

ROLE OF RULE OF LAW IN ENTERPRISE BUILDING



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1

Introduction to Rule of Law

The headlines of the news we read or hear everyday are very often about people being condemned for using force or violence on others, getting away without being punished for a crime by bribing or other weaknesses in the justice delivery system, discriminating another human based on race or gender or caste and other similar activities. These actions are denounced in our societies because there are some fundamental principles on which a society rests and runs, some of which are equality before the law, freedom of expression, non-violence, security of life and others. But what do these fundamental principles of a society rest on? The answer is Rule of Law. For countries like Nepal, which have emerged from situations of civil conflict, Rule of Law is even more of a sensitive topic as these conflict situations serve as frightening examples of what a society can look like when there is no Rule of Law.

Rule of law is the basic principle which ensures that individuals are respected as equals and

the security of their lives is guaranteed. It is a foundation of modern civilization and the building block in the formation of a society where individuals are free to organize their lives, plan their futures, and resolve disputes in a rational way.

The concept of Rule of Law can be traced through various cultures, traditions and history of nations across the continents. When we look back to the history of human civilization around the world, it is mostly about wars and powerful rulers who ruled over a certain territory based on either the divine rightⁱ or the power of their swords and army. In this context, whatever the rulers said was law and any attempt to depose the rulers or to restrict their powers was punishable. These rulers ruled 'by' law – those laws they formulated on their discretion. However, the modern civilization and societal structures are based more on democracy and democratic values and systems that ensure the fundamental rights of humans such as equal protection under the law, freedom of thought, speech, press, movement, association, right to vote and others with the consent of the governed. These basic democratic values are ensured in a constitution of a nation, which is the

ultimate law. Governance based on such laws and not the rulers' discretion is Rule of Law. However, to have a proper Rule of Law, the process by which a constitution is made and translating the values in the constitution to everyday life is as important as having a democratic constitution. Though the concept and practice of Rule of Law seem characteristic to modern societies, the history of it is as old as the history of law itself.

Around 1760 BC, the King of Babylon had promulgated the Code of Hammourabi, which is one of the first examples of the codification of law which applied to the people as well as the ruler. "In the Anglo-American context, the Magna Carta of 1215 was a seminal document, emphasizing the importance of the independence of the judiciary and the role of judicial process as fundamental characteristics of the rule of law" (United Nations Rule of Law, n.d.).

Hence, there has been a lot of discussion on Rule of Law and its importance in the creation and maintenance of free and organized societies for a very long time. According to Rogers (2005), Rule of Law is the means to regulate human

behavior, uphold rights, restrain government, resolve disputes, and tackle social problems. Encompassing much of the debate about the definition of Rule of Law over time, Stein (2009) sets the ideal characteristics of a society governed by the rule of law as:

1. The law is superior to all members of society, including government officials vested with executive, legislative, or judicial power.
2. The law is known, stable, and predictable. Laws are applied equally to all persons in like circumstances. Laws are sufficiently defined and government discretion sufficiently limited to ensure the law is applied non-arbitrarily.
3. Members of society have the right to participate in the creation and refinement of laws that regulate their behaviors.
4. The law is just and protects the human rights and dignity of all members of the society. Legal processes are sufficiently robust and accessible to ensure enforcement of these protections by an independent legal profession.
5. Judicial power is exercised independently of either the executive or legislative powers and individual judges base their decisions solely on facts and law of individual cases.

When these important characteristics of laws are translated into the day to day workings of a society, Rule of Law can be considered prevailing.

Rule of Law vs. Rule by Law

A very important aspect of understanding Rule of Law is also being aware of the distinction between Rule of Law and Rule by law. In Rule of Law, no one is above the law, even those who are given the authority to govern by the people. Similarly, the laws are made with the participation of those on whom the laws will be applied and is subjected to revision too. Those who exercise the power of governing are accountable to the people. However, in Rule by Law, the rulers are above the law and a society is governed based on laws the rulers make on their own discretion. There is lack of stability, predictability and non-arbitrariness of laws in case of Rule by Law and there is no guarantee that the laws made by the rulers are compatible to the idea of basic human rights and justice. Similarly, the aspect of accountability is also non-existent and individuals cannot question rules made by those who govern where Rule by Law prevails.

Hence, where there is rule of law, a government serves. In contrary, where there is Rule by Law, the government uses law as the most convenient way to govern. This is very much relatable to Nepalese political history too. During the monarchy, the action of the royals could not be questioned in the courts. Furthermore, the royal family could give licenses to various businesses and grant special powers to those they pleased. In Rule by Law, the laws are bent according to the convenience of those in power. For e.g. recently at the end of May 2011, when the second deadline to the draft the constitution was approaching, a law was made that prevented people from staging a protest around the Constituent Assembly Building despite the fact that it is the fundamental right of people to express their opinions. It is a small example of how laws can be made or bent according to convenience. Therefore, there is a very fine line between Rule of Law and Rule by Law.

Rule of Law however affects more than our civil liberties. It is also the building block for the growth and prosperity of a nation. We shall discuss about the relationship between Rule of Law and Prosperity in the following chapters where some

important aspects of Rule of Law connected to enterprise building will be highlighted.

2

Importance of Rule of Law in Enterprise Building

Rule of Law is often contextualized as a political and social matter. However, it is equally important in the issues of economic growth and development. As countries around the world are accepting and adapting to market led economies for achieving economic prosperity, it is important to highlight the relationship between Rule of Law and Enterprise Building. How is Rule of Law key in addressing problems like increasing unemployment rates, corruption, and income inequality? This chapter will discuss these questions by first introducing the concept of Enterprise Building and to draw the connection between Rule of Law and Enterprise Building.

Enterprises are the result of entrepreneurial efforts. Therefore, the concept of Enterprise building is intertwined with entrepreneurship. Entrepreneurship has changed the face of the modern world and the evidences are plenty. From people like Henry Ford, who revolutionized

the American transportation industry with the iconic Ford Motor Company to people like Marck Zuckerberg, who changed the way we communicate through something like Facebook, entrepreneurs have been the wheel of growth. In Nepal, people like Ananad Bagaria (who brought about an innovation in agro-based industries), Bal Krishna Joshi (who was one of the few firsts to introduce e-marketing in Nepal), Min Bahadur Gurung (a visionary founder of supermarkets in the country) are some who have played instrumental roles in enterprise building in Nepal. However, these are only few success stories enterprise building in Nepal is not as widespread as it should be if we are to escalate the economic growth of Nepal.

Having proper Rule of Law allows markets to operate well as the participants know the 'rules of the game' and the fact that they can rely upon it to protect their rights. Hence, when such rules are comprehensive, understandable and written to support competitive and efficient markets, a business friendly environment is established. In such business friendly environment, people are willing to invest in productive sectors and that is

very important for economic growth. “The bulk of private investment in developing countries is domestic investment. Reforms to the rule of law that benefit private investors will provide the greatest benefits to domestic investors” (The World Bank as cited in Stolper, A. & Walker, M. 2007). Hence, ensuring Rule of Law is the basic pre-requisite for enterprise building. Stolper, A. and Walker, M. (2007) highlight the functions Rule of Law serves in enterprise building as:

- Rule of Law ensures due process and predictability;
- Rule of Law protects entrepreneurship and small business development by establishing clear and objective rules for opening, operating and closing a business;
- Rule of Law imparts stability, certainty and clear legal boundaries for property rights;
- Rule of Law forces greater accountability of public officials;

Through these functions of Rule of law, it facilitates economic growth by creating more welcoming environment for the entrepreneurs where they will be able to perceive risks before hand and

mitigate it. Some major aspects of Rule of Law that are important in enterprise building are explained in the remaining chapters of this book.

3

Aspects of Rule of Law

a) Safety of Life and Property

Enterprises are only built if entrepreneurs feel secure about their life and property. The freedom to keep and use one's legally earned private property is the fundamental incentive that drives the process of enterprise building. Entrepreneurs face huge risks which they have to assume and manage in the process of enterprise building. Therefore, the incentive for them to take those risks is that they get to keep, control or use the fruits of the labor i.e. the profit they earn in forms of propertyⁱⁱ.

In the International Property Rights Index, 2010, Professors of Economics and Political Science at the London School of Economics Tim Besley and Maitreesh Ghatak summarized four ways of how insecure property rights negatively affect economic activity. "First, insecure or weakly

enforced property rights increase the risk of expropriation, which diminishes incentives to invest and to produce. Second, insecure property rights decrease productivity by necessitating the need to defend property. Third, insecure property rights fail to facilitate gains from trade (i.e., if property rights are not full or entirely secure, assets sometimes cannot be transferred to those who can use them most productively). Finally, Property serves as an important tool in supporting other transactions such as obtaining financing via its role as collateral.” (Besley & Ghatak, 2009 as cited in Jackson, K.A., 2010)

A very good example of how Property Rights is linked with economic development can be drawn from the context of what Hernando De Soto calls ‘dead capital’ in his famous book, “The Mystery of Capital”. Peruvian economist Hernando De Soto explains in the book that the so called ‘poor’ population of developing countries and former communist nations hold an immense amount of informal capital that amounts to trillions of dollars. However, due to the bureaucracy of these countries’ governments and lack of a system to formalize this property, it has turned into ‘dead capital’ which cannot be reinvested and thus

cannot be used in building economic prosperity. Hence, Property Rights ensure productive use of resources which is directly linked to economic growth. Without well functioning property rights, people cannot invest their resources for a couple of reasons. In the first place, without the necessary Property Rights, people will not have the rights to control or use the resources they have. This will prevent innovation and overall production. Secondly, even if they could, they would not be willing to do so because there is no guarantee that they will be able to keep the profit they earn out of their creativity, hard work and the risks they take. Hence, the incentive is killed and thus no investment takes place which in turn, prevents production. Without production, there is no economic growth.

Therefore, right to property is very important for economic growth and only Rule of Law can provide the necessary environment for the safety of property. Nepal ranked 100th out of 129 economies from around the world in the International Property Rights Index Report 2011. With a mere score of 3.2 out of 10 in the subcategory of Legal and Political Environment

owing to the decrease in the sub-categories of Rule of Law, Political Stability and Control of Corruption, Nepal has not fared very well in terms of maintaining Rule of Law.

When it comes to property, there are different forms of private property and one of the important kinds is the Intellectual Property Rights. According to World Intellectual Property Organization (WIPO), Intellectual property (IP) refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. (WIPO, n.d)

Understanding of intellectual property rights is important for entrepreneurs because it helps protect the innovation of the entrepreneur which could range from a product's name to a software to website to logos and a lot of other things. Some major aspects of Intellectual Property Rights are trademarks, copyrights, patents, trade secrets and other contractual and licensing aspects.

Nepal embraced the idea of Intellectual Property Rights by Patent, Design and Trade mark Act, 1965 which was amended in 1987 and was

again amended in parts in 1987 & 2006. Nepal is also a member of World International Patent Organization (WIPO) since February 1997. In terms of Intellectual Property Rights (IPR), in the International Property Rights Index of 2010, Nepal scored only 4.1 out of 10 which was 0.6 points increase from the previous year.

b) Limiting Government Arbitrariness

In terms of Civil liberties, Rule of Law ensures that the necessary individual freedom in a democracy is exercised and in terms of facilitating Enterprise Building, Rule of Law ensures economic freedom. However, as much as Rule of Law implies the fact that the government is able to enforce the law, it is also about constraining the power of the government by legal institutions and means. Without economic freedom, entrepreneurship does not foster and without entrepreneurship, enterprise building is not possible. Thus, in this context, to be able to establish the necessary economic freedom, Rule of Law serves as the tool to limit government arbitrariness. Why is it necessary to limit the role of government as far as enterprise building is concerned? “First of all, the government naturally has greater power than individuals because the government possesses an array of coercive means, an example of which is the police force that common people do not have. Secondly, without constraint, it is very hard for the government to refrain from discretionary interventions that are often arbitrary and harmful

to economic activities.[...] Thirdly, as economic agents rationally anticipate such government behavior, they become reluctant to invest, chase short-term and small-scale projects, and bribe government officials. This is one major reason why some economies stagnate” (Qian, Y., 2000)

When it cannot be predicted whether a government will issue a permit, confiscate or nationalize the investments of business people, tax them into bankruptcy, or arbitrarily stall their operations, people tend to do business elsewhere. This type of unpredictable environment with profound government arbitrariness is not conducive to enterprise building. It drives businesses away creating unemployment. Similarly, when the government arbitrariness is too high and there is very less predictability for business people to run their business, they tend to opt for other survival mechanisms like bribing or using personal connections. This might in turn create monopoly too. Government arbitrariness then invites a lot of malpractices where people with more money and power get special privileges. This undermines the main idea of Rule of Law where everyone is supposed to be equal in front of the law.

Some examples in Nepal where the government arbitrariness can be seen are when government agencies exert monopolies in certain business for e.g. petroleum products supply in Nepal. This can be further manifested from the fact where the government is involved in fixing the prices of goods rather than leaving it up to the market. It also applies in cases where governments create larger bureaucracies making it harder for entrepreneurs to enter and exit businesses. When regulations alter with the change of governments, doing business becomes hard and this problem is faced by a lot of entrepreneurs in Nepal. Besides this, in many instances government arbitrariness can be seen in the following areas:

- Randomness in resource allocation
- State subsidies, procurement, and state ownership
- Restrictive technical regulations and random standards where entrepreneurs require numerous permits and certificates for business activities
- Costly and lengthy procedures for business compliance issues
- Non- consistent policy and procedures

Hence, if Rule of Law is to facilitate the process of enterprise building it ought to be able to limit the government arbitrariness as expressed above and in many other forms. Rather than getting directly involved in production and intervening in market forces, the major role of government is to enforce necessary regulatory laws like contract law and bankruptcy law and maintain a competitive environment which will be discussed below.

Contract Laws

Enterprise building is based on market systems and all market systems are based on one fundamental principle i.e. voluntary exchange. When such voluntary exchange is to take place, the two (or more) parties involved in the exchange are willing to make the transaction based on certain terms and conditions which are formalized and legalized as contracts. These legal and formal contracts bind the parties involved in the exchange to deliver their promise and make a smooth transaction based on voluntary exchange. Basically, a contract is an agreement between the parties involved in the exchange which can be written, oral, or implied. However, a written contract is more binding than oral or implied. These agreements laid down as contracts create legal relationship of rights and duties on the parties. If the agreed upon exchange is breached, Contract Laws make it for the courts to take stringent action on those who breach the contract. Hence, Contract law includes laws, rules and regulations for developing and enforcing contracts and settling commercial disputes. The enforcement of such contracts is an important part of Rule of Law in the context of enterprise building.

Enterprise Building cannot flourish in the absence of legal guarantee that private contracts will be honored. This is even more important for small business owners and entrepreneurs because they cannot afford to sustain for a long time if contract enforcement is not swift and robust.

Well-performing economies have a high number of long-term contracts. The absence of reliable, low-cost contract enforcement in many developing countries has been cited as one of the primary causes of economic stagnation and underdevelopment” (Holden, P., January 2001 as cited in Agrast, M., Botero, J., Ponce, A., 2010). This statement can be related to the Nepalese context as well. Before we analyze the state of enforcement of Contract Laws in Nepal, let us first briefly look at the provisions for Contract Enforcement in the country.

LAW OF CONTRACT IN NEPAL

The history of law of contract in Nepal is not very long due to belated development of industry and commerce. Some provisions relating to contract could be found in Muluki Ain 1853. [...]

The Contract Act 1966

The Contract Act 1966 had defined contract as an agreement act between two or more parties to do or not to do any act. [...] However it was very short, insufficient and contradictory in some respects in comparison to the principle of law of contract. So it was pressed to enact new Contract Act by the stakeholders to address the growing demands of industry and commerce. As a result, new Contract Act was enacted in 1999 and came in to force on 2000.

The Contract Act 1999

The Act has made effort to address the new aspects of contract law developed in the developed countries as the demand of industry and Commerce. The Act contains 90 sections in all. Section 2 has defined 'contract' as an agreement concluded between two

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or more parties for performing or not performing any act which could be executed according to law . Similarly other terms, offer, acceptance and considerations has been defined.

Source: http://www.supremecourt.gov.np/main.php?d=lawmaterial&f=law_of_contract_in_nepal

For contracts to be enforceable in practice there must be an effective judicial system, where professional judges and prosecutors trained in relevant corporate and financial issues can base decisions on well-designed laws, and where the court has the capability to promptly execute judgments.

According to The World Bank and the International Finance Corporation's joint publication "Doing Business 2011 Report", in the section of Enforcing Contracts, where the efficiency of the judicial system in resolving commercial sale dispute before local courts is measured, Nepal ranks at the 123rd position out of 183 countries.

To look at the efficiency of Contract Enforcement in Nepal, the report presents the details as below. As shown in the table; there are 39 procedures that take about 735 days in order to enforce contracts in Nepal in Kathamndu District Court.

Court Information: Kathmandu District court ("Jilla Adalat")	
Nature or Procedure(2010)	Indicator
Procedures (number)	39
Time (days)	735
Filing and services	160.0
Trial and judgment	365.0
Enforcement of Judgment	210.0
Cost (% of claim)	26.80
Attorney cost (% of claim)	20.8
Court cost(% of claim)	3.5
Enforcement cost(% of claim)	2.5
* Claim assumed to be equivalent to 200% of income per capita.	
Source: http://www.doingbusiness.org/~media/FPDKM/Doing%20Business/Documents/Profiles/Country/DB11/NPL.pdf	

Rule of Law that ensures the achievement of a long-term growth, besides encompassing clear and consistent rules for the formation and enforcement of contracts and the settlement

of commercial disputes, should also include measures for claims arising from bankruptcy. In Nepal, issues of bankruptcy in business are guided by the Insolvency Act 2063 (2006).

A company becomes insolvent if it is unable to pay any or all of the debts due and payable to creditors or where the amount of liabilities of a company exceeds the value of the assets. A robust bankruptcy system also helps such companies to reallocate the resources from inefficient business to efficient business. If the insolvency procedures are simple, cheap and fast, companies can return to operation in a short time. But in the case of Nepal, according to The World Bank and International Finance Corporation's, Doing Business Report (2011), it takes 5 years to close down a business in Nepal which costs 9% of the estate and the Recovery Rate is only 24.5 cents on the dollar. The situation has seen no improvement with the set of data holding stagnantly true for Nepal since 2008.

c) Alternative Dispute Resolution Methods

Enforcing Contracts is an important role Rule of Law can play in Enterprise building. However, in countries like Nepal where it takes 5 years to enforce a contract (The World Bank and International Finance Corporation's Doing Business Report 2011), when contract disputes arise, it is wise, efficient and prudent to take advantage of Alternative Dispute Resolution (ADR) methods, such as mediation, arbitration, reconciliation etc. Providing an alternative to traditional court proceedings which are awfully lengthy, costly, inaccessible and inefficient, ADR methods enforce contract rights even more efficiently. This would be more beneficial for small business owners who often do not have the human or financial resources to navigate the judicial system.

According to Luitel, A.R. (2011), there were 58 mediation centers in 58 district courts of Nepal as of January 2011. In the last five years, Nepal's Supreme Court had formally adopted the practice of ADR — mediation, reconciliation

and arbitration — as a modern concept of settling court disputes by creating a win-win situation for both the battling parties. But there is no proper mechanism to refer these cases to the mediation centers for proceeding on ADR. Due to flaws in the system and non-cooperation from the stakeholders, the mediation centers have had a success rate of only about 10%.

In April, 1999, Nepal enacted the Arbitration Act, 1999 which provides provisions for agreements for the settlement (through arbitration) of any dispute concerning any specific legal issue, arising under a contract or otherwise. The Company Act, 2063 provides for the provision of commercial courts for dispute issues related to business and commerce. Few Commercial Courts have been established in various District Courts around Nepal but it is not a widespread legal practice as such.

d) Maintaining Competitive Environment

Over 60 percent of the poor in developing countries list self-employment or starting their own business as the best path out of poverty. (The World Bank, 2005 as cited in Stolper, A. & Walker, M., 2007). And the only way such aspirations of the poor could be turned into reality is ensuring free entry and exit for entrepreneurs which are the chief characteristics of competition. While free entry ensures more and more entrepreneurs to come in with their innovation, free exit ensures the allocation of resources from inefficient ones to efficient one. Therefore, competition is key to enterprise building. Without competition, there would be no markets and without markets, no enterprise building. Competition provides incentives for entrepreneurs to innovate and it is what makes good and services available in better quality, lower prices and with more choices all the time. In order to foster enterprise building, maintaining Free Competition in a market is a chief role of Rule of Law. The Competition Promotion and Market Protection Act, 2063 (2007) of Nepal prohibits all kinds of Anti-Competitive Practices.

Similarly, The Black Marketing and Certain Other Social Crimes and Punishment Act, 1975 also prohibited the practice of black marketing, deflecting of commodities, creation of artificial scarcity etc.

According to Gautam, R. (n.d.), some anti-competitive practices in Nepal are:

a) Creating Artificial Scarcity: In Nepal, big business houses are involved in purchasing huge quantities of agricultural products during the peak season from farmers who do not have the capacity to hold the stock. The business houses collectively stock these products in their warehouses for certain period. During the off-season, they start releasing the goods in a way that creates an artificial scarcity in the market. Creating artificial scarcity is essentially an unfair trade practice.

b) Collective Price Fixing: A number of commodity and business/ trade societies have emerged to represent the members of various professions with the objective of promoting their

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interests but have also been engaged in collective price fixing. Consumers have been regularly victimized due to the prevalence of curtailing in number of business practices.

c) Market Sharing Cartel: Industries in some sectors that are geographically dispersed have been dividing the market, based on the location and size of each factory, i.e. one producer is not supposed to encroach upon another's territory. Moreover, the players are seen to form price cartels within the same region. The consumers are left with no choice but to purchase the products at a virtual monopoly prices from producers located in their own towns. The market-sharing cartel prevails widely in the manufacturing sector. The reason for such cartels is politico-economic in nature.

e) Collusive Bidding or tendering: The very purpose of awarding contracts through bidding or tendering is to get the best possible offer at the lowest possible price. If the competitors collide and bid collectively, the whole purpose of bidding is defeated. The players involved in such activities blame

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blame government officials in the concerned offices who invite the tenders of the supply of these goods and services. bidding or tendering is to get the best possible offer at the lowest possible price. If the competitors collide and bid collectively, the whole purpose of bidding is defeated. The players involved in such activities blame government officials in the concerned offices who invite the tenders of the supply of these goods and services.

f) Resale price Maintenance: In Nepal, it is not mandatory for producers to indicate the price of the commodity in the packaging itself, although the Consumer Production Act has made this mandatory. Producers themselves are involved in fixing the minimum resale price of their products.

g) Tie-up Sales: Tie-up Sales are frequently used restrictive business practices. In each retail shop one can find a large stock of slow moving items and small stock of fast moving items on the shelves. If consumers want to buy a commodity that is scarce, they will also be forced to buy a quantity of slow moving items, which are in abundance. Tied selling

contd...

is widely prevalent in the education sector as well as in the public health sector. The mushrooming of private school should have reduced the cost of education, but the law of demand and supply has failed here. Schools have been making money through various tied selling practices i.e. books, dresses etc. Likewise, some of the private hospital patients are forced to make some routine pathological tests even if they are not required.

Source:(http://siteresources.worldbank.org/INTCOMPLEGALDB/southAsia/20965796/Competition_Nepal.pdf)

Theoretically, the Nepalese government supports competition on paper, however, it has not been able to maintain a competitive environment in the market owing to the anti-competitive practices as mentioned above. In recent times, from the cartels in the banking industry to syndicates in the transportation sector to Bid Rigging and tied selling, the Nepalese market has suffered from various anti-competitive policies. The Rule of Law has not been strong enough to put a check on these practices.

4

Challenges

Given the history of conflict and political instability, maintaining Rule of Law has been very difficult in Nepal. Moreover, ensuring Rule of Law for Enterprise Building has never been a priority agenda in the issues of good governance in Nepal. There are various challenges that have made the practice of Rule of Law feeble in Nepal, especially when it comes to markets and enterprise building. Some of the challenges are:

Weak Judiciary

A huge barrier to the effective enforcement of Rule of Law in Nepal is having a weak Judiciary which is made feeble by corruption as well as the complex and lengthy judicial processes. Cases of back-door deals are not new and surprising in the Nepali context and these cases reflect the corruption in the judiciary. Similarly, Court procedure in Nepal is very complex and costly which de-motivate the entrepreneurs from getting into big scale

exchanges. As big exchanges involve huge risks that is hard to calculate or assessed precisely, and without a strong judiciary, taking such risks is not logical. Hence, one solution to deal with such problems would be to create better and strong institutions that can check these malpractices that limit the scenario of enterprise building in Nepal.

Feeble Enforcement Institutions

As mentioned earlier, Nepal has all the laws in place that ensure vibrant market economy and enterprise building. From Contract Laws to Competition Policies to Dispute Resolution, Nepal has all the policies in place. The implementation on the other hand has always been feeble and lack of enforcement institutions could be one of the strong reasons. However, fundamental flaws in the policies regarding implementation could also be regarded as one of the causes.

Non-Acceptance of Rule of Law

The political trends in the past decade in Nepal have created a culture of Non-Acceptance of Rule of Law. A very common example in this

case would the widespread practice of ‘bandhs’ where people are forced to close down their business and transportation is stopped by the sheer use of force and threat. Not only do they cost the economy millions of rupees a day, they violate people’s right of safety of life and property and Rule of Law. Besides that, extortion from political and non-political entities has been one of the major problems in the business sector. Similarly, time and again, there are cases of political party representatives being involved in anti-legal activities. In the process of drafting the constitution as well, there has been debate about putting the judiciary under the parliament and not keeping it independent. Such instances show the Non-Acceptance of Rule of Law in Nepal at political and civic level which is a major challenge for enforcing Rule of Law in Nepal.

Conclusion

To bring about economic growth, people of a nation should be creative. They should produce things and get largely involved in production and market exchange. This needs investments and investments are risky. In this scenario, having Rule of Law makes it possible for people to predict and mitigate the risk. Only when people are able to do that, investments take place and economic growth becomes a possibility. Hence, the role of Rule of Law in enterprise building is a very important one. In fact, having a strong Rule of Law (and not Rule by Law) is where enterprise building and economic growth begin. As discussed above, some major aspects of Rule of Law in ensuring economic growths are Private Property Rights, enforcement of Contract Laws and dispute resolution and maintenance of Competitive Environment. “Defining property rights, preserving fair competition, fighting monopoly and enforcing contracts are all essential to economic development because they are

necessary for establishing credible commitments among economic agents. Without the enforcement of contracts, economic agents cannot become motivated because they will always worry about opportunistic behavior of the other parties to the transaction” (Qian, Y., 2000). Hence, Rule of Law is instrumental in creating an environment where enterprise building can foster. As mentioned earlier, Nepal has various laws and provisions on paper to ensure a conducive environment for enterprise building. Nevertheless, the country has always lagged behind in implementing it. Be it due to inherent flaws in the laws and policies or weak enforcement mechanisms and institutions or corruption, there are a range of challenges in the enforcement of Rule of Law in Nepal. One more important thing to note is that, the major role of the government in enterprise building is maintaining Rule of Law rather than acting as an economic agent itself.

Thus, for enterprise building to take the country forward in the path of prosperity, Rule of Law is one of the pre-requisites and it is the state’s prime function to ensure it. For Rule of Law to sustain, the legal system must be able to define the laws

clearly to avoid conflicts and keep it simple. Those laws must then be secured through access to a legal system which does not cost people their fortune both in terms of time and money.

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Notes

ⁱ The Divine Right of Kings is a political and religious doctrine of royal absolutism. It asserts that a monarch is subject to no earthly authority, deriving his right to rule directly from the will of God. The king is thus not subject to the will of his people, the aristocracy, or any other estate of the realm, including the church. http://www.newworldencyclopedia.org/entry/Divine_right_of_kings

ⁱⁱ The definition of Property ranges from money to other tangible things of value (like lands, buildings and other assets) to other intangible things like creations of mind too. Basically, property encompasses any material that is a source or element of income or wealth.

Samriddhi, The Prosperity Foundation

Introduction

Samriddhi, The Prosperity Foundation is an independent -- non-partisan, not-for-profit, research and educational, -- public policy institute based in Kathmandu, Nepal.

Following the April 2006 movement for democracy that marks the re-emergence of political freedom in Nepal, it has been established with the vision of “a free and prosperous Nepal where individuals can live a dignified life in a vibrant and democratic society with equal access to opportunities and respect for rule of law.”

Samriddhi operates with a three-tier approach to achieve its mission of promoting ideas of civil, political and economic freedom through public policy recommendations (based on independent research), educational programs and public participation. Samriddhi believes in the power of private entrepreneurs as a key to economic development and engages in fostering democracy and building a conducive environment for economic growth.

Following are some of the programs Samriddhi is currently engaged in:

01. Education and Training Programs

Education and Training Programs of Samriddhi, The Prosperity Foundation is largely about working with the youth to reinvent the entrepreneurial zeal among the young population of the nation. Most educational and training programs are with youth from undergraduate and graduate levels. One day workshops, residential programs, discussion programs, documentary features on issues related to entrepreneurship, public policies that affect the market and economy come under these programs. Some of Samriddhi's regular programs on Education and Training are :

- a. Arthalaya** – School of Economics and Entrepreneurship
- b. Neetishala** – The Public Policy Discourse
- c. Docu-Talks-** (Discussions on Documentaries related to entrepreneurship and livelihood)
- d. Internship** opportunities for the youth

02. Research and Publication

Samriddhi conducts research on several public policy issues. Its area of interest lies on research related to economics and political economy. Mostly, the research it conducts is related to studying the impact of policy on livelihood issues. Such researches are published by the organization in print and in website along with several other publications

for e.g. a yearly handbook for entrepreneurs in Nepal titled ‘Towards Enterprise Building in Nepal’ and translated versions of international books relevant to promoting economic freedom in Nepal. Samriddhi has also been publishing a series of pocketbooks to educate and inform about the importance and roles of various fields like Rule of Law, Economic Freedom, etc. in promoting the private market to build a prosperous Nepal.

03. Public Outreach

Public Outreach of Samriddhi involves hosting discussion programs on contemporary issues, organizing interaction programs that draw policy makers’ attention to alternative solution on issues, creating a platform for entrepreneurs to speak and network through talk programs and using national and international networks to bring people from relevant sectors with varied experiences to discuss on several global policy issues.

Besides this, Samriddhi is proud to be associated with National Campaign for a Livable Nepal- Gari Khana Deu!! (www.livablenepal.org), which is an effort to raise voices to end the prevailing lawlessness and impunity in the country by advocating rule of law, safety of life and property and freedom to pursue livelihood and enterprises in Nepal as

essential preconditions to a livable country. In addition to its programs, to encourage research and scholarship in the area of political economy, Samriddhi hosts a Political Economic Resource Center (PERC) in its office premises.

Few Programs under Public Outreach are:

a. Policy Talkies

b. Last Thursdays with Entrepreneur (in collaboration with E4N)

c. Occasional Discussions

d. Campaigns (Democracy is...: A Peoples' Campaign)

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Other Publications

1. Towards Enterprise Building in Nepal
2. Towards Enterprise Building in Nepal II
3. आर्थिक स्वतन्त्रता
4. उद्यमशीलता विकासमा बजारको भूमिका

*These publications are available at:
Samridhi, The Prosperity Foundation*

