An Update of Discriminatory Laws in Nepal and Their Impact on Women
A Review of the Current Situation and Proposals for Change
1.1 Status of Women in Nepal

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. However, women face discrimination on the basis of sex and gender in various walks of life. The overall literacy rate of women is only 42.5 percent that is grossly low than that of men, which is 65.1 percent. Studies on women’s status in Nepal reveals their secondary status and resulting oppression because of dominant Hindu religion and prevailing social and cultural norms in the country.

A single statement applicable to all the women in Nepal cannot be made as different groups of women enjoy different status. Hindu women and women belonging to indigenous ethnic groups such as Rai, Limbu, Gurung and so on have different rights and suffer from different modes of oppression. Women from indigenous groups enjoy more egalitarian rights, with equal or more access and control of resources; relatively higher degree of social mobility, and freedom within the private sphere. However their participation in public sphere is negligible due to the dominant ideology of \textit{Bahunbad} (Bahunism). In contrast, Hindu women have no autonomy within private sphere, but enjoy limited positions in the public sphere. Their oppression stems from the concepts of hierarchy, the caste system, traditional thoughts about food, and the high value of chastity. While discussing either group of women, one must recognize that the concept of gender equality is not novel in Nepal, though great discrimination prevails.

In this chapter, an attempt is made to study the cumulative effect of social, economic and political forces resulting in various forms of discrimination against women.

1.1.1 Economic Status

The dominant Hindu religion and culture have popularized a belief that women should be dependent on men for income right from cradle to the grave. Men are considered as the sole breadwinners of families, and women are viewed only as domestic and maternal. “Women’s work” is confined to the household, and goes unaccounted for by the state and the family itself. Their main responsibilities include household chores of cooking, washing, collecting fuel and firewood, fetching water, engaging in agriculture, and so on. 

4. The term \textit{Bahunbad} (Bahunism) refers to the dominance of one caste, one language, one religion and one culture over other in a multi-caste/ethnic, multilingual, multi-religious and multi-cultural Nepalese society.
maternity, and service to family members. Though some steps have been taken to include contribution of domestic labour in economic activities of the census 2001 by the Central Bureau of Statistics, women's domestic labour goes unnoticed and unpaid for. The workload of Nepalese women is immense. Nepalese women work about 16 hours every day. Women who are engaged in employment focus mainly in agriculture works, carpet industries, as domestic labourers, or other wage labor activities. Women often resort to prostitution, or are kidnapped and sold as commercial sex workers.

The Census of 2001 reports that 43.8 percent of women (i.e. 50,75,326 women) are participating in the labour force. Currently, it is estimated that both the government and non-government initiated microcredit programs to cater to the needs of about 30,000 women. This implies that they are serving only 5/6th of the women who are participating in the labour force.

Women’s workload may actually increase with the addition of development programs, including microcredit programs, designed for their benefit. Women are now forced to perform triple roles: that of mother, of a traditional wife and of a community participant.

Complicating economic disparity is increasing the feminization of poverty. Women have been deprived of equal property rights. This system leads to discrimination against girl child in food distribution, and the provision of clothing, health-care, education, and entertainment. This is because the female child has no lasting value to the family.

1.1.2 Socio-cultural Status

Patriarchy persists as the dominant ideology under Hindu religion and culture. The religion and its associated culture, norms, and values have prevailed for hundreds of years. Ram Charit Manas states, “Drums and idiots, outcastes, beasts, and women are fit only for beating.” Hindu scriptures also suggest that fathers, husbands, and even sons should control women. Popular sayings exemplify these beliefs, “let it be late, but it should be a son,” “the birth of a son paves the way to heaven,” “a daughter is born with doomed faith,” “it’s a sin if the groom kill the bride, charity if nurtured,” and “women are always shortsighted.” Of the various communities within Nepal, Hindu women often are the most oppressed having based on this ideology. An example of such practices is the fact that Hindu women are treated as untouchables during menstruation and for a maximum period of 22 days after birth of a child. Further distinctions are made with castes. The social practice of untouchability against Dalit women is still prevalent, though the Country Code of Nepal, 1963 has abolished it, but the status of women belonging to the Bahun-Chhetris caste is better. Given the great diversity of Nepalese society, however, the status of women cannot be


6 Some people follow a more egalitarian form of Hinduism. They rely on religious scriptures and Smritis, such as Manusmriti which offer contradictory views on the status of women. Women are sometimes portrayed as a symbol of power and compassion. Manusmriti states, “Gods rejoice where women are worshipped.” Many follow other world religions.
defined by Hinduism alone. There are 61 indigenous ethnic groups, and four races. Compared to Hindu women, indigenous women have relatively better status concerning social mobility, decision-making and sexuality. There are more than 125 languages and dialects spoken in the country. The status of women of various linguistic groups differs from one another. Finally, regional differences affect the status of women. The worst situation is of those women who live in the far-western and mid-western development regions because the government has always ignored implementation of development programs and allocation of adequate budget. Also, casteism is immense in these regions due to the existence of discriminatory traditional practices between the so called “high” and the “low” castes.

Besides the subordination of girls and women, practices like child marriage, violence in marriage, dowry, chbenpadi, deuki, badi, and jhuma are still prevalent in Nepalese society.

1.1.3 Political Status

Nepalese women have been involved in political movement since the 1950s but several factors have prevented women from actively participating in local or national politics. These factors include: the dominant ideology of patriarchy, male chauvinism, criminalization of politics, lack of equal property rights, restrictions on women's mobility, and domination of men in all political parties and the media. Politics is commonly thought to be controlled by 5-M, that is, Men, Muscle, Money, Manipulation and Mafia. Out of 205 members of the House of Representatives elected in the election of 1999, only 12 were women. Similarly, out of 60 members of the National Assembly, only 9 members are women. Among the dozens of cabinet members and other ministers, only one woman minister used to be there and she is used to be given very small portfolios. Although the present Deputy Speaker of the House of Representatives is a woman, presence of women is grossly minimal in the higher public positions, including secretary, joint-secretary and under-secretary.

An encouraging trend was the presence of approximately 40,000 elected women representatives at the Ward Committees in about 4,000 Village Development Committees (VDCs) and dozens of Municipalities as a result of new provision of twenty percent seat reservation made in the Local Self-Governance Act, 1999. However, due to the on-going insurgency, no election of VDCs and Municipalities could be held for the last two years. As a result, women's participation in these crucial bodies of local self-governance is lacking. Moreover, women lack the power to contribute significantly even within these bodies. Nepali being the only official language, females with other mother tongues have been deprived from literacy and education, both formal and non-formal. Lack of government support for literacy and education in mother tongues is one of the main reasons for low literacy rate of women in Nepal.

It is a practice in the western region of the country where women during menstruation and delivery are kept separately in the cowshed, as they are considered impure.

Deuki is a practice, where a person who wishes to gain personal advantage offers a girl or woman to temple.

Badi is a community where the fathers and husbands live on the earning of the women earned through sexual services. Usually, the fathers and husbands cause their daughters and wives to carry on prostitution.

A tradition in the mountain region of Nepal, where second daughter of Sherpa community is sent to the monastery at young age.
roles as their male colleagues control most of the resources. Equally problematic are the nominal representation of women in Village Councils, Village Development Committees (VDC), Municipalities, District Development Committees (DDC), District Councils, and in the Parliament. In addition, the National Planning Commission has no woman member.

1.2 Government Policies for Women’s Development

Planned development in Nepal began in 1956, but the importance of the role of women in development lacked recognition until the early eighties. It was only in 1980 that the Women’s Development Section (WDS) was established under the Ministry of Local Development. The Plan of Action for Women in Development was prepared in 1982 and subsequently Production Credit for Rural Women (PCRW) program was introduced. With the restoration of multi-party political system in 1990, His Majesty’s Government of Nepal ratified the UN Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in 1991 without reservation. After the Beijing Conference in 1995, the Ministry of Women and Social Welfare was established and thus His Majesty’s Government of Nepal committed itself to ending discrimination against women.

Nepal’s planned intervention to uplift the status of women began with the Sixth Five Year Plan (1980/81-1984/85). This plan attempted to increase employment for women but creating opportunities in both formal and informal education, involving women in agricultural training, cottage and other small industries as well as population control activities. In addition, the plan took as a goal to reform laws and regulations that inhibits women’s participation in development. The Seventh Five Year Plan (1985/86-1989/90) expanded the activities mentioned in the previous Plan. The Seventh Plan stated that legal reforms would be affected to remove provisions hindering women’s participation in national development. The Eighth Five Year Plan (1992/93-1996/97) made a commitment to create opportunities for equal and meaningful participation of women in the development process and to reform laws and by-laws that hinder the development of women. The Ninth Plan was progressive to incorporate the policy of “Creation of a developed society on the basis of women’s empowerment and gender equality through mainstreaming women’s participation in each and every aspect of national development.” The Plan stated two objectives: (1) to involve women actively in different sectors of development for building egalitarian democratic society, and (2) to increase access of women to political, economic and social sectors, and, importantly, (3) to reform legal provisions so

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12 It should be noted here that the concepts of Women in Development (WID) and Women and Development (WAD) were introduced in the seventies and of Gender and Development (GAD) in the early eighties around the world.
as to ensure women’s rights and for effective access to the right.

Primary objective of the Tenth Plan (2002-2007) is to create egalitarian society based upon women’s rights by improving GDI (the Gender Development Index), and by abolishing all sort of discrimination against women for the realization of economic growth and poverty eradication. To achieve this objective, the government has, *inter alia*, expressed its commitment to undertake steps to reform the existing legal system related to women and set up legal arrangement and carrying out legal re-enforcement to stop crimes (such as *bokshi, juma, denki, badi*).\(^\text{14}\)

His Majesty’s Government has shown commitment for the upliftment of women through endorsement or ratification of various international declarations, work plans and conventions. These include: the Work Plan of the First World Women’s Conference held in Nairobi in 1975, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Jakarta Declaration of 1994 and the Beijing Declaration of 1995.

His Majesty’s Government of Nepal has taken several other positive steps by establishing the Ministry of Women and Social Welfare in 1995, now renamed as the Ministry of Women, Children and Social Welfare. The goal of the Ministry is to bring women in the mainstream of development through their empowerment on the basis of gender equality.\(^\text{15}\) The Women’s Ministry has prepared its Concept Paper stating ten policies:

- create a policy for national women’s development and integrate with all other policies of national development,
- support women’s units/section/divisions of various Ministries to increase women’s participation,
- make efforts to increase development budget and government grants for women’s development programs,
- increase women’s participation in decision making from local to national levels,
- take necessary actions to eliminate institutional barriers, gender disparity, legal, administrative and policy improvement concerning women development,
- strongly advocate for gender equality and women’s empowerment,
- conduct training and discussion on gender analysis from local to national levels,
- promote affirmative action for women’s upliftment, review, monitor, evaluate and co-ordinate all women development activities conducted by governmental and non-governmental organizations.\(^\text{16}\)

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\(^\text{15}\) A concept paper of MWSW (Kathmandu, 2053 B.S.), p. 4

\(^\text{16}\) MWSW 2053:4-5
The National Women's Commission (NWC) has been established on March 8, 2002 to ensure women's rights by advising the government to effectively implement international human rights instruments and to develop plans and policies specifically aimed at advancing women.

1.3 Overview of Nepalese Legal System

The legal system of Nepal is essentially of indigenous origin. Before the territorial unification of Nepal in the eighteenth century, the country was divided into a number of independent principalities each having its separate administrative set up with ruling monarch. Some principalities and city states such as Kathmandu, Lalitpur and Bhadgaun recognized the Hindu Dharma Shastras, the holy book of scriptures, including Vedas, Puranas, and Smritis, as the main source of their law. After the territorial unification of the country, Nepalese legal development and the Dharma Shastra became supplementary and complementary to each other. Nepal as the only Hindu Kingdom in the World and a strong influence of Hindu religion can be seen on its legal system. The Hindu religion is based predominantly on patriarchal norms and values. The great Hindu philosopher Manu in his “Manusmriti” has stated that a wife and a slave can have no property and that the wealth they acquire belongs to whom they belong. Women were considered inferiors to men and non-capable of making decision. Only men were entitled by birth as the member of the family. Women acquired membership in their husband's family by marriage only. Their membership to the family was therefore governed by their marital status.

The Manab Nyaya Shastra (the foremost Code of Human Justice) prepared and enforced during the time of Jayasthiti Malla, a king of Malla dynasty, and reformations introduced by Ram Shah, one of the forerunners of the present day Shah dynasty, were based mainly on Hindu religious philosophy. In the latter days, in process of modernization, Nepalese legal development had also received number of principles of other legal system. However, the traditional legacy still continues to dominate.

The Rana regime introduced the first ever written law, the Country Code in 1853, which includes the concept of positive law. It was applicable to the whole country.

The Code was discriminatory in the application of law on the ground of religion, race, sex, caste and tribe. There was difference in punishment for men and women and for the person of “lower caste” and “upper caste.” It was based on Manusmriti and believed on the philosophy that a woman is not entitled to independence as the father is supposed to protect her in childhood, husband in her youth and son in old age. Polygamy, child marriage, unmatched

Nepalese legal system incorporated within itself the principles of written constitution since 2004 B.S. (1947) and the notion of rule of law has been part of Nepalese legal system. Since all necessary laws are enacted by the Parliament. Legal gap is fulfilled either by the Parliament itself or by the judiciary in course of interpretation on the basis of value judgment. The rule of law contains the principles of procedural fairness and legal certainty. The value judgments are to be delivered in conformity with the principle of natural justice and on the basis of liberty and equality.

The main features of the Nepalese Legal System are as follows:

- **Written law:** The Constitution of the Kingdom of Nepal is fundamental law of land and all laws inconsistent with it shall, to the extent of such inconsistency, be void. Nepal accepts the principle of constitutional supremacy. The Parliament makes laws necessary for the governance of the country.

- **Absence of Codification:** It is one of the main features of Nepalese legal system. The Country Code is a general code, which serves the purpose of civil and criminal law incorporating the respective procedures. The Country Code includes the substantive as well as procedural laws related to court proceedings, property, inheritance, adoption, marriage, divorce, maintenance, homicide, rape, incest, bestiality. However, in case of conflict between the provisions of Country Code and provisions made under a particular statute, the latter prevails over the Country Code.

- **Uniform law:** The laws on marriage and divorce are applicable to all persons of all religions. Laws relating to property and family matters are based on Hindu jurisprudence and thus, discriminate against women including in matters of acquisition, disposition and management of property, and in adoption.

- **Precedent:** Precedents are another binding source of law. Decision of the Supreme Court of Nepal is considered as precedent, and it is binding unless the Parliament nullifies its effect by enacting new Act or the Supreme Court overrules its previous judgment.

- **International treaties and conventions:** Any international treaty of convention that Nepal is a party is enforceable as a national law.

- **Custom:** Custom as an unwritten law has influenced the Nepalese legal system from times immemorial. Even during the Vedic period, customs were given place superior to other source of law. Customs have also been incorporated in relevant parts of the Country Code.

- **Juristic writing:** Lawyers and judges during their dealing with cases quote many jurists. They try to prove their statement through juristic writings by giving reference such as Modi's Medical Jurisprudence is cited in the criminal cases as an authentic resource material.

- **Criminal justice system:** The adversary model developed in

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England mainly influences Nepalese criminal justice system. However, it has no jury system as in England. The police carry out the investigation of crime and government attorneys are involved in registration of case, interrogation, pleading, etc. The accused has the constitution right to silence and is considered innocent until convicted.

- **Civil Justice System:** Civil Justice System is also influenced by adversary character. In case of a dispute between two parties, one making claim seeking relief against other and the other opposes such claim or resists such relief.

Nepalese courts consist of the following three tiers:
- Supreme Court
- Appellate Court
- District Court

In addition to these courts, the law also allows establishment of special types of courts or tribunals for the purpose of hearing special types of cases. Provided that no special court or tribunal is allowed to be constituted for the purpose of hearing a particular case.

The Supreme Court is the apex court of Nepal. All other courts are under the Supreme Court. The Supreme Court is a Court of Record. Any interpretation given to a law or any legal principle laid down by the Supreme Court in the course of hearing of a suit is binding on HMG and all offices and courts. The first instance court, i.e., the District Court is the trial court which decides cases on the basis of facts in both criminal and civil cases. Appeal Courts hear appeals against the decision of first instance court, i.e., the District Court. Nepal is one of the few countries which has not yet accepted the rule of public participation for the judicial settlement of dispute. Only lawyers and witnesses play active role to assist the court in fair trial. There are 75 Districts Courts, 16 Appellate Courts and a Supreme Court. His Majesty the King appoints the Judges upon the recommendation of Judicial Council (Constitutional Council recommends in case of Chief Justice of the Supreme Court). The independence and neutrality of the Court is guaranteed by the Constitution. Right to legal counsel is guaranteed by the Constitution itself.

One of the main aspects of legal system is the observance of the legal rules. Sanctioning mechanism of state is important to observe the implementation of legal rules. Needless to say that penal system has been developed to punish law-breakers. Nepalese penal system is more prohibitory than reformative. Generally, the penalty imposed on the accused involves use of discretionary power of the judge. Importantly, capital punishment has been abolished in the country.

To conclude, the 1950 revolution, which ousted the autocratic Rana regime and restored state powers on King, marked the fresh beginning of new legal system. Having studied the laws and legal practice after 1950, it may be said that the Nepalese Legal System is, basically, a combination of the common law, and the Hindu law. Combination of these two factors resulted in the development of indigenous system of justice. However, the trends of westernization, especially in line with the Anglo-American system of law, are
on the rise. The Country Code 2020 B. S. (1963) has followed the same philosophy and is largely a replica of the old one.

It was only in 1975, on the occasion of the International Women's Year, that certain rights were provided to women. By the Sixth amendment to the Country Code in 1975, daughters were entitled to partition share of the parental property, provided that she remained unmarried and was above 35 years of age. Other reforms included divorcee right to maintenance, provision for adoption of daughter and restriction on bigamy.

In the process of change and development, the present Constitution promulgated in 1990 brought some drastic changes into the existing judicial system of Nepal, some of which are basic human rights guaranteed as fundamental rights, independence of judiciary and rule of law which form the basic structure of the Constitution; extra-ordinary jurisdiction to the Supreme Court to test the validity of the laws on the touchstone of judicial review, judicial council as an administrative mechanism to run the administration of judges; tenure of service of judges of all levels. Except some of the articles on Citizenship, the Constitution is based on the principle of equality. However, the Country Code, 1963 as well as various laws, which are inconsistent to the Constitution, still exist and are enforceable.

1.4 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, the establishment of an independent and competent system of justice with a view to transforming the concept of the rule of law into a living reality are 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 so far ratified or acceded to sixteen international human rights instruments including the First and Second Optional Protocols to the International Covenant on Civil and Political Rights, and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The Parliament has enacted the Treaty Act 2047 (1991) which states that in case any treaty to which Nepal is a party is inconsistent with the existing laws, the existing laws shall be void to the extent of inconsistency and the provisions of the treaty shall prevail as the law of Nepal.

Nepal has reaffirmed its commitments on the Beijing Declaration to work for equal rights and inherent human dignity of women and men, as well as to implement the platform for action as adopted by the Beijing summit. One of the strategic objectives set forth in the platform for action was to “ensure equality and non-discrimination under the law and in practice” and more specifically to “revoke any remaining laws that discriminate on the basis of sex and remove gender bias in the administration of justice.” Nepal made a commitment in Beijing in its Country Report, to provide equal rights to both
men and women, by identifying and presenting to the Parliament for amendment of the discriminatory laws within two years. For this purpose, the government had agreed to present a Bill within one year to the legislature providing for equal rights to women in relation to ancestral property.

Nepal presented its Initial Report on CEDAW in June 1999 before the UN Committee on the Elimination of Discrimination Against Women in its twenty-first session. One of the principal areas of concern of the Committee was that the government had not taken sufficient action to reflect the provisions of the Convention in domestic laws, or to amend prevailing discriminatory laws. The Committee recommended to the government that, a definition of discrimination in compliance with Article 1 of the Convention be included in the relevant laws. The committee also urged the government to amend, as a matter of priority, discriminatory laws on property and inheritance, the laws on marriage, nationality and birth registration, the Bonus Act and discriminatory criminal laws, including the law on abortion.

Though the 11th Amendment to the Country Code has brought about few positive changes, many of them are partial and need to be reviewed again. Even after the 11th Amendment, 176 Provisions, two Rules in their entirety, and 103 Schedules in 85 laws are still discriminatory against women.

Recently, in January 2004, the Government of Nepal submitted its second and third periodic report before the CEDAW Committee. The Committee in its report urged the government of Nepal to expedite action and to establish a specific time-table for amending discriminatory laws without further delay in order to comply with its obligation under Article 2 of the Convention.

Taking into consideration Nepal’s commitment at national and international levels, this study identifies the discriminatory laws against women, which act as hurdles in the fullest development of women. This study not only identifies the discriminatory laws but also paves way for amending/repealing discriminatory laws and help in achieving equal rights for women in all fields of life.

1.5 Objective of the Study

The general objective of the study is to analyze the impacts of discriminatory laws against women. The specific objectives are as follows:

1. to review and compile the existing discriminatory laws against women;
2. to analyze impacts of discriminatory laws on women;
3. to identify the gaps and assess the initiatives taken by the government and civil society to eliminate or reduce discriminatory laws;
4. to review state obligation under various human rights

**Objectives of the Update Study**

To update the study conducted in 2000, and incorporating necessary changes brought about by the 11th Amendment to the Country Code and reviewing few other laws and regulations that are discriminatory against women and changes brought through the court by interpretation in equality cases.

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18 Recommendation No. 19 of the CEDAW Concluding Comments.
instrument, including CEDAW, from gender perspective; and
5. to make recommendations for elimination of discriminatory laws against women.

1.6 Justification of the Study

The main justifications of the present study are as follows:

- Nepalese women are discriminated in economic, socio-cultural, political and legal spheres. Most of the equal right activists agree that legal discrimination is the main source of other discriminations. Until 2000, no study was conducted to compile discriminatory laws against women. In 2000, for the first time this study was conducted to compile discriminatory laws against women and their impacts on the lives of the women. In the year 2004, an update study has been conducted with a view to compile the discriminatory laws, which still exist even after the 11th Amendment to the Country Code. Like the study in 2000, this study would help government officials, women’s activists, gender experts and other researchers to contribute in eliminating gender discrimination.
- Identification of impacts of discriminatory laws on women and existing gaps in the government and non-government activities would help for better lobbying to improve the status of women.
- This study would help the movement for gender equality to streamline its advocacy for gender equality effectively.

1.7 Conceptual Framework of the Study

The main fields of discriminatory laws and of impacts of these laws are discussed below.

Definition of Discrimination

This study is based on the definition of discrimination given in Article 1 of CEDAW (1979). Chapter 3, a new Chapter, has been inserted to conceptualize the definition in line with the CEDAW so that discrimination may be understood in the sense it is used.

Fields of Discriminatory Laws against Women

For the purpose of this study, the discriminatory laws against women have been categorized under the following headings taking into consideration their impacts on the lives of women.

- **Inheritance right of women:** All women rights activists have given highest priority for equal inheritance rights because the existing discriminatory laws about it adversely affect the status of women and girl children. This is the most heatedly debated issue in the country. Lack of equal parental property rights has both direct and indirect affects on women’s and girl child’s lives. As far as the laws concerning inheritance right are concerned, most of them are discriminatory against women.
- **Nationality (Citizenship) rights of women:** Each citizen is entitled to “nationality” or citizenship rights and foreigners who fulfill requirements are also entitled to such rights through
naturalization. Unfortunately, there are some constitutional and legal provisions that prevent some Nepalese women from enjoying such rights.

- **Trafficking of women/ girl child and sexual abuse**: These are some of the most serious issues in the country. Every year many innocent women and girl children are trafficked to Indian brothels and cities to work as commercial sex workers, and are used in organ transplants and other works with high risks. Also, many girl children and women become victims of sexual abuse, including rape. There are many discriminatory laws that either encourage or fail to stop trafficking of women and girl child.

- **Right to education**: Right to education is one of the fundamental human rights but many girl children and women are deprived from these rights due to the existence of many discriminatory laws. Given the low literacy rate of women, their empowerment would remain a myth if girl children and women are deprived of their right to education.

- **Women and employment**: The problem of unemployment in the country is very serious. It is difficult to imagine significant empowerment of women in absence of equal employment opportunities resulting from discriminatory employment laws.

- **Health, including reproductive health**: Though the 11th Amendment has liberalized abortion under certain conditions, the provisions relating to abortion fall under the Chapter of Homicide of the Country Code and de facto discrimination persists.

- **Marriage and Family rights**: Due to patriarchal values, girl children and women are discriminated throughout their lives. Bigamy, divorce, “false” marriage, child marriage, child custody are some important problems related to marriage and family.

- **Court and legal proceedings**: There are still some areas where women are discriminated in court and legal proceedings. Summon notice is given to males only and father’s name is required for identification of children.

### Areas of Impact of Discriminatory Laws against Women

There are many direct and indirect impact areas. However, in this study, important impact areas for the analyses, both qualitative and quantitative have been identified as follows:

- **Economic**: On the economic front, the significant issues are: inheritance, economic decision making and participation, work load, employment, human resource development, and access and control to economic resources.

- **Social**: On the social front, the significant issues are: marriage and family, trafficking, literacy and education, health including reproductive health, rural life, violence against women, and social position.

- **Political**: On the political front, the significant issues are: political and public life, nationality (citizenship), and violation of human rights.

- **Psychological**: On the psychological front, the significant issues are: mental torture, personality disorder, and depression.

- **Legal**: On legal front, the significant issues are restricted access to legal remedies and denial of recognition to women at par with men.
2.1 Population and Sample

**Target Population:** The target population is all the women of Nepal.

**Sample Population:**

Sample Population and Rationale for Selection: The sample population is from the following districts representing all three geographical regions:

<table>
<thead>
<tr>
<th>Region</th>
<th>Districts</th>
<th>Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mountain/Hill</td>
<td>Solukhumbu</td>
<td>Egalitarian societies, ethnic groups, rural, predominantly non-Hindus &amp; Tibeto-Burman language speakers</td>
</tr>
<tr>
<td>Hill</td>
<td>Kathmandu &amp; Lalitpur</td>
<td>Urban community, mixed population, educated, cosmopolitan</td>
</tr>
<tr>
<td>Tarai</td>
<td>Nawalparasi</td>
<td>Society directly exposed to open border, cross-border flow, Madhise community, rural, predominantly Hindus &amp; Indo-Aryan language speakers</td>
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**Sample Selection:** Altogether eighty respondents were selected in the following ways:

**A. In Solukhumbu and Nawalparasi:**

One VDC and one Municipality in the district headquarters were purposively selected after consultation with the key informants of the district headquarters in Solukhumbu and Nawalparasi districts. Two Wards out of nine Wards were randomly selected:

- Ward numbers 1 and 8 of Ramgram Municipality in Nawalparasi district, and
- Ward numbers 5 and 6 of Salleri VDC in Solukhumbu district.
  - From each ward ten families were randomly selected.

**B. In Kathmandu and Lalitpur:**

Two Wards were randomly selected in each city.

- Ward numbers 11 and 32 of the Kathmandu Metropolis in Kathmandu district, and
- Ward numbers 3 and 14 of the Lalitpur Sub-Metropolis in Lalitpur district.
  - From each ward, ten families were randomly selected.
2.2 Tools of Data Collection

**Primary Source**

The following tools were used to collect primary data:

**Focus Group Discussion:** The following three focus group discussions were conducted to collect qualitative information on the impacts of gender discriminatory laws:

- One focus group discussion with Women prisoners and detainees in the Women’s Cell of the Central Jail in Kathmandu;
- Two focus group discussions with women and key informants (one in Nawalparasi and other in Solukhumbu).

**Standardized Scheduled Questionnaire:** A standardized scheduled questionnaire was administered to eighty respondents to collect quantitative information about both direct and indirect impact of discriminatory laws against women. Demographic information such as caste/ethnicity, age, education, occupation, marital status, and family size, direct and indirect impact in eight areas identified to women, in general, were generated from the questionnaire.

**Scheduled Key Informant Interview:** Scheduled and unscheduled questionnaires were administered to eighty-three individuals representing governmental and non-governmental organizations. These are as follows:

- **Scheduled Interview with Open and Closed Ended Questions:** A check list was used to interview the following categories of individuals and organizations, altogether eighty-three, to collect information about the existence of discriminatory laws, its causes and impacts, laws required to reduce or eliminate such discrimination, and suggestions for enforcing agencies.
  - Twenty Members of Parliament (10 males and 10 females), fourteen Members of the House of Representatives and six Members of the Upper House.
  - Five Women’s Organizations affiliated with major political parties.
  - Ten Legal Professionals (5 males and 5 females).
  - Ten Academicians (5 males and 5 females).
  - Ten Non-Governmental Organizations: Saathi, Maiti Nepal, ABC, LAAC/Mahila Helpline, CREHPA, Feminist Dalit Organization, Didi Bahini, Shtri Shakti, NHRMG.
  - Ten Human rights activists/organizations, including FOPHUR, HURON, INSEC, CVICT, INHURED and CWIN.
  - Ten Womens rights activists.
  - Four faculty members and four students of Post Graduate Diploma Program in Women’s Studies, Padma Kanya Campus.

- **Scheduled Interview with the Concerned Authorities:** Altogether twenty-two authorities representing concerned national and district offices were interviewed to collect information about existence of women’s wings, special plans, policies and programs, opinion about discriminatory laws and its impacts, and required activities to reduce or eliminate these discriminations:
- Five Concerned Departments: Inspector General of Police, Chief of Legal Section of Royal Nepal Army, Central and Kathmandu Valley Police Women’s Cell, and Research In-charge of Attorney General’s Office.
- Three Chief District Officers (CDOs) of Kathmandu, Nawalparasi and Solukhumbu districts
- Two Chief of the Hospitals: Indra Rajya Laxmi Devi Prasuti Griha in Kathmandu and Pritivi Chandra Hospital in Nawalparasi.
- One Mayor of Ramgram Municipality in Nawalparasi.
- One Chairperson of the Nawalparasi District Development Committee.
- Two Chief Jailers: Prison Section in Nawalparasi and Solukhumbu districts.
- One District Government Attorney in Kathmandu.

**Case Study:** Fourteen case studies were conducted. Some case studies were short and others are long depending on the nature and significance of the issues. Information for case studies were generated from the following two sources:

- **Primary:** Samples of case studies were determined through snow-ball methods. The research team sought help of respondents and concerned organizations in identifying the best cases for the study.
- **Secondary:** Some relevant case studies were adapted from newspapers, magazines and unpublished or published reports, precedents and books.

**Observation:** A whole day Court observation was done in the Nawalparasi District Court.

**Secondary Sources**

Information from both published and unpublished sources such as books and reports are used to complement and supplement information generated from primary sources.

### 2.3 Data Processing, Analysis and Presentation

**Data Processing:** Field data was re-checked and errors were corrected promptly in the field. Qualitative data was processed manually and sorted in accordance to the themes identified in the conceptual framework of the study. Quantitative data was processed using Excel Program. A code-book was prepared for this purpose.

<table>
<thead>
<tr>
<th>Units of Analysis</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct Impact</td>
<td>Individual (Woman) level;</td>
</tr>
<tr>
<td>Indirect Impact</td>
<td>Individual (child, man and woman), family, community, society and the country levels.</td>
</tr>
<tr>
<td>Doctrinal Research</td>
<td>The following multi-method was used:</td>
</tr>
<tr>
<td>Document analysis</td>
<td>Published Constitution, Acts and Rules were reviewed, analyzed and discriminatory laws were identified and compiled.</td>
</tr>
<tr>
<td>Review and Compilation</td>
<td>Supreme Court’s published decisions from 1990 to 1999 were reviewed and analyzed.</td>
</tr>
</tbody>
</table>
**Judgment Analysis**: We were intending to incorporate jurimetrics study in this report, but it was not possible within the short time as jurimetrics study requires the study of the detailed personal background of the judge. Hence, we studied the decisions of three judges to analyze their attitudes towards women’s issues. Judgment analysis of the decisions made by 3 senior-most sitting judges (1990/91-1998/99) was done to understand gender sensitivity among the judges.

**Data Presentation**: Data are presented in various forms, including tables, percentage, pie charts and comparative charts.

### 2.4 Update of the Study

While updating this study, the mapping of the Constitution, 281 Acts and 278 Rules has conducted with the new conceptual framework of discrimination. All laws enacted or amended during the period of update have been examined. The concept of discrimination as outlined in Chapter 3 has been used as a basis for the identification of discrimination against women for this study.

The landmark decisions of the Supreme Court in the issue of equality or discrimination against women during the period of update have been analyzed and incorporated in this study. The provisions which have been declared *ultra vires* to the Constitution by the Supreme Court have not been included in the counting of discriminatory provisions.

### 2.5 Limitation of the Study

The limitations of the study are as follows:

- The inferences or generalizations made in the report are based on a study of eighty respondents from one VDC and three Municipalities only, and three focus group discussions and eighty-three key informants interviews with representatives of various governmental and non-governmental organizations.
- The focus of the study is on the Constitution, Parliament’s Acts and Regulations.
- The study does not touch on the absence of laws, protective discrimination, corporation’s regulations or by-laws.
- Updated study has only updated discriminatory laws against women and Supreme Court decision in sex equality cases.
History shows that women have faced many obstacles to achieving equality with men. These obstacles, which are sanctioned by culture, religion and social practices, have resulted in the discrimination that women face at all levels - from home to the highest official positions. For many years discrimination in law and practice was justified on the ground that women differ from men in their physical, mental and psychological aspirations. This is the result of a narrow approach to understanding equality. With the emergence of the women’s movement in the mid nineteenth century, the impacts of such discrimination on women’s lives became conspicuous.

At the international level the principle of non-discrimination was enunciated for the first time in the Universal Declaration of Human Rights, 1948. This principle was further reiterated in the International Covenant on Civil and Political Rights, 1966, the International Covenant on Economic, Social and Cultural Rights, 1966 and the Convention on the Elimination of All Forms of Racial Discrimination, 1965. However, as all these instruments recognized non-discrimination as a general clause, the need was felt to develop a framework to specifically address discrimination against women.

In a recent judgement, Supreme Court of Nepal has shown concern on not having definition of discrimination against women in national legislation and the Court felt necessary to have the definition. However, the Court in this case used the definition of Article 1 of the CEDAW Convention as a basis to determine discrimination against women.

Therefore, the Declaration on the Elimination of Discrimination Against Women was adopted in 1967. Article 1 of the Declaration specifically declares “Discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offence against human dignity.” This was simply part of a declaration, however, and thus was only morally binding on the State Parties, without creating any specific obligations on them.

This situation finally resulted in the adoption of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1979. For the first time, a comprehensive definition of discrimination against women has been incorporated. Article 1 of the Convention states “Discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

1. Article 2 of the Declaration
2. Article 2 of the Covenant
3. Article 2 of the Covenant
4. Article 1 of the Convention
5. Prakashmani Sharma for Pro-Public vs. Office of Prime Minister and Council of Ministry, Writ No. 31/061, decided on December 15, 2005
In order to understand the concept of discrimination, it is important to interpret the clauses used in the definition.  

**Any Distinction, Exclusion or Restriction**

**Distinction** means that women are treated differently from men in similar circumstances. For instance, according to the present nationality law in Nepal, foreign husbands or children of a Nepalese woman are not entitled to Nepalese citizenship whereas foreign women who marry Nepalese men are entitled to Nepalese citizenship.

**Exclusion** means prevention from being included. For example, married daughters are not included in the definition of family under various laws.

**Restriction** means limiting the extent of something. Thus, permission of guardian and government is a pre-requisite for women to go abroad for employment.

**Made on the Basis of Sex**

Sex is defined as biological differences between men and women. However, the CEDAW Convention refers to both sex and gender. Gender is the social construction of roles on the basis of sex. This is further explained under Article 5 of the Convention, which requires the State Parties to eliminate prejudices and practices based on stereotypes that perpetuate ideas of subordination and inferiority of one sex compared to the other.

**Which has the Effect or Purpose**

The words effect and purpose here refer to the direct and indirect discrimination that women face as a result of the government law or policy. Nepal’s nationality laws, which directly prevent women from providing their citizenship to their children, provide the best example of direct discrimination. An example

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of indirect discrimination is a previous law that provided lesser punishment for someone convicted of rape in the case of a prostitute. In this case the Supreme Court of Nepal decided that though the provision did not directly discriminate against women, in reality women of a certain class were discriminated against on the basis of their profession.

**Of Impairing or Nullifying the Recognition, Enjoyment or Exercise by Women**

**Impairing** recognition means creating hurdles to the recognition of women as equal partners. For instance, according to the law relating to guardianship, mothers are not recognized as natural guardians of the children.

Impairing enjoyment means creating hurdles in the enjoyment of rights. Though the women are given a share in the family property, they must obtain their sons’ permission to dispose of more than half of their immovable property.

Impairing exercise means creating hurdles in the exercise of rights. For instance, women have an equal right to follow any profession, but government policy to restrict women from going to Gulf countries to work in the unorganized sector impairs them from exercising their right to employment.

**Nullifying** recognition means giving rights with one hand and nullifying their recognition with the other hand. According to the law relating to property, a daughter is a co-parcener in the family property but once she is married she has to return her share of property.

Nullifying enjoyment means giving rights but in effect nullifying enjoyment of the rights. Under the law relating property, if a woman transfers her share of property to any person, and marries that same person, the transaction is not recognized.

Nullifying exercise means creating hurdles in the exercise of rights. Though the Supreme Court has declared marital rape to be a crime, in the absence of the specific law no legal remedy is available to victims.

**Irrespective of Marital Status**

Women cannot be discriminated against on the basis of their marital status. However, in Nepal, married daughters do not have right to inherit their paternal property.

**On the Basis of Equality Between Men and Women**

Equality is the condition of possessing substantially the same rights, privileges, and immunities, and being liable for substantially the same duties. Gender equality can be defined as equality between men and women. There are different models of equality, i.e., the formal model and the substantive model. The formal model argues for the sameness approach by guaranteeing equal opportunities for men and women and envisages that once such opportunities are available to women, they can access them in the same way as men can. The substantive model, on the other hand, focuses on equality of opportunity/access and in result. It identifies the differences and provides remedies for historic disadvantages and

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disparities resulting from gender discrimination through the use of temporary special measures.

Understanding discrimination in context of the general framework of the Convention is also essential. It is explained as follows:

**De jure and de facto discrimination:**

Articles 2 and 4 of the Convention mention *de jure* and *de facto* discrimination. *De jure* discrimination is discrimination by law, as seen for instance in Nepal’s nationality law. *De facto* discrimination is the discrimination in practical realization of the right. For instance, though the Constitution and Labor laws in Nepal guarantee equality in wages, no punishment is provided for violating this guarantee so that in reality discrimination in wages persists.

**Public and Private Sphere**

The Convention not only addresses discrimination in the public sphere - the discrimination initiated by the State, but also encompasses the discrimination that women face in the private sphere as mentioned in Article 2 of the Convention. Thus, in ensuring that the State should address the public violence that women face, the Convention also ensures that State take action to address the violence women face in the family, such as domestic violence, and sexual harassment at the workplace.

**Present and Historical**

The Convention not only addresses the present discrimination but also includes historical discrimination. Historical discrimination is discriminatory effects due to discrimination that was practiced in past eventhough, existing condition or requirement is neutral. In Australia, women retrenched from a steel mill because of the ruling “last hired, first retrenched”, filed a case of discrimination and received positive judgement. While it is true that the women concerned were hired last, the fact was that these women had applied for jobs at this mill ten years ago. At that time it was considered inappropriate for women to work in steel mills and had been turned down. The fact that women were the last to be hired was the consequence of historic discrimination, hence applying the rule of “last hired, first retrenched” in the case of these women was considered to be discriminatory against them although it was unintentional.

**Cross Cutting**

General Recommendation No. 21 of the Convention also addresses the cross cutting discrimination faced by women. Discrimination experienced by women in one field affects their rights and opportunities in other fields. For instance discrimination in access to education affects a woman’s opportunities to employment, thus making her economically dependent on the family and in some circumstances forcing her to endure continuing violence perpetuated by her family.

**Intersectional**

General Recommendation No. 25 of the Convention takes a note of the intersectional or multiple forms of discrimination faced by women. For instance the discrimination faced by *Dalit* women first because they belong to a so-called ‘backward’ class and secondly because they are women.
4.1 Main Areas of Discrimination

Human rights does not allow continuation of discrimination based on sex in any of its forms. Such discrimination is not only contrary to the United Nations Charter and various international human rights instruments including CEDAW, but also against the basic principle of non-discrimination, one of the guiding philosophies of every democratic society. Moreover, any discrimination based on sex as a consequence of law made by the state itself is a gross violation of basic human rights. Although the Constitution of the Kingdom of Nepal is based on the principle of non-discrimination, there are several laws including the Constitution itself, which explicitly discriminate against women. Discriminatory laws in every aspect of the legal system, including:

- Nationality (Citizenship)
- Property
- Trafficking in person and Sexual Abuses
- Education
- Women and Employment
- Health including Reproductive Health
- Marriage and Family
- Legal and Court Proceedings
- Identity
- Use of language

Research showed that 92.59 percent of the respondents were aware of the existence of discriminatory laws in Nepal. While remaining 7.41 percent of the respondents did not respond because of lack of knowledge or ignorance of law, however, no one denied the fact that there are discriminatory laws in Nepal.

Of the respondents, 95.06 percent considered the laws on property discriminatory against women. More than 90 percent considered the laws on citizenship, marriage and divorce discriminatory while 60.49 percent felt that even the laws relating to legal and court proceedings are discriminatory against women (see Tables 2 in Annex 4).
Right to inheritance of property is a subject highly discussed within and outside the Parliament in recent times. The directive order issued by the Supreme Court on the test case on property right to women, and the submission of the Country Code amendment Bill to the Parliament to comply with the directive order, created awareness among people about the existing discrimination. Similarly, various movements launched by the civil society and demonstrations by women human rights activists highlighted the issue.

Citizenship issue has also been a topic for discussion especially the constitutional provision, that does not allow husband of foreign origin or children of Nepalese women to acquire citizenship by virtue of marriage or birth respectively. Since citizenship in Nepal is directly linked with the transaction of property, employment in enterprises, issue of travel documents as well as the visa for foreigner spouses of the Nepalese women, this issue has in recent times gained a lot of attention.

There are some areas in which people can feel the discrimination but they are not aware of the causes such as laws related to court proceedings are not known to all.

In some instances, though there is no direct discrimination in law but the effect of one discriminatory law falls on the other. Such a situation can be seen in the laws relating to education where 64.20 percent of the respondents feel such discrimination.

The present update study conducted by FWLD has indicated that there are still 173 provisions, and 102 schedules in 83 laws, including the Constitution of the Kingdom of Nepal, 1990 that discriminate against women on the issues such as citizenship, property, marriage and family, nationality, legal and court proceedings, trafficking and sexual abuse, employment, education and identity. In addition, there is 462 words in various laws which are masculine and thus discriminatory in use of language.

There are still 173 provisions, and 102 schedules in 83 laws, including the Constitution of the Kingdom of Nepal, 1990 that discriminate against women on the issues such as citizenship, property, marriage and family, nationality, legal and court proceedings, trafficking and sexual abuse, employment, education and identity.
4.1.1 Nationality (Citizenship) Rights

The right to citizenship is a basic right of every individual. In the political, administrative and socio-economic situation of the country, citizenship right has multi-dimensional consequences. It has been directly linked with basic fundamental rights of citizens, in the sense that there are several rights, which are a preserve of the citizens of the country only. Such rights include: 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 marriage and family life, the right to property, the right to participate in politics and the right to employment in public and private enterprises. Through its Concluding Comments on the Initial Report of the Government of Nepal on CEDAW Convention, the CEDAW Committee urged the government to amend, as a matter of priority, discriminatory laws on nationality and birth registration.

As a State party to CEDAW Convention, Nepal has made a commitment to provide women equal rights in their ability to acquire, change or retain their nationality. It has been ensured in particular that neither marriage to a foreigner nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless, or force upon her the nationality of her husband. Similarly, Nepal has expressed its commitment by ratifying CEDAW convention to provide women equal rights with men with respect to the nationality of their children. But the discriminations exist in the following forms:

<table>
<thead>
<tr>
<th>S.N.</th>
<th>Area</th>
<th>Constitution</th>
<th>Act</th>
<th>Rule</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td>Provision</td>
<td>Annex/</td>
<td>Provision</td>
<td>Annex/</td>
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<td>Schedule</td>
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<tr>
<td>A.</td>
<td>Nationality</td>
<td>4</td>
<td>-</td>
<td>5</td>
<td>-</td>
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<tr>
<td>B.</td>
<td>Property</td>
<td>-</td>
<td>-</td>
<td>19</td>
<td>-</td>
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<tr>
<td>C.</td>
<td>Sexual Offence</td>
<td>-</td>
<td>-</td>
<td>6</td>
<td>-</td>
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<tr>
<td>D.</td>
<td>Education</td>
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<td>-</td>
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<tr>
<td>E.</td>
<td>Employment</td>
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<td>2</td>
<td>-</td>
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<tr>
<td>F.</td>
<td>Health</td>
<td>-</td>
<td>-</td>
<td>9</td>
<td>-</td>
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<tr>
<td>G.</td>
<td>Family</td>
<td>1</td>
<td>-</td>
<td>48</td>
<td>-</td>
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<tr>
<td>H.</td>
<td>Court Proceeding</td>
<td>-</td>
<td>-</td>
<td>7</td>
<td>-</td>
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<tr>
<td>I.</td>
<td>Identity</td>
<td>-</td>
<td>-</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>J.</td>
<td>Use of Language</td>
<td>15</td>
<td>1</td>
<td>233</td>
<td>-</td>
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<tr>
<td></td>
<td></td>
<td>20</td>
<td>1</td>
<td>344</td>
<td>2</td>
</tr>
</tbody>
</table>

4.1.1 Nationality (Citizenship) Rights

Neither marriage to a foreigner nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless, or force upon her the nationality of her husband. Nepal has expressed its commitment by ratifying CEDAW Convention to provide women equal rights with men with respect to the nationality of their children.

2 Art 9(1) of CEDAW.
3 Art 9(2) of CEDAW.
Women denied to provide citizenship: The constitutional provisions relating to citizenship under the constitution of 1990 are more conservative than the Constitution of 1960. Under the 1960 constitution, a child, either of whose parents was born in Nepal, could acquire Nepalese citizenship. Similarly, Citizenship Act, 1953 also provided provision to have citizenship either by birth or if one of the parent was Nepali citizen during his/her birth.

However, under the present constitution and the Citizenship Act of 1963, a child whose father is a citizen of Nepal at the birth of the child shall be a citizen of Nepal by descent and a child found within the Kingdom of Nepal shall be deemed a citizen of Nepal, until the father of the child is traced. In case of a child who is born within 272 days after the death of the father of the child, while deciding the citizenship of such child, it shall be the citizenship of the father at the time of death. All these provisions are discriminatory against the women, as women are not recognized as the natural guardian of the child, nor can the children born to her acquire citizenship by virtue of birth. In addition, their role in giving birth to the child is totally undermined as children are only recognized through the father. Moreover, in a world where the concept of single parents is growing, such discriminatory provisions act as a hurdle in the upbringing of children of single mothers.

Spouse not entitled to citizenship: According to the present Constitution, women of foreign nationality who marry a Nepalese citizen can acquire the Nepalese citizenship after starting process to denounce their former citizenship. However, a man of foreign nationality who marries a Nepalese woman is not entitled to acquire Nepalese citizenship by virtue of the marriage. Thus, Nepalese women have been discriminated in comparison to their male counterparts. The Citizenship Act, 2020 (1963) and the Citizenship Rules, 2049
(1992) have similar discriminatory provisions like that of the Constitution of the Kingdom of Nepal.\(^9\)

**Women as a Nepali citizen yet to be recognized:**
According to the present Constitution, the descendant of citizen of Nepal and who has resided in Nepal for a period of at least two years may acquire the citizenship of Nepal on such terms and conditions as may be prescribed by law.\(^{10}\) Citizenship Act, 1963 and Citizenship Rules, 1992 have given similar ground to acquire citizenship.\(^{11}\) However, the descendant only cover branch of male family member and excludes those women who has married to another family.

**Discrimination against women in the Passport Rules:** The Passport Rules require to produce father’s nationality in the form for getting passport.\(^{12}\) Similarly, it is presupposed in the passport itself that wife accompanies to her husband while going abroad and that she has no independent existence.\(^{13}\)

**Discrimination in application forms for citizenship:** Application forms to acquire citizenship or naturalized citizenship on the basis of marital status or by descent is recognized only through male citizens. This is discriminatory as it denies the ability of a mother or a wife to provide citizenship to her child or spouse respectively.\(^{14}\)

**Discrimination in citizenship certificate:** The citizenship certificate only mentions a father’s or a husband name, thus denying the independent existence of women as a citizen of the country.\(^{15}\)

**Discrimination in the application forms for citizenship termination:** The form for termination of citizenship requires only the name of father or husband to be mentioned in it. Thus, it denies recognition of wife and mother.\(^{16}\)

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\(^{10}\) Article 9(6) of the Constitution of the Kingdom of Nepal, 1990.

\(^{11}\) Section 6(3) of Citizenship Act, 1963 and Rule 4(3) of the Citizenship Rule, 1999.

\(^{12}\) Schedule 2 of Passport Rules, 2059 (2002)

\(^{13}\) Page 3 of the Nepalese Passport

\(^{14}\) Schedules 1 and 3 of the Citizenship Rules, 1992.

\(^{15}\) Schedules 2 and 4 of the Citizenship Rules, 1992.

\(^{16}\) Schedule 5 of the Citizenship Rules, 1992.
4.1.2 Property Rights

Since the Nepalese women are economically dependent on their male families, they are forced to live in abusive relationships and endure both physical and mental violence as a result of the economic dependency. Law relating to property is also significantly responsible for such condition of women. The Country Code is the main substantive law with regard to partition on ancestral property, women’s share on property as well as intestate property. Many of the existing legal provisions of the Country Code are discriminatory against women. Recently, the Eleventh Amendment to the Country Code eliminated some discriminatory property provisions, however, discrimination against women still persists.

Limited right in ancestral property to unmarried daughters and no right to married daughters: With the Eleventh Amendment to the Country Code, daughters by birth have been recognised as coparceners in the ancestral property. However, this right is limited because upon marriage, daughters have to return their remaining share of the property to the maternal family whereas in case of the son, there is no such limitation. In addition, married daughters do not have right to share in ancestral property. The law provides that amongst the children born to brothers living together, the children are entitled to share of property from their respective father. But the law does not provide anything with regard to children of sisters living together. Similarly, under the Chapter on Partition of Property, the law does not include married daughter as coparcener of parental property. Moreover, consent of married daughter is not required to dispose of more than half of the immovable property of the family. Reading these provisions together, it seems that women’s entitlement over ancestral property, even after the Eleventh Amendment to the country code, is more illusory than real. Moreover, the second wife and her children also have a share in the family property thus affecting the right to property of the first wife. Similarly, married women can inherit share of property only under certain conditions from her husband’s property and daughter born after partition of her father who has mixed up his share of property with wife and son are denied as heir of parental property.

Discrimination in intestate property and in the line of succession: Even after the Eleventh Amendment to the Country Code, unmarried daughters are given lesser priority than son in getting intestate property. A recent judgment of the

A recent judgment of the Supreme Court has invalidated the provision that upon marriage, daughters have to return remaining share of intestate property to their maternal family.

17 No. 1 of Chapter on Partition, the Country Code, 1963.
18 No.16 of the Chapter on Partition, the Country Code, 1963
19 No.1(a) of the Chapter on Partition, the Country Code, 1963.
20 No. 3 of the Chapter on Partition, the Country Code, 1963.
21 No. 19(2), (3), (5) of the Chapter on Partition, the Country Code, 1963.
22 No. 19(1) of the Chapter on Partition, the Country Code, 1963.
23 No.4 of Chapter on Partition, the Country Code, 1963.
24 No. 10 of Chapter on Partition, the Country Code, 1963.
26 No.2 of the Chapter on Intestate Property, the Country Code, 1963.
Supreme Court has invalidated the provision that upon marriage, daughters have to return remaining share of such property to their maternal family and directed the government to review such discriminatory provision. Moreover, the provision relating to succession of intestate property is discriminatory against married daughters as they fall much behind in the line of succession.

The chapter on Intestate Property has regarded the nearest relative within seven generation of the male side as Hakwala (successor or rightful claimant). Such provisions do not accept existence of women and deprive them from getting a share of intestate property. Moreover, it is also discriminatory as even if the sisters of a deceased’s person are living together, they are not entitled to receiving property but the same property can go to seven generations on male side, that is uncle’s sons etc.

Discrimination and restriction in exercise of exclusive property: The law has provided that property such as daijo and pewa are women’s exclusive property. But after the death of a woman, such property goes to the person willed, if any. If no person is willed, such property belongs to the sons and daughters living together or living separate, but such property is entitled to married daughter only if there are no sons and other daughters or if there is no husband.

Discrimination in the succession of bonus: The provision of succession to bonus is discriminatory against daughters because if an employee of an enterprise has not nominated any successor to receive bonus after his death, in absence of a surviving spouse the bonus goes first to the sons if sons are eligible to receive such bonus, and only in the absence of the sons, it goes to unmarried daughters, thereby discriminating against the daughter. Moreover, married daughters fall behind in the line of succession.

Discrimination in Succession of Pension under Civil Service Rules: For filing the application to claim the pension of the deceased government employee who has died before filing of the claim form daughters are discriminated as the sons have the first claim to file such application. Unmarried daughters are eligible to file such application only after the sons and married daughters fall much behind in the line of succession.

Moreover, the Rules further provide that if no person is willed, “heir” means husband or wife, if any; thereafter the son, if any, thereafter, unmarried daughter if any, and thereafter the father or mother. This provision discriminates against unmarried daughters as they fall behind son in the line of succession and married daughter are not included in the definition of heir.

27 No.12 a of the Chapter on Intestate Property, the Country Code, 1963.
29 Nos. 2, 3, 6, 7, 9, 10 and 12 of the Chapter on Intestate Property.
30 No.1 of the Chapter on Intestate Property, the Country Code, 1963.
31 No. 5 of the Chapter on Women’s Exclusive Property reads “A woman may use her DAIJO or PEWA as she likes. After her death such properties is treated in accord with her written will if she has made any. If such a document does not exist, her property shall go to the son or daughter living with her if there is any, if such son or daughter are dead, it goes to the son or daughter living separately if there is any, if there is no such son or daughter, it goes to the husband, if there is no husband, it goes to an unmarried daughter if there is any, if even an unmarried daughter is not there, it goes to a married daughter, if there is no married daughter, it goes to a son’s son or unmarried daughter if any, in their absence it goes to other rightful claimants.”
32 Sec. 10 (2) of the Bonus Act 2030 (1974).
33 Rule 101(2) of the Civil Services Rule, 2050
Discrimination in the succession of pension under the Army Service Rules: The Army Service Rules defines “heir” as the person willed from amongst husband, wife, son, unmarried daughter or dependant father or mother, thereby discriminating against married daughter. Moreover, the Rules further provide that if no person is willed, “heir” means husband or wife, if any; thereafter the son, if any, thereafter, unmarried daughter if any, and thereafter the father or mother. This provision discriminates against unmarried daughters as they fall behind son in the line of succession and married daughter are not included in the definition of heir.

Discrimination against married daughter in receiving pension and other benefit: If an employee has not nominated a successor to the pension, his/her married daughter is discriminated against, as the recipient of such pension is the nearest Hakwala (rightful claimant). As there is no other definition of Hakwala in the Act, it follows the definition given in No. 1 of the Chapter of Instate Property of the Country Code, 1963 which is discriminatory against married daughters as they fall behind in the line of succession.

Discrimination against adopted daughters in receiving pension and other benefits: Adopted daughters are discriminated against in receiving pension facilities as they are not included in the line of succession to receive pension.

Discrimination against married daughters in receiving other benefits pension/ bonds: In the event of the death of the nominee to the benefits/pension/bonds, the provision of succession is discriminatory as unmarried daughters fall behind sons in the line of succession and married daughters fall much behind in the line of succession.

Wives of all male police personnel can receive pension upon the accidental death of their husbands, however, in case of women police personnel, HMG has powers to decide whether the husband of deceased women police personnel is eligible to receive such pension.

Discrimination against married sisters in receiving pension and other benefits: Married sisters are discriminated against in receiving pension facilities as they are not included in the line of succession to receive pension.

Discrimination in pension benefits to spouses: Wives of all male police personnel can receive pension upon the accidental death of their husbands, however, in case of women police personnel, HMG has powers to decide whether the husband of deceased women police personnel is eligible to receive such pension.

34 Rule 2(b) of the Royal Nepalese Army (Daily and Travel Allowances and Other Benefits) Rules, 2052.
35 Ibid.
36 Rules 99 (2) of the Nepal Health Services Rules, 2055 (1999).
37 Section 7C (3), (4) and (6) of the Act relating to the terms and conditions of the Judges of the Supreme Court, Rule 95(3) and (6) of the Nepal Health Service Rules, Rule 98(3) and (6) of Civil Services Rules, Rule 83(3) and (6) of the Parliament Secretariat Personnel Administration Rules, 2059 (2002); Rule 56(3) of the Tribhuvan University Teacher and Staff Services Rules, 2050; Section 32(3) (4) and (6) of the Act relating to Remuneration, Benefit and Other Terms and Conditions of Service of Judges of Appellate and District Courts, 2048 (1991)
38 Rule 11(3) of Postal Savings Bank Regulations, 2033; Rule 58(3) of Armed Police Rules, 2060; Rule 59(2) of Rules of Service of the Tribhuvan University Teachers and Staff, 2050; Section 7(3) of the National Debts Act, 2059 (2002); Section 23(2) of the Pension Fund Act, 2042 (1986)
39 Section 7(c)(6) of the Act relating to the Terms and Conditions of the Judges of the Supreme Court,2062; Rule 95(6) of the Nepal Health Service Rules,2055; Rule 98(6) of Civil Services Rules,2050; Rule 83(6) of Parliament Secretariat Personnel Administration Rules,2050
police personnel, HMG has powers to decide whether the husband of deceased women police personnel is eligible to receive such pension.\textsuperscript{40} Similarly, in case of the husband or children of deceased woman judge, no family allowance is provided and law only provides that HMG may take action on due and justifiable manner.\textsuperscript{41}

On the contrary, widows of teachers or staff of Tribhuvan University may receive pension benefits only after the recommendation of the Executive Council of the University.\textsuperscript{42} This provision is discriminatory because no such provision is made with regard to widower husband. Moreover, adopted daughters and married sisters are not included in the line of succession.\textsuperscript{43}

\textbf{Widow of government employees discriminated in case of allowances:} A widow of a government employee is not entitled to the family allowances and gratuity if she was not living together with her husband at the time of his death. Hence a widow, even if she has not taken her share of the husband's property, or is not divorced, is deprived of such allowances.\textsuperscript{44} Similarly, widow of the staff of Parliament Secretariat is recognized only if the employee is not separated at the time of death of the employee.\textsuperscript{45} This provision is discriminatory as women give the best years of their life to the family taking care of the house and children but their contribution is neglected simply because they are separated at the time of retirement.

\textbf{Women civil servants deprived of pension facility:} The Civil Service Act, 1992 allows women to enter into civil service up to the age of 40. However, the retirement age remains the same as men that is 58 years and the service period required for receiving pension is 20 years.\textsuperscript{46} Therefore, women entering into the civil service at the age of 40 are deprived of pension facilities.

\textbf{Discrimination in succession to insurance:} In the event of death of the insured person who has not nominated any nominee, the law discriminates against married daughters as they are excluded from the line of succession.\textsuperscript{47}

\textbf{Discrimination in succession to bank deposits:} In the event of death of a person having deposits in the bank who has not nominated the successor of such deposit, the line of successors under the banking laws discriminates against married daughters, as they fall behind in the line of succession.\textsuperscript{48}

\begin{itemize}
\item Rule 107(5) of Police Rules, 2049.
\item Rule 83(2) of the Civil Services Act, 1992.
\item Rule 83(2) of the Parliament Secretariat Personnel Administration Rules, 2059 (2002).
\item Rule 83(2) of the Parliament Secretariat Personnel Administration Rules, 2059 (2002).
\item Rule 95(2) of the Nepal Health Service Regulations, 2055.
\item Sec. 23(1) of Commercial Bank Act, 2031 (1974).
\end{itemize}
A new amendment on Land Act has provided the daughter-in-law and a daughter who is unmarried and has attained the age of 35 years the same right after the decision of the Supreme Court in Sapana Pradhan Malla for Pro Public vs. H.M.G. However, even the amended provision is discriminatory as the transfer of tenancy in case of unmarried daughters is conditional.

Discrimination in succession to provident fund: In the event of death of an employee, who has not nominated a successor to his/her provident fund or the person nominated is dead, the Provident Fund Act discriminates against married daughters as they fall behind in the line of succession.  

Conditional right to property to married women: The Eleventh Amendment to the Country Code has amended the condition of attaining 35 years of age or 15 years of marriage for wife to receive share from the husband’s property. However, the amended provision is still discriminatory and it is more restrictive than the earlier provision. According to the present provision, a married woman cannot claim her share in the husband’s property without his consent during his lifetime. Moreover, this provision read with No.4 of Chapter on Husband and Wife states that a married woman can claim share in husband’s property only if the husband or his parents fail to take care of the woman’s needs.

Consent of married daughters not required to dispose of more than half of the property: According to the present law, the head of the family can dispose of up to half of the undivided immovable property inherited from ancestors for family expenses. However to dispose of more than half of such property the consent of the wife, son or widowed daughter-in-law and unmarried daughters is required. This provision is discriminatory as it does not include the consent of married daughters.

Discrimination in transferring tenancy right: Previously, tenancy right was transferable only to wife, husband or sons trusted by the landlord. A new amendment on Land Act has provided the daughter-in-law and a daughter who is unmarried and has attained the age of 35 years the same right after the decision of the Supreme Court in Sapana Pradhan Malla for Pro Public vs. H.M.G. However, even the amended provision is discriminatory as the transfer of tenancy in case of unmarried daughters is conditional. Moreover, it is discriminatory against married daughters as the right to tenancy cannot be transferred to them.

Discrimination on transaction: The present law does not recognize the transaction carried out by wife without the consent of her husband in his property. Moreover, if a woman transfers her share of

50 No.10 of Chapter on Partition, the Country Code of Nepal, 1963 reads:- No son or daughter may compel parents to provide him/her the share of parental property so long as parents are living. No parents may forcefully separate any son or daughter who does not like to be separated. No wife may be allowed to live separate having received her share of property without consent of the husband so long as he is living. The husband or parents shall provide maintenance and make appropriate provision for education and medical treatment to the wife or sons and daughters as the case may be to the best of capacity and dignity. If not provided, share of property shall be given. With regard to matters provided for in No. 4 of the Chapter on Husband and Wife, it shall be as stated therein.
51 No. 19 (1) of Chapter on Partition, Country Code, 1963
52 Section 26 (1), Land Act, 1964.
54 Section 9 of Chapter on Financial Transaction in the Country Code, 1963
property, other than her stridhan (exclusive property) to any person and marries same person, the transaction is not recognized. Such provisions restrict women in the free use of their property.

These provisions relating to transaction of property are discriminatory; because such conditions/limitations do not apply for men.

### 4.1.3 Trafficking and Sexual Offences

The Constitution has, under Article 20(1), guaranteed the right against exploitation to all its citizens. As such, the Article explicitly prohibits “the traffic in human beings, slavery and servitude or forced labor in any form.” Any act contravening this provision is, therefore, punishable as an offence under the existing law. Trafficking of women and children is a serious problem in Nepal. Both substantive and procedural laws enacted to make this constitutional spirit into a living reality are not adequate and effective. The following legal problems show these limitations.

**Buyer exempted from the legal jurisdiction:** The Human Trafficking (Control) Act, 1986 has no provision of punishment against the culprit involved in the purchase of the women and girls for prostitution.

**Court approval required for investigation:** If a person makes complaint in the Police Station regarding the offence of trafficking, investigation may be started only after the Investigation officer obtains approval of the court for initiating investigation of the case. This provision is discriminatory as it has caused delay in initiating investigation and as a result, affecting women’s right to justice.

**Rape of a married women creates an end to her family relation:** The existing law relating to rape regards the victim’s own husband as her ex-husband upon the commission of the rape. This provision is discriminatory because instead of providing support to the victim, the law victimizes her for an act she is not responsible for. Though the 11th Amendment to Country Code now entitles the victim to a right in the family property of the husband, however, it still considers the husband as ex-husband reflecting the moralistic mindset of the legislature, which gives unwarranted importance to women’s physical chastity.

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55 No. 7 on the Chapter on Women’s Executive Property reads “If a woman has previously given someone as religious or ordinary gift or sold the property other than dowry or self earned property that she is entitled to, and if she marries the same person to whom she has given the property, the transaction shall not be lawful. Other successors having the right to hold that property can get it back.”

56 Section 8(5) Human Trafficking (Control) Act, 1986 provides pecuniary penalty to the person convicted of the crime of selling human beings.

57 Section 5(2) of the Human Trafficking (Control) Act, 1986

58 No. 10 of the Chapter on Rape reads “One half of the rapists property shall be confiscated and shall be given to the victim woman. The fee of ten percent shall not be charged in such case. Such woman shall also be entitled to her share in the her former husband’s property.”
Discrimination against widow to get married: The law relating to incest is based on religion and customs. It is impractical in various situations. According to the existing law, if a person marries a widow within the relation of brother-in-law, it constitutes an offence, but it is an accepted norm in society to marry sister-in-law. Thus, the law is discriminatory.

Sexual harassment under 11 years of age is exempted: There is no specific law that deals with sexual harassment of women. Recently, the Supreme Court has issued a directive order to make law on sexual harassment. However, Chapter on Intention to Sexual Intercourse has some provisions relating to sexual harassment. No. 1 of Chapter on Intention to Sexual Intercourse restricts to touch any part of women above 11 years of age with intention to intercourse. This provision exempts physical sexual harassment under 11 years of age.

4.1.4 Education

Girls are being deprived of foreign scholarship: The Passport Rules and procedure require the guardian or husband’s consent to acquire passport, which restricts women from going to a foreign country. In addition, a daughter must obtain permission from her parents if she wishes to pursue further studies in a foreign country.

Married daughters denied Scholarship allowances: Children of army personnel are entitled to education allowances. Sons are eligible to receive scholarship up to the age of 21 or until entry into civil services, whichever is earlier. However, in case of daughters they are eligible to receive scholarship up to the age of 21 or until marriage, whichever is earlier. This provision is discriminatory because it portrays the patriarchal mindset of the lawmakers, where sons can obtain the benefit until entry into civil service whereas, it is marriage in case of daughters.

4.1.5 Women and Employment

Sons are eligible to receive scholarship up to the age of 21 or until entry into civil services, whichever is earlier. However, in case of daughters they are eligible to receive scholarship up to the age of 21 or until marriage, whichever is earlier. This provision is discriminatory because it portrays the patriarchal mindset of the lawmakers, where sons can obtain the benefit until entry into civil service whereas, it is marriage in case of daughters.

Various laws discriminate against women in regard to employment. The following laws establish this fact.

Women denied the right to join the army: The present law denies women the right to join the army except in departments, sections and attached units of the Army. Recently, women have been recruited in the army as lawyers, doctors, and parachute folders and in civil i.e. non-combatant jobs. Recently, an amendment has been made to the Military

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59 No. 3 and 4 of the Chapter on Incest, the Country Code, 1963.
60 No. 10A of the Chapter on Incest, the Country Code of Nepal which reads: “Notwithstanding any thing contained in other numbers of this Chapter, nobody shall be punished according to the provisions of this chapter if any marriage or sexual intercourse is performed with any relative which is permitted according to traditions prevailing within one’s caste or clan.”
61 Sarmila Parajuli and others v. HMG (Writ No. 3434 of 2060).
62 No. 1 of Chapter of Intention to Sexual Intercourse, the Country Code, 1963.
63 Application form of the Scholarship Rules, 2029.
64 Rule 10 of the Royal Nepalese Army (Pension, Gratuity and Other Facilities), 2033.
65 Section 10 of the Army Act, 2016 (1959).
Police Rules, 2001 having made provision of appointing women as soldier in the Military Police. However, this provision is still discriminatory as this provision only consider unmarried and single women as eligible for recruitment. Therefore, employment in the army is discriminatory.

**Permission from guardian pre-requisite to foreign employment:** The Foreign Employment Act restricts women from seeking foreign employment through foreign employment agency except with the permission of their guardian and government of Nepal. This provision is discriminatory as women are not recognised as majors even after attaining majority and are still considered as minors who are not capable of taking wise decisions. In this context, FWLD filed a case arguing that women should enjoy the same employment opportunities as men. However, the Supreme Court has, instead of declaring the provision *ultra vires*, validated it on the basis of the constitutional provision, which allows making special laws for the advancement and protection of women. Such decisions portray the patriarchal mindset of the judiciary.

4.1.6 Health Including Reproductive Health

Though the Eleventh Amendment to the Country Code liberalizes abortion under certain conditions, it is dealt with under the chapter of Homicide. This shows the patriarchal mindset of the lawmakers who still consider abortion as a form of homicide but not as a medical condition that women have to undertake as a last resort.

Women have the right to the highest attainable standard of physical, mental and reproductive health and decide freely on matters related to their sexuality. However, the health situation of Nepalese women is very poor. The law does not totally secure their right to health including reproductive health.

**Abortion permitted in limited circumstances:** The Eleventh Amendment to the Country Code, has liberalized the law relating to abortion. Abortion is permitted in limited circumstances with the consent of the concerned pregnant women.

1. To carry out abortion in the first trimester (12 weeks)
2. In case the pregnancy results from rape or incest, it is permissible up to 18 weeks.

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67 Section 12 of the Foreign Employment Act 2042 (1985) states that notwithstanding any thing contained in this Act, no women and Children shall be provided foreign employment by any license holders. Provided that women can be employed with the pre approval of HMG, Nepal and of their Guardian.
69 No. 28 B of the chapter on Homicide, the Country Code, 1963
(iii) If the life of the woman is at risk or affects her physical or mental health or if the fetus is deformed, abortion is permissible. At any time during the pregnancy, with the recommendation of an authorized medical practitioner, moreover, medical abortion is not recognized limiting women’s access to safe and affordable abortion services. Furthermore, economic reason, HIV and AIDS, Trafficking are also not recognized as ground for abortion.

**Higher punishment for woman understanding abortion than others:** According to the present law relating to abortion, if someone causes abortion as a result of an act of anger or malice of another person, the punishment is up to six months or fine of up to Rs. 1000 depending on the period of pregnancy and knowledge of the perpetrator that the woman is pregnant. However, if a woman undertakes abortion in other circumstances, she is punishable to imprisonment of up to 5 years depending on the period of pregnancy. This provision is discriminatory as a woman who undertakes abortion on her own is punished much higher than any one else committing the same act.

**Discriminatory maternity leave:** Maternity leave is a basic facility to be provided to employees during the time of pre and post delivery. It is one of the reproductive health rights of a woman as well. However, in Nepal, some laws providing for terms and conditions of service of employees are silent on the matter of maternity leave.

According to the present law relating to abortion, if someone causes abortion as a result of an act of anger or malice of another person, the punishment is up to six months or fine of up to Rs. 1000 depending on the period of pregnancy and knowledge of the perpetrator that the woman is pregnant. However, if a woman undertakes abortion in other circumstances, she is punishable to imprisonment of up to 5 years depending on the period of pregnancy.

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70 Nos. 28A and 32 of the Chapter on Homicide, the Country Code, 1963
71 No. 28 of the Chapter on Homicide, the Country Code, 1963
72 Section 8 of the Act Relating to Remuneration, Terms and Condition of the Judges of the Supreme Court, 2026 (1969); Section 14 of the Act Relating to Remuneration, Terms and Condition of the Attorney General, 2052 (1995); Section 15 of the Act Relating to Remuneration, Terms and Condition of the Office Holders of Constitutional Bodies, 2053 (1996); Rule 10 of the Rules relating to Additional Post Offices, 2034 (1977); Section 106 of the Act Relating to Job, Duty, Right and Terms of Service of Chief of Staff Army, 2026 (1969); Rule 7B of the Army Leave Rules, 2019 (1962).
73 Rule 65 of the Rules Relating to Staff of the Office of Auditor’s General, 2050 (1994); Section 21 of the Act Relating to Remuneration, Benefits, and Terms and Condition of the Judges of the Appellate and District Court, 2048 (1991); Rule 106 of the Education Regulation, 2059 (2002); Rule 59 of the Civil Service Rules, 2050 (1993); Rule 105 of the Armed Police Rules, 2060 (2003); Rule 34 of the Labour Regulation, 2050 (1993); Rule 35 of the Labour Regulation Relating to Tea Estate, 2050 (1993); Section 17 of the Act Relating to Remuneration and Term and Benefit of Service of General Secretary of Parliament, Secretary of House of Representatives, and Secretary of National Assembly, 2055 (1998); Rule 51 of the Nepal Health Service Regulation, 2055 (1998); Rule 244 of the Local Self Government Regulation, 2056 (1999); Rule 16 of the Regulation Relating to Working Journalist, 2053 (1996).
74 Rule 35 of the Labour Rules relating to Tea Estates, 1993 provides for maternity leave of 45 days and Rule 34 of the Labour Rule provides for maternity leave of 52 days.
4.1.7 Marriage and Family Rights

Marriage and family rights are important and inalienable rights of women. State parties are obliged to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations. They are obliged, in particular, to ensure that men and women have identical rights to enter into marriage. Further, state parties pledge to ensure the same rights and responsibilities for men and women in marriage and divorce. Moreover, men and women must be given the same responsibilities with regard to their children, irrespective of their marital status. In Nepal, there are various laws relating to marriage and family rights that are not only inconsistent to CEDAW Convention but are also inconsistent to Article 11 of the Constitution of the Kingdom of Nepal, 1990.

**Married daughters not included in the definition of family:** In many laws, the definition of family does not include married daughter. This is discriminatory as it reinforce the traditional notion that daughters house is husband’s house.

**Discrimination in Definition:** The Interpretation of the Statutes Act defines “father” including the father of adopted son but it excludes the father of adopted daughter. Similarly, this Act defines “son” including adopted son, but it does not define daughter.

**Discrimination in child custody:** The Country Code, under the Chapter on Paupers, deprives mothers of the right to maintain their children even in cases where she remarries after the death of her husband or if husband disappears and if the husband’s relatives are living. This legal provision is discriminatory as this applies only to women. Similarly, according to the existing law on child custody, as a general rule

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75 Art 16 (1) of CEDAW.
76 Art 16 (1) (a) of CEDAW
77 Art 16 (1) (c) of CEDAW
78 Art 16(1) (d) of CEDAW
79 Section 2(h) of the Working Journalists Act, 2051 (1994); Section 2(c) of the Land Act, 2021; Section 2(e) of the Health Service Act, 2053 (1996); Section 2(d) of the Civil Service Act, 2049 (1992); Section 2(d) of the Act relating to the Remuneration, Terms and Conditions of the Judges of the Appellate Court and District Court, 2048, Section 2(e) of the Bonded (Kamaiya) Labour (Prohibition) Act, 2058 (2001); Rule 2(e) of the Arms and Ammunition Rules, 2028 (1971); Rule 2(d) of the Rastriya Samachar Samiti Rules, 2041; Rule 2(f) of Armed Police Rules, 2060 (2003); Rule 2(b) of the Passport Rules, 2059 (2002); Rule 2(d) of the Police Rules, 2049 (1991); Rule 2(f) of the Rules to Provide Compensation to Non-governmental Persons, 2024 (1967); Rule 2(b) of the Royal Nepalese Army (Daily and Travel Allowances) Rules, 2033; Rule 2(f) of the Rules Relating to the Staff of the Office of the Auditor General, 2050 (1993); Explanation to Rule 55 of the Rules Relating to Terms and Condition of Service of Teachers and Staff of Tribhuvan University
80 Section 2(f) of the Interpretation of the Statutes Act, 2010 (1953)
81 Section 2(y), Ibid
82 No. 3 of the Chapter on Paupers reads “If a mother of a minor child takes another husband after the death or disappearance of desertion of one’s country without any information, such minor shall be maintained in the following manner:
(1) The mother shall maintain the minor, if he has no estate or co-heirs of age living together,
(2) The mother may maintain the minor till he is eight years even though the minor has estate and co-heirs living together, and the mother can bring up such child living in the house of the child, if the co-heirs of the minor are not living,
(3) The minor may maintain the minor of more than eight years but less than sixteen years of age, if the co-heirs living together brought them up or if they do not accept to bring up such child,
(4) The mother can take the responsibility of the estate of such child if there were no co-heirs living together or if the co-heirs were not of age, or if they did not accept to bring up the minor.
women are denied the right to custody of a child above the age of five years unless otherwise agreed by the husband and wife. This provision is discriminatory because such clause is not applicable to men who re-marry.

**Bigamy encouraged by the law:** According to the existing law, a man can remarry without divorcing his first wife in the following circumstances:

- If the first wife becomes infected by incurable sexually transmitted disease,
- If she becomes incurably insane
- If she becomes crippled, and cannot walk or blind with both eyes, or
- If a medical board recognized by HMG certifies that the woman is infertile
- If the wife is living separately after taking her share of the husband’s property.

This law is discriminatory precisely because when wife needs love, affection and care most, the law allows the husband to remarry. Similarly, the Police Rules permits a policeman to marry again, without divorcing the first wife in above-mentioned conditions.

**Discrimination in period of limitation:** The limitation provided by law to file a suit in a case of polyandry is one year. It is only three months, however, in cases of bigamy. These provisions read together are discriminatory as the limitation period in case of similar offence is different.

**Discrimination in age of marriage under Marriage Registration Act:** With the Eleventh Amendment to the Country Code, the age to enter marriage for both boys and girls has been made uniform, i.e., 20 years without the consent of parents/guardians and 18 with the consent of parents/guardians. However, the Marriage Registration Act has not been amended accordingly and the age for marriage for boys is 22 years and for girls it is 18 years.

**Application forms for court marriage and marriage registration record:** The law requires the names of grandfather and father in the forms of court marriage and marriage registration certificate. This is discriminatory as the mother’s existence as the guardian of the child is not recognized.

**Discrimination in providing death, marriage and divorce information:** In the forms to inform the concerned authorities on death, marriage and divorce, identity is given only through father and grandfather denying existence of mother and grandmother. This also includes Birth Registration Record Book and Death

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83 No. 3(2) of the Chapter on Husband and Wife, the Country Code, 1963.
84 No. 9 of the Chapter on Marriage, the Country Code, 1963.
85 Rule 83(1) of the Police Rules, 2049 (1992).
86 No. 6 of the Chapter on Adultery, the Country Code reads "No complaint shall be entertained in matters provided for in this chapter unless filed within one year from the date after the matter comes to light.
87 No. 11 of Chapter on Marriage, the Country Code, 1963.
88 Section 4(3) of the Marriage Registration Act, 2028.
89 Schedule 1, 2, 4 of Marriage Registration Regulation 2028 (1972).
90 Schedule 2, 3, 4, 5 of Birth, Death and other Personal Events Registration Regulations 2034 (1976).
Registration Book, Marriage Registration Record Book and Divorce Registration Record Book.  

**Discrimination in title of Chapter on adoption:** The title “Adoption of Son” in part III, Chapter 15 of the Country Code is itself discriminatory.

**Woman is restricted to adopt a child:** The law on adoption stipulates additional condition for adopting a child, on married women. According to law, men cannot adopt a child if they have children, however, women cannot adopt if their husband is alive or if they have children of their own or their husband’s co-wives. Though the Eleventh Amendment to the Country Code has allowed women living separately to adopt a child if they have no children, it has not amended the discriminatory provision that a man may adopt a child even if his wife is alive.

**Non-recognition of daughter as a family member:** Definitions of family under different laws include only unmarried daughters above 35 years of age and married daughters and adopted daughters are excluded. In one law, even unmarried daughters are not included as members of the family after the death of parents.

**No provision for registration of deed of adopted daughter:** Law relating to registration of deeds provide that deed of adoption of a son must be registered at the Registration Office. However, there is no such provision with regard to registration of adopted daughter. The law is discriminatory as it does not require the registration of adopted daughters thereby affecting their right to property.

**Discrimination in succession to throne:** His Majesty is defined as the His Majesty King and descendent of the King Prithivi Narayan Shah only, hence it denies a Queen to be the head of the state and recognizes only male descendents. Moreover, according the present law, only boys can be adopted for succession to the throne. Succession to the throne is in line of the male member only and denies the succession of throne to the eldest daughter. Moreover, even

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91 Ibid., Schedule 7, 8, 9, 10  
92 No.2 of the Chapter on Adoption of Son, the Country Code, 1963.  
93 No. 2A. of the Chapter on Adoption of son, the Country Code, 1963.  
94 Section 2(j) of the Working Journalists Act, 2051; Section 2(c) of the Land Act, 2021; Section 2(h) of the Nepal Health Service Act, 2053; Section 2(d) of the Civil Services Act, 2049; Section 7(c)(4) of the Act relating to the Remuneration, Terms and Conditions of the Judges of the Appellate Court and District Court, 2048, Section 2(f), 2(y) of the Nepal Interpretation of Statute Act, 2010; Section 2(h) of the Bonded Labour (Abolition) Act, 2058; Rule 2(d) of the Rashtriya Samachar Samiti Regulations, 2041; Rule 2(h) of the Arms and Ammunitions Regulation, 2028; Rule 2(f) of the Armed Police Rules, 2060; Rules 2(d) and 83(1) of the Police Rules, 2049; Rule 2(b) of the Passport Rules, 2059; Rule 2(f) of the Rules relating to Payment of Compensation to Non-governmental persons, Rule 2(b) of the Royal Nepalese Army (Daily and Travel Allowances) Rules, 2033; Rule 2(b) and 7(6) of the Royal Nepalese Army Pension, Benefits and Other Facilities Rules, 2033, Rule 2(f) of Rules relating to Staff of the Office of Auditor General, 2050; Rule 55 of Rules relating to Teachers and Staff of Tribhuvan University and Sections 11(1), 11(2) and 11(4) of the Succession to Throne Act, 2044.  
95 Section 2(C) of the Raptidun Development Area Land (Sales and Distribution Act 2024 (1967) defines family as the son above 16 years whether living together or separately, and the unmarried daughter above 35 years of age, till the parents are living.)  
96 No. 1 of the Chapter on Registration, the Country Code, 1963.  
98 Section 6(1)(2)(3)(4) of the Succession to the Throne Act, 2044  
99 Sec 5 and 11(1) of the Succession to the Throne Act 2044 (1987).
Women's names are not mentioned in any legal proceeding document: Any petition, reply, or appeal submitted in the court must mention the names of fathers or husbands of the persons who register such deeds.

Similarly, women married to male Royal family members may be conferred Royal titles but there is no similar provision in case of women married to Royal family members.

Discrimination in enforcing obsequies rites: Law require that only the obsequies rites for death of father, mother, elder and younger brothers must be performed and it does not require to perform obsequies rites for death of elder and younger sisters.

4.1.8 Legal Procedure and Court Proceedings

Right to resort to judicial recourse is the fundamental and inalienable right of every citizen. The Constitution of the Kingdom of Nepal has aimed to establish an independent and competent system of justice with a view to transforming the concept of the rule of law into living reality. The whole philosophy of rule of law is based on justice, and can only be established when laws and procedures are favorable. However, even today laws relating to court procedures discriminate against women.

Women's names are not mentioned in any legal proceeding document: Any petition, reply, or appeal submitted in the court must mention the names of fathers or husbands of the persons who register such deeds. Similarly any summons, subpoena, notice issued by the court only require the names of fathers or husbands of the persons to whom such order is issued. These provisions are discriminatory, as women's separate identity is not recognized.

Women's name not mentioned in registration of transaction: According to the prevailing law relating to registration, names of father and grandfather are required to be mentioned for the registration of transaction whereas mother's name is not required thereby discriminating against women by denying their identity.

Women are not considered capable to receive the summons: According to the present law women can receive notice, summons or subpoena issued by the court only in absence of the male member of the family. This is discriminatory as the law fails to treat both men and women equally.

100 Section 3(1) of Monarch Petty Ruler Act, 2017.
101 Section 2(5), 11(2) and 11(4) of the Succession to the Throne Act, 2044 (1987)
102 No. 9 of the Chapter on Miscellaneous, the Country Code, 1963.
103 Preamble to the Constitution of the Kingdom of Nepal, 1990.
104 No. 107 of the Chapter on Court Proceedings states that any petition, response, appeals filed in court should be mentioned the name of the father or the husband. Similarly, any summons, subpoena, notice issued by the court should also be mentioned the name of he father or husband of the person to whom such order is issued, Rules 14, 19, 41 of District Court Regulations, 2052, Rule 6 of Labour Court Regulations, 2052, Rule 16 of Appellate Court Regulations, 2055.
105 No. 31 of the Chapter on Registration, the Country Code, 1963
106 No. 110 of the Chapter on Court Proceedings does not mention that no women are allowed to receive any notice. Women are only allowed to receive summon or subpoena issued by a court in the name of another person if male member of the family are not available to receive such order.
Recognition through father/husband only: The model prescribed by law for interrogation of witness states that name of the father/husband should be asked. Moreover, only the name of father and husband is mentioned in the formats prescribed for statement of claims (Phiradpatra) and statement of defence (Pratituttarpatra). Similarly, the Registrar of an Appellate Court is required to maintain a record of clients and regular users of the court stating their personal detail including the name of the father. This provision is discriminatory as a person's identity is recognized only through the name of father. Moreover, documents relating to proceedings of labour courts require mention of name of father as identity of parties and persons involving in the case.

Only groom’s side allowed to accept dowry: During marriage, the bride’s side is prohibited to accept any cash or kind but groom’s side is not prohibited for the same. Rather the groom’s side is prohibited only to make a specific demand of cash or kind from the bride side.

Discrimination in Penal Provision: During marriage if bride’s side accept any cash or kind from groom’s side such items are confiscated with a fine from of Rs. 12,000- 25,000 or up to one-year imprisonment or both whereas, if the groom’s side accepts cash or kind from the bride’s family the punishment is either fine up to Rs. 10,000 or imprisonment for up to 15 days. The provision is discriminatory as the principle of law requires equal punishment for the persons involved in similar offence. However, the punishment prescribed for the bride’s family is higher than that prescribed for the groom’s family.

Discrimination in naming a child: The father has the first priority to name a child according to one’s own religion, custom or practice and the mother has the right to naming a child only if there is no father.

Discrimination in dress: The Revenue Tribunal Rules 2030 specify the dress for male employees only. This provision is discriminatory as law reaffirms the assumption that there can be no female members in the Tribunal.

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107 Nos 76 and 128 of the Chapter on Court Proceedings, the Country Code, 1963
108 Rule 107 of the Appellate Court Rules, 2048 (1991)
109 No. 152 of the Chapter on Court Proceedings provide that while taking statement of the witness, firstly name of their father should be asked. Similarly in the model questions prescribed in number 161 of the same chapter, the name of the father of the party or witness of the case should be asked while taking the statement.
110 Rules 6 and 26 of the Labour Court (Procedures) Rules, 2052.
111 Sec. 4(1) and (2) of the Social Practices (Reform) Act, 2033 (1976)
112 Sec. 4 (3) and (4) of Social Practices (Reform) Act, 2033 (1976).
113 Section 3(1) of the Children’s Act, 2048 (1991)
Recognition through name of father and grandfather: Other area where discrimination may easily be noted is looking at various forms used by the government for official purpose. In most of these forms, only the name of a person’s father or grandfather is required, undermining the value of woman in Nepalese society. For instance: Application forms to register one’s name in the voter’s list and to receive voters identity card mention only father’s and grandfather’s name.

Discrimination in providing clothing allowance in overseas travel: In case the male ministers or civil servants obtain approval to take their wives abroad, the present law provides clothing allowance for travel overseas, once in three years, to the wives. This provision is discriminatory as no such allowance is provided to husbands of women ministers or civil servants, thereby portraying the stereotypical mindset of the lawmakers that women cannot take up such positions of importance.


117 Section 9(2) of the Act relating to the Remuneration and Facilities of Ministers, 2049; Section 10(2) of the Act relating to the Remuneration and Facilities of Attorney General, 2052; Section 5(c)(2) of Act relating to the Remuneration and Facilities of the Judges of the Supreme Court, 2026; Section 11(2) of Act relating to the Remuneration and Facilities of Officials of Constitutional Bodies, 2053; Section 15(2) of Act relating to the Remuneration and Facilities of General Secretary and Secretary of House of Representatives and Secretary of National Assembly, 2055; Rule 9(2) of the Regulations relating to the Remuneration and Facilities of the Chairperson and Members of Permanent Committee of the Raj Parishad, 2052.
4.1.10 Use of Language

In addition to the aforementioned discrimination provisions, there are so many words and phrases, the use of which itself indicates the discriminatory attitude against women. First of all, the Constitution uses the male-oriented word brotherhood (ब्रत्रित्व) 118; senior priest (बदा गरुजी) 119; Chief of Army Staff (प्रद्धाम सेनपति) 120; Supreme Commander (प्रारंभ सेनधिपति) 121, 122; chairman (साहबपति) 123; Mister (सिरिमण) and so on. The Country Code was the male dominated words such as जेठा बुद्धा (senior person) 124 and धर्मपत्रा का महबल (Chapter on Adoption of Son) 125. The code uses the word पिलोला (elope) to woman getting remarried, which is offending to women. The Social Practices Reform Act, 2033 uses the word कन्यादान (giving away of girl) to denote marriage ceremony. The Defamation and Libel Act, 2016 itself uses the derogating term ‘अाऀमाइ’ to denote a woman. Various laws 126 use the male dominated words such as कुलपति (chancellor), सबकुलपति.

118 Preamble to the Constitution of the Kingdom of Nepal, 1990
119 Article 34(h) and 34(i) of the Constitution of the Kingdom of Nepal, 2047 (1990).
120 Ibid, see also Section 2(b), 3(1), 3(2), 4(1), 4(2), 5(1), 6, 7, 7A., 8(1), 8(2), 9(1), 9(2), 10(1), 10(2), 10(3), 10(4), 10(5), 10(6) and 11 of Act Relating to Functions, Duties and Powers and Terms of Service of Chief of Army Staff, 2026 (1969); Section 15(1), 73, 74, 85, 96(1), 98, 101, 129(1) of Army Act, 2016 (1959); Section 11, 26(1) of Army Leave Act, 2019 (1962); Rule 2(b), 3(1), 4B(1) of Rules Relating to Army Police, 2058 (2001); Rule 9(1) of Retired Army Appointment (Special Provision) Rules, 2059 (2002); Rule 3(b), 3(d), 4(d), 4(g), 4(k), 4(o) and Annex D of Royal Seal (Procedure) Regulation, 2954 (1997); Rule 3(b) of Royal Nepali Army Aircraft Maintenance Group Rule, 2042 (1986); Rule 2(1), 2(2), 2(3), 2(4), 3, 4, 5, 6, 7 of Military delegation of Authority Rules, 2015; Rule 3, 4(1) of Army Legal Department (Recruitment, Promotion and terms of Service) Rules, 2019 (1962); Rule 5(2) of Army Nurse Rules, 2049; Rule 2.1.1, 2.1.2, 6.1 of Army Parachute Folder Women Rules, 2046; Rule 5, 6(1), 7 of Army Entertainment Grant (Release) Rules, 2021.
122 Articles 52, 93(1), 94(2), 101(4) of The Constitution of the Kingdom of Nepal, 2047 (1990); Section 2(m), 2(n), 11, 18, 86, 179(1), 179(2), 180(1), 180(2), 183, 86(2), 86(3), 87(2), 191(1), 191(2), 191(3), 192(1), 192(2), 194, 194(2), 210(1), 222(2) and 241(1) of Local Self Governance Act, 2035 (1998); Section 7(1) and 10(1) of Local Development Training Academy Act, 2049 (1993); Section 2(d), 2(g), 9(4), 11(1), 15 and 67(1) of Local Bodies (Election Procedure) Act, 2048 (1992); Section 2(1), 2(2), 21(1), 21(2) of Act Relating to Remuneration and Terms and Benefits of Service of Office holders and Members of Parliament, 2052 (1996); Section 2(a), 6(2), 8(1), 8(2), 8(4) and 8(5) of Act Relating to Parliament Secretariat, 2058 (2001); Section 2(b), 3 of Consumer Protection Act, 2054 (1998); Section 6(1) of Press Council Act, 2048 (1992); Section 8(2) of Bonded Labour (Abolition) Act, 2058 (2001); Section 4A.2 of Higher Secondary Education Act, 2046 (1989); Section 13(1) of Kathmandu Valley Development Agency Act, 2048 (1992); Rules 153, 169, 174, 194, 195, 196, Annex 22 of Local Self-Governance Rules, 2056 (1999); Rules 40(1), 41(1), 42, 130 of Local Bodies (Financial Administration) Rules, 2056 (1999); Rule 5(2) of Kharka Land Nationalization Regulation, 2033 (1976); Rule 23(1) of Drinking Water Regulation, 2055 (1998); Rule 4(1) of Rules Relating to Payment of Compensation to Non-governmental Persons, 2024 (1967); Rule 20(1) of Land Measurement and Verification Rules, 2058 (2001), Rules 2(l), 28(3), 126(2), 163(3), 163(4), 164, 165(2), 170(2), 172(1), 181(9), 183(2), 185(1), 186(1), 191(1), 191(2), 191(4), 191(5), 191(6), 191(7), 191(9), 191(10), 191(11), 191(12), 192(2), 192(4), 198(4), 201(1), 201(2), 201(3), 201(4), 202(2), 202(3), 203, 204, 205(1), 205(3), 207, 208(2), 209(1), 209(2), 209(5), 209(6), 209(7), 210(1), 210(2), 211, 216, 218(1) of House of Representatives Rules, 2054 (1996); Rules 3(1), 4(1), 4(2) and 4(3) of Nepali Citizenship Rules, 2049 (1993); Rules 21(1(c), 4(2), 7, 8, 9, 10(1), 10(3) of King’s Council (Work Management) Regulation, 2050 (1994); Rules 1(1), 2(c), 3(1), 3(2), 3(3), 4(1), 4(2), 4(3), 4(4), 4(5), 5(1), 6(1), 6(4), 6(6), 7(1), 8(1), 8(2), 8(3), 9(1), 9(2), 10(1), 11(1), 11(2), 11(3), 12(1) 12(2), 12(3), 12(4), 13(1), 13(2), 14(1) and 14(2) of Rules Relating to Remuneration and Terms of Service of Chief of Army Staff and Members of King’s Council, 2052 (1996); Rules 2(d), 3(1), 3(2), 3(3), 4, 6(1), 11, 12, 13(1), 13(2), 16(2), 18(1), 18(2) and 19 of King’s Council Standing Committee (Work Management) Regulation, 2048 (1992); Rules 5(1), 5(2), 9 of King’s Council Rules, 192 (1962); Rules 53(1), 54(1), 61 of Education Rules, 2059 (2002); Rules 5(a), 5(b), 5(c), 5(d) of Rules Relating to Sahebju and Chautaria, 2042 (1986) and Rules 28, 32(1) of Joint Meeting and Joint Committee of Parliament (Operation of Work) Rules, 2045.
123 Schedule 2 of the Constitution of the Kingdom of Nepal.
124 No. 25 of the Chapter on Homicide, the Country Code.
125 Title of the Chapter on Adoption, the Country Code.
126 No. 3 of the Chapter on Pauper, the Country Code.
127 Sections 2(a) and 21 of the Social Practices Reform Act, 2033.
128 Section 8 of the Act.
129 Various sections of the Royal Nepal Academy Act, 2050 (1994); the Royal Nepal Academy of Science and Technology Act, 2048 (1992); the Purbanchal University Act, 2050 (1994); the Pokhara University Act, 2050 (1997) and the Kathmandu University Act, 2048 (1992); See also Section 7(1) of the Nepal Administrative Staff College Act, 2039 (1983); Section 4A.2 of the Higher Secondary Education Act, 2046 (1989) and Section 7(1) of the Tribal and Indigenous People Upliftment Academy Act, 2058 (2001).
(joint chancellor) and upakulpati (vice-chancellor). Laws relating to armed forces use the words like Pradhan Senapati (chief of Army Staff), Pati (commander) and Babini Pati (Brigadier General) which are male oriented. The Prison Rules, 2020 uses the term bhai naike to denote a prison supervisor in prisons.

The above mentioned laws illustrate that in spite of many national and international commitments to eliminate discriminatory laws and to create a society free of any gender-based discrimination, existing laws directly discriminate against women. Most of the discriminatory laws are based on the protectionist approach in which women are construed as weak and subordinate, and thus in need of protection. The state's understanding of women's differences is asserted as a justification for different treatment not realizing the impact of such “formal model” of equality on women.

130 Section 2(n), 19(1), 62(1), 69, 148 of Army Act, 2016 (1959); Section 2(d) of Rastriya Sewa Dal Act, 2027 (1970); Rules 2(b), 3(1), 4B.(1) of Rule Relating to Military Police, 2058 (2001); Rule 3(1), 4(2), 9 of Royal Nepal Army Disposal and Write Off of Outdated and Useless Restricted Materials Rules, 2026 (1969); Rules 2.1.1, 2.1.2, 6.1 of Army Parachute Folder Women Rules, 2046
Law is an instrument of social change—sometimes it leads to social change and sometime it responds to social change. However, when discrimination on the basis of sex is reflected in the law or policies themselves, it is an impediment in the process of development. Discriminatory laws affect not only the physical and mental health of women but impair their overall development. In this chapter, a preliminary attempt has been made to show the impact of discriminatory provisions, which affects the country’s development. The findings of the study are based on the respondents’ recollection and experience of the discriminatory laws and their impact in their life. It is also based on the views expressed by key informants interviewed for the study, including the policy makers, academicians, and experts.

5.1 Impact of Discriminatory Nationality (Citizenship) Laws

Citizenship right is a basic right, contingent upon which are several other rights. Citizens have the right to participate directly or indirectly in the government through various rights such as right to vote, right to hold public office and right to petition the government for redressal. Therefore, citizenship right is the basic right for it is nothing less than the right to have rights. Chief Justice Warren has rightly said, “Remove this priceless possession and there remains a stateless person, disgraced and degraded in the eyes of his countrymen”.

More than 75% of the key informants interviewed mentioned three main impacts of discriminatory laws: creation of second-class citizens, statelessness and depression and inferiority complex (figure 5.1). About 50% to 75% of the key informants interviewed mentioned restriction on mobility due to difficulty in acquiring passport, deprivation from employment opportunities, and difficulties in transferring property, separation from family and residence and problems to choose residence, as impacts of such laws. The respondents from the sample districts agreed that the discriminatory legal provisions related

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1 For details see Chapter 4.
3 Ibid.
to citizenship affect women in eight ways (Table 12 in Annex 4).

**a. Women are Treated as Second Class Citizen**

A foreigner getting married to a Nepalese woman or a child born to her is not entitled to acquire Nepalese citizenship as a result of the discriminatory nationality laws, thereby being treated as second-class citizens in their own country. The discriminatory nationality laws fail to recognize independent identity of the women and make them dependent on their parents or spouses for their most personal choices. Such discriminatory laws not only go against the fundamental right to equality guaranteed by the Constitution of the Kingdom of Nepal, but also conflict with the equal right to nationality provided under international instruments to which Nepal is a party specifically Article 9 of the CEDAW. Among the key informants interviewed 87.66% agreed that women are treated as second-class citizens due to the existing discriminatory legal provisions related to citizenship (Table 3 in Annex 4).

Among the sample respondents, surprisingly only 5.34% respondents mentioned that they themselves are affected while 56% respondents said that other women are affected, and 21.33% respondents said that both (they themselves and other women) are affected by such discriminatory legal provisions related to citizenship. (Figure 5.1.1)

**Figure 5.1.1 Second Class Citizens (percentage distribution)**

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Self</td>
<td>21.33%</td>
</tr>
<tr>
<td>Other women</td>
<td>17.33%</td>
</tr>
<tr>
<td>Both</td>
<td>5.34%</td>
</tr>
<tr>
<td>Don't Know</td>
<td>56%</td>
</tr>
</tbody>
</table>

The discriminatory nationality laws fail to recognize independent identity of the women and make them dependent on their parents or spouses for their most personal choices. Such discriminatory laws not only go against the fundamental right to equality guaranteed by the Constitution of the Kingdom of Nepal, but also conflict with the equal right to nationality provided under international instruments to which Nepal is a party specifically Article 9 of the CEDAW.

**b. Statelessness of Children**

Statelessness of children is another impact of discriminatory citizenship laws mentioned by the respondents. According to the Nepalese law, children acquire citizenship through father but they cannot acquire citizenship through the mother. Therefore, in cases the father is a foreigner, the child is at a risk of being stateless person. This has also affected the children of sex workers and Badi women who are unable to confer citizenship to their children. Even registration of the birth of the child requires name of the father and as a result children of these women are unable to pursue their education as birth certificate is a pre-requisite to the admission to schools.

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4 Section 4(1)(a) of the Birth, Death and Personal Incidents (Registration) Act of 1976
As C. Lisa Stratton rightly has said, “If the children of any national who marries a foreigner will have only the citizenship of their father, the children of such woman married to a refugee or stateless person will have no nationality”.

Among the key informants interviewed, 76.55% agreed that statelessness of the children is a result of the existing discriminatory legal provisions related to citizenship (Table 3 in Annex 4).

Among the sample respondents, only 1.33% respondents said that they themselves are affected, 45.34% respondents said that other women are affected, and 1.33% respondents said that both (they themselves and other women) are affected by such discriminatory legal provisions related to citizenship. (Figure 5.1.2).

c. Difficulties in Transferring Property

As a result of discriminatory nationality laws, women face difficulties in transferring their property to husbands of foreign origin, as according to the existing legal provisions, property cannot be transferred to a foreigner. Furthermore, women cannot transfer their property to children born out of such wedlock.

Among the key informants interviewed, 60.50% of them agreed that women face difficulties in transferring property due to the existing discriminatory legal provisions related to citizenship (Table 3 in Annex 4).

Among the sample respondents, only 8% said that they themselves are affected by such laws and 44% said such discriminatory legal provisions related to citizenship affect other women. About half of the respondents, were unaware such impact of discrimination. (Figure 5.1.3)

d. Deprivation from the Right to Choose Residence

Discriminatory nationality laws affect women’s right to choose residence. According to the present nationality laws, a women of foreign origin may acquire Nepalese citizenship by virtue of getting married to a Nepalese citizen however, a foreigner getting married to a Nepalese woman is not entitled to Nepalese citizenship by virtue of the marriage. The husbands have limited rights and have to pay visa fee. In addition, even children of the couple are not eligible to receive citizenship. In the long run the husbands prefer to or are forced out of circumstances to return back to the country of their origin. As a result women have to choose between marriage and residence.

Among the key informants interviewed, 50.62% agreed that women are deprived of the right to choose residence due to the existing discriminatory legal provisions related to citizenship (Table 3 in Annex 4).

Among the sample respondents, 5.33% said that they themselves are affected, 33.33% respondents said that other women are affected and 2.67% respondents said that both they themselves and other women are affected by such discriminatory legal provisions related to citizenship. More than half of the respondents, were unaware of such impact of discrimination. (Figure 5.1.4)

### Deprivation from Employment Opportunities

A foreigner husband of a Nepalese woman faces problems with regard to job opportunities as for most positions Nepalese citizenship is a prerequisite. The children of the couple also face discrimination in employment opportunities, as they cannot acquire citizenship and as a result have limited employment opportunities. This, in fact, forces women to leave the country for the sake of their family.

Among the key informants interviewed, 65.44% agreed that employment opportunities of the husbands of foreign origin are affected due to the existing discriminatory legal provisions related to citizenship (Table 3 in Annex 4).

Among the sample respondents, 10.67% said that they themselves are affected, 42.67% respondents said that other women are affected, and 5.33% respondents said that both they themselves and other women are affected by such discriminatory legal provisions related to citizenship, while 41.33% respondents were unaware of such impact of discriminatory laws. (Figure 5.1.5)

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**Case Study 1: Travel documents denied**

Amita (pseudonym used) married a Dutch on the condition that the couple will continue to live in Nepal. Her husband left his family and gave up his flourishing career in Holland to join his wife. They have three children and life was smooth. Their children were issued travel documents when required. However, life has taken a sad turn for this family recently when their eldest daughter who was awarded a scholarship in China was refused travel documents and instead asked to go to her father's country of origin. As a result the daughter is unable to pursue her education and the whole family is thinking of moving to Holland.

*Source: CAC Nepal, 2003*
f. Restriction on Mobility

The discriminatory nationality laws restrict the mobility of women. According to the present law, women require approval from guardian to obtain a passport, and the guardian must also take full responsibility for their visit. Even the married women require approval of husband to obtain the passport. This affects women’s right to mobility in the following manner:

- **Limitation on right to education:** The provision requiring approval of guardian for passport limits the rights of the girls/women to acquire higher or specialized education abroad;
- **Denial of passport to children:** As the passport forms require the name of the father and birth registration certificate, a woman cannot obtain passport for her children thus restricting her mobility.
- **Limitation on right to employment:** As a result of the discriminatory passport rules women’s right to foreign employment is also restricted.

Among the key informants interviewed, 74.07% agreed that women face difficulties in acquiring passport due to the existing discriminatory legal provisions related to citizenship (Table 3 in Annex 4).

Among the sample respondents, 8% respondents said that they themselves are affected, 29.33% respondents said that other women are affected, and 2.67% respondents said that both (they themselves and other women) are affected by such discriminatory legal provisions related to citizenship while 60% of the respondents were unaware of such impacts. (Figure 5.1.6)

Case Study 2: How women are deprived from acquiring passport

Ms. Narmaya Damai Pariyar, a resident of Ward No. 7 of Panjiygarh Village Development Committee in Nawalparasi, applied for passport to go abroad for employment stating that she is an unmarried woman. Two hours after she received her passport from the District Administration Office (DAO), Nawalparasi, somebody lodged a complaint against her at the DAO with a charge that she has no right to take passport by giving false information. In the complaint, it was stated that she had two children. The DAO impounded her passport and sent it to the Ministry of Foreign Affairs for their opinion. As a result, she lost the opportunity of foreign employment due to the restriction on her mobility and indeed the state declined to recognize as an independent citizen of the country. She was discriminated on the basis of marital status.


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7 The Schedule of the Passport Rules, 1970 requires in its Column 8 to mention the name of husband or the guardian. The Nepalese Passport deals wife and children as dependant persons accompanying the visiting husband.

8 Ibid.
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The Human Rights Committee of the United Nations in Aumeeruddy Cziffra v. Mauritius found that inequality in residency rights based only upon the gender of foreign spouses violated the right to freedom from interference in family life. Hence, right to family life is very much related to the right to citizenship. Any denial on the right to citizenship is the denial of this important right to family and against the international human rights laws.

Among the key informants interviewed, 58.02% agreed that the existing discriminatory legal provisions related to citizenship affect the right to family of the women (Table 3 in Annex 4).

Among the sample respondents, 2.67% respondents said that they themselves are affected, 49.33% respondents said that other women are affected, and 2.67% respondents said that both, they themselves and other women, are affected by such discriminatory legal provisions related to citizenship. Of the respondents, 45.33% were unaware of such impact. (Figure 5.1.7)

h. Depression and Inferiority

As a result of the discriminatory provision of citizenship laws women and their families are psychologically depressed and feel inferior, as their children are not entitled to acquire citizenship. They have to choose between marriage and place of residence, they cannot transfer their property to their children and face problems in life. Even the children born out of such wedlock are depressed and are affected psychologically as their right to nationality, right to movement, right to education, and right to property are affected. Among the key informants interviewed, 75.31% of them agreed that the existing discriminatory legal provisions related to citizenship result in the women suffering from depression and inferiority complex (Table 3 in Annex 4).

Ms. A. Khatoon was married to a foreigner. Her children, who were born in Nepal, are now facing problems in different facets of life, as children born to Ms. Khatoon are not entitled to citizenship due to the discriminatory citizenship provisions. Her children are compelled to study in a private college because other colleges demand their citizenship certificates. The children who are willing to live with their mother in Nepal are denied the choice of nationality and residence. Their freedom of movement is also restricted, as they do not have a passport. These children are dejected and depressed. On the other hand the mother is also worried, as she cannot transfer her property to her children. Hence, the children would be deprived of even the right to property.

Who is responsible for their dejection? Why discriminatory legal provisions affect not only the life of the woman but also of her children? How will the government handle such situation? These are some of the questions raised by Ms. A. Khatoon.


Case Study 3: How discriminatory citizenship laws affect women and their children

Figure 5.1.7: Deprivation from right to family (Percentage distribution)


9 Supra Note 2.
Among the sample respondents, 10.67% respondents said that they themselves are affected, 41.33% respondents said that other women are affected, and 13.33% respondents said that both (they themselves and other women) are affected by the discriminatory legal provisions related to citizenship. About one third of the respondents did not know about such impact of the discrimination. (Figure 5.1.8)

During the study, it also came to light that discriminatory citizenship laws also denies right to vote and right to participate in public life.

5.2 Impact of Discriminatory Property Law

Economic justice is an important goal for women because when they have economic base, they have more autonomy and do not have to endure abusive conditions and have more choices and opportunities. Therefore, discriminatory property laws affect women in more than one ways.

The respondents from the sample districts have agreed that the discriminatory legal provisions related to property rights affect women in seven ways (Table 2 Annex 4)

More than 80% of the key informants interviewed mentioned economic dependency, domestic violence, and lack of access to resources as the main impacts of discriminatory property laws. Other such impacts mentioned the respondents consider daughters as a liability and psychological effects. The respondents from the sample districts also agreed that the discriminatory legal provisions related to property rights affect various aspects of the women's life. (Figure 5.2)
a. Economic Dependency

Discriminatory property law results in women’s economic dependence on the male family members of the family. Economic dependency results in domestic violence, domination, and harassment for dowry. Women are being deprived of education, health care and social participation. Child or unmatched marriage, polygamy, financial insecurity, low productivity are other impacts of economic dependency.

Of the key informants, 93.83% agreed that the existing discriminatory legal provisions related to property result in the economic dependency of the women (Table 4 in Annex 4).

Among the sample respondents, 26.67% said that they themselves are affected, 44% said that other women are affected, and 17.33% said that both (they themselves and other women) are affected by the discriminatory legal provisions related to property. (Figure 5.2.1)

The positive impact of the amendment to the property rights can be observed by monitoring the incidents of claim of property rights made by women.

b. Domestic Violence

Economic dependency created by discriminatory property laws forces women to tolerate domestic violence. A research conducted by SAATHI revealed that 78% cases of domestic violence against women in Nepal are due to economic dependency.

Many respondents pointed out that dowry is one of the main causes for domestic violence in Nepal. The practice of dowry developed as parents give some jewelry and clothes in the form of dowry on their desecration to their daughter during marriage, which is considered as compensation in lieu of share in the parental property. In the Terai region, it is popularly known as daboj or tilak. Groom’s family exerts pressure to the bride to bring more dowries failing which they give her both physical and mental torture.

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Case Study 4: Sabina gets her share from her father’s ancestral property

Sabina, a resident of Sundhara, Kathmandu, is 16 years old. In Kathmandu District Court, a case on partition of property is going on between her mother and brothers. In that case, none of the documents (lawsuit or reply) mention giving share of the property to Sabina. However, on September 26, 2002, the Royal Assent was fixed in Eleventh Amendment to Country Code, she submitted a petition claiming that she is also a heir to the property and demanded her share in the property. On December 31, 2002, Court decided that being a daughter, she is also co-heir of the joint ancestral property and gave one part of the share to her. As, this verdict is already executed, Sabina is enjoying the rights provided by the new amendment.

Source: Legal Cell, FWLD, 2004

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Case Study 5: First Daughter to have share of property

Pyuthan, a district of remote western part of Nepal, is probably one of the first instance that daughter gets share from her father’s property after Eleventh Amendment to Country Code. Pahal Sign Pachai gave four Ropanis of land to her daughter Yam Kumari Pachai, and bandapatra (document of partition) was registered in District Land Revenue Office.


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Also, respondents were of the view that domestic violence disturbs the conjugal life and sometimes brings the situation of divorce. Discriminatory legal provisions related to property compel women to remain silent whatever may be the degree of such violence. Another report revealed that 90% of the respondents felt that economic independence is necessary to eliminate domestic violence.\footnote{11
Opinion pole survey on the state of women in Nepal conducted by Media Service International, Sept. 1999.}

Among the key informants interviewed, 82.72% agreed that domestic violence is a result of the existing discriminatory legal provisions related to property (Table 4 in Annex 4).

Among the sample respondents, 2.78% said that they themselves are affected, 56.94% said that other women are affected, and 5.56% said that both (they themselves and other women) are affected by such discriminatory legal provisions related to property. (Figure 5.2.2)

c. No Access to Resources

Unequal and conditional right to property given to women creates for them an environment of complete lack of access to resources. Male members are supposed to be heads of family and they have the right to mobilize the ancestral property. Women in the family have very little say in the mobilization of household resources and their participation in decision-making is negligible.

Women’s domestic contribution has not been acknowledged. In the rural areas, women are involved in agriculture but their contribution is not recognized. Male household members control family income. Disparity in distribution of both assets and income, in turn, influences access to education, health, nutrition and standard of living.\footnote{12
Malla Pradhan Sapana, \textit{Baseline Study on Inheritance Right of Women}, FWLD, March 2000, P. 31.} Further, women have limited access to credit acquired to finance business due to lack of property, a pre-requisite for collateral. As a result, there are very few women entrepreneurs in the country. Low participation of women in politics and in government positions and civil service is also the outcome of the lack of resources to women (see Chapter of Parliamentary Interventions).

Among the key informants interviewed, 81.48% agreed that due to the existing discriminatory legal provisions related to property, women have no access to resources (Table 4 in Annex 4).
Of the sample respondents, 12% said that they themselves are affected, 52% said other women are affected, and 16% of them said that both (they themselves and other women) are affected by the discriminatory legal provisions related to property. (Figure 5.2.3)

d. Daughters Considered as Liability

Daughters are generally considered as a liability in the family. Though with the Eleventh Amendment daughters are recognized as coparceners in family property, they have limited right, as they have to return their share of property upon marriage. Therefore, law assumes that they have temporary residence in their parents’ house and therefore, does not consider them as family members. They face discrimination from their childhood and are deprived of education, nutrition and health facilities. Daughters are compelled to think that they are guests in the family and as a result are married off at early age.

Among the key informants interviewed, 67.90% of them agreed that daughters are considered as a liability due to the existing discriminatory legal provisions related to property (Table 4 in Annex 4).

Among the sample respondents, 10.67% of the respondents said that they themselves are affected, 50.67% of the respondents said that other women are affected, and 16% of the respondents said that both (they themselves and other women) are affected by such discriminatory legal provisions relating to property. (Figure 5.2.4)

e. Other Psychological Effects

The deep-rooted cultural practices of patrileanitarian and patrilocality give higher cultural, religious and other values to sons but not to daughters. The inheritance property right system in Nepal is fully based on the patriarchal system and biased towards women. It has the direct impact on women leading to performance of subordinate role in the family and in the society. Parents give less priority to daughter and hence low capacity building and they loose equal opportunity to development.

The inheritance property right has the direct impact on women leading to performance of subordinate role in the family and in the society. Parents give less priority to daughter and hence low capacity building and they loose equal opportunity to development.
the women’s health and 9.87% said that the provisions act as hindrance in the national development (Table 4 in Annex 4).

5.3 Impacts of Discriminatory Provisions Relating to Trafficking and Sexual Abuse

Trafficking of women and children for commercial sexual exploitation is due to poverty and gender discrimination. A large number of women and children especially from poverty-stricken hilly districts are being sold to the brothels in the major Indian cities every year. There are about two hundred thousand girls in the brothels of India and every year about five to seven thousand girls are being trafficked to India. A considerable number of them have either been forcefully abducted or trafficked to India under the pretext of finding a good job or marriage. Most of the girls taken from the rural villages have no idea where they are being taken until they are sold and abused.

The impact of discriminatory laws mentioned by respondents are difficulties in the transaction of the household property, difficulty to marry and disturbance in marital relationship, deprivation from education and health facilities, victimization of STD and AIDS and feeling of insult/inferiority complex.

In a recent case filed by FWLD challenging the validity of the definition of rape in the Country Code, the Supreme Court recognized marital rape as an offence and issued a directive order to introduce a Bill for providing immediate relief to the victim. However, to this day, the rape law has not been amended to include marital rape in the definition of rape.

The respondents from the sample districts have agreed that the discriminatory legal provisions related to trafficking and sexual abuse affect various aspects of the women’s life.

a. Difficulties of Residence

Trafficked girls forced into prostitution as a result of the social stigma attached to prostitution are deprived of the right to reside in the parental home. Among the key informants interviewed, 43.21%

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agreed that the existing discriminatory legal provisions relating to trafficking and sexual abuse create difficulties for women in the transaction of household property (Table 5 in Annex 4).

Among the sample respondents, 9.33% respondents said that they themselves are affected, 37.34% respondents said that other women are affected, and 4% respondents said that both (they themselves and other women) are affected by the discriminatory legal provisions related to trafficking and sexual abuse. About half of the respondents did not know about such impact of the discrimination. (Figure 5.3.1)

With the Eleventh Amendment to the Country Code, unmarried daughters have been given equal right in the family property. However, whether victims of trafficking forced into prostitution will be able to exercise these rights needs to be observed.

b. Difficulty to Marry/ Disturbance in Marital Relationship

In a conservative society like Nepal, where the women’s physical integrity is of highest value, the victims of trafficking or sexual abuse are victimized for no fault on their part. The society instead of supporting these victims to overcome the trauma victimizes them. As a result, there are very few instances of such victims leading a normal life and getting married.

The existing law relating to rape converts the victim's own husband to her ex-husband upon the commission of the rape. The law victimises the woman for an act she is not responsible for and thus creates disturbance in the marital life. It does not give an option to the husband who is even willing to continue the marital relationship with the victim.

Of the key informants, 70.37% agreed that the existing discriminatory legal provisions related to trafficking and sexual abuse create difficulty in the marriage/disturbance in the marital relationship of women (Table 5 in Annex 4).

Among the sample respondents, 5.33% said that they themselves were affected, and 70.67% respondents said that other women were affected by such discriminatory legal provisions related to trafficking and sexual abuse. (Figure 5.3.2)
c. Deprivation of Education and Health Facilities

The victims of trafficking are generally teenagers and more so in the cases of victims of trafficking into forced prostitution. The girls who are prey to trafficking are forced into flesh trade, where they face both physical and mental abuses. In many cases, trafficked women are forced with unwanted pregnancies or their pregnancies are terminated in non-medical settings leading to health problems. These girls are deprived of health facilities either due to their low economic status or fear of HIV/AIDS. Also, in cases of sexual abuses, very few of the victims have access to health facilities either due to fear of social stigma or low economic status. In the present law there is no provision of rehabilitation of the victim of trafficking including educational and health facilities, who have returned home. As a result even upon their rescue these girls are deprived from education and health facilities.

Among the key informants interviewed, 51.85% agreed that the victims are deprived of education and health facilities due to discriminatory laws related to trafficking and sexual abuse (Table 5 in Annex 4).

Among the sample respondents, 9.33% respondents said that they themselves are affected, 58.67% respondents said that other women are affected, and 1.33% said that both (they themselves and other women) are affected by such discriminatory legal provisions related to trafficking and sexual abuse. (Figure 5.3.3)

Case Study 7: A case of rape: Social stigma

Shanti (pseudonyms used) a student of I. Com. (first year) had gone to attend a marriage reception on the night of 2055/08/29 at Dhobichaur. Later, Viswa Jung, one of her relatives requested her to go to the Public Youth College with him where she was forced to drink beverage. She did not know that it was mixed with sleeping tablets. She fell unconscious. Shanti was gang raped by four persons including her cousin, Viswa Jung. Next day, when Shanti regained consciousness, she found herself completely naked lying on the floor of an empty room near Swayambhu. She also found that the jewelry worth Rs. 77,000, which she was wearing was stolen.

Though Shanti was innocent, this incident was a curse on Shanti’s life. The chances of her getting married are very rare in a conservative society like ours, where chastity of women is of highest value. Due to social stigma, a woman victim has been deprived of living a normal life. The unfortunate incident has affected her studies and her future. While the main culprits of the rape, the four men, have not been affected due to their dominant and higher position in the patriarchal society.

Source: Legal Aid and Consultancy Center (LACC), Kathmandu.

Note: Pseudonyms used.

Figure 5.3.3: Deprivation of education and health facilities (Percentage Distribution)

As a result of lack of victim justice perspective in the present law, victims of trafficking forced into prostitution are deprived of specialized health care and support, compensation, adequate repatriation, rehabilitation and reintegration from right based approach. The stigmatization attached to the sex work leads such victims to further isolation.
stigmatization attached to the sex work leads such victims to further isolation. This has resulted in the increase of the infection.

Among the key informants interviewed, 70.37% agreed that trafficked women and girls become victims of STD and HIV/AIDS due to discriminatory legal provisions related to trafficking (Table 5 in Annex 4).

Among the sample respondents, 2.67% respondents said that they themselves are affected, 69.33% respondents said that other women are affected, and 4% respondents said that both (they themselves and other women) are affected by such discriminatory legal provisions related to trafficking. (Figure 5.3.4)

e. Feeling of Insult/Inferiority Complex

The victims of trafficking into forced prostitution face the problem of identity crisis as they are deprived of their family and cultural rights. In many cases, these girls face problems in filing cases against the culprit. Due to the high-handedness in the business of trafficking, police refuse to register the cases. Even if the cases are registered, the trafficked woman has to repeat her case before the police, the public attorney, and the open court. The victims are subjected to humiliating questions during the examination and cross-examination in the open court, which is equal to re-living the entire set of torture. Recently, the provision of in-camera hearing has been adopted by various regulations of courts in Nepal.  

Kamla is a 14 years old girl. Being a girl, she was always oppressed and discriminated by her parents. She was not allowed to go to school because she had to perform all the household chores. One of her cousins offered a job to Kamla in Bombay, which she readily accepted as she was fed up with the treatment of her parents. She went to Bombay with her cousin in search of work, but she was sold to a brothel owner and forced into flesh trade.

At the age of 18, she came to know that she was suffering from AIDS. The brothel owner declined to keep Kamla in her brothel and sent her back to Nepal. For some days, Kamla lived in a shelter house provided by an NGO. Later, she was sent back to her home against her wishes, but her parents didn’t accept her. She was forced to return back to the shelter house.

With the help of an NGO, she filed a suit against the culprits responsible for her present situation. She went to the police, the court and the Public Attorney’s Office many times to seek justice. In the course of legal procedure she had to explain several times, in front of the police, lawyers and judges how she was sexually abused and raped. It was very humiliating and difficult for Kamla to explain the same thing again and again in front of the male members, but she went through the torture in the hope of getting justice.

As her name and photograph has been published in many magazines and newspapers as a “Victim of AIDS” nobody is willing to give a job to Kamla. Even an owner of a tea shop refused to give her tea. She was not even allowed to fetch water from the local community tap.

Even today, everybody points fingers towards her when she walks on the roads. She has to face humiliation everyday. Unfortunately, neither the Nepalese government takes any responsibility nor does the Indian government, as a recipient country. Due to lack of the application of extraterritorial jurisdiction and implementation of the extradition treaty, the accused is moving freely in the society.

Now, Kamla is tired and waiting for death in the shelter house as no hospital is giving her treatment. She is afraid of her plight if the shelter house too throws her out on the road.

Source: Durga Ghimire, ABC-Nepal.
Note: Pseudonyms used.

15 Rule 46 (b) of the District Courts Regulations, 2052 adopted on 2060/8/1, Rule 60 (a) of Appellate Court Regulations, 2048, adopted on 2060/8/1, Rule 67 of Supreme Court Regulations.
However, the actual implementation needs to be observed. There are few instances where the culprit is punished and this leaves the victim without justice and eventually in frustration. Moreover, the women prefer not to file a case to escape humiliation they would be subjected to during examination and cross-examination in the open court.

Also, low record of the cases related to trafficking is a result of the discriminatory laws against women. Due to the fear of the society, there is minimal reporting of cases and the offenders are not convicted. It also results from gender insensitive court procedure where many insulting questions are posed to the victim.

As per the official record, only 150 cases were reportedly investigated by the enforcement agency in the fiscal year of 1994-1995. The number of cases has decreased in subsequent years as only 133 were investigated in 1995-96, and 107 in 1996-97. As learned from the Government Attorney's Office, out of 150 cases reported in fiscal year of 1994-95, only 39 cases were presented in courts of law. Similarly, in 1997-98, 130 cases were registered at the Police and only 125 cases were initiated by the Government Attorney's Office.

Following figures show the decision of the court in the cases of trafficking:

16 Charts based on the table published in Belbase, Narayan and Pyakuryal, Sucheta (1999), A Study on Gender and Judges, Pro-Public Kathmandu, p. 88
f. Non-recognition of Children of Trafficked Women

Another impact of discriminatory laws against women mentioned by the respondents is non-recognition of the children of trafficked women. The governments of both Nepal and India have not taken steps for the registration of these children or for their rehabilitation. The gross neglect and discrimination affect psychology of the children. Many of the boys later turn into criminals and girls are trapped into the business of flesh trade. These children have been refused admission in the schools in Delhi and are being trained privately.

Among the key informants interviewed, 83.95% agreed that improper procedures and discriminatory legal provisions related to trafficking and sexual abuse lead to inferiority complex among the girls (Table 5 in Annex 4).

Out of the sample respondents, 4% said that they themselves are affected, 54.67% respondents said that other women are affected, and 1.33% respondents said that both (they themselves and other women) are affected by such discriminatory legal provisions related to trafficking and sexual abuse. About 40% respondents did not know about such impact of the discrimination. (Figure 5.3.6)

5.4 Impact of Discriminatory Education Laws

Although education to both girls and boys has been promoted by the State, no strong steps have been taken to guarantee this right. There is indeed a de facto discrimination in education. The overall literacy rate in the country is low and this is lower in case of women. There is a lack of comprehensive educational policy for the education of the girls including free and compulsory education. Nepalese women lament that they suffer a lot due to lack of education. All the maladies that lead to subordination, subjugation, and exploitation arise out of this condition. The majority of women are unpaid family workers. Due to lack of vocational education/training women are generally employed in unskilled/ informal sector and have to work in exploitative situations. Lack of education plays a major role in women’s economic dependency and their victimization in various ways. Most girls/women fall easy prey to trafficking. They are unaware of basic reproductive health and reproductive rights, which contributes to high morbidity and mortality rates. They also become victims of domestic violence due to lack of educational opportunities. Hence, lack of education has forced most women to live an inhuman life with no individual identity, lack of self-esteem, and loss of dignity.

17 Excerpts from the interview Ms. Meera Dhawan, documentary film-maker of Highway to Hell portraying the problem of trafficked Nepalese girls, Indian Express July 19, 2000, p.13.
18 Supra Note 14.
The main impacts of discriminatory laws related to education as identified by the respondents are deprivation from education and foreign scholarship, low social status and low participation in politics and employment.

a. Deprivation from Education

As a result of lack of law relating to compulsory education, girls are deprived of education in comparison to boys as boys are given priority in the field of education. In case family has limited income, education becomes the priority for sons and marriage for daughters. The adult female literacy rate is as low as 26.41% when compared with that of male, which is 61.6%.19

As a result of lack of effective educational policy for girls, they are deprived from education. High drop out rate of girls is another impact of discriminatory laws mentioned by the respondents. Lack of effective compulsory education has contributed in rampant illiteracy. The distance of school from the house or village and the absence of the female teachers there add to the misery of the girls as the parents do not feel comfortable in sending their daughters to the school. The girls are expected to work at home, in the fields and if time permits, they are enrolled in the school. Burdened with domestic responsibilities, the girls do not have enough time to study and hence their performance in the school is affected. The division of labor is so discriminatory that girls are supposed to confine in household works. Parents believe that household work is more important than education.

Among the key informants interviewed, 70.02% of them agreed that girls are uneducated as a result of deprivation of education due to discriminatory legal provisions related to education (Table 6 in Annex 4).

Among the sample respondents, 9.33% respondents said that they themselves are affected, and 50.67% respondents said that other women are affected by such discriminatory legal provisions related to education. Of the respondents, 40% did not know about such impacts of discrimination. (Figure 5.4.1)

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b. Deprivation of Foreign Scholarship/Education

The discriminatory Scholarship Rules deprive women of the opportunity for higher studies. There are few girls who reach the level of higher education and the policy of taking permission from the father or guardian for continuing study abroad acts as an obstacle in their education. They are deprived from higher education if they do not get permission from their parents.

Among the key informants interviewed, 54.33% agreed that improper procedures and discriminatory legal provisions related to education deprive girls from foreign scholarship and education (Table 6 in Annex 4).

Among the sample respondents, 8% respondents said that they themselves are affected, and 34.67% respondents said that other women are affected by such discriminatory legal provisions related to education. More than half of the respondents did not know about such impact of the discrimination. (Figure 5.4.2)

c. Low Participation in Politics and Employment

Deprivation of education impacts on the low participation in politics as well as in employment in various positions. For instance: the eligibility to Vocational and Skill Development Training Programs carried out by the government is class 10. Most girls are school dropouts and such eligibility conditions restrict their employment opportunities.

Among the key informants, 78% agreed that improper procedures and discriminatory legal provisions related to education result in the low participation of women in politics and employment (Table 6 In Annex 4)

Among the sample respondents, 10.67% respondents said that they themselves are affected, 57.33% said that other women are affected, and 4% respondents said that both (they themselves and other women) are affected by the discriminatory legal provisions related to education. (Figure 5.4.3)

d. Low Social Status

Due to the lack of education, girls and women are unaware of their rights and have low self-esteem. This unawareness results into the lower participation of women in public life, which leads to lower social status of women in the society.
Among the key informants interviewed, 71.24% agreed that improper procedures and discriminatory legal provisions related to education result in the low social status of girls/women (Table 6 in Annex 4).

Among the sample respondents, 6.67% respondents said that they themselves are affected, 52% respondents said that other women are affected, and 1.33% respondents said that both (they themselves and other women) are affected by the discriminatory legal provisions related to education. Some 40% of the respondents did not know about the impact of discrimination. (Figure 5.4.4)

5.5 Impact of Discriminatory Employment Laws

Poverty has been on the increase from year to year with 49% of the population in Nepal estimated to fall below the poverty line. The fundamental reason behind poverty is the lack of employment opportunities and underemployment. Currently, 14% of the population is estimated as unemployed and 40% as underemployed. The unemployment and underemployment of women is even higher. This share in the total labor force was 45.5% in 1999. The pattern of labor force employment indicates a large proportion of women working as unpaid family workers, 63% for women and 24% for men.

Women are discriminated against not only in job opportunities but also in wage rates. Most women are confined to the informal sector where wages are low, working hours are longer, working conditions are poor and other compensations are non-existent especially in agriculture and construction sector.

The recent amendment to the Military Police Rules, 2058 (2001) has incorporated a new provision of appointment of women as soldier of the Military Police. However, it is limited to unmarried women or widows only.

Key informants and sample respondents mentioned deprivation from foreign employment, restriction in various employments, and discrimination on wages/remuneration, and more dependency as the main impacts of discriminatory laws related to employment.

a. Deprivation from Foreign Employment

In cases where women want to go foreign employment through employment agency, prior approval of HMG and their husband/guardian is required. Hence, it is a hurdle in their right to employment and their independent status is not recognized. The government policy of prohibiting women from taking up jobs in informal sector in the Gulf countries with an aim to prohibit trafficking of women has affected the
employment opportunities of women compelling them to use illegal access to the foreign countries.

Among the key informants interviewed, 67.9% agreed that discriminatory legal provisions related to employment deprive the women/girls from foreign employment (Table 7 in Annex 4).

Among the sample respondents, 9.33% respondents said that they themselves are affected, 41.34% said that other women are affected, and 1.33% said that both, they themselves and other women, are affected by the discriminatory legal provisions related to employment. About half of the respondents did not know about such impact of discrimination. (Figure 5.5.1)

b. Restriction in Various Employment

Women have limited opportunities in police and no opportunity in the military service. As a result, there is a restriction on the employment opportunities of women. The employee percentage of women in every sector including teaching, tourism, sports and technology is very low. There are only 8.55% women in the public services, 10.85 women in foreign employment whereas there are 60.5% women in the agriculture sector, most as unpaid laborers. 21 Women spend much more time than men in subsistence activities and domestic work. They spend about 13 to 14 hours per day as unpaid family workers. Due to lack of technical/vocational skills trainings, most women are involved in low paid or clerical jobs. Statistics reveal that 63% of women are involved in unpaid work. 22

Among the key informants interviewed, 66.67% of them agreed that discriminatory legal provisions related to employment restrict the productivity of women (Table 7 in Annex 4).

Among the sample respondents, 9.33% said that they themselves are affected, 48% said that other women are affected, and 9.33% said that both, they themselves and other women, are affected by such discriminatory legal provisions related to employment. About one third of the respondents did not know about such impact of discrimination. (Figure 5.5.2)

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21 Central Bureau of Statistics (CBS), 2001
c. Discrimination on Wages/Remuneration

Even though Constitution guarantees for equal remuneration for equal work, as a result of lack of effective policy to regulate wages in unorganized sector, there is de facto discrimination against women in wages/ remuneration for the same work. Among the key informants interviewed, 77.78% agreed that discriminatory legal environment related to employment result in the discrimination on the grounds of sex for receiving wages (Table 7 in Annex 4).

Among the sample respondents, 8% respondents said that they themselves are affected, 66.67% said that other women are affected, and 14.67% said that both, they themselves and other women, are affected by such discriminatory legal provisions related to employment. (Figure 5.5.3)

d. More Dependency

Little or no education has limited the employment opportunities of women. Women are employed in the agricultural sector and other sectors where skilled training is not required. As women are mainly involved in domestic works and in unorganized sectors their productivity is invisible. As a consequence, women are forced to depend on their husbands or parents for the fulfillment of their basic needs.

Among the key informants interviewed, 80.25% agreed that low level of employment with increasing dependency on their family is due to discriminatory legal provisions related to employment (Table 7 in Annex 4).

Among the sample respondents, 13.33% respondents said that they themselves are affected, 49.33% said that other women are affected, and 5.34% said that both, they themselves and other women, are affected by the discriminatory legal provisions related to employment. (Figure 5.5.4)

5.6 Impact of Discriminatory Provision for Health Including Reproductive Health

Many key informants pointed out that the laws are influenced by socio-cultural patterns of the society and are discriminatory in nature. According to the Human Development Report, the female life expectancy in Nepal is 59.4 years as against 59.9 years of the male. One of the reasons for lesser life expectancy of females is due to the existing discriminatory laws related to reproductive health, including abortion. There is very little awareness on the health and specifically reproductive health issues. Women have little or no access to contraception and hence many times to get rid of unwanted pregnancy, abortion is used as a means of family planning. Of the married couples, 98% have heard about family planning
but less than 30% of them actually use family planning methods. \(^{23}\) Though abortion has been liberalized under certain conditions by the 11th Amendment, the provisions still fall under the Chapter on Homicide, showing the attitude of the lawmakers that they still do not consider abortion as a health issue.

The impacts mentioned in this section are based on a study carried out in 2000 i.e. before the Eleventh Amendment. However, most of the impacts are still relevant as though the Eleventh Amendment to the Country Code has amended a few discriminatory abortion provisions, de facto discrimination against women persists.

Both the key informants and sample respondents mentioned unsafe, expensive abortion limited service, effects in the productivity of women, loss of prestige as the main impacts of discriminatory laws related to health, including reproductive health.

a. Unsafe abortion

Though abortion has been liberalized under certain circumstances and the government has adopted an abortion procedure order, in reality women are unable to access abortion services as only few of government facilities provide abortion services. As a result women are still taking resort to unsafe abortions.

Maternal mortality rate of Nepal is one of the highest in the world as 539 women die per 100,000 live birth due to pregnancy related complications.

Besides death, unsafe abortions lead to medical complications including hemorrhage and abdominal injuries such as tearing and puncturing of uterus, in most of the cases resulting in infertility. About 20% to 48% of women admitted, as obstetric and gynecological patients in the major hospitals of the country are those with complications of unsafe abortions. Due to the stringent legal provision, women do not tell even the doctors about the detail of unsafe abortion, which at times results in wrong medication and side effects.

Among the key informants interviewed, 90.12% agreed that unsafe abortions are a result of discriminatory legal provisions related to abortion (Table 8 in Annex 4).

b. Expensive Abortion and Difficult Service

Abortion is still very expensive due to the non-implementation of the abortion procedure order and is conducted secretly. It is far from reaching the poor and needy women especially women from rural areas. Sometimes, women should go across the border to India to receive such service. The price for abortion is very high leading women to unsafe abortions. In rural areas, even if the woman wants to abort
fetus on health grounds, she is unable to do so and has to take resort to quacks increasing risk to her health.

Among the key informants interviewed, 83.95% agreed that abortions are expensive and there is a difficulty in receiving the medical care as abortion is illegal (Table 8 in Annex 4).

Among the sample respondents, 4% said that they themselves are affected, 57.33% respondents said that other women are affected, and 1.33% said that both (they themselves and other women) are affected by such discriminatory legal provisions related to abortion. About one third of the respondents did not know about such impact of discrimination. (Figure 5.6.2)

c. Arrest of Women Only

Women are often charged for undertaking clandestine abortions. The male partners easily deny the charge and women are easily convicted due to the biological differences. Many key informants and respondents said that there is no proper investigation procedure in abortion cases. During the trial no proper medical investigation is carried out to determine between natural and forced abortions, and between stillbirth and infanticide. Only corroborative evidence is used to decide whether the woman is guilty. During the focus group discussions in the jail, it was seen that maximum number of women prisoners and under-trials are languishing in jail either under the crime of infanticide or abortion.

According to the study conducted by FWLD and CRLP there were 59 women in prison for taking resort to abortion or related offences. However, due to continued advocacy of women's rights activists, 35 women prisoners have been released and 23 women are still languishing in jail and one women has been released on bail. Surprisingly, there are new abortion cases being filed at courts. The women who are convicted of the crime or the under-trials are not provided proper medical care hence leading to their depleting health. A study conducted by CREPHA shows that 20% of women in the prisons of Nepal are imprisoned under the crime of abortion against 0.31% of male.

Case Study 11 Children neglected

The children of the convicted women face discrimination from their family and also from the society and they are not taken care of. There are many children in the jails of Nepal with their mothers where they live in the congested atmosphere for no fault of theirs. These children are deprived of a normal life and even the basic right to education. Law permits that minors under 2 years of age, who have no family members, including fathers, to care, are allowed to the in prisons. Many children above the age of 2 years are also living together with their mothers in the jail. Even though Section 8 of the Prison Act has a provision that the government should provide education and maintenance to minors of inmates, children who are in jails are deprived of education, sanitation, proper food and lodging. They are compelled to live in prison and hence they do not have any future.

Source: Focus Group Meeting, Central Jail, Kathmandu.

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However, so far negligible number of males have been convicted for the crime of abortion. Though the law has a provision penalizing persons assisting abortion, the men who indeed give medicines to terminate pregnancy or those who take their wives to quacks are not convicted of the crime. During the field research, not even a single man was found in the jail in the charge of abortion.

Among the key informants interviewed, 90.12% agreed that only the women are arrested and penalized due to the discriminatory legal provisions related to abortion (Table 8 in Annex 4).

Among the sample respondents, 1.33% respondents said that they themselves are affected, and 84% respondents said that other women are affected by such discriminatory legal provisions related to abortion. (Figure 5.6.3).

d. Effects on Productivity of Women

Unavailability of abortion services drives women to undertake unsafe abortion that results in their poor health, mental depression and physical weakness. It limits their productivity inside and outside the house and constrain their ability to take care of the children and adversely affect their sexual and reproductive lives. In many cases this ultimately leads to the infertility of the women.

Among the key informants interviewed, 59.26% agreed that the discriminatory legal provisions related to abortion affect the health and productivity of the women (Table 8 in Annex 4).

Among the sample respondents, 5.33% said that they themselves are affected, 50.67% respondents said that other women are affected, and 1.33% respondents said that both (they themselves and other women) are affected by such discriminatory legal provisions related to abortion while 42.67% respondents did not know about such impact of discrimination. (Figure 5.6.4)

e. Against Prestige/Societal Impact

Such stringent laws affect the physical and mental health of women leading to depression and loss of mental balance. The women who are convicted of the crime or the under-trials are treated as social outcastes and are neglected by the family. Some respondents said that their husbands hardly come to

28 Report of the Focus Group Discussion, Central Jail, Kathmandu, 2000 conducted as a part of this study.
meet them and in most cases their husbands have married for the second time. Women respondents who were in jail worried that after they are released from the jail there are no places for them to go. These women inmates are not able to get any property both from their husband’s family and parental family.

Among the key informants interviewed, 76.54% agreed that the discriminatory legal provisions related to abortion affect the prestige of the women (Table 8 in Annex 4).

Among the sample respondents, 5.33% said that they themselves are affected, 76% respondents said that other women are affected, and 4% respondents said that both (they themselves and other women) are affected by such discriminatory legal provisions related to abortion. (Figure 5.6.5)

**Box 12 Birth registration certificate for a child of an unmarried mother**

Meera and Suresh met each other while working in the same place. Their acquaintance developed into love, and when Suresh proposed to Meera, she readily accepted. After office, they used to go for a walk dreaming together about their future. Being convinced by the promise of marriage, Meera had a sexual relationship with Suresh. This relationship resulted in pregnancy. Meera requested Suresh to get married with her, but Suresh rejected Meera’s request.

As abortion is illegal under any conditions in Nepal and belonging to a middle class family, Meera was unable to abort the unwanted pregnancy. The news spread all over the city making Meera’s life pathetic.

Meera gave birth to the child, which increased her burden. As she had already lost her job, it became very difficult for her to take care of herself and of her child. Neither Suresh agreed to register the child as his child nor the V.D.C. agreed to register the child by the name of single mother. Due to the existing discriminatory laws (which do not allow registration of birth without the father’s name) Meera is unable to give identity to her child by her own name.

At the CDO Office, Meera was asked to produce her husband’s citizenship certificate if she should get her child’s identity card. The problem is that she is an unwed mother.

Without registration, the child has to face many problems like getting admission in the school and colleges, acquiring citizenship of the country etc, which will further affect the future of the child.

The non-recognition of mother’s role in our country shows her subordinate position in a patriarchal society. This inferiority results in a total neglect of women in all spheres of life.

*Source: Development Law Associates, Babarmahal, Kathmandu.*

*Note: Pseudonyms used.*
5.7 Impact of Discriminatory Laws on Marriage and Family Rights

The Nepalese legal system is influenced by Hindu law and this is reflected in the discriminatory provisions of law especially in law relating to marriage and family life. This has resulted in lack of women's access to family property, child marriage, not being considered as natural guardian of a child etc. The impact of existing discriminatory laws relating to marriage and families is diverse on women. The key informants and sample respondents mentioned polygamy, deprivation from the guardianship, domestic violence and dowry as the main impacts of such laws. The impacts mentioned in this section are based on a study carried out in 2000 i.e. before the Eleventh Amendment. However, most of the impacts are still relevant because not all discriminatory provision relating to marriage family rights are amended by the Eleventh Amendment.

a. Encouragement for Bigamy and Polygamy

The law itself under certain conditions permits a man to marry for the second time without divorcing the first wife. Besides this under other conditions too, the second marriage is not void and becomes legal after the completion of the minimal punishment of imprisonment and payment of a fine. Such discriminatory provisions not only encourage bigamy/polygamy but also affect the rights of the first wife and her children as all co-wives and their children have equal share in the family property. Though the Eleventh Amendment to the Country Code, has increased the penalty for bigamy/polygamy, it still has not declared the second or subsequent marriages void.

During the research it was found that in the last 10 months of the year 1999/2000, 25 complaints of bigamy have been registered and 15 are still under investigation in the District Police Office of Kathmandu.

The following shows the comparative chart of three years of the cases of bigamy registered in the Police Headquarter, Kathmandu: (Figure 5.7.1)

Among the key informants interviewed, 88.89% agreed that the discriminatory legal provisions related to marriage and family rights support polygamy (Table 9 in Annex 4).

Among the sample respondents, 4% said that they themselves are affected, 69.33% said that other women are affected, and 1.33% respondents said that both, they themselves and other women, are affected by such discriminatory legal provisions related to marriage. (Figure 5.7.2).

b. Deprivation of Guardianship

As a result of the discriminatory laws relating to child custody and guardianship women are deprived from right to guardianship. The assumption of the lawmakers is based on the fact that men are the breadwinners of the family and women are economically dependent on their husbands. Among the key informants interviewed, 72.84% agreed that women are deprived from guardianship of their children due to the discriminatory legal provisions related to marriage and family (Table 9 in Annex 4)

Among the sample respondents, 5.33% viewed that they themselves are affected, 44% said that other women are affected, and 2.67% said that both (they themselves and other women) are affected by discriminatory legal provisions relating to marriage and family. About half of the respondents did not know about such impact of discrimination. (Figure 5.7.3)

30 Data collected from the Women Cell, District Police Office, Kathmandu on 21st June, 2000
31 Data collected from the Central Women Cell, Police Headquarters, Kathmandu on 19th June, 2000.
c. Domestic Violence

As there is no law relating to prohibit domestic violence, domestic violence against women is on rise. Furthermore, law still encourages bigamy resulting in domestic violence against women.

A situational analysis of violence against women and girls in Nepal conducted by a non-governmental organization indicates the following data related to violence.

1. 37% reported dowry-related violence among traditional forms of violence against women.
2. 73% cited financial dependence as the reason that prevents women from reporting an incidence of violence.

Among the key informants interviewed, 87.65% agreed that women face domestic violence due to the discriminatory legal provisions related to marriage and family rights (Table 9 in Annex 4).


e. Dowry

The lack of effective law to prohibit the practice of dowry has resulted in physical and mental violence against women. There are instances where women have been murdered or committed suicide due to the practice of dowry.

A situational analysis of violence against women and girls in Nepal, conducted by a non-governmental organization found the following situation of the dowry-related violence against women. (Figure 5.7.5)

Among the sample respondents, 4% said that they themselves are affected, 61.33% respondents said that other women are affected, and 5.34% respondents said that both (they themselves and other women) are affected by such discriminatory legal provisions related to marriage and family. (Figure 5.7.4).

Case Study 13 False accusation through a photograph and divorce

Eight years ago, 23-year old Indravati got married to Rampunit Mahato of Hetauda. It was a customary marriage and she didn't bring enough dowry as expected by her husband. Within a week of their marriage, her husband started harassing her by raising the issue of dowry. Indravati is a mother of two children.

Although she was used to being harassed constantly by her husband, the limit crossed when he tried to kill her by throwing her down from the first floor of the house. As a result she got a severe head injury but was able to survive with the help of her neighbors who made arrangement for her timely medical care. Rampunit was arrested by the police for his act. Indravati did not allow police to take any action against her husband and freed him from the police custody.

After one year of this incident, he threw her out of the house with her two children of 4 years and 6 years and filed a suit for divorce against her by presenting a photograph alleging illicit sexual relationship of Indravati with her god-brother. ..............

(contd.)

33 Ibid.
Among the key informants interviewed, 75.31% agreed that dowry is a result of discriminatory legal provisions related to marriage and family rights (Table 9 in Annex 4).

Among the sample respondents, 4% respondents said that they themselves are affected, 64% respondents said that other women are affected, and 9.33% respondents said that both (they themselves and other women) are affected by such discriminatory legal provisions related to marriage and family. (Figure 5.7.6)

f. Deprivation of Education

Deprivation from education due to child marriage is another impact of discriminatory marriage laws. Due to practice of child/early marriage, daughters do not get education at their parents’ home and after marriage they have to take care of household chores at her husband’s home by giving up education.

5.8 Impact of Discriminatory Laws on Legal Procedure and Court Proceedings

Right to seek legal remedy is the fundamental, inalienable right of every citizen. The Constitution of the Kingdom of Nepal has establish an independent and competent system of justice with a view to transforming the concept of the rule of law into living reality. The whole philosophy of the rule of law is based on justice, which can only be established when the laws and procedures are favorable. Any discriminatory legal provision in the court proceeding is *prima facie* injustice and against rule of law. Existence of discriminatory legal provisions against women in Nepal related to the court proceedings is the violation of human rights, denial of justice and against the principle of rule of law.

Key informants and sample respondents identified lack of confidence in women, their restriction in household work, denial of social recognition, sub-ordination to men, patriarchal system, and restriction on public participation as the main impacts of discriminatory laws related to court proceedings.

a. No Confidence in Women

Law prefers men than women to receive any notice, summons or *subpoena*, issued by a court in the name of another person so long as men are available. Such a provision indicates that the law presumes women to be inferior than men. There is no confidence laid on women in the court proceedings. Hence,

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34 Preamble to the Constitution of the Kingdom of Nepal, 1990.
the law itself does not recognize them as equal citizens and discriminates against them.

Among the key informants interviewed, 70.37% agreed that lack of confidence in the women is a result of the discriminatory legal provisions related to court proceedings (Table 10 in Annex 4).

Among the sample respondents, 14.67% said that they themselves are affected, 54.66% respondents said that other women are affected, and 2.67% said that both (they themselves and other women) are affected by such discriminatory legal provisions related to court proceedings. (Figure 5.8.1)

b. Confined to Household Work

Some respondents noted that women are compelled to live in the house and limited in household works. Their social participation is denied. Law itself denies independent identity of women in social life. They are always considered as minors and subordinate to men.

Among the key informants interviewed, 72.84% agreed that women are restricted to household work due to discriminatory legal provisions relating to court proceedings (Table 10 in Annex 4).

Among the sample respondents, 13.34% said that they themselves are affected, 49.33% respondents said that other women are affected, and 4% said that both (they themselves and other women) are affected by the discriminatory legal provisions related to court proceedings. (Figure 5.8.2)

c. Denial of Social Recognition

Any petition or response or appeal filed to the court is required to mention the names of the father or husband. Similarly, any summons, subpoena, notice issued by the court should also mention the name of the father and husband. Identification of any person in the court is allowed by the name of the father or husband but not by that of mother or wife. Some key informants said that women are thus denied their social recognition as independent persons.

Among the key informants interviewed, 71.61% agreed that the discriminatory legal provisions related to court proceedings are a denial of social recognition to women (Table 10 in Annex 4).

Among the sample respondents, 14.67% said that they themselves are affected, 45.33% said that other women are affected, and 1.33% of the respondents said that both (they themselves and other women) are affected by such discriminatory legal provisions related to court proceedings. More than one third of

the respondents did not know about such impact of discrimination. (Figure 5.8.3)

d. Women Considered as Minors

Court presumes women as a minor and subordinate to men. Their independent identity has not been recognized. It is presumed that only men are capable of receiving summons and notices.

Among the key informants interviewed, 71.61% agreed that the discriminatory legal provisions related to court proceedings result in subordination of women (Table 10 in Annex 4).

Among the sample respondents, 10.66% that they themselves are affected, 60% respondents said that other women are affected, and 2.67% respondents said that both (they themselves and other women) are affected by the discriminatory legal provisions related to court proceedings. (Figure 5.8.4)

e. Continuance of Patriarchal System

Court proceedings follow the deep-rooted cultural rules and structure of patrilineality and discriminate against women. Non-recognition of women to receive court orders and denial of identification of a person through the relation of women are clear indications of the continuance of patriarchal system.

Among the key informants interviewed, 71.61% agreed that the discriminatory legal provisions relating to court proceedings are based on patriarchal system (Table 10 in Annex 4).

Among the sample respondents, 9.33% respondents said that they themselves are affected, 64% of the respondents said that other women are affected, and 4% of the respondents said that both (they themselves and other women) are affected by such discriminatory legal provisions related to court proceedings. (Figure 5.8.5).
f. Non Recognition in Public Sphere

Non-recognition of women in court proceedings results in the restriction on women in public participation. Women are not even allowed to register the birth of their children. Law does not accept women’s independent existence as the head of the family. Some respondents were of the view that such provisions ultimately restrict participation of women in public life.

Among the key informants interviewed, 51.86% agreed that the discriminatory legal provisions relating to court proceedings restrict public participation of women (Table 10 in Annex 4).

Among the sample respondents, 5.33% said that they themselves are affected, 36% of the respondents said that other women are affected, and 4% said that both (they themselves and other women) are affected by discriminatory legal provisions related to court proceedings. More than half of the respondents did not know such impacts of discrimination. (Figure 5.8.6)

Laws are made and revised for the most part by men, for men and against women. So women are marginalized in societies where patriarchy is the only rule of the game. The individuals who are in a position of power to decide the legal issues affecting equal citizenship rights for women are generally not interested in advancing the position of women. The impact of the discriminatory laws on women is deep-rooted in their life cycle. Impact of one discriminatory provision of law results in discrimination in other laws too. They create a vicious circle affecting each other. Such discriminatory laws deprive women of their fundamental rights as well as basic human rights such as right to nationality or citizenship, right to marriage and family, freedom of movement and to reside within the country, to leave and return to one’s country, right to health, education and employment and on the whole the right to non-discrimination. All these rights are related to life and liberty of a person.

The discrimination against women violates the principle of equality of rights and respect for human dignity. It is an obstacle to the participation of women in equal terms with men, in the political, social, economic and cultural life, it hampers the growth and prosperity of society and the family and makes difficult the development of potentialities of women in the service of their countries and of humanity.

37 Section (1) of the Birth, Death and Personal Events Registration Act, 2033 (1976).
38 Preamble to CEDAW
These discriminations have not only impaired overall development of women but also their roles in family, community as well as national development. If these impacts are analyzed from macro prospective, women are not only class suffering due to such discriminatory provisions, it is the whole society, community and the nation as a whole that is suffering in a state of backwardness.

The data reveals that many women and key informers are not aware of specific discriminatory legal provisions and its impact. However, they agree of the persisting/existing discrimination in our laws. Such a situation is not very unusual in Nepal because of the low rate of literacy among women and lack of effective communication system to sensitize and educate people on gender issues, including legal knowledge.
6.1 Executive Initiatives

Under the current constitutional order as well as its international commitments, the executive branch of government is obliged to refrain from engaging in any act or practices of discrimination against women. It is also responsible for formulating policy and programs and implementing them to ensure the greater exercise of rights by women. The following initiatives have been taken by the executive branch to eliminate discriminatory laws in Nepal.

6.1.1 Ratification of CEDAW


6.1.2 Action to Amend Discriminatory Laws Against Women

Providing access to justice: The Legal Aid Act 1997, has been enacted to provide free legal aid to the indigent persons especially for women. However, the Legal Aid Act has been formally implemented only in 13 districts and is in the process of being implemented in 10 more districts.

Visa laws guaranteeing equal provisions for spouse of Nepalese citizens: The Immigration Rules were amended to allow male foreign nationals married to Nepalese women to obtain visas. Though the Immigration Rules have been amended to guarantee equal right to visas for the husband of a Nepalese citizen, the male spouse must renew the visa every year by paying a fee of US $20. Formerly no visa fees were charged when applications were made on the ground of matrimony.

Transfer of tenancy right to daughter and daughter-in-law: The Land Act, which provides tenancy right to daughters, daughters-in-law, and granddaughters, may be considered a positive step towards equality. However, the legislation remains discriminatory, as it imposes certain preconditions on the transfer of tenancy rights to daughters and married daughters.

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6.1.3 Temporary Special Measures to Accelerate the Realization of Gender Equality

Keeping in line with its obligation under Article 11(3) of the Constitution and Article 4 of the CEDAW, the government of Nepal has formulated 150 temporary special measures for women to accelerate mainstreaming gender equality. These are spread over 56 different laws, including the Constitution, in conceptual provisions, political and public participation, education, employment, health, violence against women, court procedure and gender justice, and marriage and family life. Some of the provisions have been listed below:

**Women’s participation in local government:** To ensure better participation of women in local government, reservations have been made for women in the Local Self-Governance Act. As a result of this provision, approximately 40,000 women were elected in the local bodies, including Village Development Committees, District Development Committees and Municipalities.

**Special Provisions for effective participation of Women in the Civil Service:** The Civil Service (First Amendment) Act 1998 allows women to enter into Government Service until the age of 40 whereas men may enter only until the age of 35. Similarly, the Act shortens the probationary period for women to six months, while the period remains one year for men. Finally, the amendment decreases the requirement of the minimum service period for promotion by one year in case of women.

**Enabling environment for equal employment opportunity for women workers/employees:** The Labor Act and Regulations include a provision for establishing childcare centers in organizations with more than 50 female employees. The amended regulations also provide for a breast-feeding break and 52 days maternity leave. Unfortunately, rather than obeying the law as it is, most establishments simply refuse to employ more than 50 women, or they keep any additional female employees on a contract basis or on daily wages, so that they can evade the legal obligation. The situation has worsened as the government has not taken any steps to enforce the law.

Only a few areas such as education, employment and politics have been considered by the State as requiring special measures in favor of women. This parameter is insufficient and has limited the State's accountability, as a gender gap exists in every sector. Besides enacting these legal provisions, the government has not taken any initiative to implement them or monitor their actual implementation. The study conducted by FWLD shows that excluding a few positive exceptions, the special measures exist only on paper and have not made any difference to women’s lives.

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4 For a detailed list of the provisions, See, Special Measures for Women and Their Impact, Forum for Women, Law and Development (FWLD), April 2003.
6 Civil Service (First Amendment) Act (1998), Section 9.
7 Labor Act (1992), Section 42, 40 and 32.
8 Ibid.
6.1.4 Enactment of the Country Code (Eleventh Amendment) Act, 2002

The Ministry of Women and Social Welfare drafted a Bill concerning inheritance rights to amend the Country Code following the Supreme Court’s Directive Order in the case of Meera Dhungana. The Country Code Amendment Bill was registered in the eleventh session of the Parliament on January 13, 1997. While the Bill was under consideration of the Law and Justice Committee, another round of political crisis unfortunately gripped the country. A vicious circle of change in the government started with the no confidence motion against the government and ended with fixing dates for the elections, affecting the passage of the Bill in the Parliament. The House of Representatives was dissolved on Jan 15, 1999, and the legal status of the Bill lapsed. The same Bill (Country Code 11 Amendment Bill) was registered at Parliament as of Sept 20, 1999 before its session on Sept 24, 1999. The House of Representatives finally passed the Bill on March 14, 2002 and it became law when it received Royal Assent on September 26, 2002. The provisions of the Eleventh Amendment are discussed in detail in sub section 6.2.10. The sub-sections 6.1.5 to 6.1.7 give the background of the Amendment.

6.1.5 Positive Aspects of Country Code (Eleventh Amendment) Bill

Progressive objective of the Act: The objectives and reason stated for introducing the Bill state that the existing Country Code required timely amendments to protect the rights and interests of women. It added that the enactment is proposed to uphold the constitutional guarantees, Nepal’s obligations under CEDAW Convention, and directive orders issued by the Supreme Court in different cases related to discriminatory laws. The proposed amendments made are mentioned below:

On Partition

- **Daughters are recognized as heir of the family:** The Bill recognizes fathers, mothers, sons and daughters as equal co-heirs.

- **Court to grant wife a share of husband’s property before a divorce:** The Bill attempts to eliminate the unequal access to property of a divorcée wife by authorizing the court to grant a portion of property (matrimonial property) to wives before granting them divorces. The Act also entitles wives to a monthly or annual maintenance from their husbands until the process of partition is completed. However, the wives are entitled to a share of their husbands’ property only if the husband is the cause of the divorce or if the divorce is by mutual consent.

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12 Ibid., Section 4.
13 Ibid., Section 3.
• **Removal of age restriction for widows to obtain the family property:** The proposed Bill removes the age restriction placed on widows to claim property and live separately. It also entitles them to have full ownership over their property. However, in case of remarriage widows must return any remaining assets to the heirs of their first husbands.\(^\text{14}\)

• **Removal of age restriction for married women:** This provision removes the age restrictions placed on married women that state that women must attain 35 years of age or complete 15 years of marriage to claim their share in family property and live separately.

• **Strong mechanism to enforce the decree of the court:** This provision provides for fines and penalties to ensure the effective execution of the judgments relating to division of property.

**Relating to Adoption**

• Right to adoption is guaranteed to separated wife: The Bill intends to change the present system, in which women whose husbands are still living or who have living sons of their own or of co-wives are precluded from adopting a child. The Bill provides that a wife who has separated from the husband after taking her share of property may adopt a child.

• Adoption is restricted in case of one son and one daughter: The Bill attempts to amend the provision that couples with only one son cannot place him for adoption. The proposed provision adds that couples having only one daughter also are prohibited from placing her for adoption.

**Relating to “Aputali” (Intestate Property)**

• Equal right of Aputali among son and unmarried daughters: The Bill proposes to amend the system of intestate property to provide equal rights to sons and daughters.

**Relating to Homicide**

• **Legalization of abortion under certain conditions:** The Bill permits abortion under the following circumstances:
  - Married women, with their husbands’ consent, may abort up to 12 weeks of pregnancy.
  - Where pregnancy results from rape or incest, abortion is permitted till 18 weeks of pregnancy.
  - In cases where pregnancy poses a danger to the physical and mental health of women or if medical reports prove that the fetus is deformed leading to the birth of a disabled child, abortion is permitted in any time during the pregnancy with the consent of the pregnant woman.

**Relating to Rape**

• **Severe Punishment for the rapist:** Earlier, rape was punishable by imprisonment of between 3 years to 10 years only. The Bill proposes both minimum and maximum imprisonment of 5 years and 20 years respectively.

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\(^{14}\) Ibid., Section 4(11).
• **Investigation of rape case by women police and in-camera trials**: This provision relating to the investigation of rape cases suggests that female police officers conduct investigations and that during rape trials only relatives may be present.

**Relating to Bestiality**

- **Equal punishment for Bestiality**: The Bill proposes to amend the current punishment for cases of bestiality, which is discriminatory in nature and to create equal penalties for male and female offenders.

- **Severe punishment for Child Pedophilia**: The Bill proposes to increase imprisonment for molestation of minor children by one more year and also provides children the right to claim damages from the molester.

**Relating to Marriage**

- **Increment of minimum age for marriage and increment in the punishment for the child marriage**: The provision will raise the minimum age of girls for marriage to 18 years and of boys to 22 years, and will increase the penalty and fines for child marriage.

- **Bigamy is restricted without divorcing the first wife unless medical certificate proves that wife is the cause for not having a child**: This provision proposes to amend the earlier law, which permitted men to remarry when their wives do not bear children within 10 years of marriage or when the children do not survive. The Bill states that men may marry again only if a government recognized medical board grants a certificate stating that their wives are incapable of bearing children.

- **Equal Punishment in fraudulent marriage**: The provision proposes to amend the present law of unequal punishment between men and women for cases of marriage by fraud or misrepresentation. The Bill calls for an equal penalty.

**6.1.6 Shortcomings in the Country Code (Eleventh Amendment) Bill, 1999**

**Relating to Partition**

- **Inherited property to be returned after marriage**: The Bill recognizes the daughter as an heir of the family. However, if unmarried daughters are married after succession or partition, the remaining property must be returned to the maternal relatives. Hence, it compels daughters to choose between the right to marriage or a share in the property. Both right to property and right to marriage are her natural rights. This is a major limitation to the right to property of a daughter. Moreover, the State itself is creating barriers to the legal rights of women on the basis of their marital status. This is against the principle of non-discrimination as accepted under CEDAW.\(^\text{15}\)

- **Not given full ownership over share of a widow from her husband’s property**: Widows may undergo separation and take away the share of property they receive on behalf of their deceased husbands if they wish. However, if they remarry, the remaining property must be returned to the heirs of the former husband. Hence, the Bill gives widows only a limited right to their property. It also creates a major hurdle in widows remarrying, a necessary social reform.

\(^\text{15}\) Article 1 of CEDAW.
• **Discrimination between daughters themselves:** The present Bill discriminates between married daughters and unmarried daughters in almost all partition related issues, especially as heirs and in legacy.

• **In case of bigamy, first wife to share the property with new wife:** Upon second marriage of men, the right to share in the family property of first wives and children is affected, as new wives and sons will have same right in the husbands’ parental property. There is no provision relating to these shortcomings.

• **No interim maintenance during court case:** There is no provision entitling a wife to monthly or annual maintenance from her husband during the pendency of divorce suit.

• **No right to stay in the matrimonial house for women:** There is no provision relating to the right of children and women to live in their matrimonial houses in case of domestic violence.

**Relating to Husband and Wife:**

• **Property right is not guaranteed for a divorcee woman if she is the cause for the divorce:** The proposed Bill provides that once women file applications for divorce, the court should direct partition and should provide them one share of the family property, but this applies only in cases in which the husband is the cause of the divorce.

**Relating to Adoption**

• **A woman’s equal right to adoption is still denied:** Under the prevailing law, a woman whose husband is living or who has living sons, either her own or from a co-wife of her husband, cannot adopt a child. The present Bill allows her to adopt only if she is separated from her husband and is living independently. It does not mention a right to adoption for women who are living with their husbands.

• **Adoption restricted to own relatives:** The current restriction that people must adopt from within their own caste/gotra is a limitation to adoption of their choice, and also limits the opportunities for children who need to be adopted into a family.

**Relating to Intestate Property**

• **Married daughters are discriminated against in the line of succession:** In case of a woman’s exclusive property, even though an unmarried daughter has been included, a married daughter has been placed in the last line of priority for succession. While the provision in the Bill relating to intestate property does give equal right to daughters, it applies only to unmarried daughters. Hence, the law still discriminates between a married daughter and an unmarried daughter.

**Relating to Abortion**

• **No provisions to address sex-selected abortion:** The present Bill does not address matters such as forced abortion or abortions based on knowing the sex of the child through Amniocentesis.

• **As consent of husband is required to perform abortion, a group of women who may need abortions is excluded from access to reproductive health rights:** Under the present Bill, married women require the consent of husbands to perform abortion up to 12 weeks of pregnancy. This clause does not address the problem of widowed women and women who become pregnant outside the marital relationship, and thus they are denied their rights.
Relating to Rape

- **Definition of rape is conservative and does not include various forms of sexual exploitation:** Under the present law of rape, the definition is very narrow and limited to penetration and intercourse only. This exempts criminals from any form of legal jurisdiction in many cases. In the Bill, crimes like gang rape, rape of a pregnant woman, marital rape have not been dealt with.
- **Irrelevant and gender biased provision has been incorporated:** The provision in the Bill that in case of rape a woman is entitled to a share in her husband’s property is irrelevant and gender biased.

Relating to Marriage

- **Bigamy without divorcing the first wife is still allowed by the law:** The law permits the second marriage of men whose first wives are living, based on their wives’ physical and mental health. The present Bill has not tackled such a discriminatory provision.

6.1.7 Initiatives taken to draft other Bills

The Ministry of Women, Children and Social Welfare has been actively involved in drafting various Bills related to the rights of women, which is a positive effort. Activities carried out by MWCSW for women’s empowerment through legislation are as follows:

**Family Courts Bill:** MWCSW has taken initiative to draft a Bill on the establishment of Family Courts in Nepal. The establishment of Family Courts is intended to facilitate speedy justice for victimized women while ensuring their privacy.

**Bill against Domestic Violence:** Research has identified that in Nepal 77 percent of violence against women and children occurs at home. Domestic violence is a barrier for the advancement of women. MWCSW has prepared a Bill on domestic violence against women. The Bill was first registered in the 21st Session of the Parliament, passed by the House of Representatives on April 14, 2002 and sent to the National Assembly. However, as a result of the political instability, the Bill lapsed as the House of Representatives dissolved on June 21, 2002.

**Bill to Substitute Human Trafficking (Control) Act 1986:** Recognizing the need for new legislation to eliminate trafficking against women, which is a severe form of violence against women, a new Bill was drafted. The Trafficking Bill incorporates the related provisions under the Country Code and the existing Human Trafficking (control) Act. In the new Bill prostitution and trafficking are offences, and provisions are made for awarding compensation to the victim, in camera

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hearings, right to self-defense, more stringent punishment for people holding public office, and medical check-ups and rehabilitation for the victims. However, the Bill focuses on combating trafficking from a moral perspective rather than a human rights perspective, confuses trafficking with prostitution, and criminalizes voluntary prostitution without understanding its impact on the victims. This Bill, which was registered in the Parliament, also lapsed when the Parliament dissolved in July 2002.

6.1.8 Institutional Mechanisms for the Implementation of Women’s Right

A number of government institutions have been established for the implementation of women-related activities in Nepal. The major institutions may be described as follows:

The National Council for Women and Children Development: This Council was established within the National Planning Commission on 8 March 1995, with the Prime Minister as its chairperson. It held one meeting. After establishment of The Ministry of Women, Children and Social Welfare it became defunct.

Establishment of Ministry of Women, Children and Social Welfare: The Ministry of Women, Children and Social Welfare, established in September 1995, has the goal of helping women to enter into the mainstream of national development through policies of gender equality and empowerment. It serves as the hub for all women’s development activities in Nepal.

MWCSW has the mandate to supervise, monitor, evaluate and co-ordinate women development activities of all sectors. The Ministry has formed a national level co-ordination committee on women and development, headed by Minister for Women, Children and Social Welfare. The main thrust of the committee is to co-ordinate women development programs that are being implemented by government agencies. This avoids duplication of programs and ensures effective monitoring and evaluation. Secretaries of the line Ministries are members of this co-ordination committee.

MWCSW has been defined as the lead agency to monitor and take necessary actions to meet Nepal’s commitments to UN Conventions and Declarations related to women. It also works as the focal point for national and international activities related to women, and it disseminates international Declarations and Conventions.

Establishment of Women Sections within Ministries: The following ministries have “Women and Development (WAD)” units, sections or divisions within them: the Ministry of Local Development, the Ministry of Cooperatives and Agriculture, the Ministry of Transport and Labor, the Ministry of Education and Sports, the Water and Energy Commission Secretariat under the Ministry of Water Resources, and the National Planning Commission.

Establishment of Women’s Cells under the Police Department: A separate women’s cell in Police Headquarters was established in 1995, and women’s cells now have been extended to 19 districts. The primary role of these cells is to provide support to women victimized by various forms of domestic violence and other offences.

Establishment of Human Rights Commission: The Human Rights Commission Act 2053 B. S. (1996) conferred on the Commission the power to monitor and implement human rights, including right to equality, guaranteed by different international conventions. On May 26, 2000 a five-member Human Rights Commission was formed with one woman member and two human rights activists. The Commission has power to inquire and investigate cases involving human rights violation and to give necessary recommendations for effective implementation of international human rights instruments.

Establishment of National Women’s Commission: The National Women’s Commission was established on March 28, 2002 to ensure women’s rights by advising the government to effectively implement the international human rights instruments and to develop plans and policies specifically aimed at advancing women. However, it lacks a clear mandate regarding its authority and some of its work duplicated that of MWCSW. It is also more of a political body as the government nominated the commission members on the recommendation of political parties.

Establishment of Gender Focal Points: Gender focal points/persons have been appointed in various sectoral ministries. However, main ministries like Home and Finance do not have focal points/persons.

6.1.9 Submission of the CEDAW Initial and Periodical Reports

Submission of government reports on the implementation of CEDAW is the effective mechanism to make governments accountable in their commitments. The government submitted initial report in 1997 and presented the report in 1999 and submitted the combined second and third periodic report on CEDAW Convention in October 2002 and presented the report in January 2004. The CEDAW Monitoring Committee, an informal network of NGOs working on the CEDAW Convention that is coordinated by FWLD, submitted a Shadow Report. In both reports, the expert members of the CEDAW Committee raised questions relating to the existing discriminatory laws and practices. In its Concluding T

The National Women’s Commission was established on March 28, 2002 to ensure women’s rights by advising the government to effectively implement the international human rights instruments and to develop plans and policies specifically aimed at advancing women. However, it lacks a clear mandate regarding its authority and some of its work duplicated that of MWCSW.

18 Text of the questions asked to the government of Nepal by the CEDAW Committee and the government’s response is available online on www.un.org/News/Press/docs/2004/wom1423.doc.htm.
Comments the CEDAW Committee has asked the government to expedite action and to establish a specific timetable for amending discriminatory laws without further delay and to repeal or amend Article 9 of the Constitution, which permits discrimination against women in the area of citizenship.

6.1.10 Formation of High Powered Committee

In August 29, 2001, the government formed an eight-member High Powered Committee to prepare a report after reviewing existing discriminatory laws against women with draft amendments, in coordination of Secretary of Judicial Council. Ms. Sapana Pradhan Malla, Chairperson of FWLD, was nominated one of the members of the Committee along with the name of other members as well. The following work was entrusted to the Committee by the government to review the existing discriminatory laws against women; to prepare a draft after studying the discriminatory laws based on the principle of equality; to prepare a draft bill on elimination of discriminatory laws against women; and to submit a report with recommendations for the empowerment of women.

The Committee submitted its report in Kartik 2059 B.S. However, no initiatives have been taken to implement the recommendation of the Committee.

6.2 Legislative Initiatives

As a key institution for enactment, amendment and repeal of national legislation, the legislature plays a significant role in giving official legitimacy to the promotion and implementation of human rights of women.

During the study carried out in 2000, out of 20 parliamentarian respondents, 17 (85 percent) accepted that discriminatory legal provisions still exist in Nepal. Parliamentarians observed that maximum discrimination exists in property rights and citizenship rights, followed by discrimination in relation to sexual abuse and marriage and family rights. Though the parliamentarians felt there is minimum discrimination in education and legal and court proceedings, discrimination in education has far reaching implications.

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19 Article 2 of CEDAW: - Legislature is in the obligation to take all appropriate measures to eliminate laws, regulations, customs and practices that constitute discrimination against women. Legislature is also responsible to repeal, amend and enact the national penal provision, which constitute discrimination against women.
6.2.1 Some Interventions made by the Parliament to amend discriminatory laws

i. Passage of Country Code (10th amendment) Bill, 1993, excluding provisions relating to women’s rights: In the early sessions of Parliament after the restoration of democracy, issues relating to women were not discussed. Only in the Fifth Session of Parliament in 1993 did the government headed by the Nepali Congress table Country Code (10th Amendment) Bill, 2050 B.S. (1993), which proposed to incorporate certain provisions in Number 118 of the Chapter on Adalati Bandobasta (Court Proceedings) in order to discourage crimes against women. The Bill proposed that an accused in bigamy should not be granted bail if *prima facie* evidence shows his involvement in such crime. Although the Bill was passed by the Parliament, the provisions relating to women were not passed.

ii. Private Bill on rape was registered: During the same session, the then UML parliamentarian Mrs. Sahana Pradhan registered a private Bill proposing changes in the Chapter on Rape of the Country Code. The Bill proposed incorporating some new concepts. However, because of the objection of NC Parliamentarians, it was not presented for discussion.

iii. Country Code (11th amendment) Bill, 1994 tabled to amend some discriminatory laws: In the sixth session of Parliament (March 1994), the Country Code (Eleventh Amendment) Bill, 2050 B.S.(1994) was tabled. This Bill had proposed the following changes in various Chapters of the Code to enhance the status of women and control crime against them:

- Incorporation of a provision disallowing payment of compensation *in lieu* of imprisonment for the offence of bigamy,
- Incorporation of mental torture as one of the causes of divorce,
- Legalization of conditional abortion,
- Allowing widows to decide to live separately,
- Increment of punishment for rape.

When the Bill was under consideration of the Foreign Affairs and Human Right Committee of the House of Representatives, the House of Representative was dissolved on 27 Asadh 2051 B.S. (July 1994). The dissolution of the House caused the Bill to lapse.

iv. Private Bill on Elimination of Discrimination against Women, 1996: MP Navraj Subedi submitted another Private Bill entitled “Elimination of Discrimination against Women Bill, 2053 B.S. (1996)” in the House of Representatives during the 10th session of the Parliament. However, this Bill was also not accepted by the Parliament for discussion.

v. Protection of Pregnancy Bill, 1996: To legalize and regularize abortion, “Protection of Pregnancy Bill, 2053B.S. (1996)” was introduced by MP Sunil Kumar Bhandari, then Chairperson of Family Planning Association, during the 12th session of the Parliament on Srawan 16, 2054 B.S. (31st July 1997). This Bill lapsed on Ashad 12, 2056 B.S. (26th June 1999) due to completion of the tenure of the member presenting the Bill.

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21 Ibid. p. 30.
Meanwhile, during the 18th session of Parliament, in response to an intervention made by Hon. Sushila Nepal, a member of the House of Representatives, demanding mention of mothers’ names in the “Parliamentarians Introduction 1999” – An introductory booklet of the parliamentarians, the Speaker of the House of Representatives on 14th June 2000 made the ruling to include the names of the members’ mothers in the booklet.

Foreign Affairs and Human Rights Committee held many discussions, and also met NGO representatives and Human Rights Activists to gather necessary suggestions on the Bill. Later, the Bill was referred to the newly formed Law and Justice Committee of the House of Representatives. But the legal status of the Bill was lapsed on 15th January, 1999 as the House of Representatives was dissolved.

6.2.2 Initiatives taken by the Social Justice Committee, National Assembly

An initiative was taken by the Social Justice Committee of the National Assembly to discuss the existing discriminatory legal provisions and required areas of reforms on 25-26 March, 2000. The parliamentarians not only highlighted the various discriminatory provisions of the Country Code and the shortcomings of the Bill to amend those provisions but also prepared an improved Draft Bill to amend the Country Code and put that Bill in the pigeonholes of parliamentarians.

6.2.3 Ruling of the Speaker

Meanwhile, during the 18th session of Parliament, in response to an intervention made by Hon. Sushila Nepal, a member of the House of Representatives, demanding mention of mothers’ names in the “Parliamentarians Introduction 1999” – An introductory booklet of the parliamentarians, the Speaker of the House of Representatives on 14th June 2000 made the ruling to include the names of the members’ mothers in the booklet.

6.2.4 Parliamentarians Raised the Issue of Discriminatory Laws in the 18th Session of the Parliament

While discussing the appropriation heads for the Ministry of Women, Children and Social Welfare in the House of Representatives, a number of members of parliament belonging to the majority as well as the opposition benches raised issues of gender discrimination and empowerment of women. Most demanded formation of the National Women's Commission, rehabilitation of the victims of sexual abuse and violence, equal property rights to women and the launching of awareness programs. The members

vi. Country Code (11th amendment) Bill, 1997: The Country Code (11th amendment) Bill, 2054 B. S. (1997) was registered in the Parliament on 7th July 1997. It incorporated various rights related to women including inheritance rights of daughters, rights of divorcée women, rights of widow etc. and also proposed amendment of many discriminatory provisions such as discrimination on punishment for bestiality, and provisions on marriage and divorce. It also proposed legalization of conditional abortion and provided punishment against child pedophilia. The Bill was referred to

complained that the budget allocation to the Ministry of Women, Children and Social Welfare was very limited.23

6.2.5 Commitment of the Prime Minister in Parliament

Responding to the queries by parliamentarians in a question-answer session in the National Assembly on July 8, 2000, the then Prime Minister Mr. Girija Prasad Koirala, who held the portfolio of Women, Children and Social Welfare, assured them that the National Women’s Commission would be constituted as soon as possible, as necessary budget allocation had already been made for the commission.

6.2.6 Pressure by Women Parliamentarian

On July 25th, 2000 women parliamentarians of the House of Representatives demanded introduction of the Country Code (Eleventh Amendment) Bill in the 18th Session of the parliament and demanded introduction of another Bill on the National Women Commission. They gave an ultimatum of one day and warned that if their demands were not fulfilled, they would boycott the programs of the House. In an all-party meeting with women parliamentarians held later on, they were informed that the government would introduce the Bill in the House on July 28, 2000.24

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Ms. Sabitri Bogati of the Nepali Congress said the women, who constitute half of the country’s population, are still relegated to the back seat in many sectors. She demanded for constitution of a National Women’s Commission and formulation of a clear policy regarding the status of Nepali women sold off to Indian brothels, and their proper rehabilitation.

Mr. Homnath Dahal of the same party demanded for passing the Bill on equal rights of women on parental property.

Mr. Mahendra Prasad Yadav of the CPN-UML demanded for introduction of the Bill on equal property rights for women in this session of Parliament.

Mr. Basant Kumar Nembang of the same party demanded the constitution of a National Women’s Commission and formulation of a clear policy regarding the status of Nepali women sold off to Indian brothels, and their proper rehabilitation.

Mr. Nara Bahadur Hamal of the same party demanded for launching the programmes of woman awareness and income generation through the Commission. He said the budgetary allocation to the Women Ministry is disproportionate, and he demanded for amendment in the Muluki Ain (Country Code).

Mr. Til Kumar Meyangbo of the same party called for ensuring equal property rights to men and women, whereas, Mr. Prem Bahadur Singh of the same party said that the budgetary allocation under the Ministry of Women and Social Welfare was unreasonable.

Mr. Birodh Khatiwada of the same party called for equal remuneration to men and women, whereas Ms. Urmila Aryal of the party demanded for launching the programmes of woman awareness and income generation through the Commission. He said the budgetary allocation to the Women Ministry is disproportionate, and he demanded for amendment in the Muluki Ain (Country Code).

Ms. Renu Kumari Yadav of the Rastriya Prajatantra Party commented that women so far have been provided nothing but sweet slogans, not even the only woman minister has been given independent charge of the Women Ministry, that the Beijing Commitments have not been brought into practice. She demanded for constitution of Women’s Commission, for mentioning the name of the mother in the citizenship certificate along with the name of the father, for constitution of family court, and for enacting severe laws against domestic violence and trafficking of women.

Mr. Hari Acharya of the National Peoples Front said that there is no concrete commitment in the policy, programme and budget of the government on the woman and child development sector and he urged on providing equal property rights of women and reformation in the laws on freedom of marriage, divorce and abortion.

Mr. Narayan Man Bijukchhe of the Nepal Workers and Peasants Party commented that though there are some programs launched on advancement of women, the real target group could not get the benefits therefrom because of lack of transparency. He called for launching those programmes through local bodies.

6.2.7 Presentation and Discussion of the Bill

The government presented the Country Code (Eleventh Amendment) Bill, 2000 before the House of Representatives on July 28, 2000. In general discussion, the CPN (UML) parliamentarians welcomed the Bill and urged its early passage.

On August 18, 2000, the Bill was presented in Law, Justice and Parliamentary Affairs Committee of the Parliament. After discussion on the Bill, many members of the House of Representatives registered 74 amendment proposals in the Bill.

6.2.8 Public Opinion Poll

The Law, Justice and Parliamentary Affairs Committee on September 19, 2000 decided to conduct a random opinion poll in the various development regions of the Kingdom, to gauge for themselves public opinion on the issues. The poll revealed an unexpected positive result as respondents favored amending the discriminatory provisions of law.

6.2.9 Passage of the Bill

On the basis of the poll results and activities of civil society, the Law, Justice and Parliamentary Affairs Committee changed several discriminatory provisions within the Bill and on October 5, 2001 recommended that the House of Representatives pass the Bill. On the Committee’s recommendation, the House of Representatives passed the Bill on October 9, 2001. However, on October 13, 2001, the National Assembly refused to even consider the Bill saying that it was not comprehensive in protecting women’s rights, thereby creating a need for the Bill to be passed again by the House of Representatives. After considerable deliberations and efforts of civil society groups the House of Representatives passed the Bill by an overwhelming majority on March 14, 2002. Finally, the Bill received Royal Assent on September 26, 2002 and became law of the land.

6.2.10 The Eleventh Amendment to the Country Code: A milestone

The Eleventh Amendment to the Country Code 2002 is a milestone in the history of the women’s rights movement in Nepal. The Eleventh Amendment guarantees daughters the right to inherit property at birth, women’s right to property in case of divorce including right to alimony during the pending of divorce litigation, daughter’s right to maintenance, repeals the provision of dolaji, establishes a conditional right to abortion while making sex determination tests punishable, establishes equality in age of marriage,
equality in grounds for divorce, a conditional right to adoption, equal punishment in case of marriage by misrepresentation, equality in punishment for the offence of bestiality, increases punishment for the offence of rape, provides additional punishment in case of gang rape and rape of disabled or pregnant woman, punishment for child pedophilia. The language is gender friendly. The shortcomings in the Eleventh Amendment are listed in detail under various headings in Chapter 4.

The detailed provisions of the Eleventh Amendment Bill are as follows:

**Relating to Property**

- **Daughters accepted as heirs to family property:** Doing away with the restriction of age, daughters are accepted as coparceners in the family property at birth and have equal right to inherit family property.

- **Unmarried daughters given equal right in intestate property:** Unmarried daughters are given equal right in the intestate property.

- **Removal of age restriction for married women:** The restrictions placed on married women to claim a share in the family property, which stated that woman must attain 35 years of age or complete 15 years of marriage, have been repealed.

- **Share in the husband’s property before a divorce:** The amendment has eliminated the divorcee wife’s unequal access to property by authorizing the court to grant a portion of property (matrimonial property) to wives before granting them divorces. It entitles them to full ownership over the property. Upon their death such share of property shall devolve upon the children born after remarriage and in case no child is born upon remarriage, the remaining share shall devolve to the children, if any, of the first husband or to the rightful heirs of the first husband.

Divorced wives are given a choice to either take the share of their property or to claim monthly or yearly expenditures instead of the share in the property, set on the basis of husband’s property and income, until remarriage. Furthermore, it also entitles wives to a monthly maintenance from their husbands until the process of partition is completed.

- **Removal of age restriction for widow to receive family property:** The age restriction placed on widows to claim property and live separately is repealed. The amendment also entitles them to full ownership over their property. However, in case of remarriage, widows with children should maintain their children out of the said property and can partition or dispose of such property only for the upbringing of the children. These widows can use their share of such property only after the children become major. Childless widows have full right to their share of property. Upon their death such share of property shall devolve upon the children born after remarriage and in case no child is born upon remarriage, the remaining share shall devolve to the children, if any, of the first husband or to the rightful heirs of their first husband.

26 No.1 of Chapter on Partition, the Country Code, 1963.
27 No.10 of the Chapter on Partition, the Country Code, 1963.
28 No. 4 a of the Chapter on Husband and Wife, the Country Code, 1963.
29 Ibid.
30 No. 4 b of the Chapter on Husband and Wife, the Country Code, 1963.
31 No. 4 a of the Chapter on Husband and Wife, the Country Code, 1963.
32 No.12 of the Chapter on Partition, the Country Code, 1963.
• **Strong mechanism to enforce the decree of the court:** To ensure the effective execution of judgments relating to partition of property of women, the amendment provides for a fine up to rupees five thousand or imprisonment up to one month or both.\(^{33}\)

• **Relating to maintenance/upbringing of daughters:** The amendment obliges parents to maintain their daughters and take care of their upbringing, guaranteeing the right to food, clothing, education and health, as provided to sons.\(^{34}\)

• **Repeal of the provision of dolaji:** Dolaji was a process followed by parents with no sons to give their daughters full right over the property. Before the amendment, any person who had only daughters could, without adopting a son, institute daughter as dolaji before her marriage. This provision has been repealed by the Eleventh Amendment.

**Relating to Adoption**

• **Right to adoption is guaranteed to separated wife:** The amendment provides that a wife who has separated from the husband after taking her share of property may adopt a child.\(^{35}\)

• **Adoption is equally restricted in case of one son and one daughter:** The amendment prohibits couples with only one daughter from placing her for adoption. Earlier such restriction was only in case of sons.\(^{36}\)

**Relating to Abortion**

• **Conditional right to abortion:** The stringent law relating to abortion has been amended with the Eleventh Amendment. Abortion is permitted under certain conditions with the consent of the women.\(^{37}\)
  - Up to twelve weeks of pregnancy
  - Up to eighteen weeks of pregnancy, in case it resulted from rape or incest
  - In cases where pregnancy poses danger to the physical and mental health of women or if medical reports prove that the fetus is deformed leading to the birth of a disabled child, abortion is permitted in any time during the pregnancy with the consent of the pregnant woman.

• **Penalisation of abortion upon sex determination:** The amendment penalises abortions that are carried out after determining the sex of the foetus with additional imprisonment of up to one year.

**Relating to Rape**

• **Increase in punishment for rape:** There has been an increase in the punishment for rape with the Eleventh Amendment.\(^{38}\) The punishment is as follows:
  - Where the victim is below the age of 10 years imprisonment ranging between 10 to 15 years

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\(^{33}\) No.10(c) of the Chapter on Partition, the Country Code, 1963.

\(^{34}\) No.10 of Chapter on Partition, the Country Code, 1963.

\(^{35}\) No.2 a of the Chapter on Adoption of Son, the Country Code, 1963.

\(^{36}\) No.2 of the Chapter on Adoption of Son, the Country Code, 1963.

\(^{37}\) No.28 b of Chapter on Homicide, the Country Code, 1963.

\(^{38}\) No.3 of Chapter on Rape, the Country Code, 1963.
- Where the victim is between the ages of 10 and 16 years, imprisonment ranging between 7 to 10 years
- Where the victim is above the age of 16 years, imprisonment ranging between 5 to 7 years.

**Additional punishment in case of rape gang rape or rape of disabled or pregnant woman:** In case of gang rape or rape of disabled or pregnant woman, the amendment makes provision for additional punishment of imprisonment of five years in addition to the punishment provided for under the offence of rape.

**Investigation of rape:** The Eleventh Amendment has added gender friendly investigation procedures in case of investigation of rape. It states that the investigation of rape cases should be conducted by female police officers, or in their absence such investigation should be conducted in presence of a women’s rights activist. The amendment also provides for in camera hearing for the victim of rape.

**Pedophilia made punishable:** The amendment has made pedophilia punishable with additional punishment of imprisonment of up to one year in addition to the punishment provided for under the offence of rape and makes provision for monetary compensation to the victim (from the offender) taking into account, inter alia, the age and grievance caused to that minor.

**Repeal of the discriminatory provision of rape:** Prior to the Eleventh Amendment, the law relating to rape provided for lesser punishment in case of rape of prostitute. However, keeping in line with the decision of the Supreme Court, this provision has been deleted and now the punishment in case of rape is similar for all women and girls.

**Equality in Punishment**

- **Equal punishment for Bestiality:** The amendment provides for equal punishment to men and women for the offence of bestiality. This was earlier discriminatory in nature.

- **Equal punishment in case of marriage by misrepresentation:** The amendment provides for equal punishment to men and women for the offence of marriage by misrepresentation of marital status. That was earlier discriminatory in nature.

**Relating to Marriage**

- **Equality in age of marriage:** The amendment provides for equal age for marriage for both boys and girls. The minimum age for marriage with the consent of parents/guardians is 18 years and without the consent of parents/guardians is 20 years.

- **Increase in punishment for child marriage:** The amendment has increased the punishment for child marriage. The punishment is as follows:

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39 No. 10 a of Chapter on Rape, the Country Code, 1963.
40 No. 10 b of Chapter on Rape, the Country Code, 1963.
41 No. 9 a of the Chapter on Rape, the Country Code, 1963.
42 No. 7 of the Chapter on Rape deleted.
43 Sapana Pradhan Malla for FWLD v. HMG/Nepal, Writ no. 56 of 2001-2002
44 Chapter on Bestiality, the Country Code, 1963.
45 No. 8 of Chapter on Marriage, the Country Code, 1963.
46 No. 2 of Chapter on Marriage, the Country Code, 1963.
- Where the girl is below the age of 10 years, imprisonment ranging between 6 months to 3 years and fine ranging between rupees one thousand and ten thousand
- Where the girl is between the ages of 10 to 14 years, imprisonment ranging between 3 months to 1 year and fine of up to rupees five thousand
- Where the girl is between the ages of 14 to 18 years, imprisonment up to six months or fine of up to rupees ten thousand or both
- Where the girl is between the ages of 18 to 20 years, imprisonment up to six months or fine of up to rupees ten thousand or both

• **Bigamy is restricted without divorcing the first wife unless medical certificate proves that wife is the cause for not having child:** The amendment provides that that men can marry again without divorcing the first wife only if a government recognized medical board grants a certificate stating that the wife is incapable of bearing children. Previously a man could remarry without divorcing the first wife if she did not bear children within 10 years of marriage or where there was no surviving child during that period.

### 6.3 Judicial Initiatives

The judiciary has the prime responsibility to deliver justice based on the established principles of human rights that are universal, indivisible and inalienable. Under the Constitution of the Kingdom of Nepal, the courts have the power and the obligation to make gender-sensitive interpretation of laws/constitution/conventions to ensure greater protection and promotion of human rights. Of particular importance in the implementation of CEDAW is the responsibility of the courts, especially the Supreme Court, to declare *ultra vires* laws that contradict the rights provisions in the Constitution or any Convention to which Nepal is a party. The implementation of duly ratified International Conventions by the national courts as national law is crucial for enforcing women’s human rights.

#### 6.3.1 Interpretation of the Fundamental Rights of Women

**i. Upholding the Right to Privacy:** In *Annapurna Rana vs. Ambika Rajya Laxmi Rana*[^48^] a case involving maintenance of a daughter, the petitioner claimed the deed of partition made by her mother and brother in her absence constituted forgery and demanded nullification of the said partition deed. The defendant responded that since the plaintiff was married and had a child, they no longer had any obligation to maintain her.

The Kathmandu District Court issued an order requiring examination of the plaintiff’s vagina and uterus by three gynecologists to determine if she had delivered any child. This order was challenged in the Appellate Court, which upheld the order.

The Supreme Court, however, quashed the District Court’s order on the ground of plaintiff’s right to privacy, and said that vaginal and uterus test could not determine whether or not she was married. The Court thus recognized that even an unmarried woman could have a child.

[^47^]: No. 9 of Chapter on Marriage, the Country Code, 1963.
The Court further said that pre-marital sex is a private affair of the individual and in the changing modern society where personal liberty is highly regarded, it would be discriminatory to decide the question of whether or not a woman was married only on the basis of a virginity test.

Several of the issues raised in the case and in the judgment by the two member divisional bench of the Supreme Court such as pre-marital sex, single mothers, living in a relationship etc. are still debatable in conservative Nepali society.

This case indicates that the Court, by recognizing the personal liberty of women, can play an important role in ending discriminatory social attitudes in a patriarchal society.

However, a negative side of the decision is that before this case, a woman’s statement regarding her marriage to a particular man was considered valid on the belief that a woman from a conservative society could never lie about accepting someone as her husband. Many women fighting to obtain legal recognition of their relationship with individual men will now have to come forward with proofs of marriage.

ii. Inheritance law has been declared conditional: In Meera Dhungana vs. Ministry of Law and Justice, the petitioner had challenged No.16 of the Chapter on Partition of the Country Code, which gives a son the birth-right to share in the father’s property whereas the daughter’s right in the father’s property is conditional upon the girl remaining unmarried until the age of 35. It was argued that this provision was discriminatory and void as being inconsistent Articles 1, 11, 17 and 131 of the Constitution.

The Supreme Court declared that the provision was discriminatory to the extent that a son has a right to property as a birthright whereas in case of an unmarried daughter it is conditional upon her completing the age of 35. At the same time it said that taking into consideration the other provisions relating to partition, the provision under No.16 did not seem discriminatory against the daughter. The Court further said that if No. 16 were to be declared unconstitutional, then the daughter would have a right in the father’s as well as the husband’s property. The Court feared that the son would be entitled only to the father’s property and hence the situation then would be discriminatory against the interest of the son.
Expressing sympathy to the petitioner and to Nepalese women in general, the Court ruled that the challenged provision was the product of age-old practices in the Nepalese society and was a part of its social ethos. Under Articles 1, 11, 23, 88 and 131 of the Constitution the Court issued a directive order to introduce an appropriate bill in parliament. At the same time, the Court asked the government to take into consideration the patriarchal nature of the society, the social structure and fear of positive discrimination against men, thus showing its patriarchal bent of mind.

iii. Discriminatory visa provisions declared unconstitutional: In *Mira Gurung vs. Department of Immigration*,\(^50\) the main issue was whether it is reasonable under Art. 11 of the Constitution to reject the granting of a residential visa to a foreign husband of a native wife under Rule 14 of the Foreigners Rules 1975, when the law affords a foreign wife of a native husband the right to a visa.

The Court ruled that any person applying for a visa is a foreigner to Nepal and that therefore the law governing the relationship between an applicant for a visa and the authority responsible for considering that application *prima facie* does not involve questions of discrimination under Art 11. The impugned clauses of Rule 14, however (Clause 3 and 4) provided for visa arrangements that not only affect alien subjects but also Nepalese citizens, on the basis of their marital relationship.

Since the Rule in question allowed the authorities to refuse a visa to the husband of a Nepalese wife whereas it would have been granted to the wife of a Nepalese husband (and not limited in time), the Supreme Court ruled that the provisions in question led to unequal treatment and discriminatory practices on the grounds of sex against Nepalese wives with foreign husbands as compared to Nepalese husbands with foreign wives, and that they were therefore in contravention with the right to equality.

The order of the Court in this case was that for an interim period Sec. 24 of the Nepal Interpretation of Statutes Act should prevail until the enactment of the new Rule under the Immigration Act.

The Court further ordered that Rule 14(4) of the said Rules should not be implemented and issued the Writ of Mandamus to review the rules and make an appropriate provision.

Though the Immigration Rules\(^51\) have been amended guaranteeing equal rights for foreign husbands of Nepalese citizen to obtain a visa, the spouse has to renew the visa every year by paying a fee of US $20. Formerly no provisions were made for paying visa fees to obtain a visa on the grounds of matrimony.

iv. Infanticide, though illegal, received a sympathetic judicial attitude: In *HMG vs. Miss Minmin Maya Lama and Mr. Sarbadhan Tamang*,\(^52\) Mr. Dhaba Lama alleged that his fifteen year old sister gave birth to a baby, the killed the child and disposed of the body in a drainpipe near the toilet of Handloom Carpet Industries,

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52 Decision No. 50, Lalitpur District Court, Criminal Registration No. 61/148 (1998).
where she was working. The child was allegedly born of an illicit relationship between Minmin Maya Lama and Sarbadhan Tamang. It was alleged that she killed the child to save herself from social stigma on advice of Mr. Tamang.

The District Court convicted Minmin Maya Lama and held that she is liable to half the punishment prescribed in No.13(3) of the Chapter on Homicide, in accordance with Section 11(3) of the Children’s Act 1991, which meant she was liable to imprisonment of 12 years. Mr Tamang was set free.

This decision was challenged in the Appellate Court and the Appellate Court declared that since no substantial evidence was presented that the infant was killed, it would be considered that the child was born dead. Hence Miss Lama was set free.

In Miss Goma Devi Pyakurel vs. Mr. Hem Babadur Johari & HMG, the defendant found a half buried body of an infant in his field. He immediately reported the matter to the police. Miss Goma Devi, daughter of Mr. Prasad Gautam, was suspected of killing the child and hence was liable to punishment in accordance with No.13 (3) of the Chapter on Homicide.

In this case, the court decided that the child should be considered as born dead unless any substantial evidence of the child being born alive and then killed is established. Miss Goma Devi was set free.

The decisions in these and other cases indicate that though late-term abortion and infanticide is illegal in Nepal and a harsh punishment of up to life imprisonment is provided, the judiciary has been sympathetic in its approach. Minimum punishment has been given in many cases, taking into consideration No. 188 of Chapter on Court Proceedings of Country Code. Judges have reduced the penalty in light of the circumstances under which the women are forced to commit the offence and the fear of social stigma. However, despite their sympathetic attitude, the judges have not recognized this as an issue of gender and reproductive health rights.

v. Higher punishment for pregnant women for voluntary abortion recognized as discriminatory:

A recent positive decision of the Supreme Court protects women’s right to reproductive self-determination. Although the eleventh amendment to the Country Code has legalized abortion in Nepal under certain circumstances, the provision of

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53 Minmin Maya Lama vs. HMG, Decision No.73/74, Patan Appellate Court, Criminal Registration No. 1387/1600 (1999).
55 No. 188 of Chapter on Court Procedure of the Country Code states that even if convicted of the offences in which the capital punishment, life imprisonment with confiscation of entire property or life imprisonment is prescribed in accordance with this Act, if the judge delivering the judgement is under suspicion by his own conscience that the case may be a mere accident or while considering the circumstances of the offence committed, he deems that it would be excessive to award the punishment as prescribed in the Act and deems on his conscience that the convict be punished leniently, he shall forward his opinion in writing with reasons therefor having fixed the punishment in accordance with the Act in his reference judgement. The final court may, if it deems appropriate, award lesser punishment than prescribed in the Act.
punishment for performing an abortion beyond legal conditions is still discriminatory as it provides higher punishment for the pregnant woman in comparison to other persons whose acts cause an abortion. No. 28 of the Chapter on Homicide in the Country Code punishes the pregnant woman for up to five years of imprisonment if she performs an abortion beyond legal conditions. However, if someone else causes an abortion by coercing, threatening or enticing a pregnant woman, No. 28 A provides imprisonment of up to six months only. Further, No. 32 provides for imprisonment up to six months only for causing an abortion with the knowledge that the woman is pregnant; in case offence was committed without the knowledge that woman is pregnant, the punishment is prescribed as up to one thousand rupees fine only.

On May 11, 2004, Forum for Women, Law and Development (FWLD) challenged No.28, No.28 A and No. 32 of the Chapter on Homicide in the Country Code on the grounds that the provision of greater punishment for a pregnant woman performing an abortion beyond legal conditions than for someone else whose causes an abortion discriminates against women’s right to reproductive self-determination. On February 24, 2005, the Supreme Court of Nepal, in delivering its verdict on the writ petition, recognized the No. 28 and 28A of Chapter on Homicide as discriminatory against women and issued a directive order to the His Majesty’s Government of Nepal to bring an appropriate Bill amending the provision to address the inconsistency on punishment in performing abortion with choice than coercion.

vi. Royal Nepal Corporation rules declared ultra vires:

The Supreme Court recognized the No. 28 and 28A of Chapter on Homicide as discriminatory against women and issued a directive order to the His Majesty’s Government of Nepal to bring an appropriate Bill amending the provision to address the inconsistency on punishment in performing abortion with choice than coercion.

Under the Royal Nepal Airlines Corporation Rules, 2031 B. S. (1974), the age of retirement for crew workers was 55 years, while in the case of air hostesses it was 30 years of age or 10 years of service, whichever was earlier.

Under the Royal Nepal Airlines Corporation (Second Amendment) Rules, 2052 B. S. (1995), the service of workers could be extended for three more years after 55 years of age considering the age of the worker.

In a writ petition filed in January 1997 challenging this rule as discriminatory and inconsistent with clauses (2) and (5) of Article (11) of the Constitution of the Kingdom of Nepal 1990, the full bench comprising the three Supreme Court Justices – Laxman Prasad Aryal, Krishna Kumar Verma and Dilip Kumar Paudel – declared the rule ultra vires as it was found to be inconsistent to the said Constitutional provisions.

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57 Sapana Pradhan Malla for FWLD vs HMG, Ministry of Health, Writ No. 52/061.
58 No discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, sex, caste, tribe or ideological conviction or any of these.
59 No discrimination in regard to remuneration shall be made between men and women for the same work.
Discriminatory punishment for rape against prostitute declared ultra vires: In Sapana Pradhan Malla for FWLD v. HMG/Nepal, the discriminatory provision of the rape law that provided for lesser punishment for those guilty of rape of a prostitute was challenged as violating Article 1, Article 11, Article 12(1) and Article 20 of the Constitution of the Kingdom of Nepal and Article 9(1) of the Treaty Act. The petitioners alleged that a prostitute is also a woman and has an equal right to enjoy the rights conferred by the Constitution and other international human rights instruments. The law that provides unequal punishment for the same crime on the basis of the victim's character is prima facie discriminatory. In a crime, mens rea and actus reas are the same, irrespective of the victim's character. In this context, unequal punishment on the basis of victim's character for the same crime represents a discriminatory principle of criminal justice.

In its decision, the Court held that rape is a crime against women's human rights, directly violating an individual's right to self-determination and personal liberty. It not only affects the victim's physical, mental and family life but also affects her dignity and existence. Therefore the physical and psychological torture that the victim has to face is the same irrespective of the victim's status, such as whether the victim is married or unmarried, or whether she is a prostitute. A prostitute is also a woman and is entitled to enjoy all the rights granted to a human being, namely Article 1 of UDHR, Article 1 of ICCPR and Article 6 of CEDAW. The right to self-dignity, self-determination and independent existence are rights that even a prostitute is entitled to enjoy, as rights are inseparably granted to all human beings.

Therefore, the provision of less punishment for rape of a prostitute discriminates against them without any reasonable grounds, construing them as lower class. The existence of such laws which are discriminatory and unequal among citizens does not comply with the spirit of the Constitution. It is not
reasonable to think that punishment for an offence should differ only on the basis of the victim’s profession or character. If such discriminatory legal provisions remain in force, the rape of prostitutes is further encouraged. The Court, therefore, issued an order to declare No. 7 of Chapter on Rape as void.

viii. Marital rape declared as an offence: In *Meera Dhungana for FWLD v. HMG/Nepal*, the petitioner challenged No.1 of the Chapter on Rape, the definition of rape, as violating Article 11 of the Constitution as it does not include the offence of marital rape. No. 1 of the Chapter on Rape defines rape as the act of having sexual intercourse, with or without her consent, with an unmarried girl, or a widow or another's wife below the age of sixteen years; or without her consent for those above the age of 16 years in whatsoever manner either exerting threat, pressure or coercion or with undue influence. However, the act of having sexual intercourse with one's own wife without her consent has not been included in the definition of rape.

The petitioner contended that rape is a physical relationship against the will of the woman. Consent is a fundamental basis for sexual intercourse or contact. Thus, the above definition of rape has violated women's right to equality and right to take a decision that is secured under various international instruments.

The Court decided that in light of the discussions during the case and spirit of right to equality guaranteed by the Constitution, various international human rights instruments ratified by Nepal and changing norms and values in criminal law over time, it was appropriate, reasonable and contextual to define marital rape as a criminal offence. It cannot be said that any person who commits the heinous and inhuman crime of rape against a woman should be immune from criminal liability simply because he is her husband. Such husband has to be made liable to punishment for the offence he has committed. The Court further held that as a punishable offence, there is a difference in consequences of rape committed by a third person and by a husband, and the present law only deals with the consequences of rape committed by a third person. There is a gap of legal provisions in the situation of rape of one’s own wife, such as providing immediate relief by allowing the wife to live separately from or to divorce the rapist husband, and for prescribing the degree of offence in case of child marriage. Therefore the Court said the Ministry of Law, Justice and Parliamentary Affairs should introduce a Bill to bring necessary amendments with regard to the highlighted gaps and to make complete legal provisions for justifiable and appropriate solutions in an integrated manner with regard to marital rape, taking into account the special situation of the marital relationship and position of husband.

ix. Directive order to make law on sexual harassment: Referring to the right to equality guaranteed under the Constitution of the Kingdom of Nepal, 1990 and provision in Article 2 of the CEDAW, the Supreme Court, in *Advocate Sarmila Parajuli and others v. HMG (NKP 2061(2004), Vol. 10, p.1312*) held that any type of sexual abuse is a violence against women and that State Parties are obliged to take legislative and other measures to eliminate such discrimination. The Court issued a directive order in the name of the government to take necessary initiatives to make an appropriate law relating to sexual harassment.
Though the Supreme Court refused to issue a judicial directive until the law on sexual harassment is made, the acceptance that no law on sexual harassment exists and the directive order to make a law is a new judicial initiative to eliminate violence and discrimination against women.

x. Upholding women’s right to property: Amended No.1 of the Chapter on Partition of Property in Country Code, after eleventh amendment of the Code, provides that each of the surviving father, mother, husband, wife, son and daughter shall be equal coparcener during the partition of joint family property. However, No. 1A. of this Chapter states that notwithstanding anything contained in No. 1, the partition share need not be provided to a married daughter. Similarly, No. 16 of the Chapter on Partition of Property provided that notwithstanding anything contained in other Numbers of that chapter, if a daughter having obtained her partition share gets married, the remaining property shall pass to the heir of her parental line. In Prakash Mani Sharma for Pro-public vs. Office of Prime Minister and Council of Ministries, the petitioners challenged Nos. 1A. and 16 of the Chapter on Property of the Country Code as it is inconsistent with the Constitution and international human rights treaties to which Nepal is a party.

In this case, the Supreme Court held that No. 1 of the Chapter on Property gives equal right to daughter to get one share and once she got the share of property, she has full right to enjoy, use, sell or dispose the property according to her will. However, No 16 of the Chapter on Property not only restrict the daughter to enjoy, use, sell or dispose the property, it also compels the daughter to return the remaining property once she gets married. In this manner, a daughter's absolute and vested partition right becomes conditional on the basis of marital status. Due to this provision, the goal of eleventh amendment of the Country Code to provide equal partition right to daughter has been vitiated and it ultimately results in discrimination as defined in the Article 1 of the CEDAW Convention.

The Supreme Court issued directive order to government to review the whole chapter including No. 16 from equality right perspectives as it is necessary to review it to remove discrimination against women.

In Lily Thapa vs. Office of Prime Minister and Council of Ministries, the petitioners challenged No. 2 of the Chapter on Women's Exclusive Property of the Country Code as it is inconsistent with the Constitution and international human rights treaties to which Nepal is a party. No. 2 of the Chapter provides that an unmarried woman, a married woman or a widow may, with the consent of her father and mother if they are surviving and a married woman or a widow, with the consent of her sons and unmarried daughters attaining the age of majority and surviving, may dispose all of immovable property.

67. Writ no. 31/061, decided on December 15, 2005.
68. Writ no. 34/061, decided on December 15, 2005.
In this case, the Supreme Court held that there is no restriction to use immovable property for man on the ground of their marital status whether they are unmarried, married or widower; whereas, women face restriction to use their immovable property on the ground of their marital status. Furthermore, the law also prescribes the person to give consent for women to use their own property. This provision imposes unreasonable restriction to women and thus it is discriminatory against women. Therefore, the Court declared No. 2 of the Chapter on Women’s Exclusive Property *ultra vires* as it contradicts with the Constitution and international human rights treaties where Nepal is a party.

Similarly, in another move against gender discriminatory law, the Supreme Court in *Meera Dhungana for FWLD vs. Office of Prime Minister and Council of Ministries* declared null and void No. 12A of Chapter on Succession of the Country Code, which was inserted by the Eleventh Amendment to the Code. No 12A concerned the return by a daughter after marriage of property received through succession. The impact is that a daughter no longer needs to return the property.

In this case, the Court also issued a directive order in the name of the government to set up a panel to conduct a study on laws relating to discrimination against women and to enact appropriate laws as per the recommendations of the panel.

**xi. Discriminatory ground for divorce declared unconstitutional:** In *Meera Dhungana for FWLD vs. the Office of Prime Minister and Council of Ministries,* the petitioner has challenged the No. 1(1) of the Chapter on Husband and Wife of the Country Code allowing the husband to seek divorce if a government recognized medical board affirmed the wife’s inability to conceive. The petitioner challenged that this provision is discriminatory and thus, it violates Article 11 of the Constitution which guarantees the right to equality between men and women as law does not provide the same ground to seek divorce to the wife in case of the husband’s inability to cause conception. The Supreme Court held that this provision is discriminatory and declared *ultra-vires* to the Constitution.

**xii. Special access on divorce is recognized as a special measure for women:** In *Radheshyam Parajuli vs. HMG/Nepal,* the special legal provision that allows women to file for divorce directly to the Court while men are required to submit an application for divorce to the concerned Village Development Committee or Municipality first was challenged as being discriminatory to men. The Supreme Court quashed the writ petition even without issuing the show cause notice. The Court held that even though Article 11 of the Constitution of the Kingdom of Nepal guarantees equality before the law and prohibited discrimination on the basis of sex, Article 11(3) provides for special provisions that may be enacted for the advancement of women. The impugned provision is not discriminatory against men and is necessary for the advancement of women.

**xiii. Shorter probationary period in Health Services recognized as a special measure:** In *Sita Aacharya vs. Public Service Commission,* the Supreme Court declared that Section 18 of Nepal Health Service Act, 1997, which requires one-year probation period for newly appointed employees, to be inapplicable to women employees, on the grounds that the Civil Service Act, 1992 has special provisions that

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70. Writ no. 64/061, decided on March 29, 2006
71. Advocate Radheshyam Parajuli vs. HMG/Nepal, Writ No. 3692, 4 Magh of the Year 2056 B.S.
72. Sita Aacharya and others vs. Ministry of Health, HMG/Nepal, Writ No. 3975 of year 2056 B.S.
provides a shorter probation period of six months for women employees in government service. The Court held that as Section 18 of the Act does not clearly specify that it applies to both men and women employee, there is no reason to discriminate between women employees under civil service and under health service. In delivering the judgment, the Supreme Court referred to Articles 3, 4(1) and 4(2) the CEDAW and the proviso to Article 11(3) of the Constitution which oblige the government to implement temporary special measures to achieve de facto equality between men and women.

xiv. Directive Order to address customary practice that discriminate against women

Chaupadi: The Supreme Court on May 2, 2005 directed government authorities, including the Cabinet Secretariat, to promulgate appropriate laws to ban the *chaupadi* custom prevalent in the country. This custom requires that during their menstruation period, and during and after childbirth, girls and women must leave their homes and live in cowsheds. The custom is especially prevalent in the far western and western regions of the country and some districts in east.

A division bench of justices Anup Raj Sharma and Arjun Prasad Singh issued the order in response to a Public Interest Litigation (PIL) 73. A group of several NGOs including Dalit’s Non-government organization Federation (DNF), Pro-Public, Forum for Women, Law and Development (FWLD), and lawyers in the western region had jointly filed the PIL.

The other respondents include the Ministries of Women, Children and Social Welfare, Local Development, Health, Education and Sports and Information and Communication.

The petitioners had claimed that *chaupadi* is an inhuman and degrading custom against women, and that illiteracy among the local people is the main reason for *chaupadi* still being followed.

Witchcraft: On 10th August 2004, the Supreme Court issued a directive order to the government to promulgate a law that would control and punish criminal activities such as suppression, beating, torture and other forms of injustice committed against women accused of being witches. The case, which was brought by Advocate Reshma Thapa on behalf of LAWYERS (Lawyer’s Association for Women Youths, Environment Rights and Society), requested an order of certiorari to quash a decision of a District Administration Office that allowed *dhamis* and *jhankris* to treat women who had been accused of witchcraft, and also a mandamus to bring an appropriate law to protect victims against such treatment.

The Supreme Court said that Article 11 of the Constitution of the Kingdom of Nepal provides the right to equality and equal protection of law to all Nepali citizens. Moreover, as a party to various human rights instruments, the Government of Nepal has an obligation to ensure a dignified life for all Nepalese women. Nevertheless, many women have suffered inhuman treatment due to the unscientific and superstitious belief in witchcraft that still prevails in the country. Such ill treatment of women clearly falls within the ambit of criminal activities and the existing laws cannot be assumed to be sufficient and appropriate to handle such crimes against women. Therefore, the Court has ordered the government to promulgate a law specifically to punish criminal activities committed against women in the name of witchcraft. In addition the Court issued an order to the government to conduct awareness programs to eliminate such traditional and superstitious beliefs. 74

73. DNF vs. HMG Nepal, Writ No. 3303/061, Decided on May 2, 2005.
xxv. Government must grant citizenship to children of Badi women: The Supreme Court on September 15, 2005 made it mandatory for the government to award citizenship to every child found within the Kingdom whose parents are unknown. The Court delivered the verdict to this effect by interpreting Article 9(2) of the Constitution of the Kingdom of Nepal, 1990 which reads, “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 until the father of the child is traced.” The NGO Pro Public had filed the case demanding that the Court ensure the right to citizenship of Badi children. Many children born to women of the Badi community have been deprived of citizenship in the past as some women of this community are engaged in prostitution due to economic and social backwardness, and the fathers of their children may be unknown.

In same cases, the law requires either the head of the family or the eldest male member of the family to be present at the time of registration of personal incidents such as birth and death, a proviso that was challenged as it discriminated against mothers to register the births of her children. The Supreme Court declared the words “among the males” appearing in Section 4(1) of the Birth, Death and Other Personal Events (Registration) Act, 1977 ultra vires the Constitution and declared it to be ineffective. Invoking the doctrine of severability, the court determined the law that allows only senior most male members of the family to register birth and death is against the right to equality guaranteed under Article 11 of the Constitution.

xvi. Conceptual Demarcation between Affirmative Action and Indirect Discrimination: In Advocate Basundhara Thapa v. HMG, the petitioner challenged the proviso of Section 7(3) of the National Foundation for Development of Indigenous Nationalities Act, 2058, on the grounds that it has adopted standard discrimination relating to the appointment, terms and conditions of the nominated women members of the Governing Council making it gender discriminatory and inconsistent with Article 11 of the Constitution of the Kingdom of Nepal. According to Section 7(3) the term of office-holders shall be for four years, with the eligibility of re-election. However, the proviso to this Section states that in cases where women hold this position, their term shall only be for two years after which they become ineligible to hold the position again.

In its defense, the government stated that it enacted such a provision as a special measure to benefit all women as shorter terms and the ineligibility of re-election would create more vacancies providing opportunity to a greater number of women. However, the Supreme Court chose to interpret the provision in consideration of international human rights instruments and laid down a strong argument for declaring the provision unconstitutional. The Universal Declaration for Human Rights declares that there shall be no discrimination on the basis of sex in any sphere of life. Article 2 of the ICCPR also states that there shall be no discrimination on the basis of caste, colour, sex, language, religion and political ideology. Article 7 of CEDAW guarantees the right to equal participation in public and political life. As Section 9(2) of the Treaty Act of Nepal gives precedence to international laws, to which Nepal is a party, over domestic law these tenets must be honored even if there is no specific legislation guaranteeing women equal right to public and political participation. This right is already implicitly established under the

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76. NKP 2003/04, Vol. 5 and 6, p. 389.
international human rights instruments that Nepal is a party to as well as Article 11 of the Constitution of the Kingdom of Nepal.

In this case, while declaring the verdict in the petitioner’s favor, the Supreme Court declared the proviso to Section 7(3) as *ultra vires*. It ruled that the challenged proviso is inconsistent with Article 11 of the Constitution and is thereby declared unconstitutional and void in accordance to Article 88(1) of the Constitution.

This was a landmark judgment as it not only declared Section 7(3) of the National Foundation for Development of Indigenous Nationalities Act, 2058 as ultra vires but also has applied and privileged the principles propounded by international human rights instruments in the national context.

### 6.3.2 Judgment Analysis

Both quantitative and qualitative data were analyzed during the judgment analysis. Quantitative data refers to the percentage of success and failure in reported judgments in cases where one party was a woman. Qualitative data refers to the level of gender sensitization amongst judges as determined by study and analysis of their judgments.

The first step of judgment analysis was collection of the published Supreme Court judgments. We analyzed judgments published in the *Nepal Kanoon Patrika* (NKP) from 1990/91 to 1998/99 in which one party to the case was a woman, studying the pattern of success or failure of women litigants in those cases. The data collected on this basis is as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of total cases published</th>
<th>No. of cases relating to women</th>
<th>No. of cases in which women were successful</th>
<th>No. of cases in which women were unsuccessful</th>
<th>Percentage of women’s success</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990/91</td>
<td>207</td>
<td>41</td>
<td>21</td>
<td>20</td>
<td>51.20</td>
</tr>
<tr>
<td>1991/92</td>
<td>206</td>
<td>29</td>
<td>12</td>
<td>17</td>
<td>41.30</td>
</tr>
<tr>
<td>1992/93</td>
<td>221</td>
<td>45</td>
<td>20</td>
<td>25</td>
<td>44.44</td>
</tr>
<tr>
<td>1993/94</td>
<td>153</td>
<td>34</td>
<td>18</td>
<td>16</td>
<td>52.90</td>
</tr>
<tr>
<td>1994/95</td>
<td>187</td>
<td>30</td>
<td>17</td>
<td>13</td>
<td>56.66</td>
</tr>
<tr>
<td>1995/96</td>
<td>195</td>
<td>33</td>
<td>16</td>
<td>17</td>
<td>48.40</td>
</tr>
<tr>
<td>1996/97</td>
<td>180</td>
<td>36</td>
<td>24</td>
<td>12</td>
<td>66.60</td>
</tr>
<tr>
<td>1997/98</td>
<td>184</td>
<td>38</td>
<td>25</td>
<td>13</td>
<td>65.70</td>
</tr>
<tr>
<td>1998/99</td>
<td>160</td>
<td>38</td>
<td>23</td>
<td>15</td>
<td>60.50</td>
</tr>
<tr>
<td>1999/00</td>
<td>189</td>
<td>48</td>
<td>25</td>
<td>23</td>
<td>52.08</td>
</tr>
<tr>
<td>2000/01</td>
<td>131</td>
<td>32</td>
<td>16</td>
<td>16</td>
<td>50.00</td>
</tr>
<tr>
<td>2001/02</td>
<td>85</td>
<td>21</td>
<td>13</td>
<td>8</td>
<td>61.90</td>
</tr>
<tr>
<td>2002/03</td>
<td>119</td>
<td>20</td>
<td>7</td>
<td>13</td>
<td>35.00</td>
</tr>
<tr>
<td>2003/04</td>
<td>145</td>
<td>38</td>
<td>19</td>
<td>19</td>
<td>50.00</td>
</tr>
<tr>
<td>Total</td>
<td>2362</td>
<td>483</td>
<td>256</td>
<td>227</td>
<td>53</td>
</tr>
</tbody>
</table>
The percentage of successful women litigants ranged from 41.3 to 56.66 between 1990/91 to 1995/96, and from 60.5 to 66.6 between 1996/97-1998/99. Hence, a remarkable growth in the number of successful women litigants is observed during the latter period, though it dropped to some extent in 1998/99.

The subject-wise breakdown of the situation of success and failure of women litigants reported during the period of 1990 to 1999 has been shown in the following table:

<table>
<thead>
<tr>
<th>Subject of Case</th>
<th>Total cases relating to women</th>
<th>Cases in which women were successful</th>
<th>Cases in which women were unsuccessful</th>
<th>Success percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property</td>
<td>302</td>
<td>164</td>
<td>138</td>
<td>54.30</td>
</tr>
<tr>
<td>Citizenship</td>
<td>2</td>
<td>2</td>
<td>-</td>
<td>100.00</td>
</tr>
<tr>
<td>Marriage and Family Relations</td>
<td>16</td>
<td>10</td>
<td>6</td>
<td>62.50</td>
</tr>
<tr>
<td>Sexual Abuse</td>
<td>26</td>
<td>18</td>
<td>8</td>
<td>69.23</td>
</tr>
<tr>
<td>Health (abortion)</td>
<td>9</td>
<td>-</td>
<td>9</td>
<td>0.00</td>
</tr>
<tr>
<td>Employment</td>
<td>27</td>
<td>14</td>
<td>13</td>
<td>51.85</td>
</tr>
<tr>
<td>Court and Legal Proceedings</td>
<td>74</td>
<td>39</td>
<td>35</td>
<td>52.70</td>
</tr>
<tr>
<td>Offences</td>
<td>27</td>
<td>9</td>
<td>18</td>
<td>33.33</td>
</tr>
<tr>
<td>Total</td>
<td>483</td>
<td>256</td>
<td>227</td>
<td>53.00</td>
</tr>
</tbody>
</table>

In the cases relating to health (abortion), all women litigants were unsuccessful and only women were convicted. In cases where guilt was established, imprisonment ranging from 2 to 6 years was ordered, with the Court exercising the discretion allowed in No. 188 of the Court Proceedings chapter of the Country Code.

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77. The source of cases for formulating this table is the NKP from 1990/91 to 1998/99.
78. In Property, cases relating to partition, maintenance, land conflict, contract, trust, forgery, redeem jewellery, transaction, tenant conflict are included.
79. In Citizenship, cases relating to citizenship, passport are included.
80. In Marriage and Family Rights, cases relating to divorce, relationship establishment, adoption are included.
81. In Sexual abuse, cases relating to rape, trafficking, sexual harassment, attempt to rape are included.
82. In Health, cases relating to health, abortion, infanticide are included.
83. In subject of Employment, cases relating to employment, suspense, termination, salary are included.
84. In subject of Court and Legal Proceedings, cases relating to auction, contempt of court, habeas corpus are included.
85. In subject of Offence, cases relating to homicide, assault, beating are included.
since it was felt that, considering the degree of culpability, the maximum punishment would be too severe.

A study conducted by Pro-Public, an NGO, shows gender bias of the judges. According to this report, 66 percent of the judges thought that women should share the blame for violence committed against them, 54 percent thought that physical assault on women in the home is not as serious as a physical assault on a woman in the street, 57 percent believe that a husband giving a slap to his wife “to correct her attitude” does not commit an act of cruelty. Sixty-nine percent of the judges thought that “provocative dressing” can be an invitation to sexual assault. Only 3 percent thought a husband could commit rape while the majority felt that since a husband has a right over his wife’s body, sexual intercourse even without consent of the wife cannot be deemed rape.

The Pro-Public study was conducted on the basis of a scheduled questionnaire circulated amongst 33 judges of the District Court, Appellate Court and the Supreme Court. It examined the personal level of gender sensitivity of the judges. However, the study detailed below is based on the judgments delivered by the three senior-most judges of the Supreme Court and analyzes their gender sensitivity through their judgments. These judges are: Chief Justice Rt. Hon’ble Keshav Prasad Upadhyay, Hon’ble Justice Laxman Prasad Aryal, and Hon’ble Justice Kedarnath Upadhyay.

Of the cases collected and analyzed, 51 cases were decided by the Bench of Chief Justice Rt. Hon’ble K.P. Upadhyay, 55 cases decided by the Bench of Justice Aryal, and 47 cases decided by the Bench of Justice Kedarnath Upadhyay.

<table>
<thead>
<tr>
<th>Judges</th>
<th>Total cases relating to women</th>
<th>Cases in which women were successful</th>
<th>Cases in which woman were unsuccessful</th>
<th>Success percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Justice Keshav Pd. Upadhyay</td>
<td>51</td>
<td>29</td>
<td>22</td>
<td>56.86</td>
</tr>
<tr>
<td>Justice Laxman Pd. Aryal</td>
<td>55</td>
<td>30</td>
<td>25</td>
<td>54.54</td>
</tr>
<tr>
<td>Justice Kedarnath Upadhyay</td>
<td>47</td>
<td>30</td>
<td>17</td>
<td>63.82</td>
</tr>
</tbody>
</table>

The conclusion of the study and analysis of the judgments delivered by said judges is as follows:

i. **Judgments delivered by Rt. Hon’ble Keshav Prasad Upadhyay:**

Analyzing the judgments delivered by the Bench of Rt. Hon’ble Chief Justice reveals that useful precedents have been laid down for protecting women’s rights.

- **Legal provisions declared discriminatory on the basis of sex:** For the first time in the history of Nepal, the full bench comprising the Chief Justice (then a justice) in *Mira Gurung vs. Department of Immigration* declared a law discriminatory on the basis of sex. In this case, the Court held that the provisions relating to visas for foreigners married to Nepalese nationals

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86 Belbase, Narayan and Pyarakurel, Sucheta, *A Study on Gender and Judges*, (Kathmandu, 1999) at Executive Summary.
provided different visa durations on the basis of sex. As no reasonable cause was shown, this was held to be discriminatory and inconsistent with the constitutional guarantee of equality. This is a landmark decision guaranteeing gender equality.

- **Right to property of the wife upheld:** In cases relating to partition of parental property between husband and wife, a growing trend was shown of husbands submitting deeds of waiver of the share in parental property and thereby depriving women of their shares in parental property. In *Bhagwan Rama Bhat vs. Sarada Ranabhat* the Court laid down the principle that “The document of waiver of parental property made by the husband affects the wife’s right to property depriving her of the share in the parental property. Hence such document is a fraudulent document as per No. 3 of the chapter on Forgery.” This decision strengthened women’s right to share in family property and deterred a fraudulent practice that deprived them of their rightful share.

Similarly, in *Rita Devi Khati vs. Dam Babadur Khati*, the husband after re-marriage claimed the share of property of his first wife, who was living separately after partition. The Bench comprising the Honorable Justice decided that “where the husband re-maries after the partition of the property, the second wife and the son born to her are entitled to partition only from the husband’s share of property”. This case protected the right to property of the first wife who was living separately. If in accordance to the provision of the law the husband remarries after partition, the property of the first wife cannot be partitioned.

In *Bimla Pant vs. Mebh Singh Pant*, the Court discouraged the trend of depriving women of their share in the property, once it has been established, by transferring it in the name of a third person. The Bench of the Chief Justice set out the principle that once the right to share of property has been established, the same right need not be re-established in order to transfer the property of partition. This has helped women, as otherwise they had to file a suit to transfer property in their names.

Strengthening the right of female family members over joint property, in *Sarada Devi Tharuni vs. Sitali Devi Tharuni*, the judge held that it would be inappropriate to deem valid the execution of the deed of gift by the male head of the family merely because he is allowed by law to sell up to 50 percent of the immovable property. Such sales can be valid if they are executed to meet family requirements, or with the consent of the wife or widowed daughter-in-law. This case has upheld the right of women to the family property.

- **Mother recognized as the natural guardian of the child:** In *Dr. Alok Chalise vs. Dr. Shiru Chalise*, the Bench comprising the Chief Justice made a remarkable judgment involving a child custody issue. In this case, the father of the child filed a petition praying for issuance of a writ of

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habeas corpus, claiming that the child's mother, Dr. Shiru Chalise, detained her minor son and did not allow the father to meet him. The respondent mother replied that the minor son was not detained but was under her custody and care and guardianship and that there was no need to issue the order. She also offered to allow the father to meet his son. The Bench referring to Clause (1) of No. 3 of the Chapter on Husband and Wife decided that if a child is with his mother, the child was not detained by her but was under her custody and care and guardianship. This decision recognizes the mother as a guardian of the child.

On the other hand, certain other decisions of the Chief Justice's Bench could cause obstacles in the process of implementing women's rights.

- **Stri ansha dhana (women’s exclusive property) needs to be proved:** In *Dharma Kant Pant vs. Jeev Kumari Pant*, the woman claimed that the property in question was *stri ansha dhan* (property exclusively owned by the woman herself). In this case, the Chief Justice’s Bench held that if a woman claims that the property in question is her exclusive property but cannot prove it, the property is subject to partition. A deed of transfer of title over such property was rendered invalid.

  Here, while the law recognizes the concept of *stri ansha dhana*, this decision encroaches on this right as women must now prove their title over such property. In many cases, due to their social status or illiteracy, women cannot preserve evidence of ownership of their property. In such situations, requirements of proof could be regressive.

- **Burden of proof in case of a still birth lies on the woman:** In *Manimaya Shish vs. HMG*, relating to the issue of infanticide, a Bench comprising the Chief Justice ruled that it would not be appropriate to acquit the accused on the basis of a presumption that a child born as a result of an illicit relationship should be considered as born dead unless any substantial evidence of the child being born alive is presented.

  This case has laid down the unreasonable precedent that even in cases of birth of a dead baby the woman may be punished for infanticide. First, the prevailing medical science in the country is not specialized enough to declare whether a child was born dead or alive. Moreover, hospital facilities are not available in all areas, and most children are born in their houses. Ascertaining whether a child was born alive or dead is therefore difficult. The precedent laid down in this case may result in imposing criminal liability even when a child was born dead or died naturally.

**ii. Judgments delivered by Honorable Justice Mr. Laxman Prasad Aryal**

Analyzing the judgments delivered by the Bench comprising Honorable Justice Aryal, some judgments have enhanced women’s legal status but in cases involving issues of equality, judicial interpretations have narrowed constitutional rights.

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93 Which says that if the mother wants she may take the custody of a child below the age of five years.


• **Judges undermining their constitutional obligation:** In *Meera Dhungana*\(^96\) the judgment categorically stated that declaring No.16 of the Chapter on Partition was *ultra vires* and that providing an equal share of the property to daughters was not the solution to the problem. In that judgment, the Court unfortunately could not see the *prima facie* discrimination present in No. 16. The Court escaped its obligation under Articles 1, 11, 23, 88 and 131 by issuing a directive order to the government to present a bill in the legislature reviewing the law relating to property rights within a year of the decision date. The judgment also stressed that society may not digest many sudden changes in the prevailing social practices, modes and values, and directed the government to enact just provisions with due regard to the constitutional provisions of equality. The judgment is not clear as to what constitute just provisions and whether or not such provisions should fully conform to the fundamental rights guaranteed by the Constitution.

• **Economic independence of women not recognized:** In *Sarala Rani Rauniyar*\(^97\), the Bench of the Justice held that section 21(a) of the Income Tax Act, 2031 (1974), which declares that a wife's income is assessed in her husband's name, does not violate the fundamental right to occupation and business and does not restrict Article 12(2)(e) of the Constitution. Similarly, the Bench held that since the impugned section 21 of the Income Tax Act, 2031 (1974) does not provide less rate of tax on income of husband and more rate of tax on income of wife, it is not discriminatory. The Bench, in this way, dismissed the writ petition and upheld the patriarchal structure of society.

In *Yogendra Prasad Yadav vs. Surjo Devi Abir*\(^98\), the Bench comprising Justice Aryal said that No. 19 of the Chapter on Partition, stating that joint property can only be sold by the “head of the family” is not applicable to heads of the family other than the father or husband. In this case a woman had sold the joint property. The court declared she was not head of the family and so her act was illegal. This very narrow interpretation, recognizing only the father or husband as the head of the family renders woman unable to exercise rights as head of the family. This judgment again reveals a patriarchal attitude.

• **Burden of proof lies on the offender in case of trafficking:** In a more positive decision regarding women, Justice Aryal’s Bench made a very strict interpretation in *Durga Dhimal vs. HMG* on the issue of trafficking of women,\(^99\) saying that “the statement of the women who lodged the first information report is reliable and must be taken as evidence in the case”. This decision puts the burden of proof on the offender involved in trafficking and encourages victims to file the First Information Report (FIR), the first complaint lodged with the police.

• **In rape, role of doctors limited:** Similarly in *HMG vs. Dharma Singh Bam*, relating to rape,\(^100\) the medical report contained an indication of rape and the column of impression noted that the case was of forceful sexual attempt. On the basis of such medical report, the lower court convicted the accused of an attempt to rape. However, setting aside the lower court judgment, the Bench of Justice Aryal held that it was irrelevant and unnecessary to mention the column of impression. Mentioning the actual condition objectively would have been sufficient.

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\(^{96}\) NKP 2052 (1995), vol. 37, p. 462.
\(^{97}\) Supra note 39.
Thus, the Bench found the case to be rape and not only attempt to rape. This case established the precedent that the doctor’s role is limited only to explain the circumstances. They should not give any decision on the matter. The matter of the decision of the nature of offence lies within the jurisdiction of the court.

These two judgments indicate that Honorable Justice Aryal is sensitive to issues of violence and sexual abuse against women.

- **Daughter has priority over adopted/stepson in case of adoption:** In *Surya Babadur Thapa vs. Dham Kumari Saru Magar*, a bench of Justice Aryal decided that “only in the case of a uterine son the daughter would not have right to succession, but if there is no uterine son, the uterine daughter may get the succession”. This decision has established that a daughter shall get priority in succession over the stepson or adopted son.

- **Wife’s right to partition recognized:** In *Leela Babadur Karki vs. Annapurna Karki*, contradictory provisions relating to partition between husband and wife were raised. No. 10 of the Chapter on Partition provides that a wife cannot separate herself from her husband and take her share of property during her husband’s lifetime, but No. 4 of the Chapter on Husband and Wife provides that under certain conditions a wife may receive her share of property from her husband. The Court decided that the former provision is a general provision and the latter is a special provision; and held that the special provision overrules the general provision. This decision recognizes the right of separation of a wife negated by No. 10 of the Chapter on Partition.

- **Right to property recognized:** *Sani Tandukar vs. Maniklal Tandukar*, raised the question of applicability of the 7th amendment of Country Code in relation to daughters’ right in property. The defendants believed that since the plaintiff had reached 35 years of age before passage of the 7th amendment, she was not entitled to the benefit under the new amendment. The Bench of Justice Aryal said that as the 7th amendment to the Country Code was introduced prior to the plaintiff (unmarried daughter) filing the case, the new provision in No. 16 of the Chapter on Partition would be applicable to the daughter and she would be entitled to an equal share of property with the son.

In *Narendra Man Shrestha vs. Dal Kumari*, the defendant wife claimed her share in the family property. However, the husband claimed to have executed a deed of partition and said the share of the wife had already been separated. The Bench comprising

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104 The Seventh Amendment to the Country Code came into force on 2034.9.27 B.S. (13.1.1978)
Justice Aryal decided that though the deed was executed, in reality the wife had not obtained her share in the property and hence it could not be said that the partition was made between them.

This decision laid down a principle that if a deed of partition has been executed but no share of property has actually been given as per the executed deed, the women will be entitled to get her share of the family property.

- **Priority given to women’s statement in case of establishing relationship:** In *Chandra Maya Pathak vs. Rudra Bahadur Siwakoti*\(^\text{106}\) a case was filed on behalf of a deaf and dumb girl by her guardian, stating a claim establishing her relationship with a boy. The Bench comprising the Honorable Justice reinforced the principle that where a girl claims a person to be her husband, priority shall be given to the women’s statement in deciding the case.

- **Fraudulent divorce application discouraged:** In *Chij Kaji Gurung vs. Aas Maya Gurung*\(^\text{107}\) the husband residing in a foreign country did not allow his first wife to accompany him and married for the second time. The first wife remained in her matrimonial home. The husband himself filed a suit of divorce against her claiming that she had lived separately from him for three years. The Bench of the Honorable Justice rejected the claim as unreasonable since the first wife was willing to join her husband and the husband had refused to allow her. Hence the petition for divorce was rejected.

This decision has contributed to ending the practice of ignoring a wife for a long time and then filing a suit of divorce on the basis of such intentional preparations.

### iii. Judgments delivered by Hon’ble Justice Kedarnath Upadhyay

Analysis of the judgments delivered from the Bench comprising Honorable Justice Kedarnath Upadhyay shows that some judgments are encouraging and others discouraging. The assertive and progressive views and opinions of Justice Upadhyay which are found in his articles and statements, and in his understanding have yet to be reflected in the judgments he has delivered.

- **Biological difference recognized as a basis to gender inequality:** Moving one step back from *Meera Dhungana*\(^\text{108}\), in the case of *Dr. Chandra Bajracharya*\(^\text{109}\), the bench of Honorable Justice Upadhyay observed that since some biological differences exist between men and women, there may be some differences in their social position on the ground of sex and that there are less chances of absolute equality. The impugned law may have been influenced by the Hindu legal concept that a widowed woman without a son under the protection of her in-laws is better off than in her father’s house.

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Unfortunately the Bench took biological difference as a basis for gender inequality, and stated it could not be done away with. This decision upheld the discriminatory philosophy of Hindu law and took an orthodox rightist approach that there is no chance for absolute equality.

In matters of property, however, some positive decisions have been made by Justice Upadhyay’s Bench.

• **Women’s right to property upheld:**
  In *Saraswati Karki vs. Shiva Prasad Karki*, a case relating to partition, the Court held that even in cases where the plaintiff did not take a share of parental property, the husband’s share may be claimed from the defendants who took charge of property belonging to the husband. This case further strengthens the rights of women over ancestral property.

  Similarly, in *Sabitri Devi Rauniyar vs. Dhanraj Yadav* a case of annulment of execution of a deed, a Bench comprising the Justice held that for the purpose of No. 10 of the Chapter on Transactions, the approval of the head of the family also included the approval of the mother living in the same joint family. Without obtaining her approval, the transaction is vitiated by No. 10. This decision has helped protect the right of mother living in the same family.

  In *Bhupendra Hada vs. Mohan Kumari Hada*, a couple had executed a deed of will to be effective after their death. After the husband’s death, the wife sold the property, canceling the earlier deed. The Court held that no terms and conditions were stipulated in the deed that the wife could not sell the property and that no law prohibited her from selling, so she was able to sell that property.

• **Locus standi of a wife rejected on a petty procedural ground:** Against this background, however, in *Sabita Shrestha vs. Dharama Dhows Bhandari* relating to sale of a property of joint ownership, the Bench of Justice Upadhyay rejected the *locus standi* of the wife to file a suit on a petty procedural ground. This decision restricted the woman’s right under No. 10 of the Chapter on Transactions.

• **In case of rape, confession before the authorized authority taken as evidence:** In *Prem Babadur Gharti vs. HMG*, a case of attempted rape, the Bench comprising the Justice held that though the accused pleaded innocence before the Court, he had confessed the guilt before the authorized authority, and therefore he was convicted of attempt to rape. In this case, the decision was made with sympathetic considerations to the victim.

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An analysis of the judicial attitude of these judges shows a lack of consistency in the judicial approach towards women’s issues. The rules and regulations of Nepali society result from patriarchal thinking and as products of the dominant sections of society judges reflect its prejudices and biases. Assertions by judges that “our religion and tradition determines matters relating to social behavior, culture, and conduct” cannot be an argument to continue discriminatory legal provisions. While the judges are sympathetic towards women, their level of gender sensitization is not satisfactory and they are influenced by the “protectionist approach” rather than “substantive approach”.

The judiciary is an important organ of the state, with a key responsibility to determine the application of principles of international human rights laws. In this sense, the judiciary has the authority to declare verdicts on the protection and promotion of women’s rights.

In each test case, questions of state obligation under the various international instruments, Nepal Treaty Act and the Constitution were raised. However, in none of these cases did the Court try to develop the jurisprudence of state obligation under international instruments in the domestic context as was developed in the decision of the Indian Supreme Court in *Vishaka vs. State of Rajasthan*.115

The CEDAW Committee has already expressed its concern about the Supreme Court’s interpretation of discriminatory laws and the Court’s view in relation to culture and tradition.

Despite negative interpretations of the status of women in the society, challenges to the existing laws have had a positive impact, and as a result women are relatively more empowered. Court decisions in the inheritance right case, for example, forced the entire society to rethink the patriarchal structure, male supremacy, and the individual freedom of women. Women have begun to be vigilant about the issues and link them with the broader issue of equality.116

However, questions have been raised about whether a directive order for the submission of a Bill is itself sufficient to guarantee equal rights of women. If parliament fails to pass the Bill, what will be the consequence of the court order? Will the human rights of women be protected through judicial intervention in such an eventuality? How do we see the interpretation of a court that is more concerned about protecting patriarchal values than women’s basic human rights to equality and to live with dignity? Is the judiciary just shifting its burden to other government organs by not declaring the challenged provisions *ultra vires* and by issuing mere directive orders? Does the judiciary have any role in interpreting or implementing international conventions through the national courts?

6.4 Initiatives of Political Parties

Since the restoration of democracy, all the political parties have been making various commitments towards women’s upliftment and equality in their election manifestoes. In line with these commitments, the women’s wings and sister organizations of those parties have been launching public awareness programs including the drafting of an alternative Bill on equal property rights. However, a substantial and effective program to materialize their commitments has been lacking.117

115 AIR 1997 SC 3011.
### Political Parties

#### Election Manifestoes on Elimination of Discrimination against Women

|----------------|-----------------------------------|-----------------------------------|-----------------------------------|----------------------------------------|--------|
| 1. Nepali Congress | - Equal economic rights.  
- To reduce present maternal mortality rate by 50% in the coming 10 years.  
- Enactment of law against the problem of trafficking of women.  
- Respectful social position of women. | - Reform legal provisions, which are discriminatory against women and continue the process of appropriate amendments.  
- Reduce maternal mortality rate.  
- To launch effective legal mechanism against trafficking of women.  
- To promote female literacy. | - To minimize the existing economic, social and political inequalities between men and women.  
- To get women involved in the national mainstream through the programs on women empowerment.  
- To reduce maternal mortality rate.  
- To increase certain quota for women in government service.  
- Legal provisions against all forms of violence against women. | - For the first time, NC, RPP and NSP coalition government registered the Country Code (11th Amendment) Bill in Parliament following the Supreme Court's order.  
- Nepal Women Association, the sister organization of the Nepali Congress obtained commitment by the Parliamentarians belonging to the Congress to pass the Bill.  
- Re-registered the same Bill which was lapsed due to dissolution of House of Representatives.  
- Enactment of Local Self Governance Act 2055 (1999) | - Most of the political leaders still against the equal property rights for women, hence no change on the legal status of women.  
- In every general election, Nepali Congress has pledged to reduce maternal mortality.  
- Being the party with the longest period in the government after the restoration of multi-party system, it can be accused of not being able to keep up with the pledge since the maternal mortality rate which was 515 per 1,00,000 (CBS, 1991) has increased 539 per 100,000 (CBS, 1996).  
- Awareness / Consciousness among women members of parliament to eliminate discriminatory laws.  
- Slowly the number of gender sensitized MPs are also increasing. |
| 2. United Marxist Leninist (UML) | - Establish daughter’s equal rights to inheritance.  
- Guarantee equal rights, respect and opportunity eliminating all social discriminations against women. | - Guaranteed equal rights eliminating all political, economic and social inequalities and establish equal rights.  
- Discriminatory laws against woman will be abolished in line with the UN Convention.  
- Special arrangement to be made for the protection and advancement of legal rights of women. | - Establish daughter’s equal rights to inheritances as that of the son.  
- Enactment of severe laws against trafficking of women, rape, abduction.  
- Mandatory provision of mentioning the name of mother or wife in the governmental and non-governmental documents and certifi | - Parliamentary party issued whip to its members in support of the Country Code (11th amendment) Bill for eliminating some discriminatory laws.  
- The All Nepal Women Association, the sister organization of CPN-UML, conducted a nation-wide survey on women’s property rights and its report was submitted to the Prime Minister. | - The issuance of party whip made other parties think seriously as to their stand on equal property rights for women.  
- The survey revealed that it is not the popular sentiment rather it is the misplaced analogy of the ruling elite that the law on equal property rights to men and women would not be implemented properly.  
- It would enhance women’s status in society. |
### AN UPDATE OF DISCRIMINATORY LAWS IN NEPAL AND THEIR IMPACT ON WOMEN

The survey carried out in all 75 Districts showed that 75% of the men and women in Nepal favored equal property rights to men and women. - Advocacy/awareness / lobbying with party leaders, political activists and people to eliminate discriminatory laws against women, for equal property rights and trafficking against women. - Campaigning for 33% reservation to women within five years in all levels of political organizations. - RPP (Chand) and CPN (UML) coalition government introduced a Bill in the House of Representatives. - Initiative for local self-governance ordinance, guaranteeing seats for women in local bodies.

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<td>3. Rastriya Prajatantra Party (RPP) (Chand)</td>
<td>- Establish legal basis to secure women’s rights. - To launch programs on women’s development and promotion of upliftment of the status of women. - To increase women’s participation in politics.</td>
<td>- Formulation of laws for protection of rights and interests of women, and for their security. - To launch public awareness drive against dowry system. - Compulsory and free education to women. - Compulsory women’s representation in political, economic and social sectors. - Free legal aid to needy women. - Special women scholarship scheme.</td>
<td>- To take concrete measures to empower women in every sector.</td>
<td>- RPP (Chand) and CPN (UML) coalition government introduced a Bill in the House of Representatives. - Initiative for local self-governance ordinance, guaranteeing seats for women in local bodies.</td>
<td>- the number of gender sensitized MPs is also increasing - Awareness / Consciousness among party leaders, women members of parliament to eliminate discriminatory laws. - Pressurize government to secure more seats in governmental body. - Pressurizing Government to bring the Bill for discussion and for the formation of independent National Commission. - About 40,000 women are actively participating in the process of local government.</td>
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### General Election

- **2048 B.S. (1991)**
- **2051 B.S. (1994)**
- **2056 B.S. (1999)**

### Initiative taken to implement manifesto

- RPP (Chand) and CPN (UML) coalition government introduced a Bill in the House of Representatives.
- Initiative for local self-governance ordinance, guaranteeing seats for women in local bodies.
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<td>4. Rastriya Prajatantra Party (Thapa)</td>
<td>- Do*</td>
<td>- Do*</td>
<td>- To implement the Nairobi, Copenhagen and Beijing declaration relating to women’s rights.</td>
<td>- The party has been campaigning for equal property rights for women and for reformation of discriminatory laws.</td>
<td>- Created more public awareness in favor of equal property rights to women.</td>
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<td>- To reserve quota for appointment to the higher constitutional posts of National Development Council, Ambassadors.</td>
<td>- Campaigning also for increase in punishment for rape and trafficking</td>
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<td>- Follow the policy of promotion of women’s health, employment and income generation.</td>
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<td>5. Nepal Sadhabana Party</td>
<td>- To eliminate exploitation against women.</td>
<td>- NA</td>
<td>- Enactment of severe laws against dowry.</td>
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<td>- Advocating against the equal property rights of women affecting to move the bill ahead.</td>
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<td>6. CPN (ML)*</td>
<td>-</td>
<td>-</td>
<td>- To provide property rights to daughters as equal to sons.</td>
<td>- Parliamentary party issued whip to its members in support of the Country Code (11th amendment) Bill</td>
<td>- The issuance of party whip caused other parties to think seriously as to their earlier stand on equal property rights for women.</td>
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<td>- To eliminate social discrimination between men and women and to guarantee their equal rights in every field.</td>
<td>- Launched various street protests including rally, mass meetings etc. demanding substantial reforms on the overall status of women.</td>
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<td>- To enact severe laws against all forms of exploitation, trafficking, prostitution, rape and murder of women.</td>
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*In the General Election of 2051 (1994), RPP (Chand) and RPP (Thapa) were merged as a single party as Rastriya Prajatantra Party.

### 6.5 Civil Society Initiatives

Civil society is in a relatively early stage of development in Nepal, and has been contributing towards the effective delivery of services as well as acting as a key partner and pressure group to ensure government compliance to its social commitments. In particular, the task of monitoring state compliance to eliminate
the discriminatory laws and promoting effective delivery of justice rests largely on civil society organizations. Advocacy, lobbying and networking programs for the public as well as for various organs of the state are vital to strengthen both public awareness and state accountability to the national commitments to eliminate discriminatory laws. This study has identified the following initiatives taken by NGOs to eliminate discriminatory laws in the country.

6.5.1 Public Interest Litigation

Previously, efforts were made through workshops and lobbying to raise the issue of discriminatory laws with policymakers and lawmakers. When those efforts failed to achieve the goals, many groups decided to challenge the laws in question in court. Articles 88 and 131 of the Constitution of the Kingdom of Nepal, 1990 providing the necessary legal anchor. The latter states that laws inconsistent with the Constitution shall ipso facto cease to operate one year after its commencement.

Many test cases on discrimination issues were filed in the Supreme Court of Nepal, in which Directive Orders were made to the government to draft Bills to eliminate various discriminatory legal provisions.  

Forum for Women, Law and Development also filed a contempt of court petition against His Majesty’s Government of Nepal with the Supreme Court for failure to obey the Supreme Court’s directive order in the Meera Dhungana case to submit a Bill within a year.

6.5.2 Drafting various Bills

For quite a long time, the government made no serious effort to formulate appropriate legislation following the Supreme Court’s verdicts. Therefore, several NGOs got together to formulate an appropriate Bill on property rights. LACC (Legal Aid Counseling Centre) took initiative to coordinate and draft the Bill. The major concept of the Private Bill prepared by the NGOs was to provide daughters with the same right to inherit parental property at birth as sons. It was also proposed in the Bill that consent of both spouses would be required for disposing of more than half of property and one-fourth of the extra property could be kept aside as jiuni during partition for future security of the parents.

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118 This includes Meera Dhugana vs. His Majesty’s Government of Nepal where a daughter is denied equal inheritance rights under No. 16 of Chapter on partition of Country Code. The second case was Sapana Pradhan Malla and Prakash Mani Sharma for Pro public vs. HMG where Section 26 (1) of the Land Act, 1963 was challenged. The provision denies right to the daughter and daughter-in-law to be chosen as a tenant by the landlord. Similarly Sapana Pradhan Malla vs. HMG case challenged No. 2 and 3 of Chapter on Bestiility of Country Code. The other cases are Chanda Bajracharya for Misha Khala vs. Parliament Secretariat et al, and Sapana Pradhan for FWLD vs. Ministry of Law and Justice1 discriminatory legal provisions of the penal law, adoption law, succession (legacy), discrimination on punishment, divorce and remarriage were challenged. (See Judicial Initiatives Chapter for details).

119 FWLD vs. HMG, 1997, Writ No. 3897.
The Private Bill, along with the comparative study conducted by FWLD/LACC, was submitted to the concerned law making agency on June 26, 1996. Instead of submitting it as a Private Bill, NGOs decided to support the Bill prepared by the Ministry of Women and Social Welfare. However, the Ministry of Law, Justice and Parliamentary Affairs submitted a different Bill in the Parliament, which lapsed after dissolution of House of Representatives in Jan 15, 1999.

After the Bill lapsed, FWLD/Action Aid Nepal took up an initiative to draft an NGO Bill along with a network called Women Rights Action Group and submitted the draft to HMG on 19th September 1999. On 20th September 1999, the government re-registered in the Parliament the Bill that had earlier lapsed.

SAATHI has been preparing a draft Bill on Domestic Violence against Women and ILRR has prepared a draft Bill on Human Trafficking Control. FWLD has also prepared a draft proposal on existing discriminatory laws on women for the Ministry of Women, Children and Social Welfare on April 2000, on the justification that government is accountable for it.

6.5.3 Advocacy, Workshops and Lobbying activities

After submission of the property rights Bill, many advocacy programs were held aiming at pressuring the Parliament to enact laws based on equality. Sancharika, ILRR, SAP Nepal, FWLD, SAATHI, LACC, Caritas Network, FEDO played important roles in this regard with the coordination of other groups, individuals and activists.

A Women Pressure Group (WPG) that transcended political ideology and included women from different political parties and activists on women’s issues was formed and played an important role in pressuring lawmakers in the process of lobbying for the issue. Sancharika initiated the task of mobilizing advocacy through all forms of media. Various NGOs held a number of workshops and training programs.

Every year, on 8th March, the International Women’s Day, rallies and public meetings are held to emphasize on the need to guarantee equal rights.

After the Baseline Study on Inheritance Right of Women, a core group/Women Action Watch group was formed under coordination of FWLD to follow up on the recommendations suggested in the study to take the movement forward. This group is also active in the field of ensuring equal rights.

FWLD has been actively involved in various activities to eliminate discriminatory laws in Nepal. It prepared “Words and Deeds: to hold the government accountable in the ‘Beijing + 5 Review Process’” (English and Nepali). This is a compilation of the provisions of existing discriminatory laws, linking

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120 For details of the Bill, see Chapter on Executive Initiatives.
them with state accountability through its national and international human rights commitments. FWLD has also published a number of Advocacy Leaflets for the elimination of discriminatory laws. These include leaflets on how human rights of women are violated if equal economic rights are not granted, an advocacy leaflet on state obligations to eliminate discriminatory laws against women, and the salient features, weaknesses and necessary amendments to be made in the Country Code (11th Amendment) Bill 1999.

A lobbying document on “Beijing + 5 Review: Existing Discriminatory Laws in Nepal” was also prepared by FWLD for lobbying at national as well as international levels. FWLD is advocating for the ratification of Optional Protocol to the CEDAW, and it also lobbied during the UN Special Session held in June 5 - 9, 2000 in New York.

6.5.4 Action Taken to Bring Common Consensus in Passing the Eleventh Amendment Bill

6.5.4.1 National Event

Between November 2001 and September 2002 various meetings were held to bring common consensus with various stakeholders, including artists, actors, sports persons, women’s right groups, human rights groups, donor groups, lawyers, media persons, women’s wings of political parties, political parties, academicians. The events began with the stage performance titled ‘Women Cannot Wait’, performed by Sarah Jones, a Hollywood actress. Around 40 meetings were held during that time period.

6.5.4.2 National Conference and Rally

As part of a series of similar events conducted on a smaller scale, the National Conference and rally organized by several prominent women’s rights NGOs in Nepal was a very important event to garner public support. With participation by some 1200 people, the conference had representation from various ministries and members of Parliament, the judiciary, foreign embassies, UN agencies, INGOs, donor organizations, local NGOs, media, National Human Rights Commission, civil society groups and grassroots people’s movements from all over Nepal.

Social mobilization for law reform

It was realized that effective social mobilization is critical for legal reformation. Earlier political parties and parliamentarians were only concerned about their vote bank which was composed of males and did not want to take any risk or criticism. However, after mobilization of different walk of life of society, center to grassroots level, all the political parties and parliamentarians changed their views and stand on the Bill.

As part of a series of similar events conducted on a smaller scale, the National Conference and rally organized by several prominent women’s rights NGOs in Nepal was a very important event to garner public support. With participation by some 1200 people, the conference had representation from various ministries and members of Parliament, the judiciary, foreign embassies, UN agencies, INGOs, donor organizations, local NGOs, media, National Human Rights Commission, civil society groups and grassroots people’s movements from all over Nepal. The Conference dealt with discriminatory laws in general and shared with the participants heart rending stories from women suffering from the ill effects of the discriminatory laws. It was a major media event which decision-makers were forced to take note of, and also an event of great educative and lobbying value.

122 For detail see Activities Report on National Event for Gender Equality, 2001-2002, FWLD.
Pressure program by National Human Rights Commission: The Women Human Rights Protection Committee of the National Human Rights Commission (NHRC) organized a workshop in January 2002. The objective of the workshop was to bring a consensus between the NHRC and civil society groups on the Country Code (Eleventh Amendment) Bill. A series of discussion/lobbying programs were arranged by the Commission to facilitate passage of the Bill.

National Event in collaboration with various NGOs: A National Event for Gender Equality was organized to build strong pressure to pass the Country Code (Eleventh Amendment) Bill and on discriminatory laws against women. The event was coordinated by FWLD with the collaboration of many NGOs, INGOs and donor agencies.

National Conference and Rallies: The National Conference was held on February 12, 2002, a day before the 21st session of the Parliament began. The conference was one of the most significant conferences organized in Nepal to raise women’s issues in Nepal and played a crucial role for the passage of the Country Code (Eleventh Amendment) Bill. In the victim’s hearing session, the victims of discriminatory laws on various areas including property, expressed in their own words the agonies, pains, sufferings and humiliation, they had been undergoing. The Conference adopted a memorandum, which was submitted to head of the three state organs i.e. executive, legislative and judiciary. Later on, the same memorandum was submitted to all 265 parliamentarians of the Upper and Lower Houses of the Parliament.

Although emergency was declared in the country on the same day, after the Conference, a rally was held from Royal Nepal Academy Hall to Bhadrakali. More than 1,500 participants joined the rally with banners and placards demanding passage of the Country Code (Eleventh Amendment) Bill and elimination of discriminatory laws against women. The rally ended at least partly as a result of the national mood created by the National Conference, the Bill sailed through the House of Representatives quite easily on March 14, 2002. Earlier the House of Representatives had passed the Bill with a simple majority, where only the ruling party (Nepal Congress) had supported the Bill. After the Conference, the same House passed the Bill again by an overwhelming majority (147:1).

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123 Co-ordinated by Hon’ble Indira Rana, with Dr. Shantha Thapaliya, Durga Ghimire, Bharati Silwal Girl Sapana Pradhan Mallia, Tula Rana, Ram Kumar Kamat and Bandana Rana, etc.

Bhadrapali, where participants sat on Dharna in front of Singha Durbar (Office of the Prime Minister) where various women activists, parliamentarians and politicians addressed the gathering.

**Passage of Bill once again:** At least partly as a result of the national mood created by the National Conference, the Bill sailed through the House of Representatives quite easily on March 14, 2002. Earlier the House of Representatives had passed the Bill with a simple majority, where only the ruling party (Nepal Congress) had supported the Bill. After the Conference, the same House passed the Bill again by an overwhelming majority (147:1).

### 6.5.5 Activities for Royal Seal

After the passage of the Bill, FWLD further carried out district level conferences and rallies in ten districts, two each from the five development regions in the country. The main objectives of the district level programs were to build pressure from the grassroots level to obtain the royal seal on the Country Code (Eleventh Amendment) Bill and elimination of remaining discriminatory laws against women. Press conferences and other meetings were carried out by LACC and FWLD. It took more than seven months to obtain the royal seal after Parliament passed the bill.

### 6.5.6 Study and Research

Various studies and research have been conducted in the field of discriminatory laws and their impact. These studies were undertaken in order to highlight the impact of discriminatory laws on the lives of girls and women and to make the State accountable towards its commitments under national and international law.

### 6.5.7 Shadow Report on CEDAW

Since the Initial Report on CEDAW submitted by HMG/Nepal was incomplete and did not include various existing problems reflecting the real status of Nepali women, FWLD in co-ordination with LACC, ABC/Nepal, WSP-U, SAATHI, BBC, CWCD prepared a Shadow Report on the Government's Initial Report on CEDAW. In the Shadow Report, the issue of discriminatory laws was dealt with separately and taken up as a burning issue of the country. Effective lobbying was also done to CEDAW Committee members by the NGO network of Nepal co-ordinated by FWLD and supported by IWRAW Asia Pacific. This group also helped advocate about the discriminatory legal situation facing Nepali women. The CEDAW Committee gave specific suggestions to the government to eliminate the
discriminatory laws and also recommended the domestic application of CEDAW. The group of NGOs formed a CEDAW Monitoring Committee (CMC), which has its secretariat at the FWLD office. The Committee is currently engaged in advocating the rights provided under CEDAW and making people aware of them.

CMC submitted a Shadow Report to the Second and Third Periodic Report of the Government of Nepal on CEDAW Convention. In its report the CMC highlighted the implementation status of the Concluding Comments given to the Government of Nepal on the Initial Report. It also enumerates the steps taken by the government to eliminate discriminatory laws and the shortcomings of the government initiatives as well as the remaining discriminatory laws.

6.6 Constitutional Reforms

6.6.1 Human Rights as a Basic Feature of the Constitution

Human rights are the basic rights guaranteed to people by the virtue of their being human. These rights are pre-requisites to the development of total personality of a person. A list of basic human rights is set forth in the Universal Declaration of Human Rights, 1948, and various other human rights instruments have come into force to ensure these rights. Nepal is a party to 16 human rights instruments including the CEDAW. It is the State’s responsibility to guarantee that its citizens enjoy these rights. The Constitution is the fundamental law of the land guaranteeing these rights. The Nepalese Constitution, which came into force after the People’s Movement of 1990, upholds the basic human rights of the individual by guaranteeing most of them as fundamental rights.

The Preamble to the Constitution states that it aims to achieve social and economic justice by guaranteeing basic human rights to all citizens and establishing an independent and competent system of justice in order to transform the concept of rule of law into a living reality. The Constitution itself guarantees that it shall not be amended against the spirit of the Preamble.

6.6.2 Equality and the Constitution

The Constitution, in the Chapter on Fundamental Rights, makes an effort to guarantee the basic human rights while ensuring constitutional guarantee of remedies in case of violation of the rights. The Constitution inter alia guarantees the right to equality, right to freedom including abolition of death penalty, right against exploitation, right to privacy, right to information, freedom of press and right regarding criminal justice.

The Constitution has guaranteed the right to equality to all its citizens and upholds the basic principle of a democratic constitution. It upholds the basic principle of equality, i.e. equality before law and equal protection of law, the principle of non-discrimination in the application of general laws on the basis of religion, race, sex, caste, tribe or ideological conviction and states that citizens shall not be

126 Ibid, Article 11.
127 Ibid, Article 11(1).
128 Ibid, Article 11(2).
discriminated against amongst one another on the basis of religion, race, sex, caste, tribe or ideological conviction.

6.6.3 Affirmative Action for the Advancement of Women

Taking into consideration the unequal position of women in Nepalese society, the Constitution has upheld the principle of affirmative action for women, children, the aged and the incapacitated. The Constitution allows making of any special provisions in the law for the protection and advancement of the interest of women. Special provisions, which the State may make under the proviso to Art. 11 (3), may be either in the form of affirmative action, or in the form of reservation.

In the House of Representatives, women have been guaranteed at least five percent of the total number of candidates contesting elections from each party and at least three seats are reserved in the National Assembly.

6.6.4 Policies for the Welfare of the Women

The Directive Principles and Policies of the State outline the fundamental guidelines for what the State must strive to accomplish in stages through laws, within the limits of means and resources available in the country. One of the most important objectives of the State, as specified by these principles, is to promote conditions of welfare through establishing a just system in all aspects of national life.

The policy of the State specified in the Constitution is to make programs to increase women's participation in national development. The Constitution recognizes the need for pursuing policies in matters of education, health and social security for women.

6.6.5 Judicial Review and Judicial Activism for Women's Rights

Articles 1, 88 and 131 of the Constitution state that any legal provisions inconsistent with the Constitution can be declared to be void. These articles reinforce the supremacy of the Constitution as the fundamental law of the land and uphold the principles it enshrines. They have paved way for judicial review, which helps establish the supremacy of the Constitution and guarantees women's equal rights. Women have taken initiatives to challenge discriminatory legal provisions against women as inconsistent with the basic principles of equality of the Constitution.

For example, in Man Bahadur Bishwokarma vs. HMG, the Supreme Court declared unconstitutional a provision of the Country Code that legitimized the practices traditionally adhered to at temples or religious places and that formally considered them to be non-discriminatory.

129 Ibid, Article 11(3).
130 Ibid, Proviso of the Article 11(3).
131 Dhungel and others, Commentary on Nepalese Constitution, Published by DeLF, (Kathmandu), p. 115.
133 Ibid, Article 46(1)(b).
134 Ibid, Article 26(7).
135 For detail, see the Judicial Initiatives.
Article 88(1) is very liberal in its wording as it allows any citizen to challenge a law. This broadens the concept of *locus standi*, as it is not necessary for a person to convince the Supreme Court that s/he is personally affected by the law being challenged.

Article 88(2) of the Constitution provides extra-judiciary jurisdiction to Supreme Court to issue an appropriate writ in any dispute of public interest or concern. The Supreme Court in the following cases has discussed the nature of Public Interest Litigation (PIL) and the question of *locus standi*.

In *Radheshyam Adhikary vs. Council of Ministers, HMG*, the Court has stated that PIL, unlike general litigation, unfurls the meaning of *locus standi*. The Court further said that every person cannot be considered eligible to enter into the court, but rather the person must prove a “meaningful relation” and “substantial interest” in relation to the issue and must assure the Court that s/he can truly represent the concerned group, community or public.

In *Gopal Siwakoti vs. Ministry of Finance*, the Court said that an issue may be regarded as an issue of public interest or concern if any government action has affected the general welfare interest of the people. Although no one is individually affected in the eyes of law or under the Constitution, such a case may be entertained by the court under Article 88(2) of the Constitution as public interest litigation. The Court also pointed out that all disputes of public interest are not acceptable to the Court under Article 88(2), but that a dispute of public interest must be based on the Constitution and should be worthy of judicial resolution.

The changing attitude of the judiciary in upholding the fundamental rights of the people can be seen in the following cases:

In *Surya Prasad Dhungel vs. Godavari Marble Industries*, the Supreme Court observed that human life is in danger in a polluted environment and that a clean and healthy environment is necessary for life to be lived to its fullest.

In *Yogi Narhari Nath vs. Rt. Hon. Prime Minister Girija Prasad Koirala*, the Supreme Court held that “in spite of non-enforceability of the directive principles and the state enshrined policies and state policies enshrined in the Constitution, the Court can allude to any decision of the government made disrespecting the directive principles and the policies of the state”. It gave a broad interpretation including right to environment as a part of right to life.

These cases are the first examples proving the changing nature of the judiciary and the increasing confidence of the people in this body. This has been possible due to the strong powers given to the judiciary in the Constitution, which have opened an avenue for women to challenge discriminatory legal provisions.

6.6.6 Women’s Rights Conventions as a National Law

Treaties or agreements which have been signed and ratified by Nepal automatically become the national law. If any provision of the existing Nepal law is inconsistent with any international Convention, the provisions of the law shall be void to the extent of inconsistency and the provision of the Convention shall prevail as the national law.

Although Nepal has ratified the CEDAW Convention, existing discriminatory provisions against women which are inconsistent with the Convention have not been declared void.

6.7 Challenges on the Elimination of Discriminatory Laws

In recent years, women’s rights activism has made remarkable achievements in various fronts but the movement still faces many challenges in the process of eliminating exploitation, subjugation, suppression, oppression and discrimination based on gender by the dominant sex in a society guided by patriarchy. There is still a long way to go to achieve gender equality in Nepal.

Elimination of discriminatory laws against women is a precondition for women’s empowerment. The most important challenges concerning discriminatory laws are as follows:

6.7.1 Non-Implementation of National and International Commitments

Nepal has ratified 16 human rights instruments including the CEDAW, which recognizes equal rights of women. Nepal has strong Nepal Treaty Act provisions stating that in case of conflict between the provisions of domestic law and the treaty to which Nepal is a party, the treaty provision prevails. Also, the Preamble of the Constitution of the Kingdom of Nepal, 1990 emphasizes human rights as the guiding philosophy of post-democracy political order.

Nepal has also adopted the Beijing Platform for Action and has made international commitment to eliminate all the discriminatory laws that exist in the country. However, the following facts indicate that attention has not been given to fulfilling these commitments.

- At the end of the presentation of Nepal’s Initial report on CEDAW Convention in 1999, the CEDAW Committee, the treaty monitoring body formed under the Article 18 of the
Convention, raised concerns that the government has not taken sufficient action to reflect the provisions of the Convention in the domestic laws, or to amend the prevailing discriminatory laws. In its Concluding Comments to the Government of Nepal after the presentation of the Second and Third Periodic Report the CEDAW Committee reiterated that the government needs to amend the discriminatory laws against women.

- Affirmative action has been recognized, under Article 11(3), as a constitutionally acceptable measure the government can use to reduce the disparities between various sections of the population, but very few steps have been taken for the empowerment of women except for amendments in the Local Self-Governance Act, Labor Act and Civil Service Act. While the Constitution provides for affirmative action in relation to the election to both Houses of Parliament, political parties do not go beyond the minimum threshold provisioned in the Constitution.

- Officials at the Ministry of Women, Children and Social Welfare (MWCSW) stated in their interview for this study that adequate initiatives have not been taken to implement international commitments in the domestic context. A formal meeting of the National Council for Women and Children Development was held only for once after it was formed in 1995. Other government bodies do not take the initiatives of MWCSW seriously.

- Judicial Activism and Judicial Review could be a very strong tool to uplift women, if the judiciary would seriously assert its interpretative powers under Art 1, Art 88 and Art 131. Unfortunately the provisions have not been used as often as they should have to declare discriminatory legal provisions inconsistent with the Constitution to be void.

- Further actions and initiatives to implement the Beijing Declaration and the Platform for Action have indicated that the goals and commitments made in the Platform for Action have not been fully implemented and achieved. The Beijing Plus Five Country Report of Nepal and advocacy leaflets prepared by NGOs on 12 critical areas and emerging issues have also identified the existence of gender disparities, social, economic and legal discrimination against women.

- Even after the Eleventh Amendment to the Country Code, there are still 173 discriminatory laws against women that need to be repealed or amended.

- Political parties have shown no interest in implementing the commitments to eliminate discriminatory laws contained in their election manifestos during the last three general elections.

6.7.2 Lack of Adequate Follow-up and Monitoring, Evaluation and Coordination

There is no coordination among the government agencies, especially the Foreign Ministry, MWCSW, Ministry of Law and Justice and the National Planning Commission, all of which have certain obligations to adjust laws, policies and practices in line with the standards of ratified treaties. MWCSW has been unable to play a strong role after the rejection of its concept Bill on inheritance rights. Since the Ministry

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Almost all the secretaries of the different line ministries stated that the MWCSW should take full responsibility to initiate amendment of discriminatory laws and to implement national and international commitments for the advancement and promotion and protection of human rights of women. They did not recognize the responsibilities of the individual line ministries.

The Secretary of MWCSW said in her interview for this report that with the resources and human resources available her Ministry has been taking many initiatives to fulfill the mandate given to the Ministry for the elimination of discrimination against women. However, she admitted that the Ministry has not been able to follow-up with many international commitments or their own initiatives.

On the other hand, almost all the secretaries of the different line ministries stated that the MWCSW should take full responsibility to initiate amendment of discriminatory laws and to implement national and international commitments for the advancement and promotion and protection of human rights of women. They did not recognize the responsibilities of the individual line ministries.

6.7.3 Ineffective Communication

Very few government officials and political leaders know about the existence of discriminatory laws against women. Even high level officials of the Ministry of Law, Ministry of Labor, Ministry of Education and Ministry of Home (including the Police Department) lack adequate knowledge about such laws. Most of them are not aware of the Government’s commitment through its ratification of international Conventions and its endorsement of several declarations. There is an absence of effective communication system within the executive, the legislative and the judiciary and also among each other. Without effective communication between and within the various wings of the government it is difficult to imagine early elimination of discriminatory laws.

Parliamentarians, bureaucrats and members of the judiciary fail to understand the State obligation under CEDAW and other human rights instruments. Even after the restoration of democracy, they tend to forget the rule of law and democratic norms, which require equal participation of women in all spheres of national development, de facto and de jure. FWLD’s CEDAW Impact study found “Widespread ignorance about the ratification and obligation of CEDAW among many responsible authorities of Government”. Sixty-one percent of judges had not even heard of CEDAW and those who had were not aware of the details.

The Concluding Comments on the Initial Report on CEDAW were not even disseminated among the government institutions despite the request of the CEDAW Committee to make people, government administrators and politicians aware of them. The Committee has also clearly requested the government to respond to the Concluding Comments in its next report.

145 Belbase, Narayan and Pyakurel, Sucheta 1999, A study on Gender and Judges, Executive Summary.
6.7.4 Conservative Attitudes

Nepalese society is by and large dominated by conservative attitudes that originate from patriarchy and the Hindu social order. Such attitudes can be found among most policy makers and other authorities, who are invariably men. Many policy makers and political leaders make a public show of their commitment to gender equality but when the critical time comes, such as passing the Bill related to equal rights on parental property, they often take a conservative position in the name of saving society from chaos and anarchy. The CEDAW Committee in its Concluding Comments on Initial Report to CEDAW said that different cultural practices and traditions and persisting highly patriarchal values and norms affecting all spheres of life are impediments to full implementation of the Convention. Changing such conservative attitudes of those people holding power and authority is a major challenge for all equal right activists.

Hindu philosophy has been used as a tool to suppress women. While Article 4 of the Constitution declares Nepal to be a Hindu Kingdom, this is merely a declaratory article as Hindu philosophy is not reflected anywhere in the Constitution, including the fundamental rights.

Unfortunately, the judiciary has invoked this Article to reinforce discriminatory legal provisions against women without taking into consideration that social justice is guaranteed in the Preamble and the right to equality is guaranteed in the chapter on fundamental rights. Moreover, in interpreting Article 4, the judges have not taken the international commitments into consideration. This has caused a major hurdle in the realization of equality based on international Conventions.

Patriarchal norms and values are still prevalent amongst most lawmakers. For example, during debate on the Country Code (11th Amendment) Bill the Speaker of the House of the Representatives made the unfortunate remark that even if laws to provide share of parental property to daughter were passed, they would not be implemented. Such an irresponsible observation made by a person of high constitutional office over a Bill that was being considered by Parliament reveals how deep-rooted patriarchy is in Nepal.

6.7.5 Inadequate Budget Allocation and Lack of Adequate Resources

In its annual budget, His Majesty’s Government of Nepal has never ever allocated enough money for women’s development. Even though most budget of Nepal is not specifically targeted to either men or women, its impact is not gender-neutral. Without analyzing the expenditures of the entire budget, it is impossible to determine how much of the general budget expenditure goes to promote women’s advancement. No initiative has been taken in the country for budgeting with a focus on allocating funds for gender equality.

In its annual budget, His Majesty’s Government of Nepal has never allocated enough money for women’s development. Even though most budget of Nepal is not specifically targeted to either men or women, its impact is not gender-neutral.

Officials of MWCSW mentioned during their interview that budget constraints have prevented them from carrying out many activities, including National Plan of Action prepared for the implementation of Beijing Platform for Action.

Aside from the commitments of different women’s rights groups and individuals, NGOs do not have enough resources for the coordination, monitoring and follow-up activities nor for continuous activities to bring about change in all spheres of society.

6.7.6 Difficulties in Generating Common Understanding

Achieving a common understanding between people, political parities and government and civil society is a big challenge. Government often takes a negative stand concerning gender equality while civil society is also divided on most issues related to gender discrimination. For example, the property rights issue was one of the gender issues debated widely but there was no consensus among the women’s rights activists and other members of civil society. A variety of diverse views made it difficult to yield any tangible positive achievements in eliminating gender discrimination related to property rights.

6.7.7 Lack of Gender Sensitization/Awareness

In the last ten years, much effort has been made to increase gender sensitization/awareness at various levels, but much remains to be done. While some policy makers, planners, political leaders, high level government officials, judges and other legal professionals, law makers and media professionals have been sensitized in gender issues, many more need such gender sensitization. One of the highest ranking law enforcement officers said in an interview for this report that women are discriminated against by nature, and further said that he is not aware of any discriminatory laws.

6.7.8 Lack of Strong Movements, Pressure and Lobbying

Although the women’s right movement has been active for about five decades, the issues of gender equality and gender equity began to be raised in the seventies and have intensified since the early nineties. Several pressure groups, including Women’s Watch Group, are active in lobbying activities. Women’s right activists are divided on political ideology and also on particular issues, as well as having differences of opinion on how to pursue them. The creation of a strong movement, exerting strong pressure and lobbying meaningfully are major challenges faced by the women’s rights movement in Nepal.

6.7.9 Low Participation of Women in the Decision Making Process

There has been only negligible representation of women in the cabinet. Women’s participation in the civil services, especially in the higher levels, is also low with 10,476 (95.5%) male gazetted officers against 503 female (4.5%) officers. Similarly, in the non-gazatted class, out of 92200 civil servants, there are 84,990 (92.2%) males against 7,210 (7.8%) females.
Women’s participation in legal and judicial sector can be seen from chart below:

6.7.10 Lack of Research and Study

Very few studies or research has been conducted on discriminatory laws and their impact. This has weakened advocacy and initiatives in relation to discriminatory laws and application of CEDAW in the domestic context.

6.7.11 Negative Judicial Interpretation

Following are some examples of negative judicial interpretations.

**Daughter is not accepted as a family member:** In *Sapana Pradhan Malla for Pro-Public vs. HMG, Ministry of Law and Justice*, the petitioner had challenged Section 26 (1) of Land Act, 2021 B.S. (1964), according to which the tenancy right after the death of a tenant is transferable to the wife or sons of the deceased tenant, whoever is trusted by the landlord. This provision denies the tenancy rights of daughter, married woman and widowed daughter-in-law and hence violates the right to equality guaranteed under the Constitution.

The Court argued Article 11 of the Constitution is a general provision and the provision in Part 2 of the Constitution, relating to citizenship, is a specific one. The Court claimed that the special provision will prevail in case of contradiction with the general provisions. The Court thus failed to take into consideration Art 9 of CEDAW that ensures women the same right as men to acquire, change, retain or confer their nationality.

In this case, the Supreme Court decided that there was no sufficient cause and situation to declare Section 26(1) of Land Act, 2021 B. S. (1964) as ultra vires to Art. 11 of the Constitution. The Special Bench of the Supreme Court interpreted the foregoing provision as non-discriminatory on the following grounds:

“The tenancy right does not devolve to anyone other than the family after the death of a tenant. Since a daughter goes to her husband’s house after her marriage, the policy does not discriminate against her. The devolution of the tenancy right to a daughter may have adverse impact on the interest of the landowner.”

The justification behind not allowing the devolution of the tenancy right to a daughter-in-law was that a daughter-in-law gets the right in property from her husband.

The Court referred to the decision in the Meera Dhungana case and advised HMG to take into account Section 26 (1) of Land Act, and to formulate a new.

While the law has been amended and the new provision guarantees right to tenancy to the unmarried daughters above the age of 35, daughter-in-law and also grand daughter-in-law, the amended provision is still discriminatory as it imposes a certain pre-condition of age on the transfer of tenancy rights to the daughters, and married daughters are still discriminated against.

Religion is used to reinforce discrimination against women: In Chandra Bajracharya for Misha Khala vs. Parliament Secretariat et al and Sapana Pradhan for FWLD vs. Ministry of Law and Justice discriminatory legal provisions in the penal law, adoption law, succession (legacy), discrimination on punishment, divorce and remarriage were challenged. In the above cases, the Court said: “It cannot be denied that there is a great influence of Hindu Jurisprudence on our legal system, evident from the fact that Article 4 of the Constitution declares Nepal as a Hindu Kingdom, and that we all are devotees of Hindu religion. Above all, our religious codes play a vital role in determining such matters that are mainly influenced by family and social behavior, culture, tradition, activity and conduct.”

The Court further said that in taking steps towards changing the traditions, it is very important to consider the impact of the changes in our society and whether our society can adapt to such changes. The Court reasoned that if anything occurred that was not in conformity with the culture or tradition, it would ultimately disturb the entire society. The Court itself is thus using religion as a tool to reinforce the discriminatory legal provision.

150 Writ No. 2824/052, Decided on 1996/7/18.
Although the Constitution does declare Nepal to be a Hindu Kingdom, religion is only a way of life. Nepal also has a strong Nepal Treaty Act, according to which in case of conflict between the provisions of domestic law and a treaty, the treaty provision prevails. By ratifying CEDAW, the country has committed to eliminate all forms of discrimination against women, including discrimination based on social, cultural and religious beliefs. Hence the explanation “our religious codes play a vital role in determining such matters that are mainly influenced by family and social behavior, culture, tradition, activity and conduct” cannot be used as an argument to continue the discriminatory legal provisions.

**Non-recognition of the fundamental rights as the basic structure of the Constitution for women’s equality:** The issue in *Benjamin Peter vs. Department of the Immigration,* was that a foreign woman married to a Nepalese man could either acquire citizenship of Nepal or extend the period of visa until the nuptial relationship continued and for three months after such relationship discontinued. However, no similar right was given to the foreign husbands of Nepalese women, making it difficult for them to remain in the country.

When this provision was challenged, the Court argued Article 11 of the Constitution is a general provision and the provision in Part 2 of the Constitution, relating to citizenship, is a specific one. The Court claimed that the special provision will prevail incase of contradiction with the general provisions. The Court thus failed to take into consideration Art 9 of CEDAW that ensures women the same right as men to acquire, change, retain or confer their nationality.

**Taxation laws not recognizing the independent status of women:** In the case of *Sarla Rani Rauniyar vs. Ministry of Finance,* the petitioner challenged Sections 5 and 21(a) of the Income Tax Act, 2031 B. S. (1974) according to which the income of the husband and wife is taxed in the name of the husband. According to a separate legislation, the Social Tax Procurement Act, 2012 B. S. (1955), the income of the husband and wife are to be taxed separately. The petitioner contended that the provisions of the Income Tax Act, challenged her independent status.

The Supreme Court decided that the income tax assessment of the joint income of the couple in the name of the husband is just for the procedural purpose of assessment of tax and that the procedure could not be considered a discriminatory provision against women. Although the Court said that it is only a matter of procedure, this does affect the independent status of women as her earning is not recognized and in fact assessed as the husband’s earning.

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151 NKP 1991/92, Vo. 11, p. 479
152 Article 9 of the Constitution of Kingdom of Nepal, 1990.
Protectionist law recognized as special measures

In *Sabin Shrestha for FWLD vs. HMG/Nepal*\(^{154}\), Section 12 of Foreign Employment Act was challenged stating that it violates the fundamental right to equality guaranteed by the Constitution of the Kingdom of Nepal, 1990. The argument raised was that the women should enjoy the same employment opportunities as men. Unfortunately, the Supreme Court was unable to distinguish between substantive equality and discriminatory laws. This provision is based on a protectionist approach, which restricts various rights of women in the name of protection, but the Supreme Court validated it on the basis of the constitutional provision that allows special laws to be made for the advancement and protection of women.

Narrowing the Eleventh Amendment to the Country Code

*Shyam Krishna Maskey vs. HMG/Nepal*\(^{155}\) is a unique case where the plaintiff went to the Supreme Court to curtail women’s right to inheritance in case of divorce. In its judgment the Court narrowed the new amendment of the Country Code that guaranteed the right of property to all categories of women. The Court viewed that it is not reasonable to make the husband alone accountable to provide property in case of divorce if the wife could possibly inherit double/triple property, and if only one party to the marriage is responsible to provide such a right. The Court further mentioned that the economic status of the spouse needs to be taken into consideration for providing such a right.

Directive Order to Enact Law regarding reservations

In *Praddhos Chhettri vs. HMG*\(^{156}\), the petitioners sought to declare as *ultra vires* a decision of the TU Executive Council reserving 45 percent of the seats for *dalits*, ethnic communities and women in higher and technical education. On the basis of this decision, Tribhuvan University Teaching Hospital issued a notice stating that out of the total seats in the MBBS program, 55 percent would be filled through free competition, while the remaining 45 percent would be reserved for various groups (10 percent for *dalits*, 15 percent for ethnic communities and 20 percent for women).

The Supreme Court invalidated the reservation initiative taken by Tribhuvan University Teaching Hospital as unconstitutional as it was based only on a policy and not on any specific law as required by the Constitution. The Supreme Court said no such measure could be taken without making law pursuant to the proviso to Article 11(3) of the Constitution that allows for the formulation of special laws for groups that are considered socially backward.

At the same time, however, the Court recognized the need to take measures for advancement of these communities by enacting a law so that permanent and institutional arrangements could be made as per the spirit enshrined in the proviso to Article 11(3). Expressing its dismay over the delay to enact a law to provide special measures pursuant to the proviso to Article 11(3), the Court issued a directive order in the name of the government to enact a law within this fiscal year for protection and development of women and ‘backward communities’ with a specific demarcation on the basis of economically, socially and educationally backward.

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The Court also held that while enacting laws, the status of a particular group even within the community needs to be taken into account to ensure that such measures reach the underprivileged persons within a community.

**The Court held that International Instruments could not Supersede Constitutional Provision**

In the case of *Chandra Kant Gyawali v. HMG/Nepal*, the petitioner challenged discriminatory provisions of Citizenship law as being against the spirit of equality guaranteed by the Constitution of Nepal, 1990. In this case, though the court stated Article 88(1) of the Constitution as bestowing the right to the judiciary to declare laws that are inconsistent with the Constitution as void and repeal them, it also stated that the judiciary does not have the right to challenge the validity of provisions of the Constitution. It held that the constitutionality of a constitutional provision could not be tested and that the rule of harmonious construction must be applied because Article 9 and Article 11 of the Constitution are separate and independent of each other and the right to equality guaranteed under Article 11 is not absolute. In addition, the judges stated that though Nepal is a party to the CEDAW Convention and needs to amend, enact or repeal laws in accordance to the principles of CEDAW, and is bound by the Treaty Act 1990 to do so, this applies only in case of other laws and a treaty cannot supersede a constitutional provision, thereby quashing the case.

**The Court Disregarded the Status of Women in the Conventional Patriarchal Mindset**

In case of *Achute Prashad Kharel vs. HMG et.al*, writ petitioner claimed that Article 9 (2) of the Constitution of Nepal 2047 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”. While the provision in Article 9 (2) of the Constitution should include a child whose mother is a Nepali citizen but whose father’s whereabouts is unknown, HMG has not been providing citizenship to children of unmarried women who are Nepali citizens by descent if the children’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 HMG to grant Nepali citizenship to a child born to an unmarried woman who holds Nepali citizenship on attaining the prescribed age as Nepali law accepts that a child found within Nepali territory will be deemed a Nepali citizen until the father’s whereabouts is known.

As referred to in *Chandra Kant Gyawali vs. HMG* (No. 3668 in 2057), the Full bench of the Supreme Court ruled that citizenship can only be granted by virtue of descent according to Article 9 (1) and (2) of the Constitution of the Kingdom of Nepal 1990 and Section 3, (1) (4) and (5) of the Nepal Citizenship Act 1963. The above-mentioned case accepts the issue of citizenship by virtue of lineage on the basis of the father’s citizenship which did not hold accord with the writ petition to grant citizenship to a child born to an unmarried Nepali woman on the basis of the mother’s citizenship. Hence the writ petition was dismissed. This verdict failed to recognize the equality between man and women and the existence of single mothers. Citizenship is regarded as the sole privilege of children whose father’s are determined to be Nepali nationals.

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157 NKP 2001/02, Vol. 11&12, p. 615
Discriminatory Practice Justified in name of Right to Religion and Cultural Practice

In *Tara Devi vs HMG*\(^{159}\), the petitioner challenged the law regarding incest as discriminatory as it allows a widower to marry his deceased wife’s sister whereas a widow is not allowed to marry her deceased husband’s family, including his brother, and is assumed to maintain the same familial relations as if her husband was still alive the assumption being a women continues to belong to the man and family she was “given” to at the time of marriage whereas a man can “acquire” another wife if the existing one expires. The main legal contention raised was that such reasoning makes laws discriminatory and denies women from benefits she is entitled to from her deceased husband. The petitioner has requested a declaration of the law as void under Article 88(1) of the Constitution of the Kingdom of Nepal.

The Court referred to section 10.A of the Chapter on Incest in the Country Code which states that any marriage under the prohibited degrees of relations can be justified if approved by customs and/or traditions. The Court also referred to the Hindu Marriage Act, 1955 of India, which allows for similar exceptions regarding the prohibited degrees of relations. On the basis of the above mentioned grounds, the Court dismissed the petition.

In the given case, the court applied the law as it stands without considering the dynamic nature of present society. While an international standard of human rights maintains that the state should guarantee the right to religion and culture, traditional practices which blatantly discriminate against a particular section of society such as women and violate a minimum core human rights standard cannot be justified in the name of the right to religion and culture. In a developing country like Nepal, where progress is hindered by age-old evil practices, it is particularly necessary for the law to act as an instrument of social change.

Directive Order to Review the Law which allows man to bigamy in certain conditions

In the case of *Chandra Gyawali vs. the Office of the Prime Minister*, the petitioner challenged number 9 of the Chapter on Marriage in the Country Code, 1963 which allows men to conduct bigamy in case that their first wife becomes infected by an incurable sexually transmitted diseases, becomes incurably insane, crippled or cannot walk or is blind in both eyes, if the first wife is proved by the Medical Board to be infertile and if the first wife is living separately after taking her share of the husband’s property. The petitioner argued that discrimination exists as men are allowed to conduct bigamy, under the above-mentioned circumstances, however the same provisions are not provided to women. They raised the issue of marital discriminations and attempted to nullify the provision of bigamy under the above mentioned conditions. However, in its decision, the Court only issued a directive order to the government to review the above mentioned law in relation to the right to equality. Although the Court recognized the above mentioned provisions as discriminatory and contradictory to the right to equality guaranteed by the constitution and international instruments ratified by Nepal, the Court argued that if they declared this provision *ultra vires* the impact would create larger negative consequences for women by allowing bigamy to occur without restriction as number 9 and number 10 of the Chapter on Marriage are linked.

\(^{159}\) NKP 2058 (2001), Vol. 7, 8, p. 375.
The Constitution of the Kingdom of Nepal guarantees equality as a fundamental right to all of its citizens. Nepal has also ratified 16 international human rights instruments, thereby showing its intention to provide to its citizenry the rights mentioned within these treaties. As provided in Nepal Treaty Act, once an international instrument is ratified by the State, such treaty automatically becomes the law of the land. Despite these positive steps demonstrating a commitment to human rights, many discriminatory legal provisions remain. This chapter attempts to outline Nepal’s accountability and obligations based on various commitments to eliminate discriminatory laws.

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<td>3. All laws inconsistent with the constitution, ratified human rights conventions to be declared void</td>
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<td>9. Right against exploitation</td>
<td>International instruments and declarations</td>
<td>Art 6 of CEDAW, General Recommendation No. 19 of CEDAW, Art 8 of ICCPR, CSTPEPO, CRC 34, 35 and 36, Art 10 of the Constitution.</td>
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</tbody>
</table>
7.1 State Obligation under the Constitution of the Kingdom of Nepal, 1990

Fundamental Rights: A promise of fundamental human rights runs through the Constitution of the Kingdom of Nepal 1990. These rights are promoted by a system of justice in line with the concept of the “rule of law.”

The Constitution clearly expresses that no one shall be discriminated against on the basis of sex, and guarantees equal remuneration for the same work. The Constitution further provides that special laws may be made for the advancement of women and children, and that any such special measures shall not be considered inconsistent with the right to equality. This statement reflects Art. 5 of the CEDAW and any special measure taken for the advancement and development of women is not considered discrimination against men.

Where constitutional rights are being violated or remedies are inadequate, ineffective, or entirely unavailable, the Supreme Court has the extraordinary power to issue necessary and appropriate orders to enforce such rights or settle disputes. For these purposes, the Supreme Court may issue orders and writs including the writs of habeas corpus, mandamus, certiorari, prohibition and quo-warranto. The Supreme Court also possesses such powers for the settlement of any constitutional or legal question involved in any dispute of public interest and concern.

As the fundamental law of the land, any laws inconsistent with the Constitution shall, to the extent of such inconsistency, be void. Such provisions shall ipso facto cease to operate one year after the commencement of

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1 The preamble of the Constitution also says the objective of the Constitution is also to secure socio-economic justice...guarantee basic human rights...in line with the concept of rule of law.
2 Art. 11(1) - All citizens shall be equal before the law. No person shall be denied the equal protection of the laws. Art 11(2), no discrimination shall be made against any citizen in the application of general laws on grounds of religions, race, sex, caste, tribe or ideological conviction or any of these. Art 11(3) of the Constitution clearly obliges the state stating that the state shall not discriminate among citizens on grounds of religion, race, sex, caste, tribe or ideological conviction or any of these. Provided that special provisions may be made by law for the protection and advancement of the interest of women, children, the aged or those who are physically or mentally incapacitated or those who belong to a class which is economically socially or educationally backward.
3 The Constitution of the Kingdom of Nepal, 1990, Article 88 (2).
this Constitution. Any Nepali citizen may file a petition in the Supreme Court to have a law or any part thereof declared void on grounds of inconsistency.

The provisions made under Article 1, Article 11 and Article 131 of the Constitution and in line with the basic spirit of democratic constitutions of the world as well as with the basic principles of human rights.

Unfortunately, even after a decade of recognizing this Constitution as the highest law of Nepal, many laws within the Country Code and other provisions still discriminate on the basis of sex, directly contravening the basic principles of equality and fundamental human rights enshrined in the Constitution.

Although Article 1 and Article 131 have the force to declare void any provisions of the law inconsistent with the Constitution, till date neither the legislature nor the judiciary (under Article 88) have adequately used this Article to declare void discriminatory laws.

**Directive Principles of the State in the Constitution:** Directive Principles in the Constitution seek to eliminate social and economic inequalities among citizens. It further demands that the State protect life, property and liberty of the citizenry, and promote human rights by introducing welfare policies.

Although the directive principles and policies of the state are not directly enforceable through any court, they are fundamental to the activities and governance of the state. These policies are to be implemented in stages considering the resources and the means available in the country. In fact, the Supreme Court of Nepal has held that even though directive principles and policies of the State can not be enforced by the court, courts may take them into consideration. Courts may even issue directives against government decisions if such policies are contrary to the directive principles and policies prescribed in the Constitution.

### 7.2 State obligation under the legislation

- **Civil Rights Act 1955**
  
  No citizen shall be denied equality before the law or equal protection under the law.

- **Labor Regulation 1993**
  
  Equal remuneration for male and female employees for the same job is necessary.
• **Children Act 1992**

  No one shall discriminate between a son and a daughter in their upbringing, specifically in terms of education and health.\(^\text{11}\)

### 7.3 Obligations under the Judicial Decisions of the Supreme Court

The judiciary is one of the strongest pillars of democracy with the power and responsibility to protect the rights of the people, guaranteed to them by law.

In *Meera Dhungana vs. Ministry of Law and Justice*,\(^\text{12}\) the Court returned the decision that the existing provision to inherit parental property is conditional upon the girl remaining unmarried until the age of 35. However, the Court also issued a directive to the Government to present a bill, reviewing law related to property rights, within a year of the issuance of the order.

Similarly in *Chandra Bajracharya for Misha Khala vs. Parliament Secretariat et al*\(^\text{13}\) and *Sapana Pradhan for FWLD vs. Ministry of Law and Justice*,\(^\text{14}\) discriminatory legal provisions of the penal law, adoption law, succession, discrimination on punishment, divorce and remarriage were challenged. In these cases, the Court issued a directive orders to introduce appropriate Bills in the Parliament.

In *Sapana Pradhan Malla and Prakash Mani Sharma for Prпубlic vs. HMG/Nepal*, where Sec. 26(1) of Land Act which denied a daughter to be tenant was challenged and the Supreme Court directed the government to present an appropriate Bill in the Parliament to end the discriminatory provisions.\(^\text{15}\)

The Country Code (11th Amendment) Act is the outcome of that directive orders.

### 7.4 State Obligation under the International Instruments

As a member of the United Nations, Nepal is a party to a large number of international human rights instruments including various Conventions adopted by the International Labour Organizations (ILO) (listed in the Table 1 and Table 2) without any reservations.

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14 Writ no.2824, decision made on 2053.4.3 (1995).
15 Writ no. 2736 decision made on 8th Feb. 1996.
Table 1

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<th>S. N.</th>
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Table 2 (ILO Conventions)

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<tr>
<td>1</td>
<td>The Discrimination (Employment and Occupation) Convention, 1958 (No 111)</td>
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<td>The Minimum Wage Fixing Convention, 1970 (No 131)</td>
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<td>The Equal Remuneration Convention, 1951 (No 100)</td>
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<td>4</td>
<td>The Weekly Rest Convention, 1921 (No 14)</td>
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<td>5</td>
<td>The Tripartite Consultation (International Labour Standards) Convention, 1976 (No 144)</td>
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<td>6</td>
<td>Convention Concerning Minimum Age for Admission to Employment, (No 138)</td>
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<td>7</td>
<td>Convention concerning the application of the Principles of the right to organize and bargain collectively (No 98)</td>
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</table>

Universal Declaration of Human Rights 1948

The Universal Declaration of Human Rights 1948 reflects a common (universal) standard of human rights and serves as a fundamental source of inspiration for national and international laws that protect...
and promote human rights. According to Art 2 of UDHR all are entitled to rights and freedoms set forth in the Declaration without distinction of any kind. The other rights guaranteed in the Declaration are: equality before law and equal protection of law to all, right to freedom of movement and residence within the state and right to leave and return back to the country, right to nationality, right to marry and found family, equally guaranteed to men and women, right to own property, right to pay for equal work without any discrimination, special care to motherhood and childhood.

**Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**

This Convention is the first comprehensive legal material that requires member states not only to maintain formal equality but also substantive equality between men and women. Article 1 of the CEDAW gives the definition of discrimination against women, which has been dealt in detail in Chapter - 2A.

State parties are obliged to condemn discrimination against women and to eliminate it through constitutional, legal and appropriate means. States are under duty to ensure that public and private bodies as well as individual persons refrain from and eliminate discrimination against women.

CEDAW also obliges states to ensure the full development and advancement of women so that they can exercise and enjoy human rights and fundamental freedoms equally with men as provided under Articles 5 to 16 of the Convention which include rights to social and cultural standard, right against exploitation, right to participate in political and public life, right to international representation, equal rights regarding nationality, right to education, equal rights to employment, right to development of women in rural areas, equality with men in legal rights, equal rights of marriage and family relation.

Article 2 of CEDAW obliges states to take concrete steps to eliminate discrimination against women. States that ratify CEDAW are obliged not only to condemn all forms of discrimination against women, but also to implement various measures towards its elimination. The ratifying states must also embody the principle of equality in their national constitutions or other laws and adopt legislative and other measures, including sanctions, as appropriate to ensure enforcement of the convention’s provisions. States must establish legal protection against discrimination through national tribunals and other public institutions. Public authorities and institutions in ratifying states are to refrain from discriminatory practices. States must modify or abolish existing laws, customs and practices that discriminate against women, as well as penal provisions that amount to discrimination against women.

Article 5 of CEDAW, State is also accountable to take measures to modify social and cultural patterns in order to eliminate prejudices and practices based on the idea of inferiority or superiority, or stereotyped roles, and to ensure an understanding of maternity as a social function, as well as a recognition of male and female responsibilities towards children.

Article 13 of CEDAW conforms that state should take all appropriate measures to eliminate discrimination against women in terms of family benefits and bank loans, mortgage and other forms of financial credit. Article 14 directs the state to take appropriate measures to ensure application of the provisions of the Convention to women in rural areas, and their participation in and benefit from, rural development on an equal basis.

Art. 15 obliges state to make women equal to men with identical legal capacity in civil matters, nullifying contracts and private instruments which could restrict the legal capacity of women, and according equal rights relating to freedom of movement, residence and domicile.

Art 16 directs state to take measures to eliminate discrimination of women in matters relating to marriage and family relations, ensuring the right to marriage, free choice and consent, equal rights and responsibilities, with action and legislation towards preventing child marriages.
promotes the substantive model of equality. A considerable amount of jurisprudence has been developed through the general recommendations under various articles of CEDAW one of which is for violence against women.

General Recommendation 19, CEDAW’s first “cross cutting” general recommendation, clearly defines gender-based violence against women, whether perpetrated by a state official or a private citizen, in public or in private life. Such violence is considered sex discrimination and a violation of internationally guaranteed human rights.

General Recommendation 19 sets out specific punitive, rehabilitative, preventative and protective measures that the states should introduce to fulfill this obligation.

The Declaration on the Elimination of Violence Against Women adopted by the General Assembly in December 1993 recognizes the crucial importance of the effective implementation of the Convention in order to eliminate violence against women.

**International Covenant on Civil and Political Rights 1966 (ICCPR)**

This Covenant recognizes the political and civil rights of individuals. It upholds the right to self-determination. It obliges States to ensure the enjoyment of all civil and political rights set forth in the Covenant on an equal basis for both men and women. The Covenant specifically states that all persons are equal before the law and are entitled to equal protection of the law. It also states that all persons shall be equal before courts and tribunals. Additionally, this Covenant recognizes the equality of individuals in matters of marriage and divorce.

**International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR)**

This Covenant recognizes the economic, social and cultural rights of individuals. Like the previous Covenant, it upholds the right to self-determination and also obliges states to ensure the equal rights of men and women in the enjoyment of all economic, social and cultural rights set forth in the Covenant. The Covenant further recognizes the right of everyone to social security, including social insurance and the right to an adequate living standard within the family.

32 ICCPR, Article 1.
33 Ibid, Article 3.
34 Ibid, Article 26.
36 Ibid, Article 23.
37 ICESCR Article 1.
38 Ibid, Article 3.
39 Ibid, Article 9.
40 Ibid, Article 11.
In the Tenth Plan, the government in its strategy relating to amendment of existing discriminatory provisions of laws has committed to review the existing legislations from the lens of gender perspective and in line with the CEDAW Convention. The Covenant obliges the state to ensure the equal right of men and women to exercise the rights enunciated in the covenant without discrimination on the basis of sex, property, birth or other status.  

**UN Convention on the Rights of the Child, 1989**

The Convention obliges the state parties to ensure rights without discrimination of any kind, irrespective of sex.

### 7.5 Validity of International Instrument in the Domestic Context

A separate Nepal Treaty Act was passed by the interim government (1990-91) to regularize ratification of and accession to such conventions in line with the spirit of Article 126 of the Constitution of the Kingdom of Nepal, 1990. Section 9 of the Act provides that any treaty once ratified, acceded to, accepted and approved by the parliament shall be enforceable as a national law. So strong is the force of the treaty that in case of contradictions between a prevailing municipal law and the treaty, the prevailing law shall be declared void and the treaty provision shall prevail for the purpose of the treaty. It is important to note that the interim government ratified CEDAW without any reservation, making all its provisions applicable as law in Nepal.

### 7.6 Tenth Plan (2002-2007)

In the Tenth Plan, the government in its strategy relating to amendment of existing discriminatory provisions of laws has committed to review the existing legislations from the lens of gender perspective and in line with the CEDAW Convention. It has also committed to drafting new legislations for empowerment of women that provide the provision of temporary special measures. It also envisages amending to draft new legislations to do away with harmful traditional practices such as witchcraft, jhuma, denki etc.

### 7.7 Further Actions to Implement the Beijing Declaration and Platform for Action:

The government is committed to create and maintain a non-discriminatory, as well as a gender sensitive legal environment for which legislation must be reviewed in order to remove discriminatory provisions

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41 Ibid, Article2.
42 Ibid, Article 2.
as soon as possible, preferably by 2005. Legislative gaps that limit the rights of women and girls, and that leave them without effective recourse against gender-based discrimination are also to be eliminated.

The government is also committed to consider ratifying the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

7.8 State Commitment at the Beijing Summit

The government’s participation in the Fourth World Conference on Women held in Beijing in 1995 symbolized its determination to advance the goals of equality, development and peace. It has reaffirmed its commitment to the equal rights and inherent dignity of women and men, and to the purposes and principles enshrined in the Charter of the United Nations, to the Universal Declaration of Human Rights and other international human rights instruments, in particular CEDAW. The government made commitments to ensure the full implementation of human rights for women and for the girl child. These rights remain inalienable, integral and indivisible parts of human rights and fundamental freedoms as expressed in the Vienna Declaration. Importantly, the Government of Nepal made a strong commitment to translate the momentum of Beijing into action by identifying, and presenting to the legislature for amendment, any discriminatory laws within two years.

7.9 National Plan of Action for Gender Equality and Empowerment of Women (NPA) prepared by the Ministry of Women and Social Welfare

The Ministry of Women and Social Welfare has framed a National Plan of Action having based on the commitments made by Nepal at the Beijing Conference. The pledge made in the National Plan of Action for Gender Equality and Women Empowerment is quite strong in considering its resolve to review existing legislation on women and to enact appropriate laws in accordance with the international instruments. Strategies have been formulated, responsible agencies have been identified and a timetable has been specified to achieve these set goals. Initiatives are being taken to: establish a family court in each district of Nepal, to enact a Bill against domestic violence and to establish the National Women’s Commission.

7.10 State Commitment in Country Report on the Beijing Plus Five-Review

In its report submitted to the Beijing Plus Five Review in 2000, the government has reiterated its commitment once again. Major commitments of the state are as follows:

- To repeal all discriminatory laws.
- To initiate a critical awareness building campaign throughout the country.
- To make the process of education and socialization more gender sensitive.
- To begin affirmative action for women in all sectors and levels of government as well as in society.
- To ensure qualitative and quantitative increases in reservation quotas for women in parliament, administration, judiciary, education and other walks of life.
- To form the Human Rights Commission, ensuring the participation of women.
- To create special education and employment opportunities for women belonging to ethnic groups and disadvantaged castes.
- To take stronger actions against gender based violence.
- To update laws in accordance with rights provided in the Constitution.

7.11 National Plan of Action on CEDAW

The MWCSW has formulated a National Plan of Action on CEDAW with an aim to eliminate discrimination against women and guarantee their rights protected under the CEDAW Convention. In this, the Ministry has Strategic action plan for amending discriminatory laws and formulating new laws. It includes

- Review of the existing laws and amending the discriminatory laws against women as well as formulating new laws
- To educate the Parliamentarians, Government, Bureaucrats, Judges and Political Parties on Nepal's obligation under international human rights instruments to do away with the discriminatory laws against women.
- To include provisions relating to women's rights and protection of their rights in relation to appointment, transfer, promotion and others in the Civil Services Act and Rules as well as other concerned laws.
- Documentation of laws and treaties that protect the rights of women as well as do away with the discriminatory provisions against women.

7.12 Commitments in the Initial Report of CEDAW

Within the initial report, the Government stated that the Ministry of Women, Child and Social Welfare will take necessary initiatives to amend discriminatory laws.
Additionally, mentioned as priority activities within the initial report are plans to take any necessary action to meet HMG’s Commitment to all UN Conventions and Declarations related to women. An additional step is the planned establishment of an independent Women’s Commission. \(^{45}\)

### 7.13 Concluding Comments on Initial Report of CEDAW

The CEDAW Committee considered the initial report of Nepal on the 15\(^{th}\) and 18\(^{th}\) of June 1999. The principal areas of concern and recommendations of the Committee ranged in topics from literacy to health to discriminatory laws.

- In the area of discriminatory laws, the Committee voiced its concern that the government has not taken sufficient action to reflect the provisions of the Convention in domestic laws, or to amend prevailing discriminatory laws. It also expressed concern on the issue of interpretation of discriminatory laws by the Supreme Court of Nepal and the Court’s comments clearly supporting continuation of the patriarchal society.
- The Committee recommended that relevant laws in Nepal include the definition of discrimination in compliance with Article 1 of the Convention. As a matter of priority, the Committee also urged the government to amend discriminatory laws including the law relating to abortion.
- The Committee stated a need to ensure greater gender sensitivity; knowledge and training on gender related issues amongst groups that are in charge of the implementation of policies and programmes to achieve equality for women.
- The Committee expressed concern at the current law, which criminalizes abortion, even in cases of pregnancy due to rape or incest. The Committee found that the current law on abortion contributes to the high maternal mortality rate in Nepal. The Committee also raised concern that the proposed amendment to the current law continues to be restrictive, allowing abortion only when the mother’s health is in danger.
- The Committee urges the Government to revise existing legislation and to reconsider the proposed amendments so as to provide services for safe abortions. The Committee recommends that the Government prioritize prevention of unwanted pregnancy through family planning services and sex education. In these efforts, the Committee suggests that the Government take account of general recommendation 24 on article 12 – women and health.
- The Committee also urged the government to take effective steps to review existing legislative provisions on prostitution and trafficking of women, urging the government to consider their compatibility with the Convention, and the appropriate means to ensure their full implementation and compliance. It also called upon the government to

\(^{45}\) Addendum to Initial Report Nepal, pp. 18-19.
review its criminal code, to punish people who procure women for prostitution or for trafficking, to establish repatriation and rehabilitation programmes, as well as to support services for victims of trafficking.

From the above mentioned Constitutional and international commitments, we see the following state obligations in relation to the establishment of equal rights for women.

- The state is obliged to ensure that no one is discriminated on the basis of sex and that equality is granted to both women and men.
- The state has the duty of providing basic needs for both women and men to survive with respect and dignity.
- The state carries the obligation to eliminate all forms of discrimination against women. This specifically includes abolishing discrimination based on marital status, as well as guaranteeing fundamental freedom in the political, economic, social, cultural or any other field.
- The state must incorporate the principle of equality in legislation and take steps to amend or repeal provisions of law that discriminate against women.
- The state has the obligation to provide mobility, the freedom to practice any profession and protection against the exploitation of women.
- Based on the list of obligations, it can be said that the state has the duty to protect human rights of women without discrimination on the basis of sex. The protections are necessary because the absence of state action violates a woman’s freedom of movement, right to equality, right to employment, right to family, right to development, right to education, right to life, right to self decision, right against exploitation, right to dignity and right to participate in the public life etc.
- Despite the goals to achieve gender equality and to amend discriminatory laws, as specified in the above, national and international commitments changes are yet to be observed.

**Implementation Status of Concluding Comments of the CEDAW Committee on Initial Report of the Government of Nepal**

- While there have been several changes in the laws and the level of sensitization among policy makers seems to have improved, the state is still reluctant to fully incorporate the definition of discrimination in relevant laws.
- There have been some perceptible changes in the attitude of the judiciary since the Concluding Comments of 1999. The Supreme Court has made some progressive interpretations of discrimination in line with CEDAW provisions. The government initiative in the form of the Eleventh Amendment to the *Country Code of Nepal, 1963* is an appreciable action in line with the Concluding Comments of the CEDAW Committee, which in 1999 had called for the amendment of discriminatory laws as a matter of priority. Despite that, an updated study conducted by FWLD indicates that there are still 137 different legal provisions in the *Constitution of the Kingdom of Nepal, 1990*, various Acts and Regulations that discriminate against women on issues such as property, nationality, marriage and family, legal procedure and court proceedings, trafficking and sexual abuse, employment, education and citizenship.
- As far as the dissemination of the 1999 Concluding Comments is concerned, the government has taken very few initiatives, and most of the dissemination was done through the effort of non-government organizations.
• In relation to trafficking, the government has taken some initiatives such as drafting of the Human Trafficking (Control) Bill with provisions for rehabilitation. However, the Bill has some serious problems. Though the Committee has urged to initiate bilateral cooperation, so far no such measure has been taken by the government of Nepal to address the issue of Trafficking.

• There have been no initiatives to eliminate the discriminatory provisions of the nationality law that continue to violate one of the fundamental rights of women and have an adverse impact on the exercise of so many other rights that flow from it.

Concluding Comments of the CEDAW Committee to the government of Nepal

• The Committee urged the State party to expedite action and to establish a specific timetable for amending discriminatory laws without further delay in order to comply with its obligation under article 2 of the Convention.

• The Committee urged the State party to repeal or amend article 9 of the Constitution, which permits discrimination against women in the area of citizenship.

• The Committee requests the State party to adopt immediately measures against domestic violence and to provide in its next report information about progress in relation to the draft bill on domestic violence.

• The Committee urges the State party to intensify its efforts to address trafficking in women and girls. It recommends that its anti-trafficking strategy should include measures of prevention, the prosecution and punishment of perpetrators and increased international, regional and bilateral cooperation.

• The Committee requests the State party to provide in its next report information about the legal and actual situation with respect to trafficking in women and girls.

Concluding Observations of Human Rights Committee on Initial Report of Nepal

• The Human Rights Committee stated that it was particularly disturbed by the fact that the principle of non-discrimination and equality of rights suffers serious violations in practice and deplores inadequacies in the implementation of the prohibition of the caste system.

• The Committee expressed its concern over the situation of women who, despite some advances, continue to be de jure or de facto the object of discrimination in regard to issues such as marriage, inheritance, transmission of citizenship to children, divorce, education, protection against violence, criminal justice, and wages.

Concluding Observations of the Committee on the Rights of the Child to the government of Nepal

The Committee showed its deep concern about the absence of a specific law and policy to combat the problem of trafficking and recommended the government to take all appropriate measures, including of a legislative nature, to combat any form of ill-treatment and sexual abuse of children including within...
the family. It also suggests that the government take all appropriate measures, including legislative and administrative, to combat inter-country trafficking and sale of children.

**Concluding Observations of the Committee on Economic, Social and Cultural Rights on the Initial Report of the government of Nepal**

- The Committee noted its concern the legal inequalities between women and men in the field of inheritance, the regime of shared assets in marriage, divorce, child custody in case of divorce and remarriage, and the conferring of nationality to children on equal terms. It expressed its concern also about the de facto inequality that exists between men and women in the Nepalese society, despite legislative guarantees of equality. It further noted with concern the low representation of women in public service, the high female illiteracy rate and the unequal wages for equal work.
- The Committee showed its deep concern at the high number of women and girls being trafficked for prostitution. The Committee also regretted the continuation of polygamy and the practice of dowry, Deuki and prostitution among the Bedi caste, particularly in rural areas.
- The Committee showed concern at the high rate of domestic violence and the absence of specific legislation in this field.
- The Committee urged the State party to strictly implement existing legislation on gender equality and to incorporate a gender equality perspective in legislation, with a view to ensuring greater equality of men and women, especially in the areas of family, employment, labour conditions and representation in public services and administration.
- The Committee urged the State party to enact or enforce legislation prohibiting customary practices, such as polygamy, dowry, Deuki and prostitution among the Badi caste, and restricted ownership that women have on land and family property, which violate the rights of women and girl children and to take measures to combat such practices by all means, including national educational programmes.
- The Committee recommended that the State party adopt specific legislation on domestic violence against women and children.
- The Committee recommended that the State party enforce its legislation in an effective way and establish administrative mechanisms and monitoring systems to prevent and combat trafficking in women and children. It further recommended the strengthening of measures to allow the return, rehabilitation and reintegration into society of trafficked women.

**Concluding observations of the Committee on the Elimination of Racial Discrimination on the Fifteenth and Sixteen Periodic Report of the government of Nepal**

The Committee noted the lack of information in the periodic report on the situation of women who belong to disadvantaged groups as victims of multiple discrimination, and expresses concern over the situation of forced prostitution of girls and women of the Badi communities.

The Committee recommended that the State party consider issues of political representation, personal security, employment and education, in line with General Recommendations XXV and XXIX, in taking measures to eliminate multiple discrimination against women who belong to vulnerable groups. The Committee further requested the State party to include in its next report the measures taken in this regard, including specific action taken to eradicate forced prostitution of Badi girls and women.
8.1 Conclusion

This study on the current situation of discriminatory laws in Nepal and its impact on women revealed that there are still many discriminatory laws.

To improve the status of women, policy makers should give immediate attention to eliminating or reducing the impact that these laws have on women. Legal reform (eliminating or reducing discriminatory laws) is one of the preconditions for gender equality. Without legal reforms, upliftment of women's social, economic, and political status is not possible. Many countries of the world, unlike Nepal, have undertaken legal reforms to eliminate all forms of discrimination. Countries have also eliminated discriminatory provisions related to marriage and family relations, some forms of violence, women's property and ownership rights, women's political right, work and employment rights. Steps have been taken to realize women's de facto enjoyment of their human rights through the creation of an enabling environment including the adoption of policy measures, the improvement of enforcement and monitoring mechanisms and the implementation of legal literacy and awareness campaigns at all levels.

Nepal ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1991, but to date His Majesty's Government of Nepal has not yet fully implemented its provisions in its policies, laws and programs. Discriminatory legislation as well as harmful traditional and customary practices and negative stereotyping of women and men still persist in the country. Citizenship laws, family, civil, penal, labor and commercial laws or codes, or administrative rules and regulations still have not integrated a gender perspective. Legislative and regulatory gaps, as well as lack of implementation and enforcement of legislation and regulation, perpetuate de jure as well de facto inequality and discrimination. Even today new laws are being introduced which are discriminatory against women, for example laws on foreign employment. As the result of illiteracy, lack of adequate legal provisions, awareness, information and resources, and an insensitive and gender-biased society, women have insufficient access to justice. The lack of a gender perspective among law enforcement officials and the judiciary makes it more critical to enforce non-discriminatory laws in Nepal. There is insufficient recognition of women's rights, as well as of the barriers to full enjoyment of these rights, which include certain human rights as defined in the Beijing Platform for Action.

As a result of the State's commitment to mainstreaming gender in the process of national development on the basis of gender equality, a new dimension to women's development has been opened, making the society aware of the need for equal rights for women. The affirmative changes brought about by the Eleventh Amendment to the Country Code with regard to gender issues are an example of this new dimension. In spite of the increasing need and demand for amendments in the existing legal provisions in order to create a just and
An equitable society, diverse views and opinions are still heard regarding the issue of granting equal rights to women and there is a long road ahead for attaining this objective. Studies of education, political participation, distribution of productive assets and income, and the employment, social, cultural, religious and legal situations have proven that disparities and discrimination exist between men and women in Nepal. Economic and socio-cultural discrimination adversely affects the lives of women, leaving them far behind men to compete or take part in national development.

An analysis of the data collected from interviews with key informants and sample respondents revealed that almost all women are suffering from one or another discriminatory law relating to citizenship, property, trafficking and sexual abuse, education, employment, health including reproductive health, marriage and family and court proceedings. Discriminatory laws relating to citizenship are responsible for the treatment of women as second class citizens, the statelessness of their children, difficulty in transferring property, deprivation of the right to choose their residence and deprivation of employment opportunities, difficulty in acquiring a passport, deprivation of the right to family, depression and inferiority complex.

Similarly, discriminatory property laws have increased women's economic dependency on male members of the family, resulting in domestic violence, no access to resources, and considering daughters as a liability. Discriminatory laws relating to trafficking and sexual abuse have created problems for women in relation to transactions concerning household property, marriage and matrimonial relationships and vulnerability to STDs and AIDS, while developing an inferiority complex among women. Discriminatory laws relating to right to education have deprived women of education and scholarships, and have resulted in their low social status and low participation in politics and employment. Also, discriminatory laws relating to employment have kept women from foreign employment, restricted their income generation, caused discrimination in wages and remuneration, and increased dependency on male counterparts. Discriminatory laws relating to health have resulted in unsafe abortion, difficulty in access to abortion, imprisonment of women, low productivity and low social prestige. Discriminatory laws relating to marriage and family rights have encouraged men to practice bigamy, questioned women's chastity, deprived women of guardianship, and increased domestic violence and crimes related to dowry. Discriminatory laws relating to court proceedings have reduced the confidence of women, restricted them to household chores, denied their social recognition, subordinated them to men, strengthened patriarchal system, and restricted women's public participation.

Among the three organs of the State, it is the responsibility of the executive to take initiatives to reduce or eliminate discriminatory laws, of the legislative to intervene and pass the Bills, and of the judiciary to interpret laws to protect women's rights. To eliminate or reduce discriminatory laws, Parliament's initiative and role is very crucial. Often, the executive has been pressured to some extent by the civil society and intervention from judiciary. As a result, a Bill relating to the elimination of discriminatory laws was introduced, resulting in the 11th Amendment to the Country Code.
Strong and sincere political commitments of all ruling and opposition political parties are a must for the substantive role of all the three organs of the state in materializing gender equality in the country. Civil society organizations should play an active role in exerting pressure and facilitating the three organs of the government to reduce or eliminate discriminatory laws to comply with the national and international commitments made by the government and to contribute to gender equality.

Lack of proper coordination among the programs as well as the bureaucratic labyrinth have had a dampening effect on the process implementing international conventions. Although the commitments made in international conventions are transformed in national policies and Plans of Action, actual implementation is very slow in Nepal. Major reasons behind this are political instability in the country, the low participation of women in the decision making process and inadequate civil society initiatives, lack of gender sensitization/awareness, lack of strong movements, pressure and lobbying, an ineffective communication system, conservative attitudes of the people and difficulties in generating common understanding. All these factors are major challenges to eliminating discriminatory laws in Nepal.

To address these challenges, the human rights groups must come forward with an organized effort to articulate their demands for equal rights of women in all spheres, including elimination of discriminatory laws. Despite the fact that the State is responsible to adapt its domestic laws and practices to conform with its obligations under international law to protect and promote human rights of women, no government wants to disregard the politically articulated wishes of powerful groups that want to maintain traditional laws that violate the human rights of women. Nevertheless, responsibility for protecting and promoting women’s human rights applies not only to the formal legislative organs of the state but also to religious and customary sources or sanctions, regardless of how they are ‘enacted’, articulated and/or implemented. This responsibility is fully consistent with the principle of state sovereignty in international law.

The denial of women’s rights must be recognized not only as a violation of women’s rights but as a gross violation of human rights. States will, in all probability, contest not only their legal responsibility for such wrongs but also their accountability. Legal responsibility merely involves liability for breaches of law, but accountability is a wider concept that requires a state to make an exculpatory explanation about an apparent violation.

By ratifying the Convention and providing an equality clause in the Constitution, the State has recognized the existence of discrimination and inequality and the need to amend the discriminatory laws, to enact new laws to eliminate all forms of discrimination against women and to enforce existing laws which can protect the human rights of women and provide access to justice.

Steps have to be taken also to facilitate de facto enjoyment of human rights by women, to create an enabling environment including the adoption of policy measures, to improve enforcement and monitoring mechanisms, to carry out gender budgeting, legal literacy and awareness campaigns, effective and adequate
enforcement of the Legal Aid Act, adoption of the Optional Protocol to CEDAW, as well as the application of CEDAW and its concluding comments.

We now have to develop criteria for State action and responsibility. While making the State accountable for its commitments, we have to follow the Convention as an advocacy tool to interpret the principle of equality and gender justice, and we need to recognize all the forms of discrimination against women to be eliminated, keeping in mind the historical discrimination and disadvantages faced by women.

8.2 Recommendations for Future Action

Even at the beginning of the twenty-first century, Nepalese women face discrimination, suppression, exploitation and neglect, and are forced to live insecure lives due to illiteracy, ill-health, poverty, orthodox culture and a discriminatory legal system.

There are various laws which discriminate against women and during the last decade of democratic rule, no concerted steps have been taken to eliminate the existing discrimination. It is high time to review laws and regulations which discriminate between men and women and to secure laws based on the principle of substantive equality as envisaged in the Constitution of the Kingdom of Nepal and CEDAW. The principle followed in Articles 1 to 4 of CEDAW should be the basis for repealing existing discriminatory laws and for enactment and enforcement of all new policies and laws. Every law should provide equal opportunities to women not only on paper but also in practice. It was observed during the research that women need special attention to emerge from past discrimination, suppression and exploitation. Their de jure as well as de facto rights should be well protected.

For this purpose, all the organs of the government and the civil society together with international organizations, inter-governmental bodies, the donor community and the private sector should play an important role. The actors should not shift their responsibility and should come forward to undertake their responsibility so that discrimination of all types can be eliminated and an egalitarian society can be established.

His Majesty’s Government should take the leading role without any delay to eliminate all discriminatory laws based on sex. The following recommendations are suggested for the government and civil society on the basis of responses received during the research:

8.2.1 Implementation of the International Human Rights Instruments

Nepal has already ratified many international instruments for the elimination of all forms of discrimination against women including discriminatory legal provisions. These are specified in detail in the Chapter on State Accountability. By ratifying these
instruments, Nepal agreed to undertake several international obligations. The Nepal Treaty Act recognizes the validity of such instruments as enforceable obligations, since in case of contradiction between a prevailing domestic law and an international obligation, it is the international obligation that prevails. HMG must incorporate the provisions of such international instruments in the domestic law. The CEDAW Committee has urged the Government, in its Concluding Comments on the Initial Report and Combined Second and Third Periodical Report of the Government of Nepal on the CEDAW Convention, to amend discriminatory laws that contradict the country’s international obligations as a matter of priority within a fixed time frame.

A. For Government

Amendment Proposals on Discriminatory Laws

Existing laws which discriminate against women need to be amended immediately.

Equal Citizenship Rights: A process for the amendment of the citizenship provisions in the Constitution of the Kingdom of Nepal, 1990 should be initiated without any delay to guarantee women equal nationality rights with men to acquire, change or retain their nationality. The independent existence of women as citizens regardless of their husband’s nationality should be recognized under the Citizenship Law and the Constitution, giving the right to lineal decent of the family as per the Concluding Comments on the Combined Second and Third Periodical Report.

Equal Property Rights: During the research, more than 95 percent of respondents considered the property law discriminatory. It has an adverse effect on women. Hence laws should be enacted guaranteeing daughters the same rights as sons from birth until death on the basis of the principle of equality and without creating rights on the basis of marital status. The proposed law should guarantee equal rights to daughters, including married daughters, the right to interim maintenance and right to stay in the matrimonial house for women and children in case of domestic violence or property disputes.

The proposal for change should also incorporate an equal right to succession on bonus, insurance, provident fund, pension, and bank deposits if a will does not exist. The focus should also be on all property-related issues mentioned in property rights under the Existing Discriminatory Law Chapter, from right to ownership to maintenance, disposing of property, transfer and succession on an equal basis as sons.

No.16 of Chapter on Partition of the Country Code requiring daughters to return their share of ancestral property upon marriage needs to be amended so as to make daughters’ right to property absolute. No.1A of the same chapter needs to be repealed and No.1 to be amended so as to make married daughters coparceners to ancestral property.
Various provisions of laws relating to succession of property such as No. s 2, 3, 6, 7, 9 of the Chapter on Partition of the Country Code, including succession to bonus, pension, provident fund, bank deposit, social benefits and so on either exclude daughters, including married daughters, from right to property or give lesser preference to them in receiving property through succession. These laws should be amended or repealed to the extent they are discriminatory.

Right against Trafficking and Sexual Abuse: Human Trafficking Control Act should be amended to criminalize the act of separating any person from the legal guardian with the intention of trafficking or prostitution. Witness and victim protection, in-camera trial, right to privacy and confidentiality should be granted. Right to counseling and non-discrimination for those living with HIV and AIDS should also be granted.

Right to self-defense, compensation, right to counseling, health facilities, and right to rehabilitation should also be provided for victims of trafficking. The proposal for amendment should also include punishment for the buyers, and should empower the police to investigate even without approval of the court. The Human Trafficking (Control) Bill passed by the House of Representatives lapsed as Parliament was dissolved and needs to be re-introduced.

Definition of rape needs to be broadened to incorporate other forms of sexual harassment, including marital rape.

Law on incest needs to be amended to decriminalize widow-marrying by brother-in-law and to end discrimination based on chastity, which effectively results in punishment for women.

Law on sexual harassment needs to be enacted, incorporating all forms of sexual harassment including sexual harassment in the workplace.

Right to Education: Girls should be given the same right to education as boys. Women should be allowed to go for higher studies without the approval of their guardian.

Right of Employment: Women should be allowed to enter the army services without any discrimination. Women should be allowed to seek foreign employment without the approval of the guardian and state. However, the law should have a provision to monitor the activities of employment agencies and to penalize them in cases of wrongdoing, including by forfeiture of their license. The government should rather create an enabling environment to protect women from vulnerability. The government should also ratify the Convention on the Protection of the Rights of Migrant Women Workers. New provisions need to be incorporated to create a healthy working environment.

**Right to Health:** Right to abortion, which is a reproductive health right of women, should be guaranteed as a reproductive health right with effective implementation in practice, such as a safe, accessible and affordable abortion service. Abortion should be removed from the Chapter on Homicide, thus portraying abortion as a health issue. Moreover, the policy on safe abortion should include the definition of abortion, miscarriage, infanticide, calculation of period of gestation, issues of privacy and confidentiality, fees for services, and the availability of abortion services in public hospitals at minimum cost.

**Rights on Marriage and Family Life:** Men and women should be given equal rights to marriage and divorce. Discriminatory legal provisions in case of bigamy should be amended, and bigamy should be declared ultra vires.

A woman should have a right to child custody and childcare without any discrimination on the basis of her second marriage. The right to choose a residence should be given on an equal basis. Women should be given equal rights to register personal incidents and to provide information related to birth and death registration, including the birth registration of the child.

A woman should have the same right to adopt a child as her husband.

Laws discriminating against women in religious rites should be amended. A daughter should be recognized as a member of the family.

**Equal Treatment in Legal and Court Proceedings:** Mother’s names should also be included in petitions, responses, or appeals to be submitted in the Court. Women should be recognized as equally competent during legal procedures by all the legal documents including summons, subpoena and notice under the Country Code 1963. Penal provisions discriminating against women should be amended.

While prescribing the rules for the clothing for officials, there should be a realization that women can also be officers of the revenue tribunal.

**Discrimination in Official Forms:** Discrimination exists on various official forms. Women are not recognized on forms concerning voting regulations, election rules, provident fund rules and regulations, auditors rules, under House of Representative rules and National Assembly rules, Police rules, Government Contract regulations etc. Furthermore, only men are allowed to obtain a license to own a weapon. All these forms need to be amended and changed.

**Enactment of New Laws for the Protection of Human Rights of Women:** To minimize the legal gaps, new laws need to be enacted to eliminate all forms of violence against women. Specifically concerning domestic violence, it must be recognized that violence against women is gender-specific violence, occurring within the family and within the interpersonal relationship. Offences under the law should be subjected to criminal as well as civil liability. Hospitals, the first place of reporting domestic violence, should be
provided with a psychological and legal counseling services unit along with police section to register the complaints. The victim should be provided with the facilities of short and long term shelters - which should be like shelters and not jails - with avenues for income generating activities. Provisions such as issuing protection orders and a broader definition of “Domestic violence” should be included in the proposals by looking into international norms and General Recommendation no 19 of CEDAW. A Family Court should be established to specifically deal with matters relating to marriage and family life and to provide speedy justice without violating right to privacy of the parties to the litigation. Laws need to be enacted to address domestic violence, sexual harassment, and socio-cultural violence such as witchcraft and chaupadi. The existing anti-trafficking law needs to be comprehensively amended from a rights based approach.

Enact Laws to Address Anti-Discrimination

**Definition of Discrimination:** The definition under Article 1 of CEDAW should be included in the relevant laws at the time of their enactment and amendment.

**Distinguish equality and non-discrimination:** Article 11 of the Constitution includes both the principle of equality and non-discrimination. However, taking into consideration the developments at the international level, these principles should be dealt with in separate Articles of the Constitution, thereby recognizing the difference between them and guaranteeing them more strongly as positive rights.

**Penalize sex and ethnicity based discrimination:** The concept of non-discrimination is recognized as a right but discriminatory practices are not criminalized by law. Therefore, discrimination on the basis of gender has to be criminalized and penalized both in the public and private spheres.

**Compensation to victims:** Compensation to victims of gender based discrimination should be provided to move from a simple crime combating approach to a victim justice approach.

**Address discriminatory activities of public officials:** Service laws must be enacted in order to prohibit public officials in offices from committing discriminatory practices. For this, discriminatory practices in public offices based on any unlawful ground must be considered as a basis for departmental action.

**Country Code, 1963 should be Replaced by New Codes**

The Country Code, 1963 is a general code, serving the purpose of substantive as well as procedural laws, and incorporating both civil and criminal matters. Moreover, the Country Code is the continuation of the old Muluki Ain of 1853, which is based on orthodox tradition and culture and follows the patriarchal norms. The language of the Country Code is so complicated and confusing that even educated people are unable to understand it. Therefore, it is recommended that existing the Country Code should be replaced by a separate Procedural Code of civil and criminal matters, as is done elsewhere in the
world, and that special statutes should be enacted for special subjects, incorporating gender sensitive provisions.

**Timely Review of Laws**

Laws should be able to initiate change for development and need to be updated as times change. For this purpose, there should be a permanent mechanism for timely review of existing laws. Research and study should be initiated in this regard. The Ministry of Women, Children and Social Welfare, as a focal point on CEDAW and CRC (Convention on the Rights of the Child) for HMG/Nepal, should be involved in this regard. The Law Reforms Commission of Nepal should be strengthened for this purpose while involving relevant civil society groups.

**Initiatives for the Amendment/Enactment Proposals**

The Ministry of Women, Children and Social Welfare as well as the concerned line ministries should take the initiative to reform laws that are gender discriminatory and to enact new laws in the area where there is a gap in the legal status of women.

**Allocation of Adequate Budget**

Adequate budget should be allocated to eliminate discriminatory laws as well as to implement CEDAW. Budget should also be allocated for law enforcement agencies, including for investigation, evidence gathering, legal awareness programs and legal aid. The Ministry of Women, Children and Social Welfare should be strengthened for this purpose. The bilateral and multilateral donors should provide technical and other support to eliminate discriminatory laws made by the state. Research has to be conducted to determine the impact of existing budget allocations to implement different policies and programs of the government and the impact on women.

**Prepare Plan of Action to Eliminate All Forms of Discrimination against Women**

It is recommended that a comprehensive plan of action be prepared to implement the CEDAW Convention and the Concluding Comments and Recommendation of the CEDAW Committee on the Combined 2nd & 3rd Periodic Report of His Majesty’s Government of Nepal. This plan should be linked with the Beijing Declaration, further actions and initiatives to implement the Beijing Declaration and Platform for Action (the outcome document of Beijing Plus Five Special Session) and the resolutions adopted at the Beijing+10 meeting.

**Timely Reporting**

Submission of the government report on the implementation of CEDAW is an effective mechanism to make the government accountable for its commitments. Given the experience of the initial report on CEDAW, which was submitted about six years later than its due date, reporting under various international human rights
Both government and civil society should establish proper networking for timely monitoring to evaluate and follow-up on the process/progress made on the elimination of discriminatory laws.

Strong monitoring mechanisms should be set within government organizations. Ministry of Women, Children and Social Welfare should take the lead role for this purpose. Both government (executive, legislative and judiciary) and civil society should establish proper networking for timely monitoring to evaluate and follow-up on the process/progress made on the elimination of discriminatory laws. Follow-up with CEDAW concluding comments and Beijing outcome documents should be made to reform the existing discriminatory laws identified under this study.

Establish Effective Coordination and Communication System

An effective communication system should be established which can facilitate communication regarding the elimination of existing discriminatory laws within and among the executive, legislature and judiciary.

Coordination must be done with concerned agencies for the effective implementation of international and national commitments. Coordination and networking is also essential for civil society groups, from the grassroots level to the national level, with all the women’s rights groups including human rights organizations and media.

Introduce Free and Compulsory Education

Presently, free education to girls is provided only in the community schools. However, education up to high school level must be made free and compulsory in all schools by an enactment of law. Moreover, there must be reservations and scholarships for girl students in technical and higher education.

Introduce Gender Sensitive Curriculum

To change the mindset of Nepalese society, which is by and large dominated by conservative patriarchal norms based on religion and custom, a gender sensitized curriculum should be developed from school to university level, as well as for various training programs for the police, judiciary, administrative college, public attorneys and lawyers. A human rights course with special focus on women’s human rights study should be introduced in the curriculum of the law faculty.

Establish a Special Unit within the Parliament Secretariat

All parliamentarians may not be experts in every issue related to women’s rights. To support them in specialized issues, a separate unit with lawyers, psychologists, sociologists and other social scientists should be established within the Parliament Secretariat. There should also be a provision to invite experts on specific issue areas for discussions. Access to international norms and information on gender equality should be provided to the Parliament.
Discriminatory Procedural Rules and Forms

Various discriminatory procedural rules as well as the forms identified during this research should be amended immediately by a cabinet decision.

Ratification of other Human Rights Instruments

Government must take steps to accede to and ratify other human rights instruments that have not been acceded to as yet. The Convention on Nationality of Married Women, 1957 is one such instrument which \textit{inter alia} provides for the celebration and dissolution of marriage between a national of a country and an alien and does not allow for an automatic change in the nationality of the wife as a result of matrimony.

Ratification of Optional Protocol to CEDAW is important to provide access to justice for women at the international level as well through the communication and inquiry procedure in order to eliminate all forms of discrimination against women as well as to eliminate discriminatory laws.

The Convention relating to the Status of Refugees 1951 and the Protocol relating to the Status of Refugees 1967, which provides special treatment to women and child refugees has to be acceded to and ratified, especially since Nepal has large numbers of Tibetan and Bhutanese refugees. Violence against women and children is prevalent among those populations.

Similarly, certain human rights related conventions related to the ILO such as the Workers with Family Responsibility Convention, 1981 (No 156), Maternity Protection Convention, 1952 (No 103) need to be ratified to eliminate gender discriminatory practices in the field of employment. Similarly, ratification of Convention on the Protection of the Rights of Migrant Workers and their Families is also very important in this context.

Temporary Special Measures

Government should take appropriate steps, including the introduction of temporary special measures in accordance with Art. 4.1 of CEDAW and Art 11(3) of the Constitution to ensure greater participation of women at all levels of decision-making.

Gender Auditing of Laws

An auditing of all the existing laws including the Constitution of the Kingdom of Nepal from a gender perspective must be undertaken to further identify the existence of direct and indirect discrimination towards women.

Women’s Participation in Law Making Process

To ensure gender neutral laws, women’s participation in the law making process should be ensured by reservation of seats in House of Representatives and National Assembly.
A
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provisions of labor legislation to provide child care centers in enterprises with more than 50 women
workers, breast feeding breaks for women etc. However, these have not been enforced yet in any
organization where the Labor Act is applicable. Ensuring de facto implementation of de jure provisions on
women is also important to eliminate discrimination against women. Unless women can use their rights,
women’s equality and human rights cannot be achieved. Hence, the state should implement laws which
can protect women’s human rights in reality.

Investigation Procedure

Nepal’s investigation and prosecution systems are far below the minimum standards accepted by the
standard norms of criminal justice. Use of Forensic Science has not been developed adequately. Hence
the state has to provide an effective investigation mechanism in cases related to violence against women.

Judicial Activism

The courts should be made to realize their role in maintaining the rule of law, ensuring the fundamental
rights and interpreting the Constitution from the rights perspective, looking into the examples of
neighborsing country India in such notable cases like the Vishakha case.

B. For Civil Society

Increase Sensitization/Awareness Programs

Sensitization and awareness campaigns are needed to overcome practices (both de jure and de facto) that
discriminate against women, and to eliminate discriminatory laws.

Gender sensitization programs for policy makers, planners, political leaders, high level government
officials, judges, legal professionals, police, law makers, law ministry, public attorneys, quasi judicial bodies, media
professionals should be launched in a massive way.

Moreover, women should also be involved in decision-making at the level of local self
government.

Implementation of Existing Laws

which are in favor of Protection of Human Rights of Women

A few laws have tried to address the biological differences of women, such as
should also be sensitized so they can play an important role in awareness and advocacy.

**Organize Periodic Training for Law Enforcement Agencies**

Periodic training is a must for law enforcement agencies to make them aware of new laws, precedents, and new developments in the national and international arena in the field of feminist jurisprudence development and other aspects. Unless the law enforcement agencies become gender sensitive, women's equality can not be achieved.

**Linkage of Women’s Equality with other Human Rights Issues**

We have already identified in the chapter on state accountability that many international human rights instruments include non-discrimination clauses on the basis of sex, and some also have optional protocols like the ICCPR. Hence, the state should facilitate analyzing those articles which guarantee the right to equality from the gender perspective. During the periodic reporting under such instruments, women’s discriminatory legal and other situations should also be highlighted. Similarly, civil society groups should also link women’s human rights not only with CEDAW but also with other human rights instruments, to make the argument for law reform effectively.

**Monitoring of Implementation of National/International Obligation**

Monitoring should also be done by civil society groups on implementation of the government’s national and international commitment to eliminate discrimination against women. Media monitoring is needed to see the role of media in gender sensitization. Monitoring will not only help civil society follow-up and lobby the government for further action but will also be useful to prepare the alternate reports/shadow reports.

**Voters’ Education/Awareness Program should be Launched**

Political parties commonly come up with populist slogans at the time of elections to win votes, but their record has been generally discouraging when it comes to implementing those promises regarding women’s rights. To make them accountable, various programs for voters’ education and awareness should be launched. Voters should be aware of the attitude of the political parties and their manifestos. They should also know the legal and ethical obligations of the government. Voters’ education can be an effective mechanism to make political parties accountable to eliminate discriminatory laws.

**Study of Impact of Affirmative Action**

As a few corrective initiatives have been taken under the Constitution, Labor Act, Civil Services Act, Local Self Governance Act and Country Code of Nepal to eliminate historical and existing discrimination against women, a study has to be conducted to see the impact of such a substantive approach of equality on women’s lives and the areas that need to be addressed with affirmative action.
Prepare Shadow /Alternate Reports

To make the government responsible for its commitment under various international human rights instruments, civil society should prepare alternate/shadow reports and present them before the various Committees. This is an effective tool to make government accountable towards its commitment and realization of right of women, Dalits, ethnic groups and religious minorities. Such reports should be linked with the reports under all human rights instruments.

CEDAW’s effectiveness in monitoring state compliance is greatly enhanced by non-governmental organizations that provide the Committee with information and alternate reports about the violations of women’s right in reporting countries. These reports expose violations that often go unrecognized and show how they might have been prevented or at least remedied by the State Parties. Prof. Savitri Goonesekere, member of CEDAW Committee, mentioned in a high level intergovernmental meeting to review Regional Implementation of Beijing Platform for Action organized by ESCAP that “the reports are rich alternates, and are increasingly used by the committee to review the country report. Information obtained from NGOs in Nepal for instance was used by CEDAW Committee at its last session to closely examine and review the country report.”

Hence, civil society should continue the practice of preparing shadow reports on the actual implementation of CEDAW to eliminate all forms of discrimination against women. This process will help to lobby with CEDAW Committee on the discrimination issue and to prepare concluding comments, which will serve as guidelines for the government to enable advancement in the situation of women in the country.

Judicial review and Public Interest Litigation

Public Interest Litigation is important remedy that can be used by the civil society in cases of gross violation of rights as well as ineffective implementation of rights guaranteed by the law. Activists, lawyers and human rights groups should start challenging the existing discriminatory laws in the national courts under Article 88 of the Constitution. Public Interest Litigation is important remedy that can be used by the civil society in cases of gross violation of rights as well as ineffective implementation of rights guaranteed by the law. Activists, lawyers and human rights groups should start challenging the existing discriminatory laws in the national courts under Article 88 of the Constitution. If justice is not achieved, complaints should be filed in the United Nations Human Rights Committee under the ICCPR.
Capacity Building

Capacity building of women should be conducted to create an enabling environment for them to access opportunities to participate in every sector. This also includes capacity building for gender analysis for planning, implementation and monitoring programs and projects in line with BPFA and CEDAW, including removing gender stereotyping from the media.

Law enforcement mechanisms, such as police, women’s police cell, judiciary and public attorney’s office should be strengthened with physical facilities, resources and training to be provided on gender and human rights approaches.

Advocacy for legal reform

Civil society should take initiatives in the reform of the discriminatory laws specified above. Organizations should prepare amendment proposals and submit them to the government to facilitate proper and timely government intervention for law reform. They should also conduct seminars, workshops and regional and national conferences to build up public opinion for reform by presenting and discussing the varied impacts of the discriminatory laws and also by presenting the testimony of victims to show the actual face of the problem.

Strong advocacy and continuous lobbying from civil society groups is important for reflection of international human rights instruments on domestic legislation, so that with pressure from civil society the law makers and policy makers work to eliminate discrimination. The political manifestoes of different political parties should be publicized so that lobbying can be done later for the implementation of their commitments. Lobbying with policy makers and lawmakers to reform laws and implement the state obligations under various national and international commitments can further strengthen the movement.

Training for sensitization and conceptual clarity to law makers and law enforcers

This study reveals a lack of conceptual clarity among lawmakers and law enforcers on discrimination. Therefore, training to these groups should be conducted on models of equality as well as the difference between the protectionist approach and the substantive approach for sensitization as well as to develop conceptual clarity.

Legal Aid and legal awareness

To create access to justice for women, legal aid programs should be launched in various districts of the country. At the same time the civil society can conduct awareness campaigns for these groups to empower them about the rights guaranteed as well as the procedures to enjoy these rights.

The Legal Aid Act should be implemented all over the country. Court lawyers (paid lawyers) and civil society groups should be strengthened to provide legal service for victims of violence and discrimination.
victims of violence and discrimination. The effectiveness of the legal aid should be studied, and a determination made of the beneficiaries of such services in sex desegregation.

**Monitoring**

Civil society groups need to monitor the violation of rights of women. Case should be documented, and groups formed to pressure government agencies for serious action. NGOs should develop monitoring indicators and a framework and monitor the implementation of various conventions, concluding comments and laws.
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6. **HMG-N** 1955  
7. **HMG-N** 1993  
8. **HMG-N** 1974  
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Rules


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1. **Acharya, Meena**  
   2000  

2. **Acharya, Meena**  
   2000  

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   1997  
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   2002  

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   1996  

6. **FWLD**  
   1996  

7. **FWLD**  
   1999  

8. **FWLD**  
   2003  

9. **FWLD**  
   2000  

10. **FWLD**  
    2000  

11. **FWLD**  
    2000  

12. **FWLD**  
    2000  

13. **FWLD**  
    2001-2  

14. **FWLD**  
    2000  


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11. WOREC 1999  Cheliko Byatha, Year 2, Issue 4, 1999
# Annex I

## Matrix of Discriminatory Laws

### A. Nationality

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Name of the Legislation</th>
<th>No./Section/Article/Rule</th>
<th>Discriminatory Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The Constitution of the Kingdom of Nepal, 2047 (1990)</td>
<td>9 (1) and 9(2)</td>
<td>Women cannot provide citizenship to their children</td>
</tr>
<tr>
<td></td>
<td></td>
<td>9 (5)</td>
<td>Women cannot provide citizenship to their spouse</td>
</tr>
<tr>
<td></td>
<td></td>
<td>9 (6)</td>
<td>Descendant of citizen of Nepal can acquire citizenship</td>
</tr>
<tr>
<td>2.</td>
<td>The Citizenship Act, 2020 (1963)</td>
<td>3(1), 3(4) and 3(5)</td>
<td>Women cannot provide citizenship to their children</td>
</tr>
<tr>
<td></td>
<td></td>
<td>6 (2)</td>
<td>Women cannot transfer citizenship to their spouse.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>6 (3)</td>
<td>Descendant of citizen of Nepal can acquire citizenship</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4 (3)</td>
<td>Descendant of citizen of Nepal can acquire citizenship</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Annex/Schedule (1)&amp;(3)</td>
<td>Application forms for acquiring citizenship do not recognise women’s status</td>
</tr>
<tr>
<td></td>
<td></td>
<td>and (7)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Annex/Schedule (2)&amp;(4)</td>
<td>Citizenship certificate only states father’s or husband’s name</td>
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<tr>
<td></td>
<td></td>
<td>Annex/Schedule (5)</td>
<td>Application forms for termination of citizenship only state father’s or husband’s name</td>
</tr>
<tr>
<td>4.</td>
<td>Passport Rules, 2027, (1970)</td>
<td>Page 3 of Passport</td>
<td>Only in husband’s passport, it is required to mention that wife accompanies to her husband while going abroad.</td>
</tr>
</tbody>
</table>
B. Property

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Name of the Legislation</th>
<th>No./Section/Article/Rule</th>
<th>Discriminatory Provision</th>
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<tbody>
<tr>
<td></td>
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<tr>
<td></td>
<td>The Country Code, 2020 (1963)</td>
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<tr>
<td></td>
<td><strong>Partition</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1A.</td>
<td></td>
<td></td>
<td>Married daughters not considered as coparcener.</td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td>Partition between children of brother only</td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td>Law recognizes polygamy as all wives are equal shareholders in the husband’s property.</td>
</tr>
<tr>
<td>10</td>
<td></td>
<td></td>
<td>Conditional right to property to married women</td>
</tr>
<tr>
<td>11</td>
<td></td>
<td></td>
<td>Daughter born after partition of her father who has rejoin his share of property with some wife and son are denied as heir of parental property.</td>
</tr>
<tr>
<td>16</td>
<td></td>
<td></td>
<td>Unmarried daughters to return share of parental property upon marriage</td>
</tr>
<tr>
<td>19 (1)</td>
<td></td>
<td></td>
<td>Consent of married daughters not required to dispose of more than half of the immovable family property</td>
</tr>
<tr>
<td>19 (2)(3)(5)</td>
<td></td>
<td></td>
<td>Married daughters are excluded in partition.</td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
<td>Married daughters fall behind in the line of succession to receiving such property.</td>
</tr>
<tr>
<td>7</td>
<td></td>
<td></td>
<td>Women are restricted to use freely their own share acquired from their husband’s property.</td>
</tr>
<tr>
<td></td>
<td>Women’s Exclusive Property</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td></td>
<td></td>
<td>Definition of “Hakwala” includes seven generation of the male side.</td>
</tr>
<tr>
<td>2, 3, 6, 7, 9, 10, 12</td>
<td></td>
<td></td>
<td>Married daughters fall behind in the line of succession of intestate property</td>
</tr>
<tr>
<td></td>
<td>Intestate Property</td>
<td></td>
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<tr>
<td>9</td>
<td></td>
<td></td>
<td>Transaction carried out by a wife without the consent of her husband in his property not recognised.</td>
</tr>
<tr>
<td></td>
<td>Financial Transaction</td>
<td></td>
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</tr>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Civil Services Act, 1992</td>
<td>37(1)</td>
<td>Women civil servants deprived of pension facility if entered into the service after the age of 39 years.</td>
</tr>
<tr>
<td>3.</td>
<td>Land Act, 2021 (1964)</td>
<td>26(1)</td>
<td>Tenancy right is transferable only to unmarried daughter after attaining the age of 35 years.</td>
</tr>
<tr>
<td></td>
<td>Act Title</td>
<td>Year</td>
<td>Section(s)</td>
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<tr>
<td>4.</td>
<td>Bonus Act, 2030 (1974)</td>
<td>10(2)</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Insurance Act, 2049 (1992)</td>
<td>38</td>
<td></td>
</tr>
<tr>
<td>12.</td>
<td>Police Rules, 2049 (1992)</td>
<td>107(5)</td>
<td></td>
</tr>
<tr>
<td>No./Section/Article/Rule</td>
<td>Discriminatory Provision</td>
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</tr>
<tr>
<td>95(3)</td>
<td>Adopted daughters not included in the line of succession to receive extraordinary pension</td>
<td></td>
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</tr>
<tr>
<td>95(6)</td>
<td>Married sisters not included in the line of succession to receive extraordinary pension</td>
<td></td>
<td></td>
</tr>
<tr>
<td>99(2)</td>
<td>Married daughters fall behind in the line of succession to pension and other benefits.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

14. **Parliament Secretariat Personnel Administration Rules, 2059**  
   - 83(2) Widow’s right to allowances and gratuity of husband conditional  
   - 83(3) Adopted daughters not included in the line of succession to receive extraordinary pension  
   - 83(6) Married sisters not included in the line of succession to receive extraordinary pension  

15. **Postal Savings Bank Regulations, 2033**  
   - 11(3) Unmarried daughters fall behind the sons in the line of succession and married daughters are excluded from the line of succession of receiving savings  

   - 58(3) Unmarried daughters can receive extraordinary pension only until she attains the age of 21 or until marriage, whichever is earlier whereas boys are eligible to receive the pension up to the age of 21 or until entry into civil services, whichever is earlier  

17. **Rules of Service of the Tribhuvan University Teachers and Staff, 2050**  
   - 56(3) Married adopted daughters not included in the line of succession to receive extraordinary pension  
   - 57(1) Widows right to husband’s receive pension conditional  
   - 59(2) Unmarried daughters including adopted daughters fall behind sons in the line of succession and married daughters including married adopted daughters fall much behind in the line of succession  

Royal Nepalese Army (Pension, Gratuity and Other Benefit) Rules, 2033  
- 7(6) Married daughters are discriminated in pension and gratuity.  

### C. Sexual Offence

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Name of the Legislation</th>
<th>No./Section/Article/Rule</th>
<th>Discriminatory Provision</th>
</tr>
</thead>
</table>
Incest 3, 4 Discriminatory restriction for marriage within family relationship.

Intention to Sexual Intercourse 1 Sexual Harassment under 11 years age is exempted.


8(5) Buyer exempted from legal prosecution.

### D. Education

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Name of the Legislation</th>
<th>No./Section/Article/Rule</th>
<th>Discriminatory Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Royal Nepalese Army (Pension, Gratuity and Other Facilities) Rules, 2033</td>
<td>10</td>
<td>Unmarried daughters are eligible to receive scholarship only until she reaches the age of 21 or until marriage, whichever is earlier whereas boys are eligible to receive scholarship up to the age of 21 or until entry into civil services, whichever is earlier</td>
</tr>
<tr>
<td>2.</td>
<td>Scholarship Rules, 2060(2003)</td>
<td>Application form</td>
<td>Guardian’s approval is necessary for girls to study in foreign country</td>
</tr>
</tbody>
</table>

### E. Employment

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Name of the Legislation</th>
<th>No./Section/Article/Rule</th>
<th>Discriminatory Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The Army Act, 2016 (1959)</td>
<td>10</td>
<td>Women can join the Army only in certain non-combatant positions.</td>
</tr>
<tr>
<td>2.</td>
<td>Foreign Employment Act 2042 (1985)</td>
<td>12</td>
<td>Permission of the guardian and the Government is a pre requisite for women to go abroad for employment.</td>
</tr>
</tbody>
</table>

### F. Health

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Name of the Legislation</th>
<th>No./Section/Article/Rule</th>
<th>Discriminatory Provision</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>28, 28(a)</td>
<td>Higher punishment for women undertaking abortion than abortion in forced, threat or enticement.</td>
</tr>
<tr>
<td>No.</td>
<td>Law Title</td>
<td>Page No.</td>
<td>Description</td>
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<tr>
<td>S.No.</td>
<td>Name of the Legislation</td>
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<td>Discriminatory Provision</td>
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</tr>
<tr>
<td>17.</td>
<td>Act Relating to Job, Duty, Right and Terms of Service of Chief of Staff Army, 2026 (1969)</td>
<td>10</td>
<td>No provision for maternity leave.</td>
</tr>
</tbody>
</table>

**G. Family**

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Name of the Legislation</th>
<th>No./Section/Article/Rule</th>
<th>Discriminatory Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The Constitution of the Kingdom of Nepal, 2047(1990)</td>
<td>27</td>
<td>Recognition of male descendents only for succession to the throne</td>
</tr>
<tr>
<td></td>
<td>Paupers</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Husband and Wife</td>
<td>3(2)</td>
<td>Mothers are deprived to maintain their children in case of remarriage</td>
</tr>
<tr>
<td>Section</td>
<td>Title/Act</td>
<td>Description</td>
<td></td>
</tr>
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<td>--------------------------</td>
<td>--------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Adoption of son</td>
<td>2 &amp; 2(a)</td>
<td>Additional restriction for women to adopt a child</td>
<td></td>
</tr>
<tr>
<td>Registration</td>
<td>1</td>
<td>Law silent in relation to registration of deed of adopted daughter;</td>
<td></td>
</tr>
<tr>
<td>Marriage</td>
<td>9</td>
<td>Bigamy encouraged by law as second marriage is permitted under certain conditions without divorcing the first wife.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>11</td>
<td>Discrimination in the period of limitation in case of bigamy and adultery.</td>
<td></td>
</tr>
<tr>
<td>Adultery</td>
<td>6</td>
<td>Period of limitation in case of adultery and bigamy different.</td>
<td></td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>9</td>
<td>Discrimination in enforcing obsequies rites</td>
<td></td>
</tr>
<tr>
<td>3. Land Act, 2021 (1964)</td>
<td>2(c)</td>
<td>Unmarried daughters above the age of 16 and married daughters not included in the definition of family</td>
<td></td>
</tr>
<tr>
<td></td>
<td>5 (1), (2), (3), (4), (5), (7), (8), (9) &amp; (10)</td>
<td>Only male descents can eligible for succession to throne</td>
<td></td>
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<tr>
<td></td>
<td>11(1), (2), (4)</td>
<td>Discriminatory provision for women member of Royal family to get “Royal Title”</td>
<td></td>
</tr>
<tr>
<td></td>
<td>6 (1) (2) (3) (4)</td>
<td>Discrimination in appointing adopted son by His Majesty</td>
<td></td>
</tr>
<tr>
<td>5. Rapti Doon Development Area Land (Distribution and Sales) Act, 2024(1967)</td>
<td>2(c)</td>
<td>Definition of family includes unmarried daughters below the age of 35, only where the parents are alive.</td>
<td></td>
</tr>
<tr>
<td>7. Nepal Health Service Act, 2053 (1997)</td>
<td>2(e)</td>
<td>Married daughters, adopted daughters and married daughters not included in the definition of family.</td>
<td></td>
</tr>
<tr>
<td>8. Act Relating to the Remuneration, Terms and Conditions of the Judges of the Appellate and District Court , 2048</td>
<td>2(d)</td>
<td>Married daughters, adopted daughters and married daughters not included in the definition of family.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Act/Rule/Statute</td>
<td></td>
<td>Description</td>
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<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>9</td>
<td>Marriage Registration Act, 2028</td>
<td>4(3)</td>
<td>Minimum age for marriage for boys 21 years whereas it is 18 for girls</td>
</tr>
<tr>
<td>10</td>
<td>Working Journalists Act, 2051</td>
<td>2(h)</td>
<td>Married daughters including married adopted daughters not included in the definition of family</td>
</tr>
<tr>
<td>11</td>
<td>Nepal Interpretation of Statute Act, 2010 (1953)</td>
<td>2(f)</td>
<td>Definition of “father” excludes father of adopted daughter</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2(y)</td>
<td>Defines only son but does not define “daughter”</td>
</tr>
<tr>
<td>12</td>
<td>Bonded Labour (Abolition) Act, 2058</td>
<td>2(e)</td>
<td>Married daughters not included in the definition of family</td>
</tr>
<tr>
<td>13</td>
<td>Monarch Petty Rulers Act</td>
<td>3(1)</td>
<td>Only male descents can eligible for succession to throne</td>
</tr>
<tr>
<td>14</td>
<td>Arms and Ammunition Rules, 2028(1972)</td>
<td>2(e)</td>
<td>Married daughters not included in the definition of family</td>
</tr>
<tr>
<td>15</td>
<td>Police Rules, 2049 (1992)</td>
<td>2(d)</td>
<td>Married daughters not included in the definition of family</td>
</tr>
<tr>
<td></td>
<td></td>
<td>83 (1)</td>
<td>Second marriage of policemen is permitted under certain conditions without divorcing the first wife during her lifetime</td>
</tr>
<tr>
<td>16</td>
<td>Rules Relating to Staff of the Office of Auditor General, 2050 (1994)</td>
<td>2(f)</td>
<td>Married daughters and adopted daughters not included in the definition of family</td>
</tr>
<tr>
<td>17</td>
<td>Passport Rules, 2027 (1970)</td>
<td>2(b)</td>
<td>Married daughters not included in the definition of family</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2(c)</td>
<td>Married daughter and married sisters are excluded in the definition of ‘dependent person’.</td>
</tr>
<tr>
<td>18</td>
<td>Armed Police Rules, 2060</td>
<td>2(f)</td>
<td>Married daughters and married adopted daughters not included in the definition of family</td>
</tr>
<tr>
<td>19</td>
<td>Rules of Service of the Tribhuvan University Teachers and Staff, 2050</td>
<td>Explanation to Rule 55</td>
<td>Married daughters and adopted daughters not included in the definition of family</td>
</tr>
<tr>
<td>20</td>
<td>Regulation relating to Sahebju and Chautaria, 2042 (1986)</td>
<td>2(d)</td>
<td>Non-recognition as an independent family to unmarried sister below 35 years of age.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4 (2)(a)&amp;4(2)(c)</td>
<td>Only boys eligible for recruitment as Sahebju and daughters above the age of 35 can be nominated as Chautaria, but upon marriage they automatically disqualify to retain the post</td>
</tr>
</tbody>
</table>
21. Rashtriya Samachar Samiti Regulations, 2041 2(d) Married daughters and married adopted daughters not included in the definition of family

22. Rules relating to Payment of Compensation to Non-governmental Persons, 2024 2(f) Married daughters and adopted daughters not included in the definition of concerned person.

23. Royal Nepalese Army (Daily and Travel Allowances) Rules, 2033 2(b) Married daughters not included in the definition of family

24. Royal Nepalese Army (Pension, Gratuity and Other Facilities) Rules, 2033 2(b) Married daughters not included in the definition of nearest claimant (hakwala). Daughters are discriminated in the line of claimant.


26. Children's Act 2048 (1991) 3(1) Father has the first priority over mother in naming a child.

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### H. Court Proceedings

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Name of the Legislation</th>
<th>No./Section/Article/Rule</th>
<th>Discriminatory Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The Country Code, 2020 (1963) (i) Court Proceedings</td>
<td>76, 107 and 128</td>
<td>Identification by the name of father and husband only in documents relating to legal proceedings</td>
</tr>
<tr>
<td></td>
<td></td>
<td>110</td>
<td>Women are not considered capable to receive Court notices and summons.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>152 &amp; 161</td>
<td>Recognition of a person through the father but not by the mother</td>
</tr>
<tr>
<td></td>
<td>(ii) Registration</td>
<td>31</td>
<td>Requires only name of father and grandfather to be mentioned</td>
</tr>
<tr>
<td>2.</td>
<td>Appellate Court Rules, 2048 (1991)</td>
<td>16</td>
<td>Identification by the name of father only in documents relating to legal proceedings</td>
</tr>
</tbody>
</table>
107 Maintain a record of personal detail only including name of the father

14(1), 19(1), 19A, 41 Identification by the name of father and husband only in documents relating to legal proceedings

Annex 4(a) Reply format assumes that only son can submit it.

3. District Court Rules, 2052 (1995) 107

4. Revenue Tribunal Rules, 2030 (1974) 31 Court dress for male judges only.

5. Labour Court Procedure Rules, 2052 6, 26 Identification by the name of father only in documents relating to legal proceedings

I. Identity

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Name of the Legislation</th>
<th>No./Section/Article/Rule</th>
<th>Discriminatory Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Vehicle and Transport Management Act, 2049</td>
<td>Schedule 5 &amp; 6</td>
<td>Personal identification by the name of father and husband only</td>
</tr>
<tr>
<td>2.</td>
<td>Arms and Ammunition Rules, 2028 (1972)</td>
<td>Schedule 1(a), 1(b), 2, 3, 4, 5(a), 5(b)</td>
<td>Application forms for purchase, sell or license of arms and ammunition accepts only male as eligible.</td>
</tr>
<tr>
<td>3.</td>
<td>Rules Relating to Voter’s Name List 2052 (1996)</td>
<td>Form No. 1, 2, 3, 6, 11, 12, 14, 19, 20, 23, 24</td>
<td>Various forms mention only father’s/husband’s name</td>
</tr>
<tr>
<td>4.</td>
<td>Rules Regarding Voter’s Identity Card, 2053 (1996)</td>
<td>8(2) Form No. 1,1(a), 2, 4 &amp;5</td>
<td>Voter’s identity card only mentions father’s/husband’s name</td>
</tr>
<tr>
<td>5.</td>
<td>House of Representatives Rules, 2054 (1997)</td>
<td>Annexes (5)&amp;(6)</td>
<td>Identification by the name of father and husband only on recording forms of personal data of the Parliamentarians.</td>
</tr>
<tr>
<td>No.</td>
<td>Act Title</td>
<td>Annex/Reference</td>
<td>Identification Details</td>
</tr>
<tr>
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</tr>
<tr>
<td>8.</td>
<td>Civil Service Rules, 2050 (1993)</td>
<td>Form no. 1 of Schedule 7</td>
<td>Personal identification by name of father and grandfather only</td>
</tr>
<tr>
<td>9.</td>
<td>Police Rules, 2049 (1992)</td>
<td>Annex (2)</td>
<td>Identification by the name of father and grandfather only</td>
</tr>
<tr>
<td>10.</td>
<td>Rules Relating to Staff of the Office of Auditor General, 2050 (1994)</td>
<td>Annex 5</td>
<td>For personal identification, recognition by the name of father and grandfather only</td>
</tr>
<tr>
<td>11.</td>
<td>Government Contract Rules, 2022 (1964)</td>
<td>Annexes(1)&amp;(2)</td>
<td>Identification by the name of father only</td>
</tr>
<tr>
<td>12.</td>
<td>Rules Regarding Auditors, 2032(1975)</td>
<td>Annex A</td>
<td>Application for obtaining Certificate of the Auditor requires the name of father only</td>
</tr>
<tr>
<td>13.</td>
<td>Marriage Registration Regulations 2028 (1972)</td>
<td>Annex 1, 2, 4, 6, 7, 8</td>
<td>Personal identification by the name of father and grand father only in application forms for registered marriage, record book of marriage application and registration</td>
</tr>
<tr>
<td>14.</td>
<td>Birth, Death and other Personal Events Registration Rules, 2034 (1976)</td>
<td>Annexes 2, 3, 4, 5, 7, 8, 9, 10</td>
<td>Personal identification by the name of father and grand father only in the birth, death, and marriage and divorce registration book.</td>
</tr>
<tr>
<td>15.</td>
<td>Nepal Health Service Rules, 2055(1999)</td>
<td>Form 1 of Annex 10</td>
<td>Personal identification by the name of father and grand father only</td>
</tr>
<tr>
<td>17.</td>
<td>Land Administration Rules, 2024 (1968)</td>
<td>Annex 2 &amp; 3</td>
<td>Personal identification by the name of father and grand father only in the land record book and tenancy record book</td>
</tr>
<tr>
<td>18.</td>
<td>Land Measurement and Verification Rules, 2058</td>
<td>Schedule 2,3,4, 5, 8, 9, 10, 11 and 14</td>
<td>Personal identification by name of father / grandfather / husband / father-in-law</td>
</tr>
<tr>
<td>20.</td>
<td>Parliament Secretariat Personnel Administration Rules, 2059</td>
<td>Form 1</td>
<td>Personal identification by the name of father and grandfather only</td>
</tr>
<tr>
<td>21.</td>
<td>Armed Police Rules, 2060</td>
<td>Annex 2</td>
<td>Personal identification of armed police by name of father and grandfather only</td>
</tr>
<tr>
<td></td>
<td>Act</td>
<td>Schedule</td>
<td>Personal Identification Requirement</td>
</tr>
<tr>
<td>---</td>
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<td>------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>22.</td>
<td>Vehicle and Transport Management Regulations, 2054</td>
<td>1, 4, 12, 17, 19, 25, 27, and 56</td>
<td>Personal identification by the name of father and husband only</td>
</tr>
<tr>
<td>23.</td>
<td>Education Rules 2059</td>
<td>16</td>
<td>Personal identification of teachers by name of father and grandfather only in personal description and application forms for terms of service</td>
</tr>
<tr>
<td>24.</td>
<td>Nepal Medical Council Rules 2024</td>
<td>1, 3, 5 &amp; 6</td>
<td>Personal identification by name of father and grandfather only in application forms and record book</td>
</tr>
<tr>
<td>25.</td>
<td>Rules relating to Slaughter House and Inspection of Quality of Meat, 2057</td>
<td>2 &amp; 4</td>
<td>Personal identification by name of father and grandfather only for establishing and running slaughter house</td>
</tr>
<tr>
<td>26.</td>
<td>Hotel, Lodge, Restaurant, Bar and Trekking Guide Rules, 2038</td>
<td>2</td>
<td>Personal identification by name of father and grandfather only in application forms</td>
</tr>
<tr>
<td>27.</td>
<td>Alcohol Rules, 2033</td>
<td>1&amp;2</td>
<td>Personal identification by name of father and grandfather only in application forms for production and sale of alcohol</td>
</tr>
<tr>
<td>28.</td>
<td>Financial Administration Rules, 2056</td>
<td>15</td>
<td>Personal identification by name of father and grandfather only</td>
</tr>
<tr>
<td>29.</td>
<td>Rules relating to Government Cases, 2055</td>
<td>3</td>
<td>Personal identification by name of father only in the criminal record book</td>
</tr>
<tr>
<td>30.</td>
<td>Kidney Transplantation (Regulation and Prohibition) Rules, 2058</td>
<td>13, 14, 15 and 16</td>
<td>Personal identification by name of father and grandfather only in consent forms for donation/transplantation of kidney</td>
</tr>
<tr>
<td>31.</td>
<td>Rules relating to the Remuneration and Facilities of the Chairperson and Members of Permanent Committee of the King’s Council, 2052</td>
<td>9(2)</td>
<td>Clothing and travel allowance to wives of chairperson and members.</td>
</tr>
</tbody>
</table>
J. Use of Language

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Name of the Legislation</th>
<th>No./Section/Article/Rule</th>
<th>Discriminatory Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The Constitution of the Kingdom of Nepal, 2047 (1990)</td>
<td>Preamble 34(2), 34(3), 34(4), 34(5), 34(14), 34(15), 34(16), 34(17), 34(20), 34(21), 76, 118(1), 119(1), 119(2) and Annex 2</td>
<td>Male oriented word “Brotherhood” (<em>Bhaichara</em>) is used. Male oriented words such as “Elder Priest” (Bada Guruju), “Chief of Staff Army” (Pradhan Senapati), “Supreme Command” (Pramadhipati), “Chairman” (Sabhapati), “Mister” (Shriman) etc. are used.</td>
</tr>
<tr>
<td>2.</td>
<td>The Country Code, 2020 (1963) Homicide</td>
<td>25 Title</td>
<td>Male oriented biased title. Male oriented words such as “Elder Oldman” (Jetha Budha) etc. are used.</td>
</tr>
<tr>
<td>3.</td>
<td>Social Reform Act, 2033 (1976)</td>
<td>2(a), 21</td>
<td>Word considering women as commodity “Girl gift” (Kanyadan) is used.</td>
</tr>
<tr>
<td>5.</td>
<td>Nepal Administration Training Academy Act, 2039 (1983)</td>
<td>7(1)</td>
<td>Male oriented word “Vice-Chancellor” (Upakulpati) is used.</td>
</tr>
<tr>
<td>6.</td>
<td>Royal Nepal Academy Act, 2050 (1994)</td>
<td>2(d), 2(e), 2(f), 7(2), 7(3), 9(2), 10(1), 10(2), 15(1), 15(2), 16(1), 16(2), 16(3), 17(1), 17(2), 17(3), 17(4), 17(5), 17(6), 17(7), 18(2), 23, 25, 26(1), and 26(2)</td>
<td>Male oriented words “Chancellor, Joint-Chancellor” (Kulpati, Sahakulpati and Upakulpati) are used.</td>
</tr>
<tr>
<td></td>
<td>Law</td>
<td>Sections</td>
<td>Male oriented words</td>
</tr>
<tr>
<td>---</td>
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</tr>
<tr>
<td>8</td>
<td>Eastern University Act, 2050 (1994)</td>
<td>6, 7(2), 7(3), 7(4), 7(6), 8(2), 10(1), 10(2), 12(1), 12(2), 14(1), 19(1), 19(2), 22(1), 22(2), 22(3), 23(1), 23(2), 24(1), 24(2), 24(3), 24(4), 25(1), 26(1) and 27(1)</td>
<td>Male oriented words “Chancellor, Joint-chancellor and Vice-chancellor” (Kulpati, Sahakulpati and Upakulpati) and “Industrialist”(Udyogpati) are used.</td>
</tr>
<tr>
<td>9</td>
<td>Pokhara University Act, 2053 (1997)</td>
<td>6, 7(2), 7(3), 10(1), 10(2), 12(1), 12(2), 14(1), 14(2), 21(1), 22(1), 22(2), 22(3), 23(1), 23(2), 23(3), 24(1), 24(2), 24(3), 24(4), 25(1), 25(2), 25(3), 26(1), 26(2) and 38(1)</td>
<td>Male oriented words “Chancellor, Joint-chancellor and Vice-chancellor” (Kulpati, Sahakulpati and Upakulpati) and “Industrialist”(Udyogpati) are used.</td>
</tr>
<tr>
<td>10</td>
<td>Kathmandu University Act, 2048 (1992)</td>
<td>4(1), 4(2), 5, 6(1), 8(1), 10(1), 12, 13(1), 13(2), 13(3), 13(4), 13(5), 13(6), 13(7), 14(1), 14(2), 14(3), 14(4), 14(5), 14(6), 14(7), 14(8), 14(9) and 15(1)</td>
<td>Male oriented words “Chancellor, Joint-chancellor and Vice-chancellor” (Kulpati, Sahakulpati and Upakulpati) and “Industrialist”(Udyogpati) are used.</td>
</tr>
<tr>
<td>11</td>
<td>Act Relating to Job, Duty, Right and Terms of Service of Chief of Staff Army, 2026 (1969)</td>
<td>Title, Preamble, 2(b), 2(d), 3(1), 3(2), 4(1), 4(2), 5(1), 6, 7, 7A., 8(1), 8(2), 9(1), 9(2), 10(1), 10(2), 10(3), 10(4), 10(5), 10(6) and 11</td>
<td>Male oriented word “Chief of Staff Army” (Pradhan Senapati) is used.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2 (n), 19(1), 62(1), 69, 148</td>
<td>Male oriented word “Commander” (Pati) is used.</td>
</tr>
<tr>
<td>12</td>
<td>Army Act, 2016 (1959)</td>
<td>15(1), 73, 74, 85, 96(1), 98, 101, 129(1)</td>
<td>Male oriented word “Chief of Staff Army” (Pradhan Senapati) is used.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>72, 78, 114, 133, 138</td>
<td>Male oriented word “Bahinipati” is used.</td>
</tr>
<tr>
<td>13</td>
<td>National Service Party Act, 2027 (1970)</td>
<td>2(d)</td>
<td>Male oriented word “Commander” (Pati) is used.</td>
</tr>
<tr>
<td>14</td>
<td>Local Self Governance Act, 2055 (1998)</td>
<td>2(m), 2(n), 11, 18, 86, 179(1), 179(2), 180(1), 180(2), 183, 186(2), 186(3), 187(2), 191(1), 191(2), 191(3), 192(1), 192(2), 194, 198(2), 210(1), 222(2) and 241(1)</td>
<td>Male oriented words “Chairman and Vice-chairman” (Sabhapati and Upasabhapati) are used.</td>
</tr>
<tr>
<td>15</td>
<td>Local Development Training Academy Act, 2049 (1993)</td>
<td>7(1) and 10(1)</td>
<td>Male oriented words “Chairman and Vice-chairman” (Sabhapati and Upasabhapati) are used.</td>
</tr>
<tr>
<td>16</td>
<td>Local Bodies (Election Procedure) Act, 2048 (1992)</td>
<td>2(d), 2(g), 9(4), 11(1), 15 and 67(1)</td>
<td>Male oriented words “Chairman and Vice-chairman” (Sabhapati and Upasabhapati) are used.</td>
</tr>
<tr>
<td></td>
<td>Act</td>
<td>Sections</td>
<td>Gender Bias Details</td>
</tr>
<tr>
<td>---</td>
<td>----------------------------------------------------------------------</td>
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<td>-------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>17.</td>
<td>Act Relating to Remuneration and Terms and Benefits of Service of Officer Holders and Members of Parliament, 2052 (1996)</td>
<td>2(j), 2(l), 21(1), 21(2)</td>
<td>Male oriented words “Chairman and Vice-chairman” (Sabhapati and Upasabhapati) are used.</td>
</tr>
<tr>
<td>18.</td>
<td>Act Relating to Parliament Secretariat, 2058, (2001)</td>
<td>2(g), 6(2), 8(1), 8(2), 8(4) and 8(5)</td>
<td>Male oriented words “Chairman and Vice-chairman” (Sabhapati and Upasabhapati) are used.</td>
</tr>
<tr>
<td>19.</td>
<td>Consumer Protection Act, 2054 (1998)</td>
<td>2(b), 3(2)</td>
<td>Male oriented words “Chairman and Vice-chairman” (Sabhapati and Upasabhapati) are used.</td>
</tr>
<tr>
<td>20.</td>
<td>Press Council Act, 2048 (1992)</td>
<td>6(1)</td>
<td>Male oriented words “Chairman “ (Sabhapati) is used.</td>
</tr>
<tr>
<td>22.</td>
<td>High Secondary Education Act, 2046 (1989)</td>
<td>4(a)2</td>
<td>Male oriented words “Chairman and Vice-chancellor” (Sabhapati and Upakulpati) are used.</td>
</tr>
<tr>
<td>23.</td>
<td>Kathmandu Valley Development Agency Act, 2048 (1992)</td>
<td>13(1)</td>
<td>Male oriented words “Chairman “ (Sabhapati) is used.</td>
</tr>
<tr>
<td>24.</td>
<td>Tribal and Indigenous Upliftment Academy Act, 2058 (2001)</td>
<td>7(1)</td>
<td>Male oriented words “Vice-chancellor “ (Upakulpati) is used.</td>
</tr>
<tr>
<td>26.</td>
<td>Local Bodies (Financial Administration) Rules, 2056 (1999)</td>
<td>40(1), 41(1), 42, 130</td>
<td>Male oriented words “Chairman and Vice-chairman” (Sabhapati and Upasabhapati) are used.</td>
</tr>
<tr>
<td>27.</td>
<td>Army Leave Act, 2019 (1962)</td>
<td>11, 26(1)</td>
<td>Male oriented word “Chief of Staff Army” (Pradhan Senapati) is used.</td>
</tr>
<tr>
<td>28.</td>
<td>Rules Relating to Army Police, 2058 (2001)</td>
<td>2(b), 3(1), 4B(1)</td>
<td>Male oriented words “Commander” (Pati) and “Chief of Staff Army” (Pradhan Senapati) are used.</td>
</tr>
<tr>
<td>29.</td>
<td>Retired Army Appointment (Special Provision) Rules, 2059 (2002)</td>
<td>9(1)</td>
<td>Male oriented word “Chief of Staff Army” (Pradhan Senapati) is used.</td>
</tr>
<tr>
<td>No.</td>
<td>Law Title</td>
<td>Section(s)</td>
<td>Note</td>
</tr>
<tr>
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</tr>
<tr>
<td>30.</td>
<td>Prisoner Regulation, 2020 (1963)</td>
<td>22(1)</td>
<td>Word “Mardana” for man and “Janana” for woman are used. Male oriented words “Bhai-naike” is used.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>25, 29(2), 53</td>
<td></td>
</tr>
<tr>
<td>31.</td>
<td>Kharka Land Nationalization Regulation, 2033 (1976)</td>
<td>5(2)</td>
<td>Male oriented words “Chairman “ (Sabhapati) is used.</td>
</tr>
<tr>
<td>32.</td>
<td>Drinking Water Regulation, 2056 (1999)</td>
<td>23(1)</td>
<td>Male oriented words “Chairman “ (Sabhapati) is used.</td>
</tr>
<tr>
<td>33.</td>
<td>Rules Relating to Payment of Compensation to Non-governmental Persons, 2024 (1967)</td>
<td>4(1)</td>
<td>Male oriented words “Chairman “ (Sabhapati) is used.</td>
</tr>
<tr>
<td>34.</td>
<td>Land Measurement and Verification Rules, 2058 (2001)</td>
<td>20(2)</td>
<td>Male oriented words “Chairman “ (Sabhapati) is used.</td>
</tr>
<tr>
<td>36.</td>
<td>Nepal Citizenship Rules, 2049 (1993)</td>
<td>3(1), 4(1), 4(2) and 4(3)</td>
<td>Male oriented words “Chairman and Vice-chairman” (Sabhapati and Upasabhapati) are used.</td>
</tr>
<tr>
<td>37.</td>
<td>King’s Council (Operation of Work) Regulation, 2050 (1994)</td>
<td>2(1(c), 4(2), 7, 8, 9, 10(1), 10(3)</td>
<td>Male oriented words “Chairman” (Sabhapati) is used.</td>
</tr>
<tr>
<td>39.</td>
<td>King’s Council Standing Committee (Operation of Work) Regulation, 2048 (1992)</td>
<td>2(d), 3(1), 3(2), 3(3), 4, 6(1), 11, 12, 13(1), 13(2), 16(2), 18(1), 18(2) and 19</td>
<td>Male oriented words “Chairman” (Sabhapati) is used.</td>
</tr>
<tr>
<td>40.</td>
<td>King’s Council Rules, 2019 (1962)</td>
<td>5(1), 5(2), 9</td>
<td>Male oriented words “Chairman” (Sabhapati) is used.</td>
</tr>
<tr>
<td>42.</td>
<td>Royal Seal (Procedure) Regulation, 2054 (1997)</td>
<td>3(b), 3(d), 4(d), 4(g), 4(k), 4(o) and Annex D</td>
<td>Male oriented words such as “Elder Priest” (Bada Guruju), “Chief of Staff Army” (Pradhan Senapati), “Chairman” (Sabhapati), etc. are used.</td>
</tr>
<tr>
<td>43.</td>
<td>Royal Nepali Army Aircraft Maintenance Group Rule, 2042 (1986)</td>
<td>3(b)</td>
<td>Male oriented words “Chief of Staff Army” (Pradhan Senapati) is used.</td>
</tr>
<tr>
<td>44.</td>
<td>Royal Nepal Army Outdated and UselessRestricted Materials Disposal and Write Off Rules, 2026 (1969)</td>
<td>3(1), 4(2), 9</td>
<td>Male oriented word “Commander” (Pati) is used.</td>
</tr>
<tr>
<td>45.</td>
<td>Education Rules, 2059 (2002)</td>
<td>53(1), 54(1), 61</td>
<td>Male oriented words “Chairman” (Sabhapati) is used.</td>
</tr>
<tr>
<td>46.</td>
<td>Rules Relating to Sahebju and Chautaria, 2049 (1993)</td>
<td>5(a), 5(b), 5(c), 5(d)</td>
<td>Male oriented words “Chairman” (Sabhapati) is used.</td>
</tr>
<tr>
<td>47.</td>
<td>Military delegation of Authority Rules, 2015</td>
<td>2(1), 2(2), 2(3), 2(4), 3, 4, 5(1), 6, 7</td>
<td>Male oriented words “Chief of Staff Army” (Pradhan Senapati) is used.</td>
</tr>
<tr>
<td>48.</td>
<td>Army Legal Department (Recruitment, Promotion and Terms of Service) Rules, 2029 (1972)</td>
<td>3, 4(1)</td>
<td>Male oriented words “Chief of Staff Army” (Pradhan Senapati) is used.</td>
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<td>Page(s)</td>
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<tr>
<td>49</td>
<td>Army Nurse Rules, 2049 (1993)</td>
<td>5(2)</td>
<td>Male oriented words “Chief of Staff Army” (Pradhan Senapati) is used.</td>
</tr>
<tr>
<td>50</td>
<td>Army Parachute Folder Women Rules, 2046 (1989)</td>
<td>2.1.1, 2.1.2, 6.1</td>
<td>Male oriented words “Commander” (Pati) and “Chief of Staff Army” (Pradhan Senapati) are used.</td>
</tr>
<tr>
<td>51</td>
<td>Army Entertainment Grant (Release) Rules, 2021 (1964)</td>
<td>5, 6(1), 7</td>
<td>Male oriented words “Chief of Staff Army” (Pradhan Senapati) is used.</td>
</tr>
<tr>
<td>52</td>
<td>Joint Meeting and Joint Committee of Parliament (Operation of Work) Rules, 2048 (1992)</td>
<td>28, 32(1)</td>
<td>Male oriented words “Chairman” (Sabhapati) is used.</td>
</tr>
</tbody>
</table>
# ANNEX II

## LIST OF INTERVIEWEES

<table>
<thead>
<tr>
<th></th>
<th>Name</th>
<th>Position/Office</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Mr. Aan Dame Sherpa</td>
<td>Chairperson, VDC, Solukhumbu</td>
</tr>
<tr>
<td>2</td>
<td>Mr. Aang Nima Lama</td>
<td>Chairperson, DDC, Solukhumbu</td>
</tr>
<tr>
<td>3</td>
<td>Mr. Achyut Krishna Kharel</td>
<td>IGP, Nepal Police</td>
</tr>
<tr>
<td>4</td>
<td>Ms. Babita Upreti</td>
<td>Legal Aid Section, NBC</td>
</tr>
<tr>
<td>5</td>
<td>Mr. Babuchandra Acharya</td>
<td>Chief, Nawalparasi Jail</td>
</tr>
<tr>
<td>6</td>
<td>Mr. Bhupendra Poudel</td>
<td>Under-Secretary, Ministry of Women, Children and Social Welfare</td>
</tr>
<tr>
<td>7</td>
<td>Mr. Chhabilal Pant</td>
<td>Secretary, Ministry of Labour and Transport</td>
</tr>
<tr>
<td>8</td>
<td>Mr. Dhansher Rai</td>
<td>Inspector, District Police Office, Solukhumbu</td>
</tr>
<tr>
<td>9</td>
<td>Mr. Dilli Raman Acharya</td>
<td>District Attorney, Kathmandu</td>
</tr>
<tr>
<td>10</td>
<td>Ms. Gauri K. C.</td>
<td>AIP, Women Cell, District Police Office,</td>
</tr>
<tr>
<td>11</td>
<td>Mr. Giriraj Adhikary</td>
<td>Executive Member, NBA, Nawalparasi</td>
</tr>
<tr>
<td>12</td>
<td>Mr. Govinda Chaudhary</td>
<td>Mayor, Ramgram Municipality, Nawalparasi</td>
</tr>
<tr>
<td>13</td>
<td>Mr. Ishwor Prasad Sharma</td>
<td>Chairman, DDC, Nawalparasi</td>
</tr>
<tr>
<td>14</td>
<td>Mr. Jiv Narayan Shrestha</td>
<td>Chief, Legal Section, Royal Nepal Army</td>
</tr>
<tr>
<td>15</td>
<td>Mr. Khagendra Basnet</td>
<td>Secretary, Ministry of Education and</td>
</tr>
<tr>
<td>16</td>
<td>Mr. Krishna Prasad Sharma</td>
<td>CDO, Kathmandu DAO</td>
</tr>
<tr>
<td>17</td>
<td>Mr. Lalit Thapa</td>
<td>CDO, Nawalparasi DAO</td>
</tr>
<tr>
<td>18</td>
<td>Mr. Mohan Thapa</td>
<td>Tameldar (Court’s Messenger), District</td>
</tr>
<tr>
<td>19</td>
<td>Hon’ble Narendra Siwakoti</td>
<td>Judge, District Court, Solukhumbu</td>
</tr>
<tr>
<td>20</td>
<td>Ms. Parvati Thapa</td>
<td>DSP, Central Women Cell, Nepal Police</td>
</tr>
<tr>
<td>21</td>
<td>Hon’ble Purushottam Bhandari</td>
<td>Chief Judge, District Court, Nawalparasi</td>
</tr>
<tr>
<td>22</td>
<td>Mr. R. P. Shrestha</td>
<td>DSP, District Police Office, Nawalparasi</td>
</tr>
<tr>
<td>23</td>
<td>Mr. Radhakrishna Dhungana</td>
<td>Administrative Officer, Prithvichandra Hospital, Nawalparasi</td>
</tr>
<tr>
<td>24</td>
<td>Ms. Saraswati Padhey</td>
<td>Director, Her Majesty Indra Rajyalaxmi Devi Maternity Hospital, Kathmandu</td>
</tr>
<tr>
<td>25</td>
<td>Mr. Shanta Sedai</td>
<td>Legal Aid Section, NBC</td>
</tr>
<tr>
<td>26</td>
<td>Mr. Sitaram Pokhrel</td>
<td>CDO, Solukhumbu DAO</td>
</tr>
<tr>
<td>27</td>
<td>Mr. Srikanta Regmi</td>
<td>Secretary, Ministry of Health</td>
</tr>
<tr>
<td>28</td>
<td>Mr. Surendra Bahadur Thapa</td>
<td>District Attorney, Solukhumbu</td>
</tr>
<tr>
<td>29</td>
<td>Mr. Surya Kiran Gurung</td>
<td>Secretary, House of Representatives</td>
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<tr>
<td>30</td>
<td>Mr. Tirthaman Shaky</td>
<td>Chief Secretary, HMG/Nepal</td>
</tr>
<tr>
<td>31</td>
<td>Mr. Udaya Nepali Shrestha</td>
<td>Secretary, Ministry of Law, Justice and Parliamentary Affairs</td>
</tr>
<tr>
<td>32</td>
<td>Ms. Urmila Shrestha</td>
<td>Secretary, Ministry of Women, Children and Social Welfare</td>
</tr>
</tbody>
</table>
### LIST OF RESPONDENTS

#### Male Parliamentarians

1. Hon'ble Lila Mani Pokhrel (United People Front)
2. Hon'ble Navraj Subedi [C.P.N. (Mashal) (National People Front)]
3. Hon'ble Yubraj Gyawali [C.P.N. (UML)]
4. Hon'ble Surendra Prasad Pandey [C.P.N. (UML)]
5. Hon'ble Netra Lal Shrestha (R.P.P.)
6. Hon'ble Subash Chandra Nemwang [C.P.N. (UML)]
7. Hon'ble Suresh Karki [C.P.N. (UML)]
8. Hon'ble Tek Bahadur Chokkal (N.C.)
9. Hon'ble Jivan Prem Shrestha (N.C.)
10. Hon'ble Pari Thapa (National People Front)

#### Female Parliamentarians

1. Hon'ble Chitra Lekha Yadav N.C.
2. Hon'ble Kunta Sharma C.P.N. (UML)
3. Hon'ble Urmila Aryal C.P.N. (UML)
4. Hon'ble Tirtha Gautam C.P.N. (UML)
5. Hon'ble Goma Devkota C.P.N. (UML)
6. Hon'ble Shanta Manavi C.P.N. (UML)
7. Hon'ble Ashta Laxmi Shakya C.P.N. (UML)
8. Hon'ble Sushila Nepal C.P.N. (UML)
9. Hon'ble Ambika Pant N.C.
10. Hon'ble Kashi Poudel N.C.

#### Academicians

1. Mr. Bhim Bahadur Tamang
2. Mr. Ganesh Bahadur Prasai
3. Dr. Ram Dayal Rakesh
4. Dr. Bholu Rizal
5. Ms. Sahana Pradhan
6. Ms. Bhuvan Dhungana
7. Ms. Kusum Shakha
8. Ms. Toya Gurung
9. Hon'ble Kalyan Shrestha
10. Dr. Meera Ojha

#### Advocates

1. Mr. Harihar Dahal President, Nepal Bar Association
2. Ms. Ishwari Dahal Supreme Court
3. Mr. Lav Kumar Mainali Supreme Court
4. Ms. Pushpa Bhushal Supreme Court Bar Association
5. Ms. Shanti Kumari Rai Appellate Court
6. Dr. Ambar Pant Supreme Court
7. Mr. Satish Krishna Kharel Supreme Court
8. Ms. Chhatra Kumari Gurung Member, Supreme Court Bar Association
9. Mr. Agni Kharel Secretary, Nepal Bar Association
10. Ms. Geeta Sangraula Supreme Court
### Non-Governmental Organizations

1. Dr. Shanta Thapaliya - LACC
2. Ms. Babita Basnet - Sancharika Samuha
3. Mr. Ananda Tamang - CREHPA
4. Ms. Pramoda Shah - SAATHI
5. Ms. Anuradha Koirala - Maiti Nepal
7. Ms. Durga Ghimire - ABC Nepal
8. Ms. Durga Sob - Dalit Mahila Association
9. Ms. Saloni Singh - Didi Bahini
10. Mr. Ananta Shrestha - Shtri Shakti

### Human Rights Activists

1. Mr. Padma Ratna Tuladhar - Ex MP
2. Mr. Bishwa Kanta Mainali - Advocate
3. Mr. Nayan Bahadur Khatri - Chairperson, Human Rights Commission
4. Mr. Sushil Pyakurel - Member, Human Rights Commission
5. Mr. Kapil Shrestha - Member, Human Rights Commission
6. Mr. Sindhu Nath Pyakurel - Ex MP
7. Dr. Gopal Krishna Siwakoti - INHURED International
8. Mr. Gauri Pradhan - CWIN
9. Ms. Indira Rana - Member, Human Rights Commission
10. Mr. Daman Nath Dhungana - Ex Speaker, House of Representatives,

### Women Activists

1. Ms. Bandana Rana - SANCHARIKA
2. Ms. Mala Adhikary - DFID
3. Dr. Aruna Uprety - CEDPA
4. Ms. Shilu Singh - SUSS
5. Ms. Saru Joshi Shrestha - MGEP/UNDP
6. Ms. Kamal Rana - Former MP
7. Ms. Amrita Baskota - BBC
8. Ms. Manju Thapa - ASHMITA
9. Ms. Bharati Siwal Giri - UNDP
10. Ms. Shashi Adhikary - LACC

### Women Study Program - TU

1. Dr. Chandra Bhadra - Professor
2. Ms. Pramila Rai - Professor
3. Ms. Harinda Thapaliya - Professor
4. Ms. Neera Shrestha - Professor
5. Ms. Beepa Shrestha - Student
6. Ms. Namrata Karki - Student
7. Ms. Lalita Pradhan - Student
8. Ms. Namuna Bhusal - Student

### Women Sister organizations of Political Parties

1. Ms. Shashi Shrestha - All Nepal Women Association (United People Front)
2. Ms. Sushila Shrestha - All Nepal Women Association [C.P.N. (M.L.)]
3. Ms. Surya Thapa - All Nepal Women Association (National People Front)
4. Hon’ble Bidya Devi Bhandari - All Nepal Women Association [C.P.N. (UML)]
### Table 1
**Percentage Distribution of Existence of Discriminatory Laws in Nepal**

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Do not know</th>
<th>Total</th>
</tr>
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<tbody>
<tr>
<td>Exist</td>
<td>92.59</td>
<td>0</td>
<td>7.41</td>
<td>100</td>
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</table>

### Table 2
**Percentage Distribution of Discriminatory Property Laws**

<table>
<thead>
<tr>
<th>S. N.</th>
<th>Areas</th>
<th>Yes</th>
<th>Do not know</th>
<th>Total</th>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>Property/Partition Share</td>
<td>95.06</td>
<td>4.94</td>
<td>100</td>
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<tr>
<td>2.</td>
<td>Marriage and Divorce</td>
<td>90.13</td>
<td>9.87</td>
<td>100</td>
</tr>
<tr>
<td>3.</td>
<td>Trafficking and Sexual Abuses</td>
<td>83.95</td>
<td>16.05</td>
<td>100</td>
</tr>
<tr>
<td>4.</td>
<td>Education and Opportunities</td>
<td>64.20</td>
<td>35.8</td>
<td>100</td>
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<td>5.</td>
<td>Health including Reproductive Health</td>
<td>79.01</td>
<td>20.99</td>
<td>100</td>
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<tr>
<td>6.</td>
<td>Citizenship/Recognition of Mother’s roles</td>
<td>90.12</td>
<td>9.88</td>
<td>100</td>
</tr>
<tr>
<td>7.</td>
<td>Employment</td>
<td>70.37</td>
<td>29.63</td>
<td>100</td>
</tr>
<tr>
<td>8.</td>
<td>Legal and Court Proceedings</td>
<td>60.49</td>
<td>39.51</td>
<td>100</td>
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### Table 3
**Impact of Discriminatory Citizenship Laws**

<table>
<thead>
<tr>
<th>S. N.</th>
<th>Impacts</th>
<th>Percentage (multiple responses)</th>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>Women are treated as second class citizen</td>
<td>87.66</td>
</tr>
<tr>
<td>2.</td>
<td>Statelessness of children</td>
<td>76.55</td>
</tr>
<tr>
<td>3.</td>
<td>Depression and Inferiority</td>
<td>75.31</td>
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<tr>
<td>4.</td>
<td>Restriction on Mobility</td>
<td>74.07</td>
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<td>5.</td>
<td>Deprivation from employment opportunities</td>
<td>65.44</td>
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<td>6.</td>
<td>Difficulty in transferring property</td>
<td>60.50</td>
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<tr>
<td>7.</td>
<td>Deprivation from the right to family</td>
<td>58.02</td>
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<tr>
<td>8.</td>
<td>Deprivation from the right to choose residence</td>
<td>50.62</td>
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### Table 4
Impact of Discriminatory Property Laws  
\[N=83\]

<table>
<thead>
<tr>
<th>S. N.</th>
<th>Impacts</th>
<th>Percentage (multiple responses)</th>
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<tbody>
<tr>
<td>1.</td>
<td>Economic dependency of women</td>
<td>93.83</td>
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<tr>
<td>2.</td>
<td>Domestic violence</td>
<td>82.72</td>
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<td>3.</td>
<td>No access to resources</td>
<td>81.48</td>
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<tr>
<td>4.</td>
<td>Daughters considered as a liability</td>
<td>67.90</td>
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<tr>
<td>5.</td>
<td>Treating women as second class citizen</td>
<td>34.57</td>
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<tr>
<td>6.</td>
<td>Negative impact on women’s health</td>
<td>18.52</td>
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<td>7.</td>
<td>Hindrance on national development</td>
<td>9.87</td>
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</table>

### Table 5
Impact of Discriminatory provisions relating to Trafficking and Sexual Abuses  
\[N = 83\]

<table>
<thead>
<tr>
<th>S. N.</th>
<th>Impacts</th>
<th>Percentage (multiple responses)</th>
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<tbody>
<tr>
<td>1.</td>
<td>Feeling of Insult and Inferiority</td>
<td>83.95</td>
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<tr>
<td>2.</td>
<td>Difficulty to marry/disturbance in marital relationship</td>
<td>70.37</td>
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<tr>
<td>3.</td>
<td>Victims of STD and AIDS</td>
<td>70.37</td>
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<tr>
<td>4.</td>
<td>Deprivation of education and health facilities</td>
<td>51.85</td>
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<td>5.</td>
<td>Difficulties in transaction of household property</td>
<td>43.21</td>
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### Table 6
Impact of Discriminatory Education Laws  
\[N = 83\]

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<th>Percentage (multiple responses)</th>
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<tbody>
<tr>
<td>1.</td>
<td>Low participation in Politics and Employment</td>
<td>78.00</td>
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<tr>
<td>2.</td>
<td>Low social status</td>
<td>71.24</td>
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<td>3.</td>
<td>Deprivation from education</td>
<td>70.02</td>
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<td>4.</td>
<td>Deprivation of foreign scholarship/education</td>
<td>54.33</td>
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### Table 7
Impact of Discriminatory Employment Laws  
\[N=83\]

<table>
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<th>S. N.</th>
<th>Impacts</th>
<th>Percentage (multiple responses)</th>
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<tbody>
<tr>
<td>1.</td>
<td>More dependency</td>
<td>80.25</td>
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<td>2.</td>
<td>Discrimination on wages/remuneration</td>
<td>77.78</td>
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<tr>
<td>3.</td>
<td>Deprivation from foreign employment</td>
<td>67.90</td>
</tr>
<tr>
<td>4.</td>
<td>Restriction in various employment</td>
<td>66.67</td>
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</table>
### Table 8
Impact of Discriminatory provisions on Health including Reproductive Health  
\[N=83\]

<table>
<thead>
<tr>
<th>S. N.</th>
<th>Impacts</th>
<th>Percentage (multiple responses)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Only women are arrested</td>
<td>90.12</td>
</tr>
<tr>
<td>2.</td>
<td>Unsafe abortion</td>
<td>90.12</td>
</tr>
<tr>
<td>3.</td>
<td>Expensive abortion and difficulty in getting service</td>
<td>83.95</td>
</tr>
<tr>
<td>4.</td>
<td>Against prestige/social impact</td>
<td>76.54</td>
</tr>
<tr>
<td>5.</td>
<td>Effects on productivity of women</td>
<td>59.26</td>
</tr>
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</table>

### Table 9
Impact of Discriminatory Laws on Marriage and Family  
\[N=83\]

<table>
<thead>
<tr>
<th>S. N.</th>
<th>Impacts</th>
<th>Percentage (multiple responses)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Polygamy</td>
<td>88.89</td>
</tr>
<tr>
<td>2.</td>
<td>Domestic Violence</td>
<td>87.65</td>
</tr>
<tr>
<td>3.</td>
<td>Chastity of women alone in question</td>
<td>86.42</td>
</tr>
<tr>
<td>4.</td>
<td>Divorce</td>
<td>86.42</td>
</tr>
<tr>
<td>5.</td>
<td>Dowry</td>
<td>75.31</td>
</tr>
<tr>
<td>6.</td>
<td>Deprivation of guardianship</td>
<td>72.84</td>
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</tbody>
</table>

### Table 10
Impact of Discriminatory Laws on Legal Procedure and Court Proceedings  
\[N=83\]

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<tr>
<th>S. N.</th>
<th>Impacts</th>
<th>Percentage (multiple responses)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Restricted to household work</td>
<td>72.84</td>
</tr>
<tr>
<td>2.</td>
<td>Denial of social recognition</td>
<td>71.61</td>
</tr>
<tr>
<td>3.</td>
<td>Subordination to men</td>
<td>71.61</td>
</tr>
<tr>
<td>4.</td>
<td>Patriarchal System</td>
<td>71.61</td>
</tr>
<tr>
<td>5.</td>
<td>No confidence on women</td>
<td>70.37</td>
</tr>
<tr>
<td>6.</td>
<td>Restriction on public participation</td>
<td>51.86</td>
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</table>

### Sample Districts

### Table 11
Impact of Discriminatory Property Laws

<table>
<thead>
<tr>
<th>Impacts</th>
<th>Self</th>
<th>Other Women</th>
<th>Both</th>
<th>Do not Know</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economic dependency</td>
<td>26.67</td>
<td>44</td>
<td>17.33</td>
<td>12</td>
</tr>
<tr>
<td>Domestic violence</td>
<td>2.78</td>
<td>56.94</td>
<td>5.56</td>
<td>34.72</td>
</tr>
<tr>
<td>No access to resources</td>
<td>12</td>
<td>52</td>
<td>16</td>
<td>20</td>
</tr>
<tr>
<td>Daughters considered as a liability</td>
<td>10.67</td>
<td>50.67</td>
<td>16</td>
<td>22.66</td>
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</table>
### Table 12
**Impact of Discriminatory Citizenship Laws**

<table>
<thead>
<tr>
<th>Impacts</th>
<th>Self</th>
<th>Other Women</th>
<th>Both</th>
<th>Do not Know</th>
</tr>
</thead>
<tbody>
<tr>
<td>Women are treated as second class citizen</td>
<td>5.34</td>
<td>56</td>
<td>21.33</td>
<td>17.33</td>
</tr>
<tr>
<td>Statelessness of children</td>
<td>1.33</td>
<td>45.34</td>
<td>1.33</td>
<td>52.0</td>
</tr>
<tr>
<td>Difficulty in transferring property</td>
<td>8.00</td>
<td>44.00</td>
<td>0.0</td>
<td>48.00</td>
</tr>
<tr>
<td>Deprivation from the right to choose residence</td>
<td>5.33</td>
<td>33.33</td>
<td>2.67</td>
<td>58.67</td>
</tr>
<tr>
<td>Depression and inferiority</td>
<td>10.67</td>
<td>41.33</td>
<td>13.33</td>
<td>34.67</td>
</tr>
<tr>
<td>Deprivation from employment opportunities</td>
<td>10.67</td>
<td>42.67</td>
<td>5.33</td>
<td>41.33</td>
</tr>
<tr>
<td>Restriction on mobility</td>
<td>8.00</td>
<td>29.33</td>
<td>2.67</td>
<td>60.00</td>
</tr>
<tr>
<td>Deprivation from the right to family</td>
<td>2.67</td>
<td>49.33</td>
<td>2.67</td>
<td>45.33</td>
</tr>
</tbody>
</table>

### Table 13
**Impact of Discriminatory provision on Trafficking and Sexual Abuse**

<table>
<thead>
<tr>
<th>Impacts</th>
<th>Self</th>
<th>Other Women</th>
<th>Both</th>
<th>Do not Know</th>
</tr>
</thead>
<tbody>
<tr>
<td>Difficulties in transaction of household property</td>
<td>9.33</td>
<td>37.34</td>
<td>4.00</td>
<td>49.33</td>
</tr>
<tr>
<td>Difficulty to marry/disturbance in matrimonial relationship</td>
<td>5.33</td>
<td>70.67</td>
<td>0</td>
<td>24.00</td>
</tr>
<tr>
<td>Deprivation of education and health facility</td>
<td>9.33</td>
<td>58.67</td>
<td>1.33</td>
<td>30.67</td>
</tr>
<tr>
<td>Victims of STD and AIDS</td>
<td>2.67</td>
<td>69.33</td>
<td>4.00</td>
<td>24.00</td>
</tr>
<tr>
<td>Feeling of insult/inferiority complex</td>
<td>4.00</td>
<td>54.67</td>
<td>1.33</td>
<td>40.00</td>
</tr>
</tbody>
</table>

### Table 14
**Impact of Discriminatory Education Laws**

<table>
<thead>
<tr>
<th>Impacts</th>
<th>Self</th>
<th>Other Women</th>
<th>Both</th>
<th>Do not Know</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deprivation from education</td>
<td>9.33</td>
<td>50.67</td>
<td>0</td>
<td>40.00</td>
</tr>
<tr>
<td>Deprivation of foreign scholarship/ education</td>
<td>8.00</td>
<td>34.67</td>
<td>0</td>
<td>57.33</td>
</tr>
<tr>
<td>Low social status</td>
<td>6.67</td>
<td>52.00</td>
<td>1.33</td>
<td>40.00</td>
</tr>
<tr>
<td>Low participation in politics and employment</td>
<td>10.67</td>
<td>57.33</td>
<td>4.00</td>
<td>28.00</td>
</tr>
</tbody>
</table>

### Table 15
**Impact of Discriminatory Employment Laws**

<table>
<thead>
<tr>
<th>Impacts</th>
<th>Self</th>
<th>Other Women</th>
<th>Both</th>
<th>Do not Know</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deprivation from foreign employment</td>
<td>9.33</td>
<td>41.34</td>
<td>1.33</td>
<td>48.00</td>
</tr>
<tr>
<td>Restriction in various employment</td>
<td>9.33</td>
<td>48.00</td>
<td>9.33</td>
<td>33.34</td>
</tr>
<tr>
<td>Discrimination on wages/remuneration</td>
<td>8.00</td>
<td>66.67</td>
<td>14.67</td>
<td>10.66</td>
</tr>
<tr>
<td>More dependency</td>
<td>13.33</td>
<td>49.33</td>
<td>5.34</td>
<td>32.00</td>
</tr>
</tbody>
</table>
Table 16
Impact of Discriminatory provision on Health including Reproductive Health

<table>
<thead>
<tr>
<th>Impacts</th>
<th>Self</th>
<th>Other Women</th>
<th>Both</th>
<th>Do not Know</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unsafe abortion</td>
<td>4.00</td>
<td>62.67</td>
<td>1.33</td>
<td>32.00</td>
</tr>
<tr>
<td>Expensive abortion and difficulty in getting service</td>
<td>4.00</td>
<td>57.33</td>
<td>1.33</td>
<td>37.34</td>
</tr>
<tr>
<td>Only women are arrested</td>
<td>1.33</td>
<td>84</td>
<td>0</td>
<td>14.67</td>
</tr>
<tr>
<td>Effects on productivity of women</td>
<td>5.33</td>
<td>50.67</td>
<td>1.33</td>
<td>42.67</td>
</tr>
<tr>
<td>Against prestige/social impact</td>
<td>5.33</td>
<td>76.00</td>
<td>4.00</td>
<td>14.67</td>
</tr>
</tbody>
</table>

Table 17
Impact of Discriminatory Laws of Marriage and Family

<table>
<thead>
<tr>
<th>Impacts</th>
<th>Self</th>
<th>Other Women</th>
<th>Both</th>
<th>Do not Know</th>
</tr>
</thead>
<tbody>
<tr>
<td>Polygamy</td>
<td>4.00</td>
<td>69.33</td>
<td>1.33</td>
<td>25.34</td>
</tr>
<tr>
<td>Chastity of women alone in question</td>
<td>6.67</td>
<td>29.33</td>
<td>5.33</td>
<td>58.67</td>
</tr>
<tr>
<td>Deprivation of guardianship</td>
<td>5.33</td>
<td>44.00</td>
<td>2.67</td>
<td>48.00</td>
</tr>
<tr>
<td>Domestic violence</td>
<td>4.00</td>
<td>61.33</td>
<td>5.34</td>
<td>29.33</td>
</tr>
<tr>
<td>Dowry</td>
<td>4.00</td>
<td>64.00</td>
<td>9.33</td>
<td>22.67</td>
</tr>
<tr>
<td>Divorce</td>
<td>5.33</td>
<td>60.00</td>
<td>4.00</td>
<td>30.67</td>
</tr>
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</table>

Table 18
Impact of Discriminatory Laws of Legal Procedure and Court Proceedings

<table>
<thead>
<tr>
<th>Impacts</th>
<th>Self</th>
<th>Other Women</th>
<th>Both</th>
<th>Do not Know</th>
</tr>
</thead>
<tbody>
<tr>
<td>No confidence on women</td>
<td>14.67</td>
<td>54.66</td>
<td>2.67</td>
<td>28.00</td>
</tr>
<tr>
<td>Restricted on household work</td>
<td>13.34</td>
<td>49.33</td>
<td>4.00</td>
<td>33.33</td>
</tr>
<tr>
<td>Denial of social recognition</td>
<td>14.67</td>
<td>45.33</td>
<td>1.33</td>
<td>38.67</td>
</tr>
<tr>
<td>Subordination to men</td>
<td>10.66</td>
<td>60.00</td>
<td>2.67</td>
<td>26.67</td>
</tr>
<tr>
<td>Patriarchal system</td>
<td>9.33</td>
<td>64.00</td>
<td>4.00</td>
<td>22.67</td>
</tr>
<tr>
<td>Restriction on public participation</td>
<td>5.33</td>
<td>36</td>
<td>4.00</td>
<td>54.67</td>
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</table>