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Samsad Journal



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संसद जर्नल

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(जर्नलमा प्रकाशित लेखहरु प्रकाशन समितिका आधिकारिक विचार नभई लेखकका निजी विचारहरु हुन्। शाखाको पूर्वस्वीकृतिविना जर्नलको पुनः उत्पादन र मुद्रण गर्न पाइने छैन।)

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सम्पादकीय

संसदीय पद्धति, विधि निर्माण, संसदीय गतिविधि लगायत महत्वपूर्ण समसामयिक विषयहरूमा आधारित रही विज्ञहरूद्वारा लेखिएका लेखहरू समावेश गरी तयार पारिएको संसद जर्नलको पहिलो अङ्क पाठक समक्ष पुऱ्याउन पाउँदा हामी अत्यन्त हर्षित भएका छौं। संसद जर्नलको प्रकाशनले संसदीय मामिलाहरूको विस्तृत विश्लेषण र अनुसन्धानलाई सहयोग पुऱ्याउनुका साथै तथ्यमा आधारित कानुन निर्माणमा समेत सहयोग पुऱ्याउने देखिन्छ ।

संसदीय अध्ययन तथा अनुसन्धानको एउटा महत्त्वपूर्ण स्रोत सामग्रीका रुपमा स्थापित गराउने ध्येयका साथ संसद जर्नल प्रकाशनको थालनी गरिएको हो । यस अङ्कमा विभिन्न क्षेत्रमा अनुभव र विज्ञता हासिल गर्नुभएका नीति निर्माता, प्रशासक एवं विज्ञहरूका लेखहरूलाई समावेश गरिएको छ ।संसद जर्नललाई पहिलो अङ्कदेखि नै अनुसन्धानमूलक जर्नलको स्तरीय ढाँचा अनुरुप प्रकाशनमा ल्याइएको छ। लेखहरूको मौलिकता सुनिश्चित गर्नका लागि सबै लेखहरूको प्लेगियारिजम टेस्ट (Plagiarism Test) गरिएको छ। साथै, नवीन लेखहरूलाई मात्र जर्नलमा समावेश गरिएको छ। आगामी अङ्कहरूमा जर्नलको गुणस्तरीयता प्रवर्द्धनका लागि विषय विज्ञ समीक्षा (Peer Review) को अभ्यासको थालनीको प्रयास गरिनेछ।

अनुसन्धानमूलक नवीन लेखहरूमा रुचि राख्ने सबै पाठकहरूका लागि जर्नल महत्वपूर्ण खुराक हुने अपेक्षा रहेको छ । यस अङ्कमा आफ्ना महत्वपूर्ण लेखहरू उपलब्ध गराई संसद जर्नलको पहिलो अङ्कको प्रकाशनलाई सफल बनाउन योगदान गर्नुहुने सम्पूर्ण विज्ञ लेखकहरूप्रति हार्दिक कृतज्ञता प्रकट गर्दछौं। साथै जर्नल प्रकाशनमा प्रत्यक्ष अप्रत्यक्ष रुपमा संलग्न भई सहयोग पुऱ्याउनु हुने सचिवालयका सम्पूर्ण कर्मचारीहरूलाई समेत धन्यवाद दिन चाहन्छौं ।

- सम्पादक मण्डल

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नेपाली खण्ड

नेपालको विकासमा सार्वजनिक निजी साझेदारीः समस्या र समाधान

- रामबन्धु सुवेदी*

लेखसार

राज्य र राज्यबाहेकका पात्रहरूबीच सार्वजनिक क्षेत्रका सामाजिक तथा भौतिक पूर्वाधारहरू निर्माण तथा प्रयोगमा गरिने आपसी सहकार्य सार्वजनिक निजी साझेदारी हो । यो सहभागितामूलक शासन र साझेदारी शासनको एक प्रक्रिया समेत हो । विकासका पूर्वाधार निर्माणमा सार्वजनिक वित्तको अभावपूर्ति गर्दै निजी क्षेत्रको पुँजी, प्रविधि र कुशलतालाई राष्ट्र राज्य निर्माणमा उपयोग गर्ने माध्यम पनि हो । तर निजी क्षेत्र नाफामुखी हुने भएकोले साझेदार दुवै पक्षमा लाभ र जोखिमको समान र न्यायोचित विनियोजन हुने अनुमानयोग्य संस्थागत प्रणालीको अभावमा नेपालको निजी क्षेत्र सार्वजनिक क्षेत्रसँग साझेदारीका लागि तयार देखिँदैन । यसले गर्दा विश्वका धेरै देशहरूले लाभ लिइरहँदा नेपाल पछि परेको अवस्था छ । साझेदारीमा रहेका विश्वासका संकटहरूको स्पष्ट र अनुमानयोग्य नीतिहरू मार्फत सम्बोधन गरी सार्वजनिक निजी साझेदारीलाई विकास र समृद्धिको अभियानमा भरपुर उपयोग गर्नुपर्ने वर्तमान आवश्यकता देखिन्छ ।

शब्दकुञ्जी : सार्वजनिक निजी साझेदारी, लगानी, वित्तिय जोखिम, प्रतिफल

परिचय

सार्वजनिक क्षेत्रमा निहित कानूनी शक्ति, समन्वय र नियमनको अधिकार तथा निजी क्षेत्रको पुँजी, उद्यमशीलता, प्रविधि र उत्पादकत्वको सन्तुलित संयोजन गरी देशमा उपलब्ध स्रोत र सम्भावनाको कुशल र मितव्ययी प्रयोगबाट शीघ्र र गुणस्तरीय विकास नतिजा प्राप्त गर्ने शासकीय अवधारणा सार्वजनिक निजी साझेदारी हो। यो एक प्रकारको सम्झौता पनि हो, जहाँ दुवै पक्षले पारदर्शी रुपमा जीत-जीतको अवधारणामा कार्य

* *सहसचिव, नेपाल सरकार*

गर्दछन्। दुवै पक्षका सकरात्मक उर्जाको सम्मिलन हुने भएकोले पनि यस प्रकारको साझेदारीमा दुवै पक्षले अधिकतम लाभ प्राप्त गर्न सक्षम हुने गर्छन् । निजी क्षेत्र अन्तर्गत सरकार बाहेकका व्यक्तिगत स्वामित्व भएका र सामुदायिक स्वामित्व भएका संघ संस्था, सामुदायिक संस्था, समूह, व्यक्तिहरू समेत पर्दछन्। विकास निर्माण तथा सेवा प्रवाह सम्वन्धी कार्यमा सरकारको भूमिकालाई क्रमशः नीति निर्माण, सहजीकरण, समन्वय, प्रवर्द्धन र नियमनको रुपमा केन्द्रीकरण गर्ने तथा सरकारभन्दा बाहिरका पात्रको क्षमतालाई कार्यान्वयनमा उपयोग गर्ने रणनीतिका रुपमा पनि यसलाई लिइन्छ। यो समकालीन विश्वमा हरेक देशहरूले अपनाएको विकास व्यवस्थापनको रणनीति पनि हो।

सार्वजनिक निजी साझेदारीको सैद्धान्तिक आधार

राज्य केन्द्रित शासकीय अवधारणामा आएको तीव्र संकट तथा शासन प्रक्रियामा राज्यबाहेकका पात्रहरूको बलियो र अपरिहार्य उपस्थितिको आवश्यकता महशुस गरेपश्चात औपचारिक रुपमा सार्वजनिक निजी साझेदारी (सानिसा) को प्रादुर्भाव भएको हो। अनौपचारिक रुपमा धेरै अगाडि शुरु भएको भएता पनि यसको सैद्धान्तिक र व्यावहारिक बहसको प्रारम्भ विन्दु भने सन् १९८० को दशक नै हो। यसको सैद्धान्तिक आधार नयाँ सार्वजनिक व्यवस्थापन नै हो । नयाँ सार्वजनिक व्यवस्थापनको शासकीय बहसले निजीकरणको प्रमुख साधनलाई अगाडि सारेको भएता पनि यसका आलोचना र जोखिमहरूको भार अधिक देखिन थालियो । फलस्वरुप जित-जित को सैद्धान्तिक आधारमा सार्वजनिक निजी साझेदारी उपयुक्त मार्गका रुपमा पहिचान गरियो। यो अर्थशास्त्रको कुशलता, दक्षता, विशिष्टीकरण, पुँजीको सीमान्त उपयोग तथा शासकीय वैधता, सहभागिता, शीघ्रता र उच्च प्रतिफल जस्ता सैद्धान्तिक धरातलमा आधारित रहेको छ।

संकुचित दृष्टिकोणमा भौतिक पूर्वाधारहरू निर्माणमा मात्र सार्वजनिक निजी साझेदारीलाई लिने गरेको पाइन्छ तर पछिल्लो समयमा अभ्यासमा आएका सह-शासन, सह-उत्पादन, सह-निर्माण तथा नेटवर्क शासनका मर्म पनि सानिसाले अवलम्बन गरेको

पाइन्छ। वर्तमान अवस्थामा नागरिक तहसम्मका सहशासनका विषयहरू पनि सार्वजनिक निजी साझेदारीको वृहत् अवधारणा भित्र पर्दछन्।

राज्यका क्रियाकलापमा सरकार, निजी क्षेत्र र सेवाग्राहीको सहभागिताको माध्यमद्वारा लगानीका क्षेत्रहरूको प्रवर्द्धन गरी सार्वजनिक सेवा प्रवाहमा सुधार एवम् अर्थतन्त्रको सुदृढीकरणमा योगदान दिने उपायका रुपमा सानिसालाई अगाडि ल्याइएको देखिन्छ। सार्वजनिक क्षेत्रको वैधानिकता, विश्वसनियता, जवाफदेहिता तथा निजी क्षेत्रको नतिजामुखी संस्कार, कार्यगत दक्षता, व्यावसायिकता र व्यवस्थापकीय क्षमताको उचित एवम् प्रभावकारी संयोजनमार्फत सार्वजनिक पूर्वाधार र सेवा प्रवाहलाई प्रभावकारी र गुणस्तरीय बनाउने सैद्धान्तिक आधार यसको रहेको हुन्छ । त्यसैगरी सार्वजनिक खरीद प्रणालीमा रहेको प्रक्रियागत झन्झट र अत्यधिक ब्युरोक्रेटिक प्रक्रियाको विकल्पमा शीघ्र र नतिजामुखी कार्यसम्पादनको उद्देश्यमा समेत आधारित रहेको छ।

साझेदारी अन्तर्गत आयोजना डिजाइन, निर्माण, वित्तीय व्यवस्था, सञ्चालन र मर्मत सम्भारका कार्यहरू गरिन्छन्। यसमा मूलतः सार्वजनिक उद्देश्य हासिल गर्न सार्वजनिक र निजी क्षेत्रबीच निश्चित् सर्तको अधीनमा रही गरिने सहकार्य गर्ने गरिन्छ । यसैगरी सार्वजनिक पूर्वाधार तथा सेवा सुविधाहरूको व्यवस्थापन सम्बन्धी कार्यमा सरकार, निजी क्षेत्र र नागरिक समाजले एक आपसमा सिर्जनशील र सहयोगी भई सहभागिताको आधारमा निर्माण, सञ्चालन र व्यवस्थापनको जिम्मेवारी लिने पद्धति भनेर पनि यसलाई अवलम्बन गरिएको हुन्छ।

आर्थिक सहकार्य तथा विकास संगठन (ओइसिडी) का अनुसार सरकार र निजी क्षेत्रबीच लामो समयको करार सम्झौता नै सार्वजनिक निजी साझेदारी हो, जहाँ निजीले पुँजीको प्रयोग गरेर सार्वजनिक सेवा वा पूर्वाधारको निर्माण गर्दछ र सम्बन्धित लाभ र जोखिम समेत वहन गर्दछ। त्यसैगरी नेपालको सार्वजनिक निजी साझेदारी ऐन, २०७५ का अनुसार सार्वजनिक निकाय र लगानीकर्ताबीच स्रोत तथा प्रतिफल तथा जोखिम व्यहोर्ने गरी आपसी सहकार्यमा निर्माण संरचना निर्माण, सञ्चालन, पुनर्स्थापना वा सार्वजनिक सेवा प्रवाह गर्न कुनै परियोजना कार्यान्वयन गर्ने प्रबन्ध सम्झनु पर्दछ भनिएको छ। अधिकांश विद्धानहरूले निजी क्षेत्रले आफ्नो पुँजी र प्रविधिको प्रयोग गरी

सार्वजनिक सेवा तथा पूर्वाधारहरू निर्माण गर्ने र सरकारी नीतिबाट लगानीको सुनिश्चितता गरिएको हुन्छ भनी परिभाषित गरेका छन्।

यस अवधारणालाई पछिल्लो समयमा मुख्य गरी निजी क्षेत्रको पुँजी, प्रविधि तथा उद्यमशीलताको उपयोग गर्ने, जोखिमको विभाजन, मुनाफा अभिवृद्धि गर्ने, द्वन्द्व र विरोधाभाषको समनमा सहयोगी हुने, नागरिक सशक्तीकरणमा सहयोग गर्ने, नीति तथा कार्यक्रममा अपनत्व विस्तार गर्ने, स्थानीय सम्भावनाको उपयोग गर्ने, सामाजिक पुँजी निर्माण र दिगो विकासमा सहयोग गर्ने, नवीनतम प्रविधिको प्रयोग गर्न प्रोत्साहन गर्ने तथा राज्यको शासकीय लक्ष्यहरू हासिल गरी सुशासन र समृद्धि हासिल गर्ने शासकीय रणनीतिका रुपमा पनि लिने गरिएको छ ।

सार्वजनिक निजी साझेदारीका विविध स्वरूपहरू

सामान्यतयाः सार्वजनिक निजी साझेदारीलाई सार्वजनिक वित्तको अभावपूर्तिको लागि वित्तीय स्रोत हो भन्ने बुझाइ रहेको छ, तर वास्तविकता त्यसो नभई यो वित्तीय व्यवस्थाको एक विधि मात्र हो। आयोजनाको वित्तीय स्रोत जहिले पनि सरकार, आयोजनाका उपभोक्ता वा बहुराष्ट्रिय संस्था नै हुने गर्दछन्, साधनको प्रवन्ध मात्र र व्यवस्थापन साझेदारीले गर्ने हो ।

सानिसाअन्तर्गत विश्वमा मूलतः तीन प्रकारका मुख्य साझेदारी अवधारणाहरूको अभ्यास गरिएको पाइन्छ । पहिलो हो त्रिपक्षीय साझेदारी, जस अन्तर्गत सार्वजनिक क्षेत्र अर्थात केन्द्रीय वा स्थानीय सरकार निजी उद्यमी वा व्यवसायी र नागरिक समाज (गै.स.स, उपभोक्ता समूह, टोल विकास संस्था, पेशागत संगठन आदि) तीन पक्ष नै साझेदार भई गरिने साझेदारी पर्दछ । दोस्रो हो, सरकार निजी क्षेत्र साझेदारी, जस अन्तर्गत केन्द्रीय सरकार वा स्थानीय निकाय र निजी उद्यमी, व्यवसायी साझेदार भै गरिने तथा नागरिक समाजले समन्वय सहयोग र निगरानी गर्न सक्ने साझेदारी पर्दछ । तेस्रो हो, सरकार नागरिक समाज साझेदारी, जस अन्तर्गत केन्द्रीय सरकार, सरकारको कुनै निकाय वा स्थानीय निकाय र नागरिक समाजको रुपमा रहेका संघ, संस्था, समूह आदि साझेदार हुने गरी गरिने साझेदारी पर्दछ।

माथि उल्लेखित तीन मुख्य अवधारणा भित्र रही विश्वका विभिन्न देशहरूमा अपाइएका साझेदारीका कार्यान्वयन मोडलहरू विकसित भएका छन् । जुन देहायबमोजिम रहेका छन् :-

- Build – Operate – Transfer (BOT)
- Design- build-operate-own- transfer (DBOOT)
- Build – transfer- lease
- Build – Own – Operate (BOO)
- Build – Own – Operate – Transfer (BOOT)
- Design – Build
- Design – Build – Finance
- Design – Build – Finance – Operate (DBFO)
- Design – Construct – Maintain – Finance (DCMF)
- O & M (Operation & Maintenance)
- Strategic Partnership
- Users and community Groups
- Community government partnerships

सार्वजनिक निजी साझेदारीको विकासक्रम

इजिप्टका राजा मोहम्मद अलीले अठारौं शताब्दीको प्रारम्भमा कन्सेसन नामक अवधारणाको प्रयोग गरी निजी क्षेत्रहरूमार्फत बाटाहरू, रेलमार्ग तथा बाँधहरू बनाएको भन्ने इतिहास भेटिन्छ। यस अन्तर्गत निजी क्षेत्रलाई सार्वजनिक पूर्वाधारहरू निर्माण गर्न अनुमति तथा विविध सहुलियतहरू प्रदान गरी लामो अवधिको लागि सञ्चालन समेत गर्ने दिने विधि अपनाइएको पाइन्छ । त्यसैगरी संयुक्त राज्य अमेरिकाका प्रारम्भिक अवस्थाका पूर्वाधारहरू पनि यही अवधारणामा नै निर्माण गरिएको देखिन्छ, जसअन्तर्गत ठूलो संख्यामा स्टीमबोट, रेलमार्ग, विद्युत ग्रीडहरू तथा टोल गेटहरू निर्माण गरिएको इतिहास देखिन्छ। सन् १९९२ मा ब्रिटिश प्रधानमन्त्री जोन मेजरले प्राइभेट फाइनान्स इनिसिएटिभ अर्थात पिएफआइ लागु गरे । यसलाई नै पहिलो योजनाबद्ध र कानूनी सार्वजनिक निजी साझेदारीको प्रारम्भ मान्न सकिन्छ। उक्त कार्यक्रमले सार्वजनिक ऋणलाई कम गरी सार्वजनिक वित्तीय जोखिमलाई कम गर्ने उद्देश्य लिएको थियो ।

सन् १९९० को दशकमा धेरै ओइसिडी अर्थात आर्थिक सहकार्य र विकास संगठन देशहरूले अन्धाधुन्ध रुपमा यस अवधारणाको प्रयोग गरेका थिए। विशेष गरी सार्वजनिक खरीद प्रणालीका झन्झटहरूबाट मुक्त गर्नका लागि पनि सानिसालाई प्रभावकारी औजारका रुपमा लिइएको थियो।

सन् १९९७ मा ब्रिटिश प्रधानमन्त्री टोनी ब्लेयरले सानिसाको पुरानो अभ्यासलाई परिमार्जन गरी दुवै पक्षले जोखिम बहन गर्ने र अर्ध-स्वायत्त प्रकृतिको पार्टनरसीप युके भन्ने सानिसा हेर्ने संस्था स्थापना गरी विगतका र नयाँ सार्वजनिक निजी साझेदारीका परियोजनाहरूलाई अगाडि बढाए। विश्वका धेरै देशहरूले पनि यो अवधारणालाई नयाँ लगानीका स्रोतका रुपमा र सार्वजनिक वित्तीय जोखिम न्युन गर्ने औजारका रुपमा समेत व्यापक रुपमा अभ्यास गर्ने थाले। सानिसाको पुँजीका रुपमा बेलायतमा बोन्डहरू, क्यानडामा पाँच वर्षे लोन लिई पूर्वाधारहरू निर्माण गर्ने र पछि प्रयोगकर्ताबाट शुल्क उठाएर तिर्ने गरेको पाइन्छ। यदि सानिसाबाट पब्लिक गुड्सहरूको सिर्जना भयो भने पुँजीगत अनुदान, कर र दस्तुर छुट, भन्सार छुट, न्युनतम राजस्व ग्यारेण्टी जस्ता प्रोत्साहनका वित्तीय उपकरणहरू पनि उपयोगमा ल्याएको पाइन्छ । बेलायतमा पिपिपी टास्क फोर्स, पिपिपी संघ, पिपिपी सेल, पिएफआइ, प्राइभेट पावर इन्फ्रास्टक्चर बोर्ड, प्राइभेट पार्टनरसिप आयोग, पिपी व्यवस्थापन केन्द्र लगायतमा समन्वयकारी र नियमनकारी संरचनाहरू निर्माण गरी सानिसालाई अगाडि बढाएको पाइन्छ।

विश्वमा सन् १९९० पछि तीव्र गतिमा सार्वजनिक निजी साझेदारीलाई अपनाएको भेटिन्छ। अष्ट्रेलियामा पब्लिक फाइनान्स इनिसिएटिभ नामक सानिसा एकाइमार्फत यसको अभ्यास गरिएकोमा विमानस्थलहरू, क्रस कन्ट्री सुरुङहरू, सिड्नी हार्वर लगायतका मेगा प्रोजेक्टहरू निर्माण गरिएको पाइन्छ । क्यानडामा पिपिपी क्यानडा नामक स्वायत्त राष्ट्रिय संस्थामार्फत धेरै सामाजिक र भौतिक पूर्वाधारहरू निर्माण गरिएको देखिन्छ । त्यसैगरी चीनमा पनि शक्तिशाली पिपिपी एकाइमार्फत चौध हजारभन्दा बढी ठूला परियोजनाहरू सञ्चालन भइरहेका छन्। युरोपियन युनियनका देशहरूमा पिपिपी विज्ञ केन्द्र अर्थात इपिइसी स्थापना भई चौध सयभन्दा बढी परियोजनाहरू सञ्चालन भइरहेका छन् । त्यसैगरी भारतमा ५१ प्रतिशतभन्दा बढी निजी

लगानी भएको परियोजनालाई सानिसाभित्र समावेश गरिएकोमा संघीय सरकार र प्रदेश सरकार दुवैले शक्तिशाली पिपीपी युनिटहरू निर्माण गरी प्रभावकारी रुपमा उपयोग गरेको पाइन्छ। एक्सप्रेस वेहरू, बन्दरगाहहरू, विमानस्थल, पानी वितरण, टेलिकम, अन्तराष्ट्रिय क्रिकेट स्टेडियम, बन्दरगाह, म्युजियम जस्ता क्षेत्रहरूमा पिपिपिको सघनता रहेको देखिन्छ । भारतमा हाल १८२५ वटा परियोजनाहरू सञ्चालनमा रहेका भन्ने आधिकारिक विवरण पाइन्छ। त्यसैगरी दक्षिण कोरियामा ३५४ वटा ठूला परियोजनाहरू सञ्चालनमा रहेका, १३ वटा विमानस्थलहरू, विज्ञान म्युजियम, शैक्षिक संरचनाहरू, एक्सप्रेसवे, रेलवे, बन्दरगाह लगायतका परियोजनाहरूमा साझेदारी अपनाइएको पाइन्छ । त्यहाँका अधिकांश साझेदारीहरू निर्माण, सञ्चालन र हस्तान्तरण तथा निर्माण, हस्तान्तरण र लिजको मोडलमा सफलतापूर्वक सञ्चालन भएको देखिन्छ।

सार्वजनिक निजी साझेदारीमा नेपालको अभ्यास

नेपालले औपचारिक रुपमा सार्वजनिक निजी साझेदारीलाई अवलम्बन गरेको वि.सं. २०५० देखि मात्र हो । विश्वव्यापी प्रभावका कारण नै नेपालले पनि यस अवधारणालाई आत्मसात गरेको देखिएता पनि नेपालको सांस्कृतिक र विशिष्ट सामाजिक अभ्यास भने ऐतिहासिक रुपमा साझेदारी मोडलमा नै आधारित रहेको थियो । कानूनी र सैद्धान्तिक रुपमा यस अवधारणालाई स्वीकार गरिएको भएता पनि नतिजामूखी र नमूना योग्य साझेदारी संस्थागत हुन सकिरहेको छैन।

वि.सं. २०५४ पछि काठमाडौं महानगरले फोहर व्यवस्थापन, आकासे पुल निर्माण र सञ्चालन, नयाँ वसपार्क सञ्चालनमा निजी क्षेत्रसँग साझेदारी गरेको पाइन्छ । केही स्थानीय तहहरूले फोहर व्यवस्थापनमा साझेदारी गरेका छन् भने सामाजिक विकास र तालिम कार्यक्रमहरूमा गैससँग साझेदारी हुने गरेको पनि छ । नेपालको जलविद्युत उत्पादन पनि एक प्रकारको सार्वजनिक निजी साझेदारीको नमूना हो किनभने निजी कम्पनीले डिजाइन, निर्माण गरी तीस वर्ष सञ्चालन गरिसकेपछि सरकारलाई स्वामित्व हस्तान्तरण गरिने गरी साझेदारी गरिएको हुन्छ। त्यसैगरी विमानस्थलमा एयर कार्गो व्यवस्थापन, ट्याक्सी पार्किङ सञ्चालन लगायतका सेवा क्षेत्रहरूमा पनि सार्वजनिक निजी

साझेदारीको अभ्यास गरिएको अवस्था छ तर पनि प्रदर्शन प्रभाव पर्ने गरी ठूला पूर्वाधारहरू निर्माण भएका छैनन।

नीतिगत र कानूनी व्यवस्थाहरूमा सार्वजनिक निजी साझेदारी ऐन, २०७५ तथा नियमावली समेत जारी भई यसलाई संस्थागत रुपमा अगाडि बढाउन लगानी बोर्डलाई जिम्मेवारी प्रदान गरिएको छ। नेपालमा सानिसा ऐन, २०७५ को दफा १७.२ बमोजिम यसका विधिहरूमाः निर्माण तथा हस्तान्तरण, निर्माण, सञ्चालन तथा हस्तान्तरण, निर्माण, स्वामित्वकरण तथा हस्तान्तरण, निर्माण, हस्तान्तरण तथा सञ्चालन, लिज, सञ्चालन तथा हस्तान्तरण, लिज, निर्माण, सञ्चालन तथा हस्तान्तरण, विकास, सञ्चालन तथा हस्तान्तरण, व्यवस्थापन, सञ्चालन तथा हस्तान्तरण, पुनर्स्थापना, सञ्चालन तथा हस्तान्तरण यस्तै अन्य तरिका भनी तोकिएको छ।

नेपालमा आठौं पञ्चवर्षीय योजनाबाट विकासमा बहुपात्र प्रणाली अवलम्वन गरेपश्चात निजी क्षेत्रको भूमिकालाई कानूनी रुपमा स्वीकार गरियो। तत्पश्चात् ल्याइएको निजीकरण ऐन, २०५० मार्फत निजी क्षेत्रको भूमिका विस्तारलाई वैधानिकता प्रदान गरियो तर निजीकरणलाई नकारात्मक रुपमा बुझ्ने अभ्यास गरियो। निजीकरणको विकल्पमा यस प्रकारको साझेदारीलाई भने सकारात्मक रुपमा लिने गरिन्छ।

त्यसैगरी स्थानीय स्वायत्त शासन ऐन, २०५५ ले दिगो विकासका लागि आधारभूत सेवा प्रदान गर्ने कार्यमा निजी क्षेत्रलाई सहभागी हुन प्रोत्साहित गर्ने नीति लिएको थियो भने स्थानीय स्वायत्त शासन नियमावली, २०५६ ले प्रत्येक स्थानीय निकायमा सार्वजनिक निजी क्षेत्र साझेदारी प्रवर्द्धन समिति रहने व्यवस्था गरेको थियो । सार्वजनिक पूर्वाधार संरचना निर्माण सञ्चालन तथा हस्तान्तरण सम्बन्धी नीति, २०५७ ले पहिलोपटक नीतिगत स्पष्टता कायम गर्ने प्रयास गरेको थियो । त्यसैगरी करार निर्देशिका, २०५९, सार्वजनिक निजी साझेदारी, नीति (स्थानीय निकायको लागि) २०६० तथा निर्देशिका २०६१, पूर्वाधार संरचनाको निर्माण तथा सञ्चालनमा निजी लगानी सम्बन्धी ऐन, २०६३, सार्वजनिक खरिद ऐन, २०६३ तथा नियमावली, २०६४, सार्वजनिक निजी साझेदारी श्वेतपत्र, २०६७ पनि जारी गरिएको थियो।

पछिल्लो समयमा नेपालको वर्तमान संविधानले राष्ट्रिय विकासको लागि स्वदेशी लगानीलाई प्राथमिकता दिई वैदेशिक पुँजी र प्रविधिलाई आकर्षित गर्ने नीति राज्यले अवलम्वन गर्ने उल्लेख गरेको छ । सार्वजनिक निजी साझेदारी नीति, २०७२, सार्वजनिक निजी साझेदारी तथा लगानी ऐन, २०७५ तथा नियमावली, २०७७, लगानी बोर्ड नेपाल र साझेदारी नीति तथा कार्यक्रम रु ६ अर्वभन्दा बढीका आयोजना लगानी बोर्डको स्वीकृति चाहिने, २०० मेगावाटभन्दा बढीको विद्युत उत्पादन आयोजनामा बोर्डको स्वीकृति चाहिने, लगानी बोर्डमा सानिसा केन्द्र लगानी इकाई तथा विशेष समितिको व्यवस्था गरिएको समेत अवस्था रहेको छ।

नेपालमा सार्वजनिक निजी साझेदारी प्रभावकारी रूपमा कार्यान्वयन हुन नसक्नुका कारणहरू

नेपालमा यस अवधारणालाई आर्थिक विकासको महत्वपूर्ण आधारका रुपमा प्राथमिकता प्रदान गरी अपेक्षा समेत गरिएको भएता पनि यसबाट अपेक्षाकृत लाभ प्राप्त हुन सकिरहेको देखिंदैन । साझेदारी गर्ने निजी क्षेत्रमा उत्साह र इच्छा सबल हुन नसकेको अवस्था देखिन्छ । सार्वजनिक क्षेत्रबाट पनि सार्वजनिक निजी साझेदारीको स्पष्ट आधार र ढाँचा स्पष्ट गर्न नसकेको देखिन्छ । सरकारी वा सार्वजनिक पक्षले साझेदारीका लागि आह्वान गरिरहेको छ तर साझेदारी गर्ने निजी र नागरिक पक्षले विश्वास गर्न सकिरहेको देखिंदैन। एकातर्फ साझेदारी भन्दा शीघ्र र सहज रुपमा प्रतिफल प्राप्त हुने सहजता प्राप्त हुँदा साझेदारीको झन्झट व्यहोर्ने मनस्थितिमा निजी क्षेत्र नरहेको देखिन्छ भने अर्कोतर्फ शासन प्रक्रिया अनुमानयोग्य नहुँदा विश्वासको संकट उत्पन्न भएको देखिन्छ। एकआपसमा विश्वास, सहकार्य र साझेदारीको निर्माण गर्न नीतिगत स्पष्टता र स्थिरता भएन भने यो सफल हुँदैन । समग्रमा, सार्वजनिक क्षेत्र, निजी क्षेत्र र नागरिक समाजबीच कमजोर विश्वासको अवस्था विद्यमान छ।

साझेदारी भनिसकेपछि निर्णयमा दुवै पक्षको समान हैसियत हुनुपर्छ र दुवै पक्षले जित-जितको अनुभूति गर्नसक्ने अनुमानयोग्य तथ्यहरू स्थापित भएको हुनु जरुरी हुन्छ। यस अवस्थामा सरकारले नागरिक तथा गैरराज्य पात्रहरूलाई नियन्त्रण छैन, सशक्तिकरण, सहजीकरण र नियमन गर्न सक्नुपर्छ, अन्यथा साझेदारी कमजोर हुन्छ।

साझेदारीमा वित्तीय पुँजी निजी क्षेत्रको हुने हुँदा सम्बन्धित जोखिमहरूको विश्लेषण गरी सोको स्पष्ट सम्बोधन गर्ने नीति र कानून तथा राजनैतिक मतैक्यता एवं प्रत्याभूति हुन सकेको छैन। त्यसैगरी सानिसामा निजी क्षेत्रले साझेदारी गरेपश्चातको लाभ के हो स्पष्टता हुनुपर्छ जुन हुन सकेन भने हरेक पक्षहरूको भूमिका, संरचना र लक्ष्यहरू स्पष्ट भएनन् भने पनि सानिसा सम्भव हुन सक्दैन।

नेपालमा राजनैतिक संस्थाहरू लोकतान्त्रीकरण नभएको कारण आर्थिक लोकतन्त्रको संस्थागत बहस हुन सकेको छैन भने विचौलिया अर्थतन्त्रको निर्माता र पृष्ठपोषक राजनीति भएकोले योग्य र सक्षम निजी क्षेत्र यसमा आकर्षित नभएको अवस्था देखिन्छ। सम्पत्तिको अधिकार, अनुमानयोग्य कर प्रणाली, उद्यमशीलता र नवप्रवर्तनलाई आत्मसात नगर्ने हो भने पनि यो सफल हुँदैन। जसको उचित सम्बोधन हालसम्म हुन सकेको छैन। साझेदारका पात्रबीच अन्तरक्रिया गर्ने साझा थलो नहुनु, एकोहोरो संवाद हुनु, जग्गा प्राप्ति, वातावरणीय प्रभाव मूल्यांकनलाई प्रक्रिया जटिल रहनु, संस्थागत एवम् संरचनागत क्षमता र आत्मविश्वासको कमी हुनु, प्रतिस्पर्धात्मक लगानीको वातावरण बन्न नसक्नु, बैक तथा वित्तीय संस्थाबाट आवश्यक पुँजी जुटाउन नसकिनु, प्रदर्शन प्रभाव पार्ने खालको आयोजना पनि नहुनु, सम्भाव्यता न्यूनपूर्ति कोष (VGF) को व्यवस्था नगर्नु, न्यूनतम राजस्व ग्यारेण्टी (MRG) को सुनिश्चितता नहुनु जस्ता विविध कारणहरू अन्तरनिहित रहँदा नेपालमा निजी क्षेत्रसँगको साझेदारी सार्थक बन्न सकिरहेको छैन।

सार्वजनिक निजी साझेदारीको विकासका लागि विश्वसनीय वातावरण तयार गर्ने संस्थाहरूको निर्माण गर्नुपर्ने आवश्यकता देखिएको छ । नेपालमा विद्यमान अवस्थामा सरकारी उच्च प्राथमिकता प्राप्त आयोजना सञ्चालन गर्नका लागि समेत शुरुमा नै वातावरणीय परीक्षणको अनिश्चित प्रणाली छ भने अर्कोतर्फ निजी जग्गा प्राप्ति, वनको जग्गा प्राप्ति लगायतका जटिल विषयहरू छन् जसको समाधानका लागि विश्वसनीय प्रणालीको अभाव छ भने साझेदारीमा निजी क्षेत्रले यस्ता पूर्वाधारहरू निर्माण गर्दा अझै अनिश्चितता र सकस रहेको छ। यस्तो अवस्थामा निजी क्षेत्रको लगानी उच्च जोखिममा रहने हुन्छ भने नेपालको बजार पनि अस्थिर र विचौलिया व्यापारमा आधारित भएको हुँदा साझेदारीमा निर्माण हुने सेवा र पूर्वाधारहरूबाट न्यून प्रतिफल प्राप्त हुने जोखिम

समेत हुन्छ। सरकारी पक्षले नीतिगत र संस्थागत सुधारहरू मार्फत यस प्रकारका वित्तीय र शासकीय जोखिमहरू हटाएमा मात्र साझेदारीको वातावरण तयार हुन जाने हुन्छ।

सार्वजनिक निजी साझेदारी (सानिसा) प्रभावकारी नहुनुमा अर्को समस्या लगानी योग्य पुँजीको अभाव हुनु पनि हो। साझेदारीमा गरिने कार्यहरू दीर्घकालीन र ठूलो लगानी हुने भएकोले बैंकहरूले यस्ता परियोजनाहरूमा हुने लगानीलाई नन् पर्फर्मिङ लोनका रुपमा लिने गर्दछन् । विश्वका कतिपय देशहरूमा साझेदारी परियोजनाहरू क्रोनी क्यापिटलिज्मका औजारका रुपमा पनि देखिएका छन् । त्यसैगरी, सानिसा परियोजनाहरूमा राजनैतिक संलग्नता भयो भने पनि परियोजनाहरू दोहनकारी र खर्चिला बन्ने गरेका पाइन्छन्। निजी साझेदारहरूमा नैतिक संकट हुँदा पनि यस्ता परियोजनाहरू गलत स्वरुपमा रुपान्तरण हुन्छन् भन्ने तथ्य विविध अनुसन्धानहरूले देखाएका छन् । सानिसा भित्र रहेका सम्भावित जोखिमहरूको विश्लेषण गरी तथ्यगत सम्बोधन हुन पनि सकेको अवस्था छैन।

सार्वजनिक क्षेत्रका जोखिमहरू जस्तै राजनीतिक अस्थिरता, प्रशासनिक झन्झट र अनिश्चिता, नीतिगत अस्थिरता लगायतका रहेका छन् भने आर्थिक र वित्तीय जोखिमहरूमा व्याजदरमा हुने अनिश्चित बृद्धि, सम्भाव्य न्यून पूर्तिकोषको अभाव, न्यूनतम राजस्वको अनिश्चितता, अकस्मात आउने आर्थिक र वित्तीय संकट लगायतका रहेका छन्। त्यसैगरी प्राविधिक जोखिमहरूमा प्रविधिमा आएको अकस्मात परिवर्तन, बजारमा हुने माग र आपूर्तिको असन्तुलन लगायत रहेका हुन्छन्। पूर्वाधार निर्माण पनि समयमा नहुने, विविध भौगर्भिक समस्याहरू, विविध वातावरणीय समस्याहरू, विपद्, हडताल लगातका अनिश्चित गतिविधिहरू पनि जोखिमकै रुपमा रहेका छन्। त्यसैगरी सञ्चालन र मर्मत गर्ने विषय र पूर्वाधारबाट दीर्घकालीन रुपमा प्रतिफल प्राप्त गरिरहने प्रणालीको विकास समेतको अनिश्चितता अन्तरनिहित रहको हुन्छ। उपरोक्त जोखिमहरूको सन्तोषजनक र विश्वसनीय सम्बोधन नभएसम्म सार्वजनिक निजी साझेदारी पूर्ण रुपमा सफल हुन सक्दैन।

सार्वजनिक निजी साझेदारीलाई सफल बनाउन सुधारको मार्ग

सार्वजनिक निजी साझेदारी विश्वका हरेक देशहरूले प्रयोगमा ल्याइरहेको विकास अवधारणा हो। राज्यको प्राथमिक दायित्व प्रभावकारी रुपमा पूरा गर्नमा राज्यको लगानीको प्राथमिकीकरण गर्दा पूर्वाधारहरू र अन्य बजार वस्तुहरूको उत्पादन र वितरणका लागि वित्तीय पुँजीको अभाव हुन्छ। त्यसैगरी ब्युरोक्रेटिक प्रक्रिया विश्वका सबै देशहरूमा लामो र झन्झटिलो नै हुन्छ। यी दुई मुख्य चुनौतिहरूको विवेकपूर्ण सम्बोधनको उपाय नै सार्वजनिक निजी साझेदारी हो। यसबाट निजी क्षेत्रले पनि आफ्नो पुँजीलाई उच्च प्रतिफलयुक्त क्षेत्रहरूमा लगानीको अवसर प्राप्त गर्दछ। तर यसलाई प्रभावकारी बनाउनका लागि केही पूर्व सर्तहरू रहेका छन्। जस्तै आयोजनाको तयारीमा सावधानी अपनाउनुपर्ने, साझेदार पक्षहरूको दृढ इच्छाशक्ति हुनपर्ने, सरकारी पक्षले स्पष्ट नियमन ढाँचा निर्माण गर्ने, साझेदार पक्षहरूबीच विश्वासको वातावरण निर्माण गर्ने, प्रक्रियाको पारदर्शिता सुनिश्चितता गर्ने, साझेदार पक्षहरूबीच जित–जितको पूर्वानुमानको अवस्था सुनिश्चित गर्ने, आयोजना लगानीयोग्य हुनुपर्ने, साझेदारीको विषयमा स्पष्टता हुनुपर्ने जस्ता विषयहरूमा उचित सम्बोधन जरुरी हुन्छ।

नीति निर्देशिका एवं कानूनी आधारहरूलाई स्पष्ट र पर्याप्त बनाउनु जरुरी छ । सानिसा ऐन तथा अन्य कानून सम्बन्धित संस्था र संरचनाहरूको निर्माण गरी योग्य व्यक्तिहरूलाई नेतृत्वको जिम्मेवारी प्रदान गरिनुपर्छ। साझेदारी लगानीमा मुख्य अवरोधका रुपमा वर्तमान जग्गा प्राप्ति, वन क्षेत्र, वातावरणीय अध्ययन लगायतका विषयहरूमा सूक्ष्म अध्ययन गरी कानूनी सुधार जरुरी छ। सानिसा सम्बन्धित जोखिमहरूलाई पारदर्शी रुपमा विश्लेषण गरी स्पष्ट पार्नुपर्छ र तिनको न्यायोचित वितरण हुने कानूनी प्रवन्ध आवश्यक छ। सानिसा सम्बन्धित सबै क्रियाकलाप सरल र पारदर्शी बनाई आपसी विश्वासको वातावरण तयार गर्नुपर्छ । सम्भाव्य न्यून पूर्तिकोष (VGF) व्यवस्था गरी सही रुपमा प्रयोग गर्नु जरुरी छ। क्षेत्रगत विज्ञहरू रहेको National Facilitation Committee निर्माण गर्दा शीघ्र र त्रुटिरहित सहजीकरण हुन सक्छ।

Special Purpose Vehicle (SPV) धेरै लगानीकर्ताहरूको रकम सङ्कलन गरी लगानी गर्ने कम्पनीको निर्माणमा प्रोत्साहन गर्नुपर्छ, तर SPV मा सरकारी संग्लग्नता रणनीतिक

पूर्वाधारहरू बाहेक गर्नु हुँदैन। पूर्वाधारहरूको साझेदारीमा निरुपण ट्रिब्युनलको (Infrastructure PPP Adjudication Tribunal) संस्थागत व्यवस्था गरी सम्भावित विवादहरूको शीघ्र सम्बोधन गर्नुपर्छ । साझेदारीका क्षेत्र अनुरुपका विशिष्टीकृत समन्वयकारी संस्थाको स्थापना तथा सबै प्रकारका साझेदारीलाई समेट्ने प्रकृतिको छाता फ्रेमवर्कको निर्माण गरिनुपर्छ। जिरो कुपन बण्डमार्फत (Zero Coupon Bond) लगानीको वित्तीय व्यवस्था गर्न सकिने नीतिगत व्यवस्था गरिनु आवश्यक छ। Swiss challenge अर्थात unsolicited proposals हरूले अपारदर्शिता कायम भई विश्वासको संकट उत्पन्न गर्ने भएकोले दुरुत्साहन गर्नुपर्छ।

वित्तीय नाफाभन्दा सेवा प्रवाहमा केन्द्रित गराउने गरी साझेदारी गर्नु उपयुक्त हुन्छ। Minimum Revenue Guarantee (MRG) भन्दा पनि VGF को सही प्रयोगमा जोड दिनु उपयुक्त हुन्छ। परियोजनाको कार्यसम्पादन प्रणाली monitoring गर्ने संस्थागत प्रणाली निर्माण गर्नुपर्छ। नेपालमा वर्तमान समयमा निजी क्षेत्र साझेदारीका लागि तयार नहुनुका कारणहरू खोजी गरी नीतिगत सुधारहरू गर्न बेसलाईन सर्वे गर्नुपर्छ। सम्भाव्य आयोजनाको अद्यावधिक सूचीकरण गर्ने तथा परियोजना बैंकलाई अझै परिस्कृत बनाई स्थानीय तहसम्म यसको ज्ञान विस्तार गर्ने कार्य गर्नुपर्छ। PPP Center सवलीकरण गरी साझेदारी स्रोत र सहजीकरण केन्द्रका रुपमा विकास गर्ने, सूचना प्रणालीलाई अद्यावधिक गरी अनुगमन, मूल्यांकन, नियन्त्रण र पृष्ठपोषण व्यवस्थालाई प्रभावकारी बनाउने, प्रक्रियाको पारदर्शिता सुनिश्चित गरिदिनुपर्ने हुन्छ जस अन्तर्गत पक्षहरूबीच जित-जितको अवस्था, आयोजना लगानीयोग्य हुनुपर्ने, साझेदारीको विषयमा स्पष्टता रहनु पर्ने व्यवस्था गर्नुपर्छ।

हेजिङ फण्ड स्थापनामा नीतिगत प्रोत्साहन र सरकारी पूर्वसक्रियता आवश्यक छ। नागरिक समाजको सशक्तिकरण, सामाजिक पुँजीको निर्माण तथा स्थानीय निजी संस्थाहरूको व्यवस्थापन क्षमता बढाउन सहयोग गर्नुपर्छ। सानिसाप्रतिको सार्वजनिक चासो र साझेदारप्रतिको विश्वास बढाउने क्रियाकलापहरू सञ्चालन गर्नु उपयुक्त हुन्छ। सानिसाका लागि उपयुक्त प्रवर्द्धनात्मक वातावरण, गतिशील संस्थागत व्यवस्था र बहुपक्षीय साझेदारी निर्माण गर्नुपर्छ। सानिसाको साझा बुझाई विकास गर्ने तथा आम

सहमति कायम गरी यसलाई राष्ट्रिय बहसको विषय बनाउनुपर्ने हुन्छ। सबै पक्ष र क्षेत्रलाई समेटी सक्षम र प्रभावकारी अनुगमन संयन्त्र निर्माण गरी क्रियाशील तुल्याउने, सानिसाका सिकाइ र अनुभवको प्रचारप्रसार र अवलोकनको व्यवस्था गर्ने, तथा सानिसाको प्रक्रियामा नागरिकहरूको सहभागिता र भूमिकालाई स्पष्ट गरिनुपर्छ।

निष्कर्ष

पछिल्लो समयमा शासन प्रक्रियामा राज्य र राज्य बाहेकका पात्रहरूको साझेदारीलाई स्वीकार गरिसकेको अवस्थामा सेवाको डिजाइन र उत्पादनमा पनि साझेदारी शासनको अवधारणा व्यवहारिक रुपमा नै कार्यान्वयनमा गइसकेको अवस्था छ। सार्वजनिक निजी साझेदारीलाई अझै व्यापक रुपमा हेरिनुपर्ने आवश्यकता देखिन्छ। नेपाल जस्तो कमजोर सार्वजनिक वित्त प्रणाली भएको देशमा निजी क्षेत्रको पुँजी, प्रविधि र उद्यमशीलतालाई राष्ट्र निर्माणमा उपयोग गर्नुपर्ने वर्तमान समयको आवश्यकता देखिएकोले वर्तमानमा रहेका कानूनी र प्रक्रियागत अवरोधहरूको तथ्यगत पहिचान गरी दुवै पक्षको जीतको सुनिश्चितता सहितको पूर्वानुमायोग्य संस्थागत प्रणालीको स्थापना गरी आपसी विश्वास र अपनत्वको वातावरण निर्माण गर्नुपर्ने प्रमुख आवश्यकता देखिएको छ।

सन्दर्भ स्रोतहरुः

नेपालको संविधान, कानून किताव व्यवस्था समिति ।

सार्वजनिक-निजी साझेदारी तथा लगानी ऐन, २०७५ नेपाल कानुन आयोग

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अर्थराजनीतिलाई सही दिशामा लैजान संसदले प्रभावकारी भूमिका निर्वाह गर्न सक्छ?

- डा. चन्द्रमणि अधिकारी*

लेखसार

संघीय संसद देशको संविधान निर्माण गर्ने देखि देशको सर्वाङ्गीण क्षेत्रको लागि आवश्यक पर्ने दर्शन, विचार, नीति र कानुन दिने थलो हो। नेपालको संविधानले पनि राज्य संचालनमा कार्यपालिका, व्यबस्थापिका र न्यायपालिकाको संयुक्त भुमिका रहने र यी अंगहरुवीच सह-सम्बन्धका साथ समुचित सन्तुलन रहने व्यबस्था गरेको छ। तर यो सन्तुलनको आधार भने संविधान, नीति तथा कानूनको माध्यमबाट संसदले नै तयार गर्ने हुंदा देशको आर्थिक सामाजिक विकासमा संसदको दायित्व विशिष्ट प्रकृतिको हुन्। संसद आफैंमा एक सक्षम निकाय हो भने यसमा रहेका एकदर्जन संसदीय समितिहरु समेत सबैको लक्ष्य लोकतान्त्रिक पद्धतिलाई सुदृढिकरण गर्दै देशको आर्थिक सामाजिक विकासको माध्यमबाट जनताले खुशी र सुखी भएको अनुभति गर्ने अवस्था निर्माण गर्नु हो। यस दृष्टिबाट हेर्दा एकातिर संसदले संविधान तथा कानूनको निर्माण गर्दा देशको आर्थिक संभाव्यता, सार्मथ्य र नागरिकको आवश्यकता तथा देशको आर्थिक सामाजिक अवस्थालाई केन्द्रबिन्दुमा राख्नु पर्ने देखिन्छ भने अकातिर सरकारले गरेको राजस्व परिचालन तथा राज्यकोष उपयोग गर्ने कार्य र बनेका नीतिको कार्यान्वयन संविधान अनुकुल तथा नागरिकको हित अनुकुल गरे नगरेको सम्बन्धमा अनुगमन, मुल्यांकन, पुनरावलोकन एवं परीक्षण गरी आवश्यक निर्शन दिने र सोको पालना भयो भएन भनी त्यसको निरन्तर परीक्षण समेत प्रभावकारी ढंगले गर्नुपर्ने हुन्छ। यसो हुन सकेमा देश दिगो विकासको गन्तव्यमा सहजै पुग्न सक्दछ । आलेखमा यिनै कार्यको लागि उपाय र विकल्पहरु सुझाईएको छ ।

शब्दकुञ्जी : आर्थिक विकास, सामाजिक न्याय, राजस्व, संविधान

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पृष्ठभूमि

लोकतान्त्रिक राज्य प्रणालीमा राज्यका कामहरूलाई सन्तुलन र नियन्त्रणको कसीमा ढालेर हेर्ने प्रबन्ध गरिएको हुन्छ। यसलाई शक्ति पृथकीकरणको सिद्धान्त भनिन्छ। यस सिद्धान्त अन्तर्गत राज्यका कामहरूलाई विधायिका, कार्यपालिका र न्यायपालिकाबीच बाँडफाँड गरिएको हुन्छ। व्यवस्थापिकाले कानून निर्माण गर्छ, कार्यपालिकाले कानूनको कार्यान्वयन गर्छ र न्यायपालिका वा अदालतले बनेका कानूनको न्यायीक परीक्षण तथा कानूनको कार्यान्वयन व्यवस्थापिकाको मनसाय अनुरुप भए नभएको निर्णय दिन्छ। यस सिद्धान्तको मुख्य ध्येय राज्यका अंगहरूले संविधानले दिएको अधिकार स्वतन्त्र ढंगले सम्पादन गर्न सकुन्, एउटाको कार्यमा अर्को अंगको हस्तक्षेप नहोस, तीनवटा अंगले संविधानको भावना र लक्ष्य हासिल गर्न एकीकृत र संतुलित ढंगले काम गर्न सकुन् र कुनै अंगले संविधान विपरितको कार्य गर्न खोजेमा संविधानको परिधिभित्र रहेर त्यस्ता काम गर्न एकअर्कालाई नियन्त्रण गरी सन्तुलन र नियन्त्रणको अभ्यास होस् भन्नु हो । राज्य प्रणालीलाई संविधान अनुसार चलाउनु यसको लक्ष्य हो। हुन त यो अवधारणा विकास मध्ययुगीन समयमा युरोपमा राजतन्त्र, कुलीन वर्ग र लोकतान्त्रिक पक्षधरहरूबीचको शक्ति सन्तुलन मिलाउने दृष्टिले भएको थियो। सत्रौं शाताब्दी (१६९०) मा बेलायती दार्शनिक जोन लकले राज्य अधिकारको बाँडफाँड सहित विधायिकी अधिकार पनि राजा र संसदबीच बाँडेर शक्तिको सन्तुलन गर्नुपर्ने तर्क अघि सारेका थिए (Trang and NGUYEN, 2022)[1]। तर राज्यहरूसँग विधायिकाले बनाएको संविधानको अभाव भएकाले यो अवधारणा अहिले जस्तो परिस्कृत र प्रभावकारी हुन सकेको थिएन।

शक्ति पृथकताको सिद्धान्तको सम्बन्धमा आधुनिक ढाँचाको परिकल्पना भने फ्रान्सेली राजनीतिज्ञ तथा दार्शनिक मन्टेस्क्युले अठारौं शताब्दी (१७४८) मा गरेका थिए (Vile,1998)[2]। अहिले संयुक्त राज्य अमेरिका, फ्रान्स, जर्मनी, अष्ट्रेलिया, क्यानडा, जापान, ब्राजिल, दक्षिण कोरिया र भारतसहित करिब चार दर्जन देशहरूले शक्ति

[1] Separation Of Powers In John Locke's Political Philosophy, Synesis, v. 14, n. 1, p. 1-15, jan/jul 2022, ISSN 1984-6754 © Universidade Católica de Petrópolis, Petrópolis, Rio de Janeiro, Brasil

[2] https://oll.libertyfund.org/pages/montesquieu-and-the-separation-of-powers

पृथकीकरणको सिद्धान्त अनुशरण गरेका छन्। नेपालको संविधानले पनि सोही सिद्धान्त अन्तर्गत रही राज्य संचालनमा कार्यपालिका, व्यवस्थापिका र न्यायपालिकाको भूमिका, यी अंगको स्वतन्त्रता र सह–सम्बन्धको व्यवस्था गरेको छ। यसले राजनीतिक सन्तुलन मात्र होइन आर्थिक समुन्नति र विकासको सम्बन्धमा पनि राज्यका तीनवटा अंगहरूबीचको भूमिका, दायित्व र सम्बन्धको परिकल्पना गरेको छ, जसमा नियन्त्रण र सन्तुलनबीचको सम्बन्धलाई दिगो र कसिलो राख्ने प्रबन्धहरू रहेका पाइन्छन्।

नीति तथा कानूनको निर्माण, कार्यान्वयन तथा परीक्षणको आधारमा देशमा रहेको श्रोत साधनको विवेकपूर्ण प्रयोग गरी आर्थिक विकास गर्ने कुराहरूमा पनि यो सिद्धान्त त्यति नै लागू हुन्छ। जसमा संसदले कानून निर्माण गरेर कुन क्षेत्रमा कुन श्रोतबाट कति लगानी र कति खर्च गर्ने, कुन–कुन विधि र पद्धति अपनाएर खर्च गर्ने, कोषको सञ्चालन कसरी गर्ने, बजेट कसरी निर्माण गर्ने, कर तथा गैर कर राजस्व कुन सिद्धान्त अन्तर्गत रहेर कसरी लगाउने र उठाउने, आय र व्ययको अभिलेख कसरी राख्ने, विदेशी लगानी कुन–कुन क्षेत्रमा कति र कसरी भित्र्याउने, त्यसको भित्रिने र बाहिरिने पद्धति के हुन्छ, राज्यलाई चाहिने वित्तीय श्रोत राजस्वबाट मात्र नपुगेमा कस्तो ऋण कति र कसरी लिने, आय, व्यय, दायित्व, सम्पत्ति आदिको अभिलेख र प्रतिवेदन कसरी गर्ने तथा यी सबै कुराको परीक्षण कसले, कहिले र कुन विधिमा गर्ने भन्ने समेतका कुराको स्वीकृति दिने काम संसदको हो। संघीय सरकारको सम्बन्धमा यो भूमिका संघीय संसदले निर्वाह गर्नु पर्दछ । यसको कार्यान्वयन नेपाल सरकार वा कार्यपालिकाले गर्दछ।

संवैधानिक व्यवस्थाको कार्यान्वयन

नेपालको संविधानले देशको आर्थिक सामाजिक विकास गर्ने सम्बन्धमा संसदलाई अहम् जिम्मेवारी दिएको छ। संविधानले अंगिकार गरेको आधारभूत विषयको अध्ययन गर्दा यसले समानुपातिक समावेशीमा आधारित समतामूलक समाज निर्माण गर्ने, आर्थिक समानता, समृद्धि र सामाजिक न्याय सुनिश्चित गर्न सहभागितामूलक सिद्धान्त अपनाउने र लोकतान्त्रिक मूल्य मान्यतामा आधारित समाजवादप्रति प्रतिबद्ध रहेको विधिको शासन

सहितको समृद्ध राष्ट्र निर्माण गर्ने संकल्प र प्रतिबद्धता व्यक्त गरेको देखिन्छ (नेपालको संविधानको प्रस्तावना)। यी कुरालाई नतिजामा बदल्न संविधानले नै हरेक नागरिकले सम्मानपूर्वक बाँच्न र स्वतन्त्र रहन पाउने, सबै नागरिक समानरुपले संरक्षित हुने, छुवाछुत र भेदभाव गर्न नहुने, सम्पत्ति आर्जन, भोग र बेचबिखन गर्न पाउने, आधारभूत शिक्षा र स्वास्थ्यमा पहुँच रहने र आवासको प्रबन्ध, रोजगारी, उचित श्रम अभ्यास, खाद्य सुरक्षा र सम्प्रभुता, सामाजिक सुरक्षासमेतका एकतीसवटा मौलिक हकको (नेपालको संविधान, २०७२, धारा १६ देखि ४६) व्यवस्था गरेको छ[3]। संविधानले महिला, बालबालिका, दलित, उपभोक्ता, जेष्ठ नागरिकको हक पनि सुरक्षित गरेको छ । यी सबै अधिकारहरूको प्रचलनको लागि संवैधानिक उपचारको हक दिएर र यी प्रबन्धको कार्यान्वयनको लागि राज्यले आवश्यक कानून बनाउनु पर्ने व्यवस्था समेत संविधान (धारा ४७) ले गरेको छ।

यसका अतिरिक्त नेपालको संविधानको भाग ४ को धारा ४९ देखि ५५ सम्म राज्यले आफ्नो कार्य सम्पादन गर्दा पालना गर्नुपर्ने सिद्धान्त (जसलाई निर्देशक सिद्धान्त भनिएको छ) र अपनाउनु पर्ने नीति र निर्वाह गर्नुपर्ने दायित्वको सम्बन्धमा समेत स्पष्ट पारेको छ, अर्थात् राज्यले देशको आर्थिक सामाजिक समेतका सर्वाङ्गीण विकास गर्न लिनुपर्ने बाटो समेत देखाएको छ। निर्देशक सिद्धान्तले राज्यले लिनुपर्ने, राजनैतिक दिशा तथा राज्यको आर्थिक, सामाजिक र सांस्कृतिक उद्देश्यको व्यवस्था गरेको छ, जस अनुसार राज्यले शोषणमुक्त समाज निर्माणको आर्थिक उद्देश्य हासिल गर्न निम्न कार्यहरू गर्नुपर्ने देखिन्छ :-

(क) सार्वजनिक, निजी र सहकारीको सहभागिता र विकासको माध्यमबाट उपलब्ध साधन र स्रोतको अधिकतम परिचालन गर्ने,

(ख) द्रुत आर्थिक वृद्धि हासिल गरी दिगो आर्थिक विकास गर्ने,

(ग) राष्ट्रिय अर्थतन्त्रलाई आत्मनिर्भर र प्रगतिशील बनाउने,

(घ) समाजवाद उन्मुख स्वाधीन र समृद्ध अर्थतन्त्र निर्माण गर्ने र

(ङ) नाफाको न्यायोचित वितरण गरी आर्थिक असमानताको अन्त्य गर्ने।

[3] नेपालको संविधान, २०७२ (धारा १६ देखि धारा ४६ सम्म)

यी उद्देश्य र लक्ष्यहरू त्यसै हासिल हुँदैनन्। यसको लागि संविधानले व्यवस्था गरेको राज्यको संरचना अनुरुप राज्य शक्तिको बाँडफाँडको विषयलाई पनि पूर्ण कार्यान्वयनमा लैजानु पर्दछ। यी विषयहरूलाई नतिजामा पुर्याउन कानून निर्माण समेतका आवश्यक तयारी गरे नगरेको, कानून बने नबनेको र बनेका कानूनको कार्यान्वयन भए नभएको हेर्ने र आवश्यक निर्देशन दिने काममा संसदको भूमिका महत्वपुर्ण रहन्छ। त्यसको लागि आवश्यक पर्ने थप कानूनको निर्माण गर्न पूर्ण गृहकार्यका साथ संसदमा विधेयक प्रस्तुत गर्ने विषयमा सरकारलाई निर्देशन र सहजीकरण गर्ने तथा आएका विधेयकमाथि गहन छलफल गरी उचित समय भित्रै विधेयक स्वीकृत गरी कानूनको रुप दिई त्यसको कार्यान्वयनको लागि आवश्यक पहल, अनुगमन र मूल्यांकन गर्नमा पनि संसद एवं त्यसका विषयगत समितिहरूको ठूलो भूमिका रहन्छ।

संविधानले राष्ट्रिय सुरक्षा, शासन व्यवस्था, सामाजिक तथा सांस्कृतिक रुपान्तरण, अर्थ, उद्योग र वाणिज्य, कृषि र भूमिसुधार, विकास, प्राकृतिक श्रोतको संरक्षण, संवर्द्धन र उपयोग, नागरिकका आधारभूत आवश्यकताको परिपूर्ति, श्रम र रोजगार, पर्यटन, सामाजिक न्याय समेतका सन्दर्भमा राज्यले दिनुपर्ने नीतिका वारेमा पनि स्पष्ट पारेको छ । यसका अतिरिक्त नागरिकको मौलिक हक र मानवअधिकारको संरक्षण र संवर्द्धन, राज्यका निर्देशक सिद्धान्तको पालना र राज्यका नीतिहरूलाई क्रमशः कार्यान्वयन गर्दै नेपाललाई समृद्ध र सम्पन्न राष्ट्र बनाउनु राज्यको दायित्व हो (नेपालको संविधान, २०७२ धारा ५२)।

राज्यबाट, वा भनौं विशेष गरी सरकारबाट यस्ता नीतिको कार्यान्वयन गरी आफ्नो दायित्व कति पूरा गरिएको छ भनी परख, अनुगमन र मूल्यांकन गरी सरकारलाई सही दिशानिर्देश गर्ने काम पनि संसद तथा संसदीय समितिहरूको हो। यसको लागि राज्यका निर्देशक सिद्धान्त र नीतिको कार्यान्वयन तथा निर्वाह गरिएको दायित्वका सम्बन्धमा नेपाल सरकारले प्रस्तुत गरेको वार्षिक प्रतिवेदनको अध्ययन तथा विश्लेषण मिहिन ढंगले गर्न सक्नु पर्दछ। यसमा संसदले विशेषज्ञहरूको राय र सुझाव समेत लिनु पर्दछ, त्यसो भएमा सरकारको कामको मूल्यांकन गर्ने र आवश्यक दिशानिर्देश गर्ने काम अझ

प्रभावकारी हुन्छ।

देशको आर्थिक विकासको गतिलाई सही दिशामा लैजानको लागि एकातिर पर्याप्त रुपमा आर्थिक श्रोतको आवश्यकता पर्दछ भने यसमा मानवीय श्रोतको भूमिका अपरिहार्य र अहम् रहन्छ। साथै, प्राकृतिक र भौतिक श्रोतको दिगो र समुचित व्यवस्थापनले मानवीय र आर्थिक श्रोतको दक्षता बढाउन मद्दत पुर्याउँछ । नेपालको संविधानले संघीय तहमा राजस्व परिचालन, कोष व्यवस्थापन, परिचालित आर्थिक साधनको विनियोजन र लगानी, खर्च व्यवस्थापन तथा वित्तीय उत्तरदायित्व सम्बन्धमा संघीय आर्थिक प्रणालीको व्यवस्था गरेको छ। यसले आर्थिक योजना तर्जुमा, बजेट निर्माण र कार्यान्वयन तथा त्यसको कार्यान्वयन एवं सरकार र संसदको सम्बन्ध र भूमिकाको बारेमा उल्लेख गरेको छ । यसबाट देशको आर्थिक विकासका सम्बन्धमा संसदले प्राथमिक रुपमा नै भूमिका खेल्न सक्छ र खेल्नु पर्दछ भन्ने कुराको पुष्टि हुन्छ । यस दृष्टिबाट हेर्दा नेपालको संसदले केही विशेष क्षेत्रहरूमा विशेष रुपले ध्यान पुर्याउनु पर्ने देखिन्छ । यहाँ ती क्षेत्रहरूको संक्षिप्त समिक्षा गरिएको छ।

संसदले नियाल्नु पर्ने केही विशेष क्षेत्रहरू

१. दिगो, सन्तुलित र समावेशी आर्थिक विकास

संविधानले एकातिर समाजवाद उन्मुख स्वाधीन र समृद्ध अर्थतन्त्र निर्माण गरी नाफाको न्यायोचित वितरणद्वारा आर्थिक असमानताको अन्त्य गर्ने उद्देश्य लिएको देखिन्छ भने अर्कातिर देशको समष्टिगत आर्थिक स्थायित्वको विषयलाई पनि केन्द्रमा राखेको छ। यसको लागि वैदेशिक ऋण लिदा स्थायित्वमा प्रतिकूल असर पर्न नहुने तथा उपलब्ध श्रोतको बाँडफाँड तीन तहका सरकारबीच न्यायोचित ढंगले हुनुपर्ने व्यवस्था गरेको छ (नेपालको संविधान, धारा ५९ र ६०)। यस्ता उद्देश्य हासिल गर्न संविधानले क्षेत्रीय सन्तुलन सहितको समावेशी आर्थिक विकासका लागि क्षेत्रीय विकास योजना अन्तर्गत दिगो सामाजिक–आर्थिक विकास रणनीति तथा कार्यक्रमहरू तर्जुमा गरी समन्वयात्मक रूपमा कार्यान्वयन गर्ने र विकासको दृष्टिकोणले पछाडि परेका क्षेत्रहरूलाई प्राथमिकता दिँदै सन्तुलित, वातावरणमैत्री, गुणस्तरीय र दिगो भौतिक

पूर्वाधारको विकास गर्ने समेतका विकाससम्वन्धी नीतिहरू अघि सारेको छ।

यस आलेखमा अर्थतन्त्र र विकासको चित्र नियाल्दा अहिलेको परिदृश्य संविधानले परिकल्पना गरे जस्तो हुन सकेको छैन। विगत तीन दशकको आर्थिक वृद्धिको दर हेर्दा सरकारले लक्ष्य गरेको अंक हासिल भएका वर्षहरूको संख्या विरलै भेटिन्छ। छिमकी देशहरूले तीन दशकसम्म दुई अंकको वार्षिक आर्थिक वृद्धिदर हासिल गरिरहदा नेपालको औसत वृद्धिदर चार प्रशितबाट केही माथि मात्र छ भने मूल्यवृद्धि वा मुद्रास्फीतिले भने आर्थिक वृद्धिलाई उछिनिरहेको अवस्था छ। विकासको चरित्र पनि भौगोलिक, क्षेत्रीय, प्रादेशिक र वर्गीय दृष्टिले सन्तुलित बन्न सकेको छैन। तसर्थ, संसदले सरकारले प्रस्तुत गरेका विकासका खाकाहरू समेत वर्गीय, क्षेत्रीय, भौगोलिक, प्रादेशिक, लैङ्गिक र दिगोपनका दृष्टिले सन्तुलित भए नभएको हेर्नु पर्दछ।

२. विधायिकी अधिकारको प्रत्यायोजनको पुनरावलोकन

संसदले स्वीकृत गरेका ऐन कानूनको कार्यान्वयन गर्दा कतिपय अवस्थामा संसदले दिएको अधिकार प्रयोग गरी नेपाल सरकारले तत्–तत् विषयमा नियमावली, आदेश, निर्देशिका, कार्यविधि समेत बनाउँछ, जुन कार्य प्रत्यायोजित विधायन अन्तर्गत आउँछ। कतिपय अवस्थामा संसदले करका विषयमा पनि विधायिकी अधिकार सरकारलाई दिएको पाइन्छ। उदाहरणको लागि आर्थिक ऐन, २०३४ ले पहिलो पटक तत्कालीन श्री ५ को सरकारलाई आवश्यकताको आधारमा नेपाल राजपत्रमा सूचना प्रकाशित गरी, भन्सार महसुल, व्याजकर र कर्जाकर घटाउन सक्ने अधिकार दिएपछि (दफा २०) आर्थिक ऐनद्वारा प्रत्यायोजित विधायनको व्यवस्था शुरु भयो र आजसम्म पनि हरेक वर्षको आर्थिक ऐनले कुनै न कुनै रुपमा यो अधिकार दिइरहेको देखिन्छ। यसरी हेर्दा आर्थिक ऐन, २०४८ ले सरकारलाई भन्सार र विक्री कर घटाउन सक्ने अधिकार दियो। आर्थिक ऐन, २०५१ ले यो अधिकारलाई विस्तार गरेर यस ऐन अनुसार लगाईएका जुनसुकै दस्तुर, महशुल र कर घटाउन सक्ने व्यवस्था गऱ्यो। आर्थिक ऐन, २०५२ ले यसलाई अझ विस्तार गरी कर घटाउन र छुट दिन सक्ने व्यवस्था गर्यो। आर्थिक ऐन, २०५३ ले घटाउन र आंशिक वा पूर्ण रुपमा छुट दिन सक्ने

अधिकार पनि दियो। आर्थिक वर्ष २०६७ मा आइपुग्दा यसको रुप यति विस्तारित भयो कि आर्थिक ऐन मात्र होइन नेपाल सरकारले आर्थिक ऐन र अन्य कानून अनुसारका दस्तुर, महसुल, शुल्क र कर समेत घटाउन, बढाउन र आशिंक वा पूर्णरुपले छुट दिन सक्ने अधिकार प्राप्त गऱ्यो। जस अनुसार ऐनमा प्रयोग भएको वाक्यांश यस प्रकार रहेको देखिन्छ "प्रचलित कानूनमा जुनसुकै कुरा लेखिएको भएता पनि नेपाल सरकारले आवश्यकता अनुसार, यस ऐन र प्रचलित कानून बमोजिम लगाईएका दस्तुर, शुल्क, महसुल र करको दर घटाउन, बढाउन वा त्यस्तो दस्तुर, शुल्क, महशुल र कर आंशिक वा पूर्ण रुपमा छुट दिन सक्नेछ, त्यस्तो दर, घटाइएको, बढाइएको वा छुटको सुचना नेपाल राजपत्रमा प्रकाशित गर्नु पर्नेछ" (दफा १८.१, आर्थिक ऐन, २०६७)। यस ऐनले दस्तुर, शुल्क, महसुल र करको दर घटाएको, बढाएको वा छुट दिएको विवरण अर्थ मन्त्रालयले प्रत्येक वर्ष संघीय संसदमा प्रस्तुत गर्नुपर्ने व्यवस्था पनि गरेको देखिन्छ। आर्थिक ऐन, २०८० को दफा १८ ले यो व्यवस्थालाई अझ विस्तार गरी निरन्तरता दिएको छ, जसमा विभिन्न तहका सरकार, मुनाफा रहित सार्वजनिक र सामुदायिक संस्था र नेपाल सरकारको स्वामित्व भएका संगठित संस्थालाई लाग्ने र नेपाल सरकार संलग्न आयोजना विकास सम्झौता बमोजिम परियोजना विकासको लागि आयोजना वा नियुक्त ठेकेदारको नाममा पैठारी हुने मालवस्तुमा लाग्ने दस्तुर, शुल्क, महसुल र कर छुट दिने विषय समेत थपिएका छन्।

यसरी नेपाल सरकारले राजस्वका दरहरू घटाउने, बढाउने वा छुट दिन सक्ने विधायिकी अधिकारको प्रयोग गर्दै आएको छ र यो व्यवस्था झन–झन विस्तारित हुँदै गएको छ। यो व्यवस्था अनुसार नेपाल सरकारले नयाँ कर लगाउने बाहेकका सबै राजस्व शक्तिको प्रयोग गर्न सक्छ।

यस प्रसंगमा अधिकारको प्रत्यायोजनको यो विषयलाई दर्शन, सिद्धान्त, सामाजिक न्याय, अधिकार प्रत्यायोजनको उद्देश्य, लक्ष्य तथा औचित्यता, श्रोतको परिचालन एवं प्रभावकारिता र प्राप्त नतिजाको आलोकमा मूल्यांकन गर्ने बेला भएको छ । अब पनि यसको मूल्यांकन नगर्ने हो भने संघीय संसद आफ्नो जिम्मेवारीबाट भागेको ठहरिन सक्छ।

यसमा कतिपय कुरा प्रष्ट पार्नु पर्ने बेला पनि भएको छ। जस्तैः आवश्यकता अनुसार भन्ने शब्दको व्याख्या खोई ? आवश्यकता भन्नाले कस्तो अवस्थालाई मान्ने ? त्यसको आधार र मापदण्ड के हो ? कर लगाउने र उठाउने विषयमा कार्यकारी अंगलाई कुन हदसम्म तजविजी अधिकार दिन मिल्छ ? यसरी अधिकार दिंदा र यसको प्रयोग गर्दा संधै र सबै बेला न्यायिक मनको प्रयोग हुन्छ भन्ने प्रत्याभूति कसरी हुन्छ ? त्यस्तै गरी मुनाफा रहित सार्वजनिक तथा सामुदायिक संस्थालाई राजस्व छुट दिन सकिने व्यवस्थाको प्रयोग र लाभ पहुँचवालाको नेतृत्वमा चलेका संस्थाले मात्र पाईरहेका र पाउने त होइनन् ? भन्ने प्रश्न यहाँ तेर्सिन सक्छ। बरु यस विषयमा सम्बन्धित विशेष ऐनमा नै त्यसरी राजस्व व्यवस्थामा हेरफेर गर्ने बारे स्पष्ट शर्त, आधार र मापदण्ड निर्धारण गरी ती आधारहरू पूरा भएको अवस्थामा सबै मुनाफा रहित सार्वजनिक तथा सामुदायिक संस्थालाई त्यस्तो छुट दिने व्यवस्था गरेमा राज्य बढी जिम्मेवार, न्यायिक र पारदर्शी हुने देखिन्छ।

यस विषयलाई दर्शन र सिद्धान्तको कसीमा समेत राखेर हेर्नु पर्दछ। यसो गर्न प्रत्यायोजन विधायनको विषय नेपालको संविधानको मर्मको विपरित भयो भएन भनेर पनि हेर्नु पर्छ किन भने अन्य लोकतान्त्रिक देशको संविधानले गरे जस्तै नेपालको संविधानले पनि कानून बमोजिम बाहेक कर लगाउन र उठाउन नपाउने व्यवस्था गरेको छ (नेपालको संविधान, धारा ११५, २०३ र २२८)। प्रस्तुत तीनवटा धाराले संघ, प्रदेश र स्थानीय समेतका तीनवटै तहले कर लगाउन र उठाउनको लागि कानून बनाउन अनिवार्य गरेका छन। यो व्यवस्था जनप्रतिनिधित्व विना कर लगाउन पाइन्न (No Taxation Without Representation) भन्ने सिद्धान्तमा आधारित छ। कर लगाउने र नलगाउने तथा उठाउने र नउठाउने विषय नागरिक सार्वभौम अधिकारको विषय हो। भारतको संविधानको धारा २६५ ले पनि यही व्यवस्था अनुसरण गरेको छ।

हुन त संसदले अधिकार प्रत्यायोजन गरे पछि कार्यकारिणीले नियम बनाएर कर लगाउने र उठाउने हुँदा त्यो पनि कानून अनुसार हुन्छ भन्ने तर्क गरिएला। तर यति गम्भिर विषयमा यो तर्क हलुका हुन सक्छ। अर्को तर्फ, नेपाल सरकारलाई राजस्व घटाउने, बढाउने वा छुट दिने अधिकार दिनु नै हुँदैन भन्ने तर्क पनि त्यति उपयुक्त

होइन। किनभने कतिपय अवस्थामा तत्काल निर्णय लिनुपर्ने अवस्था आउन सक्छ, विश्व अर्थतन्त्र र अन्तर्राष्ट्रिय बजारमा आएको उतार चढावले नेपालको बजार र मूल्यलाई प्रभाव पार्न सक्छ, आपूर्ति श्रृखंलामा अवरोध आउन सक्छ । त्यस बेला उचित समयमा उचित निर्णय लिन नसक्दा वैदेशिक मुद्राको प्रवाह र आर्थिक स्थायित्वमा प्रतिकूल प्रभाव पर्न सक्छ। मानौं, सुनको मूल्यमा आउने उतार चढाव थोरै समयमा पनि धेरै प्रतिशतमा हुन सक्छ। त्यसबेला संसदको स्वीकृति लिइराख्न सम्भव नहुन सक्छ। यस्तो अवस्थामा भन्सार महसुल र निकासी पैठारीसँग जोडिएको दस्तुर तथा शुल्कमा तत्काल हेरफेर गर्नुपर्ने हुन्छ। तसर्थ, यस्ता विषयमा आवश्यक आधार र मापदण्ड सहित अधिकार प्रत्यायोजन गर्नु उचित हुन्छ र यस्ता अन्तर्राष्ट्रिय अभ्यास पनि छन्। तर अहिले भए जस्तो संसदले हेर्न सक्ने समय भएका विषयमा पनि करमा हेरफेर गर्ने अधिकार दिनु उचित हुँदैन । संसदले यो विषयको पुनरावलोकन र पुनर्विचार गर्ने समय भएको छ।

संसदमा प्रत्यायोजित व्यवस्थापन समिति समेत छ। यसले संसदद्वारा प्रत्यायोजित अधिकार बमोजिम बनाइएका नियम, विनियम तथा जारी गरेका आदेशहरू वा सूचनाहरू प्रत्यायोजित व्यवस्थापनको सीमाभित्र रही गरिएका छन् कि छैनन् र प्रत्यायोजित अधिकार बमोजिम नियम, विनियम, आदेशहरू बनाइएका र तद्अनुसार कार्यान्वयन गरिएका छन् वा छैनन् र तिनको प्रभाव अर्थतन्त्रमा एवम् नागरिकले पाउने सेवामा कस्तो परेको छ भन्ने विषयमा निरन्तर अध्ययन अनुसन्धान गरी त्यसको प्रतिवेदन संसदमा प्रस्तुत गर्ने र संसदले त्यसलाई कार्यान्वयनमा लैजाने विषयमा विशेष ध्यान दिनुपर्ने देखिन्छ।

३. बजेट तथा कार्यक्रम तर्जुमा सीमा निर्धारण प्रक्रियाको सुदृढिकरण

नेपालको संविधानले नेपाल सरकारका अर्थमन्त्रीले प्रत्येक आर्थिक वर्षको सम्बन्धमा राजस्वको अनुमान, संघीय संचित कोषमाथि व्ययभार हुने रकमहरू, विनियोजन ऐन बमोजिम व्यय हुने रकमहरू, अघिल्लो वर्षको खर्च र त्यसले लिएको लक्ष्यको उपलब्धी समेतका विवरण समावेश रहेको आगामी वर्षको राजस्व र व्ययको अनुमान चालु

आर्थिक वर्षको जेठ १५ गते संघीय संसदको दुवै सदनको संयुक्त बैठकमा पेश गर्नुपर्ने व्यवस्था गरेको छ (नेपालको संविधान, धारा ११९)।

आर्थिक कार्यविधि तथा वित्तीय उत्तरदायित्व सम्वन्धी ऐन, २०७६ र सम्वन्धित नियमावलीका अनुसार नेपालको बजेट तर्जुमाको चक्र राष्ट्रिय स्रोत समितिको सिफारिसमा राष्ट्रिय योजना आयोगले चालु आर्थिक वर्षको माघ १५ गते भित्र आगामी तीन वर्षको लागि उपलब्ध हुने स्रोत र गर्न सकिने खर्चको सीमा तथा आवधिक योजनाद्वारा प्रक्षेपित लगानीको आधारमा तीन तहका सरकारको कूल राष्ट्रिय स्रोतको अनुमान गरेसँगै शुरु हुन्छ। यस्तो अनुमान गर्दा समष्टिगत आर्थिक परिसूचक, राजस्व, सहायता तथा ऋण समेतको वस्तुनिष्ठ ढंगले विश्लेषण गर्नु पर्दछ। खर्चको सीमा निर्धारण गर्दा सम्भावित आर्थिक दायित्व, राजस्व छुट सम्वन्धी प्रतिबद्धता र भुक्तानी दिन बाँकी दायित्वको समेतको ख्याल गर्नु पर्दछ। यो अनुमान लगाउने कार्य पनि समयमा हुँदैन। उदाहरणको लागि यस वर्ष वा २०८० मा माघ १५ गते भित्र निर्धारण गरी सक्नु पर्ने बजेट सीमा फागुनको पहिलो हप्तामा मात्र निर्धारण भयो र मन्त्रालयहरूले त्यसको पत्र फागुन १५ तिर मात्र पाए। फलस्वरुप बजेट तर्जुमाको लागि प्राप्त समय जम्माजम्मी तीन महिना मात्र रहेको देखिन्छ। यसले पनि बजेट तर्जुमा कार्यलाई प्रभावित गरेको छ, बजेट परिपक्व हुन सक्ने अवस्था रहेको छ। यसपाली २०८० फागुन अगावै संसदमा बजेटका सिद्धान्त तथा प्राथमिकता प्रस्तुत भए पनि सत्ता गठबन्धनको फेरबदल र देखिएको विचलनले त्यसमा हुनु पर्ने जति छलफल हुन सकेन। यसरी बजेटमा पर्याप्त बहस, छलफल र अन्तरक्रिया नहुँदा बजेट तर्जुमाको निर्धारित तालिका समेत प्रभावित हुन गई परिपक्व र कार्यान्वयन योग्य बजेट बनाउने काममा अवरोध पुगेको छ, बजेट निर्माण कार्यमा दवाव परेको छ, अनि बजेट अनुमान तथा कार्यक्रम समावेशका काम हचुवाका भरमा हुन गई त्यसको प्रभाव सिंगो बजेटको गुणस्तरमा परेको छ। यसले वैज्ञानिक तथा विधिसम्मत ढंगले बजेट निर्माण गर्ने काम बिथोलिनुका साथै बजेटमा कार्यक्रम तथा आयोजना समावेश गर्ने र राजस्वका नीति निर्धारण गर्ने विषयमा प्रभावशाली व्यक्ति, समूह र दलको दवाव र प्रभाव हावी भएको अवस्था छ।

यस प्रसंगमा प्रचलित कानूनी व्यवस्थाले आगामी तीन वर्षका लागि उपलब्ध हुने स्रोतको अनुमान, गर्न सकिने खर्चको सीमा निर्धारण, तीन तहका सरकारको कूल राष्ट्रिय स्रोतको अनुमान, समष्टिगत आर्थिक अवस्था तथा वित्तीय स्थायित्वको अवस्थाको विश्लेषण, वैदेशिक सहायता तथा आन्तरिक ऋण परिचालनमा वाह्य तथा आन्तरिक अवस्थाले पार्न सक्ने प्रभावको आंकलन तथा स्रोत अनुमान र खर्चको आवश्यकताबीच सन्तुलन कायम हुने गरी मध्यकालीन समष्टिगत खाका तयार गर्ने जिम्मा राष्ट्रिय स्रोत समितिलाई दिएको देखिन्छ। यस्तो महत्वपूर्ण जिम्मेवारी पाएको श्रोत समितिको संस्थागत प्रवन्ध र संरचना भने स्थायी प्रकृतिको छैन, तदर्थ प्रकृतिको छ, समितिमा व्यक्तिहरू पदेन सदस्य हुन्छन्। फलस्वरुप बजेट सीमाको निर्धारण गर्ने कार्य वैज्ञानिक, तथ्यगत, वस्तुनिष्ठ र यथार्थपरक हुनु भन्दा पनि सत्तारुढ दलको (अझ भनौं प्रधानमन्त्रीको) निर्देशनबाट बढी प्रभावित भएको पाइन्छ। स्रोत समितिले प्रारम्भमा दिएको सीमा पटक–पटक परिवर्तन भएका उदाहरण प्रशस्तै पाइन्छ। फलस्वरुप उपलब्ध र थप प्राप्त हुने सम्भावित स्रोतका एकीकृत अंक भन्दा ठूलो आकारको बजेट सीमा निर्धारण भै त्यसको आधारमा बजेट बन्ने तर त्यसको कार्यान्वयन भने फितलो भै त्यसको नकारात्मक प्रभाव अर्थतन्त्रमा पर्ने गरेको छ। वास्तवमा स्रोत समितिको गठन र कार्य सञ्चालन विधि यति हलुका हुनु हुँदैन। स्रोतको अनुमान र बजेट सीमा निर्धारण गर्ने कार्यलाई वैज्ञानिक र जवाफदेही बनाउने हो भने संयुक्त अधिराज्यमा रहेको अफिस अफ बजेट रिस्पोनसिबिलिटि जस्तैः नेपाल अनुकूल नाम र जिम्मेवारी सहितको बजेट उत्तरदायित्व सम्वन्धी अर्द्ध स्वायत्त निकायको स्थापना गरी राष्ट्रिय स्रोत समितिलाई त्यसमा रुपान्तरण गर्न सकिन्छ। अफिस अफ बजेट रिस्पोनसिबिलिटी संयुक्त अधिराज्य (युके) सरकारको अर्थ मन्त्रालय अन्तर्गत रहेको, सन् २०११ मा स्थापित, विभागीय श्रृङ्खला बाहिरको कार्यकारी अन्तर्गतको अंग हो (HM Treasury, Office for Budget Responsibility, UK, २०१९)। तीन सदस्यीय बोर्डको निर्देशनमा चल्ने यसको काम देशको अर्थतन्त्र र सार्वजनिक वित्त विषयको स्वतन्त्र रुपमा विश्लेषण गरी आर्थिक परिसूचकहरूको स्वतन्त्र रुपमा अनुमान लगाउनु हो। यसले वर्षभरि नै यही काम गर्दछ, हरेक वर्ष अर्थतन्त्र र सार्वजनिक वित्त विषयको विश्लेषण गरी आर्थिक

परिसूचकहरूको अनुमान सहितको प्रतिवेदन अर्थ मन्त्रालयमार्फत सरकारलाई बुझाउँछ र यसैको आधारमा सरकारले वार्षिक बजेट बनाउँछ। यस्तो प्रकृतिको संरचना निर्माण गर्न सके हचुवाको भरमा बजेट निर्माण हुने अभ्यासको अन्त्य हुन्छ, बजेटको सीमा निर्धारणसमेतका कार्यमा यथार्थता आउँछ र कुशलता देखिन सक्छ। यो संस्थाले समष्टिगत परिसूचकहरूको वैज्ञानिक ढंगले विश्लेषण गरी भरपर्दो किसिमको समष्टिगत वित्त खाका एवं बजेट तथा कार्यक्रम र नतिजाको खाका सहितको मध्यकालीन खर्चको एकीकृत ढाँचा तयार गर्न सक्दछ जसको सही कार्यान्वयनले सार्वजनिक वित्तका क्षेत्रमा आर्थिक अनुशासन कायम हुने, बजेट कार्यान्वयन क्षमतामा अभिवृद्धि हुने, विनियोजन कुशलता र समष्टिगत आर्थिक स्थायित्व कायम गर्ने समेतका लक्ष्य हासिल गर्न सकिन्छ।

यस बाहेक बजेटलाई बढी परिपक्व र राजनीतिक दृष्टिले पनि बढी स्वीकार्य बनाउन विनियोजन विधेयक संसदमा प्रस्तुत हुनु भन्दा तीन महिना अगाडि नै अर्थ मन्त्रीले विधेयकमा समावेश हुने बजेट तथा कार्यक्रमका सिद्धान्त र प्राथमिकताको विवरण संघीय संसदमा प्रस्तुत गर्नुपर्ने र त्यसमा छलफल गरी आवश्यक थपघट गर्नुपर्ने भए सुझाव सहित संसदले अर्थ मन्त्रालयमा लेखी पठाउनु पर्ने व्यवस्थालाई बढी प्रभावकारी बनाउनु पनि त्यतिकै आवश्यक छ। यसमा छलफल गर्दा संसद सदस्यहरूले विशेषज्ञहरूको प्यानल तयार गरी उनीहरूसँग छलफल पछि आफ्नो धारणा राख्ने परिपाटी बसाउनु उपयुक्त हुन्छ। बजेट तर्जुमा गर्दा अर्थतन्त्रको विश्लेषण, तीन तहका सरकारको कूल राष्ट्रिय श्रोतको अनुमान, प्रादेशिक सन्तुलनको पुनरावलोकन, मानव बस्तीको जनसांख्यिक वितरणको अवस्थाको मुल्यांकन समेतका काम गर्नु आवश्यक हुन्छ। यी कार्य गर्नाले बजेटका नीति र कार्यक्रमलाई आवश्यकताको कसीमा ढालेर नतिजामूलक बनाउन सहयोग पुग्दछ भन्ने आधार खडा हुन्छ। यी सबै काम गर्ने दृष्टिले विद्यमान अवस्थामा रहेको बजेट तर्जुमा गर्ने समय अवधि पनि अत्यन्त छोटो भयो भन्न सकिन्छ। यसमा पनि पुनर्विचार गर्नुपर्ने देखिन्छ ।

अहिले नेपालको अर्थतन्त्र न्यून वृद्धि, वृद्धिलाई उछिनेको मूल्यवृद्धि, न्यून राजस्व परिचालन र बढ्दो सार्वजनिक ऋणको भार समेतको दवावमा परेको छ र बजेट पनि

प्रभावमा बन्ने गरेको छ। यस अवस्थामा अर्थतन्त्रलाई दवाव मुक्त र बजेटलाई नकारत्मक पक्षबाट प्रभावमुक्त बनाउन सरकारका विभिन्न अंग र निकायहरूले एकीकृत रुपमा काम गर्नु पर्दछ। बजेट निर्माण कार्यलाई सुधारको प्रथम बिन्दु बनाई राजस्व अनुमानलाई बढी वैज्ञानिक र यथार्थपरक बनाउन सक्नु पर्दछ। चालु खर्चको विनियोजन राजस्वको उपलब्धता र मितव्ययिताको सिद्धान्तको आधारमा गरी पुँजीगत तर्फको विनियोजन आयोजनाको आवश्यकता, त्यसको लागत, लाभ, प्रतिफल र नतिजा तथा सम्बन्धित निकायको खर्च गर्न सक्ने प्राविधिक तथा व्यवस्थापकीय क्षमताको आधारमा छुट्टाउने गरी विनियोजनमा कुशलता देखाई बजेटमाथिको दवाव र प्रभावलाई अन्त्य गर्नुपर्छ। यस कार्यमा संसद तथा संसदीय समितिहरूले महत्वपूर्ण भूमिका खेल्न सक्दछन् । नीति र कानूनमा सुधार गरी आउँदा वर्षमा बजेट निर्माण कार्यको लागि पर्याप्त समय प्राप्त हुने व्यवस्था गर्ने विषयमा छलफल गर्ने र सरकारलाई निर्देशन दिने काम संसदबाटै हुन सक्दछ । संसदले संयुक्त राज्य अमेकिाको बजेट निर्माणको दुई वर्षे (२२ महिना) चक्रप्रणालीको अनुभवको उपयोग गरी बजेट प्रणालीलाई बढी उपयोगी बनाउन सक्दछ।

४. राजस्व नीति र प्रणालीमा विशेष जोड

संसद देशको समग्र आर्थिक सामाजिक तथा सांस्कृतिक समुन्नतिमा केन्द्रित हुनुपर्ने हुँदा संसद सदस्यहरूको दृष्टि देशको आय, व्यय, विकास र सामाजिक न्यायको क्षेत्रमा समेत समानुपातिक ढंगले जानु पदर्छ। विगतको अभ्यास हेर्दा संसदका माननीय सदस्यहरूको बढी ध्यान आफ्नो क्षेत्रमा धेरै भन्दा धेरै परियोजना र बजेट लैजानमा केन्द्रीत भएको पाइन्छ। यो कुरा विशेष गरेर बजेट अधिवेशनमा देख्न सकिन्छ। तर ती परियोजना सम्पन्न गर्न वित्तीय स्रोत चाहिन्छ र त्यो स्रोत राजस्व परिचालनबाट प्राप्त हुन्छ भन्ने कुरा बिर्सन मिल्दैन। लगानी गर्न, खर्च गर्न र वितरण गर्न साधनको आवश्यकता पर्दछ, जुन कुरा राजस्वबाट प्राप्त हुन्छ। यसको अर्थ राजस्व प्राप्त गर्नु भनेको खर्च आवश्यकता पूरा गर्न चाहिने आय आर्जन गर्नु वा साधन परिचालन गर्नु हो। करले अर्थराजनीतिक शक्ति बोक्ने हुनाले यसले राजनीतिक व्यवस्थालाई समेत प्रत्यक्ष र अप्रत्यक्ष रुपमा प्रभावित गर्दछ।

कर भनेको समाज र सभ्यताको सम्बर्धनको लागि जनता वा संस्थाले सरकारलाई गर्ने अपरिहार्य भुक्तानी हो। यो मार्मिक र संवेदनायुक्त विषय हो, यो जन्म मृत्यु र खुशीसँग समेत जोडिएको छ। तसर्थ, सार्वजनिक हितको लागि सार्वजनिक वित्त प्रणालीको उपयुक्त माध्यमबाट कर परिचालन गर्न यसको सैद्धान्तिक र व्यवहारिक दुवै पक्षमा ध्यान दिनुपर्ने हुन्छ। संसदका सदस्यहरूले यस विषयलाई प्राथमिकतामा राख्नु पर्छ। हुन त देशको आवश्यकता अनुसार कुनै कालखण्डमा ऋण परिचालन र व्यवस्थापन गरेर पनि लगानी वा खर्च गर्न सकिन्छ तर लिएको ऋण ढिला चाडो तिर्नु पर्छ र त्यसको भुक्तानीको अन्तिम स्रोत पनि राजस्व नै हो। कतिपय अवस्थामा अनुदान पनि प्राप्त गर्न सकिन्छ तर मागेर लिएको स्रोतले देश समुन्नत हुन सक्दैन, यो सधैं प्राप्त हुने स्रोत पनि होइन।

यस अर्थमा कर तथा गैर कर राजस्व परिचालनलाई प्रभावकारी बनाउन सकेमा मात्र आत्मनिर्भर अर्थतन्त्रको निर्माण भै आमनागरिकले समेत सुखी भएको अनुभूति गर्न सक्ने हुँदा संसदमा राज्यका तीन तहका सरकारले अवलम्बन गर्ने कर सम्बन्धी नीति, सिद्धान्त, प्रणाली, व्यवस्था, करका आधार, दर र कर प्रशासन तथा व्यवस्थापनको सम्वन्धमा घनीभूत रुपमा छलफल हुनु पर्दछ र न्यूनतम सहमति सहित छाता नीति बनाउनु पनि त्यतिकै आवश्यक छ। यसले राजस्व नीतिमा रहेको तहगत र निकायगत बेमेल तथा दोहोरोपन हटाई समग्र राजस्व प्रणालीलाई प्रभावकारी बनाउँछ।

अर्को कुरा, कतिपय अवस्थामा संसद सदस्यहरूले छोटो समयमा सरकारले प्रस्तुत गरेका कर तथा गैरकर राजस्व सम्वन्धी विधेयकहरूमा समेटिएका विषयलाई छिचोलेर आफ्ना धारणाहरू राख्नमा कठिनाई पनि पर्न सक्छ। यस अवस्थामा थप अर्थशास्त्रीय र प्राविधिक ज्ञानको आवश्यकता पर्दछ । उदाहरणको लागि आर्थिक विधेयकलाई लिन सकिन्छ। आर्थिक ऐनको उद्देश्य नेपाल सरकारको अर्थ सम्वन्धी प्रस्तावलाई कार्यान्वयन गर्नु हो। यसमा राजस्व संकलन गर्ने, नयाँ कर लगाउने, कर घटाउने, कर बढाउने र कर छुट दिनुका साथै राजस्व प्रशासन सम्वन्धी प्रचलित कानूनको संशोधन गर्ने विषय समेटिएका हुन्छन् र यो किसान, कर्मचारी, उद्योगी, व्यवसायी, लगानीकर्ता, मजदुर, गृहिणी र आम उपभोक्ता सबैको चासोको विषय पनि हो। यस ऐनका कतिपय

दफा तुरुन्त लागू हुन्छन् भने अन्य दफाहरू आउँदो आर्थिक वर्षको श्रावण १ गतेबाट लागू हुन्छन।

यसका कतिपय दफा स्वयं प्रभावी हुन्छन भने कतिपय दफाले अन्य विशेष ऐनहरू जस्तैः आयकर ऐन, भन्सार ऐन, मूल्य अभिवृद्धि कर ऐन समेतका ऐनहरूमा रहेका दफा उपदफामा संशोधन गर्दछन्। यो ऐन एक वर्षको लागि लागू हुने हुँदा एक वर्षका लागि गरेका व्यवस्थालाई अर्को वर्ष पनि निरन्तरता दिने हो भने अर्को वर्षको आर्थिक विधेयकमा पनि ती कुराहरू समावेश गर्नुपर्ने हुन्छ जसले हरेक वर्ष आर्थिक ऐन मोटाउंदै गएको देखिन्छ। यसरी समावेश गरिएका विषयमा आयकर, भन्सार शुल्क, मूल्य अभिवृद्धि कर, मदिरा ऐन तथा अन्तःशुल्क सम्वन्धी विषयहरू पर्दछन्। यसरी हिजोका संशोधनहरूलाई समेत निरन्तरता दिई नयाँ कुराहरू पनि समावेश गर्नुपर्ने हुँदा आर्थिक विधेयकको आकार मोटो हुँदै गएको पाइन्छ। उदाहरणको लागि आर्थिक ऐन, २०७९ को मोटाई ७१६ पृष्ठको रहेकोले यो कुरा पुष्टि हुन्छ। आर्थिक ऐनमा विशेष गरी मूल्य अभिवृद्धि कर, भन्सार महसुल र अन्तःशुल्कका विषयहरूको संशोधन प्रस्ताव विश्व भन्सार संगठनद्वारा सिर्जना गरिएको वस्तुको आयात निर्यात प्रयोजनको लागि उपयोग गरिने हार्मोनाइज्ड कोडको आधारमा गरिएको हुन्छ। यसको कम से कम जानकारी पनि भएन भने ती कोड वा संकेत नम्बरले समेट्ने वस्तुको प्रकृति र तिनमा करको दरमा हेरफेरले अर्थतन्त्र, आपूर्ति व्यवस्था र नागरिकको दैनिक जीवनमा कस्तो प्रभाव पार्छ भन्ने विषयमा प्रभावकारी ढंगले मत जाहेर गर्न कठिनाई हुन्छ। यसमा वस्तु समूहको शीर्षकलाई संकेत गर्ने कोड चार अंकको र खास वस्तुलाई संकेत गर्ने उपशीर्षक आठ अंकको हुन्छ। आर्थिक विधेयकमा महसुल वा कर आंशिक वा पूर्ण रुपमा छुट दिएको भनी वस्तु जनाउने उपशीर्षक मात्र लेखिएको हुन्छ । यस्तो अवस्था संसद सदस्यहरूमा आफैंमा त्यसलाई छिचोलेर कुन प्रकृतिको वस्तुमा कर छुट भयो वा थप लाग्यो र गत वर्षको व्यवस्था के थियो कतिले घटबढ भयो भन्ने पत्ता लगाउन या त आफैंमा त्यसको ज्ञान हुनु पर्दछ अन्यथा विज्ञहरूको सहयोग लिनु पर्छ। हचुवाको भरमा विचार राख्नु हुँदैन। कतिपय अवस्थामा सरकारले पूरा तयारीका साथ हिउँदे वा विधेयक अधिवेशनमा प्रस्तुत गर्नुपर्ने राजस्व सम्वन्धी विशेष ऐनहरू संशोधन गर्ने विषय

पनि आर्थिक विधेयकमा समावेश गरी संसदमा प्रस्तुत गर्ने परिपाटी बढेर गएको छ। यसमा पनि संसदको जति ध्यान जानु पर्ने हो, जानु पर्ने जति गएको छैन। साथै कर लगाउनुको उद्देश्य संविधानसँग मेल खानु पर्छ। राज्यकोष भर्ने, सामाजिक न्याय कायम गर्ने, लगानी, उत्पादन र उत्पादकत्व बढाउने, पुर्नमुल्यद्धारा हानिकारक वा गलत वस्तु वा सेवाको उपभोगलाई निरुत्साहित गर्ने, वचत बढाएर पुँजी निर्माण गर्ने समेतका उद्देश्यहरूबीच अनुपातिक भार मिलाउनु पनि त्यतिकै आवश्यक छ।

तसर्थ, आउँदा दिनमा संसद सदस्यहरूले बजेटका नीति तथा कार्यक्रमका सम्बन्धमा विनियोजन पक्षमा मात्र होइन आय पक्षका कर तथा गैर राजस्व एवं ऋण परिचालन सम्बन्धी नीति, सिद्धान्त, प्रणाली र प्रक्रियाका विषयमा पनि विशेष ध्यान पुऱ्याउनु पर्ने देखिन्छ।

निष्कर्ष

संसदमा अर्थ तथा विकासको विषयलाई हेर्ने अर्थ, सार्वजनिक लेखा, उद्योग वाणिज्य, पर्यटन, कृषि, पूर्वाधार विकास समिति समेत एक दर्जन समिति छन्। समितिहरूमा विषयगत क्षेत्रको गहन चिरफार वा शल्यक्रिया गरिने हुँदा यस्ता समितिहरूलाई संसदका कार्यशाला (वर्कसप) भनिन्छ, जुन आफैं मिनी संसद पनि हुन। यी समितिको आफ्नो विशेष क्षेत्र हुने भए पनि आखिर सबैको लक्ष्य लोकतान्त्रिक पद्दतिको सुदृढिकरण गर्दै देशको आर्थिक सामाजिक विकास गर्नु नै हो, जनताले खुशी र सुखी भएको अनुभूति गर्ने अवस्था निर्माण गर्नु नै हो।

सरकारले गरेको राजस्व परिचालन, राज्यकोष उपयोग वा खर्च र अन्य काम कारवाही संविधान अनुकूल तथा जनमुखी भए नभएको सम्वन्धमा अनुगमन, मुल्यांकन तथा नीतिगत पुनरावलोकन एवं परीक्षण गरी आवश्यक निर्देशन दिने र सोको पालना भयो भएन परीक्षण गर्ने काम पनि संसद तथा संसदीय समितिहरूको हो।

नेपाल सरकारले अर्थ मन्त्रीमार्फत प्रत्येक वर्षको लागि बजेट वा आय व्ययको अंक र नीति समेतको दस्तावेजहरू संसदमा प्रस्तुत गर्दछ। यस क्रममा अर्थ मन्त्रीले बजेट वक्तव्यमार्फत सरकारको नीतिगत दिशा कता जादैछ भन्ने व्याख्या सहितको विवरण संसदमा प्रस्तुत गर्दछन्। त्यस्ता नीतिगत व्यवस्थाको कार्यान्वयन गर्नको लागि आय र

व्ययका अंकहरू समेतका विवरण समावेश गरी आवश्यक कानूनी प्रबन्ध भएका आर्थिक, विनियोजन, राष्ट्र ऋण उठाउने समेतका विधेयकहरू पनि अर्थ मन्त्रीले संसद समक्ष प्रस्तुत गर्दछन्।

यस सन्दर्भमा राजस्व सम्वन्धी नीति, कानून, प्रणाली, प्रक्रिया र कार्याविधि न्यायपूर्ण तथा नागरिकको क्षमता अनुकूल छ छैन, करका आधार र दरको तुलनात्मक अवस्था कस्तो छ, कर राजस्व र गैरकर राजस्व एवं कूल कर परिचालनमा पनि प्रत्यक्ष र तथा अप्रत्यक्ष करको अनुपातिक संरचना कस्तो छ र त्यसमा सुधारको गुन्जाइस छ छैन भन्ने कुराको जानकारी पनि संसद तथा संसद सदस्यहरूमा हुनु पर्दछ।

त्यस मध्ये विनियोजन ऐनले खर्च गर्ने क्षेत्रहरूको निर्धारण गरेको हुन्छ । यस्तो खर्चलाई मूलतः चालु खर्च, पुँजीगत खर्च र वित्तीय व्यवस्था गरी तीन शीर्षकमा बाँडेर रकम विनियोजन गर्ने गरिएको छ। अर्थतन्त्रको अवस्थाको कुरा गर्दा विगत केही वर्षदेखि राजस्व स्रोतको अभिवृद्धि अपेक्षित रुपमा हुन नसकेको सम्वन्धमा एकातिर चालु खर्चमा मितव्ययीता कायम गरी यसलाई निश्चित् सीमामा राख्नु पर्ने अवस्था छ भने अर्कातिर पुँजीगत बजेटमा विनियोजन र खर्च दुवैको अनुपात बढाउनु पर्ने अवस्था छ । वित्त व्यवस्था शीर्षकमा सार्वजनिक संस्थानमा शेयर तथा ऋण लगानी, वैदेशिक शेयर लगानी र आन्तरिक तथा वाह्य ऋणको सावाँ भुक्तानीसमेतका रकमहरू विनियोजन गरिन्छ। यी तीन प्रमुख शीर्षकहरूमा विनियोजन गरिने रकमहरू एकअर्कासँग सम्वन्धित र प्रभावित हुन्छन्।

चालु खर्च धेरै बढ्दा राजस्व रकमले नपुग्ने हुन्छ, त्यसको लागि थप आन्तरिक ऋण लिनुपर्ने हुन्छ, त्यसले निजी लगानी र मूल्यमा प्रतिकूल असर पर्न सक्छ, निजी क्षेत्रमा कर्जाको रुपमा जाने रकममा संकुचन आउन सक्छ। चालु खर्च बढ्दा मूल्य वृद्धि वा मुद्रास्फिति दर सीमा बाहिर जान सक्छ । वाह्य ऋणको विषय पुँजीगत खर्चसँग जोडिएको हुन्छ। वाह्य ऋणको सही उपयोग भएन भने एकातिर ऋणको भार बढेर जान्छ भने अर्कातिर सोही अनुपातमा आम्दानी बढ्दैन, पूर्वाधारको विस्तार हुँदैन र अर्थतन्त्रको गति सुस्त हुन्छ, अन्तर्राष्ट्रियस्तरमा देश र सरकारको साख गिरेर जान्छ।

पुँजीगत खर्च शीर्षकलाई हेर्दा एकातिर कूल बजेटमा पुँजीगत विनियोजनको अनुपात नै न्यून रहेको देखिन्छ र अर्कातिर खर्च प्रतिशत तीन चौथाईबाट माथि जान सकेको छैन । तसर्थ संसदले बजेटमा पुंजिगत विनियोजन बढाउने र खर्च क्षमता अभिवृद्धि गर्ने विषयमा सरकारलाई विशेष दवाव र निर्देशन दिन सक्नु पर्दछ। त्यसो भएमा निजी क्षेत्रबाट हुने लगानी पनि बढ्छ र अर्थतन्त्रमा वृद्धिको गति तिब्र हुन्छ।

बजेटमा ऋणको भार वा बजेट घाटाको अनुपात बढ्दा एकातिर व्याज समेतका खर्च वृद्धि भै चालु बजेटको आकार ठूलो हुन्छ भने अर्कातिर सावाँ फिर्ता गर्ने प्रयोजनको लागि विनियोजन गरिने वित्त व्यवस्थाको आकार ठूलो हुन्छ। उता वित्त व्यवस्था शीर्षकमा आउने सार्वजनिक संस्थानमा शेयर तथा ऋण लगानी र वैदेशिक शेयर लगानीको विषयलाई पनि त्यसको प्रयोजन र प्राप्त प्रतिफल दर समेतलाई दृष्टिगत गरी हेर्नु पर्ने हुन्छ। सार्वजनिक संस्थानमा शेयर तथा ऋणमा लगानी गरेको रकमले पुँजी, पूर्वाधार र प्रतिफल सिर्जना गर्न सकेको छ छैन र कतै यो रकम सामान्य दायित्व भुक्तानी गर्नमा खर्च गरिएको छ कि भनेर पनि हेर्नु पर्दछ।

हालसम्म सरकारले सार्वजनिक संस्थानमा शेयर तथा ऋणका रुपमा गरेको लगानीको प्रतिफल अत्यन्त न्यून रहेकाले पनि यसको उपयोग पूर्वाधार निर्माण गर्न वा नागरिकले पाउनु पर्ने सेवा विस्तार गर्न वा राज्यको लागि थप पुँजी निर्माण गर्नमा हुनु पर्ने जति प्रभावकारी भएको छैन भन्ने प्रमाणित हुन्छ। सरकारले वैदेशिक ऋण लिदा देशको आर्थिक तथा मूल्य स्थायित्वमा प्रतिकुल असर पर्न नहुने तथा उपलब्ध श्रोतको बांडफांड तीन तहका सरकारबीच न्यायोचित ढंगले हुने व्यवस्था गरेर मात्र लिनु पर्दछ। यसरी संसदले देशको समष्टिगत आर्थिक स्थायित्वको विषयलाई पनि केन्द्रमा राखेर सरकारको कामको निगरानी गर्न सक्नु पर्दछ। यसको लागि प्रतिनिधि सभामा रहेका दस, राष्ट्रिय सभामा रहेका चार तथा दुई सयुंक्त गरि १६ वटा संसदीय समितिहरूको विशेष भूमिका रहन्छ।

इतिहास खोतल्ने हो भने संसदीय समितिले सार्वजनिक सरोकारका विषयमा उल्लेखनीय भूमिका खेलेका उदाहरण पनि प्रशस्त भेटिन्छन् । यसमा सार्वजनिक लेखा समिति र राज्य व्यवस्था समितिले ठूला भ्रष्टाचारका घटनाका सम्वन्धमा अध्ययन तथा

छानविन गरी सुशासन कायम गर्न खेलेका भूमिका सम्झन लायक छन्। धमिजा काण्ड, चेज एयर काण्ड, लेविको चिनी आयात काण्ड, सुडान घोटला आदि यसका उल्लेखनीय उदाहरण हुन्। अन्य समितिले पनि आ–आफ्ना क्षेत्रमा उल्लेखनीय भूमिका खेलेको खण्डमा आर्थिक विकासको गतिलाई तीव्र बनाउनमा संसदको भूमिका प्रभावकारी हुन्छ भन्ने कुरामा दुई मत राख्नु पर्ने कुनै कारण रहदैन।

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सेवा प्रवाहमा जरो जोड्ने कि ?

साक्षरता शिक्षाः हामी पो चुक्यौं कि ?

- प्रा. डा. विद्यानाथ कोइराला*

लेखसार

विश्वका धेरै कुराको हामीले अभ्यास गरेका छौं । शिक्षामा गरिएका यी अभ्यासहरूले केही सकारात्मक उपलब्धी पनि दिएका छन् । यसक्रममा हामीले केही गल्तीहरू पनि गरेका छौं । बिचार ल्याउँने । संस्कार बिर्सिने । सिद्धान्त ल्याउँने । आफ्नोपनामा जोड्न नसक्ने । समकक्षी सोच ल्याउँने । रैथाने सोचमा ती कुरा पनि छन् कि त भनी नसोच्ने । हामीले मानेका शास्त्रहरूमा यसबारे के भनिएको छ भनेर नखोज्ने । जनअभ्यासमा के छ भनी नहेर्ने । परिणामतः हामीले सेवा दिएका साक्षरता शिक्षा, अनिवार्य शिक्षा, निःशुल्क शिक्षा, व्यावसायिक शिक्षा, शिक्षक शिक्षा, तथा उच्च शिक्षा अलमलमा परेको छ । जग नजोडिएको धुरी भएको छ। यो कुरामा सचेत हुनासाथ हाम्रा सेवाहरू प्रभावकारी हुन्छन् । सान्दर्भिक, व्यावहारिक सिद्धान्त र अभ्यास मिलेका । दर्शन र जीवन मिलेका । लेखमा यही कुरा उल्लेख छ ।

शब्दकुञ्जी : सेवा प्रवाह, साक्षरता, डकार सम्मेलन, व्यवसायिक शिक्षा

ललितपुरको सैंबु भैंसेपाटीमा राणाकालमैं साक्षरता अभियान चलेको थियो। पञ्चायतकालीन सरकारले २०४५ सालमै सुर्खेत तथा भक्तपुरमा साक्षरता अभियान चलायो। पछि बनेपा तथा धुलिखेल नगरपालिकाले पनि यो काम गरेका थिए । बहुदलीय सरकारले २ वर्षमा निरक्षरता उन्मूलन गर्ने अभियान थाल्यो। थाइल्याण्डको जोमटिन सम्मेलनले त्यो काममा थप उर्जा दियो । सेनेगलको डाकार सम्मेलनले थप बल लगायो। परिणामतः अहिले ६४ जिल्ला साक्षर भइसकेका छन्। नेपाली तथ्यांकले यही कुरा भन्छ।

यस क्रममा साक्षरता अभियानकर्मीहरूले स्थानीय सरकार परिचालन गरे। जाँच

* *पूर्व प्रमुख, शिक्षाशास्त्र केन्द्रीय विभाग- त्रिभुवन विश्वविद्यालय ।*

दिएर नतिजा कुरिरहेका विद्यार्थी उपयोग गरे। स्वयंसेवीहरूको परिचालन गरे। गैससहरू परिचालन गरे। आ-आफ्ना घरका अभिभावक साक्षर बनाउँन स्कूले बालबालिकालाई क्रियाशील बनाए। एक जनाले एकजना साक्षर बनाउ भन्ने अभियान चलाए । जनप्रतिनिधिहरू पनि परिचालन गरे। यस अर्थमा भेल छोपेर रोपाइँ गर्ने कृषकको तरीका अपनाए। कति तलबी रुपमा। कति पारिश्रमिकको रुपमा। कतिले बिना पारिश्रमिक काम गरे। यी सबै काममा केन्द्र नैं आदेशक भयो। जनस्तरको सरकार आदेश कार्यान्वयन गर्ने बिन्दूमा पुग्यो। यो अभ्यासको परिणतिले साक्षरता शिक्षाको काम पालिकाको रहेन । रहन दिइएन। यो काम राणा सरकारले गरेको थियो। पञ्चायती सरकारले पनि त्यसै गऱ्यो। लोकतान्त्रिक सरकारले पनि त्यही अभ्यासलाई निरन्तरता दियो। गणतान्त्रिक सरकार पनि त्यही काम गरिरहेको छ। यसको अर्थ हो - हामी स्थानीय सरकारलाई विश्वास गर्दैनौं । २०७२ को संविधानको अनुसूची ८ पनि मान्दैनौं। अहिले बनेको शिक्षा योजना तथा विद्यालय शिक्षा विकास योजनामा पनि स्थानीय सरकारलाई विश्वास गर्दैनौं। त्यसैले पालिका सरकार न त थाइल्याण्डमा जस्तो वातावरणको साक्षरीकरण (Literalization) मा सक्रिय छ। न त चीनको काउण्टी जस्तो प्रतियोगी बन्छ। यहींनेर हामी चुक्यौं कि त ?

ब्राजिलको अनुभव भने भिन्न छ। त्यहाँको भूमिहीन कामदारको अभियान (Landless workers' movement) ले पहिले आफ्ना कार्यकर्ता तथा समर्थकलाई साक्षर बनायो। हाम्रा अभियानकर्ताहरूमा यो चेत बनेकै छैन। दलित अधिकारकर्मीमा। महिला अधिकारकर्मीमा। जनजाती अधिकारकर्मीमा। किसानका नेतृत्वमा। मजदूरका नेतृत्वमा। राजनीतिक दलहरूमा। तिनका जनवर्गीय भनिएका संगठनहरूमा। दलैपिच्छेका संघ संगठन बन्न बनाउँन क्रियाशील हामीले ब्राजिलको चिन्तनको गहिराई बुझेनौं कि त ?

ब्राजिलले पाउलो फ्रेरेको उदार दर्शन (Liberation theology) बोकेको थियो। तिनी ब्राजिलियन नैं थिए। स्वदेशी । हाम्रो नेतृत्वले पनि फ्रेरे बोक्यो। यूनेस्को, युनिसेफ तथा अगैससहरूले पनि फ्रेरे नैं बोकाए। तिनकै सामाजिक अभियानका जनमुखी विश्वविद्यालय (Popular university of social movement) को अवधारणा बोकाए। सामाजिक

साक्षरता। यो बोकाइले साक्षरता शिक्षा पाएकाहरूमा केही हदमा आन्दोलनकारी चेत त बन्यो। तर समालोचनात्मक क्षमता बनेन। विद्रोही सोच त आयो। फ्रेरेले खोजेझैं मानवतावादी धारणा बनेन। परिवर्तका लागि क्रियाशील हुनुपर्छ भन्ने चेत त आयो। तर फ्रेरेको सोच अनुसारको पढेको कुरालाई व्यवहारमा रुपान्तरण गर्ने अभ्यास (Praxis) सुनिश्चित भएन। अर्थात ब्राजिलको सैनिक जुन्ताको विरोधमा बनेको फ्रेरेको सोचले नेपाली संस्कृतिमा तादात्म्यता पनि राखेन। रुपान्तरण पनि गरेन। यहाँ पनि हामीले फ्रेरेको भत्काउँने सोच त बोक्यौं। बनाउँने सोच चाहिं बिर्सियौं कि त ?

क्यूवाको YSP model ले ब्राजिलकै तरीका अपनायो। कम खर्चिलो र समन्वयमा चल्ने साक्षरता अभियान। त्यसैगरी भेनेजुयला तथा बोलेभियामा शिक्षक तथा सामाजिक कार्यकर्ताले साक्षरताको जिम्मा लिए। भारतको केरलामा संस्कार भारत मिसनले यो काम गऱ्यो। आदिबासी बस्तीमा अष्ट्रेलियाले तिनको संस्कृति सुहाउँदो साक्षरता अभियान चलायो। नेपालमा चाहिं हामीले फ्रेरे बोकायौं। सामाजिक साक्षरता। ब्राइन स्ट्रिट बोकायौं। व्यक्तिगत साक्षरता। फिलिप कुम्बस बोकायौं। कार्यवादी साक्षरता (functional literacy)। यसरी हामी साक्षरता कार्यक्रमका बोकाहा भयौं। तर तिनले गरेका वातावरणको साक्षरीकरण, साक्षरोत्तर शिक्षा तथा निरन्तर शिक्षालाई साक्षरतासँग जोड्न सकेनौं। अर्थात हामीले आफ्नोपनाको साक्षरता शिक्षाको विकास नैं गरेनौं कि त ? सेती शिक्षा परियोजनाले बनाएका हिमाल, पहाड तथा तराई जोड्ने सामग्री व्यापक बनाएनौं। क्षेत्रीय तथा जातीय सामग्री बनाउँन पुग्यौं। यहीं पो हामी चुक्यौं कि त ?

हामीले साक्षरतालाई निरन्तरता दिने जापानी तेराकोया अभियान बोक्यौं। त्यो त उसको माटोको थियो। संस्कारको थियो। यसको सन्देश हुन सक्थ्यो- हामीले मधेसका जात जातपिच्छेका दलानको उपयोग गर्नुपर्छ। दलान जातीय संवादी थलो हो। पाहुना घर हो। मनोरञ्जन स्थल हो। नेवारको डबलीको प्रयोग गर्नु पर्थ्यो। बाहुन क्षेत्रीका सत्संग भवन परिचालन गर्नु पर्थ्यो। गुम्वा तथा मदरसाको उपयोग गर्नु पर्थ्यो। उल्टै हामी बेग्लै संरचना निर्माणमा लाग्यौं। सिकाइ अध्ययन केन्द्रको निर्माण। यसरी हामीले साक्षरता शिक्षाका आयातित मोडेलहरूलाई आफ्ना बनाउँन सकेनौं। आफना संस्कारमा मिलाउँन पनि सकेनौं। आफ्नापनाका संरचनाहरूको विकास पनि गरेनौं। अहिलेको

साक्षरता, साक्षरोत्तर तथा निरन्तर शिक्षा त्यही बिलखबन्धको उदाहरण बन्न पुग्यो। पैसा दिए चल्ने। नदिए हराउँने। कतै त पैसा दिए पनि कागजी मात्र बन्ने। काम नगर्ने। यहाँ पनि हामी चुकेकै हौ कि ?

अनिवार्य शिक्षाः बुझेनौं कि ?

पद्म शम्शेरको २००४ सालको शिक्षा योजनामा अनिवार्य शिक्षाको प्रावधान थियो। २०१२, २०१८, २०२८, २०४९, २०७४, २०७५ को आयोग र अनिवार्य तथा निःशुल्क शिक्षा ऐनमा पनि यसबारे सिफारिस गरिंदैछ। २०७२ को नेपालको संविधानले पनि यो कुरा लेखेकै छ। सबैलाई शिक्षा, सन् २००० देखिका शिक्षा सुधार योजनाहरूले पनि अनिवार्य शिक्षा बारे लेखेकै छन। तर ती कुनै पनि दस्तावेजले कसको जिम्मेवारी हो त भनी तोकेनन्। लगानी कसको भन्ने कुरा पनि लेखेनन्। अनिवार्य शिक्षा सुनिश्चित नगर्ने निकायलाई सजाय के त भन्ने कुरा पनि लेखेनन्। जे लेखे गोलमटोल कुरा लेखे। परिणाम पनि यही भयो कि शिक्षा अनिवार्य बनेन्। बनाइएन। अझ आधारभूत तहको शिक्षा अनिवार्य भन्ने नेपालको संविधान, २०७२ र अनिवार्य तथा निःशुल्क शिक्षा ऐन, २०७५ का कुरा त कार्यान्वयन नैं भएनन् । यस अर्थमा पनि हामी चुकेकै हौ कि त ?

युनेस्कोले सन २०१७ मा अनिवार्य शिक्षाको लगानीलाई साझा मान्यो। सरकारका हर संरचनाले लागू गर्नुपर्ने नियम। चीनले सन् १९८६ मा अनिवार्य शिक्षा ऐन लागू गऱ्यो। ६ देखि १५ वर्षकाले पढ्नै पर्ने। तिनका अभिभावकले पढाउँनै पर्ने। नसक्नेलाई दुइटा योजना बनायो। पहिलो शुल्क मिनाहा गर्ने। दोस्रो, पूरक खर्च (Subsidy) दिने। अर्थात् चीनले अनिवार्य शिक्षाका लागि लगानीको ग्यारेण्टी हुने योजना दियो। १६ वर्ष मुनिका बालबालिकालाई काम लगाउँने उद्यमी, व्यवसायी, घरधनी, बजार आदिले तिनलाई साक्षर बनाउँनै पर्ने नीति लियो। स्कूललाई गृहकार्य शुल्क, पोशाक शुल्क, बोर्ड शुल्क, आवास शुल्क, चाहिं लिन पाउँने प्रवन्ध गऱ्यो। यति गर्दा पनि कतिपय बालबालिका विद्यालय गएनन्। जान चाहेनन्। तिनलाई के गर्ने त ? चीनले विद्यालय बाहिरका बालबालिकालाई पढाउँन विशिष्टीकृत शिक्षण संस्था बनायो।

Children's Palace, Youth Palace, comprehensive practice activity base, special children service institutions, and out-of-school training institutions. एकत्रित बस्तीमा पनि । छरिएका बस्तीमा पनि । यसरी विशिष्टीकृत शिक्षाको चिन्तन हामीले गरेनौं कि त ?

भारतले चाहिं सामाजिक अनुवन्धनको नीति लियो। कसको जिम्मेवारी हो अनिवार्य शिक्षा ? लगानी कसको हो ? यसका लागि संघीय तथा प्रदेश सरकारले लगानी गर्ने भनी तय गऱ्यो । ग्राम पञ्चायत तथा नगर सरकारले कार्यान्वयन गर्ने भनी स्पष्ट लेख्यो। यति गर्दा पनि यकिनन् जिम्मवार संस्थाको जानकारी भएन। अर्थात् भारतले अनिवार्य शिक्षा कस्को जिम्मेवारी हो भनेन। कस्को कर्तव्य हो त्यो पनि भनेन। जिम्मेवारी पूरा नगर्ने तथा कर्तव्यच्यूत संस्थालाई के गर्ने भन्ने कुरामा पनि मौन रह्यो। भारत चुकेको त्यहीं हो। अर्थात् प्राथमिक तहको शिक्षालाई केन्द्र र प्रदेशको जिम्मा लगायो। धन र कार्यक्रम केन्द्रको। अरु को जिम्मेवार छन भनी लेखियो। अपांगता भएकाहरूको शिक्षा दीक्षाको जिम्मा छिमेकी स्कूललाई दिइयो। यस क्रममा भारतले अनिवार्य तथा निःशुल्क शिक्षाको कार्यक्रम त लागू गऱ्यो। विद्यालय बाहिर रहेका बालबालिका पढाउँन सर्व शिक्षा अभियान पनि सञ्चालन गऱ्यो। दिवा खाजाको प्रवन्ध पनि गऱ्यो । बेटी बचाओ बेटी पढाओ अभियान पनि चलायो। नेपालले पनि भारतीय ढंगकै अभ्यास गरेको देखिन्छ। अभियानका कुरा गर्ने। विद्यालय बाहिरका बालबालिका मध्ये केहीलाई गरिखाने सीप सिकाउँने। तर बजारको सुनिश्चित नगर्ने। यस मानेमा चीन भिन्न रहेछ। किनकि त्यहाँ बालश्रमको अर्थ अर्कै रहेछ। हर बालबालिकालाई तिनले सक्ने काम गर्न लगाउँने। अर्थात् त्यहाँ विश्व श्रम संगठनको बालश्रमको परिभाषा लागू हुने रहेनछ । बरु गुजारामुखी कृषकको ज्ञानले मान्यता पाउँदो रहेछ। सक्ने काम गराउँने कृषक संस्कृतिले शिक्षण संस्थामा पनि मान्यता पाएको रहेछ । यही परिवेशमा चीनले विद्यालय बाहिरका बालबालिकालाई उद्योगमा लगायो। उर्जा उद्योगमा, प्रविधिमा, र अन्य व्यवसायमा । हामीले चाहिं खाली बालश्रम निषेधि कुरा गऱ्यौं। यहींनेर पो हामी चुक्यौं कि त ?

नेपालले सीप सिकाउन विश्व श्रम संगठनको मानक बोक्यो। गैसस तथा अगैससले पनि त्यही कुरामा सहमति जनाए। परिणामतः गुजारामुखी खेतीको हाम्रो संस्कारमा भएको बालसीप पनि हराउन पुग्यो। अर्थात् हामीले कुन बाल सिकाइ हो ? कुन बाल अभ्यास हो। कुन बालश्रम हो। कुन निकृष्ट बालश्रम हो भन्ने कुरामा हामी स्पष्ट बनेनौं। बनाइएनौं। बालबालिकाले रहरले तथा आवश्यकताले गरेका काममा विज्ञान छ। गणित छ। सामाजिक छ। भाषा छ भन्ने कुराको जानकारी दिने अध्ययन सामग्री पनि बनाएनौं। परिणामतः हाम्रा बालबालिका नत गुजारामुखी खेतीका लागि उपयुक्त भए नत बजारमुखी खेतीका लागि। यही स्थितिमा हाम्रो विद्यालय बाहिरका बालबालिकाको शिक्षा भयो। यो अन्यौलको श्रष्टा हामी नैं भयौं कि त ?

व्यावसायिक शिक्षाः रथ अघि घोडा पछि

वर्णश्रम व्यवस्थाले व्यावसायिक शिक्षालाई संस्थागत गऱ्यो। जातजाति व्यवस्थाले त्यसमा छुत अछुत जोड्यो। तहगत सोच बनाई दियो। प्लेटोले पनि उनको किताब द रिपब्लिकमा व्यावसायिक शिक्षालाई कामदार समूहको शिक्षा बनाएका थिए। यसको आशय थियो सीप शिक्षा महंगो छ। संस्थागत गरे टिक्छ। नत्र मर्छ। हाम्रो जातीय छुवाछुत तथा समाजलाई तहमा हेर्ने सोचले व्यावसायिक शिक्षाले सम्मान पाएन। व्यावसायिक सीपका धनीहरू नैं अपहेलित हुन पुगे। नेपाल तथा भारतको नियति यही रह्यो। चीनमा पनि व्यावसायिक शिक्षालाई दोस्रो दर्जाकै मान्ने चलन छ। जर्मनीको पनि त्यही नियति हो। यसरी हेर्दा हामी विज्ञहरूले संस्कार बुझेनौं कि ? तहगत समाज बुझेनौं कि ? व्यावसायिक तथा प्राविधिक शिक्षाको अन्तर बुझेनौं कि ? आयातित सोचमा नैं सबै कुरा देख्यौं कि ? बाबु आमाको अंश लिने समाज र अंश नदिने समाजका युवाको मानसिकता बुझेनौं कि ? यस्ता अनेकौं अप्ठेराहरू हामीसँग रहे। परिणामतः राजा जयपृथ्वी बहादुर सिंहको अभ्यासले निरन्तरता पाएन। २०२८ सालको राष्ट्रिय शिक्षा पद्दतिको योजना अन्तर्गतका व्यावसायिक तथा पूर्व व्यावसायिक शिक्षाले पनि सोही नियति भोगे। लोकतान्त्रिक तथा गणतान्त्रिक सरकारहरूले पनि शब्दान्तर गरे। भावान्तर भएन। उनीहरूले बनाएका प्राविधिक तथा प्राविधिक धारका विद्यालयहरू पनि विद्यार्थी नपाएर खिनौटे बन्दै गए । कतिपय त बन्द प्रायः हुन पुगे। तैपनि हामी

व्यवसायिक शिक्षाको रट लगाइ रहेछौं। त्यस्ता विद्यालय खोल्ने । केहीलाई पढाउँने। यसको सट्टा सबैलाई सीप दिने सहज उपायबारे उदासीन रह्यौं । विद्यार्थीको प्रोफाइल बनाउँने। त्यसमा तीन कोलम राख्ने। पहिलो कोलममा विद्यार्थीले चाहेको सीप लेख्ने। दोस्रो कोलममा उसले जानेको सीप लेख्ने तेस्रो कोलममा उसका अभिभावकले जानेको सीप लेख्ने। चाहेको सीप यूट्युबबाट सिक भन्ने। जानेको सीप साथीलाई सिकाउ भन्ने। सीप भएका अभिभावकलाई श्रोत व्यक्तिका रुपमा उपयोग गर्ने। इन्टर्न्सको रुपमा । अन-कल शिक्षकको रुपमा। सीपबाट उत्पादित सामग्री पालिकाले किन्ने। आवश्यक लगानीका लागि विद्यार्थी बचतको अभियान थाल्ने। यी र यस्ता काममा हामी चुक्यौं कि त ?

चीनमा पनि प्राज्ञिक लाईनमा जान नसक्नेले व्यावसायिक शिक्षा पढने मान्यता छ। उनीहरूको विकल्प पनि त्यति नैं हो। तर त्यहींका अध्ययनहरूले भन्छन -त्यहाँका व्यावसायिक स्कूलहरू प्राज्ञिक कोर्स तथा कम्पनीबाट छुट्टिएका छन। तिनले करिअर तथा आय दुवै दिन सकेका छैनन। उत्पादित वस्तुले बजार पाएका छैनन। त्यसैले चीनले स्थानीय तथा स्कूलमा आधारित पाठ्यक्रम अन्तर्गत १४ देखि १८ प्रतिशत समय खर्च गर्ने प्रवन्ध गरेको छ। त्यसैमा व्यावसायिक शिक्षा पनि जोड्ने सोच बनाएको छ। यस बाहेक शिक्षालाई नियन्त्रितबाट निर्देशित व्यवस्थापनमा लाने। बालमैत्री बनाउँदै जाने तथा स्तरीय आधारको सिकाइमा जोड दिने चिन्तन बनाएको छ। हामीले पनि यो यथार्थ बुझेनौं कि त ? तद्अनुसारका कामहरू गरेनौं कि त ?

भारतमा कक्षा ११ र १२ मा व्यावसायिक शिक्षा राखिएको छ। अरु तहमा व्यवसाय उन्मुख बनाउन खोजिएको छ। अनि सरकारी दस्तावेजमा बेग्लै धार हैन जे सिके पनि सम हुने सिफारिस गरिएको छ। लोक विद्या भनेर सबैलाई व्यावसायिक शिक्षा दिने सोच त्यहाँ ल्याइएको छ। तद्नुसारको क्वालिफकेशन फ्रेमवर्क बनाइएको छ। बाल शिक्षादेखि नैं व्यावसायिक शिक्षाको एकीकरण गरिएको छ। उद्यमीकरण तथा डिजिटल शिक्षामा जोड दिइएको छ। र अध्ययनहरू भन्छन -स्कूल बाहिरका बालबालकाको कमजोर सीप छ भन्ने बजारको गुनासो छ। व्यावसायिक शिक्षा भनेकै दोस्रो रुचीको विषय मानिएको छ। समाजले पनि व्यावसायिक शिक्षालाई तल्लो

नजरियाबाट हेरेको छ। यही नियति भोगेको नेपालले न त जन्मजात सीप भएका दलितको छुवाछुती पीडा हटाएका छौं न त जनजाति तथा अन्य सीपवालाहरूको सीपको स्तर बढाएका छौं। न दलितका सीपहरूको आधुनिकीकरण गरेका छौं । यहींनेर हामी चुक्यौं कि ?

शिक्षक शिक्षाः

चीनमा शिक्षक तालिम दिन तीन विषयमा जोड दिइन्छ। रैथाने दर्शनमा, शिक्षण विधिमा र बाल मनोविज्ञानमा। यसरी दिइएको तालिमको प्रभावकारिता के छ भनी अध्ययन गरिएको थियो। अध्ययनको नतिजा आयो कि तालिम सरकारी नीति अनुकूल भएन। अर्थात् रैथाने दर्शनसँग जोडिएन। शिक्षकले खोजेको र तालिम प्रदायकले दिएको तालिममा तालमेल देखिएन। तालिमकर्ताले शिक्षकलाई दिएको तालिम पनि कमजोर देखियो ।अर्थात तालिममा अपेक्षित गुणस्तर देखिएन। त्यस्तै सेवाकालीन र पूर्वसेवाकालीन तालिम जोडिएको पनि छैन। यसबाट बुझिन्छ कि शिक्षक तालिम अपेक्षित भएको छैन।

भारतले पनि चीनकै नियति भोगेको छ। यो नियति बदल्न भारतले स्तरीय तालिम (standardized training) को चिन्तन ल्याएको छ। तत्स्थानीय तालिम (site based approach) को अभ्यास गरेको छ। स्वनिर्देशित तालिम (self directed approach) को प्रवन्ध गरेको छ।

चीन र भारतले झैं नेपालले पनि शिक्षक तालिमका अनेकन् अभ्यासहरू गरेको छ। विद्यालयमा आधारित तालिम। क्लष्टर शिक्षक तालिम। प्रयोगात्मक तालिम। प्रत्याभूतिजन्य (reflective) तालिम। एबीसी तालिम। झण्डै ९८ प्रतिशतले तालिम लिइसकेको तथ्यांक पनि छ। त्यो तालिमको प्रभावकारीता बारे विभिन्न अध्ययनहरू भएका छन । सन् २०६८ देखिका अध्ययनहरूको विश्लेषणले देखाए कि तालिममा सिकेका कुराहरू कक्षा कोठामा गएका छैनन्। केवल एउटा अध्ययनले मात्र ५० प्रतिशत तालिम कक्षा कोठामा प्रयोग भएको देखाएको छ। यसको सन्देश हो—कि त चीनको अनुभव जस्तो दिन खोजेको कुरासँग तालिमको मेलजोल भएन। विदेशी सिद्धान्त

बोकाइयो। घरैमा जन्मेको सिद्धान्त खोजिएन। खोजे पनि जोडिएन। अर्थात् आजकल भन्ने गरिएको परम्परागत ज्ञान, सीप तथा प्रविधिलाई पाठ्यक्रम तथा पाठ्यपुस्तकले खोजेको ज्ञान सीप, तथा प्रविधिसँग जोडिएन। शास्त्रीय ज्ञान, सीप, तथा प्रविधि, रैथाने ज्ञान सीप तथा प्रविधि एवं पाठ्यक्रम एवं पाठ्यपुस्तकले दिन खोजेको ज्ञान, सीप तथा प्रविधि जोडिएन। सिद्धान्तलाई व्यवहार तथा व्यवहारलाई सिद्धान्तमा बदल्ने कला सिकाइएन। यो स्थितिमा सेवाकालीन तथा पूर्वसेवाकालीन तालिमहरूले अपेक्षा अनुसार परिणाम दिएका छैनन भन्ने कुरामा नेपाली अध्ययनहरू पनि एकमत छन्। तर पनि हाम्रो तालिम दिने प्रक्रिया एउटै छ। अर्थात, हामीले न त शिक्षकले गरेका राम्रा अभ्यासहरूलाई सार्वजनिक गरेका छौं। न त शिक्षकलाई नैं चुनौती गरेका छौं । न त नेपाली मोडेलको तालिम बनाएका छौं। यहींनेर हामी चुकेका छौं।

उच्च शिक्षाः खोजेको के हो ?

चीनको भर्ना आधार प्रवेश परीक्षा (Gaokao) को अंक हो । विपन्नलाई छात्रवृत्ति र कलेजमैं आंशिक काम अहिलेको प्रवन्ध हो। यति गर्दा पनि विश्वविद्यालयहरू प्राज्ञिक नैं छन् । तिनमा सीप शिक्षा दिनुपर्छ र सीपवालालाई बजारसँग जोड्नुपर्छ भन्ने धारणा चाहिं प्राज्ञिक बेरोजगारीले जन्माएको अहिलेको मुद्दा हो। यो मुद्दा सल्टाउँन चीनले डवल फस्टको नीति ल्यायो। डवल फस्ट भनेको वल्डक्लास बन्ने हो। यसका लागि चीनले उच्च शिक्षाका शिक्षण संस्थामा विकेन्द्रीकरणको नीति लागू गरिरहेको छ। बजारीकरण, अन्तर्राष्ट्रियकरण, तथा आर्थिक विकासमा जोड दिने नीति लिएको छ। अनुसन्धान, आधुनिक प्रविधि प्रयोगमा जोड अहिलेको उच्च शिक्षाको कार्यदिशा भएको छ।

भारतले एक्काइसौं शताब्दीका लागि जोसुकैबाट पनि सिक्ने नीति लागू गरेको छ। चलनचल्तीको शब्दमा ३६० डिग्रीमा सिक्ने विधि। क्रियाशील विधि प्रयोग गरेर व्याख्यान विधि घटाउँने योजना बनाएको छ। व्यवहार सापेक्ष पठनपाठन गर्ने भएको छ। निणर्यात्मक (summative) जाँचको बदलामा निर्माणात्मक जाँच लिने प्रवन्ध गरेको छ (World Economic Forum, 2022)। दूर शिक्षालाई खेल बदल्ने बाटो (game

changer) मा लाने प्रवन्ध छ। अहिले झण्डै १० प्रतिशत विद्यार्थी यो विधिबाट भारतका विश्वविद्यालयमा अध्ययनरत छन। क्रमशः यो संख्या बढाउँने भारतको लक्ष्य छ।

नेपालले पनि २१ औं शताब्दीको उच्च शिक्षाका लागि अनेकन् सोच बनाएको छ। पहिलो सोच हो- एक्काइसौं शताब्दीका चारवटा सीपलाई विद्यालय तहदेखि उच्च शिक्षाका तहसम्म समावेश गर्ने। दोस्रो सोच हो- क्वालिफिकेशन फ्रेमवर्कको स्वीकृति। यो फ्रेमवर्कमा विद्यालय तह, औपचारिक शिक्षा, व्यावसायिक तथा प्राविधिक शिक्षा एवं उच्च शिक्षाबाट अपेक्षा गरिएका कुराहरू समावेश गरिएका छन्। तेस्रो सोच हो- विश्वविद्यालयहरूले आ-आफ्ना दीर्घकालीन योजनाहरू बनाएका छन्। चौथो सोच हो - विश्वविद्यालयका उपकुलपति हुनेहरूले आ-आफ्ना सोचपत्रहरू जारी गरेका छन् । तर हामी बोल्छौं गर्दैनौं। चीनका राष्ट्राध्यक्ष सीजिङपिङ नेपाल आउँदा भनेका वाक्यको अर्थ हो हामी बोल्छौं तर गर्दैनौं। हामी चुकेको यहीं हो।

निचोड

विश्वका अभ्यासहरूले शिक्षामा लचिलोपना खोज्छ। हाम्रा अभ्यासहरूले हामी पनि लचिला छौं भन्ने देखाउछ । हामी चुकेको ठाउँ भनेको सामान्य छ। त्यो हो -आयातित सोचमा मात्रै विश्वास गर्ने चलन। तिनकै अभ्यासमा विश्वास गर्ने बानी । त्यसको संस्कृति के थियो भनी खोज्नेमा हामी कमजोर छौं। त्यसलाई हाम्रो परिवेशमा अनुकूलन गर्ने कुरामा कमजोर छौं। आफ्ना रैथाने ज्ञान, सीप, प्रविधिको खोजीमा बेवास्ता गछौं। पुर्खाले बचाएका शास्त्रीय चिन्तनमा आधुनिकता खोज्दैनौं तर गुरुकुल, गुम्बा, मदरसा जस्ता विद्यालयहरूलाई धार्मिक विद्यालय पनि भन्न नसकेर परम्परागत विद्यालय भन्नु पर्छ भनी शिक्षा नीति, ऐन, आदिमा लेख्ने हाम्रो नेतृत्व छ । यो अभ्यासले हामीलाई आफ्नोपनामा बस्न दिंदैन। पहिचानी बन्न दिंदैन आयातितको औपनिवेशिक मानसिकतामा मात्रै रम्न रमाउँन सिकाउँछ। परिणामतः मुसहर समुदायका सामाजिक न्यायका प्रतिमूर्ति दीनाभद्रीका कुरा जान्दैनौं। सिकाउँदैनौं पनि । दुषाध समुदायका सामाजिक समावेशीताका नायक राजा सहलेसबारे जान्दैनौं। जनकपुरका राजर्षि जनकको द्वैत भ्रमलाई अन्त्य गर्ने अष्टावक्रको ज्ञान बुझ्दैनौं। मटिहानीका याज्ञवल्क्यको

वृहदारण्यकोपनिषदमा के लेखिएको छ भनी हेर्दैनौं। गार्गीको चिन्तन र मैत्रेयीको आदर्श बुझ्दैनौ। कपिलवस्तुका कपिलमुनिको सांख्यदर्शनमा भएका ज्ञान विज्ञान खोज्दैनौं। तिनको द्वैतवादी दर्शन बुझ्दैनौं । लुम्विनीका वुद्धको मध्यममार्ग जान्दैनौं। द्वैतवाद बुझ्दैनौं। बाग्लुङका जैमिनीको मिमांसा दर्शन पढदैनौं। पढाउँदैनौं। संयुक्ताक्षर मानिएको ॐ को उच्चारणले शरीरभर ब्रह्मउर्जा प्राप्त गर्छ भन्ने ज्ञानका श्रष्टा विश्वामित्र सिन्धुलीको दुम्जामा थिए भन्ने जान्दैनौं। तनहुँका व्यास कति नम्वरका थिए र तिनको योगदान के थियो भनी खोज्दैनौं। योगी नरहरिनाथको योगदान बुझ्दैनौं। स्वामी प्रपन्नाचार्यको पुस्तक हिन्दु विज्ञानको गहिराई जान्दैनौं। अनि राष्ट्रिय गानमा ज्ञानभूमि शान्तिभूमि तराई पहाड हिमाल भनेर गाउँछौं। फेरि घोकन्ते विद्याको विरोध पनि गर्छौं।

यसैगरी शब्दंब्रह्म भनी सिकाउँने ऋग्वेदको मर्म बुझ्दैनौं। बरु बिगब्याङ्गको कुरा जान्दछौं। यजुर्वेदको खंब्रह्मको अर्थ बुझ्दैनौं। बरु नित्सेको शून्यवादको कुरा गर्दछौं। अथर्ववेदको अन्नंब्रह्मको कुरा जान्दैनौं। मार्कस, माओ, लेनीन आदिको भोकको सिद्धान्त पढछौं। पढाउँछौं। त्यस्तै सामवेदको आनन्दंब्रह्मको कुरा सुन्दैनौं। योगा गर्छु भन्छौं। योग नबुझी योगासनलाई योगा भन्न थाल्छौं। यसैले शिक्षित भएर पनि हामी असान्दर्भिक भएका छौं। सम्भावना भएर पनि बेरोजगार बनेका छौं। प्रकृतिले दिएर पनि दाताका पछि लागेका छौं। इतिहास र संस्कृतिले दिए पनि हर कुरामा औपनिवेशिक मानसिकता बोक्छौं। हाम्रो शिक्षा यसैमा बस्यो। साक्षरताको। सीप शिक्षाको। स्कूली शिक्षाको। विश्वविद्यालय शिक्षाको। आफ्नोपना खोज्ने, विकास गर्ने र पश्चिमी जगतको ज्ञान, सीप, तथा प्रविधिको कसीमा घोट्ने संस्कृति नहुनु पो समस्या हो कि ? सोचकर्ता तथा सेवा प्रवाहकर्ताहरूले घोत्लिने कि त ?

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English Section

Cooperative Federalism in the Nepali Constitution:

A Comprehensive Analysis

- **Khimlal Devkota***

Abstract:

Cooperative federalism has emerged as a pivotal concept in governance structures worldwide, facilitating collaboration and coordination among various levels of government. In the context of Nepal, the adoption of federalism represents a significant shift in the country's political landscape, aiming to address historical grievances, promote inclusivity, and foster socio-economic development. This essay provides a detailed examination of cooperative federalism within the framework of the Constitution of Nepal. Through an in-depth analysis of constitutional provisions, historical background, implementation challenges, and case studies, this essay elucidates the role of cooperative federalism in promoting unity, diversity, and equitable development in Nepal. By identifying key opportunities and obstacles, this study offers insights into the prospects for effective governance and democratic consolidation in the federal structure of Nepal.

Keywords: Cooperative Federalism, Nepali Constitution, Federalism, Governance, Division of power, Inclusivity, Socio-Economic Development

Introduction

Cooperative federalism is a model of intergovernmental relations that recognizes the overlapping functions of the national and state governments. This model can be contrasted with the model of dual federalism, which maintains that the national and state governments have distinct and separate government functions.[1] The adoption of federalism in Nepal represents a transformative moment in the nation's democratic evolution, signaling a departure from a centralized governance model towards a more power devolution with a revolutionized and inclusive system. Cooperative federalism lies at the heart of this transition,

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[1] https://encyclopedia.federalism.org/index.php/Cooperative_Federalism

emphasizing collaboration, autonomy, and shared governance among federal, provincial, and local levels of government. This article aims to explore the concept of cooperative federalism within the context of the Constitution of Nepal, analyzing its historical roots, federalism debates, constitutional provisions, and implementation challenges, implications for governance and development, and way forward for effective implementation. By delving into these dimensions, this study seeks

To provide a comprehensive understanding of the role of cooperative federalism in shaping Nepal's political landscape and fostering inclusive and sustainable development.

Historical Context:

There is no doubt that any debate on federalism in Nepal would center on the Maoist movement. As per federalism expert writes in his article "'People's war', were related to identity, power sharing, and decentralization" (Karki 2014). It is proud to say that, Nepal is now a federal democratic republican secular, and inclusive country. The constitution of Nepal was promulgated by the people's elected sovereign body the Constituent Assembly in 2015. The election of the Constituent Assembly was a most awaited event in the country's politics held in 2008. Almost seventy years of political aspiration have been fulfilled only after the decade-long people's war launched by the Maoist party and the result of the joint popular movement of 2006. Very interestingly, Nepal is a country that has produced seven constitutions in seven decades. This is the only constitution promulgated by the Constituent Assembly and written by the people's duly elected representatives. Interim Constitution 2006 was written by a group of technical experts appointed by the government and Maoist negotiating team, endorsed by the reinstated parliament, and approved by the interim legislative parliament.[2] The constitution has institutionalized the republicanism, federalism, secularism, and inclusion at a time. A country departed from Monarchy to Republic, Unitary to federalism, Hindu kingdom to secularism, and exclusion to inclusion. The four major political achievements achieved and institutionalized in the constitution are most of the countries have spent almost four generations.

[2] Interim Constitution drafting committee headed by Justice Laxman Aryal and Originally six members including *Khimlal Devkota, Sindhunath Pyakurel, Mahadev Yadav, Harihar Dahal, and Shambhu Thapa.*

The trajectory towards federalism in Nepal has been shaped by a complex interplay of historical, political, and socio-economic factors. The Nepalese society has been facing problems of class, caste, gender, and territorial disparities for a long time. Several initiatives had been taken though were not able to be translated into reality. In the 1950s the then king Tribhuvan had already agreed upon a republican and the political system as fixed by the people's elected legitimate body. The election of the Constituent Assembly had never happened[3]. The movement held around the 1980s resulted in the referendum, again no substantial change had been seen. The country's transition from an absolute monarchy to a constitutional democracy in the early 1990s marked a significant milestone in its democratic journey. However, deep-rooted inequalities, ethnic tensions, and regional disparities persisted, fueling demands for greater autonomy and representation from marginalized communities. The decade-long armed conflict between the government and Maoist insurgents further underscored the need for a more inclusive and participatory governance system. The Comprehensive Peace Accord of 2006 laid the groundwork for political reconciliation and constitutional reform, culminating in the Interim Constitution of Nepal 2007. This interim Constitution provided for the establishment of a Constituent Assembly, tasked with drafting a new constitution, with federalism emerging as a central theme in ensuing deliberations. The promulgation of the Constitution of Nepal in 2015 represented a historic moment, institutionalizing federalism as the guiding principle of governance and laying the foundation for a federalism and inclusive political order.

Federalism debate:

The very differences with other constitutions were that all previous constitutions were promulgated with a unitary system and the current constitution is promulgated by a federal system. The main concern of the constitutional debate was not about promulgating the Constitution but about its promulgation through people’s representatives and the federal system. (Chaulagai, S. and Devkota, K.2020). Nepal's transition from a unitary system to a federal structure has been marked by intense debate, negotiation, and constitutional reform. The federalism

[3] https://ciaotest.cc.columbia.edu/olj/sa/sa_jan02pas01.html

debate in Nepal reflects the country's diverse socio-cultural landscape, historical grievances, and aspirations for inclusive governance. Federalism has emerged as a central theme in the political discourse of Nepal, shaping the country's democratic transition and constitutional evolution. The federalism debate in Nepal is rooted in historical grievances, socio-cultural diversity, and demands for inclusive representation and governance. Moreover, the federalism debate in Nepal has its roots in centuries-old grievances related to identity, representation, and resource allocation. The country's diverse ethnic, linguistic, and regional communities have long advocated for greater autonomy and recognition of their distinct identities. The end of the decade-long armed conflict in 2006 provided a catalyst for political transformation, leading to the signing of the Comprehensive Peace Accord and the establishment of an interim government with an interim parliament called Legislature Parliament. The socioeconomic transformation of the society with the restructuring of the state was the task of the country which has been agreed upon in the Comprehensive Peace Accord signed between the government and the Maoist party as a rebellion[4]. Based on the Comprehensive Peace Accord, the Interim Constitution of 2007 laid the groundwork for federal restructuring, setting the stage for a constituent assembly to draft a new constitution.

No one can underestimate the contribution of the Maoist movement in federal restructuring of the country, as learned personality (Lawoti, 2003). With due consideration, the drafting of the Nepali Constitution of 2015 marked a significant milestone in Nepal's federalism debate. The identity and viability of the principles of federalism have been accepted by the concerned committee. However, the Constituent Assembly grappled with complex issues related to federal boundaries, power-sharing, and resource allocation. Very little time had been given to the list of the power of the federal units. The final document enshrined federalism as a guiding principle, devolving powers to three tiers of government: federal, provincial, and local. However, the process was not without controversy, as debates over federal boundaries, ethnic identity, and representation led to political deadlock and protests. Despite these challenges, the promulgation of the constitution represented a historic achievement in

[4] Comprehensive peace Accord 2006 signed between the Government of Nepal and the NCP Maoist party.

Nepal's democratic transition.

The federalism debate in Nepal has been characterized by a range of contentious issues and challenges. One of the primary issues is the delineation of federal boundaries, particularly in identically diverse regions with competing claims for autonomy and representation. Additionally, questions regarding resource allocation, fiscal federalism, and inter-governmental relations have posed significant challenges to effective implementation. Furthermore, issues such as political polarization, bureaucratic inertia, and institutional capacity constraints have hindered the smooth functioning of federal structures, impeding progress toward inclusive governance and development.

The federalism debate in Nepal has profound implications for governance, democracy, and socio-economic development. The preamble of the constitution is highlighting as mentioning the *"eliminating all forms of discrimination and oppression resulted from the feudalistic, autocratic, centralized, unitary system of governance of the State; protecting and promoting unity in diversity, social and cultural solidarity, tolerance and harmony, by recognizing the multi-ethnic, multi-lingual, multi-religious, multi-cultural and geographically diverse characteristics; and resolving to build an egalitarian society based on the proportional inclusive and participatory principles in order to ensure economic equality, prosperity, and social justice by eliminating discrimination based on class, caste, region, language, religion and gender and all forms of caste-based untouchability*[5]*"* this is a whole spirit of the constitution and as well as federalism express by the constituent assembly. By division of power and decision-making authority, federal structures have the potential to enhance citizen participation, accountability, and responsiveness to local needs. Moreover, federalism promotes inclusivity, diversity, and social cohesion by recognizing and accommodating the unique identities and aspirations of various ethnic, linguistic, and regional communities. Furthermore, devolution of the power of governance can facilitate more efficient resource allocation, service delivery, and infrastructure development, thereby contributing to equitable and sustainable development outcomes across the country.[6]

[5] Preamble of the constitution.

[6] Preamble of the Comprehensive Peace Accord.

Prospects for Effective Implementation:

As Breen (2018) revealed the fact after research, "the character of armed conflict appears to be important. Where only two conflict actors were present such as in Nepal, successful conflict resolution and health system reforms enshrined in peace accords and legislated appeared to support health system performance under decentralization." It is a huge impact of federalism that inspired effective implementation. Despite the challenges, federalism holds promise as a means of addressing historical grievances, promoting democratic governance, and fostering socio-economic development in Nepal. Strengthening inter-governmental mechanisms, enhancing fiscal federalism arrangements, and fostering a culture of dialogue and consensus-building are essential steps towards effective implementation. Moreover, investing in capacity-building, promoting intercultural understanding, and empowering local communities can enhance the effectiveness and legitimacy of federal structures. By harnessing the potential of federalism to promote unity in diversity, equitable development, and democratic governance, Nepal can pave the way for a more prosperous and inclusive future for all its citizens.

In conclusion, the federalism debate in Nepal reflects the country's complex socio-political landscape, historical grievances, and aspirations for inclusive governance. While significant progress has been made in institutionalizing federal structures, challenges persist in their effective implementation. Addressing these challenges requires concerted efforts from all stakeholders, including political leaders, civil society, and the international community. By embracing the principles of federalism and promoting dialogue, cooperation, and inclusive development, Nepal can realize the full potential of federalism as a catalyst for democratic governance, social cohesion, and sustainable development.

Constitutional Provisions:

The Constitution of Nepal (2015) embodies the principles of cooperative federalism, enshrining a comprehensive framework for the distribution of powers, resources, and responsibilities among the federal, provincial, and local levels of government.[7] Chapter 5 of the constitution is related to state structure

[7] The Constitution of Nepal 2015

and division of state power and Chapter 20 is concerned with the interrelation between federal, provincial, and local levels. Furthermore, if anyone wants to know the spirit of federalism, they need to go through the state restructuring and delineation of the state power committee report of the constituent assembly. With this background, Article 56 of the constitution mentioned that the federal democratic republican Nepal has been divided between federal, provincial, and local levels. All levels of government can exercise state power. The interpretation of the state power includes legislative, executive, and judicial powers. Article 57 of the constitution delineates the powers and functions as per the list of the annex of the constitution including exclusive and concurrent lists. The power and functions of the federal government includes defense, foreign affairs, and currency issuance, while granting provinces autonomy in areas such as education, healthcare, and agriculture. Moreover, Article 217 establishes mechanisms for resource-sharing and fiscal coordination through the National Natural Resources and Fiscal Commission, tasked with ensuring equitable development across provinces. Additionally, the Constitution mandates the establishment of an Inter-governmental Fiscal Council to promote dialogue and cooperation on fiscal matters among different tiers of government. Furthermore, provisions for the formation of the National Council, comprising representatives from provinces and local bodies, underscore the commitment to inclusive decision-making and representation at the national level.

Coordination mechanisms

The Constitution of Nepal incorporates various mechanisms for coordination among different tiers of government to ensure effective governance and cooperation. These coordination mechanisms are essential for fostering harmonious relations, resolving disputes, and promoting the smooth functioning of federal structures. The Constitution delineates specific provisions and institutions to facilitate coordination at the federal, provincial, and local levels.

Firstly, the Constitution establishes the National Natural Resources and Fiscal Commission (NNRFC)[8] as a key institution for coordinating fiscal matters among the federal government, provincial governments, and local bodies. The NNRFC is mandated to formulate principles for the distribution of natural

[8] The Constitution of Nepal, Article 217.

resources and revenues, ensuring equitable development across provinces. By providing a platform for dialogue and negotiation, the NNRFC promotes consensus-building and cooperation on fiscal issues, thereby enhancing inter-governmental relations.

Secondly, the Constitution mandates the establishment of an Inter-governmental Fiscal Council (IFC)[9] to facilitate coordination and cooperation on fiscal matters between different tiers of government. The IFC serves as a forum for federal, provincial, and local governments to discuss revenue-sharing arrangements, budgetary allocations, and fiscal transfers. Through regular meetings and consultations, the IFC promotes transparency, accountability, and mutual understanding among all levels of government, thereby strengthening the fiscal framework and promoting fiscal discipline.

Furthermore, the Constitution provides for the establishment of an Inter-state Council[10] to address disputes and conflicts arising from inter-provincial relations. The Inter-state Council serves as a mechanism for resolving disputes related to politics, such as jurisdiction, resource allocation, and boundary demarcation among provinces. By providing a platform for dialogue and arbitration, the Inter-state Council helps prevent conflicts and promotes cooperation among provinces, thereby safeguarding the unity and integrity of the federal structure. The constitutional bench[11] in the Supreme Court is responsible for resolving constitutional and legal disputes between federal, provincial, and local governments. The National Coordination Council[12] under the act passed by the federal parliament, the provision of Article 235(1) states that the provincial assembly[13] is responsible for resolving the political debate and coordinating local and provincial levels and inter-local level disputes.

Additionally, the Constitution empowers the federal government to coordinate and supervise the activities of provincial governments in matters of national importance, such as national security, foreign affairs, and inter-provincial infrastructure projects. This coordination mechanism ensures coherence and

[9] Intergovernmental Fiscal Transfer Act 2015
[10] Article 234.
[11] Article 137
[12] Article 235(1)
[13] Article 235(2)

consistency in policy formulation and implementation across different levels of government, thereby promoting national unity and coherence.

The Constitution itself has declared in Article 232, that "the relation between federation, provinces, and locals shall be based on the principles of cooperation, co-existence, and coordination.[14] With this fact, in conclusion, the Constitution of Nepal incorporates various coordination mechanisms to facilitate effective governance and cooperation among different tiers of government. From the establishment of institutions such as the National Natural Resources and Fiscal Commission and the Inter-governmental Fiscal Council to provisions for resolving disputes through the Inter-state Council, the Constitution provides a robust framework for promoting harmonious relations and ensuring the smooth functioning of federal structures. By fostering dialogue, cooperation, and mutual respect among all levels of government, these coordination mechanisms contribute to the stability, unity, and prosperity of Nepal.

Implementation Challenges:

Despite the constitutional mandate for cooperative federalism, Nepal faces numerous challenges in its effective implementation. One significant challenge is the capacity constraints and resource disparities among provinces, leading to uneven development outcomes and service delivery. The unequal distribution of human and financial resources exacerbates these disparities, hindering the ability of provinces and local governments to fulfill their mandates effectively. Moreover, issues such as overlapping jurisdiction, vertical fiscal imbalance, and inter-governmental conflicts pose hurdles to effective cooperation and coordination between different levels of government. Political instability, bureaucratic inertia, and institutional weaknesses further impede the smooth functioning of federal structures, undermining the realization of the full potential of cooperative federalism. The biggest problem faced by the provincial and local level government is the lack of staff and police. The federal government has yet to provide the required police force and staff. This is the biggest implementation problem faced by the provincial and local levels.

The federal level of government seems to be reluctant to devolve their power to the provincial and local levels. At the same time, provincial and local levels are

[14] Article 232

also confused and lack confidence to assert their power as divided by the constitution itself. To date, provincial and local governments hesitate to assert the power given by the constitution to establish their service in provincial and local level.[15]

Political will has not been reflected in reality is another challenge. Politicians who write the constitution and are reluctant to implement it hinder the implementation. At the same time, bureaucracy and police are almost not comfortable to federalize the country and institutions. The most important issue is federalizing the political parties. Federal state structure and unitary political party structure have a great contradiction which hinders to implementation of the federal constitution.

Performances at the provincial and local levels are also not satisfactory. Most of them concentrated on power concentration rather than empowering the people. Most of the legislation approved by the provincial and local levels is related to the facilities of the elected officials rather than service delivery to the people is a more criticized point from the public arena.

Implications for Governance and Development:

Cooperative federalism holds profound implications for governance, democracy, and socio-economic development in Nepal. By division of power and decision-making authority, federal structures can enhance citizen participation, accountability, and responsiveness to local needs. Moreover, cooperative federalism promotes inclusivity, diversity, and social cohesion by recognizing and accommodating the unique identities and aspirations of various ethnic, linguistic, and regional communities. Furthermore, decentralized governance can facilitate more efficient resource allocation, service delivery, and infrastructure development, thereby contributing to equitable and sustainable development outcomes across the country. Additionally, cooperative federalism fosters innovation and experimentation at the subnational level, enabling provinces and local governments to tailor policies and programs to their specific contexts and priorities. By empowering local communities and fostering collaboration among all levels of government, cooperative federalism can contribute to the consolidation of democratic institutions and the promotion of peace, stability,

[15] Article 302

and prosperity in Nepal.

Case Studies: justified cooperative federalism

Several initiatives exemplify the spirit of cooperative federalism in Nepal, showcasing successful collaboration and synergy among different tiers of government. The establishment of the National Reconstruction Authority following the devastating earthquake of 2015 demonstrated coordinated efforts between the federal government, provincial governments, and local authorities in rebuilding infrastructure and restoring livelihoods. Similarly, the implementation of the Health Sector Strategy during the time of COVID-19 was outstanding. People who were not in favor of federalism thought they appreciated the provincial and local levels initiatives related to COVID control. More specifically, the devastating earthquake and pandemic period at the provincial and local levels underscored the importance of devolution of the power of planning, resource allocation, and service delivery in improving healthcare outcomes. Moreover, initiatives such as the Provincial Assembly Development Fund and the Local Infrastructure Development Partnership Program have empowered provinces and local governments to mobilize resources and undertake development projects tailored to local needs and priorities. These case studies highlight the potential of cooperative federalism to address pressing challenges, deliver essential services, and promote inclusive and sustainable development across Nepal.

Prospects and Recommendations:

The effective implementation of the federal structure in Nepal is crucial for realizing the objectives of division of power, inclusivity, and democratic governance. To move forward successfully, several key steps must be taken:

- **Strengthening Inter-governmental Mechanisms:**

Constitutionally established inter-state council for political dispute resolution, constitutional bench under Supreme Court for legal and constitutional dispute settlement, National Coordination Council for coordination between federal, provincial and local level, provincial assemblies for coordination and political disputes resolution between provincial and local, local and local level are crucial and have effective role to play. It was expected that establishing strong inter-governmental mechanisms is essential for facilitating cooperation, coordination,

and dialogue among different tiers of government. This includes enhancing the capacity and functioning of all institutions such as the National Natural Resources and Fiscal Commission (NNRFC), the National Coordination Council (NCC) and their subject and specialized committees (SCs), the Provincial Coordination Council (PCCs), and the Inter-governmental Fiscal Council (IFC). These bodies should be empowered with clear mandates, adequate resources, and impartial leadership to effectively address issues related to resource allocation, fiscal transfers, and inter-governmental disputes.

- **Enhancing Fiscal Federalism Arrangements:**

Improving fiscal federalism arrangements is critical for ensuring financial autonomy, accountability, and sustainability at all levels of government. This involves revisiting revenue-sharing formulas, enhancing revenue-generation capacity at the sub-national level, and promoting transparency in budgetary processes. Additionally, mechanisms for monitoring and evaluating fiscal performance should be strengthened to ensure prudent fiscal management and prevent fiscal imbalances. The National Natural Resources and Fiscal Commission (NNRFC) is responsible for resource allocation and distribution by creating separate formulas specifically mentioned in the constitution. However, before the formation of the commission separate laws had been made by parliament, and the distribution and allocation of the revenue had been fixed. It is against the constitution and encroachment of the jurisdiction of the NNRFC, but no one questioned it. These are some problems with implementing federalism. Now time has come to make compatible laws to the constitution and fully implement it.

- **Promoting Capacity-building and Institutional Strengthening:**

Investing in capacity-building and institutional strengthening is essential for enhancing the effectiveness and efficiency of federal structures. This includes providing training and technical assistance to government officials at all levels, enhancing the administrative capacity of provincial and local governments, and promoting the adoption of best practices in governance and service delivery. Furthermore, efforts should be made to enhance the professionalism, integrity, and accountability of public institutions to build public trust and confidence in the federal system.

❖ Fostering Dialogue and Consensus-building:

Promoting dialogue and consensus-building among political parties, civil society organizations, and other stakeholders is crucial for overcoming political polarization and promoting inclusive decision-making. This involves creating spaces for constructive dialogue, promoting transparency in decision-making processes, and fostering a culture of cooperation and mutual respect. Additionally, efforts should be made to address the grievances and concerns of marginalized communities and ensure their meaningful participation in decision-making processes.

❖ Empowering Local Communities:

Empowering local communities to participate in governance and development processes actively is essential for promoting grassroots democracy and inclusive development. This includes devolving decision-making authority, resources, and responsibilities to local governments, strengthening local governance structures, and promoting community-based initiatives. Additionally, efforts should be made to build the capacity of local institutions and empower marginalized groups, including women, youth, and ethnic minorities, to participate effectively in local governance.

❖ Addressing Socio-economic Disparities:

Addressing socio-economic disparities and promoting inclusive development is central to the success of the federal structure. This involves investing in infrastructure development, promoting equitable access to basic services such as education and healthcare, and implementing targeted poverty reduction programs. Additionally, efforts should be made to address regional disparities in development outcomes and promote balanced regional development through targeted investments and policies.

In conclusion, effective implementation of the federal structure in Nepal requires concerted efforts from all stakeholders, including the government, political parties, civil society organizations, and the international community. By strengthening inter-governmental mechanisms, enhancing fiscal federalism arrangements, promoting capacity-building and institutional strengthening, fostering dialogue and consensus-building, empowering local communities, and addressing socio-economic disparities, Nepal can realize the full potential of federalism as a catalyst for democratic governance, inclusive development, and

social cohesion.

Despite the challenges, cooperative federalism offers significant opportunities for promoting unity, diversity, and equitable development in Nepal. Strengthening inter-governmental mechanisms, enhancing fiscal federalism arrangements, and fostering a culture of dialogue and consensus-building are essential steps toward realizing the objectives of cooperative federalism. Moreover, investing in capacity-building, promoting intercultural understanding, and empowering local communities can enhance the effectiveness and legitimacy of federal structures. Furthermore, leveraging technology and innovation to improve governance processes and service delivery can enhance the efficiency and responsiveness of government institutions at all levels. By harnessing the principles of cooperative federalism, Nepal can navigate the complexities of diversity, promote sustainable development, and build a more resilient and prosperous future for all its citizens.

Conclusion:

As Schütze, R. (2009) stated, the federal principle stands for constitutional arrangements that find "unity in diversity". Taking into account this statement, in conclusion, cooperative federalism stands as a key feature of the Constitution of Nepal, reflecting the nation's commitment to unity in diversity, inclusive governance, and equitable development. While challenges persist in its implementation, the principles of cooperation, collaboration, and solidarity offer a pathway to address governance deficits, promote socio-economic progress, and strengthen democratic institutions. Through concerted efforts and pragmatic reforms, Nepal can harness the potential of cooperative federalism to build a more resilient, prosperous, and harmonious society for generations to come. By embracing diversity, promoting inclusivity, and fostering collaboration among all levels of government, Nepal can realize the vision of cooperative federalism and pave the way for a more prosperous and inclusive future for all its citizens. As the father of federalism, Ronald Watt (2007) says "Political events in various parts of the world during the past decade have attracted new attention to the strengths and weaknesses of federal solutions as a means of resolving political problems" Let's try to justify.

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Hybrid Annuity Model:

Implications in Nepalese Highways

- **Sabin Koirala***

Abstract:

This research paper explores the potential implications of implementing the Hybrid Annuity Model (HAM) in the development of highways in Nepal. Drawing upon existing literature, case studies from other countries, the paper evaluates the suitability of HAM within the context of Nepal's infrastructure needs and socio-economic conditions. It also offers policy recommendations for the adoption and implementation of HAM in Nepalese highway projects.

Keywords: *HAM; BOT; PPP;*

Introduction

Nepal, a landlocked country in South Asia, faces significant challenges in infrastructure development, particularly in its road and highway network. The country's rugged terrain, limited financial resources, and institutional capacity constraints have hindered the expansion and maintenance of its road infrastructure, posing obstacles to economic growth and regional connectivity. In current context, investment in capital expenditure is very crucial for the development and prosperity of Nepal. Mainly, there exists two problems, lack of sufficient budget for the capital expenditure and lack of government capacity for capital expenditure. Thus, increase in development budget and capital expenditure has become a national challenge. In developing countries like Nepal, it is very difficult to arrange financial resources for construction, operation and maintenance of physical infrastructures. Nepal needs to invest as much as 10% of GDP on infrastructure (current at just 5% of GDP) which creates around USD 13-18 billion investment gap in infrastructure. According to National Planning

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Commission Nepal, financing requirement for achieving sustainable development goal is estimated to be USD 18 billion till 2030.

High-quality road infrastructure is crucial for Nepal's socio-economic development, facilitating trade, tourism, and access to essential services. However, traditional procurement models have proven inadequate in meeting the growing demand for infrastructure investment. In this context, innovative financing mechanisms such as the Hybrid Annuity Model (HAM) offer promising solutions to bridge the infrastructure gap and catalyze development.

Government of Nepal has made various effort to implement public private partnership in road transport infrastructure. However, due to various technical, financial and market risk, private sectors are not ready to participate in BOOT model. Government tried to attract private sectors in following projects, but did not succeed in these transportation infrastructure project.

- **Kathmandu-Terai/Madhesh Fast Track Road Project**

This project was first mega road project with length 72km, four lane expressway intended to be implemented in BOT model. This was solicited project which was identified by the government of Nepal. First attempt was made in 2008 to call the bidders through expression of interest and Request for Proposal (RFP). Three companies were shortlisted for this project under BOT model. However, none of them participated in RFP stage citing not having sufficient funds to match the investment cost and profit showing a need of viability gap funding. Again, government of Nepal published Expression of Interest (EOI) notice for PPP/BOT model. Three companies submitted for the EOI and two of them were shortlisted for RFP. In 2015, IL&FS Company was selected based on the lowest evaluated substantially responsive bidder. No contract was awarded because of reluctancy of IL&FS to implement project on given condition. Responsive bidder demanded government guarantee for minimum traffic. However, contract was silence in viability gap funding and finally the project was bailed out. Later, it was given to Nepal army for construction and was funded fully by government.

- **Kathmandu Kulekhani Hetauda Tunnel Highway**

This project was unsolicited project with length of 58 km four lane expressway. The NPB Company limited was formed with more than 1000 promoter shareholders. However, the company couldn’t mobilize required finance from

domestic market and tried for foreign direct investment (FDI). This project also failed due to lack of funding and lack of government participation.

Literature Review

The literature on infrastructure development and public-private partnerships (PPPs) underscores the importance of innovative financing models to address the funding shortfall and enhance project efficiency. The Hybrid Annuity Model (HAM) has emerged as a viable alternative to traditional procurement methods, offering a balanced risk-sharing mechanism between the public and private sectors.

Infrastructure development, particularly in the transportation sector, plays a crucial role in fostering economic growth, enhancing connectivity, and improving the quality of life for citizens. Traditional methods of infrastructure financing and project delivery often face challenges such as funding constraints, inefficient project execution, and inadequate risk allocation. In recent years, governments worldwide have explored alternative financing models, including public-private partnerships (PPPs), to address these challenges and accelerate infrastructure development.

❖ Importa.ce of Innovative Financing Models

Infrastructure projects require substantial investments in capital, resources, and long-term planning. However, many governments, including Nepal, often face limitations in mobilizing adequate funds through traditional budgetary allocations alone. Innovative financing models such as PPPs offer a mechanism to leverage private sector resources, expertise, and efficiency to supplement public investments in infrastructure development (Grimsey & Lewis, 2004).

❖ Role of Public-Private Partnerships (PPPs)

PPPs involve collaborations between the public and private sectors to finance, develop, and operate infrastructure projects. By sharing risks and responsibilities between the two sectors, PPPs aim to harness the strengths of both parties while mitigating their respective weaknesses. PPPs offer several potential advantages, including improved project efficiency, enhanced risk management, and access to additional sources of financing (World Bank, 2019).

❖ Hybrid Annuity Model (HAM) as an Innovative Financing Mechanism

The Hybrid Annuity Model (HAM) represents a hybrid approach to infrastructure financing, combining elements of both traditional procurement methods and PPPs. Under HAM, the government provides partial financial support to private sector partners through annuity payments, while the private sector assumes responsibility for project execution, operation, and maintenance (Mohan et al., 2017).

❖ Implications of HAM in Infrastructure Development

HAM offers several potential implications for infrastructure development:

Enhanced project bankability: HAM's risk-sharing mechanism and government support make projects more attractive to private investors, enhancing project bankability and accelerating infrastructure delivery (Bhattacharya & Prasad, 2016).

Improved risk allocation: HAM allows for a more equitable distribution of risks between the public and private sectors, thereby reducing the financial burden on the government and enhancing project viability (Flyvbjerg et al., 2003).

Stimulated private sector participation: HAM incentivizes private sector investment in infrastructure projects by providing revenue certainty and mitigating investment risks (Mukherjee et al., 2018).

Enhanced project transparency and accountability: HAM projects typically involve clear contractual arrangements, performance metrics, and regulatory oversight, promoting transparency and accountability in project delivery (Naidu & Arockiasamy, 2020).

❖ Challenges and Considerations

Despite its potential benefits, HAM implementation faces several challenges and considerations:

Regulatory complexities: HAM projects require a supportive regulatory environment and clear legal frameworks to govern contractual arrangements, revenue mechanisms, and risk allocation (Adhikary et al., 2019). Financial viability: HAM projects must demonstrate financial sustainability and attract sufficient private sector investment to ensure project success over the long term (Gurtoo & Singh, 2018).

Capacity constraints: Effective implementation of HAM projects necessitates robust institutional capacity, stakeholder coordination, and project management expertise within government agencies (Sundararajan & Sen, 2019).

The Hybrid Annuity Model: Key Concepts and Components

The Hybrid Annuity Model (HAM) is a form of public-private partnership (PPP) that combines elements of both traditional engineering, procurement, and construction (EPC) contracts and build-operate-transfer (BOT) concessions. Under HAM, the government provides partial financial support in the form of annuity payments, while the private sector assumes responsibility for project execution, operation, and maintenance.

Key components of the HAM framework include

Government involvement and support mechanisms: The government plays a crucial role in providing financial support, regulatory oversight, and policy frameworks to facilitate private sector participation.

Private sector participation: Private companies are responsible for project design, construction, financing, operation, and maintenance, bringing technical expertise and efficiency to project execution.

Revenue model and risk allocation: Revenue generation in HAM projects is a combination of annuity payments from the government and user fees (tolls, fares, etc.). Risks associated with the project are allocated between the public and private sectors based on their respective capacities to manage them effectively.

Long-term perspective and sustainability: HAM projects typically involve long-term agreements between the government and private entities, ensuring the proper operation and maintenance of infrastructure assets over their lifecycle.

Implications of HAM in Nepalese Highways

Nepal's infrastructure deficit poses significant challenges to economic growth and regional connectivity. The Hybrid Annuity Model (HAM) offers several potential implications for the development of highways in Nepal:

Enhanced project bankability: HAM's risk-sharing mechanism and government support make projects more attractive to private investors, enhancing project bankability and accelerating infrastructure delivery.

Improved quality and efficiency: Private sector involvement brings technical expertise, innovation, and efficiency to project execution, leading to improved quality of infrastructure and timely completion.

Sustainable financing: HAM's revenue model ensures a steady stream of income for private investors through annuity payments, reducing reliance on government funding and enhancing project sustainability.

Socio-economic benefits: Well-developed highways facilitate trade, tourism, and access to essential services, driving economic growth, job creation, and poverty reduction.

Capacity building and institutional strengthening: HAM projects require strong regulatory frameworks, institutional capacity, and stakeholder coordination to ensure successful implementation, contributing to long-term capacity building and institutional strengthening in Nepal.

Case Studies and Examples

While there are currently no specific case studies of HAM projects implemented in Nepal, examples from other countries provide valuable insights into the potential implications of HAM in Nepalese highways. Case studies from India, the Philippines, and Colombia demonstrate how HAM projects have been successfully implemented to address infrastructure challenges and promote economic development.

Case Study	Country	Project	Key Features	Implementation Process	Benefits
Eastern Peripheral Expressway (EPE) Project	India	Access-controlled expressway around NCR	Design, Build, Finance, Operate, and Transfer (DBFOT) basis under HAM. Total project cost: INR 11,000 crores	Competitive bidding process for concessionaire selection. Construction commenced in May 2015 and completed in May 2018.	Reduced travel time and congestion. Improved connectivity and regional development. Economic benefits

Case Study	Country	Project	Key Features	Implementation Process	Benefits
			Concessionaire responsible for design, construction, financing, operation, and maintenance.	Toll collection began upon completion.	through increased trade and transportation efficiency.
Kalyan-Bhiwandi-Shilphata (KBS) Road Widening	India	Road widening project in Maharashtra	Widening of existing road to six lanes under HAM. Total project cost: INR 1,200 crores. Concessionaire responsible for design, construction, financing, operation, and maintenance.	Competitive bidding process for concessionaire selection. Construction carried out in phases to minimize disruptions. Toll collection began upon completion.	Improved traffic flow and reduced travel time. Enhanced safety features and infrastructure quality. Facilitated smoother movement of goods and passengers.
Manila-Cavite Expressway (CAVITEX) Project	Philippines	14-km expressway connecting Manila to Cavite	Hybrid financing structure combining toll revenue and government support under HAM. Total project cost: USD 1.1	PPP agreement signed between government and private sector consortium. Construction completed in phases. Toll collection commenced	Improved connectivity between Manila and Cavite. Reduced travel time and congestion. Economic

Case Study	Country	Project	Key Features	Implementation Process	Benefits
			billion. Concessionaire responsible for design, construction, operation, and maintenance.	upon completion.	benefits through increased trade and tourism. Enhanced road safety features.
Bogota-Girardot Road Widening Project	Colombia	Widening of highway between Bogota and Girardot	60-km road widening project under HAM. Total project cost: USD 845 million. Concessionaire responsible for design, construction, operation, and maintenance.	PPP agreement signed between government and private sector consortium. Construction carried out in multiple phases. Toll collection began upon completion.	Reduced travel time and congestion. Enhanced safety features and infrastructure quality. Improved connectivity and economic development along the corridor.

Policy Recommendations

To harness the potential of the Hybrid Annuity Model (HAM) for highway development in Nepal, the following policy recommendations are proposed:

1. Develop a comprehensive regulatory framework: Nepal should establish clear guidelines, regulations, and institutional mechanisms to govern HAM

projects, ensuring transparency, accountability, and legal certainty for investors.

2. Strengthen institutional capacity: The government should enhance the capacity of relevant agencies, such as the Department of Roads (DoR) and the Investment Board Nepal (IBN), to effectively manage HAM projects and facilitate private sector participation.
3. Promote stakeholder engagement: Effective stakeholder engagement and public consultation are essential for building consensus, addressing community concerns, and ensuring the equitable distribution of project benefits.
4. Prioritize project selection and planning: Nepal should prioritize strategic highway projects with high economic and social returns, conducting thorough feasibility studies, risk assessments, and cost-benefit analyses to inform project selection and planning.

Government of Nepal can do trail for the feasibility of HAM model in Nepal. The trail road for implementation under the Hybrid Annuity Model (HAM) could be the Daunne tunnel Project. Connecting the city of Narayanghat with Butwal, a major town in the western region of Nepal, this highway plays a crucial role in facilitating trade, tourism, and transportation between the two areas.

Here's why the Daunne Tunnel is suitable for the HAM:

Strategic Connectivity: The Daunne Tunnel project aims to improve connectivity between Narayanghat and Butwal, two important cities in Nepal. This improved connectivity can enhance trade, tourism, and economic activities in the region.

Cost and Complexity: Tunnel construction projects are often complex and require substantial investment. By utilizing the HAM model, the financial burden on the government can be reduced as private investors finance a portion of the project. This can expedite the construction process and ensure timely completion.

Revenue Generation: Once operational, the Daunne Tunnel can generate revenue through toll collection. Private investors may find this revenue stream attractive, increasing their interest in participating in the project under the HAM model.

Risk Sharing: The HAM model allows for the sharing of risks between the government and private sector. Risks associated with construction delays, cost overruns, and maintenance can be allocated appropriately, ensuring efficient project delivery.

Implementing the Daunne Tunnel project under the HAM model would require collaboration between the government and private investors. The government would provide necessary approvals, regulatory support, and land acquisition, while private investors would undertake the construction, operation, and maintenance of the tunnel under a long-term agreement.

In conclusion, the Daunne Tunnel project connecting Narayanghat and Butwal holds significant potential for implementation under the Hybrid Annuity Model in Nepal. By leveraging private sector participation, the HAM model can expedite infrastructure development and contribute to regional economic growth and development.

Conclusion

The Hybrid Annuity Model (HAM) holds significant potential for accelerating highway development in Nepal, offering a balanced approach to risk-sharing, project financing, and efficiency improvement. By leveraging private sector expertise and investment, Nepal can overcome its infrastructure challenges, drive economic growth, and improve the quality of life for its citizens. However, successful implementation of HAM requires strong regulatory frameworks, institutional capacity, and stakeholder engagement. Through strategic policy interventions and concerted efforts, Nepal can harness the benefits of HAM to transform its highway infrastructure and unlock new opportunities for sustainable development.

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Gender Parity Progress: Assessing Women's Representation in Nepal's Second Constituent Assembly Elections (CAE)

- **Dr. Govinda Prasad Guragain***

Abstract

This research provides a comprehensive examination of the status of women in Nepal, focusing particularly on their participation in the second Constituent Assembly Elections (CAE). It offers insights into the need for future policy and decision making processes to prioritize women's empowerment through the electoral system, ensuring their meaningful political representation in line with democratic principles. The study analyzes media coverage of women in politics from September to December 2013, during the period of the second CAE. Through qualitative explanatory analysis, it argues that the failure of the first CAE to draft a new constitution for Nepal led to the necessity of a second election within a short span of five years. Inclusion, especially of women, was a prominent theme in both elections. While the first CAE was praised for its inclusivity, particularly in terms of women's representation, the second CAE fell short in this regard. The research concludes that the second Constituent Assembly Election (CAE) witnessed not only a reduced number of female candidates but also a lower success rate among them. It explores the reasons behind this disparity, the issues raised by women candidates, their demands, and offers a comprehensive conclusion on the overall issue.

Key words: Assembly, Demand, Election, Proportional, Representation

Introduction

Despite significant anticipation and optimism, the highly anticipated first Constituent Assembly (CA) failed to meet the deadline for delivering the constitution. Despite several extensions, the CA ultimately dissolved due to the inability of parties to reach consensus on key contentious issues (Air, 2013). While the first CA played a pivotal role in fostering agreement on various

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aspects of the draft constitution, disagreements persisted, particularly regarding the structure of the federalism. Some parties advocated for ethnic-based federalism, while others strongly opposed it. Janajatis (ethnic nationalities) and indigenous groups called for provinces to be delineated along ethnic lines, with priority given to the dominant ethnic group. Conversely, some parties opposed ethnicity-based federalism and proposed geographical delineation of provinces, regardless of ethnic considerations (Bhatta, 2013). Additionally, parties were divided on the governance system, with some supporting a directly elected executive presidency and others advocating for an executive prime ministerial system (Sharma, 2013). The inclusion of the right to self-determination for ethnic, indigenous, and Madhesi people in the constitution was also a contentious issue.

In the first constituent assembly, significant discrepancies arose over the electoral system. The UCPN-M suggested a multiple-member, proportional, direct electoral system based on proportional inclusion, considering factors such as population, geography, and socioeconomic status (Bhattarai, 2013). Conversely, others, including the NC and CPN UML, proposed a mixed system where half of the parliament members would be elected directly through FPTP and the other half proportionally (Sharma, 2013). Consensus couldn't be reached on ensuring proportionality for ethnicities/castes, regions, and genders, both in the preamble and in provisions related to fundamental and minority rights, political structures, and the electoral system.

The first Constituent Assembly received high praise for its inclusivity, boasting a significant representation of Dalits, Janajatis, and notably, a 33% participation of women. Nepal's Constituent Assembly cum legislature was acclaimed as the 14th most representative globally (IPU 2008). Among its 601 members, there were 197 women: 163 nominated by parties under the Proportional Representation (PR) system, 30 elected through the First Past the Post (FPTP) system, and four nominated by the government (Sapkota, 2013)**.** The Interim Constitution also mandated a 33% representation of women in all government institutions, including the Constituent Assembly.

Following the failure of the first Constituent Assembly, Nepal proceeded with a second CA election five years later (Constitution, 2072). However, the outcome was widely regarded as disappointing, particularly due to its lack of

gender sensitivity. Despite Section 7 (5) of the Election to the Constituent Assembly Members Ordinance 2013 stipulating that political parties must field women candidates to constitute 33% of the CA's strength, this requirement remained largely unfulfilled (RSS, 2013). Data from various sources indicate a glaring disparity: out of 6,343 candidates contesting under the FPTP section, only 672 were women, amounting to a mere 10.5%. All participating parties seemed to have overlooked women in their candidate selection process, resulting in the notable absence of many senior female leaders and former CA members from the candidate lists (Correspondent, Dolakha 2013). The three major parties - Congress, CPN UML, and United Maoists - each fell significantly short of the mandated 33% women representation, with only 10.8% of their total candidates being women.

Statement of Problem

The media analysis revealed a significant decline in women's representation in the second CA elections compared to the first one, spanning the entire country (Retrieved, 2013). For instance, in Palpa district, only 27%, 20%, and 17% of candidates from the three major parties - Congress, Maoists, and CPN UML respectively - were women (Reporter, 2013). Interestingly, the Maoists had previously nominated as high as 40% women candidates from the same area. The situation was even direr in other regions. Dolakha, for example, had just one female candidate out of 46 registered for the election. Similarly, in the far west region, only 36 out of 371 candidates were women. Districts such as Darchula, Bajura, Accham, Doti, and Bajhang had no female candidates at all (Subedi, Nov, 2013). In it, Subedi has presented the real situation of various castes and communities of Nepal in representing in the politics mainly by the women in the election.

As anticipated, the election resulted in a minimal number of women being elected, largely due to their limited presence among the candidates. Only 10 women secured seats through the FPTP system, constituting a mere 4.16% representation, significantly lower than the percentage achieved in the first CA elections. In the initial CA, women held 29% of FPTP seats. What's concerning is that this representation of women is even lower than that seen in the 1999 parliamentary elections (Kohalpur, 2013). Additionally, when considering candidates from the PR system, the overall representation of women in the

second CA elections falls short of the mandated 33%. There is a significant research gap due to the lack of sufficient previous studies on this issue. So, the research has been guided by the following research questions:

- How to enhance women in the leadership through Political participation in election?
- What are the various disparities that prevent women's representation in politics?

Objectives

The primary aim of this article is to analyze the portrayal of women in Nepalese politics through a media review conducted between September and December 2013, particularly during the second CA election. Furthermore, it seeks to explore the underlying factors contributing to the disparity in women's representation in the CA, as well as the concerns raised and the demands made regarding this issue. The research aims at:

- To explore the ways of enhancing the women's leadership through election.
- To investigate the various disparities that prevent women's representation in politics.

Methodology

This research paper utilizes information extracted from three prominent national newspapers, including two Nepali publications and one English newspaper. Among these, Kantipur (Nepali) and Republica (English) are privately owned national dailies, while Gorkhapatra (Nepali) is a publicly owned newspaper. A total of twenty-three op-ed articles, twenty reports from various regions of the country, seven editorials, and two other relevant materials were meticulously selected based on their pertinence to the research topic. These materials were carefully chosen for their relevance to the focus of the research, covering the period from September to December 2013.

Key Issues Raised

The media analysis uncovered several significant issues regarding the underrepresentation of women in the second CA elections (Editorial, 2013). Despite hopes for increased inclusivity and gender sensitivity, the opposite

occurred. Women activists and leaders squarely blamed their own parties and leaders for disregarding gender sensitivity.

One prominent issue raised was that parties trivialized gender inclusiveness by fielding women candidates in constituencies where their chances of winning were slim (Tansen, 2013). Critics noted that the allocation of tickets to women candidates was often merely symbolic. Many women candidates found themselves pitted against entrenched political heavyweights, making victory unlikely from the outset (Correspondent, 2013). This practice ensured the defeat of women candidates before the election even began.

Another notable issue highlighted in the media scan was the lack of serious consideration given to women candidates by party leaders (Correspondent, 2013). There was a dearth of clear guidance and support from the top echelons of parties for women leaders. Many women leaders themselves admitted to feeling a lack of trust from their parties, receiving lesser funding and fewer supporters for their election campaigns (Retrieve, 2013). Women writers pointed out that despite women constituting more than half of the population, male candidates often viewed them merely as a voting bloc rather than as equals in the electoral process.

This trend was especially noticeable in the most recent elections. A well-known senior leader and former CA member from a major party even took the drastic step of leaving the party after being denied a ticket for her previous constituency (Reporter, 2013). She subsequently contested the election as an independent candidate but was unsuccessful in winning.

The findings indicated that parties preferred to nominate women candidates through the PR system rather than the FPTP system. This strategy allowed them to prioritize male candidates from the FPTP system, who were perceived to have a higher likelihood of winning, according to party leaders (Retrieve, 2013). Despite the willingness of many women leaders to contest from the FPTP system, they were denied party tickets. Party leaders asserted that the choice to participate in the PR system was made by the women leaders themselves (Editorial, 2013). Numerous senior women leaders from all three parties were selected through the PR system.

Experts raised another significant concern, highlighting that the lower participation of women in the CA would result in fewer discussions on women's

issues during the constitution-making process (Editorial, 2013). They argued that male CA members would likely prioritize other matters over women's issues. Women leaders also expressed apprehension that the gains achieved for women in the first CA through extensive deliberation might be squandered (Editorial, 2013). Moreover, there was concern that the second CA would undermine the inclusivity established in the first CA. (Reporter, 2013) Even if issues concerning women and other marginalized groups were raised, experts warned that their effective resolution cannot be guaranteed in the absence of adequate female representation.

Despite receiving little support from their parties, nearly all women candidates performed well. Contrary to expectations, lesser-known female candidates posed significant challenges to their more experienced male counterparts (Editorial, 2013). This was particularly noteworthy as some of the seasoned male leaders they competed against included former Prime Ministers and Ministers (Editorial, 2013). Women leaders argued that it was the candidates' agendas that resonated with voters rather than their prominence or familiarity

Demands

As per the media analysis, women leaders emphasized the crucial demand for an inclusive Constituent Assembly (CA) with proportional representation of women, if not equal. They advocated for parties to nominate at least 33% of women candidates from the FPTP system, in accordance with guidelines (Editorial, 2013). Emphasizing the capability of women in political performance equal to men, these leaders urged party leaders not to marginalize them.

Some women leaders from various political parties raised a demand for the creation of constituencies exclusively reserved for women candidates. These constituencies would exclude male candidates entirely (Gautam, 2013). The primary objective of proposing such constituencies would be to encourage greater participation of women candidates in the electoral process, fostering direct competition among women candidates.

Furthermore, women leaders contended that the inadequate representation of women in the CA would result in the neglect of issues central to women in the forthcoming constitution. Writers also asserted that ensuring women's rights, safety, and their proportional representation in both public and private spheres

could only be guaranteed with sufficient female members in the CA. With parties disregarding the mandate for at least 33% representation of women in the CA, women leaders argued that the requirement for 33% representation of women in public bodies had become merely symbolic.

Re-Addressable of Demands

With the conclusion of the second Constituent Assembly elections, addressing the aforementioned demands becomes challenging at this juncture (Khadka, 2013). The only viable solution and recommendation for the future entail a rigorous enforcement of existing policies (Rana, 013). Women writers contend that the Election Commission should closely oversee parties' compliance with election guidelines (Marashaini, 2013). Additionally, women leaders have called for unity among female leaders from all parties in challenging the entrenched patriarchal dynamics within their respective parties and leadership structures (Jatiya Aadhar, 2013). It was observed that a lower number of women candidates were expected to be elected under the PR system, as 90 percent of the total 302 disqualified candidates, due to procedural and technical errors by the EC in finalizing the PR list, were women (Noda, 2013). Many women candidates were not listed on the voter roll, while others were nominated under both the PR and FPTP systems (Retrieved, 2013). Women leaders have attributed these occurrences to party negligence and have urged for thorough consideration of such issues in the future.

The media analysis indicates that women advocate for a shift in societal perceptions towards women to empower them politically (Ojha, 2013). Owing to prevailing social norms, security concerns, and familial pressures, women find it challenging to engage in politics and run for election candidacy (Pandey, 2013). They argue that women must be integrated into the policymaking process across all levels and institutions, and should receive proportional representation in key areas such as education, employment, and healthcare, among others.

Findings

This study highlights that national progress and prosperity can only be achieved by actively involving women in politics as representatives, working hand-in-hand with both men and women for nation-building (Singh, 2013). Efforts to engage women in politics have been made repeatedly in Nepali politics

(Pokhrel, 2013). In 1997, the government introduced the Local Self Governance Act (LSGA), which allowed up to 40,000 women to participate in local-level politics by reserving twenty percent of seats for women at the ward level of Village Development Committees (VDCs) and municipalities (Poudel, 2013). However, this did not lead to significant changes in women's participation in politics for a couple of reasons. Firstly, the number of reserved seats for women was insufficient compared to their population (Rai, 2013). Secondly, the reservation was limited to the ward level, and no specific measures were implemented to enhance women's participation at decision-making levels.

In April 2006, Nepal's ten-year conflict concluded, ushering in significant political transformations with a commitment to a more inclusive democracy and heightened focus on addressing disparities related to gender, caste, ethnicity, and religion. The successful completion of the Constituent Assembly elections and the establishment of Nepal as a federal republic on May 28, 2008, raised expectations for further advancements.

The initial Constituent Assembly elections and the significant turnout of women participants suggested that Nepali politics had become more inclusive and supportive of women (Pradhananga, 2013). The CA, functioning as a legislature, was even recognized as the 14th most representative globally (Sharma, 2013). However, the second CA election dashed these optimistic expectations. The lack of representation and evident discrimination against women indicated that achieving gender equality remains a distant goal in Nepal.

Conclusion

The research focusing on women's participation and representation in Nepal's first and second Constituent Assembly Elections has identified the minimal presence of women as a result of political parties' unwillingness, reluctance, and lack of trust in women's leadership. While the constitution mandates a minimum of 33% representation for women across all organs of the nation, including the electoral system, the primary deficiency lies in the implementation of this constitutional provision by political parties in practical terms.

The media analysis revealed significant discrimination against women throughout the entire process of the second CA Elections. From candidate selection to involvement in party manifestos, women's participation has been

minimal. The limited representation of women seems merely symbolic, and many were pitted against seasoned leaders, making their defeat almost inevitable. As a result, women accounted for just 10.5% of the CA representation.

While the first CA Election was commended for its high level of representation, it is regrettable that just five years later, the second CA elections saw minimal participation of women. This lack of women's representation in the CA could lead to various negative consequences. There is a high likelihood of women's issues being overlooked, and it also underscores the continued presence of discrimination in our patriarchal society.

Recommendation

Experience from numerous countries has demonstrated that achieving proportional representation in government bodies can promote inclusivity and drive the country's progress. Rwanda serves as a prime illustration. Despite enduring genocide nearly two decades ago, Rwanda has since emerged as one of the world's fastest-growing economies. A key factor contributing to this rapid development is its highly inclusive government structure, with approximately 64% representation of women in the lower house.

In a country like Nepal, which faces economic challenges and struggles with its health system, it is imperative to effectively implement existing policies. Political parties must adhere to the guidelines outlined in the Election Acts, and failure to do so should result in their exclusion from participating in elections. Women leaders should be entrusted with greater responsibilities and leadership roles. Additionally, the proposal put forward by women leaders to designate constituencies exclusively for women candidates could offer a potential solution. Only through achieving proportional representation of women can the country truly progress towards long-lasting peace, stability, and development.

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Expected Electoral Innovations:

An Utterly Pressing 'Democratization & Enfranchising' Emergency in Political Landscape of Nepal

- **Dr. Atindra Dahal***

Abstract

Election is one of the key and cardinal events in the democracy, and it embodies huge ground of importance in multiple aspects. Conducting elections periodically in free, fair and fast manner is an inevitable and inexorable obligation of each nation. There is no room and reason to refute this onus. Ergo, timely changes and modifications in the election practices and provisions become an utmost and pressing emergency for all the nations in order to address the recent trends and mitigate the emerging electoral challenges. Nepal no longer is in zone of exception with this dire need of the universal similarity. This paper charts out two major issues a) inherent beauty of election, and b) couple of cardinal electoral innovations and major modifications that Nepal, as soon as possible, has to daringly commence to additionally democratize upcoming election activities in pursuit of commendable trust, prompt response, higher validity, larger attraction, supplementary resourcefulness, added enthusiasm, upheld optimism, and mass social audits from the public.

Keywords: Election, Voting, Innovation, Intellect and Youth

Study Methods: As an archival research work, this study thoroughly relies on doctrinal method. Delphi-method, which has been- off late- an instrumental characteristic of the qualitative research, amounts a huge portion of this study. Most of arguments are inferred with paradigm of interpretation. About 57 literatures of respective fields are reviewed and cited to back and boost the gravity of the study. Literatures which are relatively recent, published in reputed sources and authored by known figures in respective scholarship to the extent

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possible are prioritized while screening for the reviews or used for in-text citation.

Discussion and Analysis

Introduction

With completion of the first cycle of full and formal federal democratic practices, Nepal accomplished another grand political festival by successfully and peacefully concluding the Elections at all three levels- federal, state and local bodies- for successive representatives, last year. The local bodies' election was scheduled on 13th May, 2022 and succeeded smoothly. It passed some telling and intelligible messages that had encouraged many other epiphenomenon for Federal and Provincial elections, handled on 20th November, 2022. Owing to the occasion i.e. elections, various ingenuous comments were being made on both fronts: in for and against the motion, respectively. The series is on 'show' still and seems to persist for sometimes more. Some experts tend to evidently castigate election whereas others endeavor to stupendously eulogize the election fever. However, besides those ingenious but contradicting attempts, electoral practices embody and rightfully manifest some unique values. And, at the same time, it seems reasonably expecting some needful and profound innovations too in order to uphold the situation of added democratization and enfranchisement.

Unique Values

Election, among any other human conducts or practices, best manifests that the sovereignty really rests on people as the constitution has enshrined. The mass has perceived very same provision as one of notable salient features. Believing on similar beauty, Wojtasik (2013) regards that elections appear as the first form of soliciting political consensus among citizens. Edgell et al. (2018) find elections shedding substantial importance in the process of democratization. It ensures people, who vote and partake electoral process, that they are indeed important, solely significant, visibly superlative, never possible to be seconded, and makes them further feel that their deliberate decision counts. Assessing the importance of election in Venezuela, Frantz and Geddes (2013) carefully remark that elections are ways to uphold the importance & unfold the real power of

people. The same situation is the highest form of human right as recognized in and protected by almost constitutions across the globe as Dahl (2015) lays focus.

Election, which is an inarguable and indisputable acceptance across the world, is also the prime and powerful lifeline of democracy as Horowitz (2016) infers owing to the situation that all issues i.e. class, economy, identity and politics primarily tend to be designed and defined based on the electoral process and its outcome. Those monumentally uphold the existence of democratic practices in the country. Being enmeshed and lived on similar observation, Dovi (2016) eulogizes as that election allows people enjoy four fold representations at a time i.e. formal, symbolic, descriptive and substantive representations respectively. Countries showing resistance in adopting culture of the multi-party elections-based on adult franchise- still face an endless averment of being knowingly undemocratic. Huang (2017) views that election helped Vietnam to overcome similar sorts of crisis in course of wooing admissible international recognition. Making an identical assessment, Lijphart (2008) also considers election as most major and magnificent manifestation and marker in the global political landscape. Passing a complete consonance with similar logic, Quinlan & Schwartz (2017) have agreed that election had caused a substantive transformation in Northern Ireland.

The renowned classical philosopher and one of reputed founding figures in formulation of knowledge, especially in Western part of the World, Aristotle defined 'Demo' as people and 'Cracy' as power. Conceding with the message, Kiani & Sartipi (2016) write "elections have a crucial role in building the state, power transmission, ensuring peace and political stability, fundamental human rights, public participation and the legal state" (p. 20) to elaborate the importance of election in deeper level. Further, they perceive election as 'excellent platform to achieve popular sovereignty" (p. 32). The absolute reflection of that superlative power vested in the people is also expressed rightfully through the elections. Only election is the much valid, well accepted, legitimized and peaceful means to transfer power, shift the power-centre and handover regimes. Bjornlund (2015) rightfully judges it as 'it broadens the scope of the free will of people to create and change regime' (p. 2); and for the similar assumption, Clark (2015) deems election as the most transparent procedure of selection. Therefore,

it is legal, admissible and commendable move for the political parties as well to receive the approval from the people then uphold any of their decisions through periodic and democratic election. 'Election is the mechanism for the formation of a political system, officials and political institutions' as Khosravi (2014, p.196) remarks; and Sadeghi (2015) also makes almost an identical view. Elections heavily warrant parties to refill each aspirant with competitive efforts to speed up development activities in all levels and layers for convenience of the people.

Despite reserving colossal values, Nepal's existing election praxis urgently needs to infallibly embrace many innovations to address the wider interests and ensure the higher responsibility to people. Those innovations shall definitely cause significant boost in level of democratization and enfranchisement being experienced till today.

Expected Innovations

An admissible application of up-to-the-minute electoral mechanism to disinfect people, to empower people with fragile health for franchise and to save the voters from potential danger and health risks is the most initial and fundamental expectation. Brown et al. (2022) have noted that people with poor or unsound health are less likely to be present for voting. And this shall cost a large impact on electoral turnout as Lahtinen et al. (2017) also find the similar result in various studies. In a recent study, Buril et al. (2022) also have realized the much stressing and pressing need of digitizing electoral practices owing to public health emergencies created due to COVID -19 outbreak and overlapping timing of elections across the globe. Conducting and administering election along with voting had been seriously impacted in many countries due to health risk. A report titled Global Impact of COVID-19 on Elections (2020) makes akin inference. There may be occurrence of similar or other pitfalls of pandemics on the days ahead that might disallow people gather in group or make an assembly for either of activities. The group of franchisers with vulnerable health always opts to be out of the ring for other causes too. Given these all potential challenges at any time in future, Banbury (2020) also has made strong recommendation to adopt electronic voting. Apropos to excessive dependence on digital domain, the present-day generation is being addressed 'e-tribe'. Couples

of off-late researches suggest that 'virtual world and work from home' possibly can be a valid priority, globally, in several areas, as an aftermath of pandemic. Plibersek's recent book *Upton: A Better Normal after COVID* (2020) and a report from McKinsey Global Institute titled *The Future of Work after COVID* (2020) conclude accordingly. Zakaria (2020) strongly suggests to adopt then to naturalize digital or virtual working to the extent possible in each of activities; and, election shall not distance out itself from it. Such efforts in Nepal too certainly herald many positive upshots and outcomes.

The extent of the best possible 'digital or virtual integration' ought to be prioritized in electoral procedure as well. Electronic voting or advance voting assists Nepal kick start a quantum leap of change. The slogan of 'Digital Nepal', which is one of broad concepts of Nepal Government, as Giri (2018) claims, earns an evident meaning. Application of ICT (information, communication and technology) seems to chart a visibly valuable graph. Though it has been doubted and suspiciously treated in Nepal, Electronic voting- since a quite long time span- is a common custom globally. The system was first introduced in the United States in 1960 AD, followed by India in 1998, the Philippines in 2010, Namibia and Mongolia in 2014, respectively. Furthermore, Estonia has already developed then enjoyed an enriched practice of online voting. Electronic voting apparently saves time and significantly makes expenses down as well as lowers the need of human resource for electoral deals. Basit (2017) finds it amazingly computable and significant in terms of election. Furtherance, Pual & Ray (2013) too had drawn similar inference whereas McCormack (2016) argues electronic voting and digitizing election as a landmark event and noticeable departure on quest of rebooting democratization. Less crowded elections, easier calculation and environment friendly 'green election efforts', inter alia, are the other competitive advantages. Tendency of invalid votes also gets remarkably reduced, followed with procedural simplification alike Almutairi et al (2021) also find the use of Artificial Intelligence in such manner could credit a lot of positive advantages for crowd management in various social events like election and so on. Suharsono & Kuspriyanto (2019) had presumed projectable pandemic and had urged for use of electronic voting. Besides these inferences from various scholars, an early voting scheme ensures highly voter-friendly exercise and resolves the difficulty of time constraints. Therefore, Sadiku et al (2017) praise it

as dynamic voting. Such an initiation would simultaneously instill justice to the approximately three million Nepali diaspora voters, residing abroad in Non-resident Nepali status. More than million voters currently reside outside the nation for short term seasonal migration and many other purposes. Despite being in home itself, many citizens find it unmanageable to manage cost and time to travel residency area where they are enlisted as registered voter. As an outcome, the average vote torn out is only about 65 percent. There was substantive soaring growth in election in Belgium because of practices of electronic voting and internet voting as Dandoy (2014) has noticed. All the political parties considering the election as major political phenomenon and the Election Commission, as the regulatory institution, should unbridle all the possible determinations and sweats in these areas. These attempts will ensure higher enfranchisement and give surge on vote torn out thus assist democratization at newer level.

As one of the landmark verdicts from joint bench of the then justices Hon. Kalyan Shrestha and Prakash Wasti, in 2070 BS, the esteemed Supreme Court granted the right to reject, which is one of much sought after popular political debates (as per the news report of onlinekhabar.com) on the ballot paper. However, on contrary of the expected output, Mandal et al. (2017) has noticed this provision not making any significant change and positive contribution, as having very negligible support in different countries which have already introduced the system of no voting. Negating the step shall even evoke the case of contempt of court as well. Thus, adopting this system checks the popularity graph of candidates, honors civic credibility on the political system, and will see an innovation in elections as Vachana & Roy (2017) argue. Thus, introducing right to reject shall unfold double fold benefits of exhibiting compliance to Court's verdict and allowing people to reject the undesirable candidates.

Besides others, presenting younger generation candidates in the election competition is another of the most sought-after innovation stalls. Stressing on the political need in Ghana, Biney & Amoateng (2019) also prescribe the dire necessity of youth engagement in politics. Assessing the output of youths' engagement, Henn & Foard (2014) have noted significant social changes in UK because of youths' active participation and ardent intervention. In the short past,

Obama was elected on the President of the United States at 46, Roosevelt at 42, Kennedy at 43, Clinton at 46, in their first accession to the power. David Cameron assumed office of the Prime Minister in the United Kingdom at 43 and Tony Blair at 43. Augustus FitzRoy at 33 in 1768, Frederic North at 37 in 1770, William Pitt at 24 in 1783, and Lord Liverpool at 42 in 1812 were others well renowned members of the club. Sanna Marin (38) Finland, Jacinda Arden (42) New Zealand, Carlos Alvarado (42) Costa Rica, Gabriel Boric (36) Chile, Nayib Bukele (41) El Salvador, Emmanuel Macron (44) France and Rishi Sunak (43) Great Britain are current examples in the row of this exemplary series. The leadership of those young politicians, who are evidently equipped with hypersonic energy, progressive vision, innovative thinking, irreproachable vitality, and undoubted ability to flourish, collectively showers nation bountifully. Highly creative contribution for the overall transformation and speedy progress of country becomes possible. Public can be gratified with their devotion and dedication to develop the country. Weiß (2020) feels youths' participation as significant departure on political progress and advancement of country whereas Coe et al (2016) consider "youth politics as multiple processes" (p. 6), and Rainsford (2017) writes, "it seems as if the problem of youth political participation is less a matter of whether they participate, and more a matter of where they participate" (p. 2) to further highlight the values of presenting and electing youth candidates in election.

Positioning self as quite unequivocal to other authors, James's book *The Prime Minister and the Cabinet* (2020) pronounces that the youth-led politics is not only propitiously dynamic but also princely positive, propulsive and productive. It utterly unfolds an unrivaled capacity in public service and earns sizeable civic upkeep. To add on gravity of the issue and intensify the need of youths in politics, Ekpe et al (2016) remark that youths could result in self-sustained community development and could possibly reduce many vices. Unfortunately, the retiring generation has had consecutive control over politics in Nepal. Indicating such a sordid situation, Devkota (2019) calls it severe crisis in leadership, and one of the reasons of failure of nation in line with Acemoglu & Robinson (2012) jointly argue to mention the possible reasons for failure of any nation. Therefore, the youth, now sans any delay, should have the courage to lead the populace through elections with a proposal for positive change plus

willpower and rehearsal to solve the teething troubles on the people. Reinforcing the similar propositions, Lim & Lee (2016) regard the young leadership as transformative and Pharion (2014) rates that as transformational. Hence-so-forth, all the political parties have to expressively present the young generation candidates in the elections. Adults and older political frontrunners should assimilate to act as an uprightly respectable patronage. In that case, the ballot will generate another new spark. It can even regain the almost dormant and defunct public trust into a full-speed velocity. Highly touted issues mark a meaningful genesis.

The exercise of political meritocracy is next pressing urgency now. Justifying it, Bell & Chenyang (2013) regard almost and absolute absence of meritocracy in politics as prime challenge in East Asian World; and Klein (2018) believes that it has bountifully cost on the weight and gravity of democracy. Desired development hustle necessitates a set of evident experts with the adequacy of technical knowledge in various fields. Parties need to attract and invite cream cum proficient minds to join politics and attempt for charismatic leadership. Thus, there will be a leadership which can deliver to the level of public expectation. Recalling the trend that is being well accepted across the globe, Wooldridge (2021) states that modern and developed world can be only made with positivist intervention through meritocracy. It even takes limelight of ballooning swing votes. The moral basis will be always highly productive and visibly result bearing as Ziliotti (2017) feels. Such practices are adduced to be highly advantageous for qualitative change in politics along with public lives, overseas. Many countries, mostly including China, Thailand, Japan, Singapore, Korea, Hong Kong and Vietnam, have welcomed an intense political involvement of many sound professionals and experts i.e. professors, lawyers, scientists, experts in various fields, scholars, professionals and researchers to integrate their expertise and efficacy. As there is no majority of experts among politicians these days, the quest of nation building in Nepal has fairly become mere a desire without any distinct devotion and dedication. A group of no special and in-depth expertise and enthusiasm seldom sails anything substantive for the rapid transformation of the nation. The one or two lethargic events in piecemeal basis from inapt, inept and inert politicians can cause no significant changes and overhaul the system, which is a desperate need of Nepal. Thus, all parties should

unconditionally invite and welcome experts and exercise meritocracy as political maneuver.

Conducting all three level elections at once than stipulating them in separate time span could save a lot of money. Falguera et al. (2014), note substantial rise in cost of election, inter alia, in European countries; and Nepal is no longer an exception. About 500 million Nepalese rupees is reported to have spent in conducting two elections in 2022 AD. It has compelled to negotiate with exponentially increasing election expenditure (Mietzner, 2015). A state with a very small and dependent economy, and moreover in additional hardship as now, like Nepal must promptly exercise renewed efforts to be economic in course of elections. Doing it even benefits by refraining election officials from repeatedly using same human resources, mostly outsourcing from government employees because election commission doesn't have own staff at that number. There shall be no risk of creating a conducive environment for contagion by intermittent crowding if elections are not frequently conducted. Rexha et al. (2016) coin a phrase 'crowdsourcing technique' to denote such experiments in election time. It shall not harm any to Nepal as well; it rather causes higher enfranchisement.

The parties now need to reach a new consensus on ways to refine and improve the method of direct elections given the behavioral inconsistencies and much costly practices observed in the bygone electoral spats. The increasing cost is worrisomely stressing candidates and entire process; and, managing it as an issue of paramount importance too as Prato & Wolton (2016) remark. It is obvious to cost voters' welfare and augment partisan imbalance. So is the situation that is sensed in Nepal. A situation should be endorsed where the lead candidates canvass through television debate thus the parties make minimal public off-line meetings and campaigns. At the moment when the virtual world is increasingly bigger than the material world and the word 'universe' has been replaced by the word 'metaverse', Nepal should also dare to launch some fundamental and foundational breakthroughs in electoral exercises too. Dommett & Temple (2017) and Neyazi et al. (2016) have noticed the digital campaigns assisting electoral process with multifold advantages and benefits from ensuring safety to minimizing atrocities as well. Owing to the heavy expenses in the direct election system, its suitable alternative should also be pondered. Parties and election

commission officials should not remain indifferent and oblivious about such an imperative issue. Given the constant confusion about longevity of government based on hung parliament and perpetual plotting cum endless endeavors to form and deform the government among parties, Nepal's electoral system vis a vis the method of electing federal and province executive should be subject of serious revision. Some very clumsy and nauseating scenes of government changes and its frequency has beset and embarrassed the public.

The series of previous elections as well did not expectedly generate any new civic enthusiasm. To encapsulate the crude reality, Rajkarnikar (2019) finds all sectors- inter alia, economics, which is the prime one- at irreparable disarray because of political apathy and inaction. The nation has headed towards downward trajectory and exemplified the best sojourning of underdevelopment, decay and damage. The anticipated consequences were seldom achieved due to lack of expert, devoted, young, energetic, dedicated, visionary and qualified candidates. At present, the additional inconveniences and advanced adversities are heightened due to cumbersome electoral process as well. Shrestha (2017) and Pokharel & Rana (2013) do also raise various existing practices in electoral process which need to be explicitly expunged and Nepal should happily adopt innovative praxis to uphold the relevancy and credibility of election.

In nut shell, following innovations are felt as unequivocally much needed steps to retain the electoral beauty and initiate some innovative inductions to further popularize electoral exercises.

1. Digitation of franchise
2. Electronic voting
3. Provision of early voting
4. Right to reject on ballot
5. Presenting young generation candidates in election
6. Practice of political meritocracy
7. Single time all level election
8. Television campaigning
9. Modifying direct election practices

Conclusion

Based on the analyses carried here-so-forth, some changes in electoral praxis are critically must in order to uphold the significance of elections then to make its upshots to be truly centered on civic interest and welfare. A set of rational and admissible modifications, as inferred from the above said discussion and analyses, in the present-day electoral system along with election competitors should be firmly confirmed. Nothing resisting on obsession in inducting changes in electoral practices should be entertained. If any or more of these proposed innovations are delayed and/or disagreed, the periodic election will now turn nothing meaningful and instrumental than mere an intermittent mal-affair in terms of both the process and outcomes.

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The Federal Parliament of Nepal: An Examination of Inclusive Representation, 2022

- **Sabita Kumari Mallik***

Abstract

Nepal is a country of varied and fair depiction of people from all backgrounds, makes the country multicultural, multilingual, multiethnic, multireligious, and diverse in terms of geography. Inequality in Nepal is still rife due to caste, ethnicity, religion, language, class, gender, and region, despite previous attempts at democratization and addressing issues of exclusion. The study is based on pragmatist philosophy. Multicultural and representative theories are appropriate for this study. Consequently, the study is ideally viewed as having significantly aided the federal parliament in the process of formulating policy. The representation percentage shows with the exception of Khas Arya, is significantly less than the quota assigned to these groups, despite the fact that the PR system has yielded positive results. Legislation pertaining to inclusive representation by the relevant authority needs to be changed in order to guarantee that the inclusive standards and values are fairly promoted and upheld.

Key Words: Constitution, exclusion, federal parliament, inclusive representation, multicultural society.

Background

Nepal is a land locked nation located in the northern region of South Asia. It has a total area of 147,516 sq. km. and a population of 29,164,578, with 14,253,551 men and 14,911,027 women, according to the census conducted in 2021. Many Asian countries have unique customs, cultures, languages, racial and religious groups, and views on tolerance as Nepal is also one of them. It was struggling with the extreme level of inequalities among the diverse groups like the other countries lying in south Asia. The inequality between the groups and the regions were high and these diversities were overlapping on each other.

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There were 142 caste/ethnic groups listed in the census of 2021; 125 of these were the same as in the census of 2011, and the remaining 17 were newly discovered and added. There are 124 mother tongues; 111 of these were listed in the 2011 census, and 13 were discovered in the 2021 census. Ten religious groups are practiced in Nepal, and the 12 foreign languages listed in the 2011 census have been combined into other languages (NPHC National Report, 2021).

The constitution of 1990 recognized Nepal as: "a multiethnic, multicultural, multilingual, democratic, independent, indivisible, sovereign, Hindu and Constitutional Monarchical Kingdom" and "the Nepalese people irrespective of religion, race, caste or tribe, collectively constitute the nation" (Constitution of the Kingdom of Nepal, 1990). Nepal was a Hindu Kingdom, and Nepalese language continued to be the only official language. The caste, ethnicity, religion, language, class, gender and region based inequality is practiced in Nepal even after 8 years of promulgation of the constitution. The study represents multicultural and inclusive representation theories which stress the value of accurately and respectfully portraying marginalized communities in order to promote understanding, empathy, and empowerment.

In culturally and ethnically diverse Nepal, previous attempts at democratization have resulted in elite-led processes, continuing exclusion and marginalization, serving the purpose of affirming the position of the elite rather than increasing popular participation. The 1990 Constitution was unable to address Nepal's ethnic, indigenous, linguistic, and religious diversity or find a solution to these persistent issues. Unquestionably progressive, the Interim Constitution acknowledged Nepal as a multilingual, multiethnic, multicultural, and multireligious state and demanded that marginalized groups that had been historically excluded, such as women, Janajati, Dalits, Madhesi, and others, be represented. Nepal was also proclaimed to be a republican, democratic, federal, and secular nation. (Adhikari et al., 2022).

Even after the constitution was enacted eight years ago, caste, ethnicity, religion, language, class, gender, and region-based inequality are still prevalent in Nepal. Past attempts at democratization in Nepal, a country with a diverse population in terms of culture and ethnicity, have led to elite-led processes that perpetuate exclusion and marginalization and serve to reinforce the status quo rather than increase popular participation. Nepal witnessed series of political

changes like absolute monarchy, autocracy, Rana regime (oligarchy), and absolute monarchy (Panchayat regime) to democracy (Loktantra). The loktantra restored after the People's Mass Movement II (2006) which paved the way of proportional representation in every sector of Nepali politics, administration, education etc. All people are to be equal citizens, irrespective of ethnicity, caste, religion or community belongings. The legislative parliament is responsible for promoting sustainable peace, good governance, and development. To this end, inclusive representation is essential and is seen to have a positive, long-lasting impact on Nepalese society.

Nepal is a multicultural, multilingual, multiethnic, and multireligious nation, according to the 2015 constitution. Numerous groups, including women, Madhesi, indigenous people, Dalits (the lower caste), Janajati, and many more, were excluded from the mainstream of politics. Although inclusivity has been introduced in Nepal, there are numerous issues with its application. The idea or behavior known as inclusiveness ensures that every person can take part in all national affairs.

It is the process of integrating members of marginalized, impoverished, and backward communities into the mainstream of national affairs. It is imperative that all of these groups be represented in the socioeconomic and political spheres. The goal of this research is to identify a path towards inclusion in the political sphere that would satisfy all marginalized groups of people.

Statement of the Problem

In order to address Nepal's inequality, both the Interim Constitution and the Constituent Assembly included inclusive provisions. These included the Constituent Assembly's constitution drafting process guaranteeing women, minorities, and dalits proportionate representation in state institutions. The goal of the 2007 interim constitution was to restructure the state of Nepal into an inclusive federal democratic republic. In many political sectors, including political institutions, the current constitution (2015) fails to incorporate constitutional provisions, despite its apparent attempt to address inclusionary agendas. Research on this topic appears to be necessary to ensure that there must be proper inclusive representation in the parliament according to the constitution promulgated in 2015 for better policy making.

Research Questions

How does the composition of parliament in 2022 reflect inclusivity across various demographic categories such as gender, caste and ethnicity?

Objective of the Study

In order to provide inclusive representation in the federal parliament, the researcher attempts to address how Nepal's social diversity is accommodated under the current constitution during elections using either First Past the Post (FPTP) or Proportional Representation (PR).

The specific objective of the study is:

- To examine the inclusive representation in the parliament in 2022.

Delimitation of the study

The research's limitations are readily apparent. This study only focuses on inclusion of gender, caste and ethnicity in the parliament. After the 2022 parliamentary election, inclusive representation is taken into consideration. As Nepal transitioned to a federal system, the study's main focus is on inclusive representation of gender, caste and ethnicity in general election of House of Representatives in 2022.

Literature Review

According to Takis Fotopoulos democracy and power concentration are irreconcilable. "Inclusive democracy is a new conception of democracy, which, using as a starting point the classical definition of it, expresses democracy in terms of direct political democracy, economic democracy (beyond the confines of the market economy and state planning), as well as democracy in the social realm and ecological democracy" (Fotopoulos, 2001). Three ideal forms of popular mass political inclusion are distinguished by Mouzelis (1998). The term "integrative mode" describes the relatively equitable integration of individuals into politics, such as in the case of independent, horizontally structured interest groups.

One example of a new idea that emerged quickly in the west over time is multiculturalism, which evolved into western theories whose central tenet is the protection of minorities' rights. It later affects the Asian countries; however, this model is not appropriate for those countries because of their unique historical,

cultural, ethnic, religious, demographic, and geographic differences. Numerous Asian countries have unique customs, cultures, languages, racial and religious groups, and perspectives on tolerance as unity in diversity.

Kymlicka's multiculturalism is predicated on the idea that a state has distinct cultural characteristics. Some of the groups may be the majority and some may be the minority in those differences. In that case, we might envision a shared area with several small settlements. According to Kymlicka (1995), the western countries are experiencing multicultural issues as language rights, regional autonomy, political representation, education curriculum, land claims, immigration and naturalization policy, even national symbols, such as the choice of national anthem or public holidays which are of important and potentially divisive questions at present same as the eastern society.

If we see over time in Nepal, monarchs established the Varnas and the Castes. Based on their occupations, King Jayasthiti Malla classified the Newars into 64 castes and 4 varnas. King Prithivi Narayan Shah referred to the modern Nepal as the common garden of people from 36 castes and 4 varnas (Aahuti, 2014. p. 79). The relationship between caste groups has been categorized into upper, middle, and lower level categories in various literatures. This means that people who wear janai, such as Brahmins, Chhetris, and Thakuries, are regarded as members of the upper caste. The caste groups classified as dalits belong to the lower caste categories and are known as untouchables (Gurung, 2006).

Bhattachan (2003) claims that the primary cause of social, cultural, and political discrimination was established in the past and persists today, independent of political systems, in the form of Bahunbad (Brahmanism) ideology, policy, and practice. According to him 'Bahunbad is an ideology, policy, and practice that promotes the dominance of one caste (Bahun-Chhetri), one religion (Hinduism), one language (Khasa-Nepali), one culture (Hinduism), one region (the Kathmandu Valley), and one gender (male)'.

In research on the constitution-writing process and state institutions generally, the topic of political representation of marginalized groups has received a lot of attention (Lawoti 2007c, 2012; Slavu 2012). These studies focus primarily on the technical aspects of electoral systems and representation, but they don't go into further detail about how political actors support inclusionary

or exclusionary policies. Social policy causes inequality rather than being the product of intelligence and human nature,

According to research on the subject, the representation of the elite Brahmin and Chhetries has increased while that of the hill ethnic groups, the Madhesi and Janjatis, has decreased in the House of Representatives elections held in 1994, 1996, and 1999, respectively. This has caused these groups to become dissatisfied. When the Maoists launched the insurgency in 1996, they brought up issues of caste, ethnicity, gender, religion, and language. They also demanded inclusive representation in all spheres of society as well as ethnic and regional autonomy (Pyakurel & Adhikari, 2013).

Methodology

Analyzing the inclusive representation in the 2022 Nepalese Parliament would require taking a methodical approach that involves gathering information, analyzing it, and coming to relevant conclusions. This study is well suited for pragmatist philosophy and liberal, multicultural, democratic, representative theories, and adopts a descriptive approach. Mostly the research used research data based on mixed method (Qualitative and Quantitative both) using primary and secondary sources. It initially examined the representation of underrepresented groups in Parliament, focusing on gender, ethnicity, caste, religion, and regional diversity. It also gathers relevant data from official sources, such as parliamentary papers, demographic research, and the Election Commission of Nepal.

Data on the demographics of the election results, inclusion status, and representation in both houses are included in this study. The Election Commission and other reliable sources provide quantitative data that is utilized to analyze the representation of different groups in the legislature, including the number of female members and the distribution of seats among different castes and ethnic groups. On the basis of quantitative data and reviewed literature of the secondary sources like books, magazines, newspapers, articles, journals and websites and other data is collected from different authentic sources (Central Bureau of Statistics, Records of HoR and Election Commission Reports), the qualitative perspectives are analyzed and examined the data for an inclusive patterns that shed light on the situation of inclusive representation in the legislature.

Data Presentation and Analysis

Political Representation in Nepal

Nepal saw a number of political transitions, including the transition from autocracy (the Rana regime) to democracy (Prajatantra) and from aristocracy (the Panchayat regime) to democracy (Loktantra). Following the Mass Movement II, which opened the door for proportional representation in all spheres of the government of Nepal, the loktantra was reinstated. All citizens were to be treated equally, regardless of their caste, ethnicity, religion, or place in a community.

Ethnicity and regionalism became more prevalent after 1990. Newari language in the Kathmandu municipality and Maithali in Saptari District Development Committee was experimented with making their mother tongue as the official language in accordance with the constitutional provision of the "right to protect and promote own language and culture." However, the Supreme Court overturned this ruling. The 2007 Interim Constitution of Nepal was the country's first to provide minority groups and marginalized communities with special rights and protection (Constituent Assembly Secretariat, 2010. p. 18–19). When the Constituent Assembly was writing the new constitution, this was another contentious issue. For the elections to the Constituent Assemblies, a proportional election system was used to provide inclusion for these excluded groups.

Constitutional Provisions of Legislative Parliament

The constitution of Nepal 2015 explains in Part-8 Federal Legislature. Article 83; Federal Legislature:

There shall be a Federal Legislature consisting of two Houses to be known as the *House of Representatives and the National Assembly, which shall be called as the Federal Parliament. Article 84; Composition of House of Representatives: (1) The House of Representatives shall consist of a total of two hundred and seventy five members, as follows: (a) One hundred and sixty five members to be elected through the first past the post electoral system, with one being elected from each election constituency of one hundred and sixty five election constituencies delimited in the country on the basis of geography and population, (b) One hundred and ten members to be elected through the proportional electoral system where voters vote for political parties, with the*

whole country being considered as a single election constituency. (2) The Federal law shall provide that, in fielding candidacy by political parties for the election to the House of Representatives under the proportional electoral system, representation shall be ensured on the basis of a closed list also from women, Dalit, indigenous peoples, Khas Arya, Madhesi, Tharu, Muslims and backward regions, on the basis of population. In so fielding candidacy, regard shall also be had to geography and territorial balance. Explanation: For the purposes of this clause, "Khas Arya" means Kshetri, Brahmin, Thakuri, Sanyasi (Dashnami) community .... Part 8 (Article 84, Sub – Article 2); Formation of the Representative Assembly: ..... Political parties have to give proper consideration upon the principles of inclusiveness while selecting their candidates… Part 8 (Article 86); Formation of Federal Parliament and National Assembly: ....Of the total number of candidates elected from each party in the Federal Parliament, at least one – third must be women,.....Part 8 (Article 86); Sub-Article (2a) fifty six elected members consisting of at least three women, one Dalit and one from persons with disabilities or minorities, ... Sub Article (2b) three members consisting of at least one woman nominated by the President on the recommendation of the Government of Nepal..... Part 8 (Article 87); Qualifications of Members …….. (Constitution of Nepal, 2015).

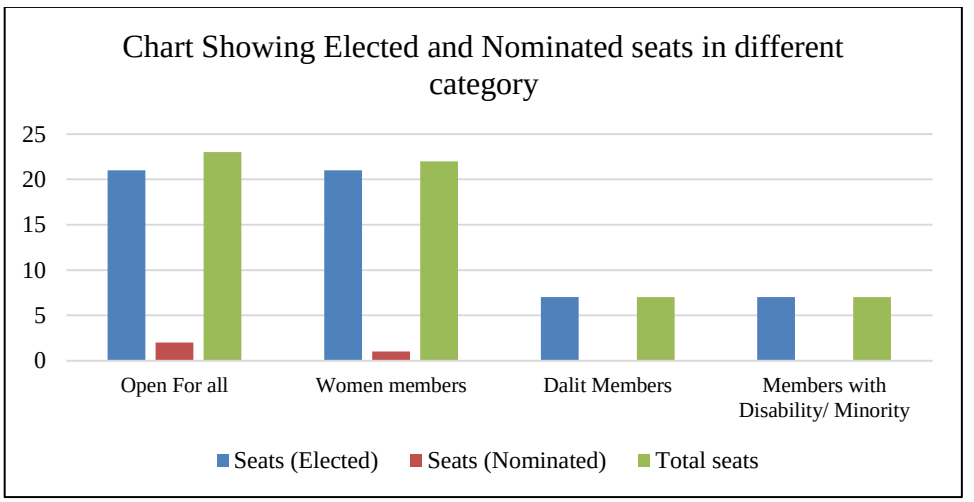
Inclusiveness in National Assembly

The National Assembly is intended to be a permanent legislative body under the constitution. Through the inclusion of marginalized and endangered communities in national governance, the National Assembly plays a crucial role in the establishment and advancement of an inclusive and democratic governance system. It consists of fifty-nine members in total, of which fifty-six members are elected from seven provinces, eight members from each province. Among the eight members; one Dalit, three women, and one representative with a disability or member of a minority group must be included from each province. They are elected through Electoral College which consists of members of the Provincial Assembly, chairpersons and vice-chairpersons of the Rural Municipalities, and mayors and deputy-mayors of the Municipalities. The federal law provides varying weights to the votes of provincial Assembly members, Mayors, Deputy Mayors, Chair persons and Deputy Chair persons in the Electoral College. On the recommendation of the Nepalese government, the

President nominates three members, at least one of whom must be a woman. Members of the National Assembly will serve six-year terms in office. Every two years, the terms of office of one-third of the National Assembly's members expire.

Figure. 1

Relation between Elected and Nominated seats in different category



Source: Constitution of Nepal (2015)

According to the constitution, of the 59 seats in the National Assembly, 21 are set aside for women, seven for Dalit individuals, and seven for candidates from other minority group or people with disabilities. One woman must be one of the three members the president has nominated. Any candidate is welcome to run for the remaining 21 seats.

Inclusiveness in House of Representatives

The composition of the House of Representatives consists of two hundred and seventy-five in total in which one hundred and sixty-five members will be elected using the first past the post electoral system. One member is elected from each of the one hundred and sixty-five election constituencies those are delimited in Nepal according to population, geographic convenience, and specificity. A total of 110 members are chosen through the proportional electoral

system, in which voters cast votes for political parties, considering the entire nation as a single electoral constituency. The federal law stipulates that representation from women, Dalits, indigenous nationalities (Aadibasi Janajati), Khas Arya, Madhesi, Tharu, Muslims, and backward regions along with persons with disability or from minority group must be guaranteed on the basis of a closed list when political parties file their candidacies for the House of Representatives election under the proportional electoral system.

The clause that has been included in Nepal's laws and constitution over time to account for the accommodation to the country's diversity. The Interim Constitution of Nepal 2007 additionally protected equality arguing that nothing shall be deemed to prevent the making of special provisions by law for the protection, empowerment, or advancement of women, Dalits, ethnic nationalities (Adibasi-janajati), Madhesi, farmers, laborers, or members of a class which is economically, socially, or culturally backward or children, the elderly, disabled, or those who are physically or mentally incapacitated, according to Sub article 3 of Article 13. This and other comparable constitutional provisions also made it possible to establish the reservation system in Nepal's civil service. Eventually, the second amendment of the Civil Service Act of 1991 introduced a provision mandating that 45 percent of employees in open recruitment be selected on an inclusive basis, aiming to make the civil service more representative. According to Dhakal's case study, of these, 33% are set aside for women, 27% for Adibasi-janajatis (Ethnic Nationalities), 22% for Madhesi (terai people), 9% for Dalits, 5% for the disabled, and the remaining 4% for backward areas. However, the share of these was later reduced to include Khas Arya's reservation.

Table. 1

Representation of different caste/ ethnic groups in the parliament from different caste/ ethnicity

Caste/ Ethnicity	FPTP		Total (%)	PR		Total (%)	Total		Total (%)
	Men	Women		Men	Women		Men	Women	
Khas Arya	91	4	95 (57.58)	8	27	35 (31.82)	99	31	130 (47.27)

Caste/ Ethnicity	FPTP		Total (%)	PR		Total (%)	Total		Total (%)
	Men	Women		Men	Women		Men	Women	
Indigenous People	33	2	35 (21.21)	5	26	31 (28.18)	38	28	66 (24.00)
Madhesi	25	2	27 (16.36)	4	13	17 (15.45)	29	15	44 (16.00)
Dalit	1		1 (0.61)	7	8	15 (13.64)	8	8	16 (5.82)
Tharu	6	1	7 (4.24)	1	5	6 (5.45)	7	6	13 (4.73)
Muslim				3	3	6 (5.45)	3	3	6 (2.18)
Total	**156**	**9**		**28**	**82**		**184**	**91**	**275**
Percentage	94.55	5.45	165 (100.00)	25.45	74.55	110 (100.00)	66.91	33.09	100

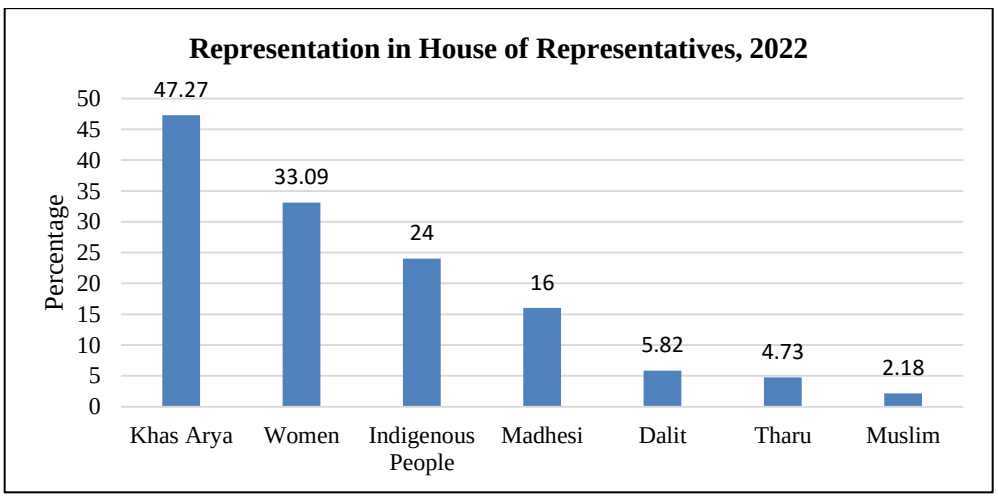
Source: Election Commission and Dignity Initiative, 2022.

The above mentioned table provides a clear representation of the outcome of the HoR election in 2022 based on inclusion. Khas Arya holds 47.27% of the total seats in the House of Representatives according to the election results of 2022, in which they received 57.58% seats in FPTP and 31.82% through PR. The indigenous community received a total of 24 % of seats with 21.21% in FPTP and 28.18% through PR, while the Madheshi community received 16% of total seats with 16.36% in FPTP and 15.45% through PR. Dalit community gained 5.82% of total seats in the House of Representatives with 0.61% in FPTP and 13.64% through PR. In a similar vein, Tharu received 4.73% of the total with 4.24% in FPTP and 5.45% through PR while Muslims received 2.18% of the total, with no one in FPTP and 5.45% through PR. In terms of gender, there are 91 women serving in the House of Representatives which is 33.09% of the total seats, 9 of whom were chosen by FPTP and 82 by PR. They are from Khas Arya 31, of which 4 are from FPTP and 27 are from PR, among 28 indigenous/Janajati, 2 are through FPTP and 26 are from PR, total 15 Madheshi female seats gained, of which 2 are from FPTP and 13 are through PR. Similarly,

among 8 Dalit seats, no one is elected through FPTP, all 8 are from PR. Regarding Tharu female quota, out of total 6 seats gained in which 1 through FPTP and 5 from PR system, and 3 Muslim women are representing, of which none of them are from FPTP all of them gained the seats in PR. Although the table shows that the PR system has yielded positive results, it is evident that the public is not satisfied as the representation percentage is significantly lower than the quota assigned to these groups with the exception of Khas Arya and women's groups.

Figure. 2

Electoral Result of representation of different gender, caste/ethnicity for year 2022



Source: Election Commission of Nepal

This information seems to show the demographic distribution of different identity groups in federal parliament in 2022. It displays the proportions of several groups, including Muslims, Khas Arya, women, indigenous people, Madhesi, Dalit, and Tharu. The percentages indicate the respective shares of these groups in the House of Representatives overall in 2022. With 47.27% of the seats to Khas Arya and 33.09% of women, Khas Arya appears to be the largest group. Indigenous people make up 24% of the group and are likely of significant cultural and historical significance in the given context. In a similar vein, the Madhesi, who make up 16% of the population, appear to be a sizeable

minority group even though their number is higher. Dalits hold 5.82% of the seats, which is a considerable increase from previous elections. In the House of Representatives, Tharu people hold 4.73% of the seats while the Muslim community makes up 2.18% of the members.

Results and discussion

Nepal's democratic practices faced numerous obstacles in their quest for a society free from discrimination and with equal rights to social, cultural, political, and economic opportunities. The Maoist insurgency was sparked by the disparities among people in the society, such as caste-based discrimination and regional injustices. In order to determine how diverse and representative the Nepali parliament is of the people living in the country, an analysis of the inclusive representation in the Nepalese parliament in 2022 would include examining a number of variables, including gender, ethnicity, caste, religion, and geographic representation

The representation of women in public roles, such as that of Chhetri and Brahman women, has also been minimal. The percentage of women in the HOR, which was formed in 1991, 1994, and 1999, never went above 6%. There were no women at all in some of the cabinets. In the gazetted civil service and judiciary in 1997, the proportion of women was 5% and 4%, respectively. The government of Nepal recognized 59 ethnic groups as indigenous, and a number of other ethnic groups, making up a sizable portion of the country's population, felt that their demands were not met by the constitution and were dissatisfied with how inclusion in all sectors had been implemented. The case of the Dalit community provides a clearer understanding of the extreme degree of exclusion that exists in Nepal. During the democratic political regime that lasted from 1990 to 2002, only one Dalit was elected to the House of Representatives and no Dalit was appointed to the cabinet.

The data illustrates the representation of different genders and caste/ethnic groups in Nepal's legislative bodies, which usually consist of the Parliament and other local or regional governing bodies. It shows the distribution of seats under two distinct voting processes: FPTP, which is based on individual constituencies, and PR, which seeks to achieve proportional representation of various groups. Analyzing the data will help assess the fair representation of different genders and castes/ethnic groups, as well as the degree of inclusivity of Nepal's political

system. Given that there are many different cultures and ethnic groups in Nepal, it is important to make sure that this diversity is reflected in political representation. Several studies on popular participation and political inclusion in Nepal relate to the recent decades of ‘ethnicization' of politics and identity movements.

The constitution of Nepal guarantees every citizen the right to live with full dignity. Everyone is equal before the law, everyone will have equal protection under the law, and when general laws are applied, no one will face discrimination, it has been clearly declared. On the other hand, it has also been observed that under federal law, special provisions may be made for the protection, development, and empowerment of people who are socially and culturally disadvantaged. These people may include women, Dalits, indigenous and ethnic groups, Madheshis, Muslims, Tharus, oppressed classes, backward communities, minorities, marginalized groups, youth, children, senior citizens, people with disabilities, pregnant women, and helpless individuals.

Inclusionary policies are appropriate for Nepalese society and have produced excellent results in the fields of politics, administration, and education. However, they shouldn't be implemented indefinitely as this could lead to new discriminatory situations and the exploitation of marginalized groups. To ensure that the standards and values of inclusion are appropriately upheld and equitably promoted, changes to the legislation pertaining to inclusive representation by the relevant authority are necessary. All things considered, a thorough examination of inclusive representation in the Nepalese Parliament in 2022 would shed light on the nation's democratic and governance conditions and suggest tactics for advancing greater equality and inclusivity in political representation. Therefore, in the process of formulating policy, the study is ideally seen as having made a substantial contribution to the federal parliament.

Conclusion

The data points to a varied demographic makeup, with representation from a range of gender, religious, and ethnic backgrounds. The majority is made up of Khas Arya, with smaller percentages coming from Muslim, Tharu, and women, as well as Madhesi and indigenous people. Intersectionality within the population is highlighted by the apparent overlap between gender and other

identity markers like ethnicity and caste. The information could guide programs and policies meant to meet the needs and advance the representation of various identity groups in the community or organization. The data draws attention to differences in representation for different caste/ethnic groups under various electoral systems. PR typically offers more equitable representation, which is especially advantageous for underrepresented groups like women and Dalits. FPTP frequently benefits powerful groups like Khas Arya, which may result in underrepresentation of minority communities.

Policies that promote inclusivity are suitable for Nepalese society and have yielded remarkable outcomes in the domains of governance, administration, and academic sector. The combined representation provides a thorough understanding of the various groups' overall political inclusion, with PR frequently offsetting the differences seen in FPTP. In order to provide historically marginalized communities, who were denied representation in state structures, with proportional representation, the 2015 Constitution instituted a mixed electoral system. According to the research study, there has been an increase in the percentage of diverse groups represented inclusively, but the numbers still do not even come close to matching the population size.

Contribution of the study

Policy implications are considered, including the potential impact of parliamentary composition on policy. It is more likely that laws advancing social justice and equality will be passed by a diverse and inclusive parliament, which will also address the concerns and demands of all societal groups. Therefore, it is hoped that the study will be seen as having made a substantial contribution to the federal parliament's policy-making process. Laws and policies pertaining to proportional representation of these various social groups in FPTP elections ought to be made by the parliament.

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Exploring Government's Eminent Domain in Land Acquisition: Inevitability of Compensation and Public Benefit

- **Binda Kumari Thapa** *

Abstract

The paper discusses the concept of an eminent domain with special reference to land acquisition and the significance of the compensation payment to the concerned person. Each individual has rights regardless of their background, however, not all rights are absolute in nature. The government, in its official capacity, can acquire or withhold certain rights, such as the right to property, through the doctrine of eminent domain. Thus, eminent domain is a power of the government to acquire private property for public use, as long as it serves a public purpose. This power, inherent to sovereignty, typically doesn't need constitutional recognition. However, the government must fulfill due diligence and prerequisites before encroaching upon individual property rights. Eminent domain reads for an adequate compensation as a crucial element for its application. The paper aims to explore the theoretical aspects of eminent domain, referencing to the significance of compensation payment and public benefit as justifiable grounds to invoke the power of eminent domain. It analyzes the conditions under which property can be lawfully expropriated through eminent domain and the grounds for justifiable acquisition. Additionally, it delves into how compensation is determined and provided to ensure it is fair and reasonable.

Key words: Eminent Domain, Compensation, Due Diligence, Acquisition, and Expropriation, Public Purpose

Background

The term "eminent domain" seems to have originated in 1925 by Hugo Grotious who wrote of this power in his work *"De Jure Belli ET Pacis"*. The Latin term "*dominium emines"* ("supreme lordship") was used in the 17th

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century.[19]"Eminent Domain" means permanent (eminent) and dominion (Domain) of the state on the property which literally means an inherent power of the state to take private property for the public purpose ultimately for the public convenience. Thus, it is the power of the government to take private property when it is needed for public purposes. Such power is an incident of sovereignty, and it generally requires no constitutional recognition. It is an inalienable power because it is founded upon the common necessity and interest of the entire community at large.[20]Thus, it lies on the famous maxim *"salus populi est suprema lex"* which means that the welfare of the people or the public is paramount law and also on the maxim *"necessita public major estquam"* which means public necessity is greater than private.[21]

An incidental limitation of this power is that the property shall not be taken without just compensation.[22]Eminent domain power is unopposed authority subject to payment of compensation to the person damaged. Eminent domain power originates out of the constitutional provisions.

However, this power is invoked generally, to acquire the land as the private property of an individual extending its scope of application to the Intellectual property as authorized by article 31 of TRIPS for a public purpose. [23] Thus, the power of eminent domain is not limited within the ambit of real property.

In many jurisdictions, the power of eminent domain is tempered with a right that just compensation is made for appropriation. The term "condemnation" is used to describe the act of the government exercising its authority of eminent domain.[24] Condemnation via eminent domain indicates the government is taking the property; usually the only thing that remains to be decided is the amount of just compensation. Condemnation of buildings on grounds of health and safety

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[19] T. Padma, K.P.C. Rao, *The Principles of Land Laws*, Alt Publications, Hyderabad-2, 2011 edition, p. 50.

[20] Russell Weaver, *Constitutional Law: Case Materials and Problems*, Wolters Kluwer Law and Business, 2nd edition, 2008, p.541

[21] T. Padma, K.P.C. Rao, *The Principles ofLand Laws*, Alt Publications, Hyderabad- 2, 2011 edition, p. 49.

[22] N. Maheshwara *Swamy's, Land Laws'*, Asia Law House, Hyderabad, 1st edition, 2006, p.7.

[23] Article 31, TRIPS, Available at WTO | intellectual property (TRIPS) - agreement text - standards, Accessed on 19th September 2023.

[24] T. Padma, K.P.C. Rao, *The Principles of Land Laws*, Alt Publications, Hyderabad- 2, 2011 edition, .p. 51

hazards or gross zoning violation usually does not deprive the owner of the property condemned but requires the owner to rectify the offending situation.[25]

Prerequisite of Eminent Domain: Public Purpose and Compensation

The term "public purpose" refers to the underlying rationale or justification for the acquisition of private property by the government through eminent domain. It implies that the intended use of the land serves the broader interests of society or the community as a whole, rather than solely benefiting specific individuals or entities. In essence, when a government entity seeks to acquire land using eminent domain, it must demonstrate that the intended purpose of the acquisition aligns with the concept of public welfare or the general interest of the community. This typically involves considerations of socio-economic welfare and the well-being of the people affected by the acquisition.[26] Furthermore, the concept of public purpose goes beyond mere utility or convenience; it encompasses the notion of public good. This means that the use of the land acquired through eminent domain should contribute positively to the common welfare and enhance the quality of life for the community as a whole.[27]

Land Acquisition Act 2034 has defined the public purpose in Section 2(b) as the purpose undertaken for the benefit or use of the public, or functions to be undertaken by Government of Nepal. This term also means the following:

(1) Project approved by Government of Nepal.

(2) Project undertaken by local bodies in different levels.

The prerequsities to invoke an Eminent domain power can be enlisted as:

1. **<u>Notifications of an acquisition.</u>**

   Section 6 of the Land Acquisition Act 2034 outlines the preliminary actions required for land acquisition. The officer initiating these actions is mandated to post a notice copy in various accessible locations for stakeholders, including places frequently visited near the concerned land,

[25] Ibid, p. 50

[26] D.D. Basu, *Shorter Constitution of India*, Wadhwa & Comp. Law Publisher, New Delhi, 17th edition, 1995, p.211.

[27] V.G.Ramachandra's, *Law Of Land Acquisition And Compensation*, Eastern Book Company, Lucknow, 7th edition, 1960, p. 158.

the respective Village Development Committee and Municipality Office, and on the door or compound wall if the acquisition involves a house or compound wall. Subsequently, after a three-day notification period, the officer, accompanied by employees and workers, may enter the land or house compound to conduct specific tasks. These tasks include surveying or mapping the land, collecting soil or stone samples through digging or boring to assess suitability for acquisition, demarcating lands deemed suitable, and installing equipment for these operations. These provisions ensure transparency and stakeholder awareness in the initial stages of land acquisition processes.

2.Justifiability of an acquisition.

Under the doctrine of ultra vires following sorts of the acquisition can be challenged as non-justifiable public purpose[28]:

a. Mala-fide land acquisition serving the individual interest in name of the public interest.
b. The Government exercising power is null and void.
c. Acquisition that deprives the basic food and livelihood of the concerned person.
d. Acquisition is intended to earn personal advantage.
e. Non-application of the due procedure and notice in accordance with the prevailing laws and regulations.

3. Acquisition Creates the Liability of the Compensation as a MUST RULE

Etymologically the term "compensation" means the image of balancing one thing to another.[29] Generally, Compensation is termed as anything provided to equivalent the damaged items, to recompense, remuneration to pay which is not necessary to be in form of the money itself. In addition, this should be followed by the payment of acquisition for the public good at large[30], because every violation of the rights of ownership causing damages to the

[28] P.K. Sarkar, *Law of Acquisition Of Land In India*, Eastern Law House, Kolkata, 1st edition, 2002, p.312.

[29] Smt. Janhvi, Legal Regime on Land Acquisition In India – A Critical Study, The Award Of The Degree Of Doctor Of Philosophy In Law, Law Karnataka State Open University, 2014.

[30] V.G.Ramachandra's, *Law Of Land Acquisition And Compensation*, Eastern Book Company, Lucknow, 7th edition, 1960, p. 142.

owner creates the liability of the concerned body to make the compensation for the dame created.[31] This principle of compensation is applicable even if it is indulged by the state power.[32]

4. The Jurisprudence of the Compensation

The primary indicators in the acquisition of the property are the "Determination of Quantum of Compensation" which must be settled via agreed and meaningful principles of the regulations. [33] The term compensation generally means the commodity provided to restore, amend and re-compensate the things as it was previously. Therefore, it does not necessarily need to be in terms of the money only.[34] However, it should be considered that the nature and extent of the injury suffered by the victim is determined by the amount paid. [35]

The terminology compensation in constitutional provision also reads that compensation need not necessarily be in form of money.[36] In other terms compensation is the amount provided for the restoration of loss of the earning.[37]Therefore, it is to recompense the equivalent damaged loss.

Regarding compensation, Nehru mentions the following requirements to acquire the property of an individual for public purpose:

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[31] Ibid, p. 141.

[32] Ibid, p. 144.

[33] Hiren Sureshbhai Somaiya, *Compensatory Jurisprudence: With Special Reference To State Of Gujarat In Context Of Land Acquisition Laws,* The Award Of The Degree Of Doctor Of Philosophy, Gujarat University, 2020.

[34] Naveen Kumar Singh, *Law Relating to Land Acquisition In India: Emerging Trends And Issues*, The Award Of Degree Of Doctor Of Philosophy In Law, Maharshi Dayanand University, 2018, Available at http://hdl.handle.net/10603/216079, Accessed on 21st September 2023.

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[36] Constitution Of Nepal, art.25(3), Available At Https://Ag.Gov.Np/Files/Constitution-Of-Nepal_2072_Eng_Www.Moljpa.Gov_.Npdate-72_11_16.Pdf, accessed on 15th December 2022

[37] Smt. Janhvi, *Legal Regime on Land Acquisition In India – A Critical Study*, The Award Of The Degree Of Doctor Of Philosophy In Law, Law Karnataka State Open University, 2014.

1. No sort of expropriation shall not be executed without the compensation as read by the constitution itself.
2. The state shall pay compensation if it has acquired the property for the sake of public good. [38]
3. The prescribed law shall define the manner and methodology of the compensation in which compensation shall be determined and paid.[39]
4. The state shall assure the fair and equitable compensation payment if the property is acquired for the public purpose. [40]
5. There shall be just and equivalent compensation payment for the interest in the property required,[41] and the judiciary shall come into the picture only if there is 'gross abuse of the law' or if there is 'fraud on the constitution' itself. In other circumstances, parliament could be the final authority.[42]

Methodology of the Compensation

The Principle of Land for Land

Section 42 of the Guthi Corporation Act 2033 stipulates that in cases where the Government of Nepal acquires land belonging to a Guthi, it has the option to provide a substitute plot of land instead of offering monetary compensation for the acquired land. There shall be the meaningful rehabilitation and resettlement policy and its execution without any condition to address the displaced persons settlement because of the legitimate acquisition of the Government. They shall not only live but also improve upon it. [43] Land is the lifelong and inheritable livelihood producing assets.[44] Therefore, it will be an adequate form of compensation in comparison to the cash payment as a compensation.

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[38] V.N. Shukla's, *Constitutional Law of India,* Rev'd. Eastern Book Company,12th edition, 2008, p.908.

[39] Thomas M. Codey, *Treatise on The Constitutional Limitations Which Rest Upon the Legislative Power Of the States Of The American Union* 1999, p. 165.

[40] Ibid

[41] D.N. Sharma, *Constitutional Provisions Ownership of Law*, G.S. Sharma Ed., N.M. Tripati, *Property RelationsIn Independent India; Constitutional & Legal Implications,* Bombay,1967, pp.269-70.

[42] Ibid

[43] Sukumar Das, *Acquisition Compensation & Rehabilitation*, 43 Administration, 1988, p.37.

[44] Sangeeta Goyal, 'Economic Perspectives on Resettlement and Rehabilitation', *Economic and Political Weekly,* Volume 31:24, 1996.

The principle of Cash for Land

Section 13 of Land Acquisition Act 2034 reads to provide the compensation for an acquisition of the land in form of the cash. Similarly, Section 7 provides compensation is mandated for losses incurred due to the clearing of crops, trees, demolition of structures like walls, and any damage resulting from earth excavation or digging. The officer overseeing initial actions is tasked with assessing and disbursing the compensation to the affected party. However, if the affected individual disputes the compensation amount, they have the option to file a complaint with the Chief District Officer.

This principle is creating the undervaluation of land acquired and the sums paid on cash for land acquired are not adequate for the affected people because they must rehabilitate themselves on their own[45]. Therefore, the cash for land principle must be accompanied and corroborated by the Hull Formula[46] of the compensation payment.

Bargaining Approach

This approach seeks adequate and appropriate resettlement and rehabilitation whether this is applied or not. There shall not be a top-to-down approach of the policy without consultation of the affected person regarding the rehabilitation and resettlement. Rather an alternative method of the bargaining approach in between the displaced person and the authority concerned shall be there to assure the collective bargaining.[47] The bargaining power shall be given to the affected person to find acceptable options and to negotiate the substantial share of the projects.[48]

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45 Ibid.

46 Editorial Comment, *American Journal of International Law* , Volume 78:1 , 2017 , pp. 121 – 130, and R. Rajesh Babu, Changing Trajectories of the Investment Protection in India: An Analysis of Compensation for Expropriation, T*rade, Law and Development,* Volume 6:2, 2014 Available at Changing Trajectories of Investment Protection in India: An Analysis of Compensation for Expropriation by Rajesh Babu :: SSRN, Accessed on 21st September 2023.

47 Ramesh C. Nayak, *Development and Displacement in Kalinga Nagar*, 2008, p.20.

48 Ibid.

The legitimate authority may hold and possess any part of the territory for common safety for the public purpose[49]. However, there are two inbuilt situations of such possession:

1. The right of the expropriated owner to safeguard the compensation.
2. There shall be the justiciability of the public purpose.[50]

Legislative Framework

Article 25 of the Constitution of Nepal outlines the rights of citizens regarding property ownership and government acquisition. It grants citizens the right to acquire, own, sell, dispose of, and otherwise deal with property, subject to the law. However, the state is permitted to requisition, acquire, or encumber private property only in cases of public interest, and it must provide compensation to the affected individuals.

This provision highlights that the right to property is not absolute, and the government's power of eminent domain is not unlimited. While citizens have the right to property, the state can intervene for public interest purposes, provided that compensation is paid. This balance ensures that property rights are respected while allowing for necessary public projects and initiatives.

Section 25 of the National Civil Code stipulates that individual property cannot be acquired, requisitioned, auctioned, or forfeited except in cases of public purpose and with payment of compensation. The acquisition process must adhere to due legal procedures to ensure legitimacy. This provision underscores the principle that private property rights are protected, but the government can intervene for public benefit, provided proper compensation is provided and legal procedures are followed.

Section 3 of The Fixed Assets Act 2013 (*Achal Sampatti Adhigrahan Ain 2013*)[51] establishes the right of the Nepal Government, Province Government, and Local Level Government to acquire immovable property for public purposes. Upon identifying the need for acquisition, concerned authorities must

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[49] V.G.Ramachandra's, *Law Of Land Acquisition And Compensation*, Eastern Book Company, Lucknow, 7th edition, 1960, pp 1-2.

[50] Om Prakash Aggarwal, *Commentary on The Land Acquisition Act, Rev'd*U.S, 8th edition, 2008, p.3.

[51] *अचल सम्पत्ति अधिग्रहण ऐन, २०१३*, Nepal, s.3, Available at अचल-सम्पत्ति-अधिग्रण-ऐन-२०१३.pdf (lawcommission.gov.np), Accessed on 21st September 2023.

notify relevant personnel within 35 days. During this period, individuals are prohibited from selling, modifying, or leasing the property. However, certain properties, such as those used for family settlements or public facilities like schools or religious sites, are exempt from acquisition.

Similarly, The Fixed Assets Act 2013 section 3 outlines the power of Nepal government regarding its acquisition of fixed assets in consideration of given conditions:

1. If the Federal Government, Province Government and Local Level Government finds the necessity to the acquisition of fixed assets for the public purpose.
2. The concerned personnel shall notify the concerned authority within 35 days if there is reasonable ground for not acquiring the land by Nepal Government.
3. Any person cannot sell, modify the original structure, and lease the concerned property within 35 days from the date of receipt of notice from the Nepal Government.
4. The Government in consultation of owner/any other concerned personnel can issue a written notice of an order if finds the utmost necessity to the acquisition of the land. However, the following property shall not be acquired:
    - If the owner is using the concerned assets for the family settlement,
    - Public places including the religious place, school, hospital, library, orphanage, etc.

Analysis

Land Acquisition upon an Application of Due-Diligence

The principle of due diligence is a standard of care and attention that a reasonable person exercises under specific circumstances to avoid harm to oneself or others. In legal contexts, due diligence often refers to the careful investigation and assessment of facts and risks associated with it. This includes verifying the accuracy of information provided, assessing potential legal risks, and ensuring compliance with relevant laws and regulations. Land Acquisition Act 2034 has explicitly mentioned about the due procedure for the acquisition of

property which includes the notification to an owner whose property is intended to acquire, consent from an owner to acquire the property, compensation payment and rehabilitation of the property. Thus, any property can be acquired only upon the fulfillment of due process.

Fair Market Value Method

This is the price at which the property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arm's length in an open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts. This method presupposes that there is a real market where such transactions can be carried out.

The criterion to define the market value:

Generally, the price an ordinary private purchaser expects to buy the property is called the market value. The indicators to define the market value can be enlisted as:

1. The original price at which the land was bought.
2. The current valuation or the capitalization of the property at present.
3. The value at which the land in the neighborhood is sold or is valued i.e., the peripheral value.

Sovereign Right over the Land

The power of eminent domain gives the state with a sovereign right over the land to acquire upon the necessity and it has been identified through established Customary International Law that an expropriation requires compensation regardless of purpose being beneficial to the public in general.[52] Any sovereign right over the land requires an 'appropriate compensation[53]. Pre-eminent Public Interests do not suffice compensation.[54]

The Doctrine of Ultra Vires

Acquisition of individual property for the public interest is the legitimate expectation of the Government. However, the acquisition of the property cannot

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[52] Marvin Roy Feldman Karpa V United Mexican States, ICSID, 2002, Case no.ARB (AF)/99/1; Azurix Corp. v. The Argentine Republic, ICSID, 2006, Case No. ARB/01/12.

[53] *Charter Of Economic Rights and Duties of States,* 18 May 1972, UNGA Resolution 3281.

[54] Andrew Newcombe, *The Boundaries ofRegulatory Expropriation in InternationalLaw*, Available at SSRN: https://ssrn.com/abstract=703244, Accessed on 2nd January 2023.

be implemented for the sake of the individual interest protection and promotion which will create the situation of ultra vires violating the limitation of acquisition principle.[55] The principle of ultra vires is applicable even if the land is acquired for the pure industrial concern working solely for its own gain, even though the goods produced by the concern may be of use to the general public.[56] To ensure the compliance with legal provision of an acqusition shall meet the following standards[57]:

a. No deprivation of property rights without application of the due process of law.
b. Acquisition of the property for the public use and public purpose.
c. Just compensation payment shall be done to the party upon encroachment of the property.
d. No physical seizure of the land,
e. Government regulation shall not cause the reduction in property valuation and
f. Government shall not make an unreasonable insist for public use.

Conclusion and Recommendations:

Free Prior, and Informed Consent (FPIC)

Dozens of landowners and the community members submitted a petition on 8th August 2021 to the Ministry of Home Affairs against the decision of the Government to continue the land acquisition for the Marsyangdi Corridor Transmission Line Project. The petition was submitted through Chief District Officer of Lamjung. The project aimed to build over the homes, lands, forests and community spaces to transfer the electricity to the Kathmandu Valley which

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55 Smt. Janhvi, *Legal Regime on Land Acquisition In India – A Critical Study*, The Award Of The Degree Of Doctor Of Philosophy In Law, Law Karnataka State Open University, 2014.

56 Ibid.

57 Eminent Domain-The basic Law, Law offices of Stimmel, Stimmel and Roser, Available at Eminent Domain - The Basic Law | Stimmel Law (stimmel-law.com), Accessed on 21st September 2023.

is produced in the Annapurna Conservation Area. The petition requested for the Free Prior, and Informed Consent (FPIC) before acquiring the land.[58]

- Public Participation

Public participation shall be ensured from the very inception of planning, implementing, monitoring and evaluating the project with other concerned stakeholders. This will also empower the citizens in decision making.

- Access to information Dissemination (laws and procedures)
- Institutional reformation and policy performance.[59]

However, the affected families claimed that they were evicted without information, consultation, and compensation in the name of road widening drive.[60]

Scientific and More Practicability

Regarding the land acquisition in Nepal, it is defining the four-decade-old land acquisition law as the fundamental law. Thus, it must be reformed and amended to make the process more simple, specific, and scientific with the approach of compensation to be more scientific and inclusive.[61] It will enable the restoration of livelihood for the displaced people out of the land acquisition.[62] It has to be settled at the pre-project's levels. The pre-project must be followed by compensation at the post-displacement period. Thus, it is now of the utmost urgency for the

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58 FPIC & Rights Forum, LAHURNIP, Accountability Counsel, Communities in Nepal resist forcible land acquisition by harmful EU funded infrastructure project, 2021, available at Communities in Nepal resist forcible land acquisition by harmful EU funded infrastructure project | Accountability Counsel, accessed on 2nd January 2023.

59 Reshma Shrestha, Assessing the transparency in land acquisition for Road Development (Case of outer Ring Road in Kathmandu Valley), 2009, Available at Microsoft Word - Thesis Final Shrestha (utwente.nl), accessed on 2nd January 2023.

60 People Affected By Road Widening Drive Stage Demonstration At Maitighar, *My Republica*,Kathmandu, 23 February 2017,available at People affected by road-widening drive stage demonstration at Maitighar - myRepublica - The New York Times Partner, Latest news of Nepal in English, Latest News Articles (nagariknetwork.com) , accessed on 2nd January 2023.

61 Prem Khanal, Nepal's Archaic Land Acquisition Laws, *The Kathmandu Post*, Kathmandu, August 25, 2021, available at, Nepal's archaic land acquisition laws (kathmandupost.com), accessed on 2nd January 2023.

62 Ibid

government to reform the old-fashioned land acquisition laws and accommodate proven provisions of global practices that ultimately serve the core interests of investors, the project, and the impacted people.[63]

Development of the Resettlement Plan

The resettlement plan must be defined and operated before the land acquisition, and it has to be transparent amongst the affected public at large. It will enable the public to understand the methodologies adopted and principles applied for the determination of the compensation. The resettlement plan must be very meaningful and will restore the affected livelihood of the people whose land has been acquired. It gives the affected individualadequate time to decide whether to agree or not with the proposed compensation and the negotiation thereafter. Arun-3, the mega infrastructure projects in Nepal can be considered as the example of Resettlement Plan acquiring fifty hectares of land approximately in four months without any single protest. Thus, it is a successfully experimented example of Resettlement Plan.[64]

The legitimate Expropriation by the State

Lawful Expropriation means the process to transfer the title of the property to the state whereby the state exercises the sovereign right of the state. Following grounds must be taken into the consideration for the lawful expropriation:

1. Property must be taken for a public purpose.
2. On a non-discriminatory basis.
3. In accordance with due process of law.
4. Accompanied by compensation.[65]

In 1960s and 1970s the appropriate compensation is widely defined and embodied in the United Nations General Assembly resolutions and represent the

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63 Prem Khanal, Nepal's Archaic Land Acquisition Laws, *The Kathmandu Post*, Kathmandu, August 25, 2021, available at, Nepal's archaic land acquisition laws (kathmandupost.com), accessed on 2nd January 2023.

64 Ibid.

65 Expropriation UNCTAD Series On Issues In International Investment Agreements II, United Nations New York And Geneva, 2012, Available At Https://Unctad.Org/System/Files/Official-Document/Unctaddiaeia2011d7_En.Pdf, Accessed On 7thJanuary 2023

standard of Customary International Law.[66]

Post Expropriation shall be addressed as[67]:

Government shall implement the measures to ensure fairness, transparency, and accountability in the process. This can help to ensure post-expropriation issues in a fair, transparent, and accountable manner, thereby minimizing conflicts and promoting social justice and development. Restitution of expropriated property is a remedy available only for unlawful takings, although this appears to be only a theoretical difference. Post expropriation is of utmost necessity because there may be consequential losses different from loss of profits and not linked to the property's value at the moment of the expropriation.

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[66] Permanent Sovereignty Over Natural Resources, 8 May 1952, UNGA Resolution 1803, art. 4 &Charter of Economic Rights and Duties of States, 18 May 1972, UNGA Resolution 3281.

[67] UNCTAD Series on Issues in International Investment Agreements II, Expropriation, United Nations, New York, 2012, available at Expropriation: A Sequel (unctad.org), Accessed On 7th January 2023

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संघीय संसद सचिवालय

संसदीय अध्ययन तथा अनुसन्धान महाशाखा

संसदीय अध्ययन तथा अनुसन्धान शाखा

सिंहदरबार, काठमाडौं

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