PRIVATISATION OF PUBLIC SECTOR UNDERTAKINGS IN NEPAL
(A CRITICAL STUDY OF POLICY, LAW AND STRATEGY)

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Submitted by
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DEDICATED TO

MY BELOVED PARENTS

PROF. DHRUBA BAR SINGH THAPA

&

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DECLARATION

I hereby declare that this dissertation is the out come of my research under the guidance and supervision of Prof. Dr. N.L. Mitra, National Law School of India University, Bangalore. This work is original, except for such help taken from such authorities as has been referred to the respective places for which necessary acknowledgments have been made. I further declare that this work has not been submitted any where either in part or in whole, for any degree or diploma at any other University or Institution.

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CHAPTER I
INTRODUCTION

1.1 Introduction:

Privatization has suddenly become one of the dominant theme in the policy throughout the world. More than 90 countries in the globe has now privatization as integral part of the economic policies. Although there are some countries which have stood aside but the vigour and decisiveness of the policy shift is undoubtedly striking. There has been an undeniable change in the intellectual and political climate towards the respective roles of the market and the state in economic and social life. Although, it is much more an umbrella term than a precise description of policy, the term `privatization' has been described as an ugly word but a beautiful concept.

The central theme of privatization is that the area and scope of market should be enhanced pragmatically. This means a wide variety of detail measures, which are considered to "roll back" the public sector. The policy prescriptions of the present day government are world apart from the wide spread belief in beneficial state intervention which dominated the political thought in many industrialized countries in the year after 1945. Similarly, doubts are emerging in many of the developing countries about the effectiveness of systems of planning and state control which are widely adopted especially in the years immediately following liberation from colonial rule.

The word 'privatization' embraces many diverse policies, that both subtlety and eclecticism are required in evaluating particular proposals. The wide variety of policies and measures included under its umbrella are portrayed as being part of a movement in favour of `rolling back' the state in the name of freedom and efficiency.

Privatization can be defined as component in the Robert Nozick's theory of `minimal state. The term in a strict sense covers reducing state's economic activities. Government should govern and let the businessman do the business. Privatization can be defined as the transfer of majority ownership of public sector undertakings to the private sector by the sale of ongoing concern or of assets following liquidation. It also includes activities that range from selling state owned enterprises to contracting out public service with private sector. Further, it embraces transfer of management control to private enterprises and other measures such as economic liberalization and deregulation of controls which facilitate entry of private sector into areas earlier reserved only for public sector undertakings.

Privatization by transferring ownership from public sector to private sector is privatization in the purest form. The proponents of privatization emphasize it as a means to increase efficiency, output, improve quality and reduce unit costs which will curb the growth of public spending and raise cash to reduce government debt. This ultimately in a way broadens the base of ownership and participation in a society where large members feel that they have a stake in the system.

The wave of privatization touched most of the country world wide because the attempt to use public sector undertakings to achieve economic and social objectives did not yield expected result rather it became political patronage. The chronicle postulates Chile as one of the leading country to begin privatization (1973). Later, the privatization rapidly spreaded from industrialized countries to developing and least developed countries. Growth of privatization only in developing countries accumulated revenue more than 29 billion (see graph) in between 1988 to 1993.

In this global wave of privatization, a least developed country Nepal also prepared herself to jump in the stream of privatization in 1990/91, since it too had the common phenomenal deficiency in the public sector undertakings alike in other countries.

1.2 Statement of the Problems:

A tiny Himalayan Kingdom with around 19 million population, Nepal, awoke from the deep slumber in the middle of the 19th century only to find in a multitude of problems like illiteracy, malnutrition, and a breathless economy based on subsistence agriculture. After some years of political instability the kingdom started trading a course in 1960s by adopting the same model of economic development adopted by other South Asian countries with a central planning system and mixed economy. This is perhaps the starting point from where a clear approach towards establishing public sector undertaking (PSU) was adopted, the reasons being, first that the private sector was not as strong to take care of everything, and second that, as elsewhere, a free hand to the private sector was not very desirable and palatable. As a result, the Government started to establish under its total ownership companies[i] and corporations[ii] as public sector undertakings in area such as electricity, textiles, food corporation, cooperative houses, banks as well as other public sector undertakings to work as extended arms of the government rather than as profit making enterprises. Corporation like Nepal Food Corporation, transported and provided food grains like rice and food stuffs to the remotest food deficit zones, whereas the Agricultural Tools Corporation manufactured and supplied agriculture tools for farmers, and banks started providing loans to farmers.

Nepal's entry into industrialization was late. Along with the establishment of PSUs the actual process of industrialization also began since 1960's. Even in the process of industrialization, agro-processing activities were predominant as the economy had over reliance on agriculture. The public enterprises in Nepal which were set up in 1960's and 1970's were mainly funded with foreign assistance. There were 97 public enterprises in Nepal among which 10 enterprises have already been privatized in the first phase of privatization program starting from 1992. The remaining 87 public enterprises are also under direct or indirect influence of the state which plays a vital role in the country's economy. The manufacturing public enterprises controlled about 70% of the domestic cigarette market, 62% of the cement market and 61% of the sugar market in 1990.

Even though all the PSU were protected by the government and monopoly was given in their respective field because of the poor management, cost inefficiency, over staffing and political shadows the PSUs were not able to yield the result which was expected by the Government. They started to incur loss and rendered poor quality of the service. This tendency in the PSUs made unsustainable burden on the budget to the tune of 20% of the overall Government budget. Though some measures were taken to improve the performance of PSUs in 1980, still the PSUs continued to undergo heavy loss. In the year 1992 the fund transfer to PSUs was more than Government expenditure on health and education. In the year 1993/94 the total investment in PSUs by the Government amounted to NRs 38630 (US$ 772.6) million whereas the losses incurred and accumulated by the PSUs in the same years amounted to NRs 11500 (US$ 23) million. The Government investment in terms of capital employed in these enterprises was to the tune of Rs. 63.995 million in 1993/94.

The continuous losses made by the PSUs created PSUs as a burden to the Government and also a cause for the drain of the tax payers' money. The reverse trend was tried to be remedied by other protectionist measures like expansion of loan and credit, customs rebate, etc. In 1993/94 only commercial banks credit to Government owned corporations reached NRs 2004.4 (US$ 40.1) million.[iii] which virtually made the public sector commercial bank insolvent. Poorly managed public utilities has also increase the cost of business to private sector. The ever increasing tariff on electricity has affected small entrepreneurs like iron casting industries and other cottage industries. As such the PSUs are supposed to be as efficient as private sector since both are governed by the same rule, but in reality it is not so. The PSUs are bureaucratically or politically owned, with their accountability limited to Government officials, politicians, who protect the PSUs from competition. They subsidize the product or provide the privilege of easy access to finance as some of these PSUs were set up for social and political reason such as the generation of employment, development of backward region, etc. As a result the PSUs never felt a sense of competition. This necessarily leads one to think about the solution of this every-growing economic loss and mismanagement. In the year 1994, Government ~~has~~ enacted Privatization Act to enhance the policy of Government in privatization. There are other laws relating to business and commerce which are equally important to have a look on it. Then the question comes; is privatization of the PSUs the solution to this problem? This is where the present study ventures to concentrate on.

1.3 Rationale for the Study:

The reason given for the failure on the part of the Government to restructure the PSUs was that the policy that was frame could not implemented because it was not able to administer in the real world of PSUs. Therefore, privatization is a strategy which succeeds where the attempt to restructure fails even though there is no such thing as single policy called privatization. Every single case is different and requires a different treatment. The term covers an approach or a series of measures designed to bring the benefits of private enterprise provisions, into the public sector where the ultimate goal is to make an enterprise which exploits maximum of its capacity in production, manage effectively and efficiently with regard to the cost benefits and help strengthen the economy of the country as a whole.

Nepal's history of privatization is only a decade old. In the Sixth Plan (1980-85) Government made policy to sell its unprofitable public enterprises. This plan ended up selling of two enterprises viz., the Chandeswari Textile and Nepal Cheuri Ghee Plant to the private sector. In 1985 the shares of Government owned enterprise such as Rastriya Banijya Bank (RBB), Nepal Industrial Development Corporation (NIDC) and National Insurance Corporation (NIC) were floated in public at premium price but the public response was very poor. There was not a single study conducted to find out causes of the failure and impact of such steps. But again the privatization program was accelerated from the year 1988. High level seminars were held to discuss the issue. The World Bank assisted the Ministry of Finance to formulate the privatization strategy. A privatization cell was established in 1989 in the Ministry of Finance to further the follow up of the privatization program.

The Government created a high level privatization committee headed by the Ministry of Finance and Secretariat to implement the process. The privatization program laid the phase-wise privatization. So far ten enterprises have been privatized and all these enterprises are small value firms in industry and services. Although the privatization policy and strategies have been questioned and critique from different quarters not a single comprehensive study has been conducted with a view to critically analyze the policy, law and strategy of privatization. This is perhaps the rationale for the present study. Apart from criticizing the policy the relevant laws which constitute the legal regime of entrepreneurship in Nepal will make the focal point of the present study.

1.4 Importance of the Study:

The main idea of creating Government owned PSUs in 1960's was to achieve overall development of the country since the investment involved was very high and the private sector at that time was not financially capable. The other idea was the social justice i.e., to provide product and service through the Government owned channels to every nook and corner of the country. It is absolutely true that most of the PSUs have failed to deliver good and meet the desired objectives due to various reasons such as poor managerial skills, over staffing, protectionist view of Government and heavy bureaucratization and political pressure in day to day administration, etc. But does this necessarily compel one to adopt privatization as a one point program? Secondly, the attainment of social justice is a perennial agenda. Thirdly, if one goes by statistics the economic scenario has not significantly changed as it is compared to 1960s. The private sector is not only urban centric but also active only in Kathmandu and a few other municipal centers. Therefore, the issue of privatization is vitally important and a major policy decision inextricably linked with the very survival of the country. The appropriateness of policy decision may not strictly fall within the ambit of legal research but the failure and success of such decisions as well as the legal regime and strategies do certainly fall. This clearly throws light on the importance of the present study.

Finally, among the ten privatized PSUs some of them were running in profit and most of the enterprises were establish as financial gift from friendly nations. The question remains, did the Government while adopting such a policy realize that the policy has a psychological bearing which may adversely affect its long term policy of strengthening the economy? It is still too early to review the performance of privatized sector but as far as the desired result of the Government is concerned the picture is gloomy. It is in this context that the present study attempts to critically evaluate the policy, law and strategy adopted for privatization of public enterprises. The policy of the Government, with the experience of past, must be a far-sighted one which should be able to yield the economic growth of the country as a whole. The policy should be to break the vicious circle of poverty and should lead the country to economic affluence which is also in demand today. This also highlights the importance of the present study.

1.5 Conceptual framework:

The conceptual framework for the present study is built basing on the Constitutional prescriptions and the legal stipulations. In general the Constitution carries two theories, Constitution is a colorless instruments drafted not only for present but also for a longer time in future, and since the Constitution evolves from the ground realities it cannot be alienated from its' response to the competing interest of the society as well as prevailing milieu. If one looked from this view the Constitution of Nepal accepts the second proposition. Being a young Constitution of only six years old the Constitution of Nepal incorporates within it economic, social and political order as this is an era of open society, where the market forces play a prominent role in the economy of the state. The Constitution of Nepal strives to promote condition of welfare on the basis of an open society. But at the same it also stress the establishment of a just system in all aspect of national lives. The just system comprehends with in it the economic, social and political justice.

The principle of open society also gets reinforced from the fact that the Constitution of Nepal recognizes right to property as a fundamental right. Fundamental right to property dose not mean that the state cannot acquire or create encumbrances to private property in any circumstances. It essentially means that acquisition of private property is not rule but exception, which the state can exercise in for the public purpose and by paying reasonable compensation.

In the past a threat to the markets survival has come from the state in many of the third world country's' as well as from western world experienced partial or total state intervention on the market. Even in democratic societies the socialist wind that blew in 50s' and 60's led to nationalization of private enterprises, therefore in the change context, now it is but natural for the market to seek a guarantee against nationalization. In Nepal beside the Constitution provisions this guarantee is given by the Industrial Entrepreneur Act, 1992.

On the one hand the new industrial policy and the Industrial Entrepreneur Act has opened those areas for private sector, which were hither to been considered the areas for the states maneuvering. On the other hand the state has now declared its' intention through policies and also through laws , for privatization.

Privatization under the legal regime of Nepal bears comprehensive meaning, it means, making private sector participate in the management of enterprise, selling or granting on lease of such enterprises to private sector. It also means transformations of Government ownership into public ownership and also includes all those activities which infuse participation of private sector or the employees or the worker either wholly or partly[iv]. Under the Act the participation is given the widest possible meaning, it not only connotes a effort between Government and private sector but also includes taking charge of all responsibilities as well as the ownership of the Public Sector Undertakings. The participation as envisaged in the Act is not only the participation of the stake holders like the employees or the workers but all desirous groups in the private sector.

1.6 Objective of the Study :

The main objective of the study is to critically evaluate the policy, law and strategy adopted for privatization of public sector undertakings. The study is conducted with a view to thrash out a most appropriate policy, law and strategies which will create a sound, efficient and effective legal mechanism for privatization which brings better result in privatization.

1.7 Issues to be Studies :

The study will focus on the following issues :

1. Critical evaluation of the policy formulated and adopted for privatization of public enterprises in the light of the present controversies and differing views.

2. Critical evaluation of the law involved and applied for privatization.

3. Critical evaluation of the strategies adopted for the above.

4. A comprehensive study of all the three issues mentioned above in the light of the experience from other countries.

1.8 Working Hypothesis and Research Questions

Hypotheses:

The policy, law and strategy will garner better result if it could be tailored to the special circumstance of the economy, it could create confidence among people in different strata of economy if the law policy and strategy is transparent. The creation of confidence becomes easy if the component unit of industry, namely, the labourers the medium level managers and the technicians, are consulted and actively involved in the process of privatization.

Research Questions :

a) What were the compulsions that led the Government to make a policy decision for privatization?

b) Is the policy, law and strategy of privatization tailored to the special circumstances of the Nepalese economy.

c) Did the Government attempt at creating a congenial enterprises friendly and nationalistic legal regime before undertaking privatization?

d) Does the law attempts to ensure transparency and create the confidence of the people whose lives are affected by such process?

e) What were the institutional and procedural aspect of privatization.

f) Was the Government conscious and interested in creating transparency in the whole process of privatization.

g) Whether the information of privatization was easily available? If yes, to what extent and how?

h) Were labourers, the medium level managers and the technicians consulted and/or involved in the process of privatization?

i) What was the response of labourers, technicians and medium level managers regarding privatization of public enterprises?

j) Was any attempt made to create consensus through public debate both at intellectual and political level?

k) Were the deals made the most appropriate ones under the prevailing circumstances?

1.9 Methodologies :

The methodologies of this research is descriptive and analytic. The study will be based on privatized public enterprises of Nepal. The tool for study is primary and secondary data. An empirical study of various steps taken to privatize the public enterprises was made. Interviews with the associated persons regarding privatization was taken viz., purchaser, labour, manager, and staff of privatization cell. In the course of data collection the researcher met administrators, planners and policy makers involved or associated with privatization. The performance record of privatized units was obtained from the privatization cell of the Ministry of Finance which was verified from empirical data. For the policy issues the researcher relied on secondary sources.

1.10 Chapterisation :

In the *second chapter* the researcher discusses the policy of privatization brought out by the Nepal Government, the institutional frame work and policies for privatization. In the *third chapter* the Privatization Act 1994 has been discussed and other existing commercial laws has also been discussed to further picturise the overall investment scenario. In the *fourth chapter* the researcher has brought the picture of privatization through implementation and model applied for the privatization in four different countries. In the *fifth chapter* researcher presents implementation aspect of privatization through case study of all eight privatized enterprises and its process in detail. The *sixth chapter* discusses the goal that privatization policy and Act devised and whether that has been achieved or not? Simultaneously, the critique, lacunae and flaws in policy and law and alternative suggestions have also been discussed in this chapter. In the *final chapter*, conclusion, suggestions and recommendation have been portended to bring the objectives promised by the policy and the Act.

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21. Sec. 2b, Privatization Act, 1994.

CHAPTER II
GOVERNMENT POLICY ON PRIVATIZATION

2.1 **Background**:

In fifties and sixties of Nineteenth century, the emphasis of developing countries was in public sector's participation in the economic development. But this proved to be disillusion in seventies and eighties by its negative result. Which created a reverse trend in eighties and nineties. The reverse trend set a pace towards market economic policy to which privatization of the public sector undertakings is a component. In the course of time it is argued that the countries which would rely on market forces as an engine in economic system would grow rapidly than the planned and controlled economy. At present more than 90 countries have privatization as an integral part of economic policies.[i]

In the context of Nepal, emphasis was put on development through government owned enterprises due to lack of scarce capital resources in private sector and managerial capacity. But the common problem of political patronage, ineffective and inefficient management made the PSUs unsustainable burden on budget and banking system of Nepal.[ii] In the year 1993/94 total government investment amounted to US $ 772.6 million, whereas loss incurred by PSUs in the same year was US$ 230 million. Attempt to reform was enunciated in the Seventh Plan (1985-90) by allowing PSUs more autonomy, incentives based on monitoring of the progress, freeing PSUs from non-commercial goals and government interference in day-to-day decision making etc.[iii] But all these became redundant since it was not implemented and remained on papers.

To curb the persistent drain of tax payers money and to further the economic development as a whole, the Government of Nepal in the year 1991 adopted the policy of privatization of PSUs. The national scenario with respect to the overall performance of the existing 97 Public Sector Undertakings (PSUs) revealed that most of them were operating unsatisfactorily. The financial loss and managerial responsibilities for these ailing units had to be borne by the Government. Everyday increasing loss is unsustainable and not also conducive to the country's economic growth. There are clear evidences that the performance of PSUs, except those operating as basic industries or public utilities, could yield better result under private sector management. It is against this background that the policy adopted by the Government of Nepal should be studied.

2.2 **Privatization Policy of the Government of Nepal**:

As a matter of policy, His Majesties Government of Nepal called upon the private sector to play more active role towards the establishment of a more liberalized and dynamic economy. Towards this end, the government adopted policy measures aimed at encouraging greater participation of the private sector. In order to give private sector maximum operational freedom the policies are based on minimizing government interference in production, distribution and pricing of products. This however, would not in any way, deter the government from taking necessary actions in providing essential services to the economically deprived people.

Privatization shall not remain political pronouncement. Since privatization activities are expected to have far reaching impacts on the development role of the government and the expansion of the private sector the government of Nepal, through the policy Statement showed its determination not to confine the privatization policy only to a political pronouncement but to make it work. This could materialize only when the process of privatization takes into account the diverse interest of different parties including the concerned line ministries, top management and personnel, shareholders, suppliers of raw materials, distributors and consumers etc. A successful implementation of the privatization policy calls for the coordination and cooperation of all these parties.

Along with the policy statement, the government of Nepal proposed to establish a high level Privatization Commission with the objectives of setting up priorities and designing privatization program and to implement the approved program, overcome obstacles and evaluate effectiveness of the program. The commission consisted of the following members:

Minister of Finance	Chairman
Two Member of Parliament	Member(s)
Member, National Planning Commission	Member
Secretary, Ministry of Finance	Member
Secretary, Ministry of Labour and Social Welfare	Member

Secretary of the Concerned Ministry	Member
Secretary, Ministry of Law	Member
Chairman, FNCCI	Member
Executive Head, Securities Exchange Center	Member-cum- Secretary

Beside the above, another technical committee was purported to be established to assist the commission under the supervision of Finance Ministry. This committee is supposed to review the performance of PSUs, identify and prioritize privatization. This committee is also supposed to be directly involved in privatization activities.

Composition of Technical Committee

Chief, Corporation Coordination Division	Chairman
Representative of concerned line Ministry	Member
Chief Executive or Representative of the PSU	Member
Representative, Securities Exchange Center	Member
Representative, Ministry of Law	Member
Representative, Chartered Accountants Association	Member
Expert on Privatization	Member

To assist the above mentioned Commission and the Committee, the policy paper also purported to establish a privatization cell in the Ministry of Finance, which would work as a secretariat of the Commission and the Committee. To facilitate the initial process, the cell was provided an initial financial support, provision was made for the creation of a fund in which 3 percent of the proceeds of the sale to be deposited. This accumulated funds is to be utilized in privatization activities as approved by the Commission.

The objectives of Privatization as underlined in the document were:

(1) To reduce the financial burden and administrative responsibilities of the Government, thus releasing funds for better alternative uses.

(2) To enhance operational efficiency resulting higher productivity and,

(3) To encourage private sector growth and public participation in industrial undertakings.

As to the strategy of privatization the document stated that the government would consider the option of only transferring ownership or management or a combination of both. In divesting the ownership of PSUs, a prospectus or an open invitation for a tender would be issued. In addition, other alternatives such as private sale, management/employee buy outs would also be considered. Similarly, asset sale and private investment for joint venture can be called for to implement privatization. The document also found it appropriate to consider the option of privatization without the transfer of ownership in which case only the corporate management would be transferred, through this the possibility of contracting out of corporate assets could be explored. Similarly, it was also stated that service performed by the PSU can be assigned to private sector in competitive basis. Further more privatization of PSUs can be performed through full or partial disinvestment of ownership from time to time.

As a temporary measure the government of Nepal also decided not to extend financial assistance to the PSUs until it is so recommended by Privatization Commission.

The act of privatization may bring in several distortions in the economy including the monopoly in production and prices which may adversely affect the small investor's interest. This is in fact a major responsibility that the privatization Commission had to shoulder. This could be done only with the help of appropriate legal measures and a most of other methods like the imapact study and close monitoring.

Another vexing question is related to the selection of PSUs for privatization. The policy statement gave priority to those enterprises which were considered feasible from economic and operational standpoints. This included industries possessing the capacity to compete in the market and having commendable performance records and also those having possibilities of restructuring. The policy document also stressed on the need to look into consequential issues like the capital intensity, technology and economies of scale of the enterprises under privatization that are likely to emanate from fragmentation, consolidation and reorganization measures carried out in consideration of the nature of the concerned products or services.

However, it should not be construed that the government of Nepal is in favour of adopting a blanket approach for privatization. The government was of the view that the PSUs at the core sector and also those carrying social obligations such as education, health and public utilities should not be privatized unless appropriate steps are undertaken for proper management and competitiveness.

As regards the modalities or privatization the document called for inviting proposals from private sector for the transfer of management and/or ownership of PSUs to be privatized. It stated that such proposals would be evaluated based on and priority will be given to those which offer greater public participation. Other yardsticks related to the quality, financial strength and managerial competence of entrepreneurs making the proposals. It stated that the proposals willing to take over the existing labour force would get high priority. As to the labour arrangement it stressed that a provision should be made to ensure that the surplus labour identified by new management receives 50% of their current wages during the lay off period not exceeding one year or until the date of re-employment whichever comes first. Alternatively, in order to encourage self-employment among the displaced labour, it stressed for providing necessary credit facility as part of the follow up program after privatization.

Another equally vexing problem in the privatization is the selection of suitable PSUs which obviously requires an in-depth study based on objective criteria like the management skill, financial status etc. The document stressed for the collection of relevant data and preparation of a list of PSUs basing on the same for recommendation. The recommendation should also cover post privatization assistance aimed at upgrading the management and operational performance of the privatized units.

After the preparation of the list of the PSUs to be privatized the next step is the valuation of the asset of such PSUs. The document stressed on the need of a careful valuation of PSUs to ensure that the estimated value for sale of assets are acceptable to private sector. At the same time it should ensure that asset of the PSU is not undervalued. Valuation norms would include organization, management, competition, past financial performance and expected rate of return, the discounted cash flow and net worth of the concerned PSU. The document allowed scope for flexibility whereby decision of the Commission as to the valuation could be revised for the purpose of attaining objectives of privatization.

The policy document took a pragmatic approach for privatization. In the first stage it purported to identify at least 3 PSUs as candidates on the basis of above mentioned criteria and to use the experience gained therefrom in designing a more refined privatization strategy for the subsequent phases.

Thus the privatization policy statement made by the Government of Nepal gives a picture that government is committed to bring economic growth through privatization rather than making a mere political pronouncement. Taking into consideration the role of private sector in economy they are called to participate directly by minimizing the role of government institutions in the market discipline. The commitment of government can be seen through institutional framework for privatization. The formation of high level Commission and Committee for privatization is a farsightedness of the government which can remove hindrance in the pursuance of privatization process. Objectives are clear, privatization methods are elaborate so as to embrace all possible options and phase wise privatization in order to make the process worthwhile. The government policy towards the investment policy to PSUs is another welcome step which will compel the remaining PSUs to compete in market if they want to survive. Evaluation process of enterprises and purchase proposal talks of taking into account all the elements needed for the smooth future operation of PSUs.

2.3 EIGHTH PLAN OF HMG NEPAL (1992-1997)[iv]

The Eighth Plan comes in the series of development the beginning of which was made in the year 1955. Nepalese development plans are always influenced by the prevailing economic and political scenario, as is the case with the Eighth Plan which advocates the privatization of PSUs.

The objective of the privatization as underlined in the Eighth Plan are,

i. Increment of production and productivity by enhancing the efficiency and competitive ability of corporations and,

ii. To increase efficiency in both types of PSUs those not to be privatized and those to be privatized in future.[v] The objectives are concerned mainly with the development of industry and business sectors, increment in productivity and efficiency the mobilization of savings and increase in public participation in the commercial field.

The privatization policies evolved in the Plan are adequately flexible. They include, preparation of a long term strategy on privatization, gradual and step by step privatization of PSUs, of industrial or business, and infusion of transparency in the whole process. Secondly, the stand of the government to allow private sector to operate in those area reserved for the PSUs like Hydro-electricity, drinking water and other public utility services was also taken as a policy measure in the Plan. Thirdly, the plan proscribed a blanket approach for privatization prescribed for the continuation of those PSUs, considered to be important from the public view point to be operated in the public sector as usual. The Plan stressed the need to categories the PSUs into four types viz., those being privatized immediately, those privatized after a certain period of time, those to be privatized in the long term after restructuring and those not to be privatized at all, the plan also emphasized for organizational changes, financial and managerial reforms to increase efficiency of the PSUs.

The Plan prescribed for the adoption of a pragmatic approach for privatization through an appropriate institutional and legal frame work through the participation of labour in the process and the launching of public awareness program.

The program for privatization underlined in the plan relates to the selection of PSUs for privatization. Keeping in mind the importance of the PSU concerned, the criteria determined are financial capacities, the need to increase the market guarantee factor and future potential, preparation of annual program, in-depth study of the problems of the concerned PSUs before selecting appropriate method and creation of privatization fund to be used for providing necessary compensation to the employees and labourers, etc.

Thus, the plan and the policy statement, if read together, provide sufficient background to adopt a flexible stand with regard to privatization of PSUs in Nepal. Both documents show a blanket approach, and prescribe for a step by step method and learning from the mistake method. Therefore it is the submission of the researcher that these documents, despite their shortcomings and weaknesses should be taken positively. At this juncture it is interesting to see as to how much of the policy declaration has found the place in the legal regime which will be discussed in the chapter that follows.

CHAPTER III
PRIVATIZATION ACT AND OTHER EXISTING LAWS

A policy forwarded by the government is a broad frame work consisting of ideas which is set to be achieved for the betterment of the country. The legislation of laws for such policy refers to the principles or agreed course of action adopted by the government for the attainment of the same goal. The process, method and outlines are earmarked in the form of laws to be shouldered by the institutions responsible for setting the course of action. The law is a second phase of policy to arrive at goals which are practicable and expedient to the interest of the society.

3.1 PRIVATIZATION ACT 2050(1994):

As stated above ,to implement the privatization policies through legal mechanism the government of Nepal enacted the Privatization Act in the year 1994 and gave a legal garb to the privatization policy declared by it.

The main objective of the Act and the goal that has been tried to achieve by this enactment is the enhancement of efficiency of government owned industries and enterprises of Nepal and to mitigate the financial and administrative burden of the government. The Act also attempts to usher in all round economic development of the country by broadening the participation of private sector in the operation of such enterprises. Act gives equal emphasis to the PSUs to be efficient and become self reliant, which will reduce fiscal burden to the government. Private sector is given open invitation to operate in the field of public sector and is asked to participate on ongoing public concern for the economic development of the country.

The term `privatization'[vi] as defined in the Act means making private sector participate in the management of Government owned public enterprises, sell or lease such enterprises or transfer government ownership into public ownership. Infuse participation of private sector or employees or workers of the concerned enterprise or of any desirous groups, by any means full or part participation will be privatization.

The Act makes provision for constituting a Privatization Committee under the chairmanship of Finance Minister to conduct the privatization works. Other members of the committee include chairman of Finance committee in the

House of Representative, two government nominated members of the Parliament.[vii] In addition member and secretaries of the Planning Commission and various ministries and also the President of Nepal, Chamber of Commerce and Industry are included as members.[viii] The joint secretary in the Ministry of Finance works as Member Secretary. Apart from the above, the committee is empowered to invite the chief of the enterprises, labour representatives and distinguished economists in the deliberation of the committee.

The committee is supposed to shoulder the responsibility of policy formation with respect to privatization. It is required to submit to the government its recommendation on programs and priorities for privatization. But it is not the sole policy evaluating body. While making recommendations it is, however, required to keep in mind the suggestions contained in the Report of the Finance Committee.

In addition to the above the committee conducts study and research in order to formulate privatization programs, evaluates the enterprise to be privatized and also undertakes follow up decisions relating to privatization. The committee is empowered to constitute sub-committees with respect to privatization and remove other hindrances faced in respect of privatization.[ix] While conducting evaluation the committee is required to take into consideration the assets of the enterprise, market value of the shares profit and loss accounts of the enterprise and estimates of future productions, sale, profit and loss of the enterprise by national and international experts.[x]

The process of the Privatization starts with the publication of the notification by the government in the gazette[xi] to this effect.

The privatization Act adopts a very flexible and comprehensive method for privatization. The government can privatize the enterprise pursuing a variety of methods like sale of shares to general public, employees, workers or any person or company intending to run the management of such enterprises or sale of assets of the enterprises, by leasing out assets of the enterprises or through involving participation of private sector in the management of enterprises or any other modality considered appropriate by government.[xii] The government then invites proposals for privatization by publishing details of the PSU to be privatized for which the law requires to follow prevailing international practices.[xiii]

The evaluation of the proposal is based on attractive terms and higher prices, management of enterprise in the existing conditions, retention of present workers and employees, increase employment opportunity, possessing managerial experience and which offers to expand the industry and business by preparing standard business plan and making additional investments. In case the proposals of two or more investors are found identical the law provides that the priority shall be given to the Nepali investor or the group of investors.[xiv] In the course of evaluation process, if it is revealed that the concerned PSU is not feasible at all and cannot be revived through any means HMG can dissolve such enterprise through notification published in Nepal Gazette.[xv]

PSUs have been one major source of employment for people. Therefore, any structural or managerial change or the change in ownership may adversely affect them. On the one hand the Act keeps retention of the service of workers and employees, and increase of employment opportunity as preferential criteria in the evaluation of the proposals, on the other it provides that the government may require to maintain workers to be continued in the service of the enterprise being privatized through transfer of privileges to the enterprise of the new investor.[xvi] If this could not be done the government can make reasonable arrangements for compensation or granting privileges in respect of the employees and workers that are to be retired. In addition to this the government can also make available to employees and the workers some shares free of cost or at a discounted price. The provision relating to the employees are sketchy and highly unsatisfactory about which a discussion will be made in the chapter six, but before this, the researcher would like to state that by and large the Act gives us a picture that it has prepared a broad legal frame and set some norms for privatization in Nepal. Even though, the broad framework of privatization policies laid down by government of Nepal in 1991 and in eighth plan of 1992 have not been fully covered by the Act, but the act tends to bring the new hope.

Since the main goal of Privatization that has been underlined in the Act is to increase productivity through enhancing efficiency, to reduce financial and administrative burden of HMG Nepal and to achieve economic development increasing private participation in public sector. This can be done only by a trade off between various competing interests. Privatization will obviously reduce the financial burden on government and it may have positive impact on the long run and economic development of the country. The overall Privatization policy and the Act tries to bring the sense of responsibility, management efficiency and competition through privatization. But will the infusion of private sector will garner this result and can it be a total cure ? Secondly, the Act is also not free of lacunae and flaws. In some area the Act gives vague meaning which needs more clarity to pursue the spirit of the Act. Lastly the Act is completely oriented towards transferring the burden of PSUs from the Government sector to private sector. Is this the only viable solution? a detail discussion has been done in chapter six while critiquing the policy, law and strategies.

3.2 Other Existing Laws:

To further project the total scenario and analyze the present, law and strategy it is relevant to judge the privatization policy and Act from the angle of the law of the land and other business laws that are in force in Nepal. In this regard the researcher would like to indicate the related constitutional provisions and other laws:

i) The Constitution of the kingdom of Nepal, 1990.
ii) Industrial Policy and Industrial Enterprises Act, 1992.
iii) Foreign Investment and Technology Transfer Act.
iv) Water Resources and Electricity Act
v) The Nepal Company Act.

3.2.1 The Constitution of Kingdom of Nepal, 1990:

The constitution of the kingdom of Nepal, which was promulgated in 1990 devises, equality, liberty and people's will as the fundamentals of the constitution. The constitution strives to secure economic, political and social justice to the people. The directive principle of the constitution further provides, the economic and social justice will be provided through education, poverty alleviation and balance distribution of resources basing on open society. Another feature of the constitution is the recognition of the right to property as fundamental right. The right to property clause and the concept of open society postulated in the Constitution is the recognition of market economy. Since the Constitution of Nepal was drafted in the year 1989-90, it has taken into consideration the present global trends and have been shaped accordingly. This is one reason to give emphasis on open society, private property and market economy.

3.2.2 **Industrial Policy, 1992 and Industrial Entrepreneur Act :**

The industrial policy, which is the back bone for the establishment of industry has classified industry in respect of the investment capital. It also designates, no license is required to establish industry except in industries related to defense, public health and environment.[xvii] The registration process of industry will be within 21 days of application.[xviii] There are ample facilities given for industries through tax rebate and tax holidays.[xix] One window committee[xx] is formed for the purpose to provide all necessary information and procedure to be performed at one place for the establishment of industry. The policy in its objectives clearly specifies invitation for the private sector to play a principle role in the industrialization, and further stipulates the public sector industries will mostly be privatized and no private sector industries will be nationalized.[xxi] In addition the Act fully protects private industries from nationalization.[xxii]

3.2.3. **Foreign Investment Technology Transfer Act, 1992:**

In the process of industrialization and economic development, the foreign investment and technology transfer Act was enacted to attract the foreign investment. The Act permits foreign investment through equity participation or the investment made in form of loan.[xxiii] The foreign investors are allowed to repatriate[xxiv] the foreign currency. The permission for the foreign investment will be granted by the department of industry within 30 days after the filing of application.[xxv] Foreign investment is only allowed in large scale industries with the investment of more than 20 million in fixed capital. All foreign investment up to NRs. 20 million shall be regarded as technology transfer.[xxvi]

3.2.4. **Water Resource and Electricity Act:**

The water resource and electricity Act was enacted in the year 1993 for the proper utilization of water resources and to fulfill the demand of electricity in domestic and industrial sector. Any domestic investors or foreign investors with the prior approval from government can produce, supply and distribute the hydro-electricity power.[xxvii] Private sector hydro-power company will not be nationalized in between the approval period.[xxviii] His majesty's government of Nepal may enter into contract with domestic or foreign investor for the hydro-power generation.[xxix] The rate of royalty as prescribed has to be paid by private investors involved in generating hydro-power.[xxx]

3.2.5. **Company Act, 1964:**

The company Act of Nepal stipulates any person doing business through raising capital by selling of shares will have to incorporate company under this Act. The minimum number of promoters for a private company is three and for the public company it has to have seven persons. The company after the registration under this Act will be a incorporation having legal capacity to operate in it's own name.

The company Act of Nepal further more provides, His Majesty's Government of Nepal can establish any company under this Act with specific provision of selling shares only to HMG or any corporation of HMG.[xxxi] For the regulation of Government companies, His Majesty's Government by publishing notice in Nepal Gazette may exempt any provision of Company Act or decide any procedure to be applied as an exception to these companies.[xxxii] This specific provision of the Act provides HMG of Nepal authority to forgo the existing provisions and formulate any procedure to sell, lease or close down the government companies. The Act in addition provides for all other standard rules and procedures of principle of company law to regulate the company limiting the liability of shareholder and securing the creditors.

The above mentioned business laws prevailing in Nepal portrays that the private entrepreneurs are always called upon for setting up the business. The individual business entrepreneur those who are from domestic or foreign are given ample opportunities for doing business in a very conducive manner. The business laws facilitates and provides security against nationalization of private industry. The law clearly indicates that there is no specific area exclusively reserved for the state to invest. The private investors are allowed to investment in all area.

The Act stipulates two sector, defense and industry causing adverse effect to public health and environment where the license is necessary to operate, even in this sector after obtaining the license one can invest, it is not totally prohibited area. The law also provides sufficient and congenial arrangements to attract foreign investment.

These all business laws are market friendly and are nurtured to bring more incentives to the private enterprises. The laws further provides wide area for private investors to investment. Since the other existing business laws in Nepal are saddled with necessary requirements to make the country investors friendly this can be one reason why privatization Act was enacted intending to reduce the public enterprises.

END NOTES

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3. Sharma Robin, Privatization lesson learned (1995), p.7, Mrs. Mandira Sharma, Kuleshwar, Kathmandu.
4. Eighth Plan, National Planning Commission HMG, 1992.
5. *Ibid*
6. Section 2(b) of Privatization Act 1994.
7. *Ibid* Section 3(2)(a), (b), (c).
8. *Ibid.* Section 3(2) (e), (f), (g), (h), (i).
9. *Ibid.* Section 7.
10. *Ibid.* .
11. *Ibid.*
12. *Ibid.* Sec. 8.
13. *Ibid.* Sec. 9
14. *Ibid.* Sec. 10(1), (2)
15. *Ibid. Sec 16*
16. *Ibid.* Sec. 10(c), (d).
17. Sec 9(1), The Industrial Enterprises Act.
18. *Ibid.* Sec. 10(3),
19. *Ibid.* Sec. 15,
20. *Ibid.* Sec. 17,
21. Industrial Policy 1992.
22. Supra N 1, Sec 21,
23. Sec. 2(b), Foreign Investment and Technology Transfer Act 1992.
24. *Ibid. Sec. 5(2) (a), (b), (c),*
25. *Ibid. Sec. 3(3)*
26. *Ibid. Sec. 4(1)*
27. Sec. 8(1), Water Resource Act 1993
28. Sec 4(d), Water Resource Development Policy 1993
29. Supra N11, Sec. 12
30. *Ibid. Sec. 8(5)*
31. *Sec. 137 (a), Nepal Company Act 1964*
32. *Ibid. Sec. 137(b)*

CHAPTER IV

4. MODELS OF PRIVATISATIO`(

After 1980s the concept of privatization of the public sector undertakings became known to every nook and corner of the world, which actually was formulated by the former Prime Minister of United Kingdom Mrs.Margret Thatcher and former President of U.S.A. Mr. Ronald Regan.

The pragmatic approach towards the role of the State produced change in the concept of the State in its role. This resulted in minimizing the role of state in industries and services in public. It was evident from the phenomenon of last decade that there was world wide interest in reducing the role of public sector in national economy.[i] The conviction grew more deeper, that private entrepreneurs can manage industries more efficiently, effectively and with less cost in the same enterprises which the government is holding as public sector undertakings. It is also emphasised, that the government should involve into other developmental areas such as health, education and infrastructure etc., rather than in money losing commercial activities.

The development model adopted by many countries after the World War II was the backbone of the creation of Public Sector Undertakings (PSU). The model laid the thrust in government to establish PSU for the distribution of products in every corner of the society and thus how save the people from the exploitative devices of the market society. But ironically they became the main drain of tax payers' money, because of ineffective and inefficient management, over staffing and over bureaucratisation. In this glaring situation, the wave of privatisation has loomed in most of the countries, including even to centrally Planned Economies of the world. Economic reforms have already been started even in centrally planned economic countries like China, Czechlosvakia, Romania, Poland and Republic of the former soviet socialist union. The reason for privatisation and the modalities for the same obviously vary in different countries depending on the country's specific situation. Nevertheless, a country can take lessons from the experience and model applied in of other countries and thus, avoid trauma. It is from this point of view researcher will dwell on the process of privatisation in follwing countries in this chapter.

4.1 Peoples Republics of Korea.
4.2 Pakistan
4.3 India
4.4 Srilanka

4.1 **Peoples Republic of Korea**:

The Korean privatisation policy includes from complete privatisation i.e., sell of government owned assets to private buyers to diregulation and contracting out of the management. In first phase, large scale privatisation programme was implemented from 1968 to 1973. In this phase eleven public enterprises were sold to private buyers and financial institutions without the limitation of share holding among buyers.[ii]

Second phase of privatisation in Korea took place between 1981-83.[iii] During this phase the method of privatisation was sale of shares of public enterprises. Shares of six public enterprise were sold during this period. Further, in order to curve the possible monopoly of financial market, the share limit was setup as five percent for private firms and 5000 shares of total shares for each individual.

The third phase of privatisation was announced by the government in April 1987, eleven enterprise were listed for privatisation.[iv] After the announcement of privatisation of these enterprises there arouse some question like monopoly and foreign control etc, because these enterprises were one of the largest PSUs in Korea. To avert this situation the Korean goverment amended Securities Transaction Act and Capital Promotion Act, to preserve the management right.

a) Restriction in voting rights of a government designed public enterprises.[v]

b) Prohibiting equity participation by foreign investors in such public enterprises.

Government also adopted the disinvestment model of privatisation in this phase of privatisation (1988-1992) to maximize peoples participation. In this programme the government announced three way of privatisation.

a) Large scale privatisation: In five, among the eleven enterprises privatisation scheme was to divert all the government stocks.

b) Partial divertiture: This scheme laid down to keep the government stake in the public enterprise to 51% of the total shares. This is because of the importance of the public enterprises in national economy and government wanted to retain the control over it.

c) Peoples Share Programme: In this scheme the government announced to divest 34.1% of share of public enterprise.[vi] Where 75% of the total stock was to be sold to people of low income bracket whose income was less than W600 thousand/month. Subscriber of this share had to submit certificate of income before hand. Twenty percent of the share was allocated to employees and five percent to general public. To maximize the participation of lower income people in peoples share programme. 30% of the price of the share was discounted, 'Peoples Share Trust Plan' was created to initiate help to manage inexperienced low income bracket shareholders, even the loan was issued by Trust to low income bracket people to purchase share by mortgaging the share acquired. The share bought in discounted price and through loan from trust prohibited the shareholders to dispose the holding before three years. This method of share distribution brought 3.2 million low income bracket people as shareholders in the privatised enterprises. The employers were also alloted twenty percent of total share in 30% discount rate to morally boost their participation in privatised enterprise.

The method of privatisation in Korea of this type has a pragmatic approach towards privatisation. Here in this case, although the control of private enterprise is still in the hand of government but it is popular among the people because it has garnered social justice by bringing in the participation of the people in low income bracket who are always neglected in these occasions. The possible monopoly has been curved, day to day intervention from government will reduce since the board of directors consisting from shareholder will be appointed. This method of privatisation where peoples participation is huge in number will prosper because this generates among the people feeling of owner of the company, it will dissemminate the information to people about the privatisation which results in successful privatisation policy.

4.2 **Pakistan**:

Pakistan government started its actual privatisation policy from the year 1991. Even though the country had privatisation policy in between 1985-1990 but the policy did not succeed. The main reason behind this was, the programme did not accompany the process of deregulation and control.

Keeping in view the very basic of privatisation, Pakistan government came out in 1990 with privatisation policy including deregulation and liberal economy in order to create environment for private sector envolvement. Regulation with regard to licensing system for import and provision to obtain permission was removed, 100 per cent foreign equity was allowed without restriction on repartiation, exchange control was deregulated, areas exclusively reserved for Public Sector such as Power generation and distribution, telecommunication, shipping etc., were opened up for private enterpreneurs.[vii]

Process of Privatisation:

When the privatisation policy was launched by the government there the total number of PSU was 175. Among them 108 units were listed for the privatisation. In the span of eighteen months sixty six units were privatised. A "Privatisation Commission" was established in the year 1991 to initiate the process, which worked as a semi autonomous commission. The commission consisted of 14 members, among them 4 were the members of parliament including the Chairman, among other members three were permanent secretaries in charge of Ministry of Industry, Production and Labour and other were Chairman of Banking Council, President Karachi Stock Exchange, four eminent professionals including two Chartered Accountants and a lawyer.[viii]

The Commission had the full authority to perform all the work for the privatisation of public sector undertakings such as evaluate unit, accept bid, receive payments and conclude formal sale agreements. This Commission worked under the direct supervision of a Cabinet Committee chaired by the Minister of Finance. The Cabinet Committee laid down the policy of privatisation. If in case the Privatisation Commission felt some relaxation or modification is needed in the guideline to carry privatisation, it would then only refer to Cabinet Committee, otherwise Privatisation Commission has full responsibility for final decision.[ix]

The notion of privatisation in general is critised by critics as "the distribution of government undertaking to the cronies of the politicians those who have financial power and close to government, or selling the family silver to a selected few business groups at throw away price". To avoid this critism the privatisation Commission adopted the method of selling shares through stock exchange. But among 108 listed units for privatisation only 15 were profitable and other 10 were on average, remaining all were running on losses or had been closed down because of heavy loss. It was evident that the loss making units will not attract many investors, for this reason the commission had to use the method of outright sale of the unit.[x]

The Government of Pakistan to make privatisation successful and to back the process through legal mechanism made amendments in laws. The basic law for the privatisation which is, the 'Transfer of Managed Establishment Order 1978' was amended, allowing the right to the previous owner, ~~right to~~ refuse the highest bid. The second amendment allowed the employees of the privatised unit to refuse the highest bid. The Bank Nationalisation Act 1974 was amended, power was given to privatise nationalised commercial banks and transfer management by selling 51 per cent of its shares. The amendment also empowered for the establishment of private commercial banks under Central Banks regulations. The other Act which were amended for privatisation were, Hydroginated Vegetable Oil Industry (control and development) Act 1973, to denationalise vegetable oil industries, Pakistan Maritime (Shipping and Control) Act 1974 providing private sector involvement in shipping. Beside these amended Acts, there were other Acts to ensure private party more protection such as Foreign Private Investment (promotion and protection) Act 1976, giving full protection for foreign investment against nationalisation as well as equal treatment as local investors. Lastly, the protection was given by the Economic Reforms Act 1991,[xi] this Act specifically stipulated the law should be enacted by both House of the Parliament for the reverse in privatisation, limiting the issue of administrative order. These amendments made the foreign or local investor more comfortable and secure in their investments and did not hesitate to invest.

Employee Settlement:

In the privatisation process it is a common experience worldwide that people to be really affected by privatisation, are labours and employees of ongoing concern. The fear of loss of job among them and unsecured future force them to create hurdles in the process of privatisation. Since most of the public sector undertakings are overstaffed due to many reasons the fear of loss of income generation always persists among the employees which ultimately compels them to voice strong resistance through labour unions.

Among the listed 108 public sector undertakings in Pakistan there were around 45,000 workers, because of the above mentioned reason, the workers were against privatisation. They even resisted the potential investors and evaluators to inspect and check the records of the unit to be privatised. They formed the union The All Pakistan State Enterprises Workers Action Committee" (APSEWAC) to protect their interest. The Action Committee came forward with the package of demand in the case of privatisation of public sector undertakings. The scheme included for the "Golden handsake", each laid off employee shall be entitled for 7 months salary for every year of service whereas the law only provided one month salary for each year of service. Employees of the unit being privatise should have first right to bid while privatising PSUs and employee opting to leave service should be given employment opportunity in other government organisation and in available job in the Middle East region.[xii]

Finally to proceed further, the deadlock was broken through negotiation with the APSEWAC by Prime Minister and the differences were sorted out. The employees or workers would whole heartedly accept the government policy of privatisation. The settlment was agreed on three ways.[xiii]

1. Employees continuing their service in privatised unit will be offered ten per cent of total shares of the enterprise. No lay off shall be made for the period of one year. If retired after one year employee shall be given Rs.1000 per month as unemployment benefit till reemployed elsewhere or for the period of two years. Government would provide credit facility for self employment and priority shall be given in off shore jobs to those employees.

2. Employees ~~those~~ who are opting for 'Golden Handshake' will be paid five months salary for every year of service completed.

3. Employees of the enterprises being privatised shall be given first right to match the highest bid while privatising. And they are allowed to use their gratuity and provident fund to purchase the unit being privatise.

Under these circumstances the policy of privatisation in Pakistan went smoothly. Around 45 per cent of the employee opted for golden handshake, Eight enterprises were sold to its employees one among them was a commercial bank with 7500 employees.

4.3 **India**:

The main reason for the creation of Public Sector Undertakings (PSU) in India was for the removal of poverty, better distribution of income, expansion of employment opportunities, removal of regional imbalances, accelarated growth of agricultural and industrial production and to prevent economic power in few hands. The Government of India to fulfill the above objectives and goals started with five PSU in 1951. At present the number of PSU is 1045, with 245 Central Government PSUs and 800 State Government PSUs.[xiv] Another equally important factor for the evolution of PSU is the Industrial Policy Resolution of 1956 which classified two schedules, Schedule A consists of 17 categories of industries indicated as core, basic and infrastructure industries these are reserved exclusively for the State. Schedule 'B consisted 12 broad categories of industries reserved for the State to run but private sector were also allowed with permission or with participation with State to establish industry. All other remaining falls under third category (not specified) where private sector is allowed to set up through licence and other clearance and the State also has right to start industry.[xv] Therefore, the State in India is given dominant role in the industrialisation process. The PSUs grew rapidly from an investment of Rs.290 million in 1951 to Rs.616 billion in 1986-87 with the total of 2.2 million employees.

The PSUs owned by the Government of India covers all group of activities ranging from Steel, Metals, Coal, Power and Petroleum to consumer goods, trading, transport, construction, tourism, etc. Despite its fast growth many weakness and problems have surfaced in this sector, which has been pointed out by many commission and committee.[xvi] At present central government alone controls 250 PSUs excluding enterprises in banking and insurance sector. The total assets value of 244 PSUs were 182,000 crore without including the land and machinary replacement value. Among 250 central government PSUs 89 are deemed to have consistantly shown profits over last 4-5 years.

It is no doubt true that PSU which were a hybird of government should have used the strength of private enterprenure to achieve its goals and objectives. But the present data reveal most of the PSUs are in ill state because of day to day government intervention, over bureaucratisation and over staffing has made most of the PSU stagnant. It has become the main source of drainage of tax payers money. The state of PSU today has become as preconceived by late Prime Minister Nehru, who once said in the Parliament "the normal government procedure applied in PSU will lead to failure of PSU." So a system has to be evolved for the working of PSU with checks and balance in one hand and enough freedom on the other hand to work quickly.[xvii] But the reality is PSUs are under multiple controls from ministerial level to bureau of public enterprises. These over controls and day to day monitoring system is one of the root cause why these PSUs are inefficient and ineffective in securing its objectives.[xviii]

The period between 1988-91[xix] in India is marked as uncertain political situation which affected the government capacity to control increasing fiscal and current account deficits. The fourth government which came in power in 1988-91 announced series of measures to rectify the situation. The measure were to reduce fiscal deficits and liberalise the economy.

The liberalisation of economy has created scope of privitisation in India. Underutilisation of capacity by PSUs and liquidity crunch in government to support loss making enterprises has triggered the discussion among academicians the possibility of privitisation. In the year 1991 the government made policy to sale shares of PSUs to mitigate budget deficit of Rs.25000 million. Shares of 31 PSUs were disinvested in the period between 1991-92. In 1992-93 shares of 20 PSUs were sold to procure Rs.35000 million. In 1993-94 further disinvestment took place and in 1994-95[xx] government's plan is to disinvest Rs.65000 million worth stocks. This process cannot be termed as privatisation in strict sense because Government has not framed policy for privatisation and to induce private sector in management to inhance operational efficiency. Secondly, disinvestments were performed only to bridge the budget deficits and the stocks were sold to mutual funds and institutions largely owned and controlled by the Government.

The cursory view of the total Indian scenario in the policy of privatisation gives a vague or unclear picture. This is because there is no clear policy set forth by the government. The debate of privatisation has created among academicians amidst decision whether to follow strict and pure privatisation or disinvestment. But if we analyse the policy initiative of the government as policy of liberalisation and the steps taken towards curtailing budgetary deficits we can find privatisation policy forwarded in three broad methods which can be termed as:

A. Greenfield Privatisation:

1. Opening up the area to private sector initially reserved for PSU's.

2. No further approval for new investment or expansion for PSU's.

3. In enterprises where public and private are working as joint sector preference to private sector for increasing shares.

B. Cold Privatisation:

This method of privatisation is to be applied to further make PSUs more efficient and effective. Financial autonomy of free access to banks or capital market for financial assistance, autonomy to make investment decision, freedom to fix the price according to the competitive markets and converting department enterprise into corporate entity.

C. Disinvestment or Divestiture:

This method is to sale the shares of PSU through stock exchange.[xxi]

The above discussion and the method of Privatisation clearly indicates that India is not prepared to opt for privatisation in the strict sense. This is because of many hindrances from political to social obligation that a country has to fulfill. But in due course of time, no one can predict the scenerio may change, it is only that people should be aware of the fact what a government is up to. If they feel the step of the government is for the better prospect of country and is accountable the privatisation step may become welcome step from all the corner of society. The only way to do this is make people aware and educate about privatisation. In this situation the government should come up with a clear policy to this effect, which will be able to clarify the present state of confusion and stalemate.

4.4 Sri Lanka:

In the course of development after independence in Srilanka, the demand of public sector service and goods also increased simultaneously, this is one of the cause which increased the number of Public Sector Undertakings (PSUs). Further the colonial inheritance of government department for basic infrastructure facility and service required for the community also existed with the independent Srilanka.

The rational behind the establishment of PSUs was the lack of organised capital resource and lack of caliber management caders to operate large private sector. The political parties which came into power from 1956 to 1977[xxii] also equally played a vital role in the creation of PSU's. Some of these parties were influenced by the ideology that the economic area has to be under state dominance, other believed that the PSU can be tool for a political patronage, a place for providing employment to their supporters. It could also provide chances for mobilisation of organised labour for political purpose. When the elected Government promised to curtail the activity of PSU's and wanted to minimize its economic activities in 1977 there was a hue and cry against this. The reason for this was the fear that if privatisation took place the politician would have less scope for political patronage, the bureaucrats would loose his control and power and the worked would loose his iron rice bowl".[xxiii]

Even though the reduction of State activity was formulated in the year 1977, it took a long and slow course to trade its path. Initially the out look was the emphasis on efficient and corruption free State Enterprises. The logic got momentum with the parallel development in availability of caliber enterpreneur and professional managers. So the theme efficient management of PSUs which changed into the reduction of State into economic area finally converted into privatisation. In the year 1988 the government came with the policy which emphasised on providing more role for the private sector. Since the existing 250 PSU's were not able to develop enough to shoulder the responsibility of providing essential services.[xxiv]

The policy of government on privatisation got further momentum by establishing a "Commission on Privatisation which later changed its name to Commission of Peoplisation". Three govt. employees of the secretary level and three leading business professional were the members of this Commission. This Commission was to recommend the government the procedure to be adopted for the sale of share of PSU's, valuation of PSUs, to determine the price of share of PSU and scheme of employment participation in ownership whose service might not be retained.

The policy further included private sector shall be allowed to play more dynamic role in future economic activities of the government and PSUs shall be confined mainly in development of infrastructure and service. The PSUs shall be examined on a case to case basis whether to privatise, restructure or closedown. In overall privatisation in Srilanka one can find five models or method for the process of privatisation.

First model was participation of private sector in economic and social activities. Private sector was allowed to replace in work which earlier was performed by PSUs, such as construction, maintenance of roads, irrigation works, security of public buildings etc. Secondly, involvement of private sector directly in public sector activities, opening up specific areas to private sector solely reserved for PSUs i.e., Banking and Insurance sector, road passenger transport, curative health care and vocational training. Third, contracting out management of PSUs to private sector without transferring ownership. Management of four textile mill was handed to foreign textile manufacturing firm in 1980. Fourth, joint venture with private sector, joint ventures were allowed in the existing PSUs. Such joint ventures were formed through company i.e., Sugar Company where government owns 49% stake, another companies are Lanka Wall Tiles Ltd. and Lanka Cement Ltd., where government has invested through cyclon ceramic corporation and Cylon Cement Corporation. Fifthly, is disinvestment model. This was performed by two ways, sale of loss making small state owned enterprises to private sector who would continue operation ie., tile and brick production. The other method was transfer of PSUs with assets and liabilities to private enterprise setup under Company Act ie., National Milk Board was transferred to Milk Industry of Lanka Ltd. (MILCO).

The privatisation process where more than 20 industries privatised in between 1989 to 1992 has yielded mixed impact in Srilanka producing varying results, positive impact can be found in demand of budget, contracting out of management has resulted from loss making PSU's to in profit. The opening of road passenger transport to private has not improved in operational efficiency. But the textile mill and private sector involvement in public sector task has improved operational efficiency, this also has reduced the budget burden on government. Operational efficiency and capital resources can be found in Banking and Insurance Sector.[xxv] Eventhough with the above result the adverse political and economic environment and low income in developing countries and the continual civil war in the country has hindered the process and overshadowed instead of smooth proceeding.

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3. Ibid.

4. In this programme the largets public enterprise in Korea such as Korea Electric Power Corporation, Korea Telecommunication Authority, Pohang Iron and Steel Company and Korea Monopoly Corporation were also listed.

5. Person holding more than three percent of total share will only be allowed to vote upto three percent, excess shares shall have no voting right. For private corporates the limit is of ten percent of total share exceeding from ten percent shall carry no voting right.

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CHAPTER V

5. STRATEGIES AND MEASURES ADOPTED

5.1.1 A CASE STUDY COMPRISING OF EIGHT PRIVATISED ENTERPRISES

The implementation of the policies on privatisation in Nepal started in 1991. The Government which came in power in 1991, initiated the privatisation of PSUs. During this period privatisation was largely because of the policy measures of the government and not because of the legal measures since the privatisation Act was enacted three years later in 1994.

Government of Nepal, with the institutional framework of Privatisation Committee chaired by the then finance minister and the Technical Committee headed by the Chief of the corporate co-ordination division of Ministry of Finance, made a comprehensive study of PSUs after the privatisation policy was announced. The technical support for the valuation and appraisal was rendered by UNDP and the World Bank. The Technical Committee with the help of these agencies prepared a detail report of these PSUs and forwarded for the consideration of High level Privatisation Committee. After the approval from high level committee, three manufacturing PSUs were privatised in 1992. The mode of Privatisation in this first phase was "sale of Assets and Business". The second phase of privatisation took place in the year 1994 after the Privatisation Act came into force.

The first phase of privatisation which was completed on November 1992 privatised three manufacturing PSUs. They are:

(i) Bhrikuti Paper Mills Ltd., (BPM).
(ii) Harisiddhi Brick and Tile Factory Ltd., (HBTF).
(iii) Bansbari Leather and Shoe Factory Ltd., (BLSF).

After the successful completion of first phase privatisation, Government listed 14 PSUs to be privatised in the second phase of privatisation and the model recommended for this was sale of block shares by the public tender. Among these listed, five PSUs were privatised by disinvestment and two PSUs were liquidated. The following PSUs were privatised in the second phase of privatisation

(i) Nepal Film Development Company Ltd., (NFDC).
(ii) Balaju Textile Industry Ltd., (BTI).
(iii) Raw Hide Collection and Development Corporation Ltd., (RHCDC).
(iv) Nepal Lube Oil Ltd., (NLO).
(v) Nepal Bitumen and Barrel Udhyog Ltd., (NBBU).

The liquidated PSUs are:

(i) Jute Development and Trading Corporation.
(ii) Tobacco Development Company.

In this chapter the researcher would like to present the detail privatisation process of the HMG Nepal in order to get a clear picture of strategies and measures adopted for privatisation.

5.1.2. BHRIKUTI PAPER MILLS LIMITED, (BPM):

a. Background:

This company was established in 1982 under the Nepal Company Act 1964, with an objective of providing machine made writing and printing papers. The company was established with financial aid from People's Republic of China. The company commenced production from 1986/87. This company employed a total work force of 321 person. Annual production capacity of company was 4550 tons but the annual production never exceeded 3000 tons per annum. The total consumption of all kinds of papers in Nepal was estimated at about 30,000 tons and consumption of writing and printing paper was estimated about 40 percent of total consumption. In the total demand this company produced only 10 percent and a private sector produced about 15 percent, the remaining gap of demand was fulfilled by imports.

Production did not reach upto the maximum capacity due to many reasons. The value of spoiled production reached US$ 20 thousand in 1990/91, machinary break down and unplanned stoppages in production increased overhead costs. The average profit of the 3 years (1989-91) were only NRS.96 (US$ 1.92) thousand. The study[i] revealed that planned maintenance of the machinary can reduce the wastage and machine stoppages which would increase the annual output of 4050 tonnes capacity to 5800 tonnes. The required raw material grass was readily available and mill could also be expanded which could produce 30 tonnes of paper per day.

b. Valuation and Privatisation Approach:

The valuation and assessment was carried out by the experts and consultants to reach the actual conclusion on saleability and likely value of the enterprise. The three approaches were made for the valuation such as Net assets value, liquidation value, valuation of future cash flow.[ii] The valuation also indicated the likely excess staff.

Valuation Approach	Valuation (thousands)	Surplus Staff
Net Assets valued	NRs. 344,000 (US$6880)	145
Liquidation value	NRs. 154,000 (US$ 3080)	321
Valuation of future cash flow	NRs. 124,000 (US$ 2480)	145

Source: Ministry of Finance.

The consultants recommended that the sale of business and assets should be the method of privaitsation. This was because taking into consideration the historical performance of this enterprise the objective behind the sale of shares to public and employees was difficult to achieve immediately.

Notices were advertised in the national and Indian news papers allowing 35 days for the registration of interest to participate on the bidding process. The information memorandum was prepared with detail information on the company's financial, organisational and market conditions. This was sold to the perspective investor at NRS.250 (US$ 5000) thousand of which 90 percent of the amount would be refunded to the unsuccessful bidder and adjusted in the purchase price in case of the successful bidder. The proposed share split recommended was minimum of 30% percent of total shars to be issued to employees and public.

In response to the advertisement published by the government eleven investors registered their interest to participate in the bidding process, but however at the closing date only eight different groups participated in the bidding process.

Name of the bidders	Proposed Price (000')
Kabra Group	NRS 295,500 (US$ 5190)
Himali Pipico	NRS 229,800 (US$ 4596)
D Acharya	NRS 80,000 (US$ 1600)
Tunga Bhadra Machinary & Tools	NRS 150,000 (US$ 3000)
Salt Trading Corporation	NRS 141,800 (US$ 2836)
Himal Impex	NRS 85,000 (US$ 1700)
Everest Paper Mills	NRS 100,000 (US$ 2000)
Straw Products (India) Ltd.[iii]	No value indicated

Source: Ministry of Finance.

After much deliberation in the high level committee, the government decided to negotiate at least once with all the valid bidders. A preliminary negotiating committee was formed under the chairmanship of the chairman of the board of the paper mill and joint secretary of the ministry of finance, the legal advisor and a charter accountant as members of the committee. It was further decided that a high level negotiating committee should be formed under the chairmanship of minister of finance, with minister of Industry, secretaries of finance, labour and law ministeries as members. The committee was formed in order to take responsibility for negotiating with the final bidders based in the outcome of the preliminary negotiation and also recommend the final decision to the high level privatisation committee.

c. Analysis of Proposals:

Among the eight proposals in bidding process, the bid submitted by Kabra group and Himali Pipico, were found to be attractive. The negotiating committee analysed the proposals on the basis of price offered, proposed business plan, payment schedule, redundancy and managerial skills.

COMPARATIVE EVALUATION CHART

(Value in 000's)

Description	Kabra Group	Himali Pipico
Offer Price	NRS 259,500 (US$ 5790)	NRS 229,800 (US$ 4596)
Deferred payment requested	NRS 167,000 (US$ 3340)	NRS 40,000 (US$ 800)
Terms of Payment	10 years, interest @15%	2 years,
Security offered	Assets	Housing Complex of paper mill.
Share to employee public	24-44% public 5% employees	30% to public and employees.

Source: Ministry of Finance.

During the course of priliminary negotiation, Kabra groups was communicated that the price they offered was attractive but the terms of repayment period 10 years is long and needed to be shortened. While negotiating with Himali Pipico, they were asked to offer public and employee share within the period of 3 years. They were also informed that the interest shall be levied on the proposal of differed payment for 3 years.

Thereafter, the preliminary negotiating committee referred both the proposals to the high level committee. The high level negotiating committee after receiving the revised proposal from both the bidders negotiated. The negotiation was based on redundancy, payment schedule, interest rates on differred payments and the issue of public and employees shares. At the time of negotiation, Kabra group submitted a written application to the high level negotiating committee their unwillingness to purchase the enterprise. The high level negotiation committee then decided to award the bid to Himali Pipico and referred their recommendation to high level privatisation committee. The High level committee also discussed the valuation of enterprise and offered price in detail manner and the credibility of the bidder. The Central Bank provided the information with regard to the credit worthiness, along with this the High level committee recommended the case to council of ministers.

Privatisation committee after getting the approval of council of ministers decided to award the bid to winning bidder Himali Pipico. The agreement with the Himali Pipico for the privatisation of Bhrikuti Paper Mill Ltd., was finalised.

FINAL PAYMENT TERMS

On Agreement date	NRS 11,400 (US$ 228) thousands
On completion date	NRS 40,668 (US$ 813) thousands
Within four months from the date of completion	NRS 187,630 (US$ 753) thousands Within two years from the
date of completion	NRS 40,000 (US$ 800) thousands

Source: Ministry of Finance.

d) Some feature of sale and purchase agreement:

1. The buyer agreed to purchase the Assets and Business of the enterprise for NRS.229,800 (US$4596) thousand. The valuation specification is -
   a) productive assets - NRS 130,434 (US$ 2609) thousand.
   b) Non-productive assets - NRS 40,000 (US$ 800) thousand.
   c) Current assets NRS 59,366 (US$ 1187) thousand.

2. The non-productive assets valued at NRS 40,000 (US$ 800) thousand shall be held by HMG Nepal and Citizens Investment Fund in an "Escrow" arrangement, for two years, which will be linked with public and employees share issue.

3. The issue of shares to general public and employees of the company shall be within two years. The employees will be offered 5 percent and public will be offered 25 percent of the total shares. The employees shall be offered shares in 25 percent discount rate and they will be allowed to pay the discount share price in 12 installments. The share acquired by the employees in this manner shall not be allowed to dispose or transfer for the period of 5 years.

4. No redundancy, no change in original name of company.

5. The existing facilities and benefits of employees shall be continued as it was in PSU. Employees unwilling to continue service shall be paid off promptly.

6. If in case of breach of agreement by purchaser the government may exercise all or any of the following options-

   a) Nullify the agreement and forfit all the money deposited/paid with the government.

   b) Resale the Assets and the Business.

   c) Sue the purchases for specific performance of the agreement.

7. If in case any portion of payment is not paid by purchaser on due date, 21% interest to be charged.

5.1.3. BRICK AND TILE FACTORY LTD., (HBTF):

A. Background:

This company was established in 1969 under the Nepal Company Act 1964. The main objective of the company was to provide machine made high quality clay bricks and tiles for private and public construction. The company commenced production from 1970. The total production capacity of the company was 2.9 million bricks and 1.3 million tiles annually. This company was established with financial aid from the Peoples Republic of China. The company with the total work force of 594 persons produced only 17% of bricks and 25% of tiles in the year 1990/91.

The analysis of the company elucidated much of the plant were under utilized, over staffed, plant facilities were badly maintained which cause maximum breakdown and the sale revenue were lost because of long delays in delivery. The average after tax net profit over three years period (1989-91) were NRS.11,000 (US$ 220) thousand which included a substantial amount of deposits of customers invested in national savings. An independent private sector machine brick producers revealed that their plant produced equal quantity of bricks with only half of the klin facility and labours, plus sold their products at higher selling price than of the HBTF. The analysis also illustrated that for the major maintenance to increase the production upto 26 million bricks per annum and to shorten delivery period, the capital investment NRS 200 million (US$ 4000 thousand) was required, which would inflow annual profit of US$ 220 thousand.

B. <u>Valuation and Privatisation Approach</u>:

A detail valuation was carried out with an objective to provide a comprehensive compilation of the data necessary to enable the government to reach a conclusion of the salability and likely value of the enterprise.

Valuation Approach	Valuaion (000's)	Surplus Staff
Net Assets valued	NRS.200,000 (US$ 4000)	260
Liquidation value	NRS.118,000 (US$ 23,600)	594
Valuation of future cash flow	NRS 98,000 (US$ 1960)	260

Source: Ministry of Finance:

The report[iv] further illustrated that to make the HBTF successful after privatisation, skilled chief executive, fund to finance significant expenditure on new plant, and investors who could provide or have access to required technical and managerial skill will be necessary. The wide spread share holding may not be able to control and bring about changes in the company. For this reason the report of the consultant recommended mode of privatisation as "sale of business and assets". The future share specification recommended is management 72 percent, employees 5 percent and public 23 percent.

Based on the report, the government published the notice for the privatisation of HBTF inviting bids and proposals from interested parties to participate. The information memorandum was also prepared with detail information of company such as financial, organisational and engineering status, market scenarios and bidding procedures. This information memorandum was sold to the private investors at NRS.250 (US$ 5) thousand of which 90 percent of the amount would be refunded to the unsuccessful bidder and adjusted in the purchase price in case of the successful bidder. Time length of 35 days was given for the registration of bid.

In response to the advertisement published by the government, seven investors registered their interest to participate in the bidding process, but at the closing date only five different groups participated in the bidding. Among five bidders one group was the employees of Brick and Tile Factory.

Name of the bidders	Proposal Price (000's)
Sunder Bhaunani & N B Shrestha	NRS.228,800 (US$ 4570)
Tawachi Brick Factory	NRS.161,500 (US$ 3230)
M.B.Khatri (employee Group)	NRS.110,500 (US$ 2210)
Nepal Metal Trading Company	NRS.92,500 (US$ 1850)
Namaste Carpet Exports Pvt. Ltd.	NRS.49,500 (US$ 990)

Source: Ministry of Finance.

A preliminary negotiation committee was formed under the chairmanship of the chairman of the Board of the Brick and Tile Factory, joint secretary of finance ministry, legal advisor and charter account were members. The negotiation committee negotiated at least once with all bidders. Since the two bidders Sunder Bhaunani and N.B.Shrestha and Tawache Brick Factory were found to be attractive, they were recommended by the preliminary negotiating committee to high level negotiating committee which was responsible for negotiating with the final bidders.

COMPARATIVE EVALUATION CHART

(Value 000's)

Description	S.Bhavanani & Associates	Tawache Brick Factory
Offer Price	NRS.228,800 (US$ 4576)	NRS.161,500 (US$ 3230)
Differed payment Requested	NRS.157,800 (US$ 3156)	NRS.153,300 (US$ 3060)
Terms of Payment	5 years, interest @ 10%	6 years, current rate of interest.
Shares to employee	15% public, 2% employee	12.5% public & employee 12.5 to foreign investor within 2 yrs of agreement
Security offered	Debuntures	Bank guarantee

Source: Ministry of Finance.

The high level committee analysed the both proposal on the basis of price offered, proposed business plan, payment schedule, redundancy and managerial skills. They were also requested to increase public and employee share percentage. After analysing the revised bid submitted by both the parties the high level committee decided to award the company to S. Bhaunani and Associates. This was recommended to High level privatisation committee. The High level committee discussed on the issues like valuation of land and building and credit worthiness of the bidder. After this process and necessary clearence, the committee enclosed the decision of high level neotiating committee and forwarded for the final clearence from the council of ministers. The draft agreement was discussed with the private investor, and was finalised. After the clearence from all the concerned places and the final decision from the council of ministers. The sale and purchase agreement of the Brick and Tile Factory was concluded.

FINAL PAYMENT TERM

(Value 000's)

On agreement date	NRS.11,349 (US$ 227)
Within 9 months from the date of completion	NRS.120,296 (US$ 2406)
Within 18 months from date of completion secured by 17% convertible debutures	NRS.95,350 (US$ 1907)

d) Broad feature of the Agreement:

a. The buyer agreed to purchase the Assets and Business of company for NRS.228,800 (US$ 4576) thousands.

b. Government will have the option to convert the debuntures and sell it to the private sector businessmen in default of payment by purchaser.

c. 23 percent of shares shall be issued to general public and 5 percent share shall be issued to employees in 25 percent discount rate. The employees shall be allowed to pay the share due in twelve installments. Employees are not allowed to transfer these shares in any manner for the period of 5 years.

d. No redundancy, any difference in the area of disclosed land shall be adjusted in purchase price.

e. No change in original name, priority of delivery of tiles and bricks shall be given to the old depositors.

f. The facilities, benefits and salaries of the previous staffs shall not be decreased after transfer,

g. If in case of breach of agreement, government may excercise any or all of the action.

h. Nullify the agreement and forfiet all the moneys deposited/paid with the government.

i. Release the shares including debenture in cash or otherwise either by way of public auction or by personal negotiation.

5.1.4. BANSBARI LEATHER AND SHOE FACTORY LTD (BLSF):

The company was established in 1965 under the Nepal Company Act 1964. The main objective of the company was to produce shoes and to produce process leather. The factory had full tanning facility to produce export quality processed leather and the shoe unit was basically manual. This was also another assitance from the Peoples Republic of China. The capacity of the company initially was 100 pairs of shoes and 67 piece of leather per day, but in average it produced 362 pair of shoes and about 6296 sq. ft. (200 piece) of processed leather. Other leather items amounting to NRS 1800 (US$ 30) thousand per annum. The overall coverage of domestic market by the company was 57 percent in shoes, it was able to export processed leather in the form of wet blue to countries like India, Pakistan and Korea. The company employeed total work force of 445 persons. The competition of company was with 11 tannerirs and three shoe manufacturers, it also had to compete with imported shoes and local coblers. The survey of 1991-92 reveals in total shoe market about 76 percent depended on importation, 13 percent from shoe manufacturers and 11 percent on local coblers.

This company was one of main source for pollution by releasing chemical and organic waste after the processing in tannery, some of which were poisonous. The footwear division was on perpetual loss not even yielding production cost. Machine were in pathetic condition due to lack of maintenance, some were broken down and discarded. The shoe unit was like just a large coblers workshop and also was over manned. Average loss of the footwear division for the period between 1989-91 was about 5000 (US$ 100) thousand. The average per employee output in a private sector was 3.75 pair of shoes whereas with this factory it was only 1.8 pairs. The market of Bansbari shoe, even though it had reputation earlier, was gradually decreasing day by day because of the poor quality, out-dated models and low rate of commission for retailer. The situation adversely affected and the company was running on loss.

The report on engineering, marketing and financial study[v] revealed that the tanning operation was running on well and the possibility existed to double its output in case the raw hides are easily available. The additional investment of NRS.7500 (US$ 150) thousand was needed to bring the unit in profit of about 30,000 (US$ 600) thousand. The pollution control device was stated a must since this company was located in prime residential area. The estimated extra investment for the modernisation of the plant was NRS.20,000 (US$ 400) thousand. The main problem that aroused in the course of privatisation here is no one was willing to buy the shoe unit because to break the vicious circle of loss making in shoe unit a big amount of investment was required, in which one can easily start the new shoe unit with modernised machines. The final recommendation of the consultant provided government to allow seperate bidding, one for both unit and one for tannery division only. Further suggested, in the event of no buyer for shoe division it should be closed and surplus land be sold.

a) <u>Valuation and Privatisation Approach</u>:

The detail valuation was carried out in order to come to the exact value of the company. The valuation also indicated the surplus staff in each valuation approach.

Valuation Approach	Valuation (000's)	Surplus Staff
Net assets valued in a going concern basis	NRS.75,000 (US$ 1500)	297
Liquidation value	NRS.65,000 (US$ 1300)	545
Valuation of future cash flow	NRS.88,000 (US$ 1700)	297
Valuation of future cash flows (tannery only)*	NRS.126,000 (US$ 2520)	417

Source: Ministry of Finance.

Note: * This value incorporates the net proceeds from closing of shoe division including sale of surplus land.

Since the company is located in expensive prime residential area, the report also recommended to relocate the industry due to environmental hazard. Keeping in view the expert report and taking into the consideration the historical performance of the company, the government decided the mode of privatisation to be sale of assets and business, because to make this unit successful after privatisation the private sector has to have good managerial and marketing capability to compete in market. The distribution of shares in maximum number would not serve the problem.

The future share holding was designed as 75 percent for management, 5 percent for employees and 20 percent for public. The notice for the privatisation was published in newspapers allowing 35 days time for interested parties to bid. The information memorandum was prepared for investors and sold as per the same way as it was sold in earlier two cases. The financial, marketing and technial information about the company was available in the information memorandum. In addition, it also provided the information that the bidders could either bid for both (tannery and shoe) division or for tannery only.

In response to this, five prospective bidder rigistered their interest to bid for the company, but on the closing date only four participated.

Name of the bidders	Proposed Price
Chaudary Group	Submitted a bid for investments of Bansbari company in champion footware.
Tata Exports (India) Ltd.	Submitted proposal for management contract only.
M.J.Kureshi	NRS.15000 (US$ 300) thousand for tannery only.
Leather Age India	NRS.70,000 (US$ 1400) thousand for both division.

Source: Ministry of Finance.

The negotiating committee negotiated priliminarily with all the bidders, since Chaudhary group wanted to purchase the shares of company in champion foot wear Ltd., the Tata group of India was interested in management at present, they would consider purchase only after operating for two years. In this case only two remaining buyers Leather Age India and Mr. FJ Kureshis proposal were valid. So the preliminary negotiating committee recommended the same to the high level negotiating comittee responsible for negotiating with final bidders.

Comparative Evaluation Chart

(Value 000's)

Description	Leather Age India	FJ Kureshi *
Offer Price	NRS.75,000 (US$ 1500)	NRS.20,000 (US$ 400)
Differed Payment Requested	NRS.65,000 (US$ 1300)	NRS.15,000 (US$ 300)
Terms of payment	Equal annual installments	
Security offered	Assets	
Share to employee & public	15 percent to public & employee	
Redundancy	194	

Source : Ministry of Finance

NOTE: * The initial bid submited by Mr. FJ Kureshi was for NRS.15,000 (US$ 300) thousands for tannery only and no propasal for business plan, redundancy. Later after negotiation he indicated to raise his bid to NRS.20,000 (US$ 400) for both division of company.

In the course of negotiation, both the committee found it very difficult and crucial to decide because there was only one realistic bid from Leather Age India and secondly both the committee members were reluctant to accept the bid with redundancy of 194 staffs. The high level negotiating committee put forward three proposals to Leather Age India.

i) To purchase the entire assets and business of the factory for NRs.79,600 (US$ 1592) thousand and the differed payment to be settled within 3 years with the annual interest of 12 percent.

ii) To lease the factory premises for a maximum period of five years at the monthly rate of NRS.100 (US$ 2) thousand and relocate the factory at the end of five years.

iii) Limited the number of redundancy to 100.

The the buyer accepted the second proposal and the same was recommended to the High level privatisation committee. The committee here discussed in the issue of labour compensation, relocation of factory and credit worthiness of the private buyer. After all the clearance from all concerned places the matter was referred to the Council of Ministers for final approval. Then all the necessary documents were prepared to conclude the process. After the approval from council of ministers the sale and purchase agreement of Bansbari Leather and Shoe Factory Ltd., was concluded.

b) Features of the Agreement:

1) The buyer agreed to purchase the business and assets of the company (excluding building and land) for NRS.22,400 (US$ 448) thousand.

2) Terms of payment shall be, on agreement date NRS.1,120 (US$ 22.4) thousand. On completion date NRS.21,280 (US$ 425.6) thousand.

3) The general public will be issued 20 percent of the shares and for employee 5 percent will be issued. The shares issued to employees shall be made available in 25 percent discount rate plus they will be allowed to pay the total amount in 12 installments.

4) The purchaser will not be allowed to transfer the business and assets of the company in any manner till the issue and subscription of shares reserved for general public and employee.

5) The remaining employees after redundancy will continue their employment and shall be entitled to all the facilities and benefits that they were allowed in the previous company.

6) The new buyer shall not change the original name of the company. The purchaser shall pay US$ 2000 per month to the government for the use of land and building as per the lease agreement executed separately. The factory should be relocated outside Kathmandu valley within the period of 5 years.

7) The purchaser is allowed to employ minimum foreign technician for a limited period of time for the transfer of technology.

8) If in case of breach of any provisions of the agreement, the government has right to excercise all or any of the following options.

a. Nullify the agreement and forfeit all the money deposited with government.

b. Resale the assets and business.

c. Sue for specific performance.

9) If in case of default in payment of installment 25 percent interest rate shall be levied.

The first phase of privatisation programme was successfully implemented while privatising three fully government owned enterprises. The most common thing among these three are, they were established by the financial grant from the Peoples Republic of China. Among three PSUs two were running on profit and one leather shoe factory was on loss. The mode of privatisation in the first phase was sale of Business and Assets but in the case of Bansbari leather shoe due to environmental concern, building and land among the assets were excluded.

The procedure followed in the process is similar to each other. Employees and workers share and facility to purchase the shares were also similar in all the privatised units.

In the course of privatisation due to the myopic observation, government could not succeed to get the full amount while privatisation. This happened in the case of Bhrikuti paper Mill's privatisation. Among the two final bidder, Mr. Rajendra Kabra abruptly dropped the negotiation stating they were not be willing to purchase the current assets equivalent to 34 crore, when the highest bid was only 22.9 crore. Government did not suspected the possible collusion and awarded the bid to remaining bidder. Here the question of transperancy has been evoked? and the attitude of government is questioned. Another event is while privatising Bansbari Shoe Factory. When negotiating committee offered three options, the second option did not mentioned the valuation of machinary and other assets excluding land and building. This is one reason why government was criticised and alleged that the government sold the PSU in throw away price.

5.2 SECOND PHASE

The second phase of privatisation programme started on July 1993. This phase of privatisation programme divestitured seven PSUs including two liquidation.

Based on privatisation policy and the eighth five year plan plus the successful implementation of first phase privatisation and with it's experience the government devised long term privatisation plan with the technical support from UNDP and world bank. The government with its various studies and reports had identified the existing problems of PSUs and they were thus categorized as:

1) Suitable for immediate privatisation.

2) Suitable for privatisation after further study and restructuring.

3) Unsuitable for divistiture but requirng immediate reform and restructuring to enhance performance.

4) To be liquidated after a detail study.

The fundamental change in the second phase of privatisation programme brought is the "Privatisation Cell" to work as secretariate for the high level privatisation committee. Secondly, PSUs that were selected for privatisation were recommended for the sale of shares rather than sale of business and assets.

The second phase privatisation programme disvestitured the shares of following PSUs.

1. Nepal Film Development Company Ltd., (NFDC).
2. Balaju Textile Industry Ltd., (BTI).
3. Raw Hide Collection and Development Corporation Ltd., (RHDC).
4. Nepal Lube Oil Ltd., (NLO).
5. Nepal Bitumen and Barrel Udhyog Ltd., (NBBU).

These PSUs were among the 14 listed for the second phase of privatisation.

5.2.1. **Nepal Film Development Company Ltd. (NFDC):**

Background:

This company was established as corporation under the Nepal Communication Corporation Act, in the year 1971 as the Royal Nepal Film Corporation. The corporation was transformed later in 1992 as company Ltd. The main objective of the industry was to produce feature films and documentaries of national and cultural interest as well as commercial film of recreational values. Before it was changed to limited company it had produced six feature films and several documentaries. The corporation employed a total of 77 person and beside one year the corproation was in perpetual loss. After the conversion of corporation to company in 1992 it was granted complete autonomy to operate commercially such as freedom to improve management, select economically viable projects and develop local film industry. After the change in 1992 the company concentrated on the film procession. The average accumulated loss of the years 1989-93 was NRS.17,500 (US$ 350) thousand.

Though the company was able to process and develop films, it was a small specialised units with limited customer base. In the year 1992/93 it processed 11 feature films. The company's success depended on the number of film produced in Nepal. This hope of success came when the government policy provided protection to Nepali film producer. The prospect of the company also depends on the facility expansion as indoor and outdoor shooting, full facilities of dubbing and sound mixing, since films are taken over to India for sound mixing process. The company after adequately equiped will be the sole competetor in this area which definitely has future prospects. The study[vi] also provided with upgradation and addition of equipment need to go to India will automatically vanish.

a) Valuation and Privatisation Approach:

A detail valuation was carried out with an objective to provide a comprehensive compilation of the necessary data to enable the government to reach a conclusion of salability and like value of the enterprise. The valuation approach also illustrated the likely excess staff in each valuation.

Valuation Approach	Valuation (000's)	Surplus Staff
Net assets valued on a going concern	NRS.50,000 (US$ 1000)	
Liquidation value	NRS.35,275 (US$ 706)	77
Valuation of future cash flows	NRS.32,700 (US$ 654)	

Source: Ministry of Finance.

The appraisal report also stated that because of the tax incentives the investment in films production and theatre has been increasing. Eventhough the sustainability of the industry depends upon the incentives policy of government and was expected to be long lasting. It further provided, the controlling share holder with efficient management and plans to expand facilities could bring about change in company. Since, the objectives of wide distribution of shares to the public and employees was difficult to be achieved immediately because of the historical performance of corporation. Government decided to sale the block shares to private investor who will get right to manage the company. The shares offered by the government was based on following pattern.

Management	Employees	Public	Film Industry	Total
51%	5%	20%	24%	100%

The notice was published in the national newspaper for the registration and to participate on the bidding process for 51% management shares in NFDC allowing a total of 35 days. The information memorandum was prepared containing detail information of company's financial, organisational and engineering status and market scenario. It also included the terms and conditions acceptable to the government, bidding procedure and policy and regulatory issue concerning the industry. This information memorandum was sold to the interested bidder at NRS.200 (US$ 4) thousand of which 90 percent of the amount would be refunded to unsuccessful bidder and adjusted in purchase price in the case of successful bidder.

In response to the advertisement for the 51 percent controlling shares, three investors participated in bidding process.

Name of the bidders	Proposed Price (000's)
Sushil Shrestha and the group	NRS.17,500 (US$ 420)
Arun Malla and Consortium	NRS.15,220 (US$ 304)
NFDC Employees	NRS.12,000 (US$ 240)

Source: Ministry of Finance.

The high level privatisation committee decided to negotiate once with all the bidders, for this purpose a preliminary negotiation committee was formed. Secretary of Ministry of Communication was appointed chairman and joint secretary of finance ministry, the legal advisor and a chartered account as members. Another committee responsible for negotiating with final bidder was also construed as high level negotiation committee. This committee, headed by Minister of Finance as chairman and other members included Minister of Communication, Secretaries of Finance, Labour and Law Minsiteries. This committee is responsible to finalise and recommend the same to high level privatistion committee.

In the second phase of privatisation some change in the negotiation procedure were observed. In this phase the bidders were asked by the committee to revise their offer without disclosing the bid price of other bidders. The high level privatisation and high level negotiation committee were given full authority by the government to conclude the sale purchase agreement with the winning bidder.

In the process of preliminary negotiation, NFDC employee group notified they were not interested to negotiate. Other bidders were asked to revise the terms and conditions unacceptable to the government such as exclusive right to import films, tax holiday, continuity of employees service period and offer price, etc.

Comparative Evaluation Chart

(Value 000's)

Description	Arun Malla	Sushila Shrestha
Offer Price	NRS.15,220 (US$ 304)	NRS 17,500 (US$ 420)
Terms of payment	to be agreed at the time of negotiation	payments at completion date
Share to public and employee	as stated in information memorandum	as stated in information memorandum
Redundancy	Indication for 30%, to be agreed while negotiation	no redundancy

Source: Ministry of Finance.

There after the high level negotiating committee called the two final bidder and allowed them half an hour to re-propose the final offer including the terms of payment. The high level committee opened their respective seal bid in front of both bidder and declared the winning bid. The decision of the high level negotiation committee was forwarded to the high level privatisation committee, which in turn indorsed the decision of negotiation committee to award the bid to Arun Malla. Then the sale purchase agreement for the management share was concluded. The final bid given by both the bidder was as follows.

Final Bid Terms

(Value 000's)

Description	Arun Malla	Sushila Shrestha
Final offer	NRs. 22,778 (US$ 455)	NRS.21,100 (US$ 442)
Terms of Payment	5% on agreement and balance on completion	5% on agreement and balance on completion
Share to employee and public	as stated in information memorandum	as stated in information memorandum
Redundancy	no redundancy	no redundancy

b) Broad feature of Agreement:

a) The buyer agrees to purchase shares of the company for NRS.22,778 (US$ 445) thousands.

b) The general public, individuals directly engaged in the film industry and employees to be offered 20%, 24%, and 5% of shares within one year from the date of completion. The buyer of the company to purchase unsuscribed shares at the price offered by them for 51 percent shares.

c) Shares issued to the employees will be discounted to 25 percent and such suscribed shares shall be paid in 12 installments.

d) Employees willing to continue to work with the new buyer shall be entitled the same benefit and salary and not to be decreased, prompt payment shall be made to employees those who are opting out service.

e) If in case of violation of terms and conditions above, the government has full right to excercise any or all option by furnishing 15 days notice to the purchaser.

   i. Nullify the agreement and forfeit all the moneys deposited/paid to the government.

   ii. Resale the shares in cash or otherwise by way of public auction.

   iii. Sue for specific performance.

5.2.2. BALAJU TEXTILE INDUSTRY LIMITED(BTI):

Background:

Balaju Textile Industry Ltd., was established under the Company Act of Nepal 1964 in the year 1971. This was another financial aid from the Peoples Republic of China. The main objective of the company was to fulfill the basic demands of cotton fabric of the people of Nepal. The Company had the capacity to produce 1200 thousand meters of clothes per annum. The national demand of the cotton fabrics in 1989/90 was about 17,286 thousand meters. The company had the capacity to fulfill only the 7 percent of demand. In the whole history of company except for couple of years the company always suffered loss. This company employed 165 persons. The accumulated loss of the company in the year 1990-93 was NRS.17,000 (US$ 340) thousand.

The main reason for the failure of cotton mills in Nepal is the cotton yarns. It is not sufficiently available in Nepal and has to be imported from India. The spinning mills in Nepal had stop producing cotton yarns because the price of cotton had increased and it was not cost effective. The fabrics imported from India is cheaper than those produced in Nepal. So the only question to the privatisation analysing team was whether any body would take up the challenge to turn around the industry. Because the industry was in need of total diversification to become viable. It was considered the injection of capital, appropriate technical and product development can make company viable.

a) <u>Valuation and Privatisation Approach</u>:

A detail valuation and appraisal was carried out with an objective to provide a comprehensive compilation of data to enable the government to reach a conclusion of slability and likely value of the enterprise.

Valuation Approach	Valuation (000's)	Surplus Staff
Net asset value on going concern basis	NRS.38,000 (US$ 760)	39
Liquidation value	NRS.18,800 (US$ 360)	165
Valuation of future cash flows	NRS.16,040 (US$ 321)	39

The report[vii] also clearly stated that, it may appeal some buyer looking for a low cost entry into the industry or interested in developing other activities in the site, so the best way is to advertise the sale of shares rather than annuonce the liquidation of the company. The objective of wide spread sale of shares to the public and employees was difficult to achieve immediately because of the historical performance of the enterprise. It was only possible for the government either to hold the shares to be issued to public and employees at later date or the sale agreement could incorporate obligation on purchaser to issue share on particular date. The government offered the share on following pattern.

Management	Employees	Public	Total
70%	5%	25%	100%

The notice was published in the newspaper for the sale of block management share of 70% percent in the BTF, for the interested private investors to register their interest within 35 days. The information memorandum containing detail information on the company's financial, technical and market scenerio was prepared and sold to interested buyers.

In response to the advertisement published for the the 70 percent controlling shares in BTF, two proposal were submitted.

Name of the bidders	Propsal price (000's)
Mr. Indira Bhakta Sakhakarmi Associates	NRS.12,400 (US$ 248)
Nepal Metal Trading Company	NRS.10,900 (US$ 218)

Source: Ministry of Finance.

The high level committee on privatisation formed preliminary negotiation committee under the chairmanship of the Secretary of the Ministry of Industry and the Joint Secretary of Ministry of Finance, the legal advisor and a chartered accountant as member. This committee was to negotiate preliminarily with all the bidders. Another high level committee was formed under the chairmanship of the Minister of Finance and the Secretaries of the Finance, Industry, Labour and Law Ministeries as members. This committee was responsible to negotiate with final bidders and recommend the high level committee their decision.

Among the two proposals, the bid submitted by Mr. Indra Bhakta Sakhakarmi & Associate was found attractive.

Description	Mr. Sakhakarmi	Nepal Metal Trading Co.
Offer Price	NRS.14,275 (US$ 285.5)	NRS.11,784 (US$ 236)
Deferred payment requested	NRS.8,990 (US$ 180)	NRS.5890 (US$ 118)
Terms of payment	2 years	6 years
Share to employees and public Redundancy	as per information memorandum no redundary	as per information memorandum 50% employee to be laid off.

Source: Ministry of Finance.

Both the propsals were analysed on the basis of price offered, proposed business plan, payment schedule, redundancy and managerial skill. The preliminary negotiation committee negotiated with both the bidders and requested them to revise their terms and condition not acceptable to the government such as tax holiday, continuity of employees service period, laying off employees and also their offer prices.

The high level negotiating committee called both the bidders and asked them to repropose their final offer including the terms of payment within 30 minutes. In the case of BTF the high level negotiating committee did not open the sealed envelopes in front of the bidder since the bidders had requested the government for differred payment and present value of the bids needed to be calculated before the decision could be made to bidders.

Final Bid Comparison

(Value 000's)

Description	Mr. Sakhakarmi	Nepal metal Trading Co.
Final offer price	NRS.17,716 (US$ 354)	NRS.15577 (US$ 311.5)
Differed Payment Requested	NRS.11,516 (US$ 230)	NRS.4,673 (US$ 93)
Terms of Repayment	1.5 years	only public and employees to be diferred
Shares to employee and public	as per information memorandum	as per information memorandum
Redundancy	no redundancy	no redundancy

Source: Ministry of Finance.

The comparision of both the bids indicated that the present value of shares offered by Indra Bhakta Sakahakarmi and the Nepal Metal Trading Company were NRS.1633 (US$ 32.66) and NRS.1602 (US$ 32.04) respectively.

Both the bids were forwarded to the high level privatisation committee for the final approval. Based upon the difference on bids the committee awarded the company to the highest bidder. The sale purchase agreement of the Balaju Textile Industry was completed.

b) The features of Agreement:

a) The buyer agrees to purchase 70% shares of the company for NRs.177,16 (US$ 354) thousand.

b) The shares reserved for the employees and public shall be issued after one year. The shares issued to employees shall be given in 25 percent discount rate, they shall be allowed to pay for the said shares in 12 installments. At the time of public and employee offering unsubscribed shares shall be purchased by buyer at the price offered by them for 70% shares.

c) The purchaser is not allowed to sell or transfer in any manner the business and assets of the company until the shares reserved for general public and the employees are offered and subscribed.

d) The employees willing to continue their employment with buyer shall be allowed the same benefits and facilities and it shall not be decreased. The employees who are opting out of service shall be paid promptly.

e) If in case breach of terms and condition of the agreement by purchaser, the government may take any or all the following options -

i) Nullify the agreement and forfeit all the moneys deposited/paid to the government.

ii) Resale the shares in cash or otherwise either by way of auction or by negotiation.

iii) Sue for specific performance of the agreement.

f) If in case of default on payment in due date interest rate of 10% and surcharge of 15% shall be levied to purchaser.

g) Without the prior written permission from the government the buyer is not allowed sale, mortgage or otherwise transfer fixed assets equal to the value of 65% of the total share value to any person.

5.2.3. RAW HIDE COLLECTION AND DEVELOPMENT CORPORATION LTD.(RHDC):

Background:

The Raw Hide Collection and Development Corporation Ltd., (RHDC) was established in 1981, under the Company Act 1964. This as a joint company of government with tanning industries and general public. The government held 57% of the shares through the Nepal Industrial Development Corporation a state owned enterprise. The main objective of the company was to collect, preserve and sell raw hide to the local tanning industries. The total availability of raw hide was 548 thousand pieces. The company employed 539 persons. In the year 1991/92 the company supplied 54 percent of total raw hide demanded which is approximately 215 thousand pieces. The average after tax net profit over the three years period 1989-91 were NRs.3000 (US$ 60) thousand.

The level of expertise at management and worker level was poor and had no business quality to collect the quality and quantity of hides available to local processor. The company was over staffed. The study[viii] revealed that the company can increase the collection of supply of raw hides by introducing modern techniques for flaying hides and increasing collections areas. But the eleven tanneries that existed in Nepal dominated the market for hide as well as the price of hides. All the eleven tanneries owned 43 percent interest in RHDC.

A detail valuation and appraisal was carried out with an objective to provide a comprehensive compilation of the data necessary to enable the government to reach a conclusion of the salability and likely value of the enterprise.

Valuation Approach	Valuation (000's)	Surplus Staff
Net Assets value	NRS.4660 (US$ 93)	135
Liquidation value	NRS.4142 (US$ 83)	539
Valuation of future cash flow	NRS.14,183 (US$ 284)	135

Source: Ministry of Finance.

The main reason for the privatisation of this company was since the Bansbari Leather Shoe Factory was privatised earlier, the government found no reason to hold this RHDC in state sector. The report of consultant also indicated since the tanneries are holding 43 percent stake in this company the best way is to negotiate with the tannery owners, because they only need 8 percent more to take over the management. In this situation the employee buyouts was also not possible.

Taking the above fact into consideration and the consultant report, government decided the model of privatisation as sale of shares; the government authorised to sale 57 percent of share to tanneries and employees. The government decided to sale 52 percent share to tanneries and 5 percent to the employees. Notices were published in the national newspaper inviting application to purchase 52 percent shares in RHDC to all the tanneries. The information memorandum containing details about company's financial, organisational and engineering, market scenario was published to help the tanneries owners for information to bid. The bid submitted by the tannery owners should be processed through the Raw Hide Association.

In response to this notice, ten tanneries participated jointly in the bidding process.

Evaluation Chart

Description	Value (000's)
Offer Price	NRS.3724 (US$ 74.5)
Shares to employees	5 percent
Redundancy	no rendundancy

Source: Ministry of Finance.

The preliminary negotiation committee and the high level negotiating committee discussed with the bidder, the discussion was about the price and terms and conditions of employees. The bidder were ready to revise their offer price after the negotiation. This was forwarded to high level privatisation committee with recommendation. The high level committee indorsed the decision and the bid was awarded to tannery group for the 52% shares of RHDC. The sale of purchase agreement was concluded.

Final Payment Terms

Proposed Prices	NRS.3990 (US$ 79.8) thousand
On agreement date	NRS.280 (US$ 5.6) thousand
within seven days of agreement	NRS.2380 (US$ 47.6) thousand
on completion date	NRS.1330 (US$ 26.6) thousand

The difference in this particular sale was that it was more of a private sale or negotiation since it was specified for tannery owners and was sold to the joint group of tanneries.

b) Broad feature of the agreement:

a) The buyer agrees to purchase share of the company for NRS.3,990 (US$ 79.8) thousand.

b) Employees of the company to be offered 5 percent of the total share in 25 percent discount rate within one year from the date of completion. This share price can be paid in 12 installments.

c) The employees who are willing to work with new owner to be continued as per the rule and regulation of company and their salary and benefit not to be decreased.

d) If in case of violation of any terms and condition of the agreement, the government may with 15 days notice excercise all or any of the following options.

i. Nullify the agreement and forfeit all the moneys deposited/paid to the government.

ii. Resale the shares in cash or other wise either by way of public auction or by personal negotiation.

iii. Sue the purchaser for specific performance of the agreement.

e) If in case of default on payment in due date 25% interest rate to be charged.

5.2.4. NEPAL LUBE OIL LIMITED (NLOL):

Background:

Nepal Lube Oil Limited was incorporated in 1983, as a joint promotion of Nepal Oil corporation, state owned enterprises and general public. The industry was established under the Company Act 1964, with the objectives of providing lubricants for automotive and industry through processing raw lubricants. The compnay had franchise agreement with Gulf Oil Corporation for the use of the Trademark and technical assistance agreement with the Gulf Asian Investments Company Limited of Hongkong.

It started its production from 1986 and was traded in the stock exchange. The share holding prior to privatistion was as follows:

Nepal Oil Corporation	Other SOEs	Public	Total
59.3%	13.13%	27.57%	100%

The company had the capacity of processing 500MT of lubricants per annum. But the production of company never increased more than 17 percent of the total production per annum, which was only 20 percent of total demand. This company employed total work force of 101 persons. Since the production was not as per the total demand, this was fulfilled by other private lubricant processing and trading companies. Though this company was operating in a competitive environment with under utilisation of capacity it's average net profit was NRs.4679 (US$ 93.6) thousand during the years 1989-1992.

The detail appraisal[ix] of the company reported that the company was not utilising its full capacity, mismanagement and labour unrest in the company were the main factor which could not utilise the capacity. The result of this, created a situation where the stock of the company brought bearish trend, it plunged from Rs.350 (US$ 7) per share to Rs.150 (US$ 3) per share. The report further stated, even though the company was operating in competitive market, the full capacity utilisation and product lubricant can be easily absorved in the market, because the number of automobiles and industries was increasing every year.

The expert also opined this was the right time for the privatisaion of NLOL, the experts were of the view that efficiency and effective management in the NLOL would be reinstated after privatisation.

Valuation and Privatisation Approach:

The detail study carried out to analyse the various options also pointed out the ample opportunity to expand the company's under utilized capacity and can be made a profitable venture by strong management and good marketing strategy. Since the company was listed in the stock exchange, it was recommended to the government that instead of spending much time in revaluting the assets of the company, it was better to leave it to the market itself for setting the value of the company.

The government decided the sale of shares of the company. Even though the wide spread sale of share was much more feasible in this case but the possibility of company to become profitable in the short term led the government to offer block shares to the private. The proposed share stipulation was as follows:

Nepal oil corporation	Other SOEs	Public	Employees	Total
40%	17.78%	37.22%	5%	100%

Source: Ministry of Finance.

The notice of sale of share of NLOL was published in the news paper for the interested parties to purchase the 40% block share. The information memorandum was prepared consisting of company's financial, organisational, marketing and technical informations, it also contained bidding procedure and terms and conditions acceptable to the government. This was sold to the interested parties for NRs.50,000 (US$ 1000) of which 90 percent of the amount would be refunded to the unsuccessful bidder and adjusted in the purchase price in the case of successful bidder.

In response to the notice of sale of shares, twelve different group participated in the bidding process.

Name of the bidders	Proposal Price (000's)
Khagendra Sitaula and Associates	NRS.20,238 (US$ 404.8)
Hulas Wires Ltd.	NRS.23,679 (US$ 473.6)
Suresh Chandra Agarwal	NRS.24,016 (US$ 480.3)
Om Prakash Sikaria & Associates	NRS.25,365 (US$ 507.3)
Jaya Narayan Nanda Kishore & Associates	NRS.19,901 (US$ 398.0)

Global Management Groups	NRS.22,060 (US$ 441.2)
Khetan Groups of Industries	NRS.21,992 (US$ 439.8)
Vijay Bahadur Shrestha and Chaudhary Group (Tara Impra)	NRS.22,734 (US$ 454.7)
Akhil Kumar Chapagain & Associates	NRS.21,655 (US$ 433.1)
Vinod Kumar Sethiya	NRS.16,730 (US$ 334.6)
Visho Nath Sharma & Associates	NRS.10,187 (US$ 203.7)
Lumbini Trading Ltd.	NRS.9,107 (US$ 182.1)

Source: Ministry of Finance.

The preliminary negotiation committee was formed headed by the Secretary of Ministry of Finance, the legal advisor and a chartered accountant as members. This committee negotiated at least once with all bidder. Another high level negotiation committee was formed headed by the Finance Minister as Chairman and Minister for Supply, Secretaries of Finance, Supply, Labour and Law Ministeries as members. The responsibility of this high level committee was to negotiate with final bidders recommended by preliminary negotiation and to recommend the winning bid to high level privatisation committee.

The preliminary negotiation made clear to all the bidders that in this sale of share, government would not accept any condition of deferred payment. The committee also requested the bidders to revise the condition not acceptable to the government such as employees redundancy, deferred payment, guarantee of continue technical collaboration of GULF. They were offered 2 days to revise the offer price and terms and conditions and rebid in a sealed envelope.

The high level negotiation committee asked all the bidder to re-bid once again in half an hour time in sealed envelop to the committee. The committee opened the bid in front of all the bidder and declared the highest bidder in front of all.

Comparative Chart of two highest bidder

Description	Hulas Wires Ltd	Tara Impex
Offer Price	NRS.32,250 (US$ 645)	NRS.30,425 (US$ 608.5)
Other conditions	Bidder retained the right to adjust the increase or decrease in the current assets and liabilities in the completion date	None
Shares to employee & public	As proposed by government	As proposed by govt.
Redundancy	No redundancy	No redundancy

Source: Ministry of Finance.

The high level negotiation committee recommended both the proposals to the high level privatisation committee. The privatisation committee asked to the highest bidder to drop their condition but in the event the bidder declined to adjust. Finally the bid was offered to Tara Impex. The sale and purchase agreement of the Nepal Lube Oil Ltd. was concluded.

b) Feature of agreement:

Final Payment Terms

On agreement date	NRS.1521 (US$ 30.4) thousand
On completion date	NRS.28,904 (US$ 578.1) thousand

a) The buyer agrees to purchase 40% shares of the company for NRS.30,425 (US$ 608.5) thousand.

b) The employees shall be issued 5% of the company shares. The employee shares shall be issued at 25 percent discount rate and are allowed to pay in 12 installments.

c) The employees who are willing to continue their service with the new owner will be entitled to all the benefits and salary as they were getting previously and their salary and benefits not to be decreased. The prompt payment of entitlement to employees those who do not wish to continue.

d) If in case of the breach of any terms and conditions of the agreement, upon 3 days notice the government may excercise all or any options.

i. Nullify the agreement and forfeit all the moneys deposited/paid to the government.

ii. Resale the shares in cash or otherwise either by way of public auction or by personal negotiation.

iii. Sue the purchaser for specific performance of the agreement.

e) If in case of default on payment of any portion on due date 25% interest rate to be charged.

5.2.5. NEPAL BITUMEN AND BARREL INDUSTRY LIMITED (NBBI):

Nepal Bitumen and Barrel Industry Limited was incorporated in 1985 under the company Act of 1964. The main objective of the company was to produce bitumen and barrels for the marketing of bitumen in bulk. Nepal Oil Corporation a government SOE holds majority shares in this industry. The company also supplied barrels to Nepal Lube Oil Ltd., it started its production from 1988 and had the total work force of 58 persons.

The total capacity of the company's production was, 12 thousand metric ton of bitumen, 8 thousand metric tons of emulsified bitumen, 8 thousand units of lube barrels and 80 thousand units of bitumen drums per annum. But the average sales of bitumen per year was 3.4 metric ton from the company. This was only 34 percent of the total demand. The production of barrels in the period of three years 1989-92 was only 4120 nos. This was mainly because of the under utilisation of the capacity. Rest of the demand was fulfilled through importation from India and third country. Even though, with all this, the company was making profit, since it was a PSU with monopoly market push sale of bitumen to the goverment departments was possible.

The detail study[x] revealed that the barrel manufacturing plant needed investment for diversification since it was uneconomical. This was one reason for the low sale of produced barrel because the second hand barrel was much more cheaper than the one produced by company. Another peculiar thing about this company was it had not built any reputation or name of it in the market in order to attract the private investors. The main concern of the assessment team was whether anyone would come forward to take up the challenge to make the company turn around.

The detail valuation of apprarial was carried out inorder to reach the decision of salability. The consultants were of the opinion that the only realistic way of privatisation would be to sell the shares of the company in the basis of no limitation on share holding. If no buyers are interested to purchase, the only option was to liquidate.

Valuation Approach	Valuation (000's)	Surplus Staff
Net Assets valued	NRS.26,603 (US$ 532.1)	
Liquidation value	NRS.13,799 (US$ 276.0)	58

Source: Ministry of Finance.

The high level privatisation committee decided to publish the notice in newspapers about the sale of shares of NBBU. The committee, as per the expert recommendation splitted the shareholding to be as follows:

Management	Public	Employees	Total
65%	30%	5%	100%

The information memorandum was prepared consisting information of company's financial, organisational, market and technical scenerio. This was sold to interested buyer at NRs.200 (US$ 4) thousand. In response to the information three investors registered their interest to participate in the bidding process.

Name of the bidders	Proposal Price (000's)
Suresh Acharaya & Associates	NRS.17,790 (US$ 355.8)
Suresh Vaidya & Associates	NRS.10,955 (US$ 219.1)
Nagaraj Duggar & Manoj Duggar	NRS.15,748 (US$ 315)

The negotiation with all the bidder started with preliminary negotiation committee chaired by Secretary of the Ministry of Supply and Joint Secretary of the Ministry of Finance, the legal advisor and a chartered acountant. Later the preliminary negotiation recommended the final bidders to high level negotiation committee headed by the Finance Minister and the Minister of Supply, Secretaries of the Finance, Supply, Labour and Law Ministry as members. This committee is responsible for deciding the bid and recommending to the high level privatisation committee.

The high level negotiation committee analysed the proposal on the basis of the price offered, proposed business plan, payment schedule, redundancy and managerial skill of the two attractive buyers.

COMPARATIVE CHART OF THE BIDS

Description	Suresh Acharya & Associates	Suresh Vaidya & Associates
Offer Price	NRS.27,300 (US$ 546)	NRS.10,920 (US$ 218.8)
Diferred Payment Requested	NRS.8675 (US$ 173.5)	NRS.8,305 (US$ 166.1)
Shares to employee & public	30% public, 5% employee	30% public, 5% employee
Redundancy	No redundancy	No redundancy

Source: Ministry of Finance.

Suresh Acharya & Associates who offered the highest bid also had a condition that they should be given the monopolistic right to sell the bitumen to the government. The second highest bidder had the condition stating the privatised unit should get tax holiday and other benefits stipulated by the Industrial Entrepreneur Act. The negotiation committee asked both the bidder to revise the conditions and also bid price if possible. The highest bidder proposed to purchase the management shares of the company at NRS.10,200 (US$ 204) thousands in revised bid. The second bidder came with and increased offer price. The negotiating committee decided to award the bid to Suresh Vaidya & Associates. This was again recommended to the high level privatisation committee. The committee afterwards endorsed the decision intimitated. Thus the sale purchase agreement of NBBI was concluded with the private sector.

Main Features of the Agreement:

a) The buyer agrees to purchase 65% shares of the company for NRS.11,640 (US$ 232.8) thousands. The final payment terms is as follows:

Final Payment Terms

On agreement date	NRs. 582 (US$ 11.6) thousands
Within Six months of agreement date	NRs. 1910 (US$ 58.2) thousands
Within a year of the agreement date	NRs.8148 (US$ 163) thousands

b) Shares reserved for employee and public (5% and 30%) shall be issued within one year. Share subscribed by employees to be sold at a discount of 25%, employee can pay the price of subscription in 12 installments.

c) Employee those willing to continue service with the new owner shall be entitled the same salary and benefits as earlier it shall not be decrease. The employees willing to opt, to be out of service shall be paid promptly.

d) In case of the breach of any terms and conditions of the agreement the government may excercise all or any of the following options;

i. Nullify the agreement and forfeit all the moneys deposited/paid to the government.

ii. Resale the shares in cash or other wise either by way of public auction or by personal negotiation.

iii. Sue purchaser for specific performance of the agreement.

e) If in case of default in payment of any portion on due date, purchaser shall be levied 25% interest.

The second phase of privatisation programme in Nepal was launched with 14 selected PSUs. Among these 14 PSUs, five were privatised in between Nov. 1993 to June 1994. The model adopted for the privatisation in second phase was sale of management shares. All the PSUs shares were sold by public bidding process, except one enterprise. In the RHDC bidding was allowed only to the tannery operators. The shares of the Nepal Lube Oil was traded in stock exchange, while privatisation of this NLO, the high level privatisation committee left the market to decide the value of shares. In all other PSUs the expert team valued the shares price of the PSU being privatised. The enthusiasm of the private sector to participate in business was clearly observed in this phase of privatisation. Even in the cases where the experts and consultants were of a pessimitic view with regard to the participation of private sector in the bidding of the particular PSU, the response from private sector was remarkable.

In the overall second phase of privatisation, the private sector accepted the PSUs without redundancy. This shows that even if PSU is over manned, the human resource can be utilised in productive manner to bring the better change in performance.

END NOTES

1. The study of the enterprise was carried out by government hired expert team in 1991.

2. The assets of the enterprise are valued at replacement cost, depreciated, condition of remaining useful life. Land is valued at estimated market value as bare land. Liquidation value represents minimum value for a business. Cash flow value - this valuation is based on future profits and capital requirements of the business, the level of returns required by an investor taking accunt the risk and appropriate mix of equity and borrowed capital.

3. Straw Products (India) Ltd., had requested the government to allow them some extra time to furnish proper bid, which was refused by the government since bids from all others were recovered on time.

4. *Supra* N.1.
5. *Ibid.*

6. The study of the enterprise was carried out by government hired expert team on 1992.

7. *Ibid.*
8. *Ibid.*
9. *Ibid.*
10. *Ibid.*

CHAPTER VI
A CRITIQUE OF POLICY, LAW AND OTHER STRATEGIES

Privatisation of public sector under takings is formed and tailored as per the requirement of the country's economy. It is already stated in the previous chapter that there is no such single policy called privatisation. The term covers an approach or series of measures designed to bring the benefits of private provision into the public sector supply. The models of privatisation differ from one economy to another but the ultimate goal of all privatisation is to turn PSUs into efficient, effective and competent in the market for economic development.[i]

The researcher has discussed, in the third chapter, the policies of the Government of Nepal on privatisation. In general, the notion of privatisation is launched in the national economy when the government feels the pressure either internally or when the influence is external. Because of this pressure, the government has to opt for privatisation policy, which may remain only in administrative measures or the policy formulation. The internal pressure on an economy are fiscal crunch, budget deficit, mori bound industries and inefficiency of PSU. The external influence can be termed as 'international scenario', the development of market economy, liberalisation and globalisation are the elements which may pressurise a national government to move towards privatisation. But if we closely analyze the two waves of privatisation, the internal pressure for privatisation can be a sanguine decision because the external pressure for privatisation may only be oriented towards short term adjustment with emphasis on balance of payments deficit and fiscal crunch rather than attacking the root cause of the problems.

In the policy formulation of a country in general and privatisation policies in specific, there always exists the involvement of three actors, the politicians, bureaucrats and the advisors. It is always in the mind of the politicians to formulate policies which would bring good and impressive result in short period. This is so because in a democratic country, political persons do not have more than five years to rule continuously at one stretch. So, in order to make their political base strong and to gain popularity (in people) they strive for the policies which will garner an immediate result. On the other hand, bureaucrats are there with their permanent status. They try to formulate policy, which has incremental changes rather than a dramatic one. They try to avert controversial and water down difficult aspect of policy. In order to resolve the controversial issues the government seeks the opinion of professionals. The hired professional advisors, by analysing indepth in the policy, will bring the result of costs and benefits. This is the main reason, why the policy making is always viewed as a struggle between two executive bodies of the government.

The privatisation policy in Nepal can be seen as an outcome of two facts, political popularism and internal pressure. Due to reasons such as political patronage, over staffing, ineffective and inefficient management, the PSUs became the non-productive source of government revenue. This tendency in the long run reached it's height when the PSUs in Nepal absorve 20 percent of the overall budget in one year.[ii] This internal pressure is one view for privatisation. The another reason which cultivated privatisation is to establish the uniqueness of the ruling party by bringing quick and impressive change to sustain and popularise political base. This was so in the case of Nepal because after the restoration of democracy in 1990, the elected government in 1991, without considering the cause for the failure of disinvestment effort in late 80's, brought a policy of privatisation.[iii]

If we analyse the privatisation policy concieved by the government of Nepal[iv] in 1991, some indicators can be observed which the policy tries to achieve. The main objective of the policy is to -

a. Reduce financial burden of Government.
b. Release funds for better alternatives.
c. Operational efficiency resulting in higher productivity.
d. Encourage private sector growth and public participation in Industrialisation process.

To strike the above mentioned goals the policy stipulates Institutional arrangement -

a) High level privatisation commission:

This body is responsible for implementing privatisation and evaluating programme's effectiveness.

b) Technical committee:

This commitees' responsibility is to review PSUs indentify and priortize for privatisation. This committee will also be directly involved in privatisation activities.

The means to attain the objectives are laid down as -

c) Privatisation Options -
   - tranfer of ownership and management or the combination of both.
   - management/employee buy outs.
   - transfer of corporate management.
   - sub-contraction of corporate assets.

d) Feasibility studies -
   - priority given to enterprise with economic and operational stand point.
   - impact on consumers, workers and investors.

e) Legal arrangement -
   - protective legal measures for small investors and measures for production and price monopoly.

f) Employees/Workers settlement -
   - high priority for proposals accepting existing labour force.
   - the surplus employees/workers to get 50 per cent of current wages in lay off period till re-employed or one year.
   - credit facilities for self employment for surplus employee/workers.

g) Evaluation of PSUs -
   - careful evaluation of assets inorder to be acceptable for private entrepreneurs as well as not be undervalued.

h) Purchase proposal evaluation -
   - priority is given to those which generates greater public participation.
   - financial strength and managerial competence.

i) Amendment in Investment policy -
   - in the process of privatisation if capital restructuring require, this will be done only on the recommendation of the privatisation commission.

Under these above mentioned indicators, the broad pherephery of the privatisation policies were expressed. From this broad area of policies the laws are enacted reflecting all the basic norms of the defined policies. Generally, the enacted law is the replica of the policy formulated by the government in concerned area. The policy of the government which are processed through the enactment of laws are confering the validity by legal mechanism. Enactment of law to proceed with any conceived plan is one of the features in democracy. This process will entail the legal validity in the course of implementation.

The success or the failure of the policy or Act can only be traced in the course of implementation. The implementation process and the outcome also provide the necessary information whether the procedure of implementation was according to the defined criteria or not ? The result of the implementation of law will give a clear picture whether the formulated policy and law are capable of yielding the goal or not?

In the case of privatisation in Nepal, the policies and measures adopted while privatising the PSUs and the result of the privatisation and its impact will be able to give a clear picture to show whether the policies and strategies were successful or not? In this regard the researcher would like to put forward the impact of privatisation from the field study.

It has already been discussed in Chapter V that the process of privatisation in Nepal took place in two phase.

PROFILE OF PRIVATISED ENTERPRISES

Enterprise	Established year	Authorised Capital (Rs million)	Paid up capital (Rs million)	Ownership pattern	Total employment
BPM	1982	NA	84.50	Government	342
HBTF	1969	20.00	14.00	Government	576
BLSF	1965	40.00	30.82	Government	478
NFDL	1971	100.00	67.50	Government	87
BTI	1972	26.50	9.30	Government	285
RHCDC	1982	17.50	4.75	Joint Venture	564
NLO	1984	NA	Not available	Joint Venture	102
NBBU	1985	NA	Not available	Joint Venture	58

Source: Ministry of Finance.

The table above illustrates the profile of privatise PSUs. Beside two PSU Nepal Film Development Company (NFDC) and Raw Hide Collection and Development Corporation (RHCDC), all other six enterprises were in the manafacturing sector producing, paper, shoes, bricks, textiles, lubricants and bitumen. Three enterprises, Nepal bitumen and barrel Udhyog, Nepal Lube Oil, and Raw Hide Collection and Development Corporation were joint venture enterprises having majority shares of the government.

The units privatised were of mixture of all sorts, which included both moribound enterprises and the profitable ones. The Paper Mill, Raw Hide Collection and Development and Bitumen enterprises were making profit but not to the satisfactory level. The units privatised also had sick and dying enterprises like textile, film industry and shoe and leather factory. The table below will give the picture of the PSUs that were privatised.

Enterprise	Status	Major problem/constraints
BPM	Profitable, generating nominal profits	Low capacity, high over head costs.
HBTF	Running at break even point	Low capacity, high over head costs.
BLSF	Sick and dying	obsolute machinery, competitive market
NFDC	Sick*	market competition, lack of fund for further investment
BTI	Sick	obsolute machinery, operational difficulty, poor financial condition.
RHCDC	Profitable	competition from pvt-sector tanneries
NLO	Profitable	Poor capacity utilisation, poor financial condition.
NBBU	Pofitable	production being confined to barrel than bitumen.

Source: Ministry of Finance.

* continuous loss for more than three years prior to privatisation.

The box below will be able to disseminate the information and present status of the companies after privatisation process with regard to the share holding, total proceeds realised by selling and the name of private buyer running the enterprise at present.

Summary of Privatisation Process

Enter-prise	Date of privatisation	No. of bidders	Buyer	Sale Proceeds (Rs. million)	Deferred payment	Distribution
BPM	Oct 21-1992	11	Himal Pipe company	229.8	2 years	70% M 25% P 5% E
HBTF	Oct 30-1992	7	S.Bhawanani and N.B. Shrestha	228.8	1-1.5 years	72% M 23% P 5% E
BLSF	Nov 9-1992	4	Leather Age India	22.40	None	50% M 20% P 5% E
NFDC	Nov 11-1993	3	Arun Malla and friends	2.78	None	51% M 24% FR 20% E
BTI	Nov 19-1993	2	I.B.Shakhakarmi and N.B. Bhattarai	17.72	1.5 years	70 % M 25% P 5% E
RHCDC	Dec 14-1993	10	A group of 10 tanneries	3.99	None	10 tanneries not excluding 17%
NLO	June 5-1994	14	B.B.Shrestha and Chaudhari Group	30.24	1 year	40% M 17.78% SOE 37.22 P 5% E
NBBU	June 21-1994	3	Viadya Group	11.64	1 year	65% M 30% P 5% E

Source: Ministry of Finance.
Share Distribution - M: Management, P: General Public, E: Employees,
FR: Film Related people, SOE: State Owned Enterprises.

To judge the successfulness of the policy, implementation of law and strategies, the researcher has indentified some indicators from the field study which is prevailing after the privatisation of the enterprises. These indicators are -

1. Capacity Utilisation
2. Employee productivity
3. Effect on Employment

4. Price changes
5. Profitability.

1. Capacity change:

One of the main reason which persistently made PSUs loss is under-utilisation of the capacity of enterprise. Some PSUs were in need of full utilisation of their capacity and some needed to enhance capacity to cover the market. The table below will show the change in pre and post privatisation production capacity.

CAPACITY AND PRODUCTION PRE- AND POST-PRIVATISATION

Enterprise, Capacity production in units	Before Privati-sation	After privati-sation	Remarks
BPM capacity utilisation (%) average production/day (T)	65 7.8	90 11.7	Expansion programme finished from 1996 and production 128 ton/day
HBTF (in million) Bricks Roof tiles Floor tiles	 15.47 0.56 0.30	 17.8 0.75 0.34	 The expansion programme completed
BSLF (in thousands) Shoes (pairs) Leather (sq.ft.)	 118 2587	 30 1799	 Closing shoe unit, exported raw wet blue leather
NFDC capacity utilisation (%) Film processing Sound studio	 20 40	 NA NA	 Further expansion programme are under way
BTI Cloth (in thousand mtrs)	 821.5	 222.5	Production figure 2 years before and after privatisation
RHCDC Collection of hides (in pieces)	 219,000	 None	 The company is not in operation
NLO Lube oil (in KL)	 846.5	 817	Data pre-privatisation 1992/93, post-privatisation 1995/96
NBBU capacity utilisation (%) Bitumen Bitumen drums Lube barrels Bitumen emulsion	 24 10 20 Nil	 17 16 19 5.4	Started emulsion plant after privatisation

Source: Ministry of Finance.

The production capacity utilisation in the post privatisation shows the mixed result. The privatised units like Bhrukiti Paper Mill (BPM) and Harisiddhi Brick and Tile

Factory (HBTF) has increased the production by capacity utilisation. There are units such as Bansbari Shoe and Leather Factory (BSLF) and Balaju Textile Industry where the production rate has decreased. As regards the units like Raw Hide Collection and Development Company (RHCDC) and Nepal Film Development Company (NFDC) no data is available and seems they are closed.

The fact to be noted is in the production function of some privatised industries. Among the privatised PSUs the BLSF, has completely closed the production of shoes and attention is given only to the processing of leather. It is appropriate to make comment here that it was only the shoe unit in BLSF which was recurring loss earlier. In the case of NBBU, it has started producing bitumen emulsion, BPM has started to use rice husks to heat the boiler instead of coal saving Rs.10 million per year, likewise, HBTF has installed the new machinery which will double the production capacity. These are some welcome signs.

2. Employee Productivity:

One of the key element in privatisation is the per employee production rate. If a unit can increase its' turn over the over head cost decreases. The production of goods is directly related to employees. It is common in PSUs that because of lack of work culture and incentives the per employee production rate is low than remuneration paid to them. So privatisation in this respect builds the morale of employees and by incentive increases the per employee productivity. After the privatisation in Nepal to gain the trust and confidence of the employees, some incentive were designed and implemented. In this plan promotion, permanent status, increase in salary, house rent and insurance premium were introduced. The box below will be able to show the productivity rate of employee in pre- and post-privatisation period.

CHANGES IN PRODUCTIVITY PER EMPLOYEE

Enterprise	Before Privatisation	After Privatisation	Remarks
BPM	9.43	11.46	Increased
HBTF	29,000	32,000	Increased
BLSF	NA	314 (pairs)	
NFDC	NA	NA	expansionprogramme under way
BTI (metres)	4150	2200	Decreased
RHDC	NA	NA	
NLO	NA	NA	
NBBUMetric tonnes	52	37	Decreased
Barrels	248	251	Increased

Source: Ministry of Finance.

The NFDC and NLO has just started their operations after a period of transition. The enterprises BLSF and RHCDC information was not available due to closure of the units. The per employee production increased in BPM, NBBU and HBTF. In BTI the production rate has decreased because of strike by workers.

3. Effect on Employment:

The total number of work force engaged in the eight PSUs before privatisation were around two thosand five hundred. In the privatisation process job security as a whole was one of the main focus of the government. While privatisation "no redundancy" clause was attached as a condition in all cases. The only exception was on BLSF where voluntary retirement was given to 100 workers prior to privatisation.

The voluntary retirement also took place in BTI, RHCDC, HBTF and BPM after privatisation. But if we see the number of worker/employee engaged after privatisation the number has reduced to half of the total employees prior to privatisation.

CHANGES IN EMPLOYMENT

Enterprise	Before Privatisation	After Privatisation	Remarks
BPM	297	377	Increased
HBTF	602	645	Increased
BLSF	478	98	Decreased
NFDC	87	48	Decreased
BTI	196	103	Decreased
RHDC	87	48	Decreased
NLO	120	95	Unit is closed
NBBU	58	60	Increased
Total	2402	1426	Decreased

Source: Ministry of Finance.

The total employment effect as per the above table is reduction of fifty percent. This is due to factors like labour unrest, reorganisation and location change. In the case of BLSF, all the workers opted for voluntary retirement before privatisation because they did not want to go outside Kathmandu since factory had to be shifted. The another aspect which is note worthy in the case of workers is the displacement of Nepali workers by foreign workers. Thirty one foreign labours in BLSF and some in BPM are recurited by these companys'. The management claimed that they are for a temporary period for expansion programme.

4. Price Change:

The price of all the produced goods has increased after privatisation. This may be because of the factors like inflation or increase in input prices. But in some cases the price has been significantly raised. In the case of HBTF the price has gone up by fifty percent, it is same with BTI also. The roof tiles and floor tiles in HBTF and raw hides of RHCDC has gone up more than hundred percent.

CHANGE IN PRICE PRE- AND POST-PRIVATISATION

Enterprise	Before Privatisation	After Privatisation	Remarks
BPM			
HBTF (Rs./000)			
Bricks	1600	2400	50% increase
Roof Tiles	4140	10000	142% increase
Floor Tiles	1600	3500	119% increase
BLSF	-	-	-
NFDC	-	-	-
BTI (Rs./meter)	27.60	41.90	34% increase
RHCDC (Hide/piece)	250	650	160% increase
NLO	-	-	-
NBBU	-	-	-

Source: Ministry of Finance.

The justification for increase of cost can be considered in two ways, firstly, in the pre-privatisation period the cost of products were controlled, the real cost of production did not reflect on one price. Second, at present demand and supply forces is in operation, so it is seen that the price has significantly increased but this may remain for a long time.

5. <u>Profitability</u>

This segment is another vital issue in the privatisation discourse. One of the main reason for the privatisation is to make the unit financially sustainable, which will further boost the economy as a whole.

After privatisation of the PSUs in Nepal when this researcher approached to the managers of the privatised units, some of them were reluctant to disclose their financial figures. Some of them replied a readymade answer that their accounts are not yet audited. The table below gives the change in profit.

CHANGE OF PROFITS PRE-POST PRIVATISATION

Enterprise	Before Privatisation	After Privatisation
BPM	Rs.7.82 million profit 1991/92	Rs.21.25 million profit 1993/94
HBTF	Rs.37,000 profit 1991	Rs.10.23 million 1992/93
BLSF	Rs.2.23 million operational loss 1992/93	Rs.1.6 million operational loss 1993/94, projected profit 0.18 million 1994/95
NFDC	Rs.4.81 million loss 1992	Profit expected 1995/96
BTI	Rs.1.2 million loss 1991	NA
NLO	Rs.4.67 million (1989-92)	Profit, share value incresed from Rs.150/share to Rs.550/share at present.
NBBU	Rs.0.676 million Profit 1992/93	Rs.4.63 million loss in
1994/95		
RHCDC	Rs.3.3 million Profit 1991/92	Company not in operation

Source: Ministry of Finance.

The available information on the profitability shows either an increase in profit or loss has been reduced. The overall expectation of the entrepreneur were that they will at least come to break even point within another two years time.

If we analyse the post privatisation performance of the PSUs, we find a mixed picture. The paper mill is a success in its privatisation objectives, whereas leather and shoe factory has vanished from the market and no whereabouts of the company. This unit has stopped producing shoes and has concentrated in leather processing but in reality shoe unit was in lost not the tannery. This may be one reason why people allege to government that they are only selling profit making units. The brick and tile factory has shown some improvement, they are ready for installation of another machinery to double the current production.

The phase II privatisation programme completed on 1994 is also showing the signs of come back. But if we see the capacity utilisation, employee effects the picture is rather gloomy. Some of the units have introduced new products through technology change and others are trying to utilise its capacity in fullest term.

The assestment of privatisation in Nepal shows narrow success. Out of eight privatised units four has shown improvements. This is because of the utilisation of long and well experienced entrepreneurs.

The policy formulated by the government for the privatisation also needs clarity because we can find vaugeness and lacunae in policy. The policy stipulates that the PSUs which are of national interest and bearing or operating as basic industries or of public utilities, which having social obligation will be excluded from privatisation. In this regard if we see the origin of PSUs, they were all created as the extended arm of the government to shoulder the burden of responsibilities in the course of development. The policy on privatisation still senses the importance of PSUs in development of the country. Here the policy should clearly define what amounts to national interest? and what types of PSUs fall under this category. In the same way social obligation also has to be defined.

The policy further postulates a technical committee to assist the high level privatisation commission. But the high level privatisation commission is only responsible for the implementation of the approved programme. The policy making role is not assigned to this commission. Which means the policy is formulated by another body and it is not mentioned in the policy. The responsibility of implementing the approved programme is intrusted to high level privatisation commission as well as to technical committee over lapping each other.

One of the objectives of privatisation is to bring wide public participation in industrial undertakings. The policy lacks by what means the public participation is to be widened in a corporate structure? Another cavity on the policy is the basis for privatisation which is, the enterprise considered feasible from economic and operational stand point will be privatised. This provides the government "carte blanche" authority to sell only the profit making PSUs.

While legislating the Act, it is always pre supposed that it will be the means to achieve goals formulated in the policy. But in reality the laws are not full proof. Similarly, the Privatisation Act of Nepal is also not an exception. First, the broad policy frame work from which the law has evolved is a policy of the ruling party at that time. It has not been debated as national issue, this is reflected in the law. The privatisation committee, which is the policy making body in privatisation[v] has not allocate place for the opposition parliament members in committee. This issue was further proved, when the communist party ruled in Nepal for nine months in between 1994-95, the whole privatisation programme was suspended.

Other laucunae and shortcomings of the Act are characterized in the following sequences. The Act provides discritionary power to the Privatisation Committee to invite the chief of enterprise or labour representative[vi] in its meetings. In the process to privatise any PSU, these personnel are the best person to get the exact information. They will be able to give all necessary input which will assist the committee in decision making process. Their representation will also enhance the morale of all employees which can create a congenial environment for privatisation. In this regard, the representation of chief and labour representative should be mandatory rather than discretion of committee.

The glaring lacuna in the Act was seen in the evaluation process. The evaluation process devised by the Act is to take into account, assets, market value of shares, profit and loss, estimated future production, sale, profit and loss of the enterprise.[vii] While privatising the PSUs three methods for the valuation were used, net asset value, value based on future cash flow and liquidation value. The valuation of all privatised PSUs are given below in box.

VALUATION OF PRIVATISED PSUs

(Rs. in million)

Enterprise	Liquidation value	Net assets value	Value based on future cash flow	Sale procedures realised
BPM	154.00	344.00	124.40	229.80
HBTF	118.00	200.00	98.00	229.00
BLSF*	65.00	75.00	38.00	22.40
NFDC	35.27	50.00	32.70	22.78
BTI	18.00	38.00	16.04	17.72
RHCDC	4.14	4.66	14.18	3.99
NBBU	13.80	26.60	NA	30.24

Source: Ministry of Finance.

The cursory view of the valuation and sale proceeds realised reflects, HBTF is the only concern which fetch more than the figures arrived by any valuation method. The other interesting thing is if we take liquidation value as the minimum value for sale transaction, then in the case of four enterprise (NFDC, BTI, RHCDC and NBBU) the realised proceeds is less than the liquidation value. So, it can be easily pointed out that the valuation procedure is not adequate or the Act is not able to curb the possibility of under-valuation. This may create an ample chances for corruption. This was the main reason for public allegation that the units have been sold in throw away value.

The Act is silent in the issue of employee/worker buy outs. The definition of the Act postulates one way of the privatisation can be employee/worker buy outs. But the privatisation process6 do not classify employee/worker buy outs as a mode of privatisation. Since one of the immediately affected group after privatisation is employee/worker. They should also be given chance to participate. Here inference can be drawn from the case of Pakistan where among 88 privatised PSUs 8 were bought by employee/workers.[viii]

Another major lacuna which needs clarity is found in the process of evaluation of proposals[ix], the basis of evaluation is -

- which offer to run the enterprise in the existing conditions.
- which agrees to retain service of present workers and employees.

If the private entrepreneur runs the enterprise in the same condition with same technology, how can he be able to turn around a company? because, one of the main reason for PSUs loss is use of absolete technology. The same argument also applies to retain the employee/worker. If the connotative idea of this clause is to safe guard the employees/workers, then the government can use other alternatives to protect the employees/worker by availing other opportunities, here again the inference can be drawn from the employees settlement in Pakistan.[x]

The provision relating to employees in the privatisation process is poor and inadequate.[xi] If in case of retrenchment of employees privatisation committee will recommend the reasonable compensation. The committee recommended 50 per cent of the salary for the period of one year for surplus labours. This was the main reason forwarded by the employees in the course of field study to researcher that because of inadequate compensation and lack of employment opportunities elsewhere, they did not opted voluntary retirement even if they desired. The share percentage issued to employee also needs to be increased since the recommendation is only of 5 percent of total shares. Another provision the Act lacks is the provision of credit facilities to be given to the retired employees/workers for self employment, which the policy paper stipulates.

Lastly, the Act provides same facilities to the privatised enterprises[xii] which was given to its' predecessors. One of the reasons which made PSUs financial burden of government is only because of facilities and protection given to them. Since the PSUs were all out of market decipline, they could not shape themselves according to market and started to make loss. If the same facility is to be given even after privatisation then there is no point in the privatisation process. Another distortion that this clause is likely to bring is the disparity in private sector. The enterprise which becomes private by privatisation will enjoy facilities whereas the one established by private sector will not be able to enjoy being in the same status.

If one gives the cursory view to the privatisation policy and the Privatisation Act, it tries to dipict the process of transferrring the financial burden from the government. If we read together the policy and law for privatisation, the main objective is to reduce financial and administrative burden of government, enhance operational efficiency and production, infuse private participation for overall economic development of the country. But the question remains will the infusions of private sector cure all the problems faced by PSUs and will it bring all around economic development?

The terminology privatisation is understood as the removal of state from the scene, but is it possible in a country where more than 70% of people are under poverty line? Where there is a wide disparity between rich and poor and where state has to provide economic opportunities for poor segment of people to go up the prosperity ladder. How can one believe there shall be worthwhile investment in a backward region until and unless state provides necessary infrastructures. In this glaring scenerio is it justifiable that the role of the state has to be minimal?

One of the main rationale behind privatisation is to bring efficient management. This is adhered by saying, the government should be removed from the management which is the panacea for all the ills in PSUs. But, the proposition of removing the government and installation of elected management from share holders, will it garner better result? will it turn around the PSU with miracle? The proponent of privatisation has forwarded the cure of the problem is management or rather responsible management.

To secure better or responsible management is it necessary to sell or liquidate the assets of PSU? Better management can be brought into by contracting out the management which will also be totally accountable. The PSU can be contracted out to private management by specifying the target and goals to be achieved, remove day to day monitoring, reduce government intervention, treat the PSU in the par of private enterprise, this can also bring better result rather than selling of assets. The above mentioned method can be done through memorandum of understanding (MOU)

Privatisation and MOU involves two different philosophies. Privatisation perceives the problem is of "ownership", whereas MOU finds problem in "quality of control" mechanism.[xiii] It can be defined as one advocates sell of assets and other advocates restructuring through change in management. In this situation MOU can be a better choice, because it will not let concentration of economic power in the hands of few. This process can also be utilised as the primary method in overall privatiastion, which will revive the financial condition of the PSU.

If we consider the broader understanding of privatisation, it is not that in privatisation state is removed from the economic scene. It is only, the role back of the states' role. If it is so as former, then the case would be, all the private enterprises should have been in profit and all PSUs should have been in loss. But in reality we too have sick units in private sector. So the mode of MOU should be the first method in privatisation.

To finalise which method to be adopted pure privatisation or MOU, the litmus test can be the degree of social obligation of a PSU, if the degree is high MOU is the best solution, if the degree is low privatisation can be a cure. Even if we consider this with the sale proceeds that will be collected through privatisation, the PSU which has revived the financial condition will attract more investors which will yield higher proceed than privatising the loss concern.

Another issue in privatisation evolves from market discipline, privatisation should not only be looked from the angle of reducing PSUs and increasing private enterprises. It should be looked through a pragamatic approach which will generate fast growth in economy, efficiency in resource use and promote welfare of the people.

The whole idea behind the public and private sector is not the debate in privatisation. The main debate is planning versus market decipline. If we take the example of industry both public and private which is operating in the reserve sector. In this field one can find both the industry in trance. The reason for this is, price are controlled, investment decision and technology induction has to be approved and price is subsidised.[xiv] Here, the main reason behind it's loss is it falls under planned sector not public or private sector. So market mechanism plays a vital role. If we take the example of joint venture companies between private sector and government[xv] which are quoted on stock market they are running well and making profit. So in this regard government can own PSUs but has to brought under market discipline.

The random investment of government in many areas irrespective of limited resources, talent and poor performance is the result of liquidity crunch at present. Government should have remained itself in the key areas. Now the situation is, that the Planning Commission is not able to invest in primary areas which have been directed by Directive Principle and Policies i.e., health, education, environment, forest, roads, etc., of the constitution, because of budget dificit the primary concern has become secondary.

The idealogical ground should not be the hindrance to the progress of the country. There is no harm to allow private sector to operate even in key areas, if the government is not able to do so. The basic function of government should be to conrol monopolies and market imperfections. Besides the core sector and defence, other sector has to be made efficient. To make the PSUs more efficient complete autonomy has to be given not just only MOU. Disinvestment upto some extent to general public is plausible to make PSUs effective and autonomy. For the perfection of market and economy as a whole a lame excuse of worker may come up in privatisation. The compensation and retaining of worker can be worked out. Since we can distribute land and compensation to lakhs of homeless people as a result of constructing Dams, why can't we solve the problem of 500 or 1000 workers?

END NOTES

1. Privatisation Principle and Practice, p 41, The World Bank, Washington, D.C.

2. Economic Survey, 1992-93, Ministry of Finance, His Majesty's Government Nepal.

3. In 1986-87, Govenment of Nepal floated the shares of four PSUs to public, The response was very poor leading to under subscription of floated shares.

4. Privatisation Policy 1990

5. Section 3 and Sec.4, *Privatisation Act*, 1994.

6. *Ibid* Sec.3(3).

7. *Ibid* Sec.7(2).

8. *Ibid* Sec 8.

9. Aziz Sartaj, p.36, *Privatisation in Pakistan*, OECD (1996), 2 rue, Andre-pascal, 75775, Paris France.

10. Supra 3. x.-10 (b), (c)

11. *Ibid* 7, p.32.

12. *Ibid* 8, Sec.14.

13. *Ibid* Sec.15 (1).

14. If we take the example of fertiliser Industry in India both public and private sector in this field are in loss.

15. For example, Nepal Lube Oil in Nepal and Cochin Refineries in India, which are government joint ventures and traded in stock market are running in profit.

CHAPTER VII
SUGGESTIONS AND RECOMMENDATIONS

The wave of privatisation awoke the government of Nepal in the year 1990-91. Even though the previous government in power initiated a programme to imendate the PSUs but all remained in paper. The PSUs remained drain of tax payers' money and the goals resided as untouchables. The government was shook by the 97 enterprises, when it absorved to the tune of 20 percent of overall budget. Government realized the PSUs were unsustainable when the transfer of the fund to these enterprise in a year amounted to more than government's expenditure on health and education.[i] This situation compelled the government to rethink the policy to curb and cure the spending.

The government study revealed that among 97 enterprises, most of them were running on loss. As the policy matter, The government of Nepal called on the private sector to play more active role for the establishment of a more open and dynamic economy. The policy further stated to reduce government interference to maximize operational freedom, and the financial loss made by the public enterprise is not conducive for the economic growth. To curve this financial loss the policy brought privatisation for these enterprises. The privatisation policy announced, all the PSUs except those engaged in basic and public utility will be privatized according to the privatisation policy. Privatisation policy brought out all the necessary measures which is to be used in the course of privatisation. The institutional framework with the long term policy was launched to privatize PSUs.

Three government owned PSUs were identified for the first phase of privatisation. The study and expert report advised the government to privatize these units by selling assets and business. The second phase privatisation programme privatized five PSUs among the 14 identified by the government.

Despite the short coming pointed out by the researcher in previous chapter, the policy and the law framed for the privatisation is showing positive signs. It always existed in privatisation that the negative effect immediately occurs in the picture than the positive result. The directly affected group in this process or negative impact is on the workers and employees, but in the long run society as a whole benefits. Here, the misconception of public service and privatisation has to be overcome. So the citizen learn the connection between privatisation/diregulation and lower costs and better service.

The empirical study has authenticated that the privatisation has demonstrated a mixed result. Two enterprises among the eight privatized has been successful and are functioning profitably. Others remained slow in setting the pace because of the labour strikes and other hurdles in operation. Another significant aspect of positive result is the government's flow of funds to and from PSUs. The flow of fund from the government to PSUs in 1994/95 has reduced to Rs. 1891.2 millions from Rs. 4787.2 million in 1991/92.[ii] Likewise, the flow of fund from PSUs to government has increased from Rs. 2148.3 million in 1991/92 to Rs. 5066.3 million in 1994/95.[iii]

Therefore, while concluding the research work the researcher stresses, the legal regime should be improved by embracing in it the gaps such as national consensus, more transparency in process, and educating the citizen for yielding sanguine results. The recommendation are follows:

The policy and Act contradicts with regard to the responsibility of the High Level Privatisation Committee, the policy stipulates the responsibility of the High level privatisation committee is to implement the approved plan. The policy formulation aspect is not under this committee, but the Privatisation Act has portrayed policy devising responsibility is one of the responsibility. The question whether the Act overlapped the policy, this should be rectified. If we read the privatisation policy and Eighth Five Year Plan, there we observe ample opportunities for restructuring the PSUs but in the Act, there is no scope of restructuring. The Act is meticulously prepared only to privatize the PSUs, here the researcher would like to recommend that the Act should also give opportunity for restructuring the units[iv] and we have scores of examples of PSUs running on very well.[v]

Furthermore, one option of privatisation indicated in the Act is employees/workers buy outs. But the Act do not designate specifically employees/workers buy out as one of the methods of privatisation. They should even be allowed this right, the researcher is of the view that they should be allowed the first right to match the highest bid.[vi]

Another important feature specified in the policy but over looked while drafting the Act is post privatisation monitoring. If there is no means of post-privatisation monitoring then how will one know whether the objectives of the policy or Act is achieved or not ? This provision should be added in the Act. Similarly, the enactment of the Act reveals, there is no national consensus for privatisation. This notion is found in the formation of privatisation committee, at least one opposition party parliamentarian should be appointed as a member in High Level Privatisation Committee inorder to pursue the privatisation programme without debacle. Likewise, the discretionary power has been given to the privatisation committee to invite management chief or labour representative is the meetings of the committee. Since these are the person who know the basic problem of the units there should be mandatory provision of their presence. This mandatory provision will enable them to voice their opinion in the concerned place.

The valuation process in the Act which has been criticized and alleged to the government for selling PSUs in trash value has to be more pragmatic to bring out the real value of PSUs. In addition, it also has to have various safe guard to avoid possible collusion among the private investors.

The provision relating to the employees needs to be reconstituted. It is already stated that the immediate effect of privatisation is on the employees. But the provisions relating to compensation is all upon the discretionary power of the committee. The provisions such as compensation should be at least specified without above ceiling and should be above than prescribed by the labour Act. The employees/workers those who will be retired, should be able to utilize the compensation amount for future incomes. Furthermore, the provision of credit facilities for the retired employees/workers to help them self employment is not depicted in the Act, which is specifically mentioned in the policy. This also should be added in the Act.

There are provisions in the Act which needs further clarification. Various provisions of the Act give vague meaning, therefore clarity is needed. One of the bases for evaluation of proposal is whether the investor offers to manage the enterprise without change in condition. The question here is how can a private investor make turn around the PSU with existing condition when due to same existing condition the PSU is in loss. If the provision meant to indicate without changing the purpose or nature of the PSU, then it should clearly specify. Likewise, another provision in the Act designates, the privatized enterprise will continue the same facility given to PSU before privatisation. In this provision what sort of facility is to be given is not distinguished, if the spirit of the provision is to allow facilities which are provided under the Industrial entrepreneur Act then this was denied to one private investor while privatizing Nepal Bitumen and Barrel Industry. If it meant to be other facilities, it is proved that because of over facilities and protectionist policy of government the PSUs are in loss. Simultaneously if the facilities are given to privatized PSU, it will again distort the levelling field and will create disparity between industries established by private entrepreneur and privatized PSUs.

The above mentioned recommendations are made to the existing legal regime, so as to make the policy and Act real instrument for successful privatisation, since willingness of entrepreneur to invest depends very much on the legal environment in which they operate. If the law does not contain strong protection for private ownership of property and for sanctity of contracts backed by impartial, smoothly working judicial system then entrepreneurship is unlikely to develop and flourish.

Creation of conducive environment for privatisation will entail not only viable policy and law but also educating people and national consensus for programme, which can be created by national debates in proper forum and by discussion with the workers, executives, technicians and community as a whole. In the privatisation process, transfer of assets and shares to private sector has to be clear and transparent. The various safeguard have to be adopted in the course of selection of private investor, and terms and conditions have to be described in detail to avoid criticism that government transferred PSUs in throw away price. This criticism persists because there is a deep seated fear in public that privatisation is growth of "crony-capitalism".

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[i]Economic Survey Report Nepal, 1990, Central Bureau of Statistics, HMG, Planning Commission.
[ii]Statistical Pocket Book, Nepal, 1996, HMG Planning Commission Secretariat, Central Bureau of Statistic.
[iii]ibid
[iv]Restructuring the PSUs through MOU, setting the objectives and goals to achieve, reduce government intervention. ie. as used in INDIA.
[v]National Electric Company in France, Steel Company in Republic of Korea, the Ethiopian Airline, Fertilizer Company in Indonesia and PSUs in Singapore are highly efficient.
[vi]The privatisation process of Pakistan allowed employees and workers to match the highest bid, which resulted in employees and worker buying eight units.

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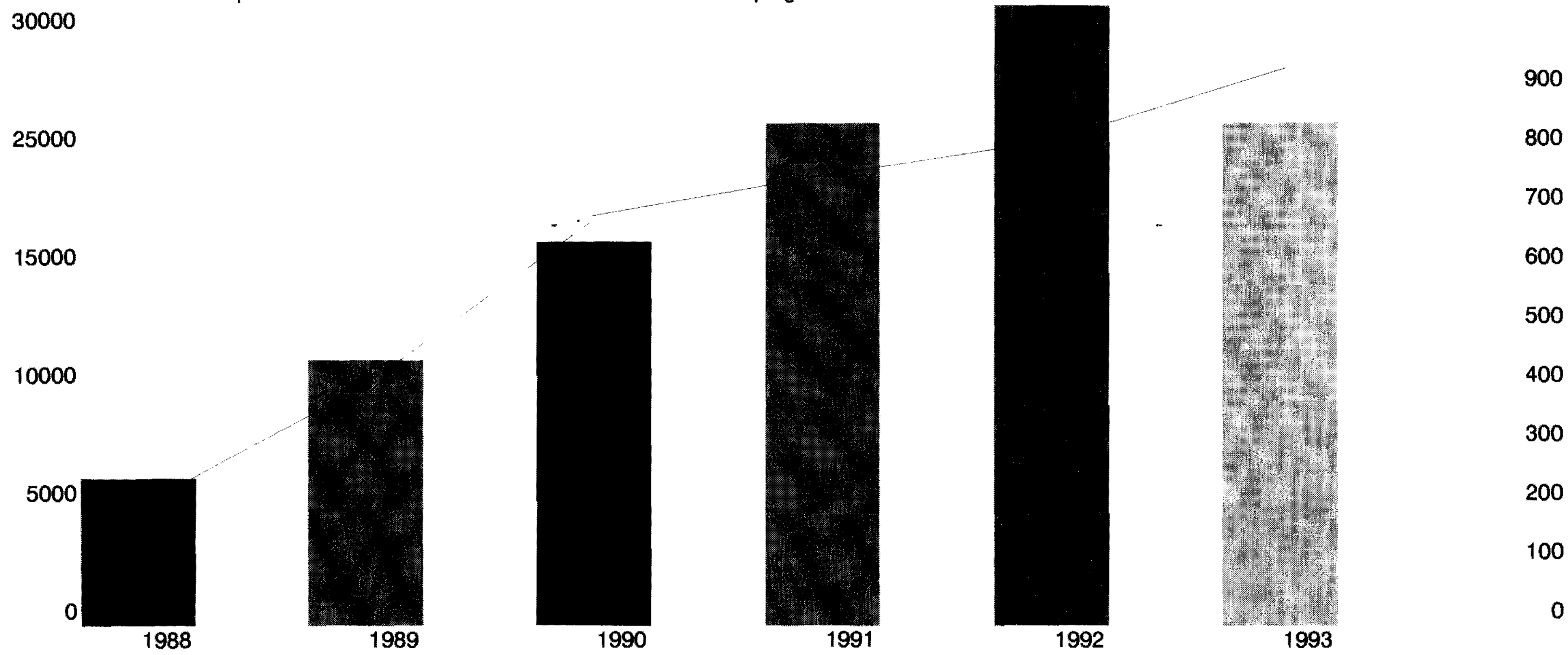
Graph 1: Growth of Privatization in Developing Countries



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Number of transactions

Source: IFC Lessons of Experience Series, The World Bank, Washington D.C. 1995

PRIVATIZATION ACT, 2050 (1994)

Enacted on 2050 Poush 19
(January 3, 1994)

AN ACT
TO PROVIDE FOR PRIVATIZATION

Preamble :

Whereas, in order to increase the productivity through enhancement of efficiency of the government owned enterprises of the Kingdom of Nepal, and thereby mitigate the financial and administrative burden of His Majesty's Government, and to usher in peripheral economic development of the country by forging significant increase in participation of private sector in the operation of such enterprises, it is expedient in the national interest to privatize such enterprises and to make arrangements therefor;

Now, therefore, be it enacted by the Parliament in the twenty-second year of the reign of His Majesty King **Birendra Bir Bikram Shah Dev.**

1. **Short Title and Commencement** : (1) This Act may be called "Privatization Act, 2050".

   (2) This Act shall come into force immediately.

2. **Definitions** : Unless repugnant to subject or context, in this Act —
   (a) "Enterprise" means a company, corporate body, industry or any other institution wholly or partly owned by His Majesty's Government and this expression shall also include other company, corporate body, industry or any other institution under the control or ownership of such company, corporate body, industry or any other institution.
   (b) "Privatization" means making private sector participate in the management of Enterprise, or to sell or lease it, or to transform government ownership into public ownership, or an act to infuse participation by any means, either wholly or partly, of any private sector or of the employees or workers, or of all desirous groups.
   (c) "Government Sector" means the sector wherein His Majesty's Government, either directly or indirectly, has whole or part ownership in or has control over the management of any Enterprise.
   (d) "Private Sector" means the sector other than the Government Sector.
   (e) "Committee" means the Privatization Committee constituted pursuant to Section 4 (?).

(f) "Prescribed" or "as prescribed" means those which is prescribed or is as prescribed in the Rules made under this Act.

3. **Formation of Privatization Committee :** (1) A Privatization Committee shall be constituted to conduct the privatization works of Enterprise in an organized manner.

(2) The Committee to be constituted pursuant to Sub-section (1) shall consist of the following members —

(a)	Minister or State Minister of Finance	Chairman
(b)	Chairman, Finance Committee (House of Representatives)	Member
(c)	Two Members of Parliament nominated by His Majesty's Government	Member
(d)	Member, National Planning Commission	Member
(e)	Secretary, Ministry of Finance	Member
(f)	Secretary, Ministry of Law, Justice and Parliamentary Affairs	Member
(g)	Secretary, Ministry of Labour	Member
(h)	Secretary, Ministry concerned with the Enterprise being privatized	Member
(i)	President, Federation of Nepalese Chamber of Commerce and Industry	Member
(j)	Joint-Secretary, Ministry of Finance (Corporation Coordination Division)	Member - Secretary

(3) The Committee shall, if necessary, invite the Chief and labour representatives of the Enterprise to be privatized and any reputed economist in the meetings of the Committee.

4. **Powers, Functions and Duties of the Committee :** The powers, functions and duties of the Committee shall be as follows —

(a) To recommend His Majesty's Government with programs and priorities for privatization also in view of the recommendations as contained in the Report of the Finance Committee (House of Representatives).

(b) To conduct study and research in order to formulate privatization programs.

(c) To cause evaluation of the Enterprises and to recommend His Majesty's Government on the process of privatization.

(d) To remove hindrances faced in respect of privatization works and maintain coordination.

(e) To follow-up the decisions and agreements relating to privatization and cause to do so.

(f) To constitute sub-committees, as may be necessary, in respect of privatization.

(g) To perform or get performed other works, if necessary, in respect of privatization.

5. **Meetings of the Committee and Decision :** (1) The meetings of the Committee shall be held on the date, time and place designated by the Chairman.

(2) The Chairman of the Committee shall preside over the meetings of the Committee, and in his absence, the meeting shall be presided over by a Member selected by the Members present at the meeting from among themselves.

(3) In the meetings of the Committee, the decision of majority shall prevail and in case of a tie in votes, the presiding person shall have a casting vote.

(4) The attendance of Members present at the Meeting, the topics of discussion and the decision made thereon shall be recorded in a separate minute-book maintained for the purpose.

(5) The decisions of meetings of the Committee shall be attested by the Member-Secretary.

(6) The Committee may, if necessary, invite any national or foreign expert or consultant to attend the meetings of the Committee as observer.

(7) Other procedures relating to the meetings of the Committee shall be as determined by the Committee itself.

6. **Publication of Notice for Privatization :** (1) If His Majesty's Government deems necessary to privatize any of the Enterprises classified for privatization, it shall publish notification to this effect in the Nepal Gazette.

(2) After publication of notice pursuant to Sub-section (1), His Majesty's Government shall determine the process of privatization according to the provisions of this Act.

7. **Evaluation Process of the Enterprise :** (1) For the privatization of an Enterprise, the Privatization Committee shall require to perform the task of evaluation of such Enterprise by a team of national experts or, if necessary, by a combined team of national and foreign experts.

(2) The team of experts, while performing the task of evaluation of the Enterprise pursuant to Sub-section (1), shall base upon the assets of the Enterprise, market value of shares, profit and loss accounts of the Enterprise and the estimates of future production, sale, profit and loss of the Enterprise.

8. **Determination of Process Relating to Privatization :** His Majesty's Government may privatize any of the Enterprises classified for privatization, pursuing any or all of the processes as follows --

(a) Through sale of shares of the Enterprise to the general public, employees, workers and any person or company intending to run the management of such Enterprise.

Provided that while selling the shares, emphasis shall be given, in consideration of the nature and financial status of the Enterprise, for maximum participation, to the extent possible, of the general public, workers and employees.

(b) Through adoption of cooperative process.
(c) Through sale of assets of the Enterprise.
(d) Through leasing out the assets of the Enterprise.
(e) Through involving participation of private sector in the management of the Enterprise.
(f) Through adoption of any other modality considered appropriate by His Majesty's Government on recommendation of the Committee.

9. **Proposals for Privatization** : While privatizing any Enterprise, His Majesty's Government shall publish notification in some newspapers of national level giving all pertinent details of the Enterprise following the prevailing international practice and invite proposals for such privatization.

10. **Evaluation of the Proposals:** (1) The Committee shall evaluate the proposals, received from the private sector pursuant to the notice published under Section 9, on the following basis --

(a) Which offer attractive terms and higher price.
(b) Which offer to run the Enterprise in the existing conditions.
(c) Which agree to retain the services of present workers and employees.
(d) Which increase the employment opportunity.
(e) Which possess managerial experience.
(f) Which has standard business plan and offer to make additional investment and expand the business.

(2) While evaluating proposals pursuant to Sub-section (1), if the proposals of two or more investors are found to be identical, priority shall be given to Nepalese investor or group of Nepalese investors.

11. **Agreement to be Concluded for Privatization** : (1) Prior to handing over of any Enterprise being privatized according to this Act to the private sector, an agreement shall be entered into between the conveying and receiving parties specifying clearly the terms and conditions to be observed by both of them.

Provided that no such agreement shall be required to be entered into where the shares are being sold in open market to the general public, employees and workers of the Enterprise and private sector through capital markets or any other medium.

(2) The terms of payment of the money to be received by His Majesty's Government on account of the privatization shall be clearly spelled out in the agreement to be concluded pursuant to Sub-section (1).

(3) The time schedule of handing over of the Enterprise by His Majesty's Government to the private sector and the terms and conditions that His Majesty's Government may wish to prescribe in respect thereof shall be clearly spelled out in the agreement to be concluded pursuant to Sub-section (1).

(4) A brief note on the agreement on privatization and the terms and conditions specified therein shall be published for information of general public within one month from the date of conclusion of the agreement made pursuant to Sub-section (1).

12. **Formation of Sub-committees** : (1) The Committee may, if necessary, constitute sub-committees of experts for the purposes of privatization.

(2) The duties and functions of the sub-committees constituted pursuant to Sub-section (1) shall be as determined by the Committee.

13. **Settlement of Dispute** : (1) If any dispute arises in respect of any matter contained in the privatization agreement entered into between His Majesty's Government or the parties participating in the privatization, such dispute shall be resolved through mutual discussion among the concerned parties.

(2) If the dispute could not be resolved pursuant to Sub-section (1), such dispute may be resolved, with the consent of both parties, by arbitration. The arbitration for resolving the dispute shall be conducted in accordance with the existing laws relating to arbitration or the Rules of Arbitration of the United Nations Commission on International Trade Law (UNCITRAL).

(3) The venue of arbitration shall be Kathmandu and the existing laws of the Kingdom of Nepal shall be applicable in respect of the arbitration.

14. **Provisions Relating to Employees** : (1) His Majesty's Government may require to maintain the continuity of service of the existing workers of the Enterprise being privatized through transfer of privileges, such as the period of service, entitlement to gratuity etc., to the enterprise of the new investor.

(2) If the continuity of service as mentioned in Sub-section (1) could not be maintained and thereby the existing employees and workers of the Enterprise have to be retired, His Majesty's Government may, on recommendation of the Committee, retire such employees and workers subject to the provisions of Sub-section (3).

(3) Where retirement is granted pursuant to Sub-section (2), His Majesty's Government shall make, on the recommendation of the Committee, reasonable arrangements for compensation or privileges in respect of the existing employees and workers being retired from the privatized Enterprise.

(4) His Majesty's Government shall make available to the existing employees and workers of the privatized Enterprise some shares of such Enterprise at free of cost or at discounted price.

15. **Facilities and Charges** : (1) The privatized Enterprise shall be entitled to similar facilities granted to old industrial concerns.

(2) While transferring all movable and immovable properties including the land of the privatized Enterprise, both parties shall be liable to pay the charges according to the existing laws.

16. **Dissolution of Enterprise** : (1) In the process of privatization of any Enterprise owned wholly by His Majesty's Government, if there appears reasonable cause to dissolve such Enterprise, His Majesty's Government may, notwithstanding anything contained in the existing laws, dissolve such Enterprise through notification published in the Nepal Gazette and may make different provision in respect of the process of dissolution.

(2) All amount which are due to be recovered by the Enterprise dissolved pursuant to Sub-section (1) shall be recovered in the manner similar to the recovery of governmental dues.

(3) His Majesty's Government may transfer the assets and liabilities of the Enterprise dissolved pursuant to Sub-section (1) to any other body or may, on the recommendation of the Committee, grant remission in respect of the unusable properties and irrecoverable liabilities.

(4) If all liabilities of the Enterprise could not be fully realized from the assets of the Enterprise, the residual liabilities shall be settled according to the existing laws.

17. **Powers of His Majesty's Government to Issue Order or Directives** : His Majesty's Government may issue necessary Orders or Directives to the concerned Enterprise of person in connection with the privatization and it shall be the duty of the concerned Enterprise or person to abide by such Orders or Directives.

18. **Punishments** : Any person who hinders or obstructs in any manner in the observance of this Act or in the implementation of any agreement concluded hereunder or in the process of privatization, His Majesty's Government may punish such person with an imprisonment upto two months or with a fine upto five thousand rupees or both.

19. **Delegation of Powers** : Among the powers conferred to it by this Act, the Committee may delegate such powers, as may be necessary, to the Chairman, Member or Member-Secretary, Sub-committee or any Member of the Sub-committee.

20. **Powers to Frame Rules** : His Majesty's Government may frame necessary Rules in order to implement the objectives of this Act.

21. **Powers to Remove Difficulties** : If any hindrance or obstruction arises in course of implementation of this Act, His Majesty's Government may remove such hindrance or obstruction through an Order contained in the notification published in the Nepal Gazette.

22. **Prevalence of the Act** : Notwithstanding anything contained in any existing laws, the provisions of this Act shall prevail on the matters provided herein and in other matters, the existing law shall apply.

DATE OF ROYAL SEAL OF ASSENT : 2050/9/19/2

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