

# Rights of Slum Dwellers in Nepalese perspective



**Tika dhwoj khadka, Advocate**

**LL.M. Int'Law and Human Rights**

**Ph.D. Scholar**

## Introduction

Nepal is a country having low economic development and income. Most of the people are poor among the poor too there are so many such people who are living in slum. There were 42,000 squatters in the 48 hill districts and 330,000 squatters in the 24 Terai districts according to the statistics published by the government in 1999. However, the Kathmandu valley has not been included in the statistics' survey carried out by Lumanti, a non-governmental organization that advocates for the housing rights of squatters, found that there were 11,965 squatters in the Kathmandu valley. Thus, overall there are approximately 384,000 in Nepal.<sup>1</sup>

Kathmandu valley is the urban center of Nepal and include five major cities: Kathmandu, Lalitpur, Bhaktapur, Kirtipur and Thimi with more than 1.1 million people, (220,000 Households). One third of them live in Slum Dwellings and 18,000 people squatting (without land rights).<sup>2</sup>

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<sup>1</sup> Balram Sherestha, The Kathmandu Post, Kantipur Publication Sep. 29, 2003

<sup>2</sup> *Kathmandu Valley water supply-proposals for services to the poor -Draft, KMC 10/4/2002 p.5*

A Slum is a settlement of unfortunate, destitute people who are out of work, out of money, living in squalor. Their homes are huts built of scraps of tin, car board or bamboo. Their are devoid of simple facilities such as roads, drainage or toilets. The water is polluted; huts are jammed together-peoples, dogs, pigs and flies sharing the same space.<sup>3</sup> The Black's law Dictionary defines meaning of dwell as - 'To reside in a place permanently or for some period'.<sup>4</sup> Slum Dwellers (SD) are as a urban squatters who live at slum area without land title and adequate shelter.

Everyone has the right to standard of living adequate for the health and well being of himself and of his family, including food, clothing, housing and medical care and necessary social service and the right to security in the even of unemployment, sickness, disability, widowhood, old age or lack of livelihood in circumstances beyond his control<sup>5</sup>.

*Civilization* and using *Nepal Police, Armed Police Force* and *Metropolitan Police*, initiated a forceful evacuation of illegal squatters from Bagmati River Banks. More than 250 huts were demolished in the process, and numerous families went homeless. According to the local source, more than 10,000 settlers have occupied almost 75hectars of land beside Bagmati river for illegal encroachment, since 1990s.

It must have been a sight to see, when the huts where poor lived were being demolished using a bulldozer, numerous families being homeless, children weeping and crying on the scene, protestors being dragged by Police, and the ultimate hullabaloo for couple of hours, in the capital city of Kathmandu. Nepalese Government plan to relocate legitimate slum dwellers to Ichangunarayan, where they have bought a huge piece of land for relocation purpose. According to the local police, the area has been evacuated 8 times before, however, people come back to resettle in the same area, over and over again. Government decided to provide **Rs.15,000** (Approx. \$180) as compensation to them who lost their home, and with a relocation opportunity, unfortunately, only 67 people showed up for claim.

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<sup>3</sup> <http://www.unhabitat.org/>

<sup>4</sup> **The Black's law Distionary, West Group, 1999 p.524**

<sup>5</sup> Art.25(1) Universal Declaration of Human Rights, 1948

Samyukta Rastriya Sukumbasi Morcha Nepal (*The Landless Scatters Struggle Committee (LSSC)*), declared a general strike to protest government action and urged them to fulfill their three-point demand. A primary school inside the settlement, with over 150 students, was also demolished, and many children who lived in the area couldn't go to school.<sup>6</sup>

### **Meaning of Rights of Slum Dwellers**

A Slum is a thickly populated, squalid part of a city, where the poorest of lowest class of the people reside. The people living in such place are called slum dwellers. According to Austin- "A person has a right when another or other are bound or obliged by law to do or forbear toward of in regard of him."<sup>7</sup> According to Holland, "Legal right is a capacity residing in one man of controlling, with the assent and assistance of the state the actions of others"<sup>8</sup> According to Salmond, "A right is an interest recognized and protected by a rule of right. It is any interest, respect for which is a duty, and the disregard for which is a wrong."<sup>9</sup> According to Ihering- "Rights are legally protected interests".<sup>10</sup> In this way right is a kinds of claims and interest of persons which is legally protected and guaranteed. If one have right another party has duty which is must to obey. Thus, SD is that poorest or lowest class of people who reside at a thickly populated, squalid part of a city.

The writer, in this article, has tried to mention meaning of SD as an urban poor or urban squatter who live at slum area without land title and adequate shelter. In this way, Rights of SD means that kinds of claims, interest of SDs which requires to be legally protected and and guaranteed by law.

### **Historical Development and problem faced by Slum Dwellers**

The Slum Dwellers we now see in the Kathmandu Valley first appeared in the 1950, when rural migrants began moving to the cities, mainly in search of employment. At that time, there were many stretches of vacant public land which newcomers to the city, when their very few resources, claimed and used to establish their new homes and communities.<sup>11</sup>

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<sup>6</sup> <http://sillyfunda.wordpress.com/tag/kathmandu-slum-dwellers/>

<sup>7</sup> Lamsal Narayan Prashad, *Jurisprudence*, Ratna Pustak Bhandar, 2054 p.302

<sup>8</sup> Ibid p. 303

<sup>9</sup> Ibid p.304

<sup>10</sup> Ibid

<sup>11</sup> *Shadows of Development: Housing the Urban Poor (An Experience from Vishnumati Link Road Project)*, Lumanti, 2002 p.1

Over the years, the composition of the SD has changed. Many settlements still support former rural-urban migrants, but added to this are urban dwellers who can no longer afford exorbitant rents and land prices in the valley. With little or no alternative, these people have joined those who must squat on public and private land.<sup>12</sup>

Of the population of 26 million of Nepal, 14%-20% living in urban areas. This is increasing with 6.5% per year. According to Nepal Tenth national five year plan, 38% of the population in Nepal live at or below the poverty line, 23% in urban areas, and 44% in rural area.<sup>17</sup> Based on statistics published by the government in 1999, there were 42,000 squatters in the 48 hill districts and 330,000 squatters in the 24 Tarai (Plains) districts. However, the Kathmandu Valley was not included in these statistics.<sup>13</sup>

Kathmandu Valley is the urban center of Nepal and includes five major cities: Kathmandu, Lalitpur, Bhaktapur, Kirtipur and Thimi with more than 1.1 million people (20,000 households), one third live in slum dwellers and 18,000 people are squatting (without land rights).<sup>14</sup>

Slum Dwellers (SDs) are facing so many problems in Kathmandu Valley. They are living in very poor condition. They haven't access to adequate housing and land. They have settled on the land which has not legally right of them so they always threat eviction without alternative and compensation. They have lost own dignity being SDs.

Similarly, they are always threatening by eviction without alternate management and compensation. They are not land certificate, enough fresh drinking water, education and adequate shelter.

The SD have observed instances of attempts made for their resettlement and even eviction (in the past but they have resisted such attempts so far in various ways. All the respondents not agree for voluntary displacement when the inquiry "Do you agree to go to another place where govt. propose"

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<sup>12</sup> Ibid, p. <sup>10</sup>

<sup>13</sup> Ibid

<sup>14</sup> Ibid

is made. It is clearly mention by them this now it is almost impossible for them to just go away from there to a new place (Unknown), some SDs are ready by change place if Well management to settlement by the govt.

Most of the them aren't agreed to change the place if govt. decide to eviction. They want to make struggle against the decision of the govt. to eviction. Some of SDs are agree if govt. provide another place to settlement and compensation. They want to make request to govt. for land certificate, some of the management of the sewerage and drinking water.

They have some evidence which shows their settlement of that place. Most of the SDs have bill of the electricity, recommendation of the ward office

In addition this, the research carried out by Mrs Tika Dhwoj Khadka(Writer of this article) for the fulfillment of seminar paper for submission to the LL.M. program, has found 70% SD does not have land at another place of Nepal and 30% SDs have land in the origin place. According to respondent of the SD if govt. give them land certificate, 60% are ready to pay minimum cost a due system and 40% aren't able to pay cost. 95% of the SDs aren't aware about their rights only 5% know their right little bit.It is know that the condition of SD in Kathmandu Valley is very poor. Not only this, many times KMC has published notice for purpose of project work to eviction them without compensation and alternate when SD could not left the settlement then KMC had demolished their shelter forcefully by bulldozer. In this way they are facing so many problems which has already mentioned above.

### **Legal Measures, efforts and Analysis**

#### **International legal measures**

##### **Charter of the United Nations, (UN) 1945**

After the establishment of UN, during the last fifty-six years since the adoption in 1948 of the universal Declaration of Human Rights, the international community has made some advance instruments to protect right to life and right against poverty. From that time to till date many Int'l measures have made in this field.

Preamble of U.N. Charter, 1945 To reaffirm faith in fundamental human rights, in the dignity and worth of the human person.<sup>15</sup> To promote social progress and better standard dignity and worth of the human person.<sup>16</sup> To promote social progress and better standards of life in larger freedom.<sup>17</sup>

### **Universal Declaration of Human Rights, (UDHR) 1948**

According to UDHR, 1948, Art. 3 Everyone has a right to life, liberty and security of person.<sup>18</sup> Art 25 (1) everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing housing and medical care and necessary social services.<sup>19</sup>

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

Art. 6, every human being has the inherent right to life this right shall be protected by law. No one shall be arbitrarily deprived of his life.<sup>20</sup> Art 9, Everyone has the right to liberty and security of person.<sup>21</sup>

### **International Covenant on Economic, Social and Cultural Rights, (ICESCR) 1966**

Art. 11 of the ICESCR states that "the state parties to the present covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food clothing and housing, and to the continuous improvement of living condition. The states parties will take appropriate steps to ensure the realization of this rights, recognizing to this effect the essential importance of Int'l Co-operation based on free consent."<sup>22</sup>

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<sup>15</sup> Preamble of Charter of the United Nations, 1945

<sup>16</sup> Ibid

<sup>17</sup> Ibid

<sup>18</sup> Art. 3 ,UDHR, 1948

<sup>19</sup> Art 25 (1), UDHR, 1948

<sup>20</sup> Art. 6, ICCPR, 1966

<sup>21</sup> Art. 9, ICCPR, 1966

<sup>22</sup> Art. 11, ICESCR,1966

## **UN convention on the Elimination of all form of Discrimination Against women, (CEDAW) 1979**

Art. 14 (2) (L) of the CEDAW obliges states parties to ensure that women: Enjoy adequate living conditions, particularly reason to housing, sanitation, electricity and water supply, transport and communications.<sup>23</sup>

## **Convention on the Rights of the Child, (CRC) 1989**

Art. 16 of the CRC, 1989 states that: "No child shall be subjected arbitrary or unlawful interferences with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honor and reputation."<sup>24</sup>

Art. 27 (3) "Stats parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and other responsible for the child to implement the right and shall in the case of need provide material assistance and support programs. Particularly with universal law publishing captured to nutrition, clothing and housing".<sup>25</sup>

## **Convention on the Elimination of Racial Discrimination, (CERD) 1965**

Art. 5 of the CERD obliges states parties to: Undertake to prohibit and to eliminate racial discrimination in all its forms, and to guarantee the right of everyone, without distinction as to race, colure, or national or ethnic origin, to equality before the law, notable in the enjoyment of the following rights:

(d) (V) The right to own property alone as well as in association with others

(e) (iii) The right to housing.<sup>26</sup>

## **Istanbul Declaration, 1996**

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<sup>23</sup> Art. 14 (2) (L), CEDAW, 1979

<sup>24</sup> Art 16.1 CRC

<sup>25</sup> Supra note 23

<sup>26</sup> Art 5 CERD

The second United Nations conference on Human Settlements (Istanbul, Turkey, 1996) the Habitat Agenda was agreed a global plan of action in which govts. Committed themselves to the goals of adequate shelter for all and sustainable urban development. Habitat is the focal point for implementing the Agenda, assessing progress in its implementation at the int'l, regional and monitoring global trends and conditions.

Habitat is now preparing Istanbul +5, the special session of the General Assembly in June 2001 to review the world-wide implementation Agenda.<sup>27</sup> According to ID 1996, all parties have agreed to Reconfirm a goals and principles of adequate shelter for all and sustainable human settlements development in an urbanizing world as set out in the Habitat Agenda. Which form the basis of our commitments. Renew and reaffirm our communities in the habitat agenda concerning adequate shelter for all, sustainable human settlements, enablement and participation, gender equality, financing shelter and human settlement, Int'l cooperation, and assessing progress.<sup>28</sup>

### **Domestic Legal Measures**

#### **The Interim Constitution of Nepal ,2063**

In the Nepalese context, the constitution which has made after successes of popular people movement 2062/063 has mentioned to pursue a policy of providing socio-economic security including land to the landless squatters, bonded labors, tillers, Harawa-Charawa as well as the economically and socially backward classes.<sup>29</sup>

Similarly, the constitution has mentioned, to pursue a policy of establishing the right of all citizens to education, health, housing, employment and food sovereignty.<sup>30</sup>

However, the Slum Dwellers do not have access to land, adequate housing, education, health, sanitation and employment in Nepal. They are living a meager life despite the fact that the policy of the state of the Interim Constitution of Nepal specifies the state shall pursue a policy of raising the standards of living of the general public through the development of infrastructure such as education,

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<sup>27</sup> Istanbul Declaration, 1996

<sup>28</sup> Ibid

<sup>29</sup> Art.33(i) the Tnterim Constitution of Nepal,2063

<sup>30</sup> Art. 33(i) Ibid

health, housing, and employment of the people of all regions, by equitably distributing investment of economic investment for the balanced development of the country.<sup>31</sup>

### **Treaty act of Nepal, 2047**

Nepal has ratified so many Int'l treaty which is related rights of SD. and which treaty, Nepal has ratified that is prevailing as a existing Nepalese law. The Treaty Act, of Nepal states that:

Any treaty, which the Nepal or GoN in party of it shall be as validity as the existing law after the ratification of, accession to, acceptance of or approval of the parliament. And in case of contradiction of the treaty with existing law, the treaty shall prevail.<sup>32</sup>

### **Civil Right Act, 2012 (CRA)**

The Act states that: HMG shall be made special provision for a particular class like women, child and backward people.<sup>33</sup>

Similarly the Act state that: All citizens shall, subject of the existing laws, have the right to 5, all people shall be stay every where as a residence and shelter in the kingdom of Nepal. All citizens shall have the right to acquire, own, shall the property.<sup>34</sup>

Likewise, the Act states that: Security of people's resident without authority of existing laws, does not inter vent or enter in the peoples residence. Sec. 12 states that: No person shall be deprived of his personal liberty and life save in accordance with law.<sup>35</sup>

### **Land Measurement Act, (LMA) 2019**

The Act, states that: Without registration and revenue which land continuously possession from long period without legal title that land must be registration of the name of possessor as a basic of possession. If that land on the periphery of municipality which is register by (Napi Goshwara) in name of the possessor.<sup>36</sup>

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<sup>31</sup> Art. 35(1) Ibid

<sup>32</sup> Sec. 9(1) of the Treaty Act of Nepal, 2047

<sup>33</sup> Sec, 5 of the CRA, 2012

<sup>34</sup> Sec,6 Ibid

<sup>35</sup> Sec. 10 Ibid

<sup>36</sup> Sec. 5 LMA, 2019

Which land and house has possessed by possessor since 15 years as a base of domestic drafting without registration, name of the possession. In this condition for registration of the land has given priority to possession.<sup>37</sup>

### **Land Revenue Act, (LRA) 2034**

The Act, states that: If govt. has seen necessity then govt. will be establish commission to register land for person class and area which information will publish on gazette.<sup>38</sup>

Any land which mention on the field book as a (Prati). If that land groove under the possession, can't say no registration and it is on according to law.<sup>39</sup>

### **Decision of the National Human Rights Commission, (NHRC) 2059**

Decision of Human Right commission on the shelter right states that: Lalitpur Sub-metropolitan city had evicted forcefully to family of supari Mijar and they had demolished his small hut after that Supari Mijor was gave application to NHRC for protect his HR.

HRC has decided at 2059, Jestha 21, Nepal has being ratify the ICESCR, so according to this Convention state must guaranteed the shelter right, provision of this convention. And has being decision, to send letter to Lalitpur Sub-metropolitan city for Urgently manage of Suparimijar's Shelter.<sup>40</sup>

### **Analysis**

According to above mentioned fact we have found 70% SD does not have land at another place of Nepal and 30% SDs have land in the origin place. the slum dwellers are suffering from lack of employment, rapid migration, landlessness, mass conflict, landslide, lack of sufficient production, lack of soil fertility, lack of modern instruments and fertilizer, state negligence etc. The number of the slum dwellers is also rapidly growing.

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<sup>37</sup> Ibid

<sup>38</sup> Sec. 7 (1) of the LRA, 2034

<sup>39</sup> Ibid

<sup>40</sup> Annual Report,NHRC,2059,p.20

Despite the fact that there are various Int'l efforts to protect housing and land right of the homeless and land less person, the Nepalese scenario is quite poor. The government is reluctant and destructive instead of being cooperative to them. It is against the spirit of the Interim constitution.

The SDs also are not aware of their position, related laws, state policies. They are ignorant of their duty to the state and stat's duty to them and mutual cooperation to get out a solution of the problem.

They are facing many problems regarding shelter. They haven't access to adequate housing. They have settled on the land which has not legally right of them so they always threat eviction without alternative and compensation. They have lost own dignity became SD.

Govt. has not provided enough service to them. It has rather has decided to make eviction of them without alternative management and compensation Most of they are want to make struggle against govt.

### **Findings, conclusion and Suggestions**

#### **Findings**

- The slum dwellers are suffering from
  - lack of employment,
  - lack of shelter,
  - migration,
  - landlessness,
  - conflict,
  - landslide,
  - lack of sufficient production,
  - lack of soil fertility,
  - lack of modern instruments and fertilizer,
  - state negligence etc.
- The number of the slum dwellers is also rapidly growing.
- The slum dwellers are unaware of their rights and in terror of eviction but in the mood of struggle against govt.'s decision of eviction.
- There is no specific law about SDs.
- Some provisions in scattered laws have been ignored.
- The government is reluctant and not cooperative to them.
- No agency is searching permanent solution to the problem.
- The Govt. is going to evict them with out managing alternative arrangement despite the fact that Nepal is a party to various international instruments.
- The effort of non-government sector is praiseworthy but not enough.

#### **Conclusion**

Above mentioned various Int'l and domestic legal measures have been guaranteed a various rights of slum dwellers. Right to land and adequate shelter is most essential for human being. Human beings can not be alive without them. Keeping this fact in mind, Int'l legal instruments have guaranteed right to land, adequate shelter and health, which Nepal is a party. But, in the Nepalese context, slum dwellers does not have access to land, adequate shelter and other opportunities the state provides to its citizen. Instead, the SDs are under government's threat of eviction without any other alternate solution an compensation. Well environment and reasonable compensation by govt.

Though the efforts of non-governmental sector is praiseworthy, the slum dwellers are suffering from lack of employment, lack of shelter, migration, landlessness, conflict, landslide, lack of sufficient production, lack of soil fertility, lack of modern instruments and fertilizer, state negligence etc. Most of them are unaware of their rights and in terror of eviction but in the mood of struggle against govt.'s decision of eviction. Some provisions in scattered laws also have been ignored. They have been told most of the problems are result of lack of specific law in this regard.

### **Suggestions**

1. The state should enact a specific law regarding the rights and protection of SDs as fundamental right.
2. The state should guarantee the land, adequate and healthy shelter, employment for the SDs.
3. The state should make commission to distribute land and adequate shelter for SD and should participate representative of the SD as a member of the commission.
4. It is necessary to categorize the SDs on the basis of access to land and economic condition.
5. The Govt. should have the actual statistical Data of the SD.
6. The state should provide them land ownership certificate.
7. The state should provide loan for adequate housing basic of installment and without interest.
8. The State should launch employment and income generation programmers'.
9. The State should not evict without compensation and alternative management.
10. The State should make encourage and make co-ordination with non-governmental sector in this field.
11. 30% SDs, who have land ownership in the origin place so they are not actual squatter. Government must discourage them to encroach public land otherwise so called squatters who have already land ownership are given tenure will

others be encouraged to move to the slum area of the cities. It is must to consider.

## References

### Int'l Treaty, Constitution and Act

Charter of the United Nations, 1945

Universal Declaration of Human Rights, 1948

Convention on the Elimination of Racial Discrimination, 1965

International Covenant on Civil and Political Rights, 1966

International Covenant on Economic, Social and Cultural Rights, 1966

UN convention on the Elimination of all form of Discrimination Against women, 1979

Convention on the Rights of the Child, 1989

Istanbul Declaration, 1996

The Interim Constitution of Nepal 2063

Civil Right Act, 2012

Land Measurement Act, 2019

Land Revenue Act, 2034

Treaty act of Nepal, 2047

### **Book**

The Black's law Distionary, West Group, 2009

Lamsal Narayan Prashad, Jurisprudence, Ratna Pustak Bhandar, 2054

### **Report**

Annual Report, NHRC, 2059

Kathmandu Valley water supply-proposals for services to the poor -Draft, KMC 10|4|2002 Access of the Disabled Persons on the water and sanitation, water Aid Nepal, workshop Report, 2062

Shadows of Development: Housing the Urban Poor (An Experience from Vishnumati Link Road Project), Lumanti, 2002

### **Newspaper**

The Kathmandu Post, Kantipur Publication Sep. 29, 2003

### **Website**

<http://www.unhabitat.org/>