Impact of Existing Discriminatory Citizenship Laws on Women and Children in Nepal
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The study “Impact of Existing Citizenship Laws on Women and Children in Nepal” is an attempt to analyze the impact of discriminatory citizenship laws and procedures on women and children with specific focus on internally displaced person, single women, badi community, women/girls working in cabin and restaurants, orphan children and street children/slum dwellers. The purpose of the study is to analyze the impact and use the findings as evidences with cases study for the law and policy formulation. Scope of the study is limited to Kathmandu, Kapilvastu and Nepalgunj.

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Abbreviations

BPFA Beijing Platform for Action
B.S. Bikram Samvat (Nepali Calendar)
CAC Community Action Center
C.D.O Chief District Officer
CEDAW Convention on Elimination of All Forms of Discrimination against Women
CRC Convention on the Rights of Child
CWIN Child Worker in Nepal
D.A.O District Administrative Officer
FGD Focus Group Discussion
FWLD Forum for Women, Law and Development
H.M.G His Majesty Government
ICCPRI International Covenant on Civil and Political Rights
ICERD International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR International Covenant on Economic, Social and Cultural Rights
IDP Internally Displaced People
MDG Millennium Development Goals
NGO Non Governmental Organization
NHRC National Human Rights Commission
NKP Nepal Kanoon Patrika
Pg. Page
OP Optional Protocol
TAF The Asia Foundation
UDHR Universal Declaration of Human Rights
UN United Nations
V.D.C Village Development Committee
Vol. Volume
Vs. Versus
WHR Women Human Rights Group
LIST OF CASES

1. Vijaya Laxmi vs. Department of Immigration,
4. Chuwalhiya Ojhain vs. HMG/Nepal, Writ No. 1209, Decision No. 1413, 2036 B.S.
9. Achute Prashad Kharel vs. HMG/Nepal, Writ No. 3504, 2061 B.S.
EXECUTIVE SUMMARY

About the Issue of Citizenship

The right to citizenship serves as the foundation for several other fundamental human rights. Right to citizenship is basic human rights of a person, which can not be denied and deprived to any one in any case. It is a right to identity and nationality of a person that establish a relationship with his/her nation. Moreover, it is the right that makes possible to create other rights and thus, it is the right to have other rights.

The Population Census 2001 reveals that the total population of Nepal is 2,31,51,423 among them there are 1,37,88,347 people who have attained the age of 15 and eligible for citizenship. Whereas, according to the statistics of the Ministry of Home only 1,26,94,403 have got the citizenship certificate till March/April, 2005, which proves that more than 11,00,000 people are deprived of citizenship rights, a basic human rights and right to identity.

The Constitution of the Kingdom of Nepal, 1990 under its Article 11 has guaranteed right to equality between men and women irrespective of sex. However, the provisions relating to citizenship in the Constitution and Citizenship law are directly discriminatory against women, which is the major barrier to ensure equal citizenship rights of a person.

Discriminatory citizenship laws affect the overall development of women and children. The Government of Nepal has committed itself to change the citizenship laws upon the ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and granting women equal rights in their ability to acquire, change, or retain their nationality. However, 15 years after the ratification, there have been no changes in the discriminatory citizenship provisions. Women can only acquire citizenship through their father or husband who must provide consent; absent consent, women will not be able to procure citizenship. As a result, the law fails to
recognize women’s individual identity and women are deprived of the right to provide citizenship to their spouse or children.

In the context, the Study on the “Impact of Existing Citizenship Laws on Women and Children in Nepal” has been implemented in three districts (Kathmandu, Nepalgunj and Kapilvastu) with the objective to identify the impact of discriminatory citizenship laws on women and children.

**Legal mechanism to address citizenship:**

The Constitution of the Kingdom of Nepal, 1990, Nepal Citizenship Act, 1963 and Nepal Citizenship Regulation, 1992 are the major legal instruments to deal with the citizenship. Article 9(1) and (2) of the *Constitution of the Kingdom of Nepal, 1990*, Section 3(1) and (4) of the *Nepal Citizenship Act 1963*, provide that a Nepalese citizenship of descent may be conferred only subject to the condition that the father of a person in question is a Nepalese citizen at the time of acquiring Nepalese citizenship. Therefore, a woman cannot confer citizenship to her children. According to Article 9(5) of the *Constitution of the Kingdom of Nepal, 1990* and Section 6(2) of the *Nepal Citizenship Act, 1963*, a woman of foreign nationality who has married a Nepali citizen, and who has initiated the proceedings for renunciation of her foreign citizenship, may acquire Nepali citizenship. However, this provision does not apply to a man of foreign nationality, as the law does not permit husbands of foreign origin to acquire Nepali citizenship. This also affects the children born out of such wedlock, as the woman cannot transfer her citizenship to her children.

Right to nationality of a citizen has also been ensured by various international human rights conventions to which Nepal is a state party. *Art. 15 of the Universal Declaration of Human Rights, 1948* states that every one has the right to a nationality and no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. *Art. 24 of the International Covenant on Civil and Political Rights, 1966* ensures that every child has the right to a nationality. *Art. 9 of the Convention on the Elimination of All Forms of Discrimination against Women, 1979* provides women equal rights with men to acquire, change or retain their nationality and also grants equal rights to the nationality of their children. Similarly, *Art. 7 of the Convention*
on the Rights of the Child, 1989 provides the right to acquire a nationality and further obligates the state parties to ensure the implementation of these rights, in particular where the child would otherwise be stateless.

Besides, in the 30th CEDAW session, the CEDAW Committee provided strong concluding remarks to Nepal to repeal or amend Article 9 of the Constitution, which permits discrimination against women in the area of citizenship in January 2004 on the 2nd and 3rd periodic report. Thus, upon ratification of these International human rights instruments, Nepal has obligation to reflect those provisions into our domestic context under the Section 9 of the Treaty Act, 1991.

**Impact of the Discriminatory Citizenship Laws:**

Under the study, interview with the key respondents that includes government officials, Human right activist, victims, Political Parties, NGO personals, Businessman, Bankers, Media personals were conducted to identify the impact of existing discriminatory citizenship laws and the most vulnerable groups. The study shows that the discriminatory citizenship laws have an extreme impact on the women and children, basically on a variety of different groups including the badi community, single women, internally displaced people, women working at cabin restaurants and dance bars, orphans and street children.

Among the key respondents, 92 present are of them believed that the existing citizenship law is gender blind from human rights perspective. 73.44 percent of the key respondents believed that the existing Constitutional provision regarding citizenship is single dimensional and women in general are most vulnerable group. 50 percent of the key respondents believed that, children are vulnerable due to the existing citizenship law. Similarly, 48.44 percent of the key respondents believed that badi women are vulnerable. Likewise, 39.06 percent of the key respondents viewed that janjatis are vulnerable and 31.25 percent viewed that internally displaced people are more vulnerable due to the existing citizenship law in Nepal.

Among the key respondents, 90.06 percent believed that the existing citizenship laws creates stateless children, 84.37 percent of them are of the view that the existing citizenship laws affect on education. 90.62 percent
believe that the existing citizenship laws impact work opportunities. Among them who believe that the existing citizenship laws impact on work opportunities, 87.05 percent of the key respondents viewed that existing citizenship laws impact on ability to get both government and private sector job. 59.39 percent of them agree that one needs citizenship to start their own business. 71.88 percent responded that the laws impact foreign employment.

Among the key respondents, 93.74 percent believe that the existing citizenship laws impact banking activities in which 89.06 percent believe it impact one from opening a bank account and 78.13 percent believe it impact to get loan. 90.63 percent believe that the existing citizenship laws has an impact on the political activities of women, 87.50 percent believe that the existing citizenship laws have a psychological impact on women, 87.50 percent fell it deprive women and children from getting adequate health care, 89.06 percent believe that the existing citizenship laws deprive women from the right to family and 92.19 percent believe it restricts the right to mobility. Among the one who believe that it restricts right to mobility; 85.59 percent feel that it difficult for women and children who are deprived of citizenship to move from one place to another within the country, 82.81 percent believe that women and cannot go abroad, 64.06 percent are concerned that women cannot participate in any international programme and 60.94 percent expressed their opinion that woman and children face difficulties during security checks.

Among the key respondents, 93.70 percent believe that the existing citizenship laws deprive women of the right to choose their residence, 84.25 percent believe it deprives women of the social benefits like getting old age allowances, widow allowances and disable allowances. 95.31 percent of the key respondents believe that the existing citizenship laws create many difficulties for women in the areas of property rights. Among the one who are of the view that it impacts in property right; 92.19 percent thinks that it makes it hard for women to buy, sell and transfer property, 75 percent feel that women are prevented from exercising their property rights and 25.31 percent believe that women also have difficulty in obtaining tenant’s rights.
During the focus group discussion with different groups; internally displaced persons, cabin restaurant workers, single women, *badi*, orphan and street children also shows that the existing citizenship laws are discriminatory and has severe impacts on their lives.

**Analysis of the cases relating to citizenship:**

The study also includes case documentation from newspapers, field visits, case registered in the legal cell of FWLD and data from Home Ministry. Cases have been analyzed to identify the impact of the discriminatory citizenship laws. Decision of the Supreme Court in the cases relating to citizenship has also been taken into account to analyze the trend of the judiciary.

From amongst the 200 cases documented, 110 cases were related to citizenship whereas 90 cases were related to birth registration. While analyzing the reasons of deprivations of citizenship of the documented cases, 12 percent due to lack of father citizenship certificate and non-identification of both father and mother, 11 percent foreign father, 10 percent due to husband missing, in 8 percent denied naturalization citizenship, 8 percent due to father is missing, husband denied to confer citizenship and father denied to confer citizenship, 5 percent abandon by the husband, 2 percent non-identification of father, due to lack of person to identify and left husband and family. Finally, 1 percent each due to procedural hurdles, due to lack of migration certificate, due to death of husband, due to lack of citizenship certificate of husband, case of incest, lack of citizenship certificate of maternal father, due to divorce and finally descent is not mentioned.

While analyzing the decisions related to citizenship cases, it is found that the Court has accepted the international conventions only to that extent where it does not contradicts with the provision of the Constitution. In some cases, such as Prakash Mani Sharma *et. al* vs. HMG/Nepal, though the Supreme Court has issued an order to take appropriate measures to provide citizenship to the children of *badi* community, it could not go beyond the recognition that the international convention can not supersede the Constitution. Moreover, in Achut Prasad Kharel vs. HMG/Nepal case, the Supreme Court made the ambiguous interpretation of the language of law. Recognizing the issue of citizenship by virtue of lineage on the basis of father, the court
denied issuing an order to grant a citizenship to a child born to an unmarried woman.

**Recommendations:**

Recognizing women’s right to equality as envisaged into the Constitution of the country and the various international human rights instruments to which Nepal is a state party, the study has made following recommendation to ensure women’s equal right to citizenship.

**Recommendation to comply with the International Human Right Instruments:**

The prevailing laws relating to citizenship contradict with the provisions of various international human right instruments to which Nepal is a state party. Thus, Nepal should amend discriminatory laws relating to citizenship such as article 9(1) (2) and (5) of the Constitution of the Kingdom of Nepal, 1990 and Section 3(1) and 6(2) of Nepal Citizenship Act, 1963 so that they correspond with the international treaties.

1. The Nepal government should adopt the concluding comments made by the CEDAW committee (13th January, 2004) regarding the amendment of Article 9 of the Constitution as soon as possible.

2. The issue of citizenship has been raised before the court in various cases under Article 88 (1) and (2) of the Constitution and section 9 of the Treaty Act, 1990. The Supreme Court should play positive role while dealing with these cases.

3. Nepal government should ratify the optional protocol to CEDAW which provides a mechanism for enforcing individual complaint at international level.

**Recommendation for the reformation in law and procedure**

1. There should be no discrimination on the ground of sex regarding citizenship laws. Nepal Citizenship Act, 1963 and the citizenship provisions of the Constitution should be amended to ensure women’s equal citizenship rights.
2. Children born to a Nepali woman married to a foreigner should be given Nepali citizenship, if they decide not to acquire citizenship of their father’s country.

3. The right to birth registration should be provided to both mother and father.

4. Sufficient advocacy is needed to effectively reflect the proposal endorsed by the House of Representatives into the legislation that provides a mother right to confer citizenship to their children.

5. If a child who is born through a naturalized citizen before acquiring the citizenship wishes to acquire the naturalized citizenship of Nepal on attaining age, provisions should be made to grant citizenship to such child based on relinquishment made by his/her father of his country’s citizenship.

6. Provisions should be made to confer citizenship to women engaged in a matrimonial relationship with foreign citizens by descent unless they acquire citizenship of their husband’s country.

7. Mother’s name and name of maternal descent should be mentioned in the citizenship form.

8. Sisters, mothers, aunts and grandmothers should also be allowed the right to identification as of the male member of the family.

9. Government should implement the provisions that recognize every child who is found within the Kingdom of Nepal and the whereabouts of whose parents are not known shall, until the father of child is traced, be deemed to be a citizen of Nepal by descent.

General Recommendation

1. The government should institute scientific record keeping of personal events such as birth, marriage, death and also the record of cross border and internal migration.

2. The judiciary should undergo training to increase the awareness of gender based issues and the implementation of international human rights, particularly women’s rights.
3. Civil society must play a prominent role to inspire and influence the court for honest compliance with enforcement of international human rights laws and also to create massive awareness in favour of equal citizenship rights of women.

4. Lawyers should be acquainted to use treaty bodies to deal with the citizenship cases and also with the procedures necessary to litigate human right cases at the international level.

5. There is need of victim’s hearing, interaction with the political parties, sensitization of bureaucracy and media campaign for advocacy.

6. There is need for equal citizenship rights movement. The network must be established at the grassroots level and should extend to the national level.

7. The government officials in all District Administration Offices of all the districts should be trained on human rights and legal update courses for effective implementation of citizenship law and to reduce the procedural hurdles.
1.1 Background

The total population of Nepal is 2,31,51,423 out of which 1,15,87,502 are women constituting 50.05 percent of the population.\(^1\) However, women face discrimination on the basis of sex and gender in various walks of life and are treated as second class citizens. This is due to the continuing dominance of patriarchal value system. There have been very little changes in the status of women even after the restoration of democracy in 1990. Although The Constitution of the Kingdom of Nepal, 1990 is based on equality and human right, the discrimination still prevails regarding citizenship. Citizenship is a prerequisite for all rights and entitlements but Nepalese women are deprived of such under The Constitution of the Kingdom of Nepal, 1990. Women are denied from conferring citizenship to their husband and children, which denies women full citizenship rights and contradicts right enshrined in various international human right conventions. This has divided the population of the state into two categories; citizens who enjoy all rights conferred by the state and non-citizens whose identity, status, dignity and ability to exercise their rights are impeded.

“Sometimes, nationality and citizenship are treated as interchangeable terms; however, they are not synonymous. All citizens are nationals of a State, but not all nationals are citizens.\(^2\) Nationality determines the political status of the individual, especially with reference to allegiance.\(^3\)

\(^1\) Nepal in Figure, 2003, The Central Bureau of Statistics, HMG/NPC-2003.
Citizenship, on the other hand, creates members of a political community who have established or submitted themselves to the dominion of a government for the protection of their general welfare and the protection of their individual and collective rights. The right to citizenship is a basic right of all people because it has a tremendous impact on the political, administrative, and socio-economic spheres of life. Citizenship rights have been directly linked to certain fundamental rights, many of which are only guaranteed to citizens of a country, including: freedom of movement and residence within the country; the right to leave and return to one’s own country; the right to nationality; the right to own property; the right to participate in politics and government; the right to vote; the right to hold public office.

International law recognizes that each state can determine the identity of its citizens according to its own national law. Consequently, the human rights and responsibilities of an individual both within a State as well as within the regime of international law depend on the important status of nationality.

Unfortunately, the concept of nationality and citizenship has traditionally been gender discriminatory. The citizenship rights of men were treated as primary and those of women were seen to flow from their relationships with men; father, and then husband. The inequality was based on two assumptions that subordinated women through their role within the family: firstly, a rigid belief in oneness of family and unity of nationality, and secondly, the patriarchal notion that this unity should be determined only by the “male head of the household”. These assumptions interconnect with the patriarchal public-private dichotomy: the restriction of women to the “private”, or domestic domain, and the belief that only men should determine the constitution of the public arena: that of the workforce, the market—that of the “citizen”.

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4 Ibid.
This result in two broad forms of discrimination against women in the realm of citizenship rights. Firstly, the principle of “dependent nationality” assumed that upon marriage a wife joined her husband in his nation state. Therefore wives were automatically granted the nationality of their husband having renounced of their own nationalities. Further they were not granted the same right to transfer citizenship to a foreign spouse. Secondly, the citizenship of a child born to parents of differing nationalities was determined only by the father’s nationality. This in turn resulted in the discrimination of women in society, and the perpetuation of gender inequality through women’s second class citizenship. Women who were divorced, abandoned or widowed were rendered stateless in their own state, and women who continued to live in their nation after marriage were similarly left without any rights associated with citizenship. As children acquired citizenship from fathers and often only within wedlock, single mothers, and children of the badi community remains affected from the existing citizenship laws in Nepal. The denial of equal citizenship rights has had a devastating effect on many women and children, unnecessarily limiting their mobility, access to services and opportunities.

1.2 Standards for Acquiring Citizenship

There are three major bases for granting citizenship: jus sanjuinis, jus soli and naturalization. Although the law of the nation may distinguish between different classes of nationals, these distinctions are not relevant in international law. The most common way in which nationality can be acquired is by birth. Some country confer their nationality on children born on their territory (jus soli), some confer nationality on children born of the parents who are nationals (jus sanguinis) or both. The other mode of acquiring nationality is by naturalization. Naturalization is a process by which a person acquires nationality after birth and becomes entitled to the privilege of citizenship. In relation to naturalization, the Inter-American Court of Human Rights has observed that “(N)ationality no

longer depends upon the fortuity of birth in a given territory or on parents having that nationality; it is based rather on a voluntary act aimed at establishing a relationship with a given political society. Therefore, citizenship conferred by the process of naturalization operates independently of jus soli and jus sanguinis, however, the applicant ordinarily must fulfill particular conditions and meet various requirements set forth by the states in order to become a naturalized citizens. In some States, an alien female spouse does not have to apply to become naturalized citizens because she automatically acquires her husband’s citizenship upon marriage. This rests on the patriarchal and discriminatory notion that the nationality of a family should be uniform, and that this nationality should only be determined by the nationality of the husband.

The lack of uniformity in state nationality laws has resulted into trouble some of multiple nationalities, statelessness and disrupted nationality of women and children. The failure to acquire nationality results into statelessness. Statelessness is a condition recognized both by municipal law and by international law. The Universal Declaration of Human Rights prohibit slavery, inhuman treatment, arbitrary interference with privacy, discrimination on the ground of race, colour, sex, language, religion political opinion national or social origin, property, birth or other status. It also proclaims the right to fair trail, freedom of movement, the right to have or change nationality, the right to marry, the right to own property, and other economic, social and political rights. The international law prompted the insertion of Article 15 in the Universal Declaration of Human Right stated that “everyone has the right to a nationality”, and that “no one shall be arbitrarily deprive of his nationality”. “Stateless people do not have voting right, right to education, right to mobility (within and out side their region), right to choose their career and are liable to deportation”. A man’s nationality is a continuing legal relationship between the sovereign state on one hand and the citizen on the other.

“The fundamental basis of a man’s nationality is his membership of an


8 A Modern Introduction to International law: Michael Akehurst, 6th Edition, pg 84
independent political community. This relationship involves right and corresponding duties upon both”\(^9\). An individual should belong to a state to enjoy various international rights. Individual does not have rights and duties under international law. To protect such dire consequences many of the countries have enter into treaties to reduce the hardship of the statelessness by altering their nationality laws. The Constitution of the Kingdom of Nepal 2047(1990) is silent about the category of stateless persons.

### 1.3 Statement of the Problem

The Constitution of the Kingdom of Nepal, 1990 has expressed its commitment to guarantee all citizens the fundamental right to equality. The guarantee of the basic human rights as well as the establishment of an independent and competent justice system with a view to transforming the concept of the rule of law into a living reality is some of the basic features of the Nepalese Constitution. Part 3 of the Constitution, under the heading of Fundamental Rights has codified almost all the rights and freedoms based on equality recognized by the international community through various international and regional instruments on human rights.

Nepal has also ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979, International Covenant on Civil and Political Rights (ICCPR), 1966, International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, and Convention on the Rights of Child (CRC), 1990, recognizing the importance of equality in right to citizenship, oblige the States Parties to guarantee citizenship right without any discrimination. The government of Nepal committed itself to changing the citizenship laws upon the ratification of the international human rights instruments, importantly the CEDAW Convention and granting women equal rights in their ability to acquire, change or retain their nationality. However, even after 15 years of ratification of the CEDAW Convention, there are no changes in the

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9 International Law; Gurdip Singh, Edition 1992, pg 135
discriminatory citizenship provisions. Such discriminatory laws are also in disagreement with Nepal’s commitment under The Treaty Act, 1991 of Nepal. Furthermore, taking into consideration the commitment of the government under Beijing Platform for Action (BPFA) and the recommendations of the Outcome Document “to eliminate discriminatory laws by 2015,” the government is obliged to take effective steps so as to review all laws and policies and amend/repeal all the existing discriminatory laws importantly the discriminatory citizenship laws which affect women’s participation in all spheres of life.

The issue of citizenship was also raise before the CEDAW Committee in 1999 and 2004 and the Committee issued strong Concluding Comments to the Government of Nepal to amend the discriminatory citizenship laws as a matter of priority. The present citizenship laws of Nepal are discriminatory against woman. Article 9 (1) and (2) of the Constitution of the Kingdom of Nepal, 1990, Section 3 (1) and 6 (2) of the Nepal Citizenship Act 1963, provides that a Nepalese citizenship of descent may be conferred only subject to the condition that the father of a person in question is a Nepalese citizen at the time of acquiring Nepalese citizenship. Therefore, a woman cannot grant citizenship to her children. Similarly, a foreigner woman marrying a Nepalese national can acquire citizenship of Nepal by virtue of marriage; however, foreigner man marrying a Nepalese woman cannot acquire the citizenship on the same grounds. This also affects the children born out of such wedlock, as a woman can not transfer citizenship to her children.

In this context, a baseline Study on Citizenship Law was conducted by FWLD. The study reveals that the causes of the discriminatory citizenship law and barriers for reform are varied. Among the challenges to amending the discriminatory citizenship laws as identified by the study are: lack of effective initiatives from the government, lack of political will, existing socio-cultural bias towards women, lack of judicial activism, non implementation of commitment made under international human rights instruments, lack of documentation and in-dept research on the issue. Moreover, as a result of ongoing conflict, people are leaving their villages
without any form of identification. Displaced women and girls are the one who are suffering most from the ongoing conflict.

FWLD along with other members working on the same issue have embarked on a national movement for amending discriminatory citizenship laws including major advocacy. Collection of additional and strong evidences is required to bring out serious consequences of the discriminatory citizenship laws. At the same time there is need to understand the perception of government officials on the discriminatory citizenship laws and the procedures followed for granting citizenship. In this context, there is need to conduct an impact analysis of discriminatory citizenship laws on particular vulnerable groups of the society, which will target collecting evidences of violation of rights, alternate practices of granting citizenship and identifying best procedures in the country.

1.4 Objective of the Study

The main objectives of the study are as follows:

- to identify the impact of discriminatory citizenship laws on women and children especially from the following categories; internally displaced persons, cabin and restaurants workers, single women, badi community, orphans and streets children/slum dwellers.
- To identify the procedural hurdles and,
- To formulate strategies for realization of equal citizenship right of women.

1.5 Methodology of the Study

The methodologies used in the study are as follows:

- Sites of the Study: The study was focused on three districts; Kathmandu, Kapilvastu and Nepalgunj.
Methods: The required information was collected by using doctrinal method and relevant research tools.

1. Doctrinal Method:

The following doctrinal methods were used:

Review: Review has been conducted to assess the State’s obligation and accountability under various international human rights instruments and national legislation to guarantee women equal right to citizenship.

2. Tools of Data Collection:

The following tools were used for the collection of data:

a. Scheduled Interview: The scheduled interview was conducted to collect the views on the existing citizenship laws in Nepal and its impact on women and children especially focusing on IDP’s, cabin and restaurant workers, single women, badi community, orphans, and street children/slum dwellers. Both open and close-ended questions were used in the interviews. The scheduled interviews were administered to total of 64 respondents from Kathmandu, Kapilvastu and Nepalgunj.

b. Focus Group Discussion (FGD): The following six focus group discussions were conducted.

- A FGD with cabin and restaurants workers was conducted on September 15, 2005 in collaboration with CAC/Nepal. There were total of 26 participants in the programme.
- A FGD with the street children/slum dwellers was conducted on October 7, 2005 in collaboration with CWIN. There were total of 17 participants in the programme.
- A FGD with the orphan children was conducted on October 25, 2005 in collaboration with the Nepal Bal Mandir. There were total of 20 participants in the programme.
A FGD with IDP’s was conducted on October 27, 2005 in collaboration with Sarad Samaj, Chanauta, Kapilvastu. There were total of 20 participants in the programme.

A FGD with badi community was conducted on October 29, 2005 in collaboration with SAFE, Nepalgunj. There were total of 27 participants in the programme.

A FGD with the single women group was conducted on November 8, 2005 in collaboration with Women for Human Rights (Single Women Group). There were total of 12 participants in the programme.

c. Case Documentation: The case documentation was done during the field visit, FGD, interviews and cases registered at the legal cell of FWLD, which was documented during the study with the support of The Asia Foundation were also used for this study.

d. Data Collection: Data relating to the citizenship were also collected from the Ministry of Home and District Administration Office, Kathmandu.

e. Data Processing and Presentation: The scheduled interviews were processed manually and sorted out in accordance with the themes identified in the issue of the study. Quantitative analysis of the scheduled interviews was processed using excel program. Data of quantitative analysis are presented in various forms, including tables, pie charts and comparative chart.

1.6 Limitation of the Study

The inferences and generalizations made in the study are based on schedule interviews with 64 respondents in three districts; Kathmandu, Kapilvastu and Nepalgunj. Most of the interviews and FGD’s were conducted in Kathmandu Valley.
Citizenship Laws in Nepal and State Obligation under International Human Rights Instruments

Some define citizenship as the legal affiliation to a state other as political affiliation to a state. The substance of citizenship expresses the specific relationship between person and state. The legal relationship allows the jurisdiction of the state to be extended to the person in a permanent, full and stable manner. Thereby, citizenship is necessary prerequisite to the application of the law of a given state. Citizenship involves three principle inter-related elements:

1. Specific relationship between person and state.
2. The legal consequences arising from the legal relation.
3. The relation between these two elements."\textsuperscript{10}

The first Nepalese Citizenship Act was enacted in the year 2009 B.S (1952). This Act specifies acquisition of citizenship through by birth, either of the parents is Nepalese citizen, by marriage to a Nepalese man. In 2019 B.S (1962) new Constitution was drafted and Part 2 of the Constitution included citizenship Chapter for the first time. Nepal is a state with limited population, to protect the individuality and identity of this small state Citizenship Ordinance was promulgated in the year 2020 (1963) and Citizenship Act 2020 was enforced. This Act repealed Citizenship Act 2009 (1952). The existing laws relating to citizenship are The Constitution of the Kingdom of Nepal 2047(1990), Citizenship Act 2020 (1963), and

\textsuperscript{10} Essay on Constitutional Law; Mukti Rijal, Volume 8, 1991, pg 6
its Regulation 2049 (1992). The Constitution of the Kingdom of Nepal is the base of all laws relating to citizenship, as the Constitution is the fundamental law of the land.


A. Acquisition of Citizenship

By Descent

Under The Constitution of the Kingdom of Nepal 1990 and Nepal Citizenship Act, 1963, the following any person can acquire the certificate of Nepalese citizenship, who desires to obtain it;

- A person who is born after the commencement of the Constitution 2047 and whose father is a citizen of Nepal at the birth of the child shall be a citizen of Nepal by descent,

- Every child who is found within the Kingdom of Nepal and the whereabouts of whose parents are not known shall, until the father of the child is traced, be deemed to be a citizen of Nepal by descent.11

Procedure:

Such person may submit an application in a prescribed form, on receipt of such application, the prescribed authority conduct investigation in the prescribed manner. If the applicant is considered eligible for obtaining certificate of citizenship, the authority issues such certificate in prescribed form.

"Any Nepalese citizen who wants to acquire citizenship certificate has to forward the application to Chief District Officer along with the

recommendation of Chairman or Vice-chairman of District Development Committee, Mayor or Deputy Mayor of Municipality, Chairman or Vice-chairman of Village Development or Gazetted Officers of HMG in a format as prescribed in the schedule 1”\textsuperscript{12}

“Any person, who is the son or daughter or descendent of a citizen of Nepal and desires to obtain the citizenship of Nepal, he/she must submit an application in the prescribed form to the prescribed authority along with the evidence of having fulfilling the prescribed conditions.”\textsuperscript{13}

**By Naturalization**

The acquisition of citizenship of Nepal by a foreigner may be regulated by law which may, *inter alia*, require the fulfillment of the following conditions:

(a) that he can speak and write the language of the nation of Nepal.

(b) that he is engaged in any occupation in Nepal.

(c) that he has renounced his citizenship of another country.

(d) that he has resided in Nepal for at least 15 years.\textsuperscript{14}

**Procedure**

Any foreign citizen other than a minor or an insane person, who desires to obtain a certificate of Nepali Citizenship shall submit an application to the Ministry of Home through the concerned Chief District Officer along with the recommendation from his/her own ward’s elected member of the VDC or municipality and from the concerned Chairman of the DDC, Mayor of the Municipality or Chairman of the VDC in a format as prescribed in schedule 3.\textsuperscript{15}

\textsuperscript{12} Nepal Citizenship Regulation, 2049 Rule 3(1)
\textsuperscript{13} 5\textsuperscript{th} amendment to Nepal Citizenship Act, 2020 Sec 6 (3)
\textsuperscript{14} The Constitution of the Kingdom of Nepal, 1990 Art 9 (4), Nepal Citizenship Act, 2020 Sec 6(1)
\textsuperscript{15} Nepal Citizenship Regulation, 2049 Rules 4 (1)
By Matrimonial Relationship

A woman of foreign nationality who has a matrimonial relationship with a Nepalese citizen and who has initiated proceedings for renunciation of her foreign citizenship may acquire the citizenship of Nepal.16

Procedure:

A foreign woman having matrimonial relationship with a Nepali national, who desires to obtain Nepali citizenship shall submit an application in a prescribed form to the prescribed authority. She shall enclosed evidence of her matrimonial relationship with a Nepali national, and of relinquish her foreign citizenship along with such application.17 Such application shall be submitted to the Ministry of Home through the concerned Chief District Officer along with the recommendation from the concerned Chairman of the DDC, Mayor of the Municipality, Chairman of the VDC or gazetted officer of HMG in a format as prescribed in schedule 3.18

The prescribed authority (Chief District Officer) shall examine the particulars mentioned in the application submitted and provide citizenship.

Conferment of Honorary Nepali Citizenship

Notwithstanding anything contained in Article 9 of the Constitution, honorary citizenship may be granted to an internationally renowned person.19 His Majesty may grant such honorary citizenship on the recommendation of His Majesty’s Government of Nepal to any person who has gained special reputation. The person shall have same status as naturalized Nepali citizen”20

16 The Constitution of the Kingdom of Nepal, 1990 Article 9 (5)
17 Nepal Citizenship Act, 2020 Section 6 (2)
18 Nepal Citizenship Regulation, 2049 Rules 4 (2)
19 The Constitution of the Kingdom of Nepal, 1990 Article 10
20 Nepal Citizenship Act, 2020 Section 6 A
B. Acquisition of Citizenship in case of Relinquishment

Any person, who has renounced the citizenship of Nepal and has gone to a foreign country but who has renounced his foreign citizenship, may acquire the citizenship of Nepal.\textsuperscript{21}

Procedure:

Any person who has relinquished the citizenship of Nepal and acquired citizenship of foreign nation desires to relinquish such foreign citizenship and again become a citizen of Nepal, shall submit an application to the prescribed authority along with the evidence of his/her having been a citizen of Nepal previously, and also having relinquish the citizenship of the foreign country.\textsuperscript{22}

The prescribed authority shall examine the application filed, in case he finds the particulars correct, forward it to the Ministry of Home along with his recommendation and the Ministry grants the citizenship of Nepal to the applicant.\textsuperscript{23}

C. Restoration of Nepali Citizenship

“Any woman who is the Nepali citizen marries foreigner, by virtue of such marriage acquire citizenship of the country of her husband, but if she later relinquishes the citizenship of that country by reason of divorce from or death of her husband, returns to and resettles in Nepal and gives notice to prescribe authority, the latter shall register such notice and Nepali citizenship of such woman shall be deemed to have been restored.”\textsuperscript{24}

D. Termination of the Citizenship

The Constitution of the Kingdom of Nepal does not prescribe any criteria of termination of citizenship. Under Nepali Citizenship Act 2020 (1963), citizenship can be terminated by three main conditions:

\begin{itemize}
\item \textsuperscript{21} The Constitution of the Kingdom of Nepal, 1990 Article 9 (5)
\item \textsuperscript{22} 5th amendment to Nepal Citizenship Act, 2020 Section 6 (b)
\item \textsuperscript{23} Ibid, Section 6B (2), (5)
\item \textsuperscript{24} Second Amendment to Nepal Citizenship Act, 2020 Sec 8 (a)
\end{itemize}
1) By Renunciation

It is an inherent right of every person that he/she is always free to renounce his/her own citizenship. Citizen who desires to renounce his/her citizenship shall provide the information to the prescribed authority as prescribed by law. From the date of such registration the citizenship of the person ceases to exist.\(^{25}\)

2) By Ipso-Facto Disappear

A citizen has the right to abandon Nepalese citizenship at his own will and citizenship of Nepal will automatically be terminated, if he secures citizenship of foreign country at his choosing. Any person who is entitled to Nepalese citizenship by descent and who is also declared a citizen of another country by birth at the same time must choose citizenship of any of the countries within a period of 5 years from the date of reaching 16 years. Otherwise, his citizenship will automatically be terminated.\(^{26}\)

3) By Deprivation

Nepal citizenship Act, 2020 (1963) states that any citizen may be deprived of his citizenship, if he has either (i) been found to have raised arms against Nepal or conspired to raise arms or committed an offence against the state or (ii) failed to decline to undertake his service to the state as determined by law at the time of war in which Nepal has also participated or during an emergency declared in Nepal or (iii) assisted in any way an enemy state against the kingdom of Nepal.\(^ {27}\) Likewise a naturalized citizen may be stripped of his citizenship if (i) he is found to have citizenship on the basis of fraudulent details, false details or statements or (ii) has generally made his domicile in a foreign country for a period exceeding 7 yrs.\(^ {28}\) A person who secured Nepalese citizenship by birth or by decent, HMG may deprive him/her of citizenship, if it is found the fact is otherwise.\(^ {29}\)

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25 Citizenship Act 2020  Sec 8
26 Id, Sec 9(2)
27 Id, Sec 10 (2)
28 Id, Sec 10 (3)
29 Id, Sec 10 (3A)
2.2 Discriminatory Laws and Practices to Obtain Citizenship

A. Discriminatory Legal Provisions for Acquiring Citizenship:

1. Law recognizes the identity of the father for providing citizenship to the child, where as citizenship can not be provided on the basis of the mother’s citizenship. In Nepal, lineal descent is provided through men. Women do not fall under the descent of the family in Nepal. She alone has no right to give identity to her children as mother or spouse.

2. Citizenship can be determined on the basis of non-identification of paternity but not of maternity. In the condition where the father of the child is not identify, mother can not confer citizenship to her child. Mother’s existence in acquiring citizenship is not recognized.

3. Citizenship on the basis of marriage is discriminatory. An alien woman who has matrimonial relationship with a Nepalese citizen can acquire citizenship through her husband, but the law does not allow women to confer Nepalese citizenship to her alien husband.

B. Discriminatory Procedural Practices for citizenship:

1. CDO does not provide citizenship to a child until the father or relatives from father's side identify the applicant.

2. CDO does not provide citizenship to married women until the husband or relatives from her husband's side identify the applicant.

C. Discrimination in Forms and Citizenship Certificate:

Nepal Citizenship Regulation, 2049 (1992) has prescribed the format for the application form and citizenship certificate, which also discriminates women.

1. Citizenship Application: According to schedule 1, the applicant has to mention name, cast and address of her father and husband
as prescribed in form and only women has to disclose her marital status (Miss/Mrs).

2. Citizenship Certificate: As prescribed in schedule 2, the applicant has to disclose name, cast and address of her father and husband.

3. Naturalization Citizenship application: According to schedule 3, the applicant has to fill the name, cast and address of father and husband as prescribed in form and women has to disclose marital status (Miss/Mrs).

4. Naturalization citizenship certificate: According to schedule 4, the applicant has to disclose name, cast and address of father and husband.

5. Citizenship relinquishment application: According to schedule 5, the applicant has to disclose the name of father and grandfather.

6. Restoration of Nepalese Citizenship: According to schedule 7, the applicant has to disclose name, cast and address of father in application for restoration of Nepali citizenship.

2.3 Procedural Hurdles for acquiring Citizenship

The government on the basis of culture, religion and ethnicity justifies discrimination against women and their rights in areas such as family law, nationality, freedom of expression and liberty of movement.

Nepalese citizenship laws confer citizenship on the basis of descent. In absence of proper records and relevant documents, most of the applicants are deprived of citizenship. In most cases, if a father denied to recognize his own son / daughter, or if a husband denied his relationship with wife, then acquiring the nationality would be difficult. In mention situation, there will be no other way to find out whether he is saying truth or otherwise. There is no practice of keeping the records of personal events like birth, death, and marriage registration to facilitate the procedure of acquiring citizenship.
For acquiring Naturalization citizenship, the applicant should have been residing in Nepal for at least 15 years. In the absence of scientific and systematic record keeping, in many instances tracing his/her stay become impossible. Further, there are many administrative procedures to be furnished before acquiring the citizenship.

Major Procedural Hurdles:

- Many people like labours, beggars and porters are deprived of citizenship due to lack of their descent evidence and further their incapability to furnish relevant documents.

- Many people have difficulty in getting citizenship, as there is no proper record of personal events (birth, migration, and death). If the applicants are applying for the citizenship from different district, producing of the father's citizenship and migration certificate becomes difficult.

- It is difficult to produce duplicate citizenship (copy of citizenship certificate) as there is no proper maintenance of citizenship record.

- Even there is no provision of identification in law, many district administrative officers follow this procedure as integral for providing citizenship. In many cases, due to personal reason, the identifier denies to identify.

- Applicants have to face difficulties due to the reluctance of government officer to get recommendation.

- Problems arise, if applicant want to change caste other than his/her father's as there is no related provision.

- It is difficult and time consuming for correcting name, caste, husband name, date of birth after acquiring citizenship.

- A Nepalese woman married to a foreigner relinquishes the citizenship of the country of her husband by reason of divorcer from her husband or the death of her husband, returns and resettle to Nepal, can retain her Nepalese citizenship. But due to the negligence of the administrative officer many of the women face difficulty.
In practice a Nepali married woman has to present both her father and husband for the purpose of identification and furnish the citizenship of both for acquiring the citizenship through her matrimonial relationship. It becomes difficult, if her father's home and her home happen to be in different district. The procedure becomes lengthy and tedious.

Lack of uniformity regarding the details to be furnished by applicant during interrogation by officials.

There are no specific penalties for giving false information. In many cases, the given informations are rarely verified.

There is provision for naturalization citizenship in the law, in case applicant has been residing in Nepal for 15 years. However, due to inefficient record keeping practices, his /her domicile becomes difficult to trace. Moreover, even after supplying mandatory information the applicant are not able to get citizenship.

There is lack of uniformity in the citizenship certificate distributed by district administration. This raises serious question regarding the legality of such certificate.

The unclear provisions for citizenship have obstructed people while acquiring, restoring, and terminating citizenship certificates. Following are some of the court cases and real life cases regarding citizenship:

Case 1

**Acting beyond one's right (termination of citizenship)**

Writ Petitioner: Awadnath Misra of Rupadenhi District, Tharki VDC, Ward 3

Respondent: Shamlal Mishra

Writ No.: 735 No 1397 of 2036 BS (Division Bench)

In this case, the appellant's father had submitted an application to the District Administration office, Rupandehi to terminate the citizenship of the appellant through the Chief District
Case 2

**Negligence of Responsible Authority**

Shanti Tamang KC, the first wife of Rajkumar KC has been longing to gain the status of Rajkumar’s wife legally for the past 25 years. They have a 26 years old son Rajendra, who is still deprive of citizenship. Rajkumar has been providing them four square meals and accommodation. Due to the fear that Rajendra will claim for the property right, Rajkumar denied having a relationship with his son and did not provide him with citizenship certificate. Even though Shanti furnished his son birth certificate, educational certificate and recommendation from her ward, the DAO (District Administrative Officer) refused to issue Rajendra citizenship certificate. After much crying Shanti has a filed partition case against Rajkumar in Kathmandu District Court. Now she anticipates that the court will give fair justice in her favor.

In Shanti’s case, the sheer negligence and lack of cooperation from DAO deprived 26 yrs Rajendra from acquiring citizenship
certificate. Even after showing birth certificate (evidence to show relationship between the Rajendra and his father) and other educational documents Shanti is unable to get her son citizenship. This shows that men have prerogative right to confer citizenship which ultimately affects not only women but also men too. In most case man who has more than one wife provide citizenship to the one they prefer and abandon the other wife and children. Even though the birth registration certificate, which is a government document is not consider authenticate proof of father child relation.

Source: Nepal magazine, issue 23 Ashwin 2062, pg-33

**Case 3**

**CDO Reluctant to grant citizenship certificate despite authenticated Document**

Chabbi Lal Shrestha is the illegitimate son of Bishnu prashad Shrestha and Fakuli Sunarni. Bishnu Never accepted Chabbi as his son. For her son’s right, Fakuli file property case against Bishnu at Puthan District Court. The court had certified the relationship between Chabbi and Bishnu as well as Chabbi’s right over his parental property.

After hearing the verdict of District court, Bishnu appeal at the Rapti Zonal Court against the decision of district court. But the Zonal court also maintained the same verdict.

Even after the court certified the relationship between Chabbi and Bishnu, CDO denied providing citizenship to Chabbi. The CDO Chetri Bahadur Bhandari confessed that he cannot provide Chabbi the citizenship until Bishnu identifies Chabbi in person. Due to the absence of citizenship, Chabbi is unable to transfer the property in his name.

Kantipur Daily Newspaper, January 3, 2006
There are many loopholes in our citizenship laws. Due to the lack of knowledge regarding citizenship law and ignorance of government officials, many innocent people are deprived of citizenship in different parts of Nepal. The government should enforce and modify citizenship laws for the proper implementation of existing laws in practice.

2.4 International Human Right Framework

Women's right as of all individuals are protected in various international human rights instruments. Following are some of the international legal instruments for the protection of human rights of women, especially regarding to equal citizenship rights of women:

I. Universal Declaration of Human Rights, 1948: The UDHR has some provisions on ensuring equal status between men and women and guaranteeing equal right to nationality. These provisions are;

1. All human beings are born free and equal in dignity and right. 30

2. Everyone is equally entitled to all rights and freedoms without distinction made on the ground of sex. 31

3. All are equal before the law and are entitled without any discrimination to equal protection of the law. 32

4. Everyone has the right to nationality and no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. 33

II. International Covenant on Civil and Political Rights (ICCPR), 1966

As set forth the principle of equality and dignity the United Nation adopted the International Covenant on Civil and Political Rights. In relation to the marital relation of the spouses and right to nationality, the following provisions are made in the Covenant;

30 UDHR Article 1
31 UDHR Article 2
32 UDHR Article 7
33 UDHR Article 15, CEDAW Article 9, ICERD Article 5d.
1. All people have the right of self determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.\(^{34}\)

2. Each state party to the Covenant undertake to respect and to ensure to all individuals within its territory and subject to its jurisdiction the right recognize in the present covenant without distinction of any kind, such as race, colour, sex, language, political or other opinion, national or social origin, property, birth or other status.\(^{35}\)

3. The state parties to the present covenant undertake to ensure the equal right of men and women to the enjoyment of all Civil and Political rights set forth in the Covenant.\(^{36}\)

4. Every child shall be registered immediately after birth and shall have a name and every child has the right to acquire a nationality.\(^{37}\)

5. All persons are equal before the law and are entitled equal protection of law without any discrimination. It prohibits any form of discrimination and guarantees right to equality for all people on all grounds including sex.\(^{38}\)

III. Convention on Elimination of all forms of Discrimination against Women (CEDAW), 1979


The declaration to explicitly combat all forms of discrimination against women and to implement CEDAW further recognizes the importance of promoting gender equality and women empowerment as an effective pathway for development. Article 5 of the declaration on the elimination

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34 ICCPR, Article 1
35 ICCPR, Article 2
36 ICCPR, Article 3
37 ICCPR, Article 24
38 ICCPR, Article 26
of discrimination against women adopted by United Nation General Assembly in November 1967 states “women shall have same right as men to acquire, change or retain their nationality, marriage to an alien shall not automatically affect the nationality of the wife either by rendering her stateless or by forcing upon the nationality of her husband. This proposed principle was spelled out in more elaborate terms in the following articles of CEDAW;

States parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by husband during marriage shall automatically change the nationality of the wife render her stateless or force upon her the nationality of her husband. Further, it states that state parties shall grant women equal rights to men with respect to the nationality of the children.

Further article 2 of the Convention states to embody the principle of the equality of men and women in their national constitution or other appropriate legislation if not yet incorporated therein and to ensure, through law and other means, the practical realization of this principle.

IV. Convention on the Rights of the Child (CRC), 1989

State should ensure necessary protection and assistance to the children so that they can fully prepared to live an individual life in society and brought up in the spirit of the ideals proclaimed in the charter of the UN. The declaration of the rights of the child states “the child by reason of his or her physical and mental immaturity needs special safeguards and care, including appropriate legal protection before as well as after birth. The convention on the right of the child embodied nationality/identity of children as follows;

The child shall be registered immediately after the birth and shall have the right from the birth to a name, the right to acquire nationality and as far as possible, the right to know and be cared for by his/her parents.

39 CEDAW, Article 9(1)
40 CEDAW, Article 9(2)
41 CRC, Article 7(1)
Further, state parties shall ensure the implementation of these rights in accordance with their national law and their obligation under the relevant international instruments in this field, in particular where the child would otherwise be stateless.\(^{42}\)

In addition, state parties undertake to respect the rights of the child to preserve his/her identity, including nationality and have family relation as recognized by law without unlawful interference. Further, where a child is illegally deprived of some or all of the elements of his or her identity, the state party shall provide appropriate assistance and protection with a view to speedily reestablish his or her identity.\(^{43}\)

V. Beijing Platform for Action

In September 1995, the Fourth World Conference on Women was held in Beijing and the Beijing Declaration and Platform for Action were adopted. Major accomplishment of this Conference was Platform for Action addressing 12 Critical Areas of Concern. BPFA strategic objectives have supplemented by national plan of action, which guide on specific gender equality measures. The following are some strategic objectives (BPFA) to promoting gender equality and empowering women:

- Ensure equality and non-discrimination under the law and in practice
- Integrate gender perspective in legislation, public policies and projects
- Strengthen national machineries and government bodies

Under Beijing+10 Islamabad declarations (3-5 May 2005) Nepal has committed to recognize the gaps and challenges in implementation in the following areas:

a) Lack of expeditious enactment of legislation as well as failure to repeal and amendment of discriminatory laws

\(^{42}\) CRC, Article 7(2)  
\(^{43}\) CRC, Article 8
b) Inadequate progress in meeting the commitments under article 9 of CEDAW on gender equality in citizenship laws.

VI. Millennium Development Goals (MDG)

MDG has made the equality of women a central focus of development agencies. Most of the states including Nepal undertook a plan to advance a global vision for improving the condition of humanity throughout the world in the areas of development, poverty eradication, peace and security, protection of human rights and democracy under MDG. MDG recognize the importance of promoting gender equality and women empowerment as an effective pathway for combating poverty, hunger and disease for stimulating truly sustainable development.

Every human being is a whole person and entitled to experience the rights stated in national and international law. They have three basic rights concerning the development of their personality. A) Right to identity B) The right to contract c) The right to have property. Due to the defective value system in Nepal, women are totally disregarded for their independent identity. Therefore, to meet the objectives of the MDG also reformation in citizenship law is imperative.

2.5 State’s obligation under International Convention

Human Rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. Human rights for women, as for all individuals, are protected in international law. Despite this, women all over the world have been victimized due to the patriarchal structure, defective value system and discriminatory legal and social manifestation. The situation in Asian countries is much more oppressive. Women face human rights violations solely or primarily because of their sex.

The responsibility to think about the obligation to enforce and protect equality rights stems from Human Rights perspective. Equality as an essential component of human rights is an inherent, inalienable and universal right which is born within human being, not born of human
beings. Neither the government nor the constitution is the creator of human rights.

Nepal Government had already ratified 16 various international instruments for protecting and promoting women's rights with a view to withdraw the gender gap that exist in the society. This is particularly important in the case of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), a bill of rights for women's rights. The state party is obliged to provide an environment for exercise of such rights to the fullest. The law in force must be interpreted in order to give effect to the scope of rights guaranteed by different international instruments. Government should ensure that women are treated equally by law.

Article 126 of the Constitution of Nepal provides that the provisions of the international conventions or treaties would be part of domestic law and would be equally applicable as the municipal law upon ratification or accession of such international conventions or treaties. Further, Section 9 of the Nepal Treaty Act, 1991 specifies that any Nepalese laws inconsistent with any international convention or treaty ratified by the government can be declared null and void. However, the government of Nepal has not properly brought international conventions into domestic law and the discriminatory Citizenship law is still prevailing in the country. It is, therefore, as being a state party to those international human rights instruments, Nepal government is obliged to amend and reform the discriminatory citizenship law to ensure the right to citizenship of every one under the international conventions as well as domestic laws.
Impact of Discriminatory Citizenship Laws

Law is an instrument of social change. Sometimes it leads to social change and sometimes it responds to social change. However, when sex discrimination is reflected in the law or in government policy, it impedes the process of development. The existing discriminatory citizenship law affects the overall development of women.

According to the Population Census 2058 B.S. 13,788,347 population is eligible for acquiring citizenship. But data available from the Home Ministry shows that the total citizenship distributed from 2009 to 2061 B.S. is 12,694,403. This data straightly proves that there is more than 1,100,000 people who have been deprived of citizenship.

<table>
<thead>
<tr>
<th>Acquired citizenship</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>By descent</td>
<td>12,478,673</td>
</tr>
<tr>
<td>By matrimonial relation</td>
<td>152,788</td>
</tr>
<tr>
<td>By birth</td>
<td>62,832</td>
</tr>
<tr>
<td>Total citizenship distributed till 2061</td>
<td>12,694,403</td>
</tr>
</tbody>
</table>

Source: Home Ministry

This chapter depicts the different ways in which discriminatory citizenship laws impacts women and children. It is based on the views expressed by the key respondents interviewed during the study.

3.1 Opinion of the Key Respondents on the Existing Citizenship Law

The key respondents were asked their views on the existing citizenship law in Nepal. 92 % of the key respondents believed that the existing
citizenship law is gender blind from a human rights perspective. The existing citizenship law gives the father priority to confer citizenship to his child and gives the husband priority to confer citizenship to his wife. It is natural right of every child to acquire citizenship through his/her mother. This prerogative right of the men has severely affected men, women and children of different classes and clans. The Constitutional provision relating to citizenship is rigid and overlooks the consequences that result in cases involving children of single mothers, *badi* women, children of divorcees, street children, orphans etc. The citizenship law needs to cover a broader spectrum and should incorporate special provision for different circumstances.

7% of the respondents said the present Constitution of Nepal is appropriate when one considers the cross border migration. However, some of the respondent's feel those linking citizenship issues with border regulation are baseless and conservative. There should be different laws and mechanisms used to regulate cross border migration. Moreover, border maintenance procedures should not violate the rights of women.

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Is the existing citizenship law discriminatory?</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Yes</td>
<td>92%</td>
</tr>
<tr>
<td>2.</td>
<td>No</td>
<td>7%</td>
</tr>
<tr>
<td>3.</td>
<td>No response</td>
<td>1%</td>
</tr>
</tbody>
</table>

### 3.2 Opinion of the Key Respondents on Vulnerable Groups

On asking the question who are the vulnerable groups due to the existing citizenship law, 73.44% of the key respondents believed that the existing Constitutional provision regarding citizenship is single dimensional and women in general are most vulnerable group. 50% of the key respondents believed that, children are vulnerable due to the existing citizenship law. Similarly, 48.44% of the key respondents believed that *dalits* are vulnerable group and 44.75% of the key respondents believed that *badi* women are vulnerable. Likewise, 39.06% of the key respondents viewed that *janjatis*
are vulnerable and 31.25% viewed that internally displaced people are more vulnerable due to the existing citizenship law in Nepal.

3.3 Impact of Discriminatory Citizenship Law

a. Statelessness of Children

Citizenship is the most crucial evidence of one's existence. It provides identity to the person. In the absence of citizenship, one's identity of a bona fide member of the nation is denied. According to the Nepalese citizenship law, children can acquire citizenship only through their father, not their mother. Among the key respondents, 90.62% believed that the existing citizenship law creates stateless children, 6.25% disagree and 3.13% of the key respondents did not respond.

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Do discriminatory citizenship laws lead to statelessness?</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Yes</td>
<td>90.62%</td>
</tr>
<tr>
<td>2.</td>
<td>No</td>
<td>6.25%</td>
</tr>
<tr>
<td>3.</td>
<td>Don’t know</td>
<td>3.13%</td>
</tr>
</tbody>
</table>
Who am I?

Police rescued Rajani Shakya as her mother was in the process of trafficking her to India. After her rescue, she was sent to an NGO run by a trafficking survivor. She now works there as an accountant and attends morning school. She hardly recalls her childhood memories. She does not remember who her parents were or where she was born.

She does recall an experience at the Chief District Office. One day she went to the CDO to apply for citizenship. The first question they asked pertained to her parent’s name. When she replied that she didn’t know, the officer tormented her by asking, “did you fall from the sky?” She felt humiliated by the officer’s behaviour. Rajani visited the CDO office many times, but to no avail. Some even suggested that she get married, as it would be much easier to acquire citizenship through a husband. After four years of continuous visits to the CDO office, she obtained citizenship. Rajani felt that her struggle ultimate achievement was a symbolic victory for unfortunate orphans everywhere.

In Search of Self Reliance
Published By: UNIFEM & Shakti Samuha, Page 33
By Rajani Shakya

b. Impact on Education

Among the key respondents interviewed, 84.37% of them are of the view that the existing citizenship laws affect on education. On the other hand, 12.50% of the key respondents are of the view that it does not affect, whereas 3.13% of the key respondents did not respond to the question.

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Impact on education</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Yes</td>
<td>84.37%</td>
</tr>
<tr>
<td>2.</td>
<td>No</td>
<td>12.50%</td>
</tr>
<tr>
<td>3.</td>
<td>No response</td>
<td>3.13%</td>
</tr>
</tbody>
</table>
Nowadays compulsory birth registration is required to enroll in school. The birth of a child cannot be registered without his/her father. Nepali existing discriminatory laws and policies make it very difficult for street children, orphans to register their birth, children of *badi women*, children of single mothers, children of divorcees etc. In many instances, birth registration can be used as supporting document during an application for citizenship. “Citizenship laws create barriers to children’s academic achievements and better career prospects”\(^{44}\).

Among the key respondents who felt that the existing citizenship law has an impact on education, 51.56% believed that citizenship is needed to enroll in universities. 61.94% think that it impacts scholarship distribution. Many colleges have reserved a few scholarships for different categories of people (women, *dalits*, and people from remote areas). However, “In absence of Citizenship, the chances of getting scholarship are nil”\(^{45}\). Colleges abroad offer a variety of courses specializing in different fields. These colleges also provide scholarships for merit students. Most of the respondents (67.19%) agreed that the lack of a passport, created by the lack of the citizenship, creates a problem for those attempting to study abroad.

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44 Notice for collecting merit Award published in Gorkhatra Daily dated November 11, 2005 by Mahendra Sanskrit University.
c. Economic Impact

Article 11 of CEDAW declares that the states shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure that women have the same right to employment as men. It guarantees women the same employment rights, opportunity, choices and benefits as men and obligates states to make every effort to remove both direct and indirect discrimination against women. To enroll in any formal or organized sector one has to submit a citizenship certificate along with the job application. Due to existing citizenship laws women are often unable to provide the certificates. As a result of various security concerns, nowadays, even potential house help must show their citizenship certificate in order to obtain employment.

Impact on work opportunity

Among the key respondents, 90.62% believe that the existing citizenship laws impact work opportunities, 6.25% feel that they does not have only impact on work opportunities, and 3.13% of the key respondents did not respond.

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Impact on work opportunities</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Yes</td>
<td>90.62%</td>
</tr>
<tr>
<td>2.</td>
<td>No</td>
<td>6.25%</td>
</tr>
<tr>
<td>3.</td>
<td>No response</td>
<td>3.13%</td>
</tr>
</tbody>
</table>

Among the key respondents who believe that the existing citizenship laws impact work opportunities, 87.5% of the key respondents viewed that existing citizenship laws impact to ability to get both Government and private sector jobs. To apply for a job with National and International Non Governmental Organizations, Banks, and business organizations,46 citizenship is a must. 59.38% of the key respondents agree with the statement that one needs citizenship to start their own business for e.g. to

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register the company, acquire property and carry out other economic activities. Similarly, 76.56% of the key respondents feel that those who lack citizenship cannot get passports. Thus 71.88% responded that the laws impact foreign employment. Failure to secure jobs which create a high unemployment rate, thus hindering economic and human development.

- Impact on Banking Activities

Among the key respondents, 93.74% believe that the existing citizenship laws impact banking activities, 3.13% disagree and 3.13% did not respond.

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Impacts on banking activities</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Yes</td>
<td>93.74%</td>
</tr>
<tr>
<td>2.</td>
<td>No</td>
<td>3.13%</td>
</tr>
<tr>
<td>3.</td>
<td>No response</td>
<td>3.13%</td>
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</tbody>
</table>

Banks accepts people's savings in the form of deposits. People save money for future use. Many have different motives. Some are speculative, some motive, transactional and some precautionary. Most open bank accounts to earn a return as their investment to provide security. Likewise, banks invest deposits in different sectors such as loans, stock purchases and other economic activities. 89.06% of those who felt citizenship law affect
banking activities also felt that the lack of citizenship prevents one from opening a bank account. With no bank account, individuals are not able to save as much. 78% of those who think citizenship laws affects banking activities also believe that citizenship is required to obtain a loan. Most rural people do not have citizenship. They can neither open bank accounts nor get loans to start business. Also they are prevented from buying and selling shares of stocks. That is why the many bank deposits lie idle. In most cases, loans circulate among the rich. Without collateral, poor people are often denied access to loans. The absence of citizenship makes the situation worse. And so, the gap between the rich and the poor increases as the economy suffers yet another blow.

d. Political Impact

Among the key respondents, 90.63% believe that the existing citizenship law has an impact on the political activities of women, 6.25% disagree and 3.13% did not respond.

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Impact on political activities</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Yes</td>
<td>90.63%</td>
</tr>
<tr>
<td>2.</td>
<td>No</td>
<td>6.25%</td>
</tr>
<tr>
<td>3.</td>
<td>No response</td>
<td>3.13%</td>
</tr>
</tbody>
</table>

47 Notice Published in Kantipur Daily dated August 12, 2005 by Capital Merchant Banking and Finance Ltd for collection of share certificate.
Article 7 of CEDAW reaffirmed the right of all women to vote in elections and to be eligible for election to elected bodies. It obliges states to take all appropriate measures to eliminate discrimination against women in the political and public life of the country.

Among the key respondents who felt that the existing citizenship law has impacts the political activities of women, 53.13% believe that it impacts the ability to cast a vote. “One has to be of Nepali origin to stand in an election”⁴⁸. Similarly, 31.25% of the key respondents who believed that citizenship laws have a political impact are of the view that the existing citizenship laws impact a woman’s ability to take part in political activities.

e. Psychological Impact

Among the key respondents, 87.50% believe that the existing citizenship laws have a psychological impact on women, whereas 12.50% respondents disagree. In absence of citizenship, one cannot enjoy the rights exercised by other citizens. Confronted by lack of opportunity, by humiliation and frustration accumulate. Stateless people are often forced to ask the questions Who I am? What am I? They begin to develop a negative attitude not only towards themselves, but toward their country.

⁴⁸ Notice Published in Gorkhapatra Daily dated October 20, 2005 by Election Commission for registration of political party.
as well. Self-respect and dignity erode. To make matters, stateless people are always apprehensive about the future of their family their economical and social security. People deprived from citizenship are deprived from social benefits, economic rights, political rights, and all other basic rights as well.

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Psychological Impact</th>
<th>Percentage</th>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>Yes</td>
<td>87.50%</td>
</tr>
<tr>
<td>2.</td>
<td>No</td>
<td>12.50%</td>
</tr>
</tbody>
</table>

f. Impact on Health

Among the key respondents, 87.50% fell that the existing citizenship laws deprive women and children of adequate health care, 12.50% disagree.

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Impact on health</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Yes</td>
<td>87.50%</td>
</tr>
<tr>
<td>2.</td>
<td>No</td>
<td>12.50%</td>
</tr>
</tbody>
</table>

Article 12 of CEDAW obligates state to ensure that women have equal access to health care. States are also required to remove all legal and social barriers that obstruct access to health care for women. Access to health care facilities is essential in order to improve living standards and the human development. Foreigners are not prohibited from receiving medical
treatment. 40.63% of the respondents believe that only Nepali should be eligible to receive certain medical benefits and facilities provided by the Government. In practice, many Nepalese who are economically backwards receive free medical treatment based on a recommendation from the ward. As per hospital terms and conditions, both government and private hospitals provide free or reduced fee services to certain patients. Women without citizenship are deprived of such facilities and services.

On the other hand, 46.88% of the key respondents expressed their view that the existing citizenship laws affect the ability to seek treatment abroad. 6.25% feel that it impacts about health insurance and life insurance.

g. Impact on right to family

Among the key respondents, 89.06% believe that the existing citizenship laws deprive women from the right to family, 7.81% disagree and 3.13% of the key respondents did not respond.

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Impact on right to family</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Yes</td>
<td>89.06%</td>
</tr>
<tr>
<td>2.</td>
<td>No</td>
<td>7.81%</td>
</tr>
<tr>
<td>3.</td>
<td>No response</td>
<td>3.13%</td>
</tr>
</tbody>
</table>

Everyone has the right to family. The Constitution of the Kingdom of Nepal, 1990 does not allow women to confer citizenship to their children or their husband. 87.5% of the key respondents think the procedure to confer citizenship by descent is biased. This provision affects the natural relationship between a mother and her child. 56.25% of the key respondents replied that women without citizenship cannot adopt children, 35.94% of the key respondents responded that when women are not allowed to provide citizenship to their husbands, their right to a family is affected. Similarly, 21.69% believed that the existing citizenship laws affect marriage registration and 23.43% felt that it impact the right to live with a family.
Case: RIGHT TO FAMILY

**Vijaya Laxmi vs. Department of Immigration (1989)**

Vijaya Laxmi Simmons was a Nepalese national who married an American national Bradford Simmon. Vijaya Laxmi did not migrate to USA. The couple agreed to settle in Nepal. He attempted to obtain residential visa but was denied. A petition was lodged in the Supreme Court. The Supreme Court rejected a petition for recognition of an alien husband’s right to spousal visa exceeding a period of 4 months although an alien women marrying Nepali men are entitled to reside in Nepal without reservations. The Supreme Court decision in this case was a great set back to the cause of equality for men and women under the law.

**Meera Gurung et.al vs. Department of Immigration (1991)**

Meera Gurung, a Nepalese national, married an Iranian national. They had a baby son. Her husband arranged his internship at Tribhuvan University teaching hospital. The couple decided to stay in Nepal. However the Immigration Department refused to grant him spousal visa in access of 4 months per
year based on Rule 8(4) of the Immigration Regulation. They lodged a petition lodge at the Supreme Court demanding that the Immigration Regulation be declared unconstitutional.

The court decided that the said clause of the Immigration Regulation was discriminatory and, as such inconsistent with Art 11 of the Constitution of the Kingdom of Nepal. The law was declared null and void. The petitioner's husband became entitled to obtain a residential visa to remain with his wife in Nepal.

Many laws especially those relating to family and property rights define the legal position of women in terms of their marital status. The case of Meera Gurung was the first case to uphold the right to marriage and to start a family. These rights are inherent rights to every woman like man, and neither the state nor the law should impinge upon them. Following the case of Meera Gurung 16 cases on the same issue were heard by the Supreme Court. The court followed the rationale of Meera Gurung case.

The judgment was instrumental in bringing about amendments to the Immigration Regulations. These amendments were not ideal; the right of a foreign wife to automatically renew her spousal visa was removed. Provisions were made for visa fees to be payable by the foreign wives of Nepalese nationals. However the judgment, did help to promote women's rights by recognizing the right of alien husbands to obtain visas in the same manner as foreign wives to Nepalese male.

h. Impact on Mobility

Among the key respondents, 92.19 % believe that the existing citizenship laws restrict the right to mobility, 4.68 % disagree and 3.13 % did not respond.
Amongst the key respondents who are of the view that the existing citizenship laws restrict the mobility of women; 85.95 % feel that it is difficult for women and children who are deprived of citizenship face difficulties to move from one place to another within the country, 82.81 % believed that women and children can not go abroad and 64.06 % are concerned that women cannot participate in any international programmes. 60.94% expressed their opinion that women and children face difficulties during security checks.

i. Impact on Right to Property

Article 13 of CEDAW obligates states to eliminate economic discrimination against women in the area of economic and social life in order to ensure the same right, particularly, the right to family benefits and the right to financial credit. As a result of the existing discriminatory citizenship laws women face difficulties transferring property. According to the existing legal provisions, property cannot be transferred to a foreigner.49

Furthermore, women cannot transfer their property to children born out of foreign husband.

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Impact on Right to Property</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Yes</td>
<td>95.31%</td>
</tr>
<tr>
<td>2.</td>
<td>No</td>
<td>1.56%</td>
</tr>
<tr>
<td>3.</td>
<td>No response</td>
<td>3.13%</td>
</tr>
</tbody>
</table>

Among the key respondents, 95.31 % believe that the existing citizenship laws create many difficulties for women in the areas of property rights. 1.56 % disagree and 3.13 % have not responded to the question. Among the respondents who are of the view that the existing citizenship laws impact women's property right, 92.19 % thinks that the makes it hard for women to buy, sell and transfer property, 75 % feel that women are prevented from exercising their property rights. Similarly, 25.31 % believe that women also have difficulty obtaining tenant's rights.

Impact on Right to Property (Multiple Responses)

- To buy, sell and transfer property: 92.19%
- To get tenant's rights: 25.31%
- To exercise property rights: 75%

**TENNANCY RIGHT**

Petitioner: Piyare Loniya, resident of Ramgaht Village Panchayat, Ward No.6

Respondent: Kasidevi Mishra et.al,

Case: Mandamus and Certiorari

Writ No.: 2268,

Decision No.: 3261, Division Bench, (2044)
In the aforementioned case Piyare Loniya v. Kasidevi Mishra et.al plots of land situated in the Malpara Village Development Committee 8 and numbered 27, 28 and 29 were registered in the name of Bikram Pathak. After completion of a land survey and mapping Plot number 40 was registered in the name of Kasidevi. Piyare Loniya received a temporary document certifying his tenancy on the above-mentioned land. Pursuant to a temporary tenancy document, Tenant Kasidevi submitted an application for number 3 permanent tenancy certificates at Land Reform Office of Kapilvastu. The petitioner argued that he was eligible for tenancy in accordance with Section 34(1) of Land Act, 2021. Pursuant to Section 25 (1) he had a strong, valid document of tenancy. Thus he attempted to become a tenant under the provision of Section 25 (2) of the same Act. Unfortunately the petitioner did not acquire naturalized citizenship until 2038/2/12.

The Division Bench of Supreme Court held that the petitioner could not obtain tenancy rights before possessing a Nepali citizenship certificate. The petitioner was unable to prove this when filling out record forms 1 and 2. Pursuant to 25 (5) (B) of Land Act 2021 non-Nepali people cannot obtain tenancy rights on Nepalese land.

j. Impact on right to residence

The existing citizenship laws affect women's ability to choose a residence. 93.70% of the key respondents believe that the existing citizenship law deprives women of the right to choose their residence, 3.13% disagree and 3.13% did not respond.

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Impact on right to residence</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Yes</td>
<td>93.70%</td>
</tr>
<tr>
<td>2.</td>
<td>No</td>
<td>3.13%</td>
</tr>
<tr>
<td>3.</td>
<td>No response</td>
<td>3.13%</td>
</tr>
</tbody>
</table>
Among the respondents who believed that the existing citizenship laws deprive women of the right to choose a residence, 87.50 % feel that women are prevented from purchasing land, 85.50 % think that the laws make it difficult to get legal approval for constructing houses, 40.60 % believed that women are deprived from the right to choose residence and 37.50 % opine that the existing citizenship laws even create problems for rent.

k. Deprive from Social Benefits

The government has provided social benefits and allowances to the elderly, widows, disabled citizens and orphans of adults killed during the conflict. People without citizenship certificates are being deprived of the social benefits provided by the state.

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Impact on social benefits</th>
<th>Percentage</th>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>Yes</td>
<td>84.34%</td>
</tr>
<tr>
<td>2.</td>
<td>No</td>
<td>3.13%</td>
</tr>
<tr>
<td>3.</td>
<td>Don’t Know</td>
<td>9.36%</td>
</tr>
<tr>
<td>4.</td>
<td>No response</td>
<td>3.13%</td>
</tr>
</tbody>
</table>

Among the key respondents, 84.25 % believe that the existing citizenship laws deprive women of the social benefits, 3.13 % disagree, 9.36 % said they don't know and 3.13 % did not respond. Among those who are of the
view that the existing citizenship laws deprive women of the social benefits. 81.25 % said that one couldn't get such benefits without citizenship. The government allocates quotas for the above-mentioned benefits. 78.83 % feel that the law affect widows who receives allowances, and 73.44 % think that it the laws affects disable people who access the allowances. "Applicant has to furnish citizenship to prove his/her age (old age allowance), relationship (widow allowance) and above all, his/her evidence of being Nepali national"50. In the absence of citizenship, such details are hard to verify. The legal existence of these people is called into question.

Due to the existing citizenship laws many women has been deprived of citizenship. As a result, women are denied various state social services. For example, to acquire a mobile phone, one must apply along with a citizenship certificate.51 Although governmental facilities and benefits create the illusion of a principled welfare state, in reality, many women and children are finding it difficult if not impossible to access and exercise their social benefits.

51 Notice Published in Gorkhapatra daily dated November 17, 2005 for the distribution of Telecommunication services.
Major Findings of Focus Group Discussions

Focus group discussion with various groups was conducted in order to analyze the ways in which they had been impacted by the discriminatory citizenship laws. Major findings have been briefed as follows;

4.1 Focus Group Discussion with Street Children/slum dwellers

A FGD with the street children/slum dwellers was conducted on October 7, 2005 in collaboration with CWIN.

During the decade old conflict, more than 1200 children have been directly affected by the violence of both state and non-state actors alike. Due to the vulnerable situation these children have been forced to work in dangerous condition in brick kilns, stone quarries and wool spinning mills, and as domestic servants. A few also have landed on the streets of urban centers. CWIN reveals that there are more than 5000 street children in Kathmandu alone. As a result of the conflict, the number continuous to grow.

17 individual "Street children" aged 10-17 participated in the group discussion. The children fall into three main categories: fugitives from rural poverty, escapes from parental abuses. After arriving in the urban centers they accommodate themselves in the streets. Some works as conductors in various public transports, while others decide to beg. Some become addicted to different drugs as well as the excitement of street life. CWIN has arranged for some of the children at its center to receive skill and income generating training. Out of total 17 participants only 1 participant has received citizenship which also means that the present citizenship laws have negative impact. Street children are they who had left their homes and are abandoned by their parents.
In response to the question, “Why haven’t you had your citizenship or birth registered?” all of the participants said they were unaware. When they were asked about the importance of citizenship, some of the responses were:

- To have the identity as Nepalese citizen,
- For better employment opportunities in the future (without citizenship no one will be willing to give you a job),
- To acquire a passport and a license and
- To provide a citizenship certificate to the police during a security check.

**Case Study**

Ravi (pseudonym) from Lagankhel was living with his mother in a rented house. One day he went to play with his friend as usual but when he came back home he found that the door of his room was locked. He thought his mother had gone somewhere and would return home at evening. But after waiting for a long time his mother didn't come back. Ravi then went somewhere and spent night there. Next day when he came to his room he found that his mother had shifted from there, overnight. He does not have citizenship and has to face difficulties in each ad every step of his life. In this way he was left all alone to survive, this is how he became street children.

*They expressed that they are the children of Nepal and that the Government must arrange for their citizenship as soon as possible to help solve the problems they face in their day to day lives.*

**4.2 Focus Group Discussion with Orphan Children**

A FGD with orphan children was conducted at the Nepal Children's Organization (Nepal Bal Mandir). This organization focuses on childcare
and education for children who are orphaned, abandoned, affected by conflict, a born to prisoner. NCO also works to promote children's rights, national and international adoptions of children and works to provide educational support to children from low income families. 20 individuals "orphans" aged 11-16 participated in the FGD. 19 of them do not know about their birth registration.

“Citizenship associates one with the state, Citizens have the duties and obligations towards the state and vice versa. It is the true identification and evidence of ones existence.”

(Orphan)

“Without citizenship, a person will have refugee status as refugee in his/her own country”

(Orphan)

While discussing the drawbacks of not having citizenship, the participants mentioned the following concerns;

- If one doesn't have citizenship they are considered as stateless people.
- Property transfer is not possible.
- Have to face difficulties to get admission in schools and colleges.
- One does not get the driving license.
- Can not start own business.
- Unable to open bank account.
- Unable to join Army and Police Force.
- One couldn't be a politician.
- Can't go to any Ministries.
- Unable to migrate from one place to another.
- Deprived from security facilities.
- People cannot go abroad for medical treatment.
- Because of not having citizenship people are missing good employment opportunities this practices supports to increase poverty level.
- Lack of citizenship means being like a refugee in our own country.
- One cannot follow up their desired profession.
- Buying and selling of land is not possible if there is no citizenship.

I knew one of our senior has to face a lot of problem to go for the higher studies as she received her citizenship in where the Bal Mandir had taken the guardianship( in the place of parents name Bal Mandir is ementiond . But now (Orphan)

When the participants learned of the existing citizenship laws they seemed to feel that the law treats women as second class citizens. Major issues raised by the participants were as follows:

- Firstly, there should be a provision in the law that allows both parents to confer citizenship to their children.
- Nepal procedure for conferring citizenship contradicts the rule of nature, which clearly demonstrates that every child is externally linked to a mother.
- After divorce, the right to confer citizenship to the children should rest with whichever parent with whom the child is living.
- Mothers should have the right to confer citizenship if the father of the child is unidentified or dead.
4.3 Focus Group Discussion with Cabin and Restaurant Workers

A FGD with cabin and restaurants workers was conducted on September 15, 2005 at CAC/Nepal. There were a total of 26 individual participated in the programme.

Dance bars and cabin restaurants employ many girls from all parts of Nepal. More girls than boys are uneducated making them ineligible for good jobs. They are unable to earn the money needed to support their family while working in carpet factories and other small-scale industries. Some women migrate for safety, some to earn money and some to escape from mental and physical torture perpetrated by their family and in-laws. Most of the women who work in cabin restaurants and dance bars are not willing to continue but are compelled to for lack of a better alternative.52

All the participants believed that mothers should have the right to confer citizenship to their children. Also they stressed that the birth registration of children has to be done through mother's name. Deprived of citizenship they have to face problems from time to time. In most cases, husbands declined to make citizenship of their wives, making them difficult for married women to acquire citizenship through their husbands.

One of the participants said, “My husband denied me citizenship just because I belong to different caste”. The next participant added “I requested that my husband for my citizenship. In reply he said 'Why you need citizenship while I am with you?' Further he asked 'Are you planning to elope with another guy?' Another participant said, 'most of the time my husband tries to convince me saying he is taking care of me what else do I need?' Most of the women reveled that they tolerate various forms of spousal abuses. Still, they stay with them in the hope that they will be able to get citizenship. Every individual needs citizenship in order to enroll for jobs, training or education.

52 FGD conducted for Cabin Restaurant worker by FWLD for Impact of Discriminatory Citizenship Laws on Women and Children in Nepal and its Impact on women and Children
Impact of discriminatory citizenship law:

- I impacts in the overall mobility within the country without the citizenship.
- Have to face harassment on the street by the police, army and also by the rowdy guys.
- Have to engage in a work which is stigmatized in our society.
- Since we are not able to get good jobs we have to lie them by saying that we work in a carpet or a garment factory.
- In the absence of the citizenship, and also due to the discriminatory law on birth registration I am not able to register the birth of my child.

“As we do not have citizenship we are not getting good jobs, and are forced to work in restaurants and bars. These are the only places where we can work, as they provide food and transportation.”

(Cabin and Restaurant Worker)

“Our profession carries a social stigma. For this reason, we do not disclose our profession. We have to face a lot of harassment from rowdy guys and the police and army if they recognize us. We can’t even report such incidents due to the fear of humiliation. If we had citizenship we would have been able to find decent jobs and the situation would have been different.”

(Cabin and Restaurant Worker)

4.4 Focus Group Discussion with Internally Displaced Person

A FGD with Internally Displaced Person (IDPs) was conducted on October 27, 2005 at Chanauta, Kapilvastu. There were total of 20 individual participated in the programme.
Migration and internal displacement is emerging as one of the most serious issues of the insurgency. The rate of internal and external migration has reached its highest level in the last few years. According to the Global IDP Project between 100,000 - 200,000 people have been displaced by the armed conflict.

“Due to the Maoist insurgency, I can not go to my village (Dang) even though I have my parent’s citizenship certificate in my village. I do not have my migration certificate. Officials here (Kapilvastu) said I can not get citizenship until I furnish my migration certificate and father’s citizenship.”

(Internally Displaced Person)

Some IDP's expressed that they were unable to get citizenship due to the absence of the husband. Due to the insurgents threat some were afraid to go back to their respective VDC for a recommendation. Most of them do not have migration certificate due to the reluctance of Government officials. As a result, parents can not register the birth of their children nor can they provide them with citizenship.

Impacts of discriminatory citizenship laws identified by the participants:

- Minimum employment opportunities in absence of citizenship. In the present context, one needs citizenship even to work as house helper.
- Mothers can not register the birth of children without citizenship.
- People are deprived of other political rights (right to vote), economic rights and other fundamental rights due to absence of citizenship certificate.
- Impact for getting loan from the bank.
- Impact for getting higher studies.
- Mother's cannot register the birth of their children.
The major concerns raised by participants is that due to the on-going conflict in the country they can not return to their own villages and out of 20 participants only 5 of them have received the migration certificate. Rest of them could not get the same. Due to lack of citizenship, they were unable to register the birth of their children. Some of them are of the view that though they do have citizenship certificate as well as the migration certificate even though they are unable to register the birth of their children as the concerned agencies are not so willing to do so.

They are of the view that once the person migrated to other district, the concerned agency from both the district should take the issue sensitively and facilitate them to get the citizenship as well as to register the birth of their children.

They strongly recommended for amending the existing law on citizenship which is discriminatory and enact new law allowing mother to confer citizenship to their children.

4.5 Focus Group Discussion with Badi Community

A FGD with member of the badi community was conducted on October 29, 2005 at Nepalgunj. There were total of 27 individual participated in the programme.

The Badi community inhabits nearly 22 districts in the mid- and far-western regions of Nepal. Their population is estimated to be around 80,000. Nepal is a multi ethnic country and the Badi community is considered a minority group. The Badi are one of the most disadvantaged groups of Nepalese society. Badi women have been involved in the commercial sex for a long time.

Previously, children of Badi women were deprived of citizenship since they could not identify their fathers. After a much advocacy and awareness the Supreme Court recently (15th September 2005) issued a directive order to provide the citizenship to the children's of Badi women. Even though the decision represents a major achievement, the law has not accepted a mother's right to confer citizenship to her children.
Some of the participants do not have citizenship. As a result, those who wanted for more formal employment were unable to do so. Many were humiliated and degraded when they attempted to obtain citizenship for their children. Even though Supreme Court decision exists, their enforcement depends on the individual attitudes of the officials. Many people who are eligible to acquire citizenship are being denied.

Impacts of discriminatory citizenship laws identified by the participants:

- **Direct impact on employment**

Most of the women who wants to go for better employment were unable to go because they have to show the citizenship which they do not have.

- **Impact on identity of the person**

Citizenship certificate is the main document for the legal identity of a person. In the absence of the citizenship certificate it also impact in the process for the birth registration of the child.

- **Impact in the purchase of property**

The participants identified the importance of the citizenship certificate to purchase land and to transfer it. In the absence of the citizenship certificate women can neither purchase land nor can they transfer it.

- **Negative attitude towards the *Badi* community of the concerned stakeholders**

Due to the nature of profession *Badi* women are stigmatized in the society. They have to struggle a lot in a whole process for acquiring citizenship and also have to face humiliation. The stakeholders are of the view that *Badi* community is bringing negative impact in the society and they try to ignore their case.

- **Unnecessary financial burden**

*Badi* women shared their experience that they have to spend money unnecessarily in providing lunch, tea to the employees of the CDO to get their citizenship certificate as well as their children's.
Impact to open the bank account

One of the negative impact which Badi women had faced due to the lack of the citizenship is they are not able to open the bank account hence are deprived from the right to deposit their savings.

Badi men are more victimized by discriminatory citizenship laws

The participants are of the view that the Badi men are in more vulnerable situation due to the existing discriminatory citizenship laws. Women can obtain the citizenship from their husbands after marriage but for men there is no option which makes them more vulnerable.

Stigma attached

Though the Supreme Court has facilitated the Badi community by delivering the directive order to provide the citizenship to the children's of the Badi. However, they are of the view that it has created a level that they are getting citizenship as they are the children from the Badi community, which stigmatized against them leveling as children of Badi community. They are of the opinion that mothers should have the right to confer citizenship to their children.

The participants raised the following issues:

- Mothers should be included in lineal descent and given the right to confer citizenship to their children.
- The Government should start to provide sustainable skill development training to women.
- The Government should focus on technical matters such as driving courses, instead of so-called skill training, which includes animal husbandry, knitting etc.
- The Government should make reservations for the employment of women from the Badi community.
- The Government should also recognize the work done by NGO's to uplift the Badi community.
- The Government should create alternative employment opportunities for the Badi community.
4.6 Focus Group Discussion with Single Women

A FGD with single women was conducted at the Women for Human Rights, Single Women Group (WHR), Kathmandu. There were total of 12 individual participated in the discussion. More than 10,000 widows have already been registered with WHR. 3,000 of them have lost their husbands in armed conflict. In many families, widows are treated as inauspicious or unlucky and are held responsible for their husbands' deaths. The traditional behaviour has impacted on the education of the children, their internal and external mobility, and the ability to buy and sell property.

Following were the major issues discussed with the participants:

Importance of Citizenship Certificate

The participants discussed basically focusing on the following points:

- The first and foremost importance of the citizenship is to have a legal identification of nationality.
- To deposit and withdraw money from the bank.
- To work in a factory or in any company.
- To stay in a rented house

Measures to be taken to make the existing law discriminatory free

The participants discussed basically focusing on the following points:

- Citizenship has to be given as soon as a girl reached 16 years old or soon after she gets married.
- If the mother is Nepalese her children should get citizenship certificate by her name but not by her husband if he is foreigner.
- The law enforced by our Constitutions regarding citizenship rights has to be reformed.
- Certain system or law has to be developed so the children can acquire citizenship certificate under the name of any one of their parent's i.e: either father or mother.
Importance of citizenship as mentioned by participants is as follows:

- Citizenship is needed for identity,
- To start any business and banking activities,
- For employment,
- To rent a room/house and;
- To access a bank loan.

Sharing of Case Study:

**Asha (pseudoname)**

Asha of Dhumbarahi is a mother of 11 years old daughter but she is unable to do the birth registration of her daughter. She was married to a person from Chitwan and stayed with him for 3 years. As days went on they used to have argument which normally happens between husband and wife. But one day her husband left her and went away. But she continued to live with her in-laws for 10 months. But they started to tortured her and compelled Asha to leave the home with her daughter.

She came to know that her husband is in Saudi Aarab and is living with the second wife. In his last visit to Nepal, members from single women group went to meet him. They took the photographs of Asha and her daughter. But Asha's husband and the other members of the family denied recognizing both of them. She does not have any documents to proof that she is married to this person.

Asha is facing several kinds of problem like she doesn't have citizenship and is unable to do the birth registration of her daughter. During her stay with her husband she had requested him to make her citizenship but then her husband told her that there is no need of citizenship for people like her who doesn't have to go out for work. Thus Asha couldn't make her citizenship and also she is unable to work and live independently in
accordance to the present situation of the country. These days citizenship is required for all purpose, thus she has to loose many employment opportunities also.

**Deepa (pseudoname)**

Deepa is 26 years old, mother of 6 year old son and is staying with her brother at Tinkune. She had love marriage. Deepa had received citizenship certificate from her father's name. But she is unable to do the birth registration of her child because her child was 1 month old at the time she go married. Now her husband had expired, she has got only the photo copy of her husband's citizenship. Due to the reason that she gave birth to her son before she get married she has not yet proceeded for the birth registration. Due to the existing law relating to the birth registration which requires the presence of father for the registration of the birth of the child she is afraid that even if she proceeds for the birth registration of her son she will be denied which will have severe impact on future of her son.

**Maya (pseudoname)**

Maya mother of three children lost her husband at a very young age. Her husband dies when he was posted abroad. All the important documents along with citizenship were with him and Maya couldn't get them back. Due to the existing discriminatory citizenship law which requires the citizenship of a father to get the citizenship, Maya had to face a lot of problems to get the citizenship of her youngest son. When she went to the concerned authority for the citizenship of her son, she was told to bring her husband's citizenship which she couldn't. Later on she showed them the citizenship of her two elder sons as a proof and also told them that they should consider her as a proof of being their mother. Finally, she was able to get the citizenship of her youngest son.
One of the participants said “I asked my husband to help me obtain citizenship; he never took it seriously saying that I do not need citizenship to stay at home. Now he left me for another woman and has been residing abroad. I requested help from my in-laws but they refused.”

Some of the issues identified by the participants were as follows:

- Both the mother and father should have the right to confer citizenship.
- Children of a Nepali mother and a foreign father should be citizens of Nepal.
- There should be an amendment in the laws related to the citizenship in the Constitution itself.
- In case of rape or incest, single mothers should be allowed to confer citizenship to their children.
Existing Constitutional and legal provision in Nepal do not provide women the right to transfer citizenship to her children and husband. There are several legal and administrative intricacies regarding the acquisition of citizenship by the children born from the raped women or absconded fathers. Deuki tradition in far western districts of Nepal and female of Badi communities are also facing similar impediments. Children born from such women could not get citizenship by descent according to the article 9(2) of the present Constitution. These are some issues, which create the condition of statelessness, and difficulty in acquiring and transferring immovable properties and hinder opportunity in economic, social, and political fields.

Some court cases decided by the Supreme Court of Nepal have been presented and analyzed succinctly which are as follows:

**5.1 Chuwalhiya Ojhain vs HMG/Nepal (Writ No. 1209, Decision No.1413, 2036 BS)**

In the referred case, the petitioner Chuwalhiya Ojhain, the wife of Radhakrishna, an Indian citizen of Darbhanga District, Madhubani, Mirjapur; Chichari has her name in the voter list of the same place. Though married to an Indian, she had a Nepali citizenship by virtue of descent. On the question raised whether she could exercise her rights on property acquired in Nepal, the precedent show that "the law has not prohibited the use of property acquired within the country by virtue of descent or domicile by a Nepali citizen (woman) married to a foreigner but still having her domicile within the territory of Nepal."
The Janakpur Zonal Court on 2034/4/23 declined to give effect to such principle and said that the property of Chuwalhiya Ojhain would be confiscated. On the writ petition filed at the Supreme Court on this verdict, the Division Bench annulled the verdict of Janakpur Zonal Court on 2034/4/23 on such grounds, and the re-petition verdict of 2034/9/24 is repealed by order of certiorari.

The given verdict depict that any Nepali descendant citizen, whether she has acquired the Nepali citizenship or not, until she has acquired the citizenship of some other country or terminated the Nepali citizenship, will remain a Nepali citizen and can exercise her rights in the immovable property/land acquired in the country even though she is married to a foreigner.

This judgment unequivocally refuses to recognize the automatic change of women’s nationality upon marriage and as such upheld the rights of women to marry and found a family without any limitation. This is an attempt of our court to interpret Nepalese law with the help of international human right instrument. This judgment gave effect to the freedom of choice of nationality enshrined in article 15 of UDHR and Article 9 of CEDAW. The judgment in favor of Chuwalhiya is a progressive decision against the automatic change of nationality of Nepalese women married to foreigner.

5.2 Benjamin Peter et.al vs. Home Ministry, HMG/Nepal (Writ No. 1379, 2048 BS)

The writ petition had claimed that Rule 14(3) and Rule 14(4) of Foreigners' Rule 2032(1975) should be declared void. Because Rule 14(3) provides that an alien woman married to a Nepali citizen does not need to extend visa till her matrimonial relationship exist and until three months of termination of such matrimonial relationship. Rule 14(4) of the Foreigners' Rule 2032 (1973) states that a male foreigner having matrimonial relationship with a Nepali woman can generally get non-tourist visa for a
period of maximum four months in a year which is against the provision of article 11 of Constitution. The court stated that the provision of Article 11 of the Constitution of the Kingdom of Nepal that provides the right to equality is a provision of general nature whereas; the provision of citizenship is of specific nature. Thus, the claim is related to particular nature. The court concluded that the issue of citizenship cannot be linked to the right to equality under Article 11 of the Constitution 1990.

5.3 Jabir Yasin vs. Home Ministry, HMG/Nepal, et.al (Writ No. 3503, 2055 B.S)

Jabir Yasin was born in Nepal and his birth was registered at the District Administration Office in Nepal. His father was a foreign national and the mother was a Nepali citizen. Furthermore, Jabir Yashin is the son of a Tamang woman from Sindhupalchowk who holds a Nepali citizenship, owns immovable property including land and house and is a legitimate voter and is married to a national of the United Arab Emirates. Jabir's father returned to his own country and was killed in the political conflict of his country 15 years back. When Jabir Yashin attended age and applied for a citizenship in the CDO Office, Kathmandu on the ground of his mother being a Nepali citizen and his having been born in Nepal, he was denied a citizenship by the CDO on the ground that his father was not a Nepali and did not hold a Nepalese citizenship. Jabir has never been out of Nepal. He is studying and wants to start a profession but requires a citizenship to establish a career as well as to inherit the property of his mother. Unfortunately, he was denied from acquiring citizenship. The case was brought into the Supreme Court of Nepal. The Supreme Court decided the case on 2057/07/25 declining to give effect to the Art 9 of the CEDAW and gave the verdict that a mother cannot transfer citizenship to her child, if her husband is not a Nepali citizen. This is an extreme example of insensitivity to human rights and justice in Nepal.
5.4 Chhabi Peters et. al. vs. District Administration Office, Kathmandu (NKP 2049, Vol 5, p.444)

In the case, the petitioners are the wife and children of Terens Peters, an Indian national who worked in the Royal Nepal Airlines Corporation. The wife is a Nepali citizen and has domicile within the Kingdom of Nepal. They have three children who were born in Nepal. Terens Peter died in 2032/11/12 before acquiring Nepali citizenship. When the children attained 16 years of age, they had submitted applications to acquire Nepali citizenship to the District Administration Office, Kathmandu but they were denied their citizenship on the ground that their father was not a Nepali national. Then, they filed a writ petition against the office demanding an order of mandamus to be issued in the name of the district administration office to confer citizenship to the petitioners.

However, the Supreme Court decreed that the citizenship of the father is a pre-requisite in such a case. A person born of a Nepalese father after the commencement of this Constitution is a Nepalese citizen by descent. It is immaterial whether he is born in Nepal or a foreign country and whether his mother is a Nepali citizen or not. Hence, Supreme Court dismissed the writ petition.

The above Judgment does not uphold the sanctity of international laws and the principle of equality enshrined therein. The judgment is manifestly contradicts the spirit of the convention on CEDAW and other international instruments guaranteeing equality of gender. The judgment is base on sectarian interpretation of the constitution. It is widely accepted that no provision of the constitution should be interpreted in contradiction with other provisions. The interpretation must reconcile the meaning and spirit of various provisions in law. However, present judgment stand against the spirit of article 11, which guarantees right to equality between sexes.
5.5 Chandra Kant Gyawali vs. HMG/Nepal (Writ No.3668, 2057BS)

A writ petition was filed in Supreme Court to issue an order to the parliament to amend the provision of Art 9 (1) of the Constitution of the Kingdom of Nepal 1990, Section 3, 3 (4) (5) of Citizenship Act and Rule 3, 3 (1), Index 1,2 of Citizenship Rule 1992 because they are inconsistent and prejudiced with the Art 11 (1) (2) (3) of the Constitution on the grounds of sex and also with the provisions of CEDAW, 1979. It is also in disagreement with the section 9 of the Treaty Act 1990. In the case, the court stated that "Supreme Court has no jurisdiction to amend the Constitution; it has only the rights to interpret it."

This judgment shows that Nepalese court has accepted the international law only to that extent where it does not contradict with the provision of the Constitution.

5.6 Achut Prasad Kharel vs. HMG/Nepal et. al (Writ No.3504, 2061 BS)

Article 9 (1) of the Constitution of the Kingdom of Nepal, 1990 states that a child whose father has Nepalese citizenship is a Nepali citizen by descent. Likewise, Article 9 (2) of the Constitution states that "Every child who is found within the territory of Nepal and the whereabouts of whose parents are not known shall, until the father of the child is traced, be deemed to be a citizen of Nepal by descent". The provision in Article 9 (2) of the Constitution should include a child whose mother is a Nepali citizen but father's whereabouts is unknown. The state has not been providing citizenship to children of unmarried women who are Nepali citizens by descent, if the child's father's whereabouts is unknown. A writ application was submitted to issue an order of mandamus or certiorari or any other needed orders in the name of the HMG to grant Nepali citizenship to children born to unmarried woman who holds a Nepali citizenship, when the child attains the prescribed age.
Our law accepts that a child found within the territory of Nepal will be deemed a Nepali citizen until the father's whereabouts is unknown. Hence, there is no provision which states that a child should be denied citizenship until his father's whereabouts is unknown. As referred in Chandra Kant Gyawali Vs. HMG (No. 3668 in 2057), the Full bench of Supreme Court, on 058/10/25, ruled that the citizenship can only be granted by virtue of descent according to Article 9 (1) and (2) of the Constitution of the Kingdom of Nepal, 2047 and Section 3, (1) (4) and (5) of Nepal Citizenship Act, 2020.

The above mentioned case accepts the issue of citizenship by virtue of lineage on the basis of father's citizenship, thus, the writ petition to grant a citizenship to a child born to an unmarried Nepali woman on the basis of the mother's citizenship does not accord with it. Hence, the writ petition is dismissed.

This verdict blatantly disregards to the status of women in the conventional patriarchal mindset. Citizenship is regarded as the sole privilege of those whose father is a Nepali national.

5.7 Prakash Mani Sharma, Tek Tamrakar et.al vs. HMG/Nepal (Writ No.121, 2060)

In response to writ petitions filed separately by Pro- Public, a non-governmental organization, and Dalit NGO Federation Nepal, a special bench of Supreme Court issued an order in line with Article 9(2) that “every child who is found within the kingdom of Nepal and the whereabouts of whose parents are not known shall be recognized as a citizen of Nepal by descent until the father of the child is traced.”

The apex court also declared that a provision in Section 4.1 of the Birth, Death and Other Personal Incidents Registration Act, 2033 (1976) contravenes constitutional provisions on right to equality and is declared null and void.
The following orders were issued by Supreme Court in the case:

1. Section 4 (1) (A) of the Birth, Death and Personal Incident Registration Act 2033 states that "the right to child registration is recognized under the name of the male head of the family, and in his absence, under that of the eldest male member of the family". The phrase "male member" in this clause clearly discriminates between men and women and hence, is contradictory with right to equality of the Article 11 of the Constitution 2047, thus will be revoked as per Article 131 of the Constitution of Nepal.

2. An order of mandamus was issued in the name of the respondent to register the birth of the children of the Badi community and other children whose father's whereabouts are unknown and provide Nepali citizenship to such children as per Article 9 (2) of the Constitution of the Kingdom of Nepal, 2047 and Section 3 (4) of Nepal Citizenship Act, 2020. The court asks government to provide citizenship to Badi children with necessary appropriate measures.

This is a landmark verdict (15th Sep 2005), where the Supreme Court, through the implementation of Article 9(2) of the Constitution issued a directive order to the government to provide citizenship certificate to every child found in Nepal, whose father has not been identified.

Although the Supreme Court ruled out the petition against this discriminatory provision of acquiring citizenship only after identification of father, this verdict denied the independent identity of Nepalese women, as it endorsed the law prohibiting women from passing their nationality to their children making the father the sole source of citizenship by descent. It is a perfect example of patrimonial supremacy and as such discriminates against women on the basis of sex. By applying Article 9 (2) of the Constitution, this judgment failed to recognize the existence of mother.
In all of the cases mentioned above, our Apex Court has declined to develop the jurisprudence of state obligation under international instruments in domestic context.

The CEDAW Committee on 13th January 2004 in its concluding observations expressed the particular concern that the Constitution of the Kingdom of Nepal, 1990 which precludes Nepalese women from passing their nationality to their children and to foreign spouse violates Article 9 of the convention. The committee urged Nepal to repeal Article 9 of the Constitution. It also recommended amending all the discriminatory laws with the time bound plan of action.

Therefore, Supreme Court must consciously enforce the constitutional spirit of equality and international human right law, while interpreting the Nepalese laws. The need for honest compliance with the enforcement of international laws is an obligation of each state party. The Supreme Court of Nepal therefore, must exercise its power conspicuously to ensure that the government frames laws in accordance with international human right norms.
Cases Relating to Citizenship

200 cases relating to citizenship have been documented in the legal cell of FWLD within the period of February 2005 to January 2006. These cases were documented under the project "Equal citizenship rights of women" supported by The Asia Foundation. Out of 200 cases, 110 cases were related to citizenship whereas, 90 cases were related to birth registration. In this chapter, the details of the cases relating to citizenship have been analyzed to trace the impact of discriminatory citizenship law on women and children.

While analyzing the cases relating to citizenship, the following reasons were identify that have deprived people from citizenship:

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Reasons of deprivations</th>
<th>No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Foreigner father</td>
<td>12</td>
</tr>
<tr>
<td>2.</td>
<td>Lack of fathers citizenship certificate</td>
<td>13</td>
</tr>
<tr>
<td>3.</td>
<td>Due to father is missing</td>
<td>9</td>
</tr>
<tr>
<td>4.</td>
<td>Husband denied to confer the citizenship</td>
<td>9</td>
</tr>
<tr>
<td>5.</td>
<td>Father denied to confer the citizenship</td>
<td>9</td>
</tr>
<tr>
<td>6.</td>
<td>Living separately</td>
<td>4</td>
</tr>
<tr>
<td>7.</td>
<td>Denied naturalization citizenship</td>
<td>10</td>
</tr>
<tr>
<td>8.</td>
<td>Due to procedural hurdle</td>
<td>1</td>
</tr>
<tr>
<td>9.</td>
<td>Due to lack of migration certificate</td>
<td>1</td>
</tr>
<tr>
<td>10.</td>
<td>Non-identification of father</td>
<td>2</td>
</tr>
<tr>
<td>11.</td>
<td>Non-identification of both father and mother</td>
<td>13</td>
</tr>
</tbody>
</table>
12. Due to death of husband 1
13. Due to lack of citizenship certificate of husband 1
14. Due to husband missing 11
15. Abandon by the husband 6
16. Incest 1
17. Lack of citizenship certificate of father (maternal) 1
18. Due to lack of person to identify \textit{(sanakhat)} 2
19. Due to divorce 1
20. Left her husband and family 2
21. Decent is not mentioned 1
22. Cases related to birth registration 90

\begin{tabular}{|c|c|}
\hline
\textbf{Total} & 200 \\
\hline
\end{tabular}

The Constitution of the Kingdom of Nepal, 2047 allows father and husband to confer citizenship through descent and matrimonial relations. As a result, numbers of people are being deprived of citizenship due to the absence of father and husband, their denial to identify wife, son and daughter. For various reasons such as second marriage, demise of father and husband and absence of father's and husband's citizenship certificate, people are not getting citizenship. In the case of naturalized citizen, children born after acquiring the naturalization citizenship are likely to acquire Nepalese citizenship. However, children born in Nepali soil before acquiring Naturalize citizenship are rendered stateless.

\textbf{6.1 Some of the Documented Cases}

The documentation of cases has also facilitated to categorized the cases such as; problem caused by the discriminatory citizenship law, problem caused by the procedural complications, administrative hurdles and reluctances, denial of local authority, denial of family support, poor
implementation of the existing law etc. Some of the cases representing various issues have been presented as follows:

**Case 1**

Name: Prakash (pseudo name)
Age: 20 years
Sex: Male
Address: Bagbazar, Kathmandu

Case Details:

Kamala married Suresh 25 years ago. He was a citizen of India but was living in Nepal. According to article 9(4) of the Constitution, a foreigner can acquire citizenship, if he can speak and write Nepalese language, is engaged in any occupation in Nepal, has renounced his citizenship of another country and has resided in Nepal for at least fifteen years. He was trying to acquire citizenship as he fulfilled all these provisions. He had already renounced his Indian citizenship and was in process of acquiring Nepalese citizenship but he died. Kamala and her son Praksh are living in Kathmandu. When Prakash was born, his father registered his birth in the Municipality. Prakash has a voting card but he does not have citizenship. Now, he is in a stateless situation because he does not have citizenship certificate of Nepal and his father had already renounced his citizenship from India. In absence of citizenship he neither can enroll in any colleges nor get a decent job.

Main Issue/Problem:

- Prakash's father was an Indian citizen and his mother is a Nepali.
- Prakash's father had already renounced citizenship of India but died before getting Nepali citizenship certificate.
- Now Prakash has no identity.

Initiative Taken:

- Prakash and his mother went to the CDO office for citizenship.
Result of the initiatives:

- Since Prakash's father was not a Nepalese citizen, he did not acquire Nepalese citizenship.
- Prakash's parents did not register his birth at the Indian embassy in Kathmandu. Thus, he failed to get Indian citizenship.

Implication

- Prakash has become stateless and deprived of his each and every rights granted by the state.

Challenges:

- Mother cannot transfer citizenship.
- A child born to foreign father can not get citizenship.

Case 2

Name: Radha (pseudo name)
Sex: Female
Address: Kathmandu

Case details:

Radha is a single mother. She decided not to marry but interested for a child. She went to India for insemination. Now she is a mother of 3-years-old son and worried for her son's identity because the Constitution and citizenship law do not allow a mother to confer citizenship to her child.

Main Issue/Problem:

- Radha is a single mother and worried for her son's future as under the Nepalese law she can not transfer the citizenship to her son.

Challenges:

- Mother cannot transfer citizenship to her children.
Case 3

Name: Sarita
Sex: Female
Address: Rupendehi
Contact Address: Keshav Kumari Pokharel, Watch office - Butwal.

Case details:

Sarita was trafficked to India when she was only 10 years old. She worked as a prostitute in a brothel for 10-12 years. She succeeded to run away from Brothel with the help of a Nepali man. She lives in Butwal but she does not know where her parent's house is nor does she have identity of her daughter's father. Now her daughter is 17 years old and wants to acquire citizenship. However, it is difficult to acquire Nepalese citizenship without knowing one's father.

Main Issue/Problem:

- Sarita does not know about her daughter's father.
- Her daughter is 17 year old but could not acquire citizenship, as her father is not identified and she can not confer citizenship to her daughter.

Implication:

- Sarita's daughter finished her SLC with good marks. But unfortunately, she is unable to get admission in the college due to lack of citizenship.

Case 4

Name: Himal (pseudo name)
Age: 41 years
Sex: Male
Permanent Address: Biratnagar
Case details:

Himal’s father, Kashi was migrated to Nepal in 2000 BS and started his own business. Himal was born in 2021 BS and he lives with his two bother and two sisters. His father acquired naturalized citizenship in 2036 BS after all children were born. His brother acquired citizenship by birth but he did not. He has voting identity card. Although he was born and grown up in Nepal, his father and brother has Nepalese citizenship but he does not have. Even his wife and children do not have citizenship.

Main Issue/Problem:

- Himal was born and grown up in Nepal. His father had naturalized citizenship and even his brothers have citizenship by birth. However, he did not get Nepalese citizenship and consequently his wife and children are stateless.

Initiative Taken:

- He went to the CDO Office and submitted all documents for making citizenship.

Result of the initiatives:

- The CDO Office denied him citizenship as he was born after his father acquired naturalized citizenship.

Implication

- In absence of citizenship, Himal cannot open the bank account and he cannot claim his parental property. His wife and children are also suffering to acquire citizenship.

Challenges:

- He is not being able to acquire citizenship neither by decent nor by naturalization.
- He can provide citizenship neither to his wife nor to children.
- State has no clear provision on providing naturalized citizenship and also poor implementation of the existing citizenship law.
Case 5

Name: Sadhana
Sex: Female
Age: 27 Years

Case details:
Sadhana was married to Harka Bahadur, a driver in 2051 BS. After marriage, she came to know that her husband already has his first wife. She conflicted and separated with her husband and now she is living in her maternal home along with her 11 years. She is living with the support of her maternal parents and they have provided a house and land to her. However, it is not in her name due to lack of her citizenship. She has not registered her marriage and is not being able to register her son's birth. Though her husband has assured to make marriage registration and birth registration of son, he is escaping from the procedures.

Issue/Problem:
- She has no marriage registration
- She is not being able to make birth registration of her son
- She is not being able to register her immovable property in her own name

Initiative taken:
- She went to Ward Office for making marriage registration and birth registration but was unable, as she could not present her husband or any supporting document in the ward office.

Result of Initiative:
- She is not being able to make neither marriage registration nor birth registration of her son.

Implication:
- She can not make her son's birth registration
- She can not register her immovable property in her own name
Challenges:

- Nepalese laws do not allow mothers to register their child's birth.
- Discriminatory citizenship law and procedural provisions to acquire citizenship.

**Case 6**

Name: Kiran (pseudo name)
Age: 50 Years
Sex: Male

Case details:

Kiran is 50 years old. He has no citizenship certificate as his father and mother both died when he was too young. He is left alone and his only relatives are his sister and brother in law and they can not help him to get citizenship certificate. Despite his lots of effort he could not get the citizenship certificate even in his 50 years.

Main Issue/Problem:

- His parents have already died when he was too young
- He is unable to get citizenship certificate as he has no one to identify him.

Initiatives taken:

- Kiran went to the VDC for the recommendation as he has no relatives and therefore, to be recommended for the citizenship certificate.

Results of the Initiatives:

- He received the recommendation from the VDC and applied for the citizenship certificate in the CDO Office but the Office denied providing citizenship as his father was not there to identify him.
Challenge:

- Procedural complication,
- Administrative hurdles and reluctances of the concerned authority.

**Case 7**

Name- Ambalika (pseudo name)
Sex- Female
Age- 16 years

Case detail:

At the age of 14 Ambalika was raped by her own father and gave birth to a daughter. When community came to know about it, she was sent to Maiti Nepal (NGO). Now her father is facing the imprisonment for the charge of rape. Ambalika is facing difficulty, as both Ambalika and her daughter have the same father and will have the same father's name.

Main Issue/Problem:

- Even though the father of the child is identified birth registration could not be done due to the relation between the father and child.
- Both mother and daughter will have same father, thus the problem arise in acquiring citizenship.

Implication:

- Due to this incident, the community looks down upon her. She has felt excluded from the society and bearing psychological trauma.
Legal Counseling and Services

In most of the cases documented in FWLD people are deprived of citizenship due to the discriminatory citizenship laws that do not allow women to confer citizenship to their spouse and children. In addition to this procedural provisions are also discriminatory towards women that do not allow women to identify their children. Procedural provisions are more complicated rather than facilitating. Further, in some cases, administrative hurdles, reluctances of the concerned authority and denial of family support also create problems to acquire citizenship certificate hindering right to citizenship.

Despite the advocacy and awareness program on the importance of citizenship rights and advocacy to the concerned agencies to create favorable and facilitating environment, people are deprived of citizenship. In many cases, negligence of administrative bodies and lack of procedural knowledge and awareness contribute to absence of citizenship. Considering this fact, FWLD has been providing legal counseling in most of the cases and also legal services to the cases having procedural complications and to those who are denied citizenship rights due to the lack of legal representation. Consequently FWLD has been able to facilitate to provide citizenship in 13 cases.
7.1. Major Findings of the Study

1. Nepalese Constitution fails to recognize equal rights of women and women’s individual identity; they are treated merely as child manufacturing machine rather than as a productive member of the society.

2. Nepalese law fails to protect women's right to transfer citizenship to their children and spouse.

3. The discriminatory legal provisions relating to nationality not only violate women's basic rights but also violate the rights of children as they are at risk of statelessness in case where the father denies the recognition of the child.

4. The judiciary has failed to take any initiative to declare void discriminatory provisions relating to citizenship as the citizenship provisions in the present Constitution is itself bias against women.

5. Nepalese government is not compliance with the provision of ICCPR, CEDAW and CRC regarding to citizenship. The state has failed to give an effect to the provision to the Treaty Act which forces it to honor international treaties to which it has signed.

6. Lack of knowledge to use of process and procedure of individual complaint system to the United Nation treaty body.

8. The Birth Registration Act recognizes the right of birth registration in the name of the father and in his absence by the name of the male head of the family only.

9. Due to the lack of awareness and ignorance, many Nepalese citizen have not applied for citizenship certificate in past, therefore, children born out of such people are facing many difficulties to acquire citizenship after their father's death. Likewise, the lack of provision to grant citizenship through a mother's citizenship has made it more difficult for a child to acquire a citizenship whose father is missing.

10. In the context of the present conflict, children whose parents are missing face additional problems to acquire their citizenship as the administration demands them to present their parents.

11. Birth, Death and Other Personal Events Registration Act, 2033 (1975) has been poorly implemented. In addition, there is no provision to keep mandatory record of the birth and death of Nepali citizens. Due to lack of proper evidence, it is even more difficult to distinguish between citizens and residents.

12. As the recording system is neither systematic nor scientific, the misplacement and loss of previous records and inability to retrieve them when needed causes more difficulty. Consequently, if a citizenship certificate is lost, it is very difficult to get the duplicate copy of that.

13. A person who provides recommendation for citizenship is liable to punishment, if any of the given information is proved to be false. Hence, authorized people are hesitant to provide recommendations which create more problems for applicants.

14. The main reason behind not getting citizenship is due to administrative drawbacks rather than policies.
15. The tendency of the political parties to politicize the issues of citizenship and the political, ethnic, and religious prejudice has posed further problems.

16. Property right has also emerged as one of the main reason behind women being denied their citizenship. In Nepal, polygamy though punishable is not void. Hence, a man can keep as many wives and identify only the wife and children of his preference for citizenship so that the other wife and children from that wife will not be able to claim his property.

17. Citizenship issues are not only women's issues but also national issues and related to the national security. The provisions regarding citizenship have violated the rights of women and children.

18. Every child found within the territory of Nepal whose father whereabouts is not known shall, until the father of the child is traced, be deemed to be a citizen of Nepal by descent. However, a woman even being a Nepali citizen cannot confer citizenship to her own child through her identity.

19. The gender discriminatory citizenship provisions in the Constitution of the Kingdom of Nepal, 2047 and Nepalese Citizenship Act, 2020 has affected not only women but also the child born to them.

20. It is difficult for a legally divorced woman, to replace her ex-husband's name with her present husband's name in the citizenship certificate.

21. There is lack of adequate human resources, facilities and infrastructure necessary to improve citizenship distribution process.

22. The officers sometimes refuse to issue citizenship certificates to a qualified person and are bribed to issue to an ineligible citizens. These types of complaints are often seen in the citizenship distribution process.
23. The High Level Citizenship Commission 2051 (1994) in Nepal had an objective to study the laws on citizenship and to review the existing structural and procedural mechanism on citizenship to identify and analyze the problem related to citizenship. However, it has not submitted gender sensitive recommendation.

24. Land Ownership Certificate only is not sufficient document for getting citizenship certificate. However, citizenship certificate is required for land ownership certificate and land ownership certificate is required for citizenship certificate which makes it difficult to acquire citizenship certificate and is considered controversial.

25. Birth registration certificate is not taken as valid document for providing citizenship certificate.

7.2. Recommendations

Special Recommendations under International Human Right Instruments:

1. The government should amend the provisions relating to nationality and birth registration such as article 9(1) (2) and (5) of the Constitution of the Kingdom of Nepal, 1990 and Section 3(1) and 6(2) of Nepal Citizenship Act, 1963 to ensure women's right to confer citizenship to their children and spouse as well.

2. Nepal has already ratified more than 16 international human rights instruments including CEDAW. The prevailing domestic laws relating to citizenship contradict with the provisions of those international instruments. This issue has been raised before the court in various cases under Article 88 (1) and (2) of the Constitution and section 9 of the Treaty Act, 1990. Nepal should amend its domestic laws so that they correspond with the international treaties.
3. The government should follow the suggestions made by the CEDAW committee (13th January 2004) regarding the amendment of Article 9 of the Constitution as soon as possible, since Article 9 permits discrimination against women in the area of citizenship and does not comply with Nepal's obligation under article 2 of the Convention.

4. Nepal government should ratify the optional protocol to CEDAW which provides a mechanism for enforcing individual complaint at international level.

5. Nepal government and political parties should take initiative to amend the Article 9(1), (2), (5) of the Constitution and Section 3(1), (4), and Section 6 (2) of Nepal Citizenship Act, 1963 in order to ensure equal citizenship rights of women.

7.3. Recommendations on the Grounds of Findings

Recommendation to Comply with the International Human Right Instruments:

The prevailing laws relating to citizenship contradict with the provisions of various international human right instruments to which Nepal is a state party. Thus, Nepal should amend discriminatory laws relating to citizenship such as article 9(1) (2) and (5) of the Constitution of the Kingdom of Nepal, 1990 and Section 3(1) and 6(2) of Nepal Citizenship Act, 1963 so that they correspond with the international treaties.

1. The Nepal government should adopt the concluding comments made by the CEDAW committee (13th January, 2004) regarding the amendment of Article 9 of the Constitution as soon as possible.

2. The issue of citizenship has been raised before the court in various cases under Article 88 (1) and (2) of the Constitution and section 9 of the Treaty Act, 1990. The Supreme Court should play positive role while dealing with these cases.
3. Nepal government should ratify the optional protocol to CEDAW which provides a mechanism for enforcing individual complaint at international level.

Recommendation for the Reformation in Law and Procedure

1. There should be no discrimination on the ground of sex regarding citizenship laws. Nepal Citizenship Act, 1963 and the citizenship provisions of the Constitution should be amended to ensure women’s equal citizenship rights.

2. Children born to a Nepali woman married to a foreigner should be given Nepali citizenship, if they decide not to acquire citizenship of their father’s country.

3. The right to birth registration should be provided to both mother and father.

4. Sufficient advocacy is needed to effectively reflect the proposal endorsed by the House of Representatives into the legislation that provides a mother right to confer citizenship to their children.

5. If a child who is born through a naturalized citizen before acquiring the citizenship wishes to acquire the naturalized citizenship of Nepal on attaining age, provisions should be made to grant citizenship to such child based on relinquishment made by his/her father of his country’s citizenship.

6. Provisions should be made to confer citizenship to women engaged in a matrimonial relationship with foreign citizens by descent unless they acquire citizenship of their husband’s country.

7. Mother’s name and name of maternal descent should be mentioned in the citizenship form.

8. Sisters, mothers, aunts and grandmothers should also be allowed the right to identification as of the male member of the family.
9. Government should implement the provisions that recognize every child who is found within the Kingdom of Nepal and the whereabouts of whose parents are not known shall, until the father of child is traced, be deemed to be a citizen of Nepal by descent.

General Recommendation

1. The government should institute scientific record keeping of personal events such as birth, marriage, death and also the record of cross border and internal migration.

2. The judiciary should undergo training to increase the awareness of gender based issues and the implementation of international human rights, particularly women’s rights.

3. Civil society must play a prominent role to inspire and influence the court for honest compliance with enforcement of international human rights laws and also to create massive awareness in favour of equal citizenship rights of women.

4. Lawyers should be acquainted to use treaty bodies to deal with the citizenship cases and also with the procedures necessary to litigate human right cases at the international level.

5. There is need of victim’s hearing, interaction with the political parties, sensitization of bureaucracy and media campaign for advocacy.

6. There is need for equal citizenship rights movement. The network must be established at the grassroots level and should extend to the national level.

The government officials in all District Administration Offices of all the districts should be trained on human rights and legal update courses for effective implementation of citizenship law and to reduce the procedural hurdles.
7.4. Conclusion

In Nepal, the right to pass on citizenship is conferred only to men. Women can not pass on citizenship to their husband and children, even if they are Nepali citizens. If a Nepalese woman marries a foreign national, her husband continues to be foreign citizens and their children are required to take citizenship from their father's citizenship thus, they become foreigner even in their mother’s country. The notion of Nepalese citizenship that exists today is still masculine. The patriarchy that exists in every aspect of the Nepali social structure is overwhelmingly reflected in the legal system of Nepal. Every family and societal relationship between men and women are governed by value system that preserves men’s rights to control over women’s personality. Citizenship right is based on a masculine construction premised on the exclusion of women. Women's right to citizenship has been invariably sacrificed for the sake of existence and security of nation.

Even the judiciary defends the patriarchy as the rational behind the Nepalese legal system and obstructs the way for the enforcement of International Human Rights Instruments including CEDAW. Women’s right to pass on their nationality to the children is protected by article 9 of the CEDAW, which states that women shall be granted equal right with men with respect to the nationality of their children. Since CEDAW came into force in 1981, at least 10 countries have changed their citizenship laws to give women the right to pass on their nationality to their children. However, even after 15 years of ratification of CEDAW and despite the concluding comments made by the CEDAW committee urging the government to amend discriminatory laws including nationality laws, there have been no changes in the discriminatory citizenship provision. In reality, government has failed to take any steps to do away with the discriminatory provision of nationality, which are continuing to violate the rights of women. Still thousands of Nepalese women have been denied from conferring citizenship to their children. The patriarchal system that establishes the domination of men over women creates power imbalance that traps men as well as women in the system of exploitation.
Discriminatory citizenship laws put men in a vulnerable situation. Women can obtain citizenship from their husband's name but men will be forever stateless, as there is no alternative process by which one may acquire citizenship.

The judgment in Chabbi Peter and Jabir Yasin case, the court has permitted superiority of husband's position to that of his wife in regard to conferring nationality to the child. Such judgments not only impair women’s relationship with her children but also affect the independent identity of Nepalese women. The judgment in these cases is an example of regressive interpretation at its most extreme. In the case of Chandra Kanta Gyawali vs. HMG and Benjamin Peter vs. HMG, the court claimed that article 11 of the Constitution is a general provision and the provision in part 2 of the Constitution is a specific. Therefore, the claim made by the petitioner that the provisions do not comply with the general provisions is not the matter that can be agreed upon. In the case of Prakash Mani Sharma, the court declared the provision of Section 4.1 of the Birth, Death and Other Personal Events Registration Act null and void and also issued an order to implement Article 9(2) of the Constitution that states to provide citizenship to those children whereabouts of their father is unknown. Though this decision safeguards the child's right to nationality and reduce the condition of statelessness, it overlooked the identity of women as individual as well as their right to confer citizenship. There are still many loopholes in our legal system. The equality granted to women by our law is not reflected in every aspect of the law.

Denial or removal of the right to citizenship could be used to comprehensively deny a population a broad range of human rights. The issue is concerned with the children's right to nationality and to the full exercise of human rights. Children denied citizenship in their own country are often denied basic rights such as right to education and employment. They are also discriminated socially and politically. They are even denied documents establishing to their identity. In Nepal, citizenship is not granted at birth (Jus Soli) and women do not have right to confer citizenship to their children. The verdict in the case of Annapurna Rana vs. Kathmandu District Court and others can be taken as radical verdict of Supreme Court
of Nepal. The court has introduced a new dimension to sexuality and cohabitation. It stated that bearing of child does not amount to marriage and all these facts do not accept or alter the legal status of women. Subsequently, this contradicts and raises some serious doubt over the right of father to confer the citizenship to the child. The provision for providing citizenship to the child does not complement the verdict. There are some serious situations, which may arise due to this discriminatory legal provision:

- A child of Single mother
- A child whose father decline to be his own
- A child born out of wedlock
- A child born out of rape cases

Our citizenship law does not have effective suggestion for the following circumstances:

- A child solely brought up by mother in case of divorce
- A child born to a woman raped by her own relatives (father, brother, uncle etc)
- A child born from artificial insemination and
- Test tube babies.
Citizenship is critical for the participation in all spheres of life as it establishes the legal identity of an individual. However, the existing discriminatory citizenship laws have become a major barrier to ensure this fundamental right. The citizenship rights are denied or limited on the ground of sex and procedures and application is discriminatory. Considering to this fact, FWLD with the support of UNIFEM conducted this study on the “Impact of Discriminatory Citizenship Law on Women and Children in Nepal” which has analyzed the impact of discriminatory citizenship law on certain groups of the society; single women, badi community, women working at cabin and restaurant, orphans, street children/slum dwellers and internally displaced person. The study has collected evidences of violation of rights, alternate practices of granting citizenship and identifying best procedures in the country and helped in building on evidences for strong advocacy at all levels including the law makers and policy makers in line with the promises made under the CEDAW and other international human rights conventions.

In the changing political context, the House of Representatives has endorsed a landmark proposal on providing women right to confer citizenship to their children on 30th May, 2006. However, this needs to be reflected into practice with the effective legislation importantly incorporating equal citizenship rights for women in the Constitution to be formed in the days to come.

In the context, FWLD organized a meeting with the concerned stakeholders to share the findings of the study and to build future strategies for the road ahead to ensure women’s equal citizenship right along with the effective implementation of the endorsed landmark decision in the

**A Roadmap on Equal Citizenship Rights**

**Goal:** Equal citizenship rights of women.

**Objective:** A comprehensive national campaign on equal citizenship rights.

**Opportunities:** Revision of the Constitution
- Constitutional amendment
- Interim Constitution
- Constituent assembly and new Constitution through assembly

**Basis for movement:**
- A proposal and declaration endorsed by House of Representatives
- Inclusive democracy and political commitment
- International human rights treaties/ conventions to which Nepal is a party state and concluding comments of the committee
- Supreme Court’s decisions on equality

**Obstacles:**
- Lack of strong political will
- Minimal women’s participation in decision making
- Patriarchal mindset and argument of national sovereignty
- Gaps amongst women activists

**Partners of the movement:**

Women’s right activists, political parties, civil societies, media, various professional organizations, artists, homemakers, and citizens are the partners of the movement.
Mode of operation:

- Comprehensive national network
- District level network

Strategies:

- Political strategy
- Social mobilization strategy
- Local community mobilization strategy
- Legal strategy
- Media strategy

Political Strategies

- To create a persistent pressure on the political parties to implement the endorsed proposal by the House of Representatives on May 30, 2006 that provides mother equal rights to transfer citizenship to their children.

- To form caucus or committee to work on women’s rights among the women parliamentarians from various political parties.

- To strengthen collaborative and cooperative relations between the sister organizations of political parties and among the organizations working for women’s rights.

- To create pressure on political parties to include an equal citizenship rights provision in the interim Constitution and new Constitution to be formulated through the Constituent Assembly. Also to have political parties to publicly commit such inclusion in their manifestos.

- To initiate collaboratively to ensure women’s proportionate participation in decision making level.

Social Mobilization

- Most the people consider that the citizenship movement is a subject of political people. In the context, a continuous
awareness program to educate people on the importance of citizenship rights is necessary.

- Conduct awareness programs to minimize the gaps between those that do and don’t recognize the value of citizenship.

- Men and women should collectively be mobilized as this is not only a women’s issue; it is rather a human rights issue.

- The movement needs to trickle down to target groups as intended and not just remain at the surface; this requires awareness at all levels of society.

- Ethnic women’s groups also need to be aware of the issue.

- Sufficient voice is needed to implement the endorsed proposal into practice.

- Civil society network should be strong, comprehensive and effective. District and central civil society networks should work collaboratively.

- Right to citizenship is the gateway to other rights and therefore, cannot be dealt with in isolation. It should be considered relatively with other human rights.

- Women’s participation at political and decision making levels should be enhanced from grassroots to central levels to implement the endorsed proposal.

- Dissemination of the proposal to grassroots levels is necessary. Community/street drama can be an effective means to convey the proposal.

- Local networks of central level civil societies should be mobilized for the purpose.

- Civil society can play a responsible role in minimizing the gaps between grassroots and central level organizations to reflect the proposal into practice.

- Initiate capacity building programs for civil societies.
Prepare counter arguments to tackle concerns from opponent of equal citizenship rights to build a common consensus.

Local Community Mobilization

- District level group should be formed at every district.
- VDC level group should be formed at every VDC representing the members of the ward committee.
- Ward level group should be formed at every ward of the VDC.
- An orientation program on the importance, necessity, advantage and procedural provisions to acquire citizenship should be conducted to the groups formed at ward level.
- Every ward group should conduct an awareness programs on citizenship and a systematic record of those who have and have not acquired citizenship and the data should be sent to the district level group to initiate providing citizenship to those without.
- Mass mobilization should be conducted to ensure equal citizenship rights of women at every ward and VDC level group.
- Disseminate information regarding citizenship through local radio and F.M.

Legal Strategies

- Initiate legal reform activities (e.g. amendment proposal, lobbying with interim constitution drafting committee, political parties and members of the Constituent Assembly).
- Conduct advocacy programs (advocacy and information leaflets, publication and dissemination of posters, advocacy meetings with concerned stakeholders, victim hearings, and voice collection of intellectuals).
- Application of international human rights conventions (pressurizing state on its obligation under international instruments, to submit international reports on time, shadow reports, dissemination of concluding comments and advocacy
to ratify international human rights instruments, such as OP-CEDAW).

- Training and orientation program for the effective implementation of laws (to CDO, employees of the citizenship section of the district administration office, representatives of the local bodies, judges, and law and policy makers).

- Establishment of legal aid cell to assist victims of discriminatory citizenship law.

- Public interest litigation (identification of test cases, creation of enabling legal environment, application of different approaches on a case by case basis).

- Advocacy to change negative arguments, and social/cultural values and norms (training to the change advocates, awareness programs on the importance of citizenship and procedural provisions, and sensitization against discrimination).

- Application of international complaint mechanisms, such as application of optional protocol to ICCPR.

- Coordination with key stakeholders/ bodies.

- Networking and coordination for a unified movement.

**Media Strategies**

- Media should play a crucial role for bridging the gap between grass roots to central level to raise the issue.

- Highlights victim’s hearing through media.

- Sensitize media with providing comprehensive information on citizenship.

- Raise the issue of equal citizenship rights from the right based approach through print as well electronic media.

- Aware about the declaration of House of Representatives on mother’s right to confer citizenship to their children and advocacy for the implementation of the declaration.

- Dissemination of the issue through hoarding board in the public places, use of slides in theater, leaflet and posters etc.
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LIST OF INTERVIEWEES

Kapilvastu

1. Baburam Bhandari, Non-gazetted second class (Khardar), District Development Committee, Kapilvastu.
4. Danda Pani Lamichane, Section Officer, Kapilvastu District Court.
5. Deepak Kumar Joshi, Chief District Officer, District Administration Office, Kapilvastu.
6. Durga Singh Thapa, Secretary, Waranga Namuna VDC.
7. Bhakti Ram Panthi, Executive Member, Hurlek.
8. Guna Nidhi Bhusal, Vice-President, Siddhartha Samajik Bikash Kendra.
10. Krishna Ram Koirala, Under-Secretary, Kapilvastu District Court.
11. Mahadev Prasad Poudel, Local Registrar (Panjikadhikari), Kapilvastu Municipality.
13. Pushpa Regmi, President, District Level Paralegal Committee.
14. Ramesh Sharma, Member, Central Training Department, Nepali Congress (Democratic).
15. Sudharak Pandey, President, District Bar Kapilvastu.
16. Suresh Sharma, Secretary, Nepali Congress (Democratic) District Committee.
18. Ghana Shyam Panta, President, Appellate Bar Unit, Nepal Bar Association.

Kathmandu

1. Aatma Ram Pandey, Joint-Secretary, Ministry of Finance.
2. Bal Bhadra Bastola, Registrar, Kathmandu District Court.
3. Bikshu Anand, Lecturer, Tribhuvan University.
5. Chandi Raj Dhakal, President, FNCCI.
6. Deepa Shree Niroula, Actress, Kantipur F.M.
7. Deepak Raj Ghiri, Artist, Kantipur F.M.
8. Dinesh Hari Adhikari, Joint-Secretary, Ministry of Labour and Transport Management.
9. Durga Sob, President, FEDO.
10. Girish Giri, Editor, Kantipur Publication.
11. Hansraj Waglae, Secretary, Foreign Employment Entrepreneur Association.
15. Khem Raj Pandit, RPP.
16. Krishna Prasad Bhusal, Secretary, Lubu VDC, Lalitpur.
17. Lal Babu Kawari, Administrative Officer, District Administration Office.
18. Lava Prasad Tripathi, Joint-Secretary, Ministry of Education and Sports.
20. Lok Nath Dahal, Registrar, Ministry of Local Development.
22. Padam Raj Regmi, Executive Officer, Kathmandu, Metropolitan City.
26. Prof. Dr. Shanta Thapaliya, President, LACC.
27. Radheshyam Adhikari, Nepali Congress.
28. Ram Prasad Adhikari, Head of Department, Nepal Rastra Bank, Baluwaatar.
29. Shambhu Shrestha, Editor, Dristi Weekly.
30. Shanti Chadda, Entrepreneur.
31. Subash Nemwang, Central Member, CPN-UML.
32. Sushil Ghimire, Chief District Officer, District Administration Office, Kathmandu.

**Neplagunj**

1. Ajaya Kumar Sristava, Former President, Narainapur VDC, Banke.
2. Bhawani Rana, President, SAATHI, Nepalgunj.
3. Bhupal Nepali, General Secretary, SAFE, Nepalgunj.
5. Bishnu Bahadur Thapa, Documentation Officer, INSEC, Dhanagadhi.
6. Govinda Prasad Koirala, Central Member, CPN-UML.
8. Indra Mani Dahal, Local Registrar, *(Panjikadhikari)*, Nepalgunj Municipality.
9. Krishna Shyam Budathoki, Assistant District Administration Officer, District Administration Office, Nepalgunj Banke.
10. Madhabendra Raj Regmi, Registrar, Banke District Court.
12. Mohan Hamal, Administrative Officer, Nepalgunj Municipality.
13. Nava Raj Shaha, President, Khaskargainda VDC, Banke.
Consultative Meeting on Future Strategies on Women’s Equal Right to Citizenship

July 13-14, 2006
Hotel Annapurna, Durbar Marg, Kathmandu

Programme Schedule

Day 1 (July 13, 2006)
11:00 – 11:15 Registration/Tea

Session: Introduction
11:15 – 11:20 Welcome and Objectives of Program
- Ms. Aruna Thapa, UNIFEM
11:20 – 11:25 Introductions of Participants
11:25 – 11:30 Sharing the Modality of Program
- Mr. Sabin Shrestha, FWLD

Session: Context Setting and Study Sharing
11:30 – 12:00 Presentation of the study on “Discriminatory Citizenship and its Impact on Women and Children”
- Prof. Kussum Shakh, Lead Consultant
12:00 – 12:30 Discussion and Feedbacks on the Study

Session: Identification of Challenges and Opportunities
12:30 – 12:45 Challenges and Opportunities for Ensuring Women’s Equal Citizenship Right
- Adv. Sapana Pradhan Malla, FWLD
12:45 – 1:15 Open Floor Discussion
1:15 – 2:15 Lunch

Session: Social Mobilization Strategies
2:15 – 2:35 Social Mobilization Strategies for Women’s Equal Right to Citizenship
- Adv. Sapana Pradhan Malla, President, FWLD
2:35 – 2:45 Grassroots Mobilization Strategies for Women’s Equal Right to Citizenship
- Ms. Goma Mahara, Coordinator, District Network, Dang
2:45 – 3:15 Open Floor Discussion
3:15 – 3:30 Tea Break
Day 2 (July 14, 2006)
11:00 – 11:15 Arrival/Tea

Session: Political Strategies
11:15 – 11:35 Political Strategies for Women’s Equal Right to Citizenship
- *Hon’ble Kamala Pant, Member of Parliament*
11:35 – 11:50 Open Floor Discussion

Session: Legal Strategies
11:50 – 12:10 Legal Strategies for Women’s Equal Right to Citizenship
- *Adv. Sapana Pradhan Malla, FWLD*
12:10 – 12:30 Open Floor Discussion

Session: Media Strategies
12:30 – 12:50 Media Strategies for Women’s Equal Right to Citizenship
- *Ms. Babita Basnet, Sancharika Samuha*
12:50 – 1:15 Open Floor Discussion
1:15 – 2:15 Lunch

Session: Road Map for Women’s Equal Right to Citizenship
Chief Guest: Hon’ble Urmila Aryal, Minister of State, MWCSW
2:30 – 2:45 General Overview of the Issue
- *Adv. Sapana Pradhan Malla, FWLD*
2:45 – 2:55 Presentation of Road Map
- *Adv. Sabin Shrestha, FWLD*
2:55 – 3:00 Remarks
- *Ms. Chandani Joshi, UNIFEM*
3:00 – 3:15 Remarks from Chief Guest
- *Hon’ble Urmila Aryal, Minister of State, MWCSW*

Press Meeting on Program
3:15 – 3:30 Hi-Tea
Consultative Meeting on Future Strategies on Women’s Equal Right to Citizenship

Day 1 - 13 July, 2006
Hotel Annapurna

Participant List

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Consultative Meeting on Future Strategies on Women’s Equal Right to Citizenship

Day 2 - 14 July, 2006
Hotel Annapurna

**Participant List**

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GLIMPSES OF THE PROGRAMME