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Post-Earthquake Resurrection: Jurisprudential Diagnosis from the Standpoint of the Earthquake Victims

Anil Kumar Shrestha*

Abstract

Natural disaster is an ongoing phenomenon and among many, the earthquake is one. Nepal holds 11th position in the world as an earthquake prone country because of its geological formations. This paper endeavours to analyse the ongoing reconstruction and rehabilitation efforts taken by Nepal Government after the massive earthquake of 2015. The quest of Building Back Better (BBB) under the resurrection schemes for families, whose houses have been collapsed and challenges are encountered per se, following the statutory enactment and underlying opportunity and threats have been diagnosed in this paper. This study is based upon the field research done in course of conducting 90 different Community Mobile Legal Clinics (CMLCs) in the house of the earthquake victims in three most crisis hit districts i.e. Sindhupalchok, Gorkha and Bhaktapur, where these clinics were designed to meet triad objectives of legal awareness, consultations and legal aids. The study further attempts to reflect the functions of National Reconstruction Authority for excelling the pace of reconstruction.

1. Introduction

On Saturday, 25 April 2015 at 11:56 of local time, a 7.6 magnitude earthquake- as recorded by Nepal's National Seismological Centre (NSC)-struck Barpak, a hilly place in the historic district of Gorkha¹. The catastrophic earthquake was followed by more than 400 aftershocks greater than the magnitude of 4.0. Four aftershocks were greater than 6.0 magnitude, including one measuring 6.8 with the epicentre in the Dolakha district and it struck 17 days after the first big one². After the quake, an analysis of the data of each affected district were framed, in combination with the data on population, which reveals that the average values of disaster was more

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1 Nepal Earthquake, Post Disaster Needs Assessment Executive Summary, Government of Nepal, National Planning Commission, Kathmandu, 2015

2 White paper announced by Government of Nepal on November 24, 2015

than NPR 255,860 per person in Dolakha to NPR 43,800 in Makawanpur causing an average of NPR 130,000 per person across the 14 most affected districts.

Followed by earthquake alone, 7,00,000 people are added to poverty line after the earthquake and among them, 60% belongs to mid-hilly and mountainous region³ and it has been doubted that the economic growth rate in upcoming fiscal years is likely to be affected. To date, there are over 8,790 casualties and 22,300 injuries. It is estimated that the lives of eight million people, almost one-third of the population of Nepal, have been impacted by these earthquakes. Thirty-one of the country's 75 districts have been affected, out of which 14 were declared 'crisis-hit'⁴ zone. Reports indicate that 15,001 governmental buildings and 288,797 private (residential) buildings have been completely destroyed following the initial quake.

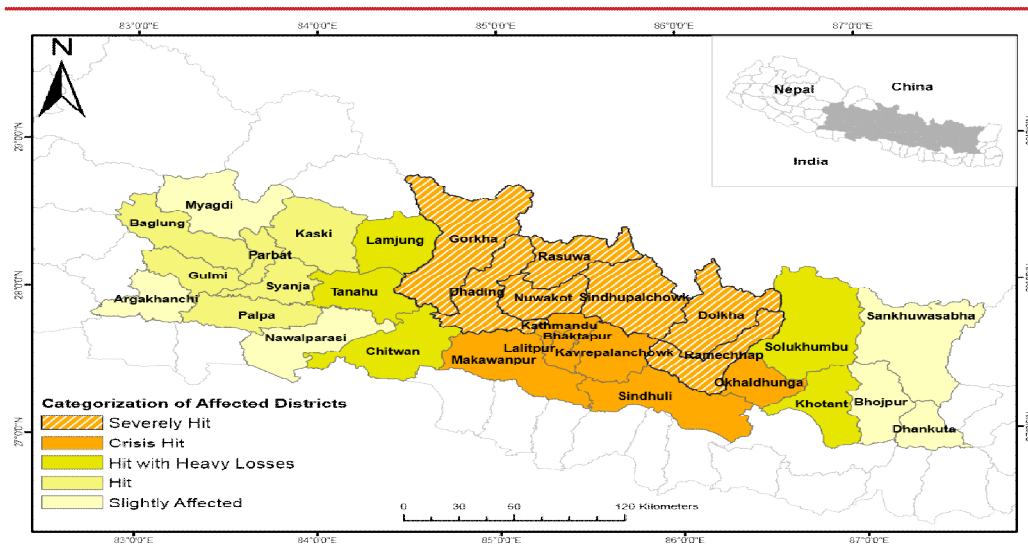


Figure 1 Categorization of the earthquake affected districts, Source: Post Disaster Need Assessment, National Planning Commission, Nepal Government, 2015 cited from Ministry of Home Affairs (2072/02/11)

Access to justice is a basic human right as well as an indispensable means of combating poverty then resolving and preventing conflict⁵ as UNDP defines access to Justice as, “the ability of people to seek and obtain a remedy through the formal or informal institutions of justice, and in conformity with human rights standards”⁶ then recognizes that access to justice includes the ability to access the judicial system but has a broader scope than mere litigation. It needs to be understood much more than improving individual's access to courts or

³ Ibid.

⁴ Nepal Earthquake, Post Disaster Needs Assessment Executive Summary (1).

⁵ Access to Justice, Practice Note UNDP 9/3/2004.

⁶ 'Programming for Justice Access for All. A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice', UNDP, Bangkok, 2005, p. 4.

guaranteeing legal representation. It is also one of the heavy challenges for the state alone to provide access to justice for all. In some instances, state actions are the cause of injustices. In the Nepalese context as well, a larger portion of people are unable to have equal access to justice owing to their economic and social considerations. The situation of some hilly and Himalayan districts of Nepal is even worsening after the big disaster of earthquake. More importantly, the disadvantaged and marginalized social groups in the affected districts have suffered much. Nepal government together with help of different friendly nations' governments, donor agencies, UN agencies and various other actors has shown deep commitment to materialize the situation according to the Post Disaster Need Assessments (PDNA). The government of Nepal has announced and has been adding more support for different reconstruction and rehabilitation packages to support the earthquakes victims through one door policy. Similarly, some announcements and plans forwarded in ad-hoc basis are not reaching the victims of earthquake.⁷ Meanwhile, government has issued "Earthquake Victims' Family Identity Card" having records of each family with details of damages suffered by them. Enlisting them in the beneficiary list, that card will be used as a basis to provide all support and facilities by the State.

This paper is based on the observation made and research conducted on the 90 Community Mobile Legal Clinics (CMLCs) by the institution named 'Forum for Nation Building, Nepal (FNB) in three different districts: Gorkha, Sindhupalchok and Bhaktapur. Clinics were conducted between from January to December, 2016. One of the interesting findings from the researched locations was that people from remote parts of the country and even from urban areas were not aware about: the legal procedures about getting enlisted under the beneficiary list, process of getting housing grants, accessing to banking and government bodies for getting financial loan, and making different legal documents of their needs. Similarly, even in few VDCs, village secretaries, who are the focal point for providing support to earthquake victims, too were unaware about the updated government plans, policies and procedures of dealing different legal issues. Those earthquake victims, who have signed the housing grant agreement, did not know what are the terms and conditions stipulated there and their legal obligations, which have been discussed in the following headings in detail.

2. Ongoing Reconstruction Initiatives

It is an undeniable fact that the 25th April earthquake and its aftershocks destroyed and damaged over a quarter million houses. While 8.1 million people were directly affected, millions mainly across the rural areas were exposed to numerous

⁷ Government of Nepal has announced NRs 10,000 support to earthquake victims to buy warm clothes for the year 2072 as a part of relief package. And first instalment of relief amount (NRs 3, 00,000) and privileged loan up to 3, 00,000 whose houses are completely collapsed.

vulnerabilities. Major life-supporting ecosystems were also severely damaged. Across the country, people still talk about the disaster that left 2.8 million people displaced, including families, who live outside the impacted regions. To rebuild them safe and smart, Nepal remains troubled with the ongoing struggle and lack of visible progress⁸.

After reaching to several thousands of April earthquake victims, it is expedient that in the worst hit regions, whole villages were left with only a few habitable buildings standing. Hundreds of thousands of Nepalese are still living in the cramped huts, made from corrugated iron sheets and tarpaulins; they put together in a hurry. Similarly, both in the cities and villages, the people, who have lost their homes, will most likely have to spend another few years, if not even longer, in their temporary shelters. Some disputes and problems are in one hand impairing people for approaching for reconstruction and rehabilitation. Concerns about land ownership, slum dwellers, tenancy issues, and less access to the financial institutions for the victims are some of the key reasons behind it getting halted.

In other hand, unavailability of trained human resource for the expected modality of reconstruction, increasing expenses of building materials, insufficiency of the housing grant and lengthy cum complex subsidy loan procedure, ignorance of the victims regarding the installment practice for the housing grant distributed by the government, costly clearance of debris, few of the crisis hit places being further prone to landslides, soil erosion and floods have posed further challenges. Thus needy people have been acutely waiting a support package promised by the government to begin rebuilding their homes. But the delay in it has substantially decreased the pace of the reconstruction. Meanwhile, as of December 2016, 715,319 households in 11 earthquake hit districts, and 1, 88,064 households in Kathmandu valley have been surveyed. Among those, 5, 31,964 in 11 districts and 94,072 households respectively have been enlisted as beneficiary of grant thus signed housing grant agreement while 476,103 in 11 districts and 66,074 in valley have been provided with the bank account deposits of first tranche of housing grant⁹. Similarly, 202,170 grievances were registered¹⁰ within the same date from those, who had been abandoned for not pleasing the terms and conditions of total damaged house for the housing grant.

Despite the fact that Nepal government has position and commitment to materialize the post disaster situation, the process of realization have not been accelerated in the preface of completing even after 23 months of the massive earthquake. Meanwhile a most awaited law for addressing the issue of

⁸ <http://www.empowergeneration.org/earthquake-one-year/>, assessed on 5th October, 2016.

⁹ <http://nra.gov.np/uploads/docs/ctQFbclKaF161229054220.pdf> , (Nepalese), accessed on 25th January, 2017

¹⁰ <http://www.nra.gov.np/uploads/docs/Pl6nGLjMsB160823111419.pdf>, (Nepalese), accessed on 25th January, 2017

reconstruction named, an Act Made to Provide for Reconstruction of the Earthquake Structures with the major arrangements of National Reconstruction Authority (NRA) was enacted only after nine months, at the end of the year 2015. This has been one of the major hindering factors in the process of the reconstruction itself. In contrast, PDNA clearly mentioned that "as the earthquakes in Nepal have left a large part of the country shaken, the need for recovery is immediate and urgent. But various obstructions have been shattering the initiative taken by the government so far. People have already initiated their efforts for recovery, and they expect the government to help in the process as quickly as possible. As the government prepares to develop a large-scale recovery programme on the basis of the PDNA results and the Reconstruction Act, there is a widely shared realization that it has to be a multi-pronged effort with a strong orientation towards the poorest and the most vulnerable section of the society.

3. Reconstruction Act and National Reconstruction Authority

The National Reconstruction Authority (NRA) was constituted on 25 December 2015, following the enactment of the Act, which was made to assist Reconstruction of the Earthquake affected Structures, on 20 December. The basic objectives behind the enactment of the Act are to promptly complete the construction of the structures, which are damaged due to earthquake and subsequent aftershocks, in a sustainable, resilient, and planned manner. Promoting the national interest and providing social justice by making resettlement and translocating the persons and families displaced out of EQ¹¹ through the powerful body i.e. NRA is another to second. The NRA began setting up office at a time when public expectation was that the reconstruction should begin immediately across all earthquake-affected districts. Even though the authority did not have basic physical facilities, human resources and policies needed for undertaking reconstruction at the required scales and it is still not adequately formulated.

Functions, Duties and Authority of NRA¹²

The NRA is a coordinating and facilitating body formed by the Government of Nepal to manage, oversee and coordinate the reconstruction work. By law, its functions include assessing the damages caused by the earthquake and its aftershocks, fixing the priorities of reconstruction, preparing policies, plans and programs, and facilitating implementation. It can carry out reconstruction, or ensure that it is done through different agencies, obtain land for reconstruction, and prepare plans for developing integrated settlements for ensuring that

¹¹ Preamble, Act Made to provide for Reconstruction of the Earthquake affected Structures, 2015 A.D

¹² <http://nra.gov.np/pages/details/about>. URL accessed on 25th January 2017.

reconstruction is carried out in the prescribed manner, in accordance with established safety standards.

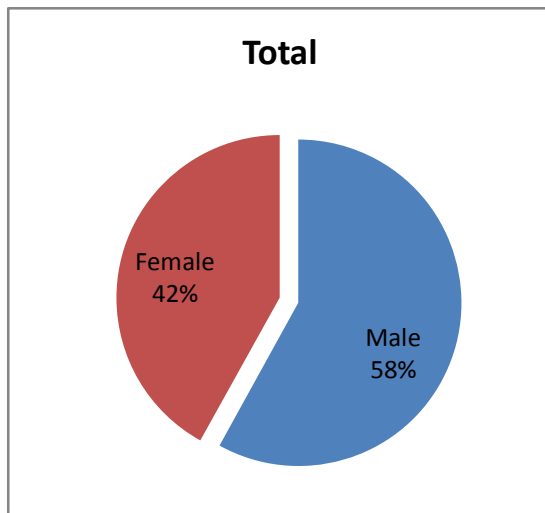
The NRA is also responsible for coordinating the work of, and collaborating with, non-governmental organizations, private sectors or communities as they relate to reconstruction. It is also empowered to raise financial resources for reconstruction and to make arrangements for effective use.

The Authority is responsible for carrying out technical reviews of damaged or unsafe physical structures and order safe demolition, where required. For all practical purposes, it is the one-stop institution to oversee, coordinate, and facilitate Nepal's effort to build back better – that underpins the reconstruction policy.

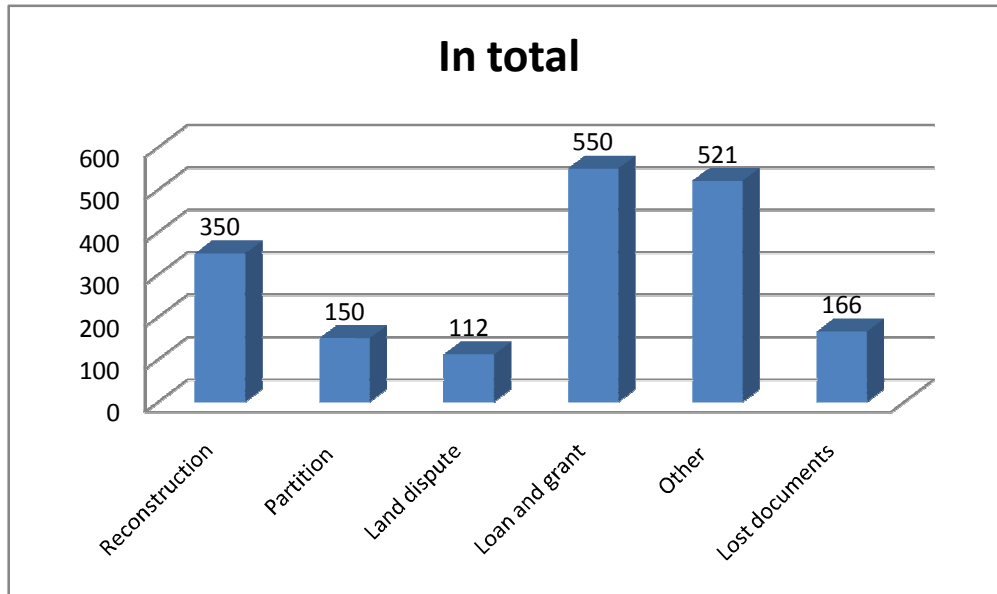
4. Establishment of Community Mobile Clinics and Research

Total 90 mobile legal clinics were conducted and the very same were taken as the basis for study. Thirty mobile legal clinics were established in each of Gorkha, Sindhupal Chowk and Bhaktapur districts. There were 7865 participants' altogether; and out of which, there were 4540 males and 3325 females.

The community mobile legal clinics were conducted in two steps. Legal literacy classes were followed by group questions in first step and the group and individual consultation and counselling was provided in second step, from where the problems were studied for this purpose. Majority of cases discussed and consulted in the clinics were related to government's loan and subsidy scheme, partition of property, earthquake victims excluded from beneficiary list of government housing grant, lost documents and many others.



5. Cases Pattern Received during the Clinics



There was consultation program in the clinic followed by legal literacy classes, in which participants of the clinic raised different questions and concerns related to different topics. Total around 2000 people were benefited from individual and group questions and consultation. The cases discussed and consulted during this session were related to different categories like reconstruction, partition, land dispute, loan and grant, other and lost documents. Out of total cases, the highest number of cases was related to housing loan and grant, then after, others were reconstruction, lost documents, partitions and land disputes respectively. Under reconstruction category, people asked questions related to house reconstruction after the earthquake as how they can reconstruct, what support the government can provide to reconstruct their houses and like that. Likewise, under partition category, they asked questions like lacking partition of land certificate and other partition issues they are facing i.e. 3-4 storied house was dismantled thus how to make partition for 3-4 families is question. Among 4-5 people, if someone is abroad then how to make partition was full of confusion. Similarly, under land dispute category, people raised questions regarding dispute that occurs among people, between adjoined houses, neighbours, etc. Likewise, under loan and grant category, people raised questions regarding loan and grant which government has provided to earthquake victims to build their houses. Under lost documents category, people raised questions regarding their lost documents after their houses

were damaged by earthquake. Some people asked questions about how to make land certificate as they lost it when earthquake damaged their houses and lost it under the debris of rubbles. Other asked about how to make copy citizenship certificate and mark-sheet which were lost or damaged. In this way, various concerns of the earthquake victims were addressed and major findings expressly imply the ignorance of the people about the law and procedure for getting benefits about the reconstruction support from or through government.

6. Problems Encountered

Many of the typical problems, which needed special process and expertise as well as strong advocacy for resolving those effectively, in the researched districts, had been, reported during the launch of the CMLCs activities. In line with, it was found that in the hill districts, there are presence of many organizations/NGOs, basically supporting in the rehabilitation and reconstruction from livelihood and technical support perspective. However, it significantly lacks the legal awareness and counselling as well as support. Which have again highlighted and justified the intervention through CMLCs. In the quest, some disputes and problems are, in one hand, impairing people for approaching for reconstruction and rehabilitation and, in other hand, the slow undertaking of NRA, a powerful office to carry out all the functions of the restoration, is not smoothly functioning. The major constraints against the acceleration of overall reconstruction and inertia in concerned authorities may be summarized under following sub headings:

Land Ownership Issues:

Most of the grievances filed so far against not incorporating earthquake victims under the beneficiary list are concerned with the problems like; land ownership, slum dwelling victims, tenancy issues, or in nutshell property related issues. The Procedure of NRA mandates, under the law, to enter into housing grant agreement to the listed beneficiary for the reconstruction of houses only if they could suffice with land ownership or possession certificates or proof. Nepalese Land holding pattern is yet to be systematic since there is guthi (kind of Trust land System) and Raikar Land System. Whereby, under Raikar Land system too, there is dual land holding i.e. land owner and tenants, and those tenants, who have been serving the land don't own land ownership certificate and without that neither they can conclude agreement nor get the first tranche of the grant. The condition regarding the Guthi land is also same. While, many of the people are landless in the particular areas and during course of time they happen to construct the house either in the government or other private individual's lands, but again they don't have their own land for building new houses following the building code.

Meanwhile, the stake in the parental property is inherent in Nepal and all the heirs have legal right to claim that, however, in the research area, they are not partitioned for generations in the many of affected families. Often the owners

may have died early and living heir may not have transferred the ownership. While there are ongoing disputes between the co-heirs of the parental property, it automatically affects the reconstruction and getting government announced housing grant. Government has tried to address the issues related with the landlessness, tenancy and guthi land and to those, who don't own any piece of land, through directives with very short notice. It aims at providing some 1300 square feet of the land to each landless family with set procedures. However, many of the targeted EQ victims were ignorant and have not approached.

Access to the Banking and Financial Institutions

Since Government of Nepal (GoN) has made mandatory provision that all the grants shall be provided through the banking and financial channels, the access to such institutions is major concern. It is reasonable and seems to be effective and may control the insecurity or misuse and checks other possible threats. However, access to banks and financial institutions is not so possible and feasible to each of the EQ victims. Less access to the financial institutions for the victims is one of the key reasons behind reconstruction getting halted. In this course, government has disregarded the role of local cooperatives and finance.

Immediately after earthquake¹³, GoN declared two sorts of subsidy loans, which have been later classified into two types i.e. one is 'EQ Victims Special Housing Loan' issued through Nepal Rastra Bank (NRB) licensed any bank of A, B, C class against of sufficient collateral mortgage and next 'EQ victims subsidize loan' under collective guarantee through any D class micro credit financial institutions. For the former sort of loan, NRB has already issued circular to all banks but only nominal EQ victims have been able to approach while rest have been confused, and for next sort of loan, NRA is yet to bring the procedure. Hence, in one hand, GoN is yet to bring systematic procedure and effectively monitor the flow of the loans while whether all the EQ victims have access and aware about the technical knowhow of the loan process is major question. In this regard, legal awareness and advocacy for easy access to loan process and smooth flow through nearest banking and financial institution is most. In other hand, proper counselling will also be required for giving best alternatives to EQ victims for effective utilization of the subsidy loan. Importantly, many of the bank managers have taken it as part of corporate social responsibility rather than binding obligation while NRB has not made banking and financial institutions mandatory to issue the subsidy loan to earthquake victims. Similarly for the fiscal year 2073/74 B.S, no renewal of the directives for assuring the loan amount by NRB has additionally threatened and converted the subsidy loan. In this context, banks have proven that their priority is to multiply their profits investing in the other sectors than that of victims.

¹³ <http://nra.gov.np/uploads/docs/eiB4QYFrzS170111070413.pdf> , (Nepalese), accessed on 8th September, 2016

Technical and Other Concerns:

After earthquake, Nepal has entered in the unparalleled and unprecedented construction and reconstruction phase. In due course, the requirement of varieties of construction resources and human resources are most. Once the first installment of financial assistance is already offered and victims have begun building houses, for getting the second, third and fourth tranche of the housing grant, the compliances to the existing building code and requirement house map are primarily important which have again confused the EQ victims.

It is undeniable fact that after experiencing the devastation and irrevocable loss with earthquake, the new construction shall encompasses all the possible drawbacks made previously. NRA has appointed over 15 hundreds of engineers, sub engineers, overseers and surveyors for looking after the proper utilization of the government investment in the private buildings but they are again found to be engaged in strike for illustrating their hardship in grassroot level. Without the field supervision and inspection and recommendations, victims won't get other installments. So far NRA and government have not been able to deploy and function properly; and it has again derailed the dream of effective post earthquake resurrection.

Reconstruction Prior to the Distribution of Housing Grant

In the quest of the reconstruction, it has been reported frequently that many of the fake victims have reached or taken the advantage of the subsidy grant and other benefits while many of the first hand victims have reached in the state of missing in the process of getting benefit¹⁴. Because of the slow reconstruction initiatives, reconstruction Act was enacted quite late only after the nine month of earthquake thus so many confusions have remained unsettled. Out of that many of the EQ victims, who are listed under the beneficiary list of the government, have either already started or completed the construction of their houses on their own. Having it done with or without government's supervision and inspection, and formally not going through the terms and condition of the earthquake resistant houses and existing building code, the enlisted victims will be ousted from enjoying the housing loan.

In this context, the procedure set by the government to provide the grant on all four installments after getting the progress of construction verified is questioned. While, the requirement of following building code, 2065 B.S and other directives are most for getting all the grants and subsidy government has declared so far. So any EQ victim listed as beneficiary shall be going through this examination

¹⁴ Mallikashakya, 'the cracks are still open', 25 April 2016, *official website* available at <http://www.thehindu.com/opinion/op-ed/The-cracks-are-still-open/article14255351.ece>, accessed on 3 May 2017.

whereby many of those victims, who have already constructed their houses, are posed in difficult juncture.

Grievances Handling Mechanism

As stated earlier, more than 200,000 grievances have been already filed from 14 crisis hit districts and it will be increasing even more after the completion of the housing grant agreement being signed. It seems that almost 25 percent of the preliminary EQ victims, who have got twice the relief package from GoN, won't be getting housing grant. According to the EQ Reconstruction related Acts, there is a redress mechanism set for immediate appeal and tribunal is to be formed for addressing the enquiry of the EQ victims and their grievances. Most of the EQ victims are ignorant about it and if not taken seriously, many of them, who are once victim of disaster, are prone to be victim of the defective system too.

Since the Act concerning the Reconstruction has made the appeal committee so far, proper mechanism under the Act has not been made effective.

7. Conclusion

Upon the preface of the right to live dignified life, right to adequate housing, right to equality and non-discrimination, which are recognized as fundamental rights in the constitution promulgated after the massive earthquake, victims are still awaiting their losses to be healed. April earthquake knocked people of affected districts like an unwarranted dream, which has now generated thousands and millions of other dreams where people definitely want to live happily with other priorities other than only the resurrections, post to earthquake. Nepal Government's one door policy for reconstruction is praiseworthy if it is properly regulated and efficiently done. The concept of powerful statutory Authority again emphasized the government priority. However, the turtle motion for effective realization of the objective set by the reconstruction legislation has significantly impaired the dream of large affected population and all supportive hands. In this milieu, Community Mobile Legal Clinics conducted to earthquake victims of three districts Bhaktapur, Sindhupal Chowk and Gorkha have been very fruitful thus achieved its objectives of serving the earthquake victims and getting acquainted with the ground realities. Participants found the clinics very fruitful and helpful to solve the problem they are facing. From the research and analysis done, it is seen that majority of the participants of the clinic were interested to know about the government subsidy and loan and the procedure to be benefited from those facilities.

Due to the delay in collecting the data of the genuine victims, there is potential threat of fake victims getting benefitted and real victims getting deprived of the

housing grant. It has been expedient that the legal awareness, consultancy and legal-aid support to the earthquake victims have primarily been appreciated as helpful to give concrete awareness and substantially enhanced process of getting grant and subsidies declared by the government. Different supporting organizations, active locally and nationally, approached for taking subsidized loans and for process of getting important documents which were either lost or damaged during earthquake. Similarly, active and meaningful participation of targeted beneficiaries in the community mobile clinics and dissemination information and its services was crucial. Supporting the victims' concern and follow up cases of earthquake victims on their legal needs is recommended. Similarly, some of the typical problems in the particular district or area have been reported as those need special process and expertise as well as strong advocacy. Similarly, the media campaigning as well as reach of general information shall be added for reaching large masses of the earthquake victims for resolving typical or individual problems. In addition, the concept like community mobile legal clinics for supporting the earthquake victims on their legal issues and providing concrete information and consultation services are considered as unique approach so far.

The cases, which were not forecasted even by Nepal government for providing relief amount to landless tenants, whose houses were damaged and even included in beneficiary list but are being encountered with problem due to having no land certificates, demand due address. It was found that majority of the participants were interested to share or felt comfortable to ask questions or do consultation in group.
