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By Reena Pathak, Asst. Lecturer, KSL

ToT and Workshop on Safeguarding Human Rights in the Criminal Justice System in Nepal

Kathmandu School of Law (KSL) and Sydney Center for International Law, The University of Sydney organized two-day 'Training the Trainers' and a separate workshop on "Safeguarding Human Rights in the Criminal Justice System in Nepal " participated by police, public prosecutors, law teachers and defense lawyers. The programs aimed at educating stakeholders of criminal justice system in Nepal, mainly police and prosecutors, to improve understanding and knowledge of, and respect for human rights.

The ToT program was conducted on 12-13 April, 2009 at KSL participated by six public prosecutors, five police officers, three officers from Armed Police Force, two law teachers and two defense lawyers. The program was followed by a short inaugural session in presence of Chief Guest Senior Advocate Bishwokanta Mainali, President of Nepal Bar Association; Guest of Honour Mr. Ramesh Chand Thakuri, Inspector General of Nepal Police; Dr. Ben Saul, Director, Sydney Centre for International Law; Prof. David Kinley, Chair in Human Rights Law, Faculty of Law, The University of Sydney; and Assoc. Prof. Dr. Yubaraj Sangroula.

Addressing the program from the chair of Chief Guest, Senior Advocate Biswokanta Mainali expressed his observation on the present scenario of impunity and police and public prosecutors' role in the criminal justice system in Nepal. He pointed to the demerits of adversarial system in Nepalese context and role of police and prosecutors in safeguarding human rights in Nepal. Police involvement in investigation is necessary but still methods are traditional and they don't fulfill expectation of people, he added. He also emphasized on the need of complete reform of Nepalese criminal justice system from victim's rights perspective.

Expressing his remarks at the program, Inspector General of Nepal Police Mr. Ramesh Chanda Thakuri emphasized on the importance of human rights training and legal knowledge to the police officers. "Nepal Police lacks officers from law background. Hence, training on human rights and rule of law and application of the gained knowledge in investigating criminal cases is crucial to build public confidence over police", he said. He mentioned that role of police officers who are engaged in primary investigation of criminal cases is crucial to enhance human rights. By means of their human rights friendly discharge of duties, they can build positive relationship with public and get their support to control criminal activities.

Earlier in his welcome speech Dr. Yubaraj Sangroula welcomed all the guest and participants and highlighted on the collaboration between KSL and Sydney University. He said the concept of training was developed considering the practice of forced confessions, inhumane treatment in detention, sexual harassment, prolonged delays of cases, unfair trails, lack of impartial investigations and lack of access to lawyer etc. which has created adverse impact on people, particularly, marginalized groups of Nepal.

Dr. Ben Saul highlighted on the objectives of the project and the importance of the ToT program. The objective of the project is to improve understanding and knowledge of, and respect for human rights, amongst key actors in the criminal justice system in Nepal. This objective will be achieved by reviewing legal education in Nepal on human rights in the criminal justice system and formulating model curriculum to provide training to police and prosecutors on human rights, he said. Dr. Saul also informed about the preparation of Law Enforcement Training Manual to conduct the ToT and Training Workshops. Besides introduction to Human Rights, the Manual consist of separate chapters on Arrest, Detention, Investigation, Policing Public Order, Fair Trial and Prosecution. This Manual will provide the basis of instruction and equip trainers to deliver a one-day training module to police and public prosecutors on human rights in the criminal justice system in Nepal.



Prof. David Kinley highlighted on the students exchange, teacher exchange and possible collaboration between the two institutions in different research programs in future. Concluding the session, Chairperson Prof. Madhav Pd. Acharya talked about applicability of human rights in criminal justice system for the protection of rights of accused and also of victims. He further proclaimed that the academic exercise of the two institutions will provide new shape to traditionalism of justice system and also change the perception of public upon justice system.



Assoc. Prof. Dr. Yubaraj Sangroula delivering his speech at inaugural session

The inaugural session was followed by ToT. Prof. David Kinley, Dr. Ben Saul and Dr. Yubaraj Sangroula facilitated the training. On the first day, they provided the overview on the training manual while detail discussion was made in each topic on the second day. The participants engaged in lively discussion on the issues, realized the shortcomings in the criminal justice system, and urged for more other training and workshops to ensure human rights friendly criminal justice system in the days to come.



Dr. Ben Saul making his presentation to the participants at the ToT

Four selected trainers from the ToT facilitated a workshop organized by Kathmandu School of Law (KSL) and Sydney Center for International Law, The University of Sydney on 16th April 2009 participated by eighteen officers from Nepal Police and Office of the Government Attorney. The trainers were Prakash Dhungana, Deputy Government Attorney, Office of the Attorney General; Ishwor Babu Karki, Deputy Superintendent, Nepal Police; Mukunda Raj Acharya, Deputy Superintendent, Nepal Police; and Harka Rawal, Defense Lawyer. Workshop Manual was distributed to all the participants of the training. At the end of both the programs certificates were distributed to the participants with the commitment to work for the protection and promotion of human rights in the criminal justice system in Nepal.

National Workshop on Need of Constitutional Address for the Protection of Intellectual Property in Nepal

KSL Business Law Centre organized a one-day National Workshop on 26th April 2009 entitled 'Need of Constitutional Address for the Protection of Intellectual Property in Nepal' to mark 9th World Intellectual Property Day. The worldwide theme for celebration was 'Promoting Green Innovation' this year.

The objective of the program was to address the issues of creativity and creative heritage as the intellectual property and ensure guarantee of their protection. Indeed, there are mechanisms like patent, trademark, copyright etc. but these mechanisms have failed to incorporate the issues related to individual's and communities' peculiar creativity existing through out Nepal. The program was organized to bring this issue into attention in this transition phase.

Hon'ble Satya Lal Mool, Member of the Constituent Assembly, was the Chief Guest of the inaugural session, chaired by Asst. Prof. Kumar Innam. Coordinator of Business Law Centre Asst. Prof. Raj Kumar Suwal welcomed the guests and participants from different institutions and organizations. He highlighted the objective of the program with a glimpse of existing position of creativity and creative heritage in Nepal. As there is creativity in every individual and creative heritage in every community, the state should take responsibility to protect and recognize the genuine talent, he said.



Assoc. Prof. Dr. Yubaraj Sangroula delivering his speech at the program

Keynote speaker Assoc. Prof. Dr. Yubaraj Sangroula appreciated the efforts to make people aware about the recognition and protection of their creativity as their rights and provoke the state mechanism to address the issue in a right manner. He suggested that the upcoming Constitution, like other commissions, can include a separate commission like Intellectual Property Rights Promotion and Protection Commission for recognition, protection and promotion of the heritage and creativity of Nepalese people and Nepalese origin.

Assoc. Prof. Geeta Pathak Sangroula, Acting Executive Director of KSL, shared her opinion as intellectual property right is highly intimated with basic notions of Human Rights. She expressed her regards for success of the program. At the same program, Hon'ble Om Prasad Subedi, Justice, Appellate Court, Pokhara, expressed his greetings while sharing his own experience being a student of Intellectual property Rights.

Advocate Anju Upreti, President of Lawyers for Intellectual Property and Govinda Subedi, Director, Department of Industry shared the same view that the upcoming constitution should incorporate the issues of creativity and creative heritage as fundamental rights. Advocate Upreti also informed about the conference going to be held in the near future related to same issue which is going to submit its findings to Constituent Assembly.

Sharing his experiences, Mr. Subedi highlighted about the problems in existing limited form of recognition of intellectual property. It is very hard to protect the rights of original owner. In market if one brand is famous the other will register his/her product adding some prefix or suffix to that popular brand name. There is no fair policy to protect the rights of creator of every unique thing, he added.

The Chief Guest of the session, Hon'ble Satya Lal Mool was happy to know various issues of Intellectual Property. He assured to bring the issue into attention of the Constituent Assembly. The formal inaugural session ended with Chair person, Asst. Prof. Kumar Ingnam's closing remarks. He identified many issues and matters related to creative heritage and creativity which needed to be recognized and protected with guarantee of right of ownership to the creators.

The second session was followed by presentation from different intellectuals in the theme with different perspectives. Assoc. Prof. Geeta Pathak Sangroula presented a paper on 'Relation of Intellectual Property Rights and Fundamental Human Rights'. She identified many provisions in International Human Rights Instruments in support of arguments that the intellectual Property rights should be incorporated as Fundamental Rights in the upcoming Constitution. Universal Declaration on Human Rights (UDHR), International Covenant on Economic, Social and Cultural Rights (ICESCR) were few to quote.

The presentation was followed by another presentation by Hon'ble Om Subedi on the conceptual outline of the recognized patterns of intellectual property and the creativity and creative heritage in Nepal while students of LL.M. Shambhu Karki and N.M. Ranjit dealt about legal instruments for protection of creativity in Nepal. They listed the legal instruments to deal with intellectual property from the very old Muluki Ain (1910) to the newly drafted industry policy.

The session was ended with discussion initiated by Asst. Prof. Raj Kumar Suwal about the rational of incorporation of the issue of creativity and creative heritage in Constitution. The participants from Department of Industry, teaching faculty of different colleges, students from LL.M. and LL.B. and the faculty members of KSL took part in intensive debate over several issues. Participants of the program agreed to the need of constitutional address of the Intellectual Property rights for protection of creativity and creative heritage in Nepal.

Student's Participation in International Competitions

KSL students took part in different international moot court competitions. Mr. Apurba Khatiwada and Sudip Pokharel of LL.B. 5th Year, and Mr. Barun Ghimire of LL.B. 4th Year participated in Thirteenth Annual Environmental Moot Court Competition at Stetson University College of Law, Gulfport Florida, USA from 25-28 March, 2009. The team was qualified for this competition by competing against 19 other law Schools in the qualifying round organized jointly by Surana and Surana International and Madras University, Department of Legal Studies, in Chennai India from 17-19 October, 2009.

Earlier, Mr. Khatiwada and Mr. Ghimire had participated in Investment Arbitration Moot- Court "International Investment Protection Law" at Frankfurt, Germany from 4-6 March, 2009. The program was organized by Wilhelm-Merton Centre of European Integration and International Economic Order of the Frankfurt University and the Frankfurt International Arbitration Centre (FIAC).

The regular participation of KSL students in Shearman & Sterling Jessup Cup Law Moot Court Competition also continued this year. A team of Mr. Alok Pokharel and Mr. John Karki of LL.B. 5th Year participated in the competition from 22-28 March, 2009 in Washington DC, USA. The competition was participated by more than 120 teams from 80 countries across the globe including Nepal. The issues for this year competition were based on contemporary international disputes such as mandate of regional organizations and right of humanitarian intervention, abolition of death penalty, offence made by United Nation Peace Keeping official etc.

Lately, students of LL.B. 3rd Year Ms. Rojina Thapa and Mr. Nischal Pokhrel also participated in Gujrat National Law University International Moot Court Competition from 2-5 April, 2009 at Gujrat, India. The issue of the competition this year was related to international trade law, Adrena Free Trade agreement. Total 29 teams from four countries, namely; Nepal, India, Pakistan and Srilanka participated in the competition.

Teachers' orientation program on Empowering Youths through Democratic Education

Constitutional and Electoral Law Centre organized a teachers' orientation program on 'Empowering Youths through Democratic Education' on 9 April, 2009 with an objective to educate school and college teachers to improve understanding and knowledge of democracy and human rights and encourage students to promote democracy and human rights through peaceful means.



Assoc. Prof. Prakash K.C. making his presentation at the program

The program was conducted in a participatory and interactive way. Resource persons provided information on democracy, good governance, democratic and political norms and values, human rights, constitutionalism and role of educational institution in promotion of democracy and peace. The program began with distribution of booklet and training manual and a short introduction by program coordinator Mr. Sukhadev Sapkota. At the same occasion, Mr. Sapkota also asked for cooperation of teachers and college and school administration to launch students' advocacy program in each institution.

Assoc. Prof. Prakash K.C. discussed on human rights, constitutionalism, good governance, democratic norms and values and prerequisites for sustainable peace. Similarly, Asst. Prof. Kumar Innam discussed on the role of students and youths leadership in nation building while Assoc. Prof. Geeta Pathak discussed on the role of educational institutions to encourage students and youths to provide positive contribution for promoting democracy, human rights and peace. Teachers from different school and colleges inside the valley participated in the program. The program was supported by USAID through Chemonics International.

IN MEMORIUM

KSL family expresses its deep sorrow over the untimely and tragic demise of our beloved and cherished student Mr. Deepak Prasai. We have indeed lost our well-wisher and a pro-active and sincere student. His memory remains omnipresent in our minds and heart. We mourn this moment of great loss and express our heartfelt condolences to the bereaved family.



Late Deepak Prasai

Women Participation In Politics

By Reena Pathak

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Women on average make up only around 10 percent of the representatives in national parliaments or legislative bodies worldwide. Participation in political and public lives has traditionally been regarded as a male domain. Although women have been active in various political movements since the fifties, several factors have prevented their mass participation in local or national politics, which in turn have shaped the nature of the government.

The formal rule of equality often does not yield equal results because of significant differences in the characteristics and circumstances of men and women. Substantive participation in this direction demands that rules take account of these differences to avoid the unfair gender-related outcomes. Thus the attainment of substantive participation and the restoration of, and the respect for, the dignity of all persons, is foundational to the new order.

Substantive participation is a means to an inclusive process, which in turn provides a better platform for stability, acceptance of the new political order and loyalty to a nation. Women's substantive participation is to increase the proportion of development aid directed at women's organization working on peace building and reconciliation; to make gender considerations central to post-conflict rehabilitation and reconstruction; to develop initiatives to respond to women's and girl's special needs in the reconstruction processes; to implement internationally agreed commitments; and to ensure the participation of women as leaders in all spheres of life, from the community to the political.

In many peace negotiations, women are not adequately represented at the formal peace table, with the risk that their concerns and priorities may be disregarded in the final outcome. Economic constraints including lack of food, education and health facilities further strain their participation in peace and reconstruction activities.

United Nations Security Council Resolution 1325 asserts that to achieve just and lasting peace, women need to be a part of decision making at all levels. It highlights women's role in peace building, conflict prevention, resolution and reconstruction. But this is not making sense when we look at women's participation in the peace process.

While passing a proposal of the constituent assembly and signing a twelve-point understanding between the Seven-Party Alliance and CPN (M), there were only male members representing the major parties. On May 5, 2006, a high level judicial body was formed under the chairpersonship of former Justice Krishna Jung Rayamajhi to investigate the acts of atrocities, human rights violation and suppression of people during the 19-day-movement.

The body consisted of all male members. Deputy speaker Chitra Lekha Yadav who chaired all meetings of the reinstated House of Representatives since its first convention on 28 April was not entrusted to lead the house as a speaker. The vacant post was again handed over to the male representative. Thus once again women were neglected despite their role in the reinstated House of Representatives.

The first round of government-Maoist talks and the second round of peace talks were also represented solely by male leaders. During the eight-point understanding between Seven Party Alliance and CPN-Maoist also, there was no participation of women. Even the Peace Secretariat is headed and influenced by male members only. The first interim constitutional drafting committee was formed under the coordination of former justice Laxman Prasad Aryal along with five other male members.

But later on, due to the growing voices of women and civil society, the interim constitutional drafting committee was re-constituted including four women members. This clearly depicts the supremacy of patriarchal society and the trend of viewing women as inferior and less capable of playing influential role in decision-making process.

On November 21, 2006, the Government of Nepal and the CPN (M) signed a comprehensive peace agreement to formally end the ten-year long conflict; however, this historical peace agreement did not recognize the contribution of women and left their participation behind the curtain. The Interim Legislative Parliament which was constituted after the Jana Andolon II consisted of only 57 women out of 329.

This picture is not satisfactory and it has not recognized the sacrifices made by women in Jana Andolon II, to make it successful. In the recently held election of Constituent Assembly (CA), only 30 women i.e. 12.5 percent were elected out of 240 seats on the First Past the Post Election. During this process also, women candidates were required to contest with male heavyweights leading to very slim chance of victory. Women's candidature was just seen for the sake of representation.

These glimpses are ample to project what kind of new Nepal we are going to restructure. Substantial participation of women in peace building process can only be achieved by creating violence free society; emphasizing creativity and productivity of women; providing fearless opportunity to women; and ensuring political, social, economical, civil, cultural and environmental rights.

However, in the context of Nepal, proper inclusion of women is yet to be done. Unless and until the voices of women are heard and represented in practice, the goal of inclusive democracy, protection of human rights and rule of law would not be achieved. Thus, the state should bear in mind the fact that proportional representation of each and every segment of society is necessary to achieve sustainable peace and development.