

Reasons for recognition of Socio-economic and cultural rights as a fundamental right

- Anita Jadhari

LL.B. 1st Year, Kathmandu School of Law

Socio-economic cultural right (SECR) is the right need for our daily life purpose which includes the rights like Right to food, Right to health, Right to land, water and environment , Right to security, Right to housing, clothing and so on. SECR simply speaks the maintenance of a level of living which is below the poverty line of the society concerned. Separately speaking core of social rights is the rights to an adequate standard of living. The enjoyment of this right requires at a minimum, that everyone shall enjoy the necessary subsistence rights adequate food and nutrition right, clothing, housing and the necessary conditions of care. This right is closely related to the right of families. In order to enjoy those social rights there is also a need to enjoy certain economic rights and cultural rights. These are the right to proper housing and right to social security. These rights seriously imply the commitment of social integration solidarity and equality including equal income distribution. It includes major concern with the protection of vulnerable group such as the poor, handicapped and indigenous people. Without these rights the legitimacy of the constitution would suffer because people would be bound to say that it does not deal with their most fundamental needs.

Fundamental rights are the rights recognized by the state under constitution. These are the rights, protection of which is the duty of the state. According to the constitution of Nepal 2047, we have been given 13 kinds of rights as fundamental rights(Article 11 – 23 of part three) and according to interim constitution of Nepal 2063, we have been given 20 kinds of rights as fundamental rights (Article 12-32 of part three).

Comparatively analyzing these two constitutions it is seen that the constitution of Nepal 2047, it seems have neglected the SECR and only the civil and political rights CPR are given emphasis. People's right to life is guaranteed but the fundamental thing to enjoy the right to life like right to food, housing and health are not guaranteed. But in context of interim constitution there seem certain changes, SECR is incorporated but not fully, even CPR is given high emphasis.

The democratic movement of 2047 resulted in the formation of a democratic constitution in Nepal. Though constitution of Nepal has remained silent on the sphere of SECR, the directive principles and the policies of the state, have profoundly elaborated on various aspects pertaining to SECR. The *Loktantrik* (Democratic) movement of 2063 resulted in the

formation of *Loktantrik* constitution in Nepal. In this constitution fundamental right includes most of the SECR.

Fundamental rights are those rights without which the legitimacy of the constitution would suffer; there would be no value of such constitution. The constitution would be the pickle without salt and the fundamental rights of constitution without SECR would be pickle without salt. There will not be realization of value of constitution to the people as Nepalese people feeling. Since the constitution of Nepal 2047 could not guarantee the SECR as fundamental right there arise a different domestic violence with the voice to guarantee the SECR. For example if we analyze the reason for rise in Maoists in Nepal it shows the lacunas in constitution in context of SECR. Similarly if we have studied the Madhesi Andolan the problem is same. Hence if we could recognize the SECR at right time Nepal would not have faced these problems.

Some case analysis to conclude the reason for recognition of SECR,

1) *Two child died due to the lack of food (2063-08-21 RAJDHANI)*

In Arghakhanchi, Dhakawang two children, a 4-year son and a 6-year daughter of Bijuli Pariyar died due to the lack of food.

2) *In Lamjung the area captured by Nepali Army had not freed yet.*

From five years the Kandetar area of Lamjung is not freed from bomb and ambushes deposited by Nepal Army, people of this area are under tension due the lack of security.

3) *Murder of brother and mother due to poverty.*

In the 16th Poush, Nepalgunj, due to the cause of poverty Radhyeshyam Kurmi could not give sufficient food to his mother and brother so he murdered them. According to him since they had no source of income and had to live by daily labor and that was not sufficient for their daily life and he did so.

If we analyze these three cases, we feel shame with our own countries policies. In our country there is fundamental right to vote but no fundamental right to food, employment, education and security. How miserable is the condition here in Nepal! In Nepal the registrar of supreme court gets the Pajero that costs 52 lakh, but the people who are dying due to lack of food do not get right to food. The PM get the air conditioned quarter to live with the life of Western style but the people are in tension for their insecure life. Ministers and members of parliament doing meetings in five star hotels on the topic to eliminate the poverty in Nepal where people are killing their mother and brother due to the poverty which are not fair and injustice.

Similarly most of people may not know that in Nepal per minute ten bullets are producing and see the condition of cetamol factory, they are in the critical stage and no one is conscious about it. This shows the critical condition of SECR in Nepal. All the higher post people of Nepal have tendency to get pajero but not the ambulance or stretcher or health post to that

woman of remote area who are dying due to delivery related complication. To cope these problems also the SECR must be recognized as fundamental right.

To support further, some reasons for recognition of SECR are as follows:

- 1) To maintain social order
- 2) To maintain Rule of Law
- 3) To maintain Good Governance
- 4) To maintain Democracy

1) To maintain Social Order

Nevertheless, the change or progress is impossible to attain without 'inclusion of all' in wider perspective.¹ From the *Madhesi Aandolan* also we can also realize that in Madhesh there is social disorder due to the exclusion, they feel that they are excluded in SECR and CPR. Until and unless there is assurance to all in SECR, the country has to face such a social disorder repeatedly as Nepal is facing for the last 10 yrs like Maoist, Madhesi, Jwalasingh and so on. So, to maintain the social order, the ESCR as their fundamental rights as these are their fundamental needs.

2) To maintain Rule of Law

Rule of law is a foundation of the concept of good governance and justice which speaks to prevent misuse as well as abuse of powers. And this will be possible only if the people or citizen of that country are educated, physically and mentally sound and secured from internal and external environment with proper employment, see the case of Radheshyam Kurmi and their parents, can such family realize the importance of rule of law in country? Again it speaks the SECR must recognized as the fundamental right.

3) To maintain Good Governance

Good governance always targets to promote the participation of every individual in development as a beneficiary as well as an agent. It exists only if it enables citizens to enjoy civil, economic, social and cultural rights. Good governance means constitutional legitimacy, democratic elections, absence of corruption, political openness, transparency and so many other things which are impossible without active inclusion of all people. Hence to maintain good governance people must aware and we should mark it that hungry person cannot judge good and right. See the case of Bijuli Pariyar and such other people will they be able to choose proper politician or representatives for good governance instead of searching food and labor, obviously no.

¹ Yubaraj Sangraula, Report Third winter residential school on SECR development right and good governance

4) To maintain Democracy

Democracy is a government in which everyone has a share². And a democratic society is one in which the spirit of liberty, equality and fraternity prevails. Democracy a form of government is a process of appointing, controlling and dismissing a government by the people. But if the people are hungry, naked and homeless, how can they think, speak and protest, this is what the subject matter of SECR. So SECR must be recognized as fundamental right to maintain Democracy.

What a gist of this long explanation is that until and unless people are secure, they are enjoying their life with sound health and proper food, they cannot be educated and without educated people awareness cannot be possible and without awareness what ever we are talking that good governance, rule of law, *Loktantra* and so on through revolution will be useless. Even if we get that power it will be like “the coconut on the hand of Monkey”(बाँदरको हातमा नरिवल). So primarily, the SECR must be recognized as Fundamental right.

Bibliography

1. Constitution of Nepal 2047
2. Interim constitution of Nepal 2063
3. Report of 3rd winter residential school on SECR development right and good governance.
4. Cases are form paper cutting file of KSL library.



² Abrahm Lincon