Committees, disaster risk reduction, recovery, response, overall disaster management, business establishments, public entities, security agencies, and Local Disaster Management Committees.

The Disaster Risk Reduction and Management Rules, 2076 (2019) outline specific regulations to operationalize the Disaster Risk Reduction and Management Act, 2074. These rules define the functions, duties, and powers of disaster management committees at federal, provincial, district, and local levels. They emphasize practical measures such as establishing emergency response mechanisms, ensuring adherence to building codes, and mobilizing local communities and volunteers for disaster preparedness. The regulations also mandate maintaining disaster management funds at various levels to support immediate relief and long-term recovery efforts, with provisions for transparency and accountability in fund usage.

The regulations focus on integrating disaster risk reduction into development planning by setting standards for infrastructure resilience and public safety. They promote capacity building through training programs and awareness campaigns for government staff, volunteers, and local communities. The rules also detail procedures for requisitioning property, distributing relief,

and preserving critical documents lost during disasters. By aligning disaster management with local governance and stakeholder collaboration, the regulations aim to enhance Nepal's disaster preparedness and recovery capabilities effectively.

The National Disaster Risk Reduction and Management Strategic Plan of Action 2018-2030

The National Disaster Risk Reduction Strategic Action Plan (2018-2030) of Nepal outlines a comprehensive strategy to minimize disaster risks and enhance the nation's resilience to natural and human-induced hazards. Nepal faces significant disaster risks due to its geographical and socio-economic conditions. Recognizing these challenges, the Government of Nepal has aligned its disaster management strategies with international frameworks such as the Sendai Framework for Disaster Risk Reduction.

The National Disaster Risk Reduction and Management Strategic Plan of Action 2018-2030 further operationalizes the 2017 Act by setting out specific goals and objectives for reducing disaster risks and enhancing resilience. This plan aligns with the Sendai Framework's priorities and underscores the importance of safeguarding human rights, particularly in ensuring that disaster management efforts do not disproportionately impact vulnerable groups such as women, children, the elderly, and people with disabilities.

Objectives:

- Strengthen institutional frameworks for disaster risk reduction (DRR).
- Enhance disaster preparedness, response, and recovery capabilities.
- Foster coordination among federal, provincial, and local governments.
- Promote public awareness and community participation.

Key Areas of Focus:

1. Risk Assessment and Early Warning Systems: Improve disaster forecasting and early warning mechanisms.
2. Capacity Building: Enhance the skills and preparedness of stakeholders at all levels.
3. Institutional Strengthening: Establish robust disaster management committees and task forces.
4. Public Awareness: The National Disaster Risk Reduction and Management Strategic

Plan of Action 2018-2030 in Chapter 4 has included to conduct education and outreach programs on disaster preparedness.

5. Infrastructure Resilience: Promote the construction of disaster-resilient infrastructure.

Implementation Mechanisms: The action plan emphasizes multi-stakeholder collaboration, involving government agencies, NGOs, community organizations, and international partners. Specific roles and responsibilities are assigned to national, provincial, and local governments.

Monitoring and Evaluation: A systematic framework has been designed to monitor progress and evaluate the effectiveness of DRR initiatives, ensuring alignment with national and international objectives. It is affirmed in chapter 9 of The National Disaster Risk Reduction and Management Strategic Plan of Action 2018-2030.

The plan is part of Nepal's broader commitment to sustainable development, addressing climate change adaptation and disaster resilience holistically. It serves as a blueprint for reducing vulnerabilities and enhancing disaster management systems in the country.

Despite these advancements, critiques of Nepal's disaster management policies often point to implementation challenges. For example, studies have noted that while the legal framework is robust on paper, gaps remain in its practical application, particularly at the local level where resources and capacities are often limited. (Sharma & Poudyal, 2019) Additionally, there is concern that the integration of human rights principles into disaster management remains insufficient, with more attention needed to ensure that the rights of marginalized communities are adequately protected during disaster responses. (Maharjan, Bista & Dahal, 2020)

Link Between Disaster Management and Human Rights

The relationship between disaster management and human rights is complex and multifaceted. Disasters can exacerbate existing vulnerabilities and inequalities, making it essential that disaster management policies are designed and implemented with a strong human rights perspective. The United Nations Office for Disaster Risk Reduction (UNDRR) highlights that effective disaster management is not only about protecting lives and property but also about ensuring that all individuals can access the support they need in times of crisis without discrimination.

In the context of Nepal, this linkage is particularly important given the country's diverse population and the varying levels of vulnerability across different communities. Research indicates that marginalized groups, including indigenous peoples, low-caste communities, and rural populations, are often disproportionately affected by disasters and may face barriers in accessing

relief and recovery resources. (Bajracharya & Acharya, 2019) Ensuring that disaster management policies are inclusive and rights-based is therefore crucial to reducing these disparities and promoting equitable recovery.

The literature also suggests that there is a need for stronger legal mechanisms to hold the government accountable for upholding human rights during disaster responses. While Nepal's current policies provide a framework for protecting human rights, their effectiveness largely depends on the political will and capacity to enforce these provisions. (Adhikari, 2020) Strengthening community-based disaster risk management (CBDRM) approaches has been identified as a key strategy for enhancing resilience and ensuring that the voices of vulnerable populations are heard in the policymaking process. (Gautam, 2020)

The previous disaster has shown marginalized groups have been facing serious discrimination leading to their human rights violation. Women, marginalized group, PWDs, children and senior citizens often struggle to access emergency shelters, relief supplies, and medical care. Despite the constitutional guarantees of equality and non-discrimination, these groups face systemic barriers in accessing disaster relief and recovery resources, highlighting critical human rights concerns in disaster management policies.

Case Study

A) 2015 Gorkha Earthquake

Background and Overview

The 2015 Gorkha earthquake, which struck Nepal on April 25, 2015, was a catastrophic event with a magnitude of 7.8, causing widespread devastation across the country. Over 9,000 people lost their lives, and hundreds of thousands of homes were destroyed or damaged. The earthquake also triggered avalanches, landslides, and aftershocks that exacerbated the disaster's impact. The event highlighted both the strengths and weaknesses of Nepal's disaster management policies, particularly in protecting life and property.

Application of Disaster Management Policies

At the time of the earthquake, Nepal's disaster management framework was primarily guided by the Natural Calamity (Relief) Act of 1982. The Act focused on emergency relief and post-disaster response, but it lacked comprehensive provisions for disaster risk reduction, early warning systems, and long-term recovery planning.

The Gorkha earthquake occurred without any prior warning, as Nepal lacked an effective early warning system for seismic events. The government's emergency response to the earthquake was hampered by logistical challenges, including damaged infrastructure, blocked roads, and limited communication channels. While the National Emergency Operations Center (NEOC) was activated immediately, coordination between various agencies was often disjointed. There were reports of inadequate provision of basic necessities in emergency shelters.

The post-disaster rehabilitation and reconstruction efforts were slow and fraught with challenges. The establishment of the National Reconstruction Authority (NRA) in December 2015 was a step toward coordinating recovery efforts, but bureaucratic delays and corruption issues hindered the pace of reconstruction. Many survivors remained in temporary shelters for years, and the reconstruction of homes and infrastructure was often inconsistent in quality, with some areas still awaiting full recovery.

Effectiveness in Protecting Life and Property

The 2015 Gorkha earthquake exposed the inadequacies of Nepal's disaster management policies, particularly in terms of preparedness, emergency response, and protection of vulnerable populations. The high death toll and extensive property damage underscored the need for a more robust disaster risk reduction framework, which was later addressed through the enactment of the Disaster Risk Reduction and Management Act, 2074. While the immediate response saved many lives, the overall effectiveness of the policies in place at the time was limited, leading to significant human and material losses.

B) 2017 Terai Floods

Background and Overview

The 2017 Terai floods occurred after continuous heavy rainfall in August, affecting 35 districts (Global Facility for Disaster Reduction and Recovery [GFDRR] & UNDP, 2017) across Nepal. The floods claimed over 160 lives, displaced tens of thousands, and damaged over 190,000 houses. Large swaths of agricultural land were inundated, causing extensive damage to crops and livestock. Infrastructure, including roads, bridges, and schools, was also severely affected. The disaster disproportionately impacted vulnerable populations in the southern plains, exacerbating existing socio-economic disparities.

Application of Disaster Management Policies

The floods occurred under the transitional phase of Nepal's federal restructuring, which created challenges in disaster response and coordination. Although the government activated

emergency operations and collaborated with humanitarian agencies, the lack of preparedness and early warning systems hampered the effectiveness of relief efforts. Emergency shelters were quickly established, but inadequate facilities and resources created difficulties for displaced families. Post-disaster recovery focused on rebuilding infrastructure and distributing compensation, but delays and insufficient resources hindered progress.

Effectiveness in Protecting Life and Property

The 2017 Terai floods exposed gaps in disaster preparedness, particularly in flood-prone regions. While immediate rescue operations saved lives, the overall response was hindered by logistical challenges and a lack of pre-disaster planning. The floods emphasized the need for effective early warning systems, better land-use planning, and investments in flood-resilient infrastructure. Lessons learned contributed to shaping Nepal's disaster risk reduction policies, including better integration of local governments in disaster management.

C) 2024 Monsoon Flood and landslide

Background and Overview

The monsoon of 2024, triggered by record monsoon rainfall and landslide was very devastating, resulting in 246 lives lost, 15 individuals missing, and over 17,000 people rescued. Tragically, about 3,000 homes have been damaged or destroyed, along with over 100 kilometers of roads and more than 50 bridges rendered unusable. (Volunteers Initiative Nepal, 2024) Landslides in the hilly regions and waterlogging in the Terai plains worsened the situation, leading to food shortages and outbreaks of waterborne diseases. This disaster once again underscored the urgent need to strengthen Nepal's disaster management policies and institutional frameworks.

Application of Disaster Management Policies

Nepal has enacted the Disaster Risk Reduction and Management Act, 2074 during this phase. This Act established a more structured framework emphasizing disaster preparedness, risk reduction, and resilience-building.

Effectiveness in Protecting Life and Property

The Department of Hydrology and Meteorology issued flood warnings (DHM, 2024), but limited dissemination of information, especially to remote communities, hindered timely evacuation. Despite the activation of provincial and local disaster management committees, a lack of inter-agency coordination led to delays in rescue and relief efforts. National Disaster Risk

Reduction and Management Authority (NDRRMA) do not look to be efficiently carrying it's duty as per mandated. Even the rescue efforts were disorganized which posed challenges.

Analysis

Evaluating the Effectiveness of Nepal's Disaster Management Policies in protecting Life

The Disaster Risk Reduction and Management Act, 2074, emphasizes the development of early warning systems to alert communities at risk. Evaluating the effectiveness of these systems involves assessing their reach, timeliness, and the public's understanding and response to warnings. For example, in the case of the 2015 Gorkha earthquake, the lack of an effective early warning system contributed to significant loss of life. However, since the enactment of the 2074 Act, there have been improvements in early warning mechanisms, especially for floods and landslides, which have helped in reducing casualties. The effectiveness can be measured by comparing mortality rates in disasters before and after the implementation of these systems.

The Act mandates a coordinated emergency response to save lives during disasters. The effectiveness of these operations can be evaluated by looking at the speed and efficiency of rescue efforts, availability of trained personnel, and the adequacy of resources such as medical aid, shelters, and food. During the 2015 earthquake, response times were slow, and many remote areas received delayed assistance, leading to avoidable loss of life. Recent floods and landslides have shown some improvement in response times, but challenges remain, particularly in remote and inaccessible areas. Effectiveness is also reflected in the reduction of deaths due to swift evacuations and timely medical interventions.

The Act places special emphasis on protecting vulnerable groups such as women, children, the elderly, and people with disabilities. Evaluating effectiveness in this area involves examining whether these groups received priority in rescue operations, whether their needs were adequately met in emergency shelters, and whether there were specific measures in place to protect them from harm. In recent years, there has been some progress in recognizing and addressing the needs of these groups, but gaps remain, particularly in ensuring their access to timely and appropriate care during disasters. The success of these measures can be seen in reduced mortality rates among vulnerable populations during recent disasters.

Evaluating the Effectiveness of Nepal's Disaster Management Policies in Protecting Property

The Act requires regular disaster risk assessments and the creation of hazard maps to identify areas at high risk of disasters. The effectiveness of these assessments and maps in protecting

property can be evaluated by analyzing whether they have been effectively used to guide land-use planning, construction standards, and disaster preparedness initiatives. For example, in areas where hazard mapping has been properly implemented, there should be a noticeable reduction in property damage during disasters. However, in many cases, the implementation of these assessments and the enforcement of related building codes have been inconsistent, leading to significant property losses during disasters.

The enforcement of building codes and land use regulations is crucial for protecting property during disasters, especially in earthquake-prone areas like Nepal. The effectiveness of these regulations can be measured by the extent to which they have been adopted and enforced in urban and rural areas. After the 2015 earthquake, there was a push to improve building standards, but the effectiveness of these efforts has been mixed. In some areas, new constructions adhere to earthquake-resistant designs, reducing property damage during seismic events. However, in other areas, non-compliance with building codes remains a significant problem, resulting in substantial property damage during disasters.

The Act also focuses on the rehabilitation and reconstruction of properties after disasters. Evaluating the effectiveness in this area involves assessing the speed and quality of rebuilding efforts, the availability of financial assistance for reconstruction, and whether the rebuilt infrastructure is more resilient to future disasters. The reconstruction efforts following the 2015 earthquake were slow and often plagued by delays, leading to prolonged displacement and vulnerability. However, lessons learned from that experience have informed more recent efforts, leading to some improvements in the speed and quality of reconstruction in subsequent disasters. The success of these initiatives is reflected in the resilience of properties rebuilt after the earthquake, which have withstood subsequent disasters with less damage.

Conclusion

Nepal's disaster management policies have evolved significantly since the 2015 Gorkha earthquake, reflecting a shift towards more proactive and comprehensive approaches. The Disaster Risk Reduction and Management Act, 2074, represents a significant advancement in addressing disaster risks and enhancing resilience. However, the effectiveness of these policies in protecting life and property remains a work in progress.

The analysis reveals that while improvements have been made in certain areas, challenges persist in implementing and enforcing disaster management policies effectively. Key issues

include inadequate early warning systems, inconsistent enforcement of building codes, and gaps in addressing the needs of vulnerable populations. The 2015 Gorkha earthquake underscored the need for a more robust and inclusive disaster management framework, and subsequent efforts have shown progress, but further reforms are necessary.

Integrating human rights considerations into disaster management is crucial for ensuring that all individuals, particularly the most vulnerable, receive adequate protection and support during crises. By adopting a rights-based approach and addressing the identified gaps, Nepal can enhance its disaster management policies and better safeguard lives and property against future disasters.

The recommendations provided aim to address these gaps and build on the lessons learned from past disasters. Implementing these recommendations will help Nepal develop a more resilient and equitable disaster management system, ultimately contributing to the protection of human rights and the reduction of disaster risks for all communities.

Recommendations

Early Warning Systems should be strengthened. The development and deployment of early warning systems for all types of natural disasters, including earthquakes, floods, and landslides are needed to be enhanced. Ensure that these systems are well-integrated with community-based communication networks to reach remote areas effectively. Regular drills and public education programs should be conducted to improve awareness and response.

The Coordination and Resource Allocation still remains a core challenge in the disaster time which need to be improved. A clear protocol for coordination among national, provincial, and local disaster management bodies to streamline emergency response efforts should be established. Invest in infrastructure that facilitates efficient resource distribution and communication during crises, and ensure that disaster management agencies are adequately funded and equipped.

A strict building standards regulations and land use regulations to ensure that new constructions are resilient to natural disasters. A regular inspections and penalties for non-compliance to ensure adherence to safety standards should be implemented. Public awareness campaigns about the importance of disaster-resistant construction practices should be promoted.

Expanding disaster risk reduction initiatives is essential, requiring investment in comprehensive programs such as hazard mapping, risk assessments, and community-based risk reduction efforts. By utilizing hazard maps, authorities can guide land use planning and implement targeted interventions in high-risk areas to minimize potential damage.

Improving disaster insurance and compensation mechanisms is critical for enhancing resilience. Affordable disaster insurance options should be developed and promoted for individuals and businesses, while the compensation process must be streamlined to provide timely and sufficient financial support to affected populations. Greater transparency and accountability in the distribution of compensation are also necessary.

Post-disaster rehabilitation and reconstruction should prioritize building back better through robust strategies. Reconstruction efforts must involve input from affected communities and adhere to higher safety standards. Effective monitoring and evaluation of these projects are crucial to assess their success and long-term impact.

A Real-time monitoring system to evaluate disaster response effectiveness:

A real-time monitoring system for evaluating disaster response effectiveness is essential to enhance Nepal's disaster management capabilities. One key component would be a Geographic Information System (GIS)-based platform, which could track disaster events and infrastructure damage in real-time. This system would visualize data on the extent of the disaster, locations of shelters, and the distribution of aid, thus aiding in more effective decision-making and resource allocation. Additionally, integrating mobile and web-based applications for community reporting would empower citizens to submit incident reports, request aid, and provide feedback directly to authorities. This real-time data would be complemented by predictive analytics, which would use AI to optimize resource distribution and forecast needs, further improving the response efforts.

Furthermore, a centralized dashboard would be essential for coordinating all agencies involved in the disaster response, displaying real-time data on shelter occupancy, the progress of rescue operations, and the status of aid distribution. Real-time tracking of relief logistics using GPS-enabled technology and drones would ensure timely delivery of supplies. The system should also incorporate feedback from social media to capture public sentiment, allowing for quick adjustments to response strategies. By integrating these various technologies, Nepal could create a more agile, coordinated, and effective disaster management system, improving both short-term recovery and long-term resilience to future disasters.

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Political Representation and Human Rights: Identity and Inclusion of Tharu Community

Dibya Das Tharu

Abstract

Human rights, as the cornerstone of dignity and equality, include the right to identity, which extends beyond individual recognition to affirm a community's cultural and social heritage. This research explores the critical intersection of political representation and human rights, focusing on the Tharu community's fight for identity and inclusion in Nepal. Political representation is not merely a matter of numbers but an essential recognition of a community's voice and aspirations, vital for ensuring equality and protecting cultural heritage. The Tharu community's ongoing struggle for representation highlights the systemic challenges marginalized groups face in achieving meaningful inclusion within democratic frameworks. This study delves into the historical context, current challenges, and legal frameworks impacting the Tharu community while proposing that true equality demands active acknowledgment of distinct identities in the political and social fabric of Nepal. Addressing these dimensions, the research aims to contribute to the broader discourse on indigenous rights, democracy, and human dignity.

Keywords: Tharu community, political representation, human rights, identity, inclusion, Nepal, cultural heritage, democracy, equality.

I. Introduction:

In the diverse tapestry of Nepal's ethnic landscape, the Tharu community stands out as a significant indigenous group with a rich cultural heritage and a complex history. Despite their substantial population and deep roots in the country, particularly in the Terai region, the Tharu people have long faced challenges in asserting their identity and securing adequate political representation. This struggle is not merely a local issue but resonates with broader global concerns about indigenous rights, political inclusion, and the fundamental human right to identity. The intersection of political representation and human rights forms the core of this article's exploration. Political representation, in its essence, is more than just a numbers game in legislative bodies; it is

a profound expression of a community's voice, aspirations, and place within the national narrative. For marginalized communities like the Tharu, achieving meaningful political representation is intrinsically linked to the recognition and protection of their human rights, particularly their right to identity (Lawoti, 2006). The right to identity, as enshrined in various international human rights instruments, encompasses far more than individual identification. It extends to the collective identity of communities, their cultural practices, languages, and ways of life. For the Tharu community, this right is particularly salient given their distinct cultural practices, traditional knowledge systems, and historical relationship with their ancestral lands in the Terai. This article aims to delve deep into the multifaceted struggle of the Tharu community for political representation and the recognition of their identity examining the historical context, current challenges, and the legal and policy frameworks that shape this struggle, we seek to illuminate the complex interplay between political processes and human rights principles. Furthermore, this exploration will shed light on how the fight for representation is not just about political power but about preserving and promoting a unique cultural identity in the face of modernization and national homogenization efforts. As Nepal continues to navigate its path as a federal democratic republic, the case of the Tharu community serves as a critical lens through which to view the broader challenges of inclusivity, representation, and the protection of minority rights. This article will argue that ensuring adequate political representation for the Tharu is not only a matter of democratic fairness but a fundamental human rights issue that speaks to the core principles of dignity, equality, and cultural preservation. Through a comprehensive analysis of these interconnected themes, this article aims to contribute to the ongoing discourse on indigenous rights, political inclusion, and the evolving nature of democracy in multiethnic societies.

II. Methodology:

This article employs a doctrinal research method to examine the complex issue of political representation and human rights for the Tharu community in Nepal. The doctrinal approach, also known as the "black-letter" law approach, focuses on analyzing legal texts, principles, and concepts to understand the current state of the law and its application to specific issues. The research involves a thorough examination of primary legal sources, including the Constitution of Nepal, relevant statutes, and case law pertaining to political representation and indigenous rights. It also analyzes legislative debates, committee reports, and other parliamentary documents to understand the intent behind laws affecting Tharu political representation. The methodology includes a jurisprudential review, examining judicial decisions and interpretations related to political representation and indigenous rights in Nepal, with a focus on cases involving the Tharu community. Additionally, the

research reviews authoritative legal commentaries, textbooks, and journal articles to gain insights into the interpretation and application of relevant laws. A comparative legal analysis is conducted, comparing Nepal's legal framework with international standards and practices, particularly focusing on the UN Declaration on the Rights of Indigenous Peoples and ILO Convention 169. Finally, the research traces the legal history, examining the evolution of laws and policies related to political representation and indigenous rights in Nepal, to provide a comprehensive understanding of the current legal landscape affecting the Tharu community's political representation and human rights.

III. Objective of the Research:

The objective of this research is to examine the intricate relationship between political representation and human rights, with a particular focus on the Tharu community in Nepal. It aims to explore how the recognition of the right to identity, coupled with meaningful political inclusion, serves as a foundation for safeguarding cultural heritage, promoting equality, and fostering democratic participation. This study also seeks to identify challenges and propose solutions for achieving effective representation of marginalized communities within a federal democratic framework.

IV. Research Question:

- How does political representation impact the recognition and protection of the Tharu community's right to identity in Nepal?
- What are the key challenges and opportunities for ensuring meaningful political inclusion of the Tharu community in the context of Nepal's democratic governance and legal framework?

V. The Right to Identity:

The right to identity is a fundamental human right that goes far beyond simply acknowledging an individual's existence. It encompasses a complex web of cultural, social, and ethnic affiliations that form the core of a person's or community's sense of self. This right is particularly crucial for indigenous communities like the Tharu, whose very essence is intricately woven into their cultural practices, traditional knowledge, and ancestral lands. Article 6 of the Universal Declaration on Human Rights states that everybody has the right to a legal identity (United Nations Development Programme, n.d)[1].

1 United Nations Development Programme. (n.d.). *Universal Declaration of Human Rights of 1948*. Retrieved from https://www.ohchr.org/sites/default/files/Documents/Publications/Compilation1.1en.pdf

For the Tharu and similar indigenous groups, identity is not just a personal matter but a collective one that spans generations and ties them to specific geographical locations. Their cultural practices, passed down through centuries, are not mere customs but living traditions that shape their worldview and daily lives. Traditional knowledge, often misunderstood or undervalued by outsiders, forms the backbone of their survival strategies and their understanding of the world around them. Their connection to ancestral lands goes beyond mere ownership; it's a spiritual and cultural bond that defines their place in the universe.

The right to identity encompasses several key elements, each vital in its own way:

- **Legal recognition as a person before the law:** This ensures that individuals and communities are not rendered invisible in the eyes of the state, granting them access to basic rights and services.
- **The ability to maintain and practice cultural traditions:** This allows communities to keep their unique ways of life alive, preserving knowledge and practices that might otherwise be lost to time.
- **Recognition of collective identity for distinct communities:** This acknowledges that some rights and identities are held collectively, not just individually, which is crucial for many indigenous worldviews.
- **The freedom for individuals and groups to define their own identity:** This prevents the imposition of identities by outside forces and allows for self-determination.

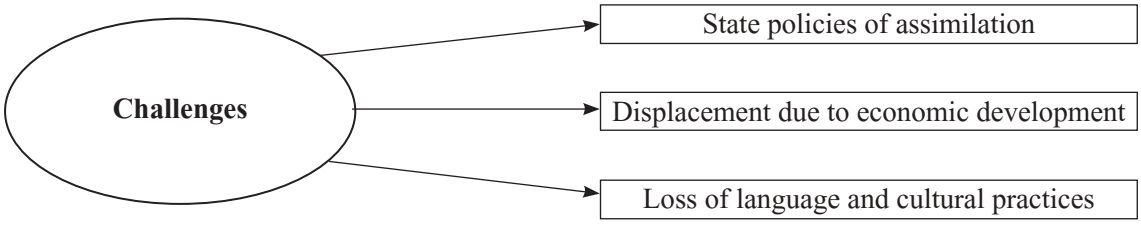
The international community has recognized the importance of this right through various instruments. The International Covenant on Civil and Political Rights goes further, protecting the rights of minorities to enjoy their culture and practice their religion (United Nations, 1966). The UN Declaration on the Rights of Indigenous Peoples represents a significant step forward, explicitly acknowledging the right of indigenous peoples to maintain and strengthen their distinct identities.

For indigenous communities like the Tharu, the right to identity is not an abstract concept but a vital necessity for their survival and flourishing. It serves multiple crucial functions:

- **Preserving culture**: It allows them to maintain their unique worldviews, traditions, and knowledge systems in the face of homogenizing global influences.
- **Asserting land rights**: Many indigenous identities are inextricably linked to specific territories. Recognition of identity can be a powerful tool in land rights struggles.

- **Gaining political recognition**: A recognized identity is often the first step towards political representation and a voice in decision-making processes.
- **Protecting against discrimination**: A strong sense of identity can provide resilience against discriminatory practices and policies.

However, the path to asserting this right is often fraught with challenges. Many indigenous communities face:



- **State policies of assimilation**: Governments may push for cultural homogeneity, viewing distinct identities as threats to national unity.
- **Displacement due to economic development:** Large-scale projects often force communities from their ancestral lands, severing crucial ties to their identity.
- **Loss of language and cultural practices**: Globalization and modernization can lead to the erosion of traditional ways of life, especially among younger generations.

For the Tharu community specifically, the right to identity holds particular significance due to their unique circumstances. Their distinct history sets them apart from other Nepalese communities, shaping their worldview and social structures (NepalBase. (n.d.)). Their deep connection to the Terai region is not just geographical but forms a core part of their identity. The Tharu language, with its unique vocabulary and expressions, encapsulates knowledge and concepts that may not exist in other languages. Additionally, addressing the historical marginalization of the Tharu requires first acknowledging their distinct identity and the specific challenges they have faced.

Governments play a crucial role in upholding the right to identity. Their obligations include:

- **Providing legal recognition**: This involves officially acknowledging the existence and rights of indigenous communities.
- **Ensuring non-discrimination**: States must ensure that recognition of distinct identities does not lead to discrimination or exclusion.

- **Taking positive measures**: Governments should actively protect and promote the cultural identities of indigenous communities through supportive policies and programs.
- **Ensuring community participation**: Indigenous communities must be involved in decisions that affect their identity and rights, following the principle of free, prior, and informed consent.

However, states also face the challenge of balancing the recognition of distinct identities with the need for national unity. This requires promoting a multicultural national identity that celebrates diversity while still fostering a sense of shared nationhood. It's a delicate balance that requires careful policy-making and ongoing dialogue with all communities.

Writ Filed in Supreme Court:

Recently, a writ was been filed in the Supreme Court **challenging the constitutionality of the National Foundation for Development of Indigenous Nationalities Act**. The writ was argued that the Act wrongly categorizes the Tharu community as part of the Adibasi Janjati group. According to the Constitution, the Tharu community should be recognized as a distinct and separate identity. The petition seeks to declare the relevant provisions of the Act void and to officially recognize the Tharu as a separate entity[2].

The right to identity is a identical concept that lies at the heart of human dignity and cultural rights. For communities like the Tharu, it's not just about recognition but about survival, dignity, and the ability to thrive in a rapidly changing world. The struggle for political representation is inextricably linked to this broader fight for recognition and respect of distinct identities. Addressing these issues comprehensively is crucial not just for the well-being of indigenous communities, but for creating more just, diverse, and vibrant societies for all. As we move forward, it's essential that we continue to evolve our understanding of identity rights and work towards systems that can truly accommodate and celebrate the rich tapestry of human diversity.

VI. The Tharu Community: Background and Identity

The Tharu community, one of Nepal's largest indigenous groups, boasts a rich and complex history that is deeply interwoven with the land and culture of the Terai region. Archaeological evidence and oral traditions suggest that the Tharu are among the oldest inhabitants of this area, with a history stretching back thousands of years. Their longstanding presence in the Terai is attributed

2 The Writ Filed in the Supreme Court of Nepal(constitutional bench) ,with objective to declare the Act null and Void as it was getting inconsistent with the constitution and call for legislation to make separate law for Tharu Community Writ No : 080-WC-0060.

in part to their natural resistance to malaria, which allowed them to thrive in the region's dense, mosquito-infested forests while other groups avoided the area (Nepal Tourism Board, n.d.). This geographical isolation played a crucial role in shaping their unique culture and identity. The Tharu's connection to their land goes beyond mere habitation; it forms the very core of their identity. Their traditional practices, social structures, and spiritual beliefs are all intimately tied to the rhythms of agriculture and forest management. The Tharu have developed sophisticated farming techniques adapted to the local environment, including complex irrigation systems and sustainable forest use practices. This deep ecological knowledge has been passed down through generations, forming an integral part of their cultural heritage. Demographically, the Tharu comprise approximately 6.6% (Adhikari, 2024) of Nepal's total population, making them one of the country's largest indigenous groups (IWGIA, 2024). While they are primarily concentrated in the Terai region, Tharu communities can be found across several districts in southern Nepal, from the western border with India to the eastern plains. It's important to note that the Tharu are not a homogeneous group; rather, they consist of several subgroups, each with its own distinct dialects, customs, and cultural practices. This internal diversity adds layers of complexity to their collective identity and political representation. The Tharu people, an indigenous ethnic group, have been residing in the Western Terai districts of Nepal since ancient times. Their unique history and culture have been shaped by their long-standing relationship with the land and natural resources of this region. For centuries, the Tharu lived relatively isolated lives, protected from outside influences by the malarial jungles of the Terai. This isolation allowed them to develop a distinct society with unique language, religion, and cultural practices. The Terai was known as the rice basket of Nepal, and the fertile lands of the Western Terai were cultivated by the Tharu, who were the primary inhabitants of this region. However, the last seventy years have seen significant changes for the Tharu people (NepalBase, n.d.). The eradication of malaria and subsequent development initiatives led to an influx of hill people into the Terai. This migration resulted in many Tharus losing their traditional lands and being forced into exploitative labor conditions to repay debts they had not incurred. They often worked for minimal or no wages for the so-called high-class people who had taken over their lands (NepalBase, n.d.). The socio-economic impact of these changes was profound. The Tharus faced exploitation, poor health conditions, and lack of access to natural resources, limited political voice, and poverty. They were often blamed for their own socio-economic backwardness by other communities, who attributed it to social and cultural factors. In 1951, the Government of Nepal enacted a progressive land reform act that centralized non-registered land (Uprety, 2021). The use of Dichlorodiphenyltrichloroethane (DDT) in the late 1950s and 1960s further facilitated the

migration of hill populations to the Terai . Before these government actions, the Tharus had their own administrative system, known as the Praganna system, which managed justice, development, and religious rituals.

The Tharus' traditional way of life was further disrupted by the Rana aristocracy, who claimed legal ownership of parts of the land. The Ranas used a few Tharu individuals, known as Chaudharyas to collect revenue from the Tharu population and send it to the central government. Despite this, the land was effectively free for the Tharus to use for cultivation, provided they paid the required revenue (Bist & Bist, 2022). The Tharu population in Nepal, as per the 2011 census, was 1,737,470 people, with half residing in the six districts of Dang, Banke, Bardiya, Surkhet, Kailali, and Kanchanpur. These lands were highly productive and sought-after agricultural areas, and the Tharus' traditional agricultural practices were well-suited to this environment. The Tharu people have faced numerous challenges over the years, but their resilience and cultural heritage remain strong. Their history is a testament to their enduring connection to the land and their ability to adapt and survive amidst significant socio-political changes (Bist & Bist, 2022). The multimedia exhibition 'Daule Daule' at Patan Museum offers an evocative portrayal of the Tharu community's suppressed history and vibrant culture. Curated by Erendina Delgadillo and others, it underscores how the Tharus have been marginalized and misrepresented over the years. Tharu individuals were historically classified as "paani chalne masinya matwali" under the Muluki Ain of 1854[3], making them vulnerable to exploitation and land dispossession. Key historical events, such as the malaria eradication campaign in the 1960s and the Maoist conflict, further disrupted their lives. Despite these challenges, the Tharu community has maintained a wealth of traditions and wisdom. The exhibition features compelling images depicting various aspects of Tharu life, including farming, pottery, fishing, and political movements, offering visitors a glimpse into their rich heritage. A notable highlight is the role of Tharu women in social and political movements (Ray, 2024). They are shown not just as passive symbols of beauty but as strong, active individuals leading grassroots efforts. The exhibition also showcases the artistic culture of the Tharu, with intricate wall paintings and traditional crafts. 'Daule Daule' calls for a reevaluation of Tharu history, advocating for a complete and accurate representation of their past. It emphasizes the need to listen to and support Tharu voices, ensuring their struggles and achievements are acknowledged and celebrated. Exhibitions like this are crucial for indigenous communities, providing spaces for cultural celebration, education, and documentation. They challenge stereotypes and promote

3 The law code with constitutional features drafted at the initiative of Prime Minister Janga Bahadura Rana which is regarded as the foundational legal text for modern Nepal

solidarity, helping to preserve and uplift the heritage of marginalized groups like the Tharu (Ray, 2024).

The Tharu language, with its various dialects, serves as a crucial marker of their identity. It encapsulates unique concepts, traditional knowledge, and worldviews that may not have direct equivalents in other languages. The preservation of this language is thus not just about maintaining a means of communication, but about safeguarding an entire way of understanding the world. Similarly, Tharu customs, rituals, and festivals form an intricate tapestry of cultural expression. These include elaborate wedding ceremonies, harvest festivals, and spiritual practices that often blend indigenous beliefs with elements of Hinduism and Buddhism (Ray, 2024). Tharu art forms are another distinctive aspect of their culture. Their homes are often adorned with vibrant wall paintings depicting scenes from daily life, nature, and mythology. Intricate woodcarvings and colorful textiles also showcase their artistic traditions. These art forms are not merely decorative; they serve as visual representations of Tharu identity and history, playing a crucial role in cultural transmission.

Achieving adequate political representation at all levels of government remains a key challenge for the Tharu community. While there has been some progress in recent years, with more Tharu representatives in local and national government bodies, many feel that this representation is still not proportional to their population or sufficient to address their specific needs and concerns.

Tharu identity has become a crucial rallying point for political mobilization within the community. Calls for political representation are often framed in terms of recognizing and respecting Tharu identity, with demands for cultural autonomy and self-governance closely linked to the assertion of their unique cultural heritage. This struggle for political representation goes beyond merely gaining seats in legislative bodies; it's about ensuring that the Tharu voice, shaped by their distinct identity and historical experiences, is heard and respected in the political discourse of Nepal.

VII. Political Representation and Its Importance:

Political representation is a fundamental aspect of democratic governance, ensuring that diverse voices and interests are heard and considered in decision-making processes.

Political representation, on almost any account, will exhibit the following five components (Christiano, 2018):

- Some party that is representing (the representative, an organization, movement, state agency, etc.);

- Some party that is being represented (the constituents, the clients, etc.);
- something that is being represented (opinions, perspectives, interests, discourses, etc.); and
- A setting within which the activity of representation is taking place (the political context).
- Something that is being left out (the opinions, interests, and perspectives not voiced).

For marginalized communities like the Tharu, it is not just about democratic participation but a crucial mechanism for protecting their rights, advancing their interests, and preserving their identity. Political representation can take various forms, including elected representatives, proportional representation systems, and reserved seats for specific groups, occurring at local, provincial, and national levels. There are several theories of representation, including **descriptive representation** (representatives reflecting the demographic characteristics of their constituents), **substantive representation** (representatives acting in the interests of their constituents), and **symbolic representation** (the presence of representatives from certain groups having symbolic value and impact). Likewise there a new form of representation which is of **legal representation** (Representatives acting in the interests of their laws and codes). The importance of political representation lies in its ability to protect rights, influence resource allocation, shape policies, and hold governments accountable (Acharya, Dhungana & Guragain, 2022).

Political representation for the Tharu community goes beyond mere numbers in legislative bodies. It's about ensuring their voice is heard, their rights are protected, and their unique perspective shapes the policies that affect their lives. As Nepal continues to evolve as a democratic nation, the quality and effectiveness of Tharu political representation will be a crucial indicator of the country's progress towards true inclusivity and equality. The ongoing struggle for meaningful representation underscores the deep connection between political processes and the protection of human rights, particularly the right to identity and cultural preservation.

VIII. Intersection of Political Representation and Human Rights:

The struggle for political representation by the Tharu community is deeply intertwined with the broader framework of human rights. This connection emphasizes that political participation is not merely a matter of governance, but a fundamental human right that enables the protection and promotion of other rights. The human rights framework, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the UN Declaration on the Rights of Indigenous Peoples, all affirm the right to political participation and equal access to public service. For the Tharu, the right to political participation is crucial in shaping policies

that affect their community and cultural identity, though they face structural, social, and economic barriers in fully realizing this right. Political representation serves as a means to protect and promote Tharu cultural identity, affirm their status as a distinct community within Nepal, and exercise their right to self-determination. It also acts as a tool to combat historical discrimination and marginalization, with measures like quotas and reserved seats aiming to achieve substantive equality.

IX. The Impact of Political Representation on the Tharu Community:

The ongoing struggle for political representation has had profound impacts on the Tharu community, influencing various aspects of their social, economic, and cultural life. This section examines the tangible and intangible effects of increased political representation on the Tharu community, as well as the challenges that remain.

Empowerment and Self-Determination:

Increased political representation has significantly boosted the Tharu community's confidence in asserting their rights and identity. With more Tharu individuals in positions of power, there has been a noticeable increase in their influence over local and national decision-making processes. This shift has empowered the community, spurring broader involvement in social and political issues. The sense of empowerment has also facilitated community mobilization, encouraging the Tharu to take active roles in advocating for their rights and addressing their concerns {Sit Study Abroad. (n.d.)}.

Cultural Preservation and Promotion:

Political representation has played a crucial role in preserving and promoting Tharu culture. Advocacy by Tharu representatives has led to initiatives aimed at protecting and revitalizing the Tharu language, ensuring its continued use and transmission to future generations. Increased visibility in the political sphere has raised national awareness about Tharu culture, leading to greater recognition and appreciation. Additionally, political representation has helped safeguard traditional Tharu practices and customs, integrating cultural preservation into broader national dialogues.

Economic Impacts:

Increased political representation has led to a focus on development projects in Tharu areas, driving economic growth and improvement in living standards. Advocacy for fair representation in public service has opened up new employment opportunities, helping to address economic disparities. Additionally, there has been some progress in addressing historical land alienation

issues through political channels, contributing to greater economic stability and land security for the Tharu.

Legal and Policy Changes:

The inclusion of specific provisions for indigenous rights in the 2015 Constitution marks a significant legal advancement for the Tharu. This recognition has been bolstered by increased Tharu participation in local governance structures following the implementation of federalism, ensuring that their voices are heard in decision-making processes. Additionally, anti-discrimination measures have been enacted to combat discrimination against the Tharu and other marginalized communities, promoting greater equality and justice.

Political Awareness and Participation:

Increased political awareness within the Tharu community has led to higher voter turnout, reflecting a growing engagement with the democratic process. There is a growing understanding of political processes and rights, which has been crucial in fostering political literacy. This enhanced awareness has also led to the emergence of new Tharu political leaders at various levels of governance, ensuring that the community is represented and their interests advocated for. The impact of political representation on the Tharu community has been multifaceted, touching various aspects of their lives. While significant progress has been made in terms of recognition, cultural preservation, and policy influence, challenges remain in translating these gains into substantive improvements in the everyday lives of Tharu individuals. The ongoing process of political representation continues to shape the community's trajectory, offering both opportunities and challenges as the Tharu navigate their place in Nepal's evolving democratic landscape. As this process unfolds, the interplay between political representation and the realization of broader human rights for the Tharu community remains a critical area for continued observation and analysis.

X. Legal and Policy Framework:

The legal and policy framework surrounding political representation for the Tharu community in Nepal is both complex and evolving, reflecting the nation's broader efforts to ensure inclusivity and equity for all its citizens.

A cornerstone of this framework is the 2015 Constitution of Nepal, which formally recognizes the Tharu as an indigenous nationality (Nepal Law Commission, n.d., Art. 42). This recognition is not merely symbolic; it is embedded with provisions for the proportional inclusion of marginalized communities, including the Tharu, within state structures. The Constitution explicitly

guarantees the right to participate in state bodies for all citizens, with additional, specific provisions to ensure that marginalized communities are adequately represented. Furthermore, it acknowledges the cultural and linguistic diversity of Nepal by recognizing all mother tongues spoken in the country, including Tharu, as national languages. This recognition helps preserve and promote the linguistic heritage of the Tharu community. Electoral laws further bolster Tharu representation through a mandated quota system. This system requires that a certain percentage of seats in various electoral processes be reserved for marginalized communities, including the Tharu. Political parties are legally bound to ensure that their internal structures and candidate selection processes reflect inclusive representation. These measures are crucial for fostering a political environment where the voices of marginalized communities can be heard and their interests represented. Additionally, local election provisions include specific mandates to ensure that marginalized communities are represented in local government bodies, further decentralizing power and representation. In the realm of civil service and the public sector, reservation policies play a pivotal role. These policies include quotas for the recruitment of indigenous nationalities, including the Tharu but under Adibasi/Janjati, into civil service positions (Nepal Law Commission, n.d.). Alongside these quotas, there are guidelines designed to promote diversity and inclusion within public sector institutions. Such policies are essential for creating a public sector workforce that reflects the diverse makeup of Nepal's population and for ensuring that the governance of the country is inclusive at all levels.

International commitments also play a significant role in shaping the political representation of the Tharu community. Nepal's endorsement of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the ratification and implementation of ILO Convention 169 underscore the country's commitment to upholding international standards for indigenous rights[4]. These commitments include provisions that directly impact political participation, thereby reinforcing domestic legal and policy measures.

XI. Conclusion:

The struggle for political representation by the Tharu community in Nepal exemplifies the complex interplay between democracy, human rights, and cultural identity in a diverse society. This exploration has revealed several key insights and areas for future consideration. The Tharu community's quest for political representation is not just a minority issue but a fundamental

4 In 2007, Nepal was one of the countries that voted in favor of UNDRIP during its adoption by the UN General Assembly, highlighting its support for the rights of indigenous peoples globally. Nepal ratified ILO Convention 169 in 2007, becoming the first country in South Asia to do so. This convention specifically addresses the rights of indigenous and tribal peoples, obligating Nepal to recognize and protect their rights to traditional lands and resources.

aspect of Nepal's democratic evolution, underscoring the importance of inclusive participation in building a truly representative democracy. Political representation for the Tharu is intrinsically linked to the realization of broader human rights, serving as a mechanism for protecting cultural identity, ensuring non-discrimination, and promoting equitable development. There is an ongoing need for capacity building within the Tharu community to develop political leadership, enhance civic engagement, and effectively utilize existing legal and institutional mechanisms. The Tharu struggle for representation offers lessons for other marginalized communities in Nepal and beyond, contributing to the global discourse on indigenous rights and inclusive governance. Future directions include continued refinement of legal and policy frameworks, enhanced focus on implementation and monitoring, greater emphasis on education and awareness-raising, exploration of innovative representation models, and increased engagement with international human rights mechanisms. Ongoing research and documentation of the impacts of political representation on the Tharu community are needed to inform future policy decisions and advocacy efforts. The role of media in shaping public perceptions and political narratives around Tharu identity and representation remains crucial. Future efforts should focus on linking political representation with economic empowerment, recognizing that political voice is closely tied to economic security and opportunity.

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Lawyers and Human Rights Defenders

Bivek Chaudhary

Abstract

In a democracy, the role of advocates as guardians of justice cannot be overstated. Lawyers are recognized as the professional in the field of law. They argue for the cause of another person in front of any judicial authority. A fearless legal profession is the cornerstone of a thriving democracy. They serve as the backbone of the judicial system, tirelessly advocating for the rights of their clients and upholding the principles of fairness and equality before the law. In the pursuit of justice, lawyers are the first line of defense for human rights. However, in many parts of the world, including Nepal, these legal professionals often find themselves subjected to threats, intimidation, attacks, which hindering their ability to perform duties effectively. This article delves into the pressing need for an Advocate Protection Law in Nepal, drawing inspiration from the Advocates Protection Act of India. Examining the challenges faced by Nepalese advocates and analyzing the Indian legislation, it underscores the urgency for a comprehensive legal framework to safeguard the interests of those who defend justice. Additionally, the article calls upon the Nepalese parliament and the Nepal Bar Council to undertake proactive measures in drafting and enacting such a law, ensuring that the guardians of justice are shielded from undue interference and can carry out their noble duties without fear or favor.

Keywords: Lawyers, Rights, Justice, Advocacy, Protection

I. Introduction:

Lawyers are the backbone of the human rights movement. Their safety and security are essential for advancing our cause. Justice is the cornerstone of a civilized society, and the role of advocates in upholding this fundamental tenet cannot be understated. They are the guardians of justice, the champions of legal rights, and the voices that resonate through the halls of courtrooms, advocating for the fair and impartial application of the law. However, in many parts of the world, including Nepal, these legal professionals often find themselves in a precarious position, facing threats, intimidation, and even physical attacks that undermine their ability to perform their duties effectively. The Nepalese legal system, like many others, relies heavily on the dedication and professionalism of its advocates. They are the crucial link between the judicial system and the

public, ensuring that the rights of individuals are protected and that the principles of due process and equal treatment under the law are upheld. Unfortunately, instances of advocates being subjected to harassment, intimidation, and violence have become increasingly prevalent, casting a shadow over the integrity of the legal profession and the administration of justice itself.

II. Methodology:

The methodology employed in this article primarily utilizes the doctrinal research method, complemented by comparative analysis and case study approaches

III. The Plight of Nepalese Advocates:

Defenders Also Need Defenders, Protecting Those Who Protect.[1]

When lawyers are targeted, the entire justice system is undermined[2]**.** In recent years, reports of advocates in Asian more overall in India seems to state that lawyers are facing threats, intimidation, and violence have become increasingly common. These incidents not only undermine the legal profession but also erode public confidence in the judicial system and the rule of law. In the context of Nepal, One of the most prominent cases that highlighted the vulnerability of advocates in Nepal was the, Nepal human right lawyer and environmental activist Gopal Siwakoti, was physically assaulted in Nepal on January 17th, 2001 (United Nations, 2001). He suffered serious injuries, including a fractured knee and head wounds. A police report was filed, but no investigation has been conducted. Numerous other advocates have reported receiving threats, being subjected to harassment, and even facing physical violence in retaliation for their work. In some cases, these attacks have been linked to powerful individuals or groups seeking to influence the outcome of legal proceedings or to silence those who challenge their interests. The consequences of such attacks are far-reaching and detrimental to the entire legal system. Advocates who feel threatened or intimidated may become reluctant to take on certain cases, particularly those involving powerful or influential parties. This can lead to a chilling effect on the legal profession, compromising the principles of equal access to justice and the fair administration of the law.

1 The phrase "Defenders also need defenders: Protecting Those Who Protect" is a common theme in the discourse on human rights advocacy.

2 This statement emphasizes the critical role lawyers play in upholding the justice system. When lawyers face threats or attacks, it doesn't just affect them individually, but compromises the entire legal process. Lawyers are essential for ensuring fair trials, protecting rights, and maintaining the rule of law. If they are intimidated or harmed, it can lead to a chilling effect where lawyers may be reluctant to take on certain cases or vigorously defend their clients. This, in turn, weakens the overall justice system by reducing access to legal representation and potentially allowing injustices to go unchallenged. The statement underscores that protecting lawyers is not just about individual safety, but about preserving the integrity and effectiveness of the justice system as a whole.

Moreover, the lack of legal protection for advocates can deter talented individuals from pursuing a career in the legal field, further exacerbating the shortage of qualified legal professionals in Nepal. This, in turn, can have ripple effects on the efficiency and effectiveness of the judicial system, ultimately undermining the rule of law and the protection of fundamental rights.

IV. The Indian Advocates Protection Act: A Step of Hope

General Law of India related with Advocate:

The Advocates Act, 1961 is a pivotal legislation that governs the legal profession in India. Enacted after India gained independence, it was a much-needed move to unify the disparate classes of legal practitioners like advocates, lawyers and barristers that existed under the previous Legal Practitioners Act of 1879. A key aspect of the Act is the establishment of the statutory Bar Council of India and State Bar Councils to regulate and oversee the conduct of advocates across the country. These bodies play a vital role by setting standards for enrollment, drafting rules of professional ethics, and maintaining a roll of advocates. The Act lays down clear eligibility criteria for enrollment as an advocate. This includes stipulations on minimum age, educational qualifications like a law degree, as well as clearing the All India Bar Examination conducted by the Bar Councils. For instance, a person convicted of an offence involving moral turpitude cannot be admitted as an advocate until a waiting period, as held in the Mahipal Singh Rana vs State of UP case (Mahipal Singh Rana Vs State of UP). Once enrolled, advocates are conferred specific rights and privileges under the Act. This includes the exclusive right to practice law by representing clients before any court, tribunal or authority. They can plead and act on behalf of clients. Additionally, advocates have the distinct privilege of being designated as 'senior' by virtue of experience, specialization or other criteria laid down by the respective High Courts, as per the T.N. Raghupathy case (Shri T N Raghupathy Vs The High Court of Karnataka 2020).

The Act puts in place a comprehensive disciplinary mechanism by setting up dedicated committees to inquire into allegations of professional misconduct by advocates. Based on the findings, it empowers these bodies to take punitive action ranging from issuing warnings and suspensions to permanently striking off an advocate's name from the rolls, thus terminating their right to practice. Recognizing the importance of quality legal education, the Act enables the Bar Council to establish law universities and prescribe curricula standards. It can also grant accreditation to law colleges based on compliance with specified norms. This exercise of regulating legal pedagogy aims to equip future advocates with the requisite skills and ethics training. In today's age of commercialization, the Act prohibits advocates from advertising their services through any mode

except as permitted under Bar Council rules. This is to maintain the decorum and integrity of the noble profession. Similarly, the Bar can prescribe fee schedules delineating minimum/maximum chargeable amounts for various legal services to prevent exploitation.The Act acknowledges the significance of ensuring access to justice for all by provisioning legal aid programs and schemes that State Bar Councils can promote and sponsor. This helps underprivileged sections of society in availing quality legal representation. While conferring extensive statutory rights, the Act also imposes various obligations and a strict code of conduct on advocates to uphold professional ethics and probity. Any violation renders them liable for disciplinary proceedings before the concerned Bar Councils. An interesting feature is enabling foreign lawyers and law firms to render professional services in India on a reciprocal basis and adhering to prescribed conditions. This allows the exchange of best practices while strengthening India's position as an international arbitration hub. The Act has witnessed several landmark judgments from the Supreme Court that have interpreted and settled contentious provisions over the decades. One such ruling in Pratap Chandra Mehta's case [3]reiterated the requirement of the Bar Council of India's approval for regulations framed by State Bar Councils to become enforceable. The establishing uniform standards, the Advocates Act ensures a robust regulatory framework governing India's legal fraternity. While criticisms exist around potential misuse and enforcement gaps, the Act undoubtedly plays a crucial role in preserving the integrity, accountability and independence of the country's legal system.

Special Advocate Protection Act of India passed by State Rajasthan:

On March 21, 2023, Shanti Kumar Dhariwal, the Law and Legal Affairs Minister of Rajasthan, stated that the Rajasthan state assembly had approved the Rajasthan Advocates Protection, 2023[4], 2023 in an amended form. The aim of this bill is to prevent violence against lawyers. The minister mentioned that important suggestions provided by advocates were incorporated into the amended bill. Rajasthan is the first state where such a law has been brought in the direction of protection of advocates. For the welfare of the advocates, every year Rs 5 crore is given by the State Government to the Bar Council (Dhariwal, 2023).

3 Pratap Chandra Mehta vs State Bar Council Of M.P.& Ors on 9 August, 2011

4 On 22nd March 2023, the Rajasthan State Assembly passed the Advocate Protection Bill, 2023, and the Bill was approved by voice vote in the Rajasthan Assembly.

Some Key Features of Act (Times now News, 2023):

Section 3	Any act of assault, grievous hurt, criminal force and criminal intimidation against an advocate will be deemed to be an offence under the Act if such an act is in connection with the discharge of duties of the advocate in court premises.
Section 4	If an advocate complains to the police regarding any act mentioned in Section 3, the police is to provide the lawyer with protection, if deemed fit.
Section 5	5(1) - Assault or criminal force against an advocate would lead to a maximum of two years imprisonment, along with a fine of up to ₹25,000.
	5(2) - Act of voluntarily causing grievous hurt to an advocate would lead to a maximum of seven years imprisonment and a fine of up to ₹50,000.
	5(3) - Voluntary commission of the offence of criminal intimidation against an advocate would result in maximum of two years imprisonment and a fine of up to ₹10,000.
Section 6	All offences under the bill have been made cognizable. A cognizable offence enables the police to make an arrest without a warrant or prior permission of the court.
Section 11	If any provisions of the act are misused, the guilty party would be punishable by upto 2 years of imprisonment.

V. The Need for an Advocate Protection Law in Nepal:

Inspired by the Indian Advocates Protection Act passed by Rajasthan , as India all state has grown the demand to pass such Act in there state also so in this way , Nepal must recognize the need to enact a similar legal framework to safeguard the interests of its legal professionals. Like there is words which is: Prevention is better than cure, so it is necessary to Nepal also to recognize such laws and Act in Nepal. The challenges faced by Nepalese advocates, coupled with the growing instances of threats and attacks, demand a robust and comprehensive response from the government and the legal community. An Advocate Protection Law in Nepal would serve as a powerful deterrent against those who seek to undermine the legal profession and the administration of justice. Clearly defining offenses against advocates and prescribing severe penalties for such actions, the law would send a strong message that any attempts to intimidate or harm legal professionals will not be tolerated. Furthermore, the establishment of a dedicated tribunal or oversight body to investigate complaints and impose penalties would provide a much-needed avenue for advocates to seek redress and ensure that their concerns are addressed promptly and effectively. The law could also

mandate the provision of adequate security measures for advocates, such as police protection or the establishment of special units within law enforcement agencies to handle cases involving threats or attacks against legal professionals. This would not only enhance the safety of advocates but also bolster public confidence in the legal system's ability to protect its guardians. Moreover, an Advocate Protection Law in Nepal could incorporate provisions for legal aid and support services for advocates who have been subjected to threats or attacks. This could include financial assistance, counseling, and other resources to help them cope with the psychological and emotional trauma associated with such incidents. Importantly, the drafting and enactment of an Advocate Protection Law in Nepal should not be a unilateral endeavor. It must involve extensive consultation and collaboration between the government, the Nepalese parliament, the Nepal Bar Council, and other stakeholders within the legal community. This inclusive approach would ensure that the law addresses the specific needs and concerns of Nepalese advocates while drawing upon best practices from other jurisdictions.

A Case Study: Physical Assault on a Lawyer in Nepal **(News Staff, 2024)**

On March 23, 2081, Advocate Laxmi (Nani) Thapa was physically assaulted by a police officer within the Kathmandu District Court premises. This brazen act of violence against a legal practitioner while on duty sent shockwaves through the legal community. The Kathmandu District Bar Association issued a strong condemnation of the incident, characterizing it as a direct attack on the independence of the judiciary.

The bar association's statement highlighted the deteriorating security situation for legal professionals and emphasized the urgent need for measures to protect lawyers while carrying out their professional duties. The incident has sparked widespread concern over the erosion of the rule of law and the implications for access to justice. This case underscores the critical importance of a safe and secure environment for lawyers to practice their profession without fear of violence or intimidation. The incident also highlights the urgent need for comprehensive legal frameworks to protect lawyers from physical harm and to ensure accountability for perpetrators of such attacks. The assault on Advocate Laxmi (Nani) Thapa is a stark reminder of the challenges faced by legal professionals in Nepal. It serves as a catalyst for advocating for stronger legal protections for lawyers, essential for upholding the rule of law and ensuring access to justice for all.

VI. The Role of the Nepal Bar Council:

The Nepal Bar Council, as the statutory body responsible for regulating and safeguarding the legal profession in the country, has a pivotal role to play in advocating for an Advocate Protection

Law. the Present Law of Nepal Bar Council Act has certain provision which indirectly also provides protection to the advocates as like, the Act states that states that one, of the functions and duties of the Nepal Bar Council is "To protect the prestige, dignity, security, rights, welfare and facilities of Legal Practitioners" (Government of Nepal, 2050).

Likewise it also states that no legal practitioner shall be arrested in a civil case concerning any claimed amount or penalty when they are on their way to present, plead and argue in a case on behalf of a party (Government of Nepal, 2050). No petition may be filed against a legal practitioner on slander on the basis of what they have said during the course of argument. It also allows the Nepal Bar Council to frame Rules regarding the "Professional Code of Conduct of Legal Practitioners" which can help protect their rights and dignity (Government of Nepal, 2050). While there is no dedicated section solely focused on advocate protection, Sections 8(1)(h), 24 and 27(2)(a) do provide some provisions aimed at protecting the prestige, dignity, security, rights and welfare of legal practitioners in Nepal.

As the collective voice of Nepalese advocates, the Bar Council should more leverage its influence and actively engage with the government and the parliament to ensure that this crucial legislation is given the attention and priority it deserves.

VII. The Role of Human Right commission of Nepal:

The Human Rights Commission of Nepal holds a pivotal role in safeguarding the rights of advocates. As a constitutional body mandated to protect, promote, and enforce human rights, the Commission is uniquely positioned to address the challenges faced by legal professionals. Its responsibilities encompass investigating human rights violations, monitoring the state of human rights, and recommending necessary measures for their protection. In the context of advocate rights, the Commission can play a crucial role by investigating incidents of violence against lawyers, documenting patterns of intimidation and harassment, and advocating for the implementation of comprehensive advocate protection laws. Furthermore, the Commission can provide legal aid and support to lawyers facing threats and reprisals, and engage in public awareness campaigns to highlight the importance of an independent legal profession for a just society.

Commission's Role in the Absence of a Specific Advocate Protection Law:

In the absence of a dedicated advocate protection law, the Human Rights Commission assumes an even more critical role. The Commission can utilize its investigative powers to probe incidents of violence against lawyers, gather evidence, and issue recommendations for

accountability. Through its monitoring and reporting functions, the Commission can document the prevailing threats to the legal profession and advocate for policy reforms. Additionally, the Commission can leverage its authority to engage in public advocacy, raising awareness about the challenges faced by lawyers and mobilizing support for their protection. Issuing advisory opinions and guidelines, the Commission can contribute to the development of a protective legal framework, even in the absence of formal legislation. Ultimately, the Commission's proactive engagement can help to mitigate the risks faced by lawyers and create a more conducive environment for the administration of justice.

A Case Study: The Philippines and Extrajudicial Killings of Lawyers:

The Philippines provides a stark example of the challenges faced by lawyers in a context of human rights abuses. The extrajudicial killings of numerous lawyers, particularly those involved in human rights and criminal cases, have raised significant concerns about the safety of the legal profession. The Philippine Commission on Human Rights (CHR) has been at the forefront of documenting and condemning these killings. The Commission has conducted investigations, issued reports, and advocated for accountability. Despite facing challenges, including threats and intimidation, the CHR has persisted in its efforts to protect human rights defenders, including lawyers (International Bar Association, 2022).

VIII. The Call for Legislative Action:

The enactment of an Advocate Protection Law in Nepal is not merely a matter of legal reform; it is a necessary step toward upholding the principles of justice, fairness, and the rule of law. It is a call to action for the Nepalese parliament to recognize the pivotal role that advocates play in safeguarding the rights of citizens and ensuring the proper functioning of the judicial system.

Legislators must understand that an attack on an advocate is an attack on the very foundations of justice itself. When legal professionals are subjected to threats, intimidation, or violence, it erodes public confidence in the legal system and creates an environment of fear and uncertainty. This, in turn, can discourage individuals from seeking legal recourse, perpetuating a cycle of injustice and undermining the principles of equality and due process. Taking decisive action and enacting a comprehensive Advocate Protection Law, the Nepalese parliament would send a powerful message that the safety and well-being of legal professionals are of paramount importance. It would demonstrate a firm commitment to upholding the rule of law and ensuring that the guardians of justice can perform their duties without fear of reprisal. The enactment of such a law would align Nepal with international standards and best practices regarding the protection

of legal professionals. It would place the country among the ranks of nations that have taken proactive measures to safeguard the integrity of their legal systems and uphold the fundamental rights of their citizens. The drafting process of the Advocate Protection Law should be inclusive and transparent, involving extensive consultations with stakeholders from the legal community, civil society organizations, and relevant government agencies. This collaborative approach would ensure that the law addresses the specific needs and concerns of Nepalese advocates while drawing upon best practices from other jurisdictions.

IX. Key Components of an Effective Advocate Protection Law:

To be truly effective, an Advocate Protection Law in Nepal must incorporate several key components that address the multifaceted challenges faced by legal professionals. These components should include, but not be limited to, the following:

a. **Clear definition of offenses against advocates**: The law should clearly define and categorize offenses against advocates, such as criminal intimidation, assault, interference with the discharge of professional duties, and any other acts that impede the fair administration of justice. This clarity would ensure that there is no ambiguity regarding what constitutes a violation and would provide a solid legal basis for prosecuting offenders.

b. **Enhanced penalties for offenses against advocates**: To serve as an effective deterrent, the law should prescribe enhanced penalties for offenses committed against advocates. These penalties should be proportionate to the severity of the offense and should take into account the critical role that advocates play in upholding the rule of law. Severe punishments, including substantial fines and imprisonment, would send a strong message that any attempts to undermine the legal profession will not be tolerated.

c. **Establishment of a dedicated tribunal or oversight body**: The law should mandate the establishment of a dedicated tribunal or oversight body to investigate complaints filed by advocates who have been subjected to threats, intimidation, or violence. This body should have the authority to conduct thorough investigations, collect evidence, and impose appropriate penalties on those found guilty of violating the provisions of the law.

d. **Provision of security measures and protection**: To ensure the safety and well-being of advocates, the law should include provisions for adequate security measures, such as police protection, the establishment of special units within law enforcement agencies to handle cases involving threats or attacks against legal professionals, and the implementation of security protocols in courtrooms and legal premises.

e. **Legal aid and support services**: The law should incorporate measures to provide legal aid and support services to advocates who have been victims of threats, intimidation, or violence. This could include financial assistance, counseling services, and other resources to help them cope with the psychological and emotional trauma associated with such incidents.

f. **Awareness and training programs:** To ensure effective implementation, the law should mandate the development of awareness and training programs for all stakeholders involved, including law enforcement agencies, judicial officials, and members of the legal community. These programs would promote a better understanding of the law's provisions, the importance of protecting legal professionals, and the procedures for reporting and addressing incidents of threats or attacks.

g. **Regular monitoring and evaluation**: The law should establish mechanisms for regular monitoring and evaluation of its implementation and effectiveness. This could involve periodic reports, external audits, and consultations with stakeholders to identify areas for improvement and ensure that the law remains relevant and responsive to the evolving challenges faced by advocates incorporating these key components, an Advocate Protection Law in Nepal would not only provide a robust legal framework for safeguarding the interests of legal professionals but also promote a culture of respect and appreciation for the crucial role they play in upholding the rule of law and protecting the rights of citizens.

X. International Perspectives and Best Practices:

While the Advocates Protection Act of India serves as a valuable reference point, it is essential to examine international perspectives and best practices to ensure that Nepal's Advocate Protection Law aligns with global standards and incorporates the latest developments in this area.

The independence of the legal profession is firmly established as the distinguishing feature of a democratic system by the 1990 Basic Principles on the Role of Lawyers (the "Basic Principles") and the 1993 Vienna Declaration on Human Rights, which were later supported by several states' resolutions at the UN Human Rights Council (UNHRC) and General Assembly (UNGA). According to the United Nations Basic Principles on the Role of Lawyers (UN Basic Principles), the independence of the legal profession is a critical foundation for upholding the rule of law in a democratic society. As per the International Covenant on Civil and Political Rights, harassing legal professionals may lead to infringement of clients' rights, particularly their right to due process (article 14 of the Covenant). Article 16 of The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders**,** Cuba says that "Governments shall

ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics" (Sharma, 2023).

Article 12 of the Declaration on Human rights defenders also says that States must take all necessary measures to ensure the protection of human rights defenders including lawyers. Principle 7 of the ICJ Geneva Declaration on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis, 2011 states, "All branches of government must take measures to protect lawyers from violence, threats, retaliation, de facto or de jure discrimination, pressure, and other arbitrary actions." Principle 12 of UN principles and guidelines on access to legal aid in the criminal justice system published by the United Nations Office on Drugs and Crime (UNODC) also imposes obligations on the state for the Independence and protection of legal aid providers. In order to achieve Sustainable Development Goal 16 of the 2030 Agenda for Sustainable Development, the independence of advocates and the legal profession are undeniably essential components. These many international standards and regulations make it abundantly evident that states have a responsibility to safeguard advocates and the legal profession (Sharma, 2023).

XI. Overcoming Challenges and Building Resilience:

The path to enacting an Advocate Protection Law in Nepal may not be without challenges. There may be resistance from certain quarters, concerns about potential misuse or overreach, and debates surrounding the appropriate balance between protecting advocates and preserving the rights of others. However, these challenges should not deter the pursuit of this crucial legislation. Instead, they should serve as opportunities for constructive dialogue, open discourse, and the refinement of the law to address legitimate concerns while upholding the fundamental principles of justice and the rule of law. One potential challenge may arise from concerns about the law being misused or abused for personal or political gain. To address this, the law should incorporate robust safeguards and mechanisms to prevent frivolous or malicious complaints. This could include provisions for stringent evidentiary requirements, independent oversight, and penalties for false or vexatious claims. Another challenge may stem from apprehensions about the law's potential impact on the rights of individuals or organizations to express dissent or criticize legal professionals. It is crucial to strike a balance between protecting advocates and preserving the fundamental rights of free speech and expression. The law should clearly delineate the boundaries between legitimate criticism and intimidation or interference with the discharge of professional duties. Overcoming these challenges will require a concerted effort from all stakeholders, including the government, the

legal community, civil society organizations, and the public. It will necessitate open and transparent communication, extensive consultations, and a willingness to listen to diverse perspectives while remaining steadfast in the pursuit of protecting the guardians of justice. Moreover, it is essential to recognize that enacting an Advocate Protection Law is not a panacea but rather a significant step in a broader journey towards strengthening the rule of law and fostering a culture of respect for the legal profession. Complementary measures, such as public awareness campaigns, educational initiatives, and ongoing dialogue between the legal community and the public, will be crucial in building resilience and ensuring the effective implementation of the law.

XII. Conclusion:

Lawyers in Nepal are more than legal practitioners; they are guardians of our fundamental rights. Protecting them is not just a moral imperative but a strategic necessity for a just and equitable society. Nepal's journey towards a human rights-based society is inextricably linked to the safety and security of its lawyers. It is imperative to create an environment where legal professionals can work without fear of reprisal. The enactment of an Advocate Protection Law in Nepal is not merely a matter of legal reform; it is a moral imperative that strikes at the heart of upholding justice, fairness, and the rule of law. As guardians of justice, advocates play a pivotal role in safeguarding the rights of citizens and ensuring the proper functioning of the judicial system. Yet, they often find themselves subjected to threats, intimidation, and violence, hindering their ability to perform their duties effectively. It is drawing inspiration from the Advocates Protection Act of India and incorporating international best practices, Nepal has an opportunity to create a comprehensive legal framework that shields legal professionals from undue interference and empowers them to carry out their noble duties without fear or favor.

The call to action is clear: the Nepalese parliament and the Nepal Bar Council must take proactive measures to draft and enact an Advocate Protection Law that addresses the specific needs and challenges faced by Nepalese advocates. Ultimately, the enactment of an Advocate Protection Law in Nepal is not just a legal endeavor; it is a moral imperative that reflects the nation's commitment to upholding the principles of justice, fairness, and the rule of law. The safeguarding guardians of justice, Nepal can foster a legal system that inspires confidence, promotes equal access to justice, and upholds the fundamental rights of its citizens. In a world where the role of advocates is increasingly challenged and their safety is often compromised, Nepal has an opportunity to lead by example, setting a precedent for other nations to follow. Through unwavering determination, collaborative efforts, and a shared vision, Nepal can create a lasting legacy of protecting those who tirelessly defend the principles of justice and uphold the sanctity of the law.

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लेखकहरुको लागि मापदण्ड

राष्ट्रिय मानव अधिकार आयोगबाट प्रकाशित मानव अधिकार शोध-पत्रिका संवाहक मा लेख पठाउने सम्बन्धमा लेखकहरुको जानकारीका लागि देहायबमोजिमको मापडण्ड तयार गरिएको छ ।

- शोध-पत्रिका (Journal) को लागि प्राप्त हुने लेखहरू मानव अधिकार र सो विषयसँग सम्बन्धित हुनुपर्नेछ ।
- लेख उपलब्ध गराउने सम्बन्धमा आयोगले आफ्नो Website तथा सामाजिक सञ्जालमा सूचना प्रकाशन गर्नेछ ।
- लेखकले आफ्ना लेखरचना सम्पादन समितिलाई सूचनामा उल्लेख गरिएबमोजिमको मितिमा इमेलमार्फत उपलब्ध गराउनुपर्नेछ ।
- लेखकले सम्पादन-समितिलाई जानकारी नदिई सोही लेखरचना अन्यत्र दिन पाउने छैन । सोही लेख आयोगको शोध-पत्रिकामा प्रकाशन हुनुपूर्व अन्यत्र प्रकाशन भएको खण्डमा लेखकलाई पारिश्रमिक उपलब्ध गराइने छैन ।
- लेख अस्वीकृत भएको वा प्रकाशनयोग्य नरहेमा सम्बन्धित लेखकलाई सो को जानकारी गराउनुपर्दछ।
- लेखरचना प्रकाशन गर्ने-नगर्ने सर्वाधिकार सम्पादन-मण्डलमा निहित रहनेछ ।
- शोध-पत्रिकाको लागि प्राप्त लेखहरूमा तपसीलबमोजिमको निर्धारित ढाँचामा हुनुपर्नेछ :
    - परिचय वा पृष्ठभूमि (Introduction or Background)
    - अनुसन्धानात्मक लेखको उद्देश्य/प्रश्न (Research Objectives/Questions)
    - विधि (Methodology)
    - विश्लेषण (Analysis)
    - निष्कर्ष (Conclusion)/सुझावह¿ (Recommendations)
    - सन्दर्भ-सामग्री (References)
- सारसङ्क्षेप १५० देखि २५० शब्दबीचमा हुनुपर्नेछ ।
- लेखरचना न्यूनतम ५००० शब्दको हुनुपर्नेछ ।
- उद्धरण (Citation) र Referencing (सन्दर्भ सामग्री) American Psychological Association (APA) को सातौँ संस्करण (7^{th}) अनुसार हुनुपर्नेछ ।
- लेखमा यथाशक्य प्राथमिक स्रोत (Primary Source) को प्रयोग गर्नुपर्नेछ। द्वितीय स्रोत (Secondary Source) लाई प्रयोगमा ल्याउन सकिनेछ ।
- लेख-रचना पठाउँदा नेपालीमा कालिमाटी र अङ्ग्रेजीमा टाइम्स न्यू रोमन (Times New Roman) अक्षर (Font) आकार (Size) १२ मा हुनुपर्नेछ ।
- यस मापदण्डलाई आवश्यकता र औचित्यताको आधारमा सम्पादक मण्डलले सल्लाहकार समितिसँग परामर्श गरी संशोधन गर्न सक्नेछ ।

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७७. राष्ट्रिय मानव अधिकार आयोग बागमती प्रदेश कार्यालयको वार्षिक गतिविधि पुस्तिका, २०७७/७८

७८. मानव अधिकार र जान्नुपर्ने कुरा, २०७८
७९. वार्षिक प्रतिवेदन (आ.व. २०७९/०८०)
८१. संक्षिप्त वार्षिक प्रतिवेदन आर्थिक वर्ष २०७९/०८०
८२. संक्षिप्त वार्षिक प्रतिवेदन आर्थिक वर्ष २०७९/०८० (अंग्रेजी)
८३. मानव अधिकार सम्बन्धी जान्नुपर्ने कुरा, २०८१
८४. महत्वपूर्ण प्रेस–विज्ञप्तिहरू भग –४
८५. राउटेको मानव अधिकार अवस्था अध्ययन प्रतिवेदन, २०८१
८६. राष्ट्रिय मानव अधिकार आयोग र संक्रमणलीन न्याय
८७. लैङ्गिक समानता तथा सामाजिक समावेशीकरण नीति, २०७७ दोस्रो संस्करण (नेपाली)
८८. Gender Euality and Social Inclusion Policy, 2021 (English)
८९. The human Rights Situation of Nomadic Raute Community, 2024
९०. मानसिक स्वास्थ्य अधिकार अवस्था (गण्डकी र बागमती प्रदेश) अध्ययन प्रतिवेदन २०८१
९१. एच.आई.भी./एड्स सक्रमित नागरिकको मानव अधिकार अवस्था अध्ययन प्रतिवेदन–२०८१
९२. चौंबिसऔं वार्षिक प्रतिवेदन (आ.व.२०८०/०८१)
९३. सङ्क्षिप्त वार्षिक प्रतिवेदन (आ.व.२०८०/०८१)(नेपाली)
९४. A Study on the situation of Mental Health Rights in Gandaki and Bagmati Provinces-2024
९५. A Study on the Human Rights Situation of People Living with HIV/AIDS-2024

मानव अधिकार चिन्तक तथा लेखक समूहमा अहिलेसम्म आवद्ध संवाहकका लेखकहरू

अङ्क-१

१. राजुप्रसाद चापागाई (+अङ्क ४)
२. विष्णुप्रसाद तिमिल्सेना (+अङ्क ५, १२ २१)
३. बनोदकुमार वि.क. (+अङ्क ४)
४. डा. शङ्करकुमार श्रेष्ठ
५. ओमप्रकाश अर्याल (+अङ्क ७)
६. डा. हरिहर वस्ती (+अङ्क १२)
७. डा. रंजीतभक्त प्रधानाङ्ग
८. डा. श्रीप्रकाश उप्रेती (+अङ्क ७)
९. डा. लोकनाथ भुषाल
१०. विशाल खनाल (+अङ्क १३, २०)
११. माधव रेग्मी (+अङ्क ३)
१२. पुष्पा पोखरेल (+अङ्क ४)
१३. जायश्वर चापागाईं
१४. मोहना अन्सारी

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१५. ललितबहादुर बस्नेत (+अङ्क १९)
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)
२२. सलिना काफ्ले (+अङ्क ६)
२३. उदयन रेग्मी
२४. डा. चन्द्रकान्त ज्ञवाली (+अङ्क ४)
२५. सोम लुइंटेल (+अङ्क ७, १४)
२६. लोकेन्द्र पनेरु (+ अङ्क ८)

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२७. मोहन बन्जाडे (+अङ्क २२)
२८. संजीवराज रेग्मी (+ अङ्क ८)
२९. गोविन्द शर्मा वन्दी
३०. कृष्णजीवी घिमिरे (+अङ्क ७, १२, १८)
३१. श्रीराम अधिकारी
३२. डा. टीकाराम पोखरेल (+अङ्क ११, १६)
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, २०)
४२. डा. महेन्द्रजंग शाह
४३. शारदा तिमिल्सेना
४४. शिवप्रसाद पौडेल
४५. नीतु पोखरेल (+अङ्क १५)
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 (+अङ्क १२)

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५२. डा. नारायणप्रसाद घिमिरे
५३. कोषराज न्यौपाने
५४. वीरबहादुर बुढा मगर
५५. श्यामबाबु काफ्ले (+अङ्क ७, १३, १६)
५६. बुद्धिनारायण श्रेष्ठ
५७. घनश्याम खड्का (+अङ्क ११)

५८. सूर्यप्रसाद पराजुली (+अङ्क ९)

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५९. वेद भट्टराई (+अङ्क १३, १४)

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६०. प्रा.डा. श्रीरामप्रसाद उपाध्याय

६१. नवराज सापकोटा (+अङ्क ११, १३, १४)

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६२. वसन्त अधिकारी

६३. इन्दु तुलाधर

६४. शिवप्रसाद पौडेल

६५. टेक ताम्राकार (+अङ्क १२, १९)

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६६. जेष्ठ नागरिक विशेषाङ्क २०७५ (रा.मा.अ.आ)

अङ्क ११

६७. बलराम राउत

६८. केशवप्रसाद चौलागाईं

६९. अर्जुन विश्वकर्मा

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७०. मीना गुरुङ

७१. प्रेमबहादुर थापा

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७२. विदुशी अधिकारी

७३. श्यामकुमार भट्टराई

७४. इन्दिरा दाहाल

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७५. दिनेश रेग्मी

७६. होम कार्की

७७. रामेश्वर नेपाल

७८. शरु जोशी

७९. मन्जु गरुङ

८०. नेहा चौधरी

८१. अनुराग देवकोटा

८२. आरती श्रेष्ठ

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८३. यज्ञप्रसाद अधिकारी (+अङ्क १८)

८४. रविन्द्र आचार्य

८५. केदार कोइराला

८६. कल्पना नेपाल आचार्य

८७. Akhila Kolisetty

८८. अनिशकुमार पौडेल

८९. दिनेशप्रसाद जोशी रतला

अङ्क १६

९०. केशवप्रसाद बास्तोला

९१. बासुदेव बजगाईं (+अङ्क १८)

९२. डा. टिकाराम पोखरेल

९३. डा. दिव्य दवाडी

९४. रघुनाथ अधिकारी (निलमशेखर)(+अङ्क २१)

९५. राजेश भ्का अहिराज

९६. महेन्द्र विष्ट

९७. डा. लेखनाथ पौडेल

९८. डा. हेमन्तराज दाहाल

अङ्क १७

९९. किरण बराम

१००. समिक्षा पौडेल

१०१. अच्युतमणि न्यौपाने

अङ्क १८

१०२. डा. कृष्णचन्द्र शर्मा

१०३. विजयप्रसाद मिश्र

१०४. डा. श्रीजनाकुमारी भण्डारी

१०५. मोहन काफ्ले

१०६. दिपेन्द्रबहादुर सिंह

१०७. राजेन्द्रबहादुर सिंह

१०८. डा. वीरेन्द्रराज पोखरेल

१०९. अक्षेया दुवाडी

अङ्क–१९ (विपद् र मानव अधिकार विशेषाङ्क)

११०. डा. समीरकुमार अधिकारी

१११. रोशनकुमार भ्का (+अङ्क २१)

११२. डा. घनश्याम गुरुङ

११३. आरती खड्गी

११४. डा. धरमराज उप्रेती

११५. टीकेश्वरी जोशी
११६. डा. सुवोध ढकाल
११७. दिनेशप्रसाद घिमिरे

अङ्क २०

११८. डा. गिरिधारी शर्मा पौडेल
११९. रवीन्द्र भट्टराई
१२०. अजयशंकर झा "रूपेश" (+अङ्क २२)
१२१. डा. खुशीप्रसाद थारु
१२२. कर्णबहादुर थापा
१२३. विजयप्रसाद जयसबाल
१२४. सविनबहादुर जूवा

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१२५. प्रेमराज सिलवाल
१२६. चन्द्रकुमार राई
१२७. भोला भट्टराई
१२८. दुर्गा पोखरेल

अङ्क २२

१२९. बुद्धनारायण साहनी केवट
१३०. कुमारी महरा
१३१. Dr. Newal Chaudhary
१३२. Dipesh Kumar Ghimire, PhD
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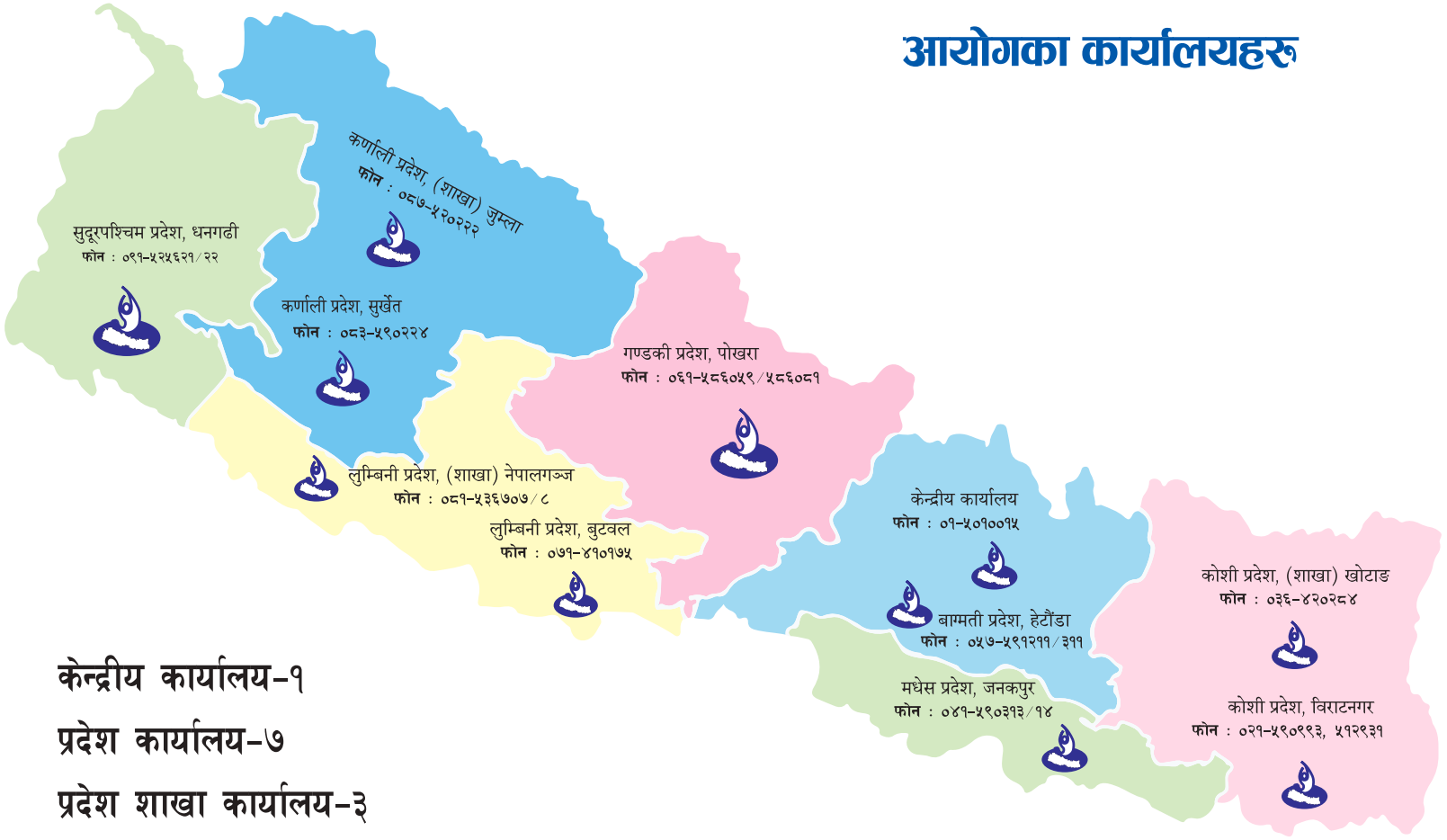
आयोगका कार्यालयहरू



केन्द्रीय कार्यालय-१

प्रदेश कार्यालय-७

प्रदेश शाखा कार्यालय-३