

LAND CONSTITUTION OF NEPAL: Topic focused on Constitution 2072

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ABSTRACT:

The Constitution of Nepal promulgated in 2015 recognizes land as a critical resource. Constitution of Nepal contains 38 parts and 308 articles, among which 5 parts and 10 articles in them advocates about the Land and property issue. Article 25, Article 26, Article 28, Article 40, Article 42, Article 51, Article 57, Article 60, Article 116 and Article 204 are the articles that advocates about the land and property rights. Key provisions related to land include equitable distribution of land rights, support for sustainable agricultural practices and ensuring access to land for marginalized groups. The Constitution also establishes a framework for land administration and governance emphasizing transparency and accountability. The constitution places a good value on land because it is an essential natural resource, an economic asset a legal entity with numerous rights and a social component that promotes self-actualization. It is found that the local level and states authorities are provided with the focused and systematics plan for land and properties related formulation and development activities. The process of implementing all the rights and fundamentals of the constitution related to land are still not properly fulfilled. There exists gap between the theoretical writings and the practice of all those statements. This paper also points out some of the previously implemented land act that have been amendment in 2072 constitution.

1. INTRODUCTION

1.1 Country Profile

Federal Democratic Republic of Nepal commonly known as Nepal is a landlocked country in South Asia. Nepal is of roughly trapezoidal shape, about 800 kilometers (500 mi) long and 200 kilometers (120 mi) wide, with an area of 147,516 km² (56,956 sq. mi). It is located mainly in the Himalayas, but also includes parts of the Indo-Gangetic Plain. It borders China in the north and India in the south, east and west while Bangladesh is located within only 27 km (17 mi) of its southeastern tip and Bhutan is separated from it by the Indian state of Sikkim.



1.2 Background

The Constitution of Nepal (2015) under the federal, democratic, and republican dispensation, in its preamble, has clearly articulated for “ending all forms of discrimination and oppression created by the feudalistic, autocratic, centralized, unitary system of governance”. It has also resolved to “build an egalitarian society to ensure economic equality... and social justice”. It has also the commitment to “socialism based on democratic norms and values” (Government of Nepal, 2015, p.1). The constitution of Nepal has mandated that all three governments (federal, provincial, and local) have certain rights in relation to land governance, administration, and management. Practise, however, is very different from the theory due to a combined lack of subsequent policy measures, technical expertise, an earmarked budget, and a busy political agenda. (*The State of Land Rights in Nepal*, n.d.)

Land is a fundamental natural resource for living, an economic asset for production, legal entity with multiple rights over it and above all, a societal factor for self-actualization. (H. Nepal & Marasini, 2075). Constitutions are supreme law, with which subject laws (such as land laws) need to comply. All National Constitutions have something to say on land and property(Wily, 2009).According to Upriety (2021), From the political economy perspective, the development of all laws, policies, and strategies appertaining to land, forest, wildlife, and agricultural development in post-1951 Nepal has primarily been influenced by the historically specific “reigning development paradigms” of the world

2 OBJECTIVE

The objective of this paper writing is to explore acts, issue and rights of land in the Constitution of Nepal especially focused on 2072.

3 Literature Review

The Constitution of Nepal 2015 provided enough power and authority to the local levels based on devolution under federalism. Despite that, the inadequacy of laws, and policies, and lacking coordination between local levels and center-province and poor mobilization are major challenges to local levels and the question of good governance and leadership is more pronounced in this regard.(Chaudhary, 2019)

Presently, the discussion on land issue is wide at both regional & global levels mostly in relation to increasing hunger and food insecurity in the world. But it is proven from the past experiences that most of those top-down discussion has not yield positive results towards ensuring rights of producers i.e. the peasants, indigenous people and landless. Contrastingly there is an increasing voice against those attempts having hidden interest of global capitalist regime to commoditize and privatize land for its profit motives. Therefore, understanding politics of land through policy review is important both from critical as well as constructive approach towards resolving the land problems and identifying potential threats. Also In Nepal, there have been many attempts from government through policy reforms to resolve land issues since 1950s. Attempts have been made initially to end feudalism, the dual ownership of land, patron client relation etc. and then recently in the name of increasing agricultural production. But not all reforms have been successful. Rather in recent cases, it has further fragmented agrarian land, forced rural to urban migration, increased privatization of land, land grabbing and land pooling as well as put serious risk on farm land further displacing and marginalizing the small peasants and landless communities from their territories. (Pokharel, 2019).

Land management issues are multidimensional and multisectoral; they therefore require a concerted effort to translate policies into administrative and management actions. In order to implement policy statements into ground level practice, it is necessary to build a strong, functioning institutional set-up; otherwise, it would all be rhetoric rather than reality.(P. Nepal et al., 2020).

Policies and laws related to land, despite their claims for better land governance, have been hellbent on “dispossession of peasants” and their “proletarianization” (because they have been forced to sell their “labor power” as their only available commodity). “Dispossession of peasant population” (a population that owns little land resource or has access to it and produces for “use value”) can be historically seen in the acquisition of their lands for industrial estates, government-owned corporation sites (which were privatized after 1992), the establishment of national parks, the faulty implementation of the much-trumpeted land reform program of 1964 (in which actual sitting tenants were evicted by the landlords in their anticipatory process of land transfers in the names of their faithful/kin), the establishment of ‘special economic zones’, urban, semi-urban, and peri-urban settlements, etc. National land policy, land use policy, agriculture development strategy, and national agro-forestry policy have all been crafted with a neo-liberal perspective which underscores the “agricultural capitalism” and “commodification of land” (Uprety, 2021).

4 METHODOLOGY

This study employs a desk-based research methodology, primarily drawing upon a systematic review of existing literature and scientific writings related to the land-related constitution and acts of Nepal. The approach involved extensive paper readings sourced from academic journals, government publications, legal documents, and relevant research articles. Keywords such as "land constitution Nepal," "land laws Nepal," and specific act names were used to locate relevant literature. The inclusion criteria prioritized studies published within the last decade to ensure currency and relevance. The review process involved screening abstracts and full texts to select papers that directly addressed constitutional provisions, legal frameworks, policy implications, and practical implementations pertaining to land management in Nepal. Emphasis was placed on articles offering critical analyses, comparative perspectives, case studies, and

empirical evidence. The whole pdf of Constitution of Nepal- 2072 was studied and all the articles, clause and subclause related to land and property were noted down. For the different acts, many websites like landact-2076, land rights and management, Land legal rights and provisions were studied.

4.1 Constitution of Nepal

Part 3

Fundamental Rights And duties

Article 25: Right relating to property

- i) Clause (1): Every citizen shall, subject to law, have the right to acquire, own, sell, dispose, acquire business profits from, and otherwise deal with, property. Provided that the State may levy tax on property of a person, and tax on income of a person in accordance with the concept of progressive taxation. Explanation: For the purposes of this Article, "property" means any form of property including movable and immovable property, and includes an intellectual property right.
- ii) Clause (2): The State shall not, except for public interest, requisition, acquire, or otherwise create any encumbrance on, property of a person. Provided that this clause shall not apply to any property acquired by any person illicitly.
- iii) Clause (3): The basis of compensation to be provided and procedures to be followed in the requisition by the State of property of any person for public interest in accordance with clause (3) shall be as provided for in the Act.
- iv) Clause (4): The provisions of clauses (2) and (3) shall not prevent the State from making land reforms, management and regulation in accordance with law for the purposes of enhancement of product and productivity of lands, modernization and commercialization of agriculture, environment protection and planned housing and urban development.
- v) Clause (5): Nothing shall prevent the State from using the property of any person, which it has requisitioned for public interest in accordance with clause (3), for any other public interest instead of such public interest.

Article 26: Right to freedom of religion

- i) Clause (2): Every religious denomination shall have the right to operate and protect its religious sites and religious Guthi (trusts). Provided that nothing shall be deemed to prevent the regulation, by making law, of the operation and protection of religious sites and religious trusts and management of trust properties and lands.

Article 28: Right to privacy

The privacy of any person, his or her residence, property, document, data, correspondence and matters relating to his or her character shall, except in accordance with law, be inviolable.

Article 37: Right to housing:

- i) Clause (1): Every citizen shall have the right to appropriate housing.
- ii) Clause (2): No citizen shall be evicted from the residence owned by him or her nor shall his or her residence be infringed except in accordance with law

Article 40: Rights of Dalit

- i) Clause (5) The State shall once provide land to the landless Dalit in accordance with law.

Article 42: Right relating to Social Justice

- i) Clause (4): Every farmer shall have the right to have access to lands for agro activities, select and protect local seeds and agro species which have been used and pursued traditionally, in accordance with law.

Part 4

Directive Principles, Policies and Obligations of the State

Article 51: Policies of State

- i) Clause (e): Policies relating to agriculture and land reforms
 - a) Subclause (1): to make scientific land reforms having regard to the interests of the farmers, while ending the dual ownership existing in the lands,
 - b) Subclause (2): to enhance product and productivity by carrying out land pooling, while discouraging inactive land ownership,
 - c) Subclause (3): to make land management and commercialization, industrialization, diversification and modernization of agriculture, by pursuing land-use policies to enhance agriculture product and productivity, while protecting and promoting the rights and interests of the farmers,
 - d) Subclause (4): to make proper use of lands, while regulating and managing lands on the basis of, inter alia, productivity, nature of lands and ecological balance,
 - e) Subclause (5): to provide for the farmers' access to agricultural inputs, agro products at fair price and market.
- ii) Clause (j): Policies relating to social justice and inclusion
 - a) Subclause (6): to identify the freed bonded labours, Kamlari, Harawa, Charawa, tillers, landless, squatters and rehabilitate them by providing housing, housing plot for residence and cultivable land or employment for their livelihoods,

Part-5

Structure of State and Distribution of State Power

Article (57): Distribution of State power

- i) Clause (1): The powers of the Federation shall be vested in the matters enumerated in Schedule-5, and such powers shall be exercised pursuant to this Constitution and the Federal law.
 - Schedule (5): List of Federal Power
No. 29: Land use policies, human settlement development policies, tourism policies, environment adaptation.
- ii) Clause (2): The powers of a State shall be vested in the matters enumerated in Schedule-6, and such powers shall be exercised pursuant to this Constitution and the State law.
 - Schedule (6): List of state power
No. 4: House and land registration fee, motor vehicle tax, entertainment tax, advertisement tax, tourism, agro-income tax, service charge, fee, penalty.
No.21: Management of trusts (Guthi)
- iii) Clause (3): The concurrent powers of the Federation and the State shall be vested in the matters enumerated in Schedule-7, and such powers shall be exercised pursuant to this Constitution, the Federal law and the State law.
Schedule (7): List of Concurrent Powers of Federation and State
No.24: Land policies and laws relating thereto.
- iv) Clause (4): The powers of the Local level shall be vested in the matters enumerated in Schedule-8, and such powers shall be exercised pursuant to this Constitution and the law made by the Village Assembly or Municipal Assembly.
Schedule (8): List of Local Level Power
No.14: Distribution of house and land ownership certificates.

v) Clause (5): The concurrent powers of the Federation, State and Local levels shall be vested in the matters enumerated in Schedule-9, and such powers shall be exercised pursuant to this Constitution, the Federal law, the State law and the law made by the Village Assembly or Municipal Assembly.

Schedule (9): List of concurrent power of Federation, State and Local Level

No.13: Landless squatters management

Article (60): Distribution of sources of revenue

i) Clause (1): The Federation, State and Local level may impose taxes on matters falling within their respective jurisdiction and collect revenue from these sources. Provided that provisions relating to the imposition of taxes and collection of revenue on matters that fall within the Concurrent List and on matters that are not included in the List of any level shall be as determined by the Government of Nepal.

Part 10

Federal Financial Procedure

Article (116): Federal Consolidated Fund

Except for the revenues of trusts (Guthi), all revenues received by the Government of Nepal, all loans raised on the security of revenues, all amounts received in repayment of any loans made under the authority of any Act and any other moneys received by the Government of Nepal shall, except as otherwise provided by a Federal Act, be credited to a Government Fund to be known as the Federal Consolidated Fund.

Part 16

State Financial Procedure

Article (204): State Consolidated Fund

Except for the revenues of trusts (Guthi), all revenues received by the State Government, all loans raised on the security of revenues, all moneys received in repayment of any loans made under the authority of any State Act and any amounts of grants or loans received from the Government of Nepal shall, except as otherwise provided for in the State Act, be credited to a State Government Fund to be known as the State Consolidated Fund.

In Nepal, since 2072 B.S. (2015-2016 A.D.), a series of significant land-related acts have been enacted or amended to address a variety of pressing issues within the realm of land governance. These legislative measures have targeted the equitable distribution of land, aiming to reduce disparities and ensure that landless individuals have access to land resources. Amendments have also focused on modernizing land ownership regulations, tackling problems such as land fragmentation and absentee ownership (Government of Nepal, Ministry of Land Management, Cooperatives and Poverty Alleviation, 2016). In addition, sustainable land management has been a key objective, with acts promoting the planned use of land resources to prevent chaotic urbanization and preserve agricultural and forest lands (Government of Nepal, Ministry of Land Management, Cooperatives and Poverty Alleviation, 2019). Modernization efforts include the digitization of land records, improving transparency, and efficiency in land administration through comprehensive land information systems. These legislative changes reflect a broader strategy to enhance governance, enforce standardized surveying and measurement practices, and manage public land more effectively, ultimately fostering a more equitable and organized land management system in Nepal (National Land Commission, 2019).

Some of the land Acts are as follow:

Land Act, 2021 (Eighth Amendment) – 2072 B.S. (2016)

The Land Act, 2021 (Eighth Amendment) in Nepal, enacted in 2072 B.S. (2015-2016 A.D.), introduced significant changes to land ownership and usage regulations. This amendment aimed to address pressing issues such as land fragmentation, absentee landownership, and the equitable distribution of land resources. It sought to modernize and clarify regulations governing land ownership, simplify procedures for land

transactions, and ensure transparency in land management practices. The amendment also emphasized the importance of sustainable land use practices and the protection of land rights, aiming to provide security and legal clarity for landowners and occupants (*Ministry of Land Management, Cooperatives and Poverty Alleviation - Wikipedia*, n.d.)

Institutions which benefitted from the Clause 12 of Land Act 1964 should be disallowed to sell or exchange land for any reason. If such institutions dissolve or go into liquidation; provision should be made for government to buy that land at the price not exceeding the initial purchase price or just seize that land. Legal provision should be enacted to provide land on lease, also considering the changes that may surface in land tenure arrangement after COVID-19, for farmer who want to do agriculture.

Lands Act 1964 Eighth Amendment added sub-clause (7) with specific provision enabling land office to withhold land beyond the legal limit until concluding the investigation/examination within a definite timeframe. If this provision of withholding was properly implemented while revising the land ceiling, huge amount of it is estimated that 600,000 ha of land could have identified, and re-distributed. Meanwhile, it is claimed that only 3 percent of all landholdings exceeding ceiling levels and available for land redistribution was identified, of which less than 1.5 percent was legally appropriated and only 1 percent was legally distributed. Such land remained on withhold ultimately. The process of land investigation and appropriation should not come to a halt at this point. The excess land beyond legal limits should be distributed to landless by setting the definite time frame. 8th Amendment has rejected the provision of legal limits over tenancy land. With this new provision, there is no any legal obstacle for tenancy land separation even if the investigation related to land ceiling is not concluded [sub-clause (8)]. The land rights of the struggling tenants should be well recognized and formalized through the land title over their share of tenanted land by the state as early as possible, utilizing the changed legal context, which has made tenants (operating over the land beyond ceiling) eligible to take their right. (*Government of Nepal Adopts National Land Policy 2019 / UN-Habitat*, n.d.)

Land Use Act, 2076 B.S. (2019)

On the 10th March, 2019, Nepalese federal parliament endorsed the Land Use Act to regulate land management and ensuring sustainable use of land resources in the country. (*Federal Parliament Passes the Land Use Act - CSRC Nepal*, n.d.). The Act has given special importance to the agricultural area. It also allows using any other categories of land for agriculture until that land is used for its specified purpose. Ministry of Land Management, Cooperatives and Poverty Alleviation (MoLCPA) will have to ensure that all 753 local governments prepare their land use maps within a year. The Act aims to ensure sustainable land use, promote equitable distribution of land, protect the rights of landowners and landless people, and facilitate land administration and management ([*Solved*] *Give Brief Description on Land Use Act 2076 BS Nepal - Law (2018npl) - Studocu*, n.d.).

According to Article 4, Classification of landuse zones, based on the classification, valuation, use, and necessity of land in Nepal, the following zoning shall be adopted: Agricultural zone, Residential zone, commercial zone, industrial zone, mining and excavation zone, forest zone, river, pond, lake and watershed zone, conservation area zone, cultural and heritage preservation zone, and any other zone designated as necessary by the government of Nepal. If land other than classified as subclause (1) of clause (1) of article 4 shall not be restricted to use as an agricultural land unless local bodies have informed the local government in the form of an agricultural land in order to use it in agricultural sector. There are total 6 parts and 34 Articles. The Act recognizes the rights of landless people and provides for the distribution of public land to landless households. It also establishes provisions for fair compensation in case of land acquisition by the government. Two significant provisions of the Act include the following: first, the federal ministry is mandated to prepare a land-use area map for every local unit within a year of the Act's implementation, which will be handed over to the respective local units and can be periodically updated by the "Local Land Use Council" as necessary. Second, the Nepal government, in collaboration with provincial and local governments, is tasked with formulating land use plans based on a comprehensive long-term approach paper. This paper, developed through detailed studies of land conditions, population growth rates, food and

housing needs, and the demand for economic development and infrastructure, requires approval from the "federal land use council," "provincial land use council," and "local land use council," respectively. These land use plans must clearly identify specific areas, including industrial corridors, special economic zones, national and inter-provincial projects, natural and physical properties of national importance, sites of religious and cultural significance with international recognition, locations for schools and other educational institutions, areas designated for roads, health institutions, and irrigation canals, sites sensitive to national security, disaster-prone areas, protected areas for environmental cleanliness and biodiversity conservation, and any other necessary areas. Additionally, the Nepal government will establish further specific arrangements and provisions related to the land use plans as required. (भूउपयोग-ऐन-२०७६, n.d.)

5 DISCUSSION

The Constitution of Nepal, promulgated in 2015 places significant accent on land as a vital resource encompassing its economic, social, and legal dimensions. The main focus is always on the property of the people towards the land ownership and right to use the land according to people. The constitution focuses on the agricultural land of the people with the right to use and increase the productivity with land management and land reforms. Constitution preserves all forms of religious beliefs included within the land like Guthis. Dalits are not deprived of the use and ownership of land. State provides the legal authority of land to these people as well. Labours, Kamlari, Harawa, Charawa, tillers, landless, squatters are also in the concern of the government. Land reform with main concern in land pooling is focused on both urban and rural area. Government has right to use the land for infrastructure development and urbanization. However, there is always a beneficial side of this for the owner of the land, not directly in terms of compensation but with increase in facility and land valuation. The Federation, States and local level plays significant role in managing and utilizing land and property right of the people. Grassroot authorities of the property and land can solve individual issues easily and more conveniently. The revenue generated in the form of tax are also associated with the local level government which are always linked with the overall law implementing national authorities and government. Amendment of the land laws are also included on this constitution. Eighth amendment of the Land Act 2072 included on the 2072 constitution focuses on land fragmentation and equitable distribution of land resources. Similarly Land Use Act has major emphasis on agricultural land.

6 CONCLUSION

The Constitution of Nepal (2015) safeguards citizens' property rights, including land, while enabling state-led land reforms and requisition for public interest with due compensation. It also directs state policies towards scientific land reforms, and ensuring social justice through rehabilitation and support for marginalized communities. Every immovable and moveable property belonging to the person has the full claim to it. However, every property is tied within the taxation system of government and state can use the property of any person for the public benefit with direct or indirect compensation.

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