



**Respected President**

**Honorable Delegates**

**Distinguished Ladies and Gentlemen:**

Today, I, Janak Raj Giri, former minister of Nepal, have the privilege to share with you all the love and respect from the humble and hardworking people of Republic Nepal. My nation, located between two emerging great economies of South Asia of the World; India at the South, East and West and China to the North, has promulgated the first people's Constitution of Nepal on **September 20, 2015**. This constitution has been framed by the Constituent Assembly formed after almost six decades of people's struggle for democracy and human rights.

The Constitution of Nepal, 2015 has envisioned Nepal as a republic set up with guarantee of fair and equitable provisions of human rights, transparent and accountable governing system. Our nation, for the first time in history, has adhered to the democratic practices with head of the the government being elected through ballot. I stand as a proud citizen of Nepal that is one of the youngest republics of the world.

## **Nepal's New Constitution: Provisions of Human Rights**

The newly promulgated constitution, the Constitution of Nepal 2072 BS (2015 AD) is the seventh constitution of Nepal. However, this is the first time that the dream of Nepalese people of drafting a Constitution through the elected representative has come true.

### **Provisions of Human Rights**

Several of the fundamental rights have been included for the first time in the new constitution, including economic, social and cultural rights<sup>1</sup>. The lawmakers also have envisioned a provision for affirmative action for historically prejudiced or disadvantaged communities among others <sup>2</sup>. The right to inclusion and participation in the state structures is also there that applies to all communities in the country<sup>3</sup>.

Similarly, rights of the Women, Dalits, Indigenous people and minorities have also been enlisted through several provisions. These rights can be claimed at the provincial high court and district courts as part of the right to remedy. Further, the new Constitution creates specific independent constitutional commissions, (such as the Women Commission, Dalit Commission, Janajati

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<sup>1</sup> Part III of the Constitution of Nepal, 2015

<sup>2</sup> Article 18(3)

<sup>3</sup> Article 42

Commission, Madhesi Commission, Tharu Commission and Muslim Commission). They will exist with the National Human Rights Commission.

These commissions, which are created outside the framework of Fundamental Rights, and in different chapters, have a mandate to recommend changes in the laws, policies, and practices of areas that discriminate against or deny rights to their respective communities. They submit annual reports to the parliament. These provisions are expected to make the state inclusionary for major groups and communities in the country.

Furthermore, the new constitution expresses the determination of the state to build an equitable society on the basis of the principle of proportional inclusion and participation, by ensuring economic equality, prosperity and social justice.

Fundamental rights are those rights which are provided by the constitution of a state. The Constitution of Nepal, 2015 has provided the fundamental rights to the people in the part 3 Article 16 to 48 as discussed below:

**Article 17, right to freedom:**

(1) Every person shall have the right to live with a dignity, and no law shall be made which provides for the death penalty.

(2) No person shall be deprived of his or her personal liberty save in accordance with law.

(3) Every citizen shall have the following freedoms:

(a) Freedom of opinion and expression;

(b) Freedom to assemble peaceably and without arms;

(c) Freedom to form political parties;

(d) Freedom to form unions and associations;

(e) Freedom to move and reside in any part of Nepal; and

(f) Freedom to practice any profession, carry on any occupation, industry and trade.

Provided that:

(1) Nothing in Sub-clause (a) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty and integrity of Nepal, or which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes, religions or communities, or on any act of defamation, contempt of court or incitement to an offence, or on any act which may be contrary to public decency or morality.

- (2) Nothing in Sub-clause (b) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty, integrity or public peace and order of Nepal.
- (3) Nothing in Sub-clauses (c) and (d) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty and integrity of Nepal, or which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes, religions or communities, or which may incite violent activities, or which may be contrary to public morality.
- (4) Nothing in Sub-clause (e) shall be deemed to prevent the making of laws which are in the interest of the general public, or which are made to impose reasonable restrictions on any act which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes, religions or communities.
- (5) Nothing in Sub-clause (f) shall be deemed to prevent the making of laws to impose restrictions on any act which may be contrary to public health or morality of the general public, to confer on the State the exclusive right to undertake any specific industry, business or service, or to prescribe any condition or qualification for carrying on any industry, trade, profession or employment.

**Article 18, right to equality:** (1) All citizens shall be equal before the law. No person shall be denied the equal protection of the laws.

(2) No discrimination shall be made against any citizen in the application of general laws on grounds of religion, color, sex, caste, tribe, origin, language or ideological conviction or any of these.

(3) The State shall not discriminate against citizens among citizens on grounds of religion, race, caste, tribe, sex, origin, language or ideological conviction or any of these.

Provided that nothing shall be deemed to prevent the making of special provisions by law for the protection, empowerment or advancement of women, Dalits, indigenous peoples (Adibasi, Janajati), Madhesi or farmers, workers, economically, socially or culturally backward classes or children, the aged and the disabled or those who are physically or mentally incapacitated.

(4) No discrimination in regard to remuneration social security shall be made between men and women for the same work.

**Article 24, right against untouchability and racial discrimination:** (1) No person shall be discriminated against as untouchables and subjected to racial discrimination in any form, on grounds of caste, race, community or occupation. Such discriminatory treatment shall be punishable, and the victim shall be entitled to such compensation as determined by law.

(2) No person shall, on grounds of caste or race, be deprived of the use of services, facilities or utilities available to the public or of the access to any public place or public religious sites or of the performance of any religious function.

(3) In producing or distributing any goods, services or facilities, no person belonging to any particular caste or tribe shall be prevented from purchasing or acquiring such goods, services facilities nor shall such goods, services facilities or facilities be sold or distributed only to the persons belonging to any particular caste or tribe.

(4) No such act as to purport to demonstrate any superiority or inferiority of the person or persons belonging to any caste, tribe or origin or to justify social discrimination on the ground of caste or race or to publicize ideology based on racial superiority or hatred or to encourage caste discrimination in any manner shall be allowed.

(5) Any act contrary to clauses (2), (3) and (4) shall be punishable by law.

**Article 30, right relating to safe environment:**

(1) Every person shall have the right to live in a safe and healthy environment.

(2) Every individual shall have the right to compensation against any hazards caused by the polluters.

- (3) This clause shall not be deemed to be an obstacle in framing required balance between the environment and development works.

**Article 31, right relating to education:**

1. Every citizen shall have an access to right to education.
  2. Every citizen will have compulsory and free education up to primary level education
- (1) Every community shall have the right to get basic education in its own mother tongue, as provided in law.
- (2) Every citizen shall have the right to get free education up to the secondary level from the State, as provided in law.
- (3) Every community residing in Nepal shall have the right to preserve and promote its language, script, culture, cultural civilization and heritage.

**Right relating to Health**

1. Every citizen shall have free of cost primary health facilities and no one will be deprived of emergency health services.
2. Every citizen shall have the right to information regarding his/her health.
3. Every citizen shall have an access to clean drinking water and sanitation.

**Article 33, right relating to employment:**

- (1) Every citizen shall have the right to employment. Terms, conditions and employment help fund as per the laws of the federal laws.



(2) All citizens shall have the right to select the nature of employment.

**Article 36, Right to Food**

1. All citizens shall have the right to food.

2. All citizens shall have the right to be secured from conditions arising out of inadequacy of food.

**Article 25 right to property:**

(1) Every citizen shall, subject to the laws in force, have the right to acquire, own, sell, dispose of, and otherwise deal with, property.

(2) The State shall not, except in the public interest, requisition or acquire, or otherwise create any encumbrance on, the property of any person.

Provided, that this Clause shall not apply to any property acquired in an illicit manner.

(3) Compensation shall be provided for any property requisitioned, acquired or encumbered by the State in the course of enforcing a scientific land reform program or in the public interest, in accordance with law. The amount and basis of compensation and the procedure therefore shall be as determined by law.

**Article 38, Rights of women:** (1) No discrimination of any kind shall be made against the women by virtue of sex.

(2) Every woman shall have the right to reproductive health and reproduction.

(3) No woman shall be subjected to physical, mental or any other kind of violence; and such act shall be punishable by law.

(4) Sons and daughters shall have the equal right to ancestral property.

**Article 21, right to social justice:** The economically, socially or educationally backward women, Dalits, indigenous peoples, Madhesi communities, oppressed classes, poor farmers and labors shall have the right to take part in the structures of the State on the basis of the principle of 'proportional inclusion.

**Article 39, rights of the child:** (1) Every child shall have the right to name and birth registration with self identity.

(2) Every child shall have the right to nurture, basic health and social security.

(3) Every child shall have the right against physical, mental or any other form of exploitation. Such exploitative act shall be punishable by law; and any child so treated shall be given such compensation as may be determined by law.

(4) The helpless, orphan, mentally retarded, conflict victim, displaced, vulnerable and street children shall have the right to get special facilities from the State for their well-ascertained future.

(5) No minor shall be employed to work in any factory, mine or engaged in any similar other hazardous work or used in army, police or conflict.

**Article 22, right against torture:**

(1) No detained person during investigation or for trial or for any other reason shall be subjected to physical, mental torture or to cruel, inhuman or degrading treatment.

(2) Any act referred to in Clause (1) shall be punishable by law, and any person so treated shall be provided with such compensation as may be determined by law.

**Article 23, right against preventive detention:** (1) No person shall be held under preventive detention unless there is a sufficient ground of the existence of an immediate threat to the sovereignty, integrity or law and order situation of the State of Nepal.

(2) Any person held under preventive detention shall, if he or she has been held under such detention by the authority making preventive detention contrary to law or in bad faith, have the right to such compensation as may be prescribed by law.

**Article 23, Right to religious freedom:**

(1) Every person shall have the right to profess, practice and protect his or her own religion as handed down to him or her from ancient times, with due respect and regard to the existing social and cultural practices.

Provided that no person shall be entitled to convert another person from one religion to another; and that no act or action shall be done in such a manner as to jeopardize the religion of each other.

(2) Every religious group shall have the right to operate and conserve religious places and trusts.

**Article 24, right relating to justice:** (1) No arrested person shall be detained in custody without informing him or her of the reason for such arrest.

(2) Every person who is arrested shall have the right to consult a legal practitioner of his or her choice at the time of such arrest. Any consultation made by such person with his or her legal practitioner and advice given by such practitioner shall be secret; and such person shall not be deprived of the right to be defended by his or her legal practitioner.

Explanation: For the purpose of this Clause, the expression "legal practitioner" shall mean any person who is authorized by law to represent any person in any court.

(3) Every person who is arrested shall be produced before the case trying authority within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to such authority; and any such person shall not be detained in custody except on the order of such authority.

Provided that nothing in Clause (2) and (3) shall be deemed to apply to person on preventive detention and to a citizen of an enemy state.

(4) No person shall be punished for an act which was not punishable by law when the act was committed nor shall any person be subjected to a punishment greater than that prescribed by the law in force at the time of the commission of the offence.

(5) Every person charged with an Offense shall be presumed innocent until proved guilty of the offense.

(6) No person shall be prosecuted or punished for the same offense in a court more than once.

(7) No person charged with an offense shall be compelled to testify against him/herself.

(8) Every person shall have the right to be informed of any proceedings taken against him or her.

(9) Every person shall have the right to a fair trial by a competent court or judicial body.

(10) Any incapable party shall have the right to free legal aid, as provided in law.

**Article 27, right to information:** Every citizen shall have the right to demand or receive information on any matter of his or her interest or of public interest.

Provided that nothing shall be deemed to compel any person to provide information on any matter of which secrecy is to be maintained by law.

**Article 28, Right to Privacy:** Except as provided by law, the privacy of any person, his or her home, property, document, data, correspondence or matters relating to his or her character shall be inviolable.

**Article 29, right against exploitation:** (1) Every person shall have the right against exploitation. (2) No one shall be exploited in the name of any custom, tradition and usage or in any manner whatsoever.

(3) No one shall be trafficked in nor shall one be held in slavery or in servitude.

(4) No one shall be required to perform forced labor.

Provided that nothing in this clause shall be deemed to prevent the making of law requiring citizen to perform compulsory service for public purposes.

**Article 34, Right regarding Labor:** (1) Every worker and employee shall have the right to appropriate labor exercise.

(2) Every worker and employee shall have the right to form and join trade unions and to engage in collective bargaining for the protection of their respective interests, as provided in law.

This provision has been introduced for the first time in Nepal.

**Article 46, right to constitutional remedies:** The right to proceed in the manner set forth in Article 107 for the enforcement of the rights conferred by this Part is guaranteed.

This provision is set to ensure that the rights provided in the constitution are ensured by the judiciary that they are implemented by the government.

## **Provisions of Federalism**

The Constitution of Nepal has envisioned that “In order to fulfill the aspirations for perpetual peace, good governance, development and prosperity through the medium of federal democratic republican system of governance, hereby promulgate this Constitution through the Constituent Assembly.” (*Preamble*)

Similarly, Article 4 (1) states that Nepal is an independent, indivisible, sovereign, secular, inclusive democratic, socialism-oriented federal democratic republican state.

**Explanation:** For the purpose of this article, 'secular' means protection of religion and culture being practiced since ancient times and religious and cultural freedom.

### **Conclusion:**

Nepal is committed to the fact that a civilized nation cannot be developed in absence of guarantee of right to human rights. In this concern, the constitutional framework has envisioned latest ideas and development in regards to providing and safeguarding fundamental human rights with provisions of implementation, constitutionally secure.

In concern, to federalism, State of Nepal has been divided into seven states. However, other procedures including naming the provinces, headquarters and others are to be finalized by a committee formed by the government of Nepal.



Finally,

I would like to express my sincere gratitude on behalf of the Government of Nepal, people of Nepal and from myself to the Government of Australia and the Parliament for extending this opportunity to put the provisions of Nepalese constitution.