Gender Friendly Environment in the Workplace
Gender Friendly Environment
In the Workplace

2005
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The Study Team

Research Consultant
Adv. Sapana Pradhan Malla

Lead Researcher
Ms. Salina Joshi

Enumerator
Ms. Bishnu Basyal
ACKNOWLEDGEMENTS

Though international human rights instruments and national laws have provided right to work in a safe and healthy environment women still face discrimination in the workplace. The labour laws in Nepal have provided some special measures for women however, implementation of these laws are questionable in presence of conflict and resulted affect in the employment sector. The participation of women in employment sector is increasing and similarly also the concerns of violations of their rights in the workplaces. This study examined the current status of gender friendly environment and the implementation of the special measures. The report is valuable in addressing these concerns through recommendations from different stakeholders.

Several individual and organization's contribution has been valuable in conducting this research and developing the recommendations to ensure women’s economic rights and promoting gender friendly environment in the workplace.

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Sapana Pradhan Malla
President
# CONTENTS

Acknowledgements

Abbreviation

Executive Summary

1. Introduction
   1.1 Background
   1.2 Scope and Purpose of the Study
   1.3 Research Methodology
   1.4 Limitations of the Study

2. Human Rights Instruments and State Obligations to Ensure Gender Friendly Environment in the Workplace
   2.1 International Human Rights Conventions
   2.2 Declarations

3. Analysis of National Policies to Ensure Gender Friendly Environment in the Workplace
   3.1 The National Labour Policy, 1999
   3.2 Tenth Plan, 2002-2007
   3.3 National Plan of Action on CEDAW, 2003
   3.4 National Human Rights Action Plan, 2004
   3.5 National Plan of Action on Gender Equality and Women Empowerment, 2004
4. Analysis of National Laws Relevant to Gender Friendly Environment in the Workplace
   4.1 Provisions Relating to Gender Friendly Working Environment
   4.2 Discriminatory Provisions
   4.3 Neutral Provisions but Discriminatory in Impact
   4.4 Gaps in the Existing Laws

5. Analysis of Gender Friendly Environment in the Workplace
   5.1 Low Participation of Women in Employment
   5.2 Discouraging Environment in the Workplace
   5.3 Inconsistent Implementation of Special Measures provided by the Labour Laws
   5.4 Awareness on the Labour Laws Among Employers and Employees
   5.5 Perception of Employers on Gender Friendly Environment
   5.6 Perception of Employees on Gender Friendly Environment

6. Initiatives to Promote Gender Friendly Environment in the Workplace
   6.1 Government’s Initiatives
   6.2 Civil Societies’ Initiatives

7. Challenges in Promoting Gender Friendly Environment in the Workplace

8. Recommendations to Ensure Gender Friendly Environment
   8.1 Initiatives required by the Government
8.2 Interventions through Laws and Policies 77
8.3 Initiatives to be taken by Employers 79
8.4 Intervention Required by the Civil Society 81

Bibliography 83

Annexes
Annex I : List of Interviewees (Key Informants) 85
Annex II : List of Enterprises Interviewed 87
Annex III : Questionnaire for Key Informants 89
Annex IV : Questionnaire for Employers 91
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>AIDS</td>
<td>Acquired Immune Deficiency Syndrome</td>
</tr>
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<td>BPFA</td>
<td>Beijing Platform for Action</td>
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<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination against Women</td>
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<td>DECONT</td>
<td>Democratic Confederation of Nepalese Trade Union</td>
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<td>FNCCI</td>
<td>Federation of Nepalese Chambers of Commerce and Industry</td>
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<tr>
<td>FWLD</td>
<td>Forum for Women, Law and Development</td>
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<td>GAN</td>
<td>Garment Association - Nepal</td>
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<tr>
<td>GEFONT</td>
<td>General Federation of Nepalese Trade Union</td>
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<tr>
<td>HAN</td>
<td>Hotel Association of Nepal</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<tr>
<td>ILO</td>
<td>International Labour Organisation</td>
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<td>INGO's</td>
<td>International Non-Government Organisation</td>
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<tr>
<td>MDGs</td>
<td>Millennium Development Goals</td>
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<td>MOL</td>
<td>Ministry of Labour and Transport Management</td>
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<tr>
<td>MWCSW</td>
<td>Ministry of Women, Children and Social Welfare</td>
</tr>
<tr>
<td>NATA</td>
<td>Nepal Association of Travel Agents</td>
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<td>NCC</td>
<td>Nepal Chamber of Commerce</td>
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<td>NPABSON</td>
<td>National Private and Boarding School Organization of Nepal</td>
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<td>NTUC</td>
<td>Nepal Trade Union Congress</td>
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<tr>
<td>PABSON</td>
<td>Private and Boarding School Organization of Nepal</td>
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<tr>
<td>TAAN</td>
<td>Trekking Agents Association of Nepal</td>
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<tr>
<td>WEAN</td>
<td>Women Entrepreneurs Association of Nepal</td>
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</tbody>
</table>
EXECUTIVE SUMMARY

Discrimination based on patriarchal structures has resulted in stripping the dignity, self-respect and confidence of the majority of Nepalese women, a particularly important population segment (51 %) because it cuts across all groups. Women in Nepal have little access and control over economic resources and the social and legal environment is yet to be favorable to promote women's economic rights. Stereotype perceptions and behaviors are hurdles to achieve women’s economic empowerment. Generally, women are perceived as homemaker or housewives. They are expected to work in the house, raise a family and basically provide support inside the house. Such expectations and stereotyped perceptions have failed to create a conducive environment for women to work outside the house, develop career and be independent economically. Moreover, in our society, women have been the sole responsible person for all the reproductive functioning. A man’s role in reproductive functioning has been neglected or not expected. Men are isolated from such responsibility thereby forcing women to take up the burden of all reproductive and social functioning alone.

Though women’s participation is increasing every year in the employment sector, however, significant participation and contribution is yet to be achieved. According to the Nepal Human Development Report, 2004 only 18.75 women are in professional jobs and 12.71 percent are in administrative jobs. There are only 8.55 percent of women in public services, 10.85 in foreign employment whereas 60.5 percent of women are in agriculture sector, most as unpaid laborers.

The Constitution of the Kingdom of Nepal, national labour laws and various international human rights instruments guarantee women the right to an equitable, safe, and healthy working environment. The Labor Laws in Nepal
have provided special measures for women with objectives to create gender friendly environment and encourage women’s participation in economic sector leading them to their economic empowerment. However, data shows that women’s participation is far from satisfactory and the implementation of the special measures provided by the labor act is questionable. It is imperative that working-women have access to gender-friendly working environment to maximize their economic opportunities. This study therefore, examines the status of gender friendly environment to provide recommendation and advocate for women’s economic empowerment.

Nepal is a party to sixteen international human rights instruments including 9 ILO Conventions and committed to various declarations that prohibit discrimination on the basis of sex. The UN Convention on the Elimination of All Forms of Discrimination against Women, (CEDAW) 1979 specifically obliges the State Parties to take measures to promote women’s economic rights. General Recommendation No. 13 of the CEDAW Committee provides for equal remuneration for work of equal value. General Recommendation No. 19 recommends the governments to take strong penal sanctions, civil remedies and compensatory provisions to protect women against sexual harassment at the workplace.

In addition to CEDAW, other international human rights instruments such as the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the ILO Convention on Equal Remuneration for Men and Women for Work of Equal Value, 1951, (C100) and the ILO Convention on Discrimination (Employment and Occupation), 1958, (111), also ensures various rights to promote women’s economic rights. Similarly, Universal Declaration on Human Rights 1948, Beijing Platform for Action 1995, and Millennium Development Goals 2000 also recommends government to take effective actions for women’s economic empowerment.

At the national level, the Tenth Plan has stipulated various policies to address labor related concerns relating to women’s empowerment. The National Plan of Action on CEDAW 2003, the National Human Rights Action Plan 2004, and the National Plan of Action on Gender Equality and Women Empowerment, 2004 have specifically included activities to promote women’s economic rights. The National Labor Policy 1999 encourages the entrepreneurship and enterprises
The Labour Act, 1991 and the Labour Rules, 1994 provided for special measures which include special arrangement for security for night workers, break for breast-feeding, child care room: weight limitation for women, equal remuneration, separate toilet, and maternity leave.

Despite these mechanisms, the study reveals that the participation of women in the employment sector is seriously low. Among the total employees 12,210 in 44 enterprises, 8829 are male and 3381 are female. In terms of percentage, women’s participation is much lower (28 %) in comparison to men’s participation (72 %). One of the reasons for the low number of women’s participation in the workplace is lack of gender friendly environment to encourage women’s participation. Also lack of division of work burden women with double and triple work responsibility. In addition to low number of women in economic sector, their participation is insignificant in decision-making. One of the reasons of women’s insignificant participation in higher positions is that they lack skill confining them to jobs such as helpers and cleaners. The study reveals that only 26 percent of the establishments have given priority to recruit women in their enterprises. Likewise, only 35 percent gave priority while taking out a vacancy notice encouraging women to apply. Also only, 26 percent gave priority to promote women to higher positions and only 13 percent of establishment gave priority to hire women for productive jobs.

Special Measures is a means to achieve substantive equality. The substantive model of equality considers special measures as the most effective means to ensure de-jure as well as de-facto equality. Women expressed their difficulties for not having separate toilets at workplaces. Among the women employees/workers only 52 percent of them said that they have the facility of separate toilet.

Though, the labor law provides that childcare center is a must where 50 or more women work, however, only 25 percent of the enterprises qualify under this provision. A large number, which is 75 percent of the organizations do not have childcare centers. In cases where such facilities are provided, many times an empty room is subjected to childcare, which is not functional as it lacks a nanny (dhiaama) or children friendly environment.
Many women said they are not aware that they are entitled to get breast-feeding breaks, however, they do get upon request. The women expressed their difficulty in asking for breast-feeding time fearing that they might upset the employers and in turn loose their jobs. Among the women employees, 55 percent of them said that they know that they are aware about the provision of maternity leave. However, 45 percent of them were not aware about the provision of maternity leave and one of the reasons is many of the women workers in these places were unmarried. Some enterprises provide maternity leave for 48 days and in others it is 52 days and sometimes it is only for 12 days.

Though employers acknowledge that maternity leave is a must, it was shared that it is indeed a burden to an enterprise. Many women said that they are paid equally for their work as their male colleagues in similar jobs, however, most of the time women are not employed in equal status jobs.

Also, some of the labour laws are negatively interpreted. Women are allowed to carry 45 Kgs. of weight, however, this provision has over-cautioned employers and they do not hire women in jobs that would require women to carry weight. Similarly, women are not hired for night work, as the labour law provides that generally women can be hired between 6 am to 6 pm. Also, employers viewed allowing women to work at night is risky due to the fear of sexual harassment, rape etc. Such legal provisions have further curtailed women’s employment opportunities.

In addition to the ineffective implementation of the special measures provided by labour laws, it was also evident by the study that employers avoid labour laws. The labor law provides that half an hour break should be allowed to employee/workers after five hours of work at a stretch. However, the establishment has hired workers in a five hourly shift to avoid providing an hour of rest period. Also, to avoid providing a childcare center or a Creech the number of women employee/ workers is limited to less than 50 in numbers.

Besides weak implementation of the special measures, the monitoring and supervision mechanism to follow-up on the implementation is virtually absent. The monitoring is not conducted to examine the gender concerns in the workplaces.
One of the reasons of the ineffective implementation of special measures is unawareness among the employers and employees. Among the employees/workers 53 percent said that they are not aware about the Labor Act and their labor rights. And 37 of them said that though they have heard of Labor Act, they do not understand it clearly and are unaware of their rights. Though most of the employers stated that they are aware of labor laws only 51 percent said that they are aware of few women friendly provisions provided by the laws.

Trade Union’s have also been working for women’s right, however, they have not been able to extensively cover the private sector. Among the employee/workers interviewed 40 percent of them said that they are involved in trade union, whereas 52 percent of them said that they do not have trade union in their enterprises. Also, women have poor representation in collective bargaining and also women’s concerns have not been raised through collective bargaining.

Sexual harassment in the workplace is a persistent problem. Among the women employees/workers 58 percent of them said that they have faced sexual harassment. Though the problem is prevalent, 86 percent of employers said that they do not have a policy against sexual harassment while, 12 percent said that though they do not have a formal sexual harassment policy, they have informal mechanism to address sexual harassment in their workplace.

To economically empower women, the challenges are several. Some of the provisions of the labour laws are protectionist towards women rather than rights based. Also, they are inconsistent with the international human rights instruments. The maternity leave provided by the labour laws is inconsistent within the national laws itself as the Labour Act, 1991 provides for 52 days of maternity leave and the Labour Rules Relating to Tea State, 1993 provides for 45 days of maternity leave. The maternity leave provided by these laws do not meet the standard provided by the ILO Convention on Maternity Practices (C 183) which, provides for not less than 14 weeks of maternity leave (98 days). Also, the labour laws reinforce gender stereotyping. Provisions of labour laws such as a facility for child care center only in enterprises employing 50 or more women employers reinforces the notion that childcare is only a woman’s responsibility and not a man’s. Also, the labour laws have protective measures for women, a provision provides normal working hours for women from 6 am to 6 pm, discouraging employers from hiring women for night work. Moreover,
arguing to protect women, the Foreign Employment Act, 1986, restricts women from going to the Gulf countries for employment, which resulted in illegal migration, thereby making women vulnerable to exploitation and trafficking.

Though provision for monitoring and supervision is provided under the labor act, the implementation is weak in absence of adequate human resources allocated in the labor office. Also, monitoring and supervision is focused on health and safety measures and not for gender concerns.

Biasness towards married women is also evident in the private sectors where employers prefer hiring an unmarried woman as they think unmarried girls are less occupied with their household duties. Women’s employment is further constricted as they are confined into specific jobs for example women are generally not favoured in jobs that involved carrying weight, or night work etc. Women are confined into stereotypical jobs that are related to teaching or nursing. Also, steel factories are devoid of women employee/workers.

Women’s access to resources is weak. Though the Eleventh Amendment to the Country Code ensures the rights to property for women, data revels that still women are not been able to exercise the rights. In partition cases, among the 88 decided cases, which were filed by women, only in 42 percent of the cases the plaintiff received property share as per their claim. And, in 25 percent women receive partial property share, whereas in 5 percent of the cases the plaintiff did not receive any share in property. In divorce cases, among the 65 cases, only 11 percent of the cases were decided with share in property for women, 3 percent with maintenance, whereas majority of the cases i.e. 66 percent of the cases were decided only for divorce where the plaintiff women did not receive any share of property or maintenance from their husband.

Budget allocation also clearly reflects that government has not been able to take women’s economic empowerment seriously. The budget for women’s economic empowerment is almost absent. Moreover, budget for women-only programs has been very low in Nepal. For example, of the total budget for 2003/04 women specific programs accounted for 2.05 per cent only.

The rules of economic and trade liberalization are stacked against women workers. The Agreement on Textiles and Clothing (ATC) expired on January 1, 2005, as a result, Nepalese garment industries, which provided employment
opportunities to thousands of women are in crisis. The government has not taken any serious step to find an alternative market for garment products in which the private sector in Nepal has made heavy investment. Moreover, the country’s ongoing conflict has also been seriously affecting the economic sector. Resultantly, the declining status of private sector will pose a serious threat against the employment of thousands of women and men.

The study reveals that the problems in the workplace are persistent and affect women’s health and right to decent workplace. It is therefore imperative to address these problems to ensure economic rights of women. It is important to monitor and supervise the workplaces to ensure worker’s rights making timely interventions. Survey, questionnaire, interview, observations can be used as method to monitor for the gender concerns. Trained human resources are important to sensitively carry out monitoring and provide recommendations. Importantly, budget needs to be allocated adequately giving importance to programmes for women on training, education, generating employment opportunity etc. Training programmes for women needs to be provided in a regular basis. Foreign employment could be a strong option for women as an alternative job and measures need to be taken for safe working conditions in foreign country.

In today’s dominant patriarchal society, strategic policies are needed to promote women’s role in different sectors. One of the strategies can be providing tax exemption to enterprises who hires certain percentage of women or who take actions to promote women in decision-making roles, or in more productive roles etc. Also, legal intervention ensuring twenty-five percent of fee exemption for women for both registration and renewal of private firms, company, security transaction agent, organizations, co-operatives, immovable property etc could motivate women entrepreneurs for business. Similarly, provision for banks and financial institutions to provide better interest rates on deposits made by women could be enforced.

Sexual harassment in the workplace is a persistent problem; this needs to be addressed by developing a law and a workplace policy. Also, Paternity leave needs to be provided to share responsibility of reproductive functioning. Providing paternity leave will also help in breaking the stereotype that only holds women responsible for reproductive functioning. The protectionist and
inconsistent labour laws need to be amended and replaced by laws that meet the international human rights standard and are rights-based. To ensure proper implementation of the labour laws actions need to be taken in the form of warning or fine against establishments that have neglected the implementation of Labour Act.

Nepal needs to ratify the ILO Convention on Maternity Protection (C 183) and ensure adequate maternity leave. Also, the Convention on Workers with Family Responsibilities Convention, 1981 (C 156) needs to be ratified to ensure women’s right to work to the extent possible, without conflict between their employment and family responsibility.

Placement services need to be developed to provide women with information on job vacancies. Also, the placement service will provide guidance in selecting and applying for a job. The ten yearly census study needs to be more concrete in terms of data generating and include four-digit data recording that classifies women’s status in different categories.

Media can be a strong tool to change the stereotyped perception and behaviour towards women. Advertisements in reversal roles should also come through media, showing men taking care of the house or the wife.

Many women in Nepal are illiterate and uninformed of their rights. It is therefore, common that these women are incapable to claim their right to work and right in work. Women are forced to endure discrimination and violation of their rights in absence of strong government mechanisms. Also, the private sector is fighting against the impact of conflict in the country. Their survival and their capacity to provide all kinds of measures in the workplace are questionable. In this background, the role of concerned stakeholders is imperative to ensure encouraging environment for women’s economic empowerment through advocacy, formation of laws that are rights-based and implementation of the laws and its monitoring, and promoting gender friendly environment.
1. Introduction

1.1 Background

Equitable socio-economic development has been given a top priority in the international agenda. Disadvantaged groups, silent in the past, are now demanding for equitable access to resources, livelihood and opportunities for development.¹ Also, as global economic development progresses, it is imperative not only that disadvantaged group especially women are able to share in the material and other benefits associated with increased economic activity, but that they are also simultaneously empowered, enabled, and encouraged to take up greater roles in national economic development as well as higher levels of participation across all strata of society and in all facets of public and private life.² In reality, there are considerable differences in women’s and men’s access to and opportunities to exert power over economic structures in their societies. In most parts of the world, women are virtually absent from or are poorly represented in economic decision-making, including the formulation of financial, monetary, commercial and other economic policies. Since it is often within the framework of such policies that individual men and women make their decisions, inter alia, on how to divide their time between remunerated and unremunerated work, the actual development of these economic structured and policies has a direct impact on women’s and men’s access to economic resources, their economic power and consequently the extent of equality between them at the individual and family levels as well as in society as a whole.³

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² See http://www.worldbank.org/gender/overview/ssp/home.htm; “The absence of women in economic policy formulation can only reinforce gender-blind policies. Given that all macroeconomic policy is gendered and neo-liberal policy has distinct impacts on gender, class, age, education level, and ethnicity, gender analysis within all policy and project design is imperative to guaranteeing women’s rights and ensuring that women benefit from development.”
³ Beijing Declaration and Platform for Action with the Beijing + 5 Political Declaration and Outcome Document, 2001 pg. 93.
The National Human Development Report, 2004, states that the component of economic empowerment necessarily involves the distribution of capital and of income generating opportunities. While poverty and economic vulnerability cannot be reduced without strong private sector activity, economic growth cannot become sustainable unless it is broad-based and roughly egalitarian. In short, it is self-defeating to exclude such groups as women and Dalits from equitable engagement in productive employment and other income-generating activities.

Discrimination in education and training, hiring and remuneration, promotion and horizontal mobility practices, as well as inflexible working conditions, lack of access to productive resources and inadequate sharing of family responsibilities, combined with a lack of or insufficient services such as child care, continue to restrict employment, professional and other opportunities and mobility for women and make their involvement stressful.  

Growing GDP alone simply cannot be the goal of developing nations, and economic growth must take place hand-in-hand with efforts to secure the rights of women.
Gender Friendly Environment in the Workplace

The Constitution of the Kingdom of Nepal and various international human rights instruments guarantee women the right to an equitable, safe, and healthy working environment. However, de-facto exercises of these rights are absent. Assertion of those rights is difficult in presence of several challenges in the country.

The society in Nepal is patriarchal, and women’s lower status is reflective of the dominant patriarchy. Women in Nepal have little access and control over economic resources and their participation in the economic sectors is minimal. According to Nepal Human Development Report, 2004 only 18.75 women are in professional jobs and 12.71 percent are in administrative jobs. Women have only limited access to resources and only limited control over those they can access. Of the total landholdings, females own only 8.1%.  

According to the Nepal Living Standard Survey, 2003-2004, there are 72 percent of male wage earners in non-agriculture while only 36 percent of female wage earners are in this sector. Both in agricultural sector and non-agricultural sector, there are noticeable gender differences in daily wages. In agricultural sector, male receive Rs. 68 in Cash and Rs. 32 in kind, Women receive Rs. 48 in cash and Rs. 29 in kind. In non-agricultural sector men receive 122 in cash and 42 in kind and women receive 85 in cash and 40 in kind.

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Figure 1 Percentage of the Women in Total Labour Force


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9 Ibid., pg. 55.
Discrimination based on patriarchal structures has resulted in stripping the dignity, self-respect and confidence of the majority of Nepalese women, a particularly important population segment because it cuts across all groups. The Constitution of 1990 stipulates non-discrimination and equality as fundamental rights. However, other state laws including the Constitution still relegate women to inferior status. Literacy rate of women is 42.8 percent less than that of men while maternal mortality rate is one of the highest in the region.  

Women have very limited access to and control over resources, and their representation in the government and political parties is low.

Despite the subordination and inequality women are slowly moving towards empowerment. The political process, economic activities and social mobilization are slowly but clearly supporting women to come out of exclusion.

Over the last two decades, increasing numbers of women have been entering the workforce around the world, particularly in Asia and the Pacific. In order for this expansion of the global labor force to produce meaningful improvements at a societal level, women must have access to gender-friendly working environments that enable them first to realize their potential contributions to society and second, to maximize the economic benefits conferred to them and to their families by their employment.

It is imperative that working women have access to gender-friendly working environments so that they can maximize their economic and advancement opportunities. In addition, the creation of safe, healthy, fair and equitable working environments can help entice more women to join the organized labor force and leave exploitative, unremunerated work situations. Over the long term, such a transition from unpaid to paid labor will be crucial to

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Gender Friendly Environment in the Workplace

It is imperative that working women have access to gender-friendly working environments so that they can maximize their economic and advancement opportunities.

the empowerment and advancement of Nepali women, and to national development in general. However, the women that have already joined the labor force need to have their rights protected as well. A gender friendly working environment will have measures in place to protect the health and safety of woman workers, including reproductive health and ensures non-discrimination in hiring, promotions and remunerations prohibiting sexual harassment.

The Labor Laws in Nepal have provided some special measures for women with objectives to create gender friendly environment and encourage women’s participation in economic sector leading them to their economic empowerment. However, data shows that women’s participation is low and that the implementation of the special measures provided by the labor act is questionable. This study therefore, have examined the status of gender friendly environment in the workplace to provide recommendation and advocate for women's economic empowerment.

1.2 Scope and Purpose of the Study

1.2.1 Main Purpose
- To examine the status of gender friendly working environment.

1.2.2 Specific Purposes
- To examine the implementation of the Labor laws with special reference to the Special Measures for women provided by the laws.
- To examine the existing policies and international human rights instruments relevant to ensuring women's economic rights.
- To identify how employers in different workplaces perceive women's participation at work and also collect recommendations from them to
Gender Friendly Environment in the Workplace

enhance women's economic participation in various employment sectors.

- To identify the challenges women face in workplaces and provide recommendations to address these challenges.
- To provide recommendations for creating gender friendly environment in the workplaces.

1.3 Research Methodology

The research sample, field sites, tools of data collection, and limitations of the study are as follows:

1.3.1 Respondent Samples

The groups studied in this research consists of 42 employers/managers, 48 women employees/workers and 20 key informants consisting of trade unions, ministries, departments, labor offices, business associations, education associations, and civil society representatives. (See Annex I and II for the list of key informants and enterprises. The names of employee are not indicated for confidentiality purposes). As it was a pilot study 110 samples were purposively selected for this study.

1.3.2 Process of Sampling

The enterprises were selected through random sampling process from the lists provided by the Labour Offices of Biratnagar and Kathmandu.

1.3.3 Field Sites Studied

Biratnagar and Kathmandu Valley

1.3.4 Tools of Data Collection

- Primary data was collected through structured interviews, conducted with 110 sample respondents from Biratnagar and Kathmandu.
- Secondary data on which the study is based includes review of national laws, polices and international human rights instruments and research reports.
1.4 Limitations of the Study

The report is based on a small sample size of 110, from Biratnagar and the Kathmandu Valley. The findings of the study are, therefore, more indicative than definitive about the gender friendly status in the workplace in Nepal. Quantitative data are presented in percentage in pie charts. Qualitative analysis is based on a representative cross-section, including employers, women employees and key informants. The study is conducted only in private formal sector and thus has not included informal sector and civil service sector.
2. Human Rights Instruments and State Obligations to Ensure Gender Friendly Environment in the Workplace

Nepal is a party to sixteen international human rights instruments, nine ILO Conventions and is committed to various declarations that prohibit discrimination on the basis of sex. These instruments oblige the state to promote equality among the sex and guarantee right to work, right to economic development and right to participate in the decision-making. The Nepal Treaty Act, 1990 provides that provision of any treaty to which Nepal is a party prevails over the national law in case of conflict between the two. This chapter discusses on the ratified international human rights instruments and state obligations under them to ensure women’s economic rights.

2.1 International Human Rights Conventions

2.1.1 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979

The UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979 obliges the state parties to take measures for substantial equality of women. Article 1 of this Convention defines discrimination against women and Article 2 obligates state parties to take all appropriate measures to eliminate discrimination against women by any person, or enterprise. Article 3 obligates state parties to adopt measures, particularly in the field of economics, designed to “ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms.

\[14\] UN Convention on the Elimination of All Forms of Discrimination against Women Article 2 (e).
Gender Friendly Environment in the Workplace

on a basis of equality with men."  

Article 4 of the Convention provides approval for affirmative measures designed to achieve substantive equality, and expressly states that such special measures are not to be construed as discriminatory.

Article 11 of the CEDAW Convention contains the specific and significant provision relating to women’s employment. It requires state parties to eliminate discrimination against women in order to ensure the same right between men and women in employment and benefit including right to protection of health.

15 Ibid Article 3.
16 Ibid Article 4 (1): “Adoption by States Parties of temporary special measures designed aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards...”
17 Article 11
1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:
2. The right to work as an inalienable right of all human beings;
   (a) The right to the same employment opportunities;
   (b) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
   (c) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of quality of work;
   (d) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.
3. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:
   (a) To prohibit subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
   (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
   (c) To provide special protection to women during pregnancy in types of work proved to be harmful to them.
Gender Friendly Environment in the Workplace

and safety in working conditions and safeguarding of the function of reproduction.

CEDAW imposes an obligation on States to eliminate all types of discrimination against women, and then applies this general principle to the employment context. Thus, CEDAW represents an unambiguous mandate for States to take all affirmative steps necessary to ensure the substantive equality of women in both treatment and opportunity in the workplace. Substantive equality of women in the employment context cannot be achieved without the elimination of all forms of sex-based discrimination, including sexual harassment, that currently act as barrier to women’s abilities to seek employment, enjoy a safe and healthy working environment, and achieve advancement within a business enterprise through promotions and pay increases.

General Recommendations of CEDAW Committee

General Recommendation No. 13 of the CEDAW Committee deals with Equal Remuneration for Work of Equal Value. The Committee recommends that States Parties consider the “study, development and adoption of job evaluation systems based on gender-neutral criteria that would facilitate the comparison of the value of those jobs of a different nature, in which women presently predominate, with those jobs in which men presently predominate...”

The General Recommendation No. 19 of CEDAW Committee has clearly stipulated that gender-based violence is a form of discrimination that seriously inhabits women’s ability to enjoy rights and freedoms on the basis of equality with men. The General Recommendation No. 19 also recommends to the governments to take

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18 Ibid at 2.
effective measures including strong penal sanctions, civil remedies and compensatory provisions to protect women against sexual harassment in the workplace.

**Second and Third Government Report (Combined) on CEDAW Convention, 2003**

The Second and Third Periodic Report of Government of Nepal on CEDAW Convention points out several legislative gaps and persisting problems in establishing gender friendly working environments such as disparity between the salary of women and men, difference in working hours and restriction on foreign employment opportunities to women.

**Shadow Report to Second and Third Periodic Report (Combined) of Government on CEDAW, 2004**

The Shadow Report on the Second and Third Periodic Report of the Government of Nepal notes that although the CEDAW Committee’s Concluding Comments of Initial Report to CEDAW urged HMG/Nepal to prohibit wage discrimination, and the prevailing labor law has provisions establishing equal wages between men and women, these provisions have not been adopted in the informal sectors of the labor market. The Shadow Report further points out that although the Tenth Plan “has adopted strategies to empower women in order to maximise involvement in the areas of work[,]... implementation of these policies is yet to be seen.”

**Concluding Comments under CEDAW**

**Concluding Comment on Initial Government Report**

In the context of protecting, promoting and fulfilling women’s economic rights, the CEDAW Committee in its Concluding Comments on the Initial Report of the Government of Nepal on

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21 Ibid.
CEDAW Convention urged the government to amend, as a matter of priority, the discriminatory laws relating to property and inheritance.\(^{22}\) It urged the government to introduce and implement policies and programs for vocational and skill development training for income generation of women especially for marginalized rural women.\(^{23}\) Showing its concerns on women's concentration in low-skilled jobs, gender disparity in wages and unequal income distribution caused by concentration of vast majority of women in unpaid family work, it urged the government to adopt labor legislation prohibiting wage discrimination, develop special credit facilities for women to establish small enterprises and introduce special measures to encourage women to participate in all sectors of employment.\(^{24}\)

**Concluding Comments on Second and Third Periodic Report (Combined)**

Responding to the government's second and third periodic report the committee has shown its concerns at the persistence of discriminatory cultural practices and stereotypes relating to the roles and responsibilities of women and men in all areas of life, and by deep-rooted patriarchal attitudes and conduct based on the assumed superiority of men in the public and private spheres and the strong perception that women are weak and vulnerable, which undermine women's social status and are an obstacle to the implementation of the Convention.\(^{25}\)

The Committee urged the government to intensify its efforts to eliminate discriminatory cultural practices and stereotypes and encourage men to share family responsibilities and to take action to change stereotypical attitudes and perceptions. Furthermore, it recommended that the media be encouraged

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\(^{23}\) Paragraph 25 of CC to Initial Report.

\(^{24}\) Ibid

\(^{25}\) Paragraph 28 of CC to Combined 2nd and 3rd Report.
to project a positive image of women and of the equal status and responsibilities of women and men both in the private and public spheres.  

2.1.2 International Covenant on Economic, Social, and Cultural Rights (ICESCR), 1966

The International Covenant on Economic, Social, and Cultural Rights (ICESCR), adopted by the UN in 1966, obligates State Parties “to ensure the equal right of men and women to the enjoyment of all economic, social, and cultural rights set forth in the [ICESCR].” The ICESCR recognizes the right to work, “which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts...” States Parties also have an affirmative duty under the ICESCR to implement measures including “technical and vocational guidance and training programs, policies and techniques to achieve steady economic, social, and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.”

The Covenant guarantees basic rights regarding employment conditions and remuneration. Article 7 of the Covenant acknowledges the right to “fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work...” Article 7 specifically recognises a right to “safe and

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26 Paragraph 29 of CC to Combined 2nd and 3rd Report.
27 UN International Covenant on Social, Economic, and Cultural Rights (1966), Article 3.
28 Ibid Article 6(1).
29 Ibid Article 6(2).
30 Ibid Article 7(a)(i).
healthy working conditions,” as well as a right to “[e]qual opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.”

The ICESCR, thus, provides support, with the weight of international law, for the substantive equality model of women’s empowerment. Economic rights are both basic human rights and fundamental freedoms, and therefore all available means must be utilised to establish gender-friendly working environments that protect and safeguard these rights of women.

2.1.3 ILO Convention on Equal Remuneration for Men and Women for Work of Equal Value, 1951 (C 100)

The Equal Remuneration Convention for men and women for work of equal value, 1951 provides that each member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value. Nepal ratified this Convention in 1976.

2.1.4 ILO Convention on Discrimination (Employment and Occupation), 1958 (C 111)

The ILO Convention on Discrimination (Employment and Occupation), 1958 provides that each member for which this Convention is a party declares a national policy designed to promote, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination.

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31 Ibid Article 7(b).
32 Article 7(c) of the ICESCR.
33 Nepal ratified the Convention in October 6, 1976.
34 Article 2 (1) of the ILO Convention No 100 (C100) Equal Remuneration Convention, 1951.
discrimination in respect thereof. Special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labor Conference shall not be deemed to be discrimination. Any Member may, after consultation with representative employers’ and workers’ enterprises, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognized to require special protection or assistance, shall not be deemed to be discrimination. Nepal ratified the Convention in 1994.

2.1.5 ILO Convention on Night Work 1990 (C 171)

The ILO Convention on Night Work, 1990(C 171), provides measures to be taken to ensure that an alternative to night work is available to women workers. The convention provides that specific measures required by the nature of night work shall be taken for night workers in order to protect their health, assist them to meet their family and social responsibilities, provide opportunities for occupational advancement, and compensate them appropriately. Such measures shall also be taken in the fields of safety and maternity protection for all workers performing night work. However, this convention is not ratified by Nepal.

2.1.6 ILO Convention on Maternity Protection, 2000 (C 183)

The ILO Convention on Maternity Protection, 2000(C 183) provides that a state party should provide maternity leave to women employees/ workers of not less than 14 weeks. The

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36 Article 2 of the ILO Convention on Discrimination (Employment and Occupation) (C111).
37 Article 5 (1) (2) of the ILO Convention on Discrimination (Employment and Occupation) (C111).
38 Article 3 of the ILO Convention on Night Work, 1990(C 171).
39 Article 4 of the ILO Convention on Maternity Protection 2000 (C 183). However, Nepal is not party to the Convention.
Gender Friendly Environment in the Workplace

Convention also requires each member state to adopt appropriate measures to ensure that pregnant or breastfeeding women are not obliged to perform work which has been determined by the competent authority to be prejudicial to the health of the mother or the child, or where an assessment has established a significant risk to the mother’s health or that of her child.\(^{40}\)

The General Conference of the International Labor Organization (ILO) has recommended amending the above provision with minimum of 18 weeks maternity leave and has also recommended flexible extension provision in event of multiple births.\(^{41}\)

2.1.7 ILO Convention on Workers with Family Responsibilities, 1981 (C 156)

This convention has, with a view to creating effective equality of opportunity and treatment for men and women workers, obliged each member to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities.\(^{42}\) Though Nepal has yet to ratify this convention, this convention is important in regard to promoting women’s employment in society where women are deprived of employment opportunities due to heavy family responsibility.

2.2 Declarations

2.2.1 Universal Declaration of Human Rights, 1948

This Declaration provides that everyone has right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.\(^{43}\)

\(^{40}\) Article 3 of the ILO Convention on Maternity Protection 2000 (C 183).


\(^{42}\) Article 3 of the Workers with Family Responsibilities Convention, 1981 C156.

\(^{43}\) Article 23(1) of the Declaration.
Gender Friendly Environment in the Workplace

The Declaration also provides that everyone has the right to equal pay for equal work, \(^{44}\) right to just and favorable remuneration, \(^{45}\) and right to rest and leisure, including reasonable limitation of working hours. \(^{46}\)

**2.2.2 Beijing Platform for Action and Beijing Declaration, 1995**

The Fourth World Conference on Women held in Beijing\(^{47}\) adopted the Beijing Platform for Action (BPFA). The BPFA adopted Women and Economy as one of the critical areas of concern. It requires government to enact and enforce legislation to guarantee the right of women and men to equal pay for equal work or work of equal value; eliminate discriminatory practices by employers and take appropriate measures in consideration of women’s reproductive role and functions and to reform laws or enact national policies that support the establishment of labor laws to ensure the protection of all women workers including safe work practices, the right to organize and access to justice. \(^{48}\)

Similarly, the BPFA requires government, employers, employees, trade unions and women’s enterprise to implement and enforce laws and Rules and encourage voluntary code of conduct that ensure the international labor standard; to enact and enforce law and introduce implementing measures to prohibit discrimination on the ground of sex in relation to access to employment, conditions of employment including training, promotion, health and safety, termination of employment and social security benefits to workers. \(^{49}\)

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\(^{44}\) Article 23(2) of the Declaration.

\(^{45}\) Article 23(3) of the Declaration.

\(^{46}\) Article 24 of the Declaration.

\(^{47}\) The government delegation from Nepal was headed by Hon’ble Ms. Sahana Pradhan, Minister, Ministry of Women, Children and Social Welfare.


\(^{49}\) Beijing Declaration and Platform for Action with Beijing + 5 Political Declaration and Outcome Document, UN 2001, PP 105-106.
Gender Friendly Environment in the Workplace

**Beijing Outcome Document, 2000**

The Beijing + 5 review resulted in the Outcome Document that provided to facilitate employment for women through, *inter alia*, promotion of adequate social protection, simplification of administrative procedures, removal of fiscal obstacles, where appropriate, and other measures, such as access to risk capital, credit schemes, micro-credit and other funding, facilitating the establishment of micro-enterprises and small and medium-sized enterprises.

The Outcome Document has also provided to promote and protect the rights of women workers and to take action to remove structural and legal barriers as well as stereotypical attitudes to gender equality at work, addressing, gender bias in recruitment; working conditions; occupational segregation and harassment; discrimination in social protection benefits; women’s occupational health and safety; unequal career opportunities and inadequate sharing, by men, of family responsibilities.

**Beijing + 10 Review, 2005**

A review process on Beijing Platform for Action and Beijing Declaration was held during the 49th Session of General Assembly at United National through the Commission on the Status of Women. The 49th session adopted a resolution on Economic advancement for women.

The resolution urges Member States to eliminate discrimination against women in labor markets, employment practices, and the workplace, providing equal access for women in occupational categories and sectors where they are under-represented, and

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50 Beijing + 5 Review was held in the United Nations in New York in 2000, where the Progress made after the Beijing Conference in China in 1995 was reviewed.
51 Beijing Declaration and Platform for Action with Beijing + 5 Political Declaration and Outcome Document, UN 2001, PP 222.
providing equal opportunities with respect to the right to organize and participate in labor unions and collective bargaining, employment conditions, career development opportunities, and take action to remove structural and legal barriers, as well as stereotypical attitudes to gender in work and training.

Member States are also called to adopt temporary special measures where needed aimed at accelerating de facto equality of opportunity between men and women in all economic and employment sectors.

Further it calls on Member States to recognize, develop and promote policies, including workplace policies and other supports such as maternity and parental benefits and leave, child care, and care for other dependents, that facilitate the reconciliation of employment and family responsibilities that recognize the importance of the value of non-market contributions that individuals and families make to society and the economy, encouraging men to share equally with women household, child care and other care-giving responsibilities, and also ensuring that women have equal rights to social security and other entitlements.

2.2.3 Declaration on the Elimination of Violence against Women, 1993

Declaration on the Elimination of Violence against Women states that women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, *inter alia*: the right to life, the right to equality, the right to liberty and security of person, the right to equal protection under the law, the right
to be free from all forms of discrimination, the right to the highest standard attainable of physical and mental health, the right to just and favourable conditions of work, the right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.

2.2.4 Millennium Development Goals (MDGs) 2000

The eight Millennium Development Goals (MDGs) are an agenda for reducing poverty and improving lives that world leaders agreed on at the Millennium Summit in September 2000. For each goal one or more targets have been set, most for 2015. The Goal No. 3 of the MDGs is on Promotion of Gender Equality and Empowerment of Women. Nepal needs to develop targets and indicators under this goal, including targets to ensure women's economic empowerment.

54 Declaration on the Elimination of Violence against Women, 1993.
3. Analysis of National Policies to Ensure Gender Friendly Environment in the Workplace

3.1 The National Labor Policy, 1999

One of the objectives of the National Labor Policy 1999 is to encourage the enterprises to increase the employment of woman and handicapped persons in employment. For this, special programs shall be conducted for skill development of women and handicapped persons and shall be encouraged to associate them in employment as per their skill and ability.

The labour policy provides sectoral working policies relating to training, employment and skill development which include continuation of self-employment programs for working women; special priority to women skill development training related to tourism industries; and special priority in technical and skill-oriented education in order to eliminate gender discrimination in employment. One of the important recommendations of the Labor Policy is to provide tax benefits to industries that give employment opportunities to women. 55 However, this policy is vague as the criteria and modality of the tax incentive to be given to the enterprises is not clear. This policy does not include any specific policy of creating gender-friendly working environment for women.

The policy is more focused in increasing women’s presence in employment but not on creating conducive workplace environment. Only giving technical and vocational trainings to women does not eliminate gender gaps in employment. Employers also needs to be provided with training and sensitization programs. But the National Labor Policy has failed to give attention in this direction.

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55 The policy shall be adopted to eliminate gender discrimination on employment and to include women into technical and skill full educational and training programs.
Gender Friendly Environment in the Workplace

3.2 Tenth Plan 2002-2007

In analyzing Nepal’s current economic situation, the Plan notes that, “Women’s active participation in paid employment is limited. Women currently account for only a third of the paid labor force. And when they enter the labor market, their wages continue to be lower than men’s for the same type of work.”

The Tenth Plan stipulated various policies to address labor related issues and to empower women. It provides that labor related laws, process and intuitional aspects will be reformed as required to safeguard the rights and interests of laborers. Importantly, the plan has adopted a policy to take necessary measures to encourage those industries with limited woman employees to increase women’s employment. The Tenth Plan also provides that laws and policy against sexual harassment in the workplace needs to be enforced.

3.3 National Plan of Action on CEDAW, 2003

The government has framed a national plan of action on CEDAW. Under the Article 11 of the CEDAW Convention the plan consists of polices to conduct a research to understand the reasons of women’s low economic participation, to bring employment programs including disabled women, marginalized and disadvantaged women. In addition the plan has laid out activities to promote the rights of women migrate workers, strengthen national machineries to ensure the rights protected under the ratified international human rights

Gender Friendly Environment in the Workplace

instruments, to promote women in decision making, create gender awareness for employers, training for women, and to address sexual harassment in the workplace in Nepal.  

3.4 National Human Rights Action Plan, 2004

The National Human Rights Action Plan developed by the government has specific activities under the section on "labor and employment." The plan proposes to review and amend employment and labor related laws to make the laws consistent with the international norms and standard, raise awareness regarding labor rights, provide skill training to people living below poverty line, establish standards of occupational safety, fix minimum wage rate for un-unionized laboure, expand labor courts etc.  

But the plan fails to bring specific programs to implement women's economic rights including right to employment. But the mere rhetoric of bringing gender equality by amending law does have no significance without introducing specific programs that promote women's economic rights.

3.5 National Plan of Action on Gender Equality and Women Empowerment, 2004

The National Plan of Action provides that women's role is imperative for the overall national development and acknowledges that women's contribution for national economy has not been correctly evaluated. The spirit of the National Plan of Action is to promote and fulfill women's human rights by effectively implementing the ratified human rights

Under the Article 11 of the CEDAW Convention the plan consists of polices to conduct a research to understand the reasons of women's low economic participation.

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Gender Friendly Environment in the Workplace

The National Plan of Action has developed the Plan on the basis of twelve critical areas of concerns identified in the Beijing Conference in 1995. Under the section on Women and Economy, the plan provides for a committee to amend the discriminatory laws against women, provide legal counseling for women who are deprived of property rights, include in textbooks a chapter on economic discrimination between men and women, provide informal education on equal economic rights of men and women, provide non requirement of dhito (collateral security) in taking loan, and provide modern skill based training for unemployed women, and provide special measures to increase women's participation in employment.
4. Analysis of National Laws Relevant to Gender Friendly Environment in the Workplace

The Constitution of the Kingdom of Nepal, 1990 guarantees basic human rights to women. Under the fundamental right to equality, law prohibits discrimination on the basis of “religion, race, sex, caste, tribe or ideological conviction.”\(^{58}\) The Constitution allows government to implement affirmative measures for the betterment of disadvantaged groups including women, thereby providing the basis for substantive model of equality.\(^{59}\) In Directive Principles of the State, the Constitution provides that the state shall pursue a policy for female participation to a greater extent, in the task of national development by making special provisions for women's employment.\(^{60}\)

The following matrix gives a glimpse of various provisions in labor laws that are neutral, special, and discriminatory. Practices have shown that gender-neutral law does not ensure equality, as it is unable to perceive that women are different and they need special measures. The sameness approach cannot protect and promote women’s economic rights as women have been in disadvantaged position historically.

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58 Article 11(2) of the Constitution (1990) reads “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 Proviso of Article 11(3) of the Constitution (1990) reads “Provided that special provisions may be made by law for the protection, advancement of women, children...”.
60 Article 26(7) of the Constitution (1990).
Gender Friendly Environment in the Workplace

4.1 Provisions Relating to Gender Friendly Working Environment

The Nepalese law provides some special measures for woman workers/employees while engaging in work. These facilities include maternity leave, breast-feeding time, child-care room, equal wage and weight limitation for women to carry load.

Maternity Leave

The Labor Act provides employees/ workers the facility of leave including maternity leave. The Labor Rules provides maternity leave of 52 days with full pay for women workers/employees. Women may use this leave for both pre and post delivery period. But the duration of this leave is less for women employed in tea estates. The Labor Rules Relating to Tea Estates provides that pregnant woman workers or employees in a tea estate are

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entitled to a maternity leave of 45 days only. This Rule is irrational not only because it discriminates amongst women/employees workers but also because it provides shorter duration of maternity leave to women who have to work standing most of the time in tea garden. It is not only difficult but also affects a woman’s health.

**Mutual Consent to Work**

In an effort to make workplace a safe place for women, the law requires the employer recruiting women to report to the concerned Labor Office as soon as possible. Woman workers may be engaged in works similar to men by making appropriate arrangements in mutual consent of the employer and the employee.

**Special Arrangement for Security**

Employers are liable to arrange special security measures to women workers/employees while engaging them in works normally from 6 o’clock in the morning till 6 o’clock in the evening. An employer may recruit women workers/employees in hotel or travel agency in work at any time by making special arrangement of security according to the nature of work.

**Breast-feeding and Child-care**

The Labor Act provides that employers must provide time for breast-feeding as per requirements to women workers/employees with suckling babies. Labor law requires employers hiring more then fifty women to make arrangement for a healthy room for children. Moreover, employers are

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64 Rule 4(3) of the Labor Rules, 1993.
65 Section 5 (3) of the Labor Act, 1991.
67 Section 48 (A) of the Labor Act 1991.
68 Section 42 (3) of the Labor Act 1991.
69 Section 42 (1) of the Labor Act 1991.
Gender Friendly Environment in the Workplace

The Labor Rules prescribe the maximum weight of load to be carried by women as 45 kg and it is 55 kg for men. Obliged to make arrangement of a trained nurse and necessary toys for children.  

Special Provision for Carrying Weight

Labor law regulates the maximum weight of load to be lifted or carried by woman. The Labor Rules prescribe the maximum weight of load to be carried by women as 45 kg and it is 55 kg for men. Similarly, maximum weight limit for a minor girl of 16-18 years of age group is prescribed as 20 kg, whereas it is 25 kg for male counterparts.

Equal Remuneration

The Constitution guarantees that there shall be no discrimination in remuneration between man and woman for the same work. In the same line, the Labor Rules provide that equal pay must be provided to man and woman in work of same nature in an enterprise.

Separate Toilet

As an effort to create a conducive working environment for women, the Labor Act requires for separate modern toilets in convenient places for women and men workers/employees.

4.2 Discriminatory Provisions

Limited Maternity Leave

Maternity leave is granted only for two times during the entire period of service. There is discrimination even in the duration of maternity leave.

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70 Section 42(2) of the Labor Act 1991.
71 Section 32(2) of the Labor Act 1991.
73 Article 11(5) of the Constitution.
75 Section 27(1)(i) of the Labor Act, 1991.
Gender Friendly Environment in the Workplace

amongst the workers/employees in tea estates and other enterprises. The duration of the maternity leave is not compatible with the international practices, which are based on ILO Convention on Maternity Protection, 2000 (C183). According to this Convention, a woman shall be entitled to a period of maternity leave of not less than 14 weeks. Moreover, the General Conference of the International Labor Organization (ILO) has recommended amending the provision with minimum of 18 weeks maternity leave and providing flexible extension provision in the event of multiple births. Nepal is not a signatory to this ILO Convention.

The Supreme Court of Nepal has issued a directive order to the Government to review the law related to maternity leave to ensure minimum standard of maternity leave to women workers/employees in the light of various provisions of international conventions and practices.

**Decision of Supreme Court on Maternity Leave**

**Directive Order to Provide for Adequate Maternity Leave**

In Adv. Prakash Mani Sharma vs. HMG/N, the petitioner filed a case against inadequate and inconsistent maternity leave, which were provided for 45 days, 52 days or 60 days in different Labor and other laws. The Supreme Court held that the Constitution of the Kingdom of Nepal, CEDAW and the CRC protect the right to reproductive health and issued a directive order to provide for measures to ensure adequate maternity leave in line with the international human rights instruments, especially the ILO Convention on Maternity Protection, 2000 that provides for 14 weeks of maternity leave.


**Place for breast-feeding not provided**

Though the law has provided break for breast-feeding for working-women, there is no provision of making arrangements of appropriate space for breast-feeding.

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Gender Friendly Environment in the Workplace

Denial of Foreign Employment

Generally, women are restricted from foreign employment, as the law does not allow recruiting agencies to provide foreign employment to women without the approval from government as well as the guardian's consent. Therefore, a woman needs to take government’s approval and consent from guardian to take employment abroad. This provision reinforces protectionist approach violating various rights of women on the name of protecting women from exploitation. This amended provision of requiring consent of parents and approval of government is more restrictive than the earlier version.

4.3 Neutral Provisions but Discriminatory in Impact

During this study, majority of the key respondents highlighted that the labor law does not embody within itself all the required aspects of the existing dynamic society. A number of gaps especially in the area of implementation are widely noticed. In particular, provisions relating to gender issues at work places is neglected. There is a wide gap between the formal law in law books and the living law in practice. Provisions, which are neutral but having discriminatory impact is summarized as follows:

Fifty one Percent of Workers Required to Submitting Collective Demand

The Labor Act requires the signature of fifty one percent of workers/employees for submitting written demand relating to collective issues of rights, interests and facilities of workers and employees. This is the

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79 Section 74(1) of the Labor Act, 1991.
mechanism to submit collective demands to the management. In most of the enterprises, number of woman workers/employees is less than 51 percent. This mechanism neglects opportunity for women workers/employees to raise their concerns such as maternity leave, special consideration during menstruation periods, breast feeding times and places because male workers/employees may not be aware of such concerns of women workers/employees.

**Obsequies Leave**

Service Rules such as Civil Service Rules and the Health Service Rules provide obsequies leave to women employees whose husband has to perform obsequies rites but women workers/employees are not provided with such facility.

**4.4 Gaps in the Existing Laws**

**No Special Measures to Promote Women’s Employment**

In civil service laws, some special measures have been made to increase women’s participation such as age limit for entry into service is 40 years whereas, it is only 35 years in case of men. Similarly, the probation period for women is only six months as against one year for men. However, there are no such provisions to facilitate employment of women in private sector.

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80 Rule 60(1) of the Civil Service Rules, 1992.
81 Section 10(1) of the Civil Service Act, 1992.
82 Section 16 of the Civil Service Act, 1992.
Absence of Law on Sexual Harassment in the Workplace

There is no specific law to address sexual harassment in the workplace. Also, there are no procedural guideline for complaint submission and handling. As a result, there is no atmosphere to seek remedies by women in cases of sexual harassment. A report prepared by FWLD for ILO showed that 53.84 percent of woman workers or employees themselves have experienced sexual harassment in workplaces. In the writ filed by Pro Public, FWLD and Sathi Supreme Court has issued directive order in the name of the government to make appropriate laws to address sexual harassment in the workplace. In this context, it is imperative to have a separate and special policy to guide employers for creating healthy and gender friendly working environment for women workers/employees.

The Labour Court Decision

In Rajendra Thpaliya v. Hotel Yak and Yeti, the case was filed challenging the action of the management for given a warning letter to the employee as an action against sexual harassment, the labour court upholding the decision of the management provided opinion that sexual harassment needs to be included as a misconduct in the Labour Act and in the by laws of enterprises to provide protection against sexual harassment.

Supreme Court Decision on Sexual Harassment in the Workplace

In a case filed to address the absence of law on sexual harassment in the workplace the Supreme Court delivered a directive order to the government to take an initiative to develop appropriate laws relating to sexual

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84 Sharmila Parajuli and et. al. vs. HMG/ N and et. al., writ No. 3434 of the Year 2002.
85 Rajendra Thapaliya v Hotel Yak and Yeti, Labour Court, Decision No. 69.
harassment. The Supreme Court stated that the legal provisions are inadequate in the context of controlling sexual harassment, which is an impediment in exercise of rights to equality and freedom guaranteed by the Constitution of the Kingdom of Nepal, 1990. Moreover, Treaties Act requires that if there is no law in order to implement provisions of international treaties initiatives must be taken to make or amend laws, and it seems that it is necessary to make laws relating to sexual harassment so that obligation arising out of international treaties and Conventions could be fulfilled.

No Institutional Representation of Women

There is no special provision providing for representation of women in the Central Labor Advisory Board, which is a key advisory body of the government to make recommendations on policy matters. Similarly, no such provision is there to represent women workers in the Labor Relations Committee, which is an important mechanism for social dialogue process within enterprises. Because of these gaps in the institutional representation of women, so many concerns of working women could not have been addressed.

Gender Issues not a Matter of Concern for Inspection

The Labor Rules provide a long list of functions, duties and powers of the Factory Inspector and Welfare Officer but the Rules fail to include gender issues as concerns to be taken into account while inspecting factories by Factory Inspector and while dealing with labor issues by the Welfare Officer.

Implementation of Apprentice Act Ignored

The Apprentice Act, 1982 has been enacted with an objective of conducting trainings relating to industrial skills so that more and more peoples may be involved in industrial activities. The Act provides that the enterprises prescribed in a gazette notification by the government have to conduct training programs and the trainees have to fulfill certain conditions for taking part in trainings. Industrial apprentice is especially important where there are no appropriate provisions of giving trainings for producing competent human resources.

Industrial apprentice activities could be an effective mechanism to promote and ensure women’s employment in industrial enterprises. However, the government has never published a gazette notification to that effect. The government has not even formed the training council, which has to be formed for operations of trainings. Due to lack of government initiative many women are deprived of training activities, which is instrumental in enhancing their participation in industrial sector.

Status of Implementation of International Obligations not Publicized

Nepal has poor rating of compliance of international obligations. The government either does not send reports or it submits reports late. There is no system of dissemination of information on government obligation under the treaties amongst general public.

No Adequate Provisions for Gender Friendly Environment

Childcare center are still to be implemented and industries are avoiding legal obligations. Maternity Leave for pregnant women workers/employess
is too short then ILO C 183 provides. Different laws have different maternity leave provision and are inadequate. Women worker are still working on stereotype role, more in house keeping, reception, etc.

**Labour Court Located in Kathmandu Alone**

Under Section 72 of the Labour Act, 1991, a Labour Court has been constituted and it has been settling labour related disputes since December 18, 1995. But there is only one Labour Court in the country and it is located in Kathmandu with jurisdiction to adjudicate labour disputes all over the country. It is costly and time consuming for laborers/employees outside Kathmandu valley to file cases to the court. It is far more difficult for women laborers/employees to come to Kathmandu and to have their cases studied.

**Unfair Labor Practices**

Basically, gender friendly environment have come up as major concerns. Moreover, there is no mechanism to check informal sector. Women worker in informal sector are more vulnerable and are not getting general facilities provided by labor law such as equal pay for equal work.

There are several legislative gaps that hamper women’s increased representation in the work force. Although women may join the civil service until the age of 40, no similar provision exists in public corporations.  

Although some of the special measures undertaken to benefit workingwomen have had a positive impact, the remaining legislative gaps and insufficient implementation have severely limited the overall impact of these measures.

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91 Special Measures for Women and Their Impact, Forum for Women, Law and Development, FWLD, April 2003 at page 84.
Because women have a heavy workload in home, affirmative measures are needed to encourage them to enter into competitive employment fields. At present, there is no reservation provision for women in any government office, including the civil service.\textsuperscript{92} Likewise, there is no provision that would help working women take care of their household duties and still fulfill their job requirements.\textsuperscript{93}
5. Analysis of Gender Friendly Environment in the Workplace

5.1 Low Participation of Women in Employment

5.1.1 Participation of Women Significantly Low in Private Sector

It is evident from this study that the employment of women employee/workers in private sector is seriously low. Among the total 12,210 employees/workers in 42 enterprises, male employees are 8,829, and female are only 3,381 in numbers. The percentage of women’s participation is much lower (28 %) in comparison to men’s participation (72 %). This disparities in participation in employment also validates the data provided by Central Bureau of Statistics, 2004 where among the wage employment in non-agriculture sector 82.5 percent are men and 17.5 percent are women.94

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Gender Friendly Environment in the Workplace

Similarly, it was also revealed during the study that women's permanent status in enterprises is also seriously low. Among the women employees/workers, only 33 percent were in permanent status. Though many women have been working for several years they are still only in temporary status. Women stated that because of their temporary status they are unable to enjoy many benefits provided to permanent staff. Moreover, several women are working as seasonal workers. The seasonal work demands workers only once or twice in a year for few months. Women are unable to find jobs for the whole year round and this has posed a serious threat to the survival of these women.

5.1.2 Women's Participation Low in Existing Executive Committees in Employers Association

The given chart shows male and female ratio of existing executive committee of the leading employer's association. The chart reinforces the fact that women are virtually absent in decision-making. Very few women have been able to acquire a position in executive committee. This is hindering women's participation in influential position.

95 Section 4 (2) of the Labour Act, 1991 provides that an employee/worker shall be made permanent after a year's employment.
5.1.3 Low Participation of Women in Decision Making in the Trade Union Federations

<table>
<thead>
<tr>
<th>Name of the Confederations</th>
<th>Number of National Committee Members</th>
<th>Member Unions and Central Leadership</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>Women</td>
</tr>
<tr>
<td>GEFONT</td>
<td>35</td>
<td>3</td>
</tr>
<tr>
<td>NTUC</td>
<td>21</td>
<td>5</td>
</tr>
<tr>
<td>DECONT</td>
<td>21</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>87</td>
<td>11</td>
</tr>
<tr>
<td>Percentage</td>
<td>100</td>
<td>12.6</td>
</tr>
</tbody>
</table>


Gender Friendly Environment in the Workplace

The above table shows that the women’s participation in decision-making level of the major trade unions is significantly low. Only 12.6 percent of women are in the decision making level in comparison to 87.4 percent of men. The data is discouraging as trade unions itself have not been able to involve women to a satisfactory number.

5.1.4 Lack of Polices to Give Priority to Women in Vacancy, Nature of Work, Selection and Promotion

Figure 5  Priorities for Women Employees in Enterprises

The study revealed that only 26 percent of the establishment stated that they will consider recruiting women in their enterprises. Likewise, only, 35 percent of the enterprises published vacancies encouraging women to apply. Also only, 26 percent of the establishments prioritized in promoting women to higher positions. And only 13 percent of establishment gave priority in hiring women for substantial jobs.

Some of the establishments expressed that they should be concerned about prioritizing a company’s welfare rather than worrying over women’s participation in private sector. Such vision resultss in lack of environment for the promotion of women’s economic participation.
5.1.5 No Enterprise Policy to Promote Women in Decision Making

A company is a profit making institution and gender concerns should be government's responsibility to address.

A employer during the Interview for the Study.

Figure 6  Do you have any policy to involve women in decision making of your enterprises?

Though women's participation is increasing in the labor market as indicated by several reports, their participation in decision-making level is a major concern and a challenge. This is further aggravated by the enterprise policy, which do not have any plans to promote women in decision-making level not there is any encouragement from the government to do so. In this study, only 28 percent of the enterprises said that they have a policy to promote women in decision-making.

Though women workers are favored in garment, they are again confined only into jobs of thread cutters, cleaners, helpers etc. It is clear that the priority of the enterprises is to sustain themselves in the market rather than in issues relating to women or equality. The enterprise's development in prioritizing women's concern is plagued by the pressure to fight the everyday crisis originated by the ongoing conflict and deteriorating market situation in Nepal.
5.1.6 Women's Participation Low in Trade Union Committees

Trade unions are absent in many of the enterprises. Awareness on legal rights, negotiation for gender friendly environment are some of the issues that could be raised effectively through a trade union and absence of such mechanism hinders the progress of women as an economic actor. Among the employee/workers interviewed 40 percent of them said that they are involved in trade union, whereas 52 percent of them said that they do not have trade union in their enterprises.

“Women are compromised for jobs that are paid less, I should be teaching higher classes according to my qualifications and experience, however, I am asked to teach nursery students, I was told that women are good with children and therefore I am assigned for nursery class.”

A woman employee—During the Interview for the Study.
Women in Committees under GEFONT Affiliation

<table>
<thead>
<tr>
<th>S.N.</th>
<th>Name of Union</th>
<th>No. of Unions/Committees</th>
<th>Total No. of Organised Members in Committees</th>
<th>Women in %</th>
<th>Mechanism</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Total</td>
<td>Women</td>
<td>Men</td>
</tr>
<tr>
<td>1.</td>
<td>NIWU</td>
<td>46</td>
<td>550</td>
<td>200</td>
<td>350</td>
</tr>
<tr>
<td>2.</td>
<td>ITGWUN</td>
<td>104</td>
<td>852</td>
<td>107</td>
<td>745</td>
</tr>
<tr>
<td>3.</td>
<td>ITWAN</td>
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<td>1247</td>
<td>4</td>
<td>1243</td>
</tr>
<tr>
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<td>225</td>
<td>52</td>
<td>176</td>
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<td>5.</td>
<td>NIHWU</td>
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<td>765</td>
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<td>740</td>
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<tr>
<td>6.</td>
<td>UNITRAV</td>
<td>55</td>
<td>425</td>
<td>1</td>
<td>424</td>
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<tr>
<td>7.</td>
<td>IPWUN</td>
<td>14</td>
<td>132</td>
<td>1</td>
<td>131</td>
</tr>
<tr>
<td>8.</td>
<td>ITPWUN</td>
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<td>279</td>
<td>69</td>
<td>210</td>
</tr>
<tr>
<td>9.</td>
<td>NATU</td>
<td>30</td>
<td>275</td>
<td>1</td>
<td>274</td>
</tr>
<tr>
<td>10.</td>
<td>CUUPEC-Nepal</td>
<td>75</td>
<td>539</td>
<td>14</td>
<td>525</td>
</tr>
<tr>
<td>11.</td>
<td>IGCUN</td>
<td>16</td>
<td>135</td>
<td>26</td>
<td>109</td>
</tr>
<tr>
<td>12.</td>
<td>NIFBWU</td>
<td>56</td>
<td>627</td>
<td>45</td>
<td>582</td>
</tr>
<tr>
<td>13.</td>
<td>NICWU</td>
<td>75</td>
<td>714</td>
<td>32</td>
<td>682</td>
</tr>
<tr>
<td>14.</td>
<td>NRPU</td>
<td>60</td>
<td>395</td>
<td>0</td>
<td>395</td>
</tr>
<tr>
<td>15.</td>
<td>FAWN</td>
<td>192</td>
<td>1743</td>
<td>190</td>
<td>1553</td>
</tr>
<tr>
<td>16.</td>
<td>CWWWD</td>
<td>41</td>
<td>299</td>
<td>299</td>
<td></td>
</tr>
</tbody>
</table>

Total | 1123 | 9202 | 1066 | 8139 | 11.58

5.1.7 Women's Involvement Low in Collective Bargaining

Collective bargaining is a process that raises concerns of employees/workers and facilitated by trade unions. When women employees/workers were asked if they were involved in collective bargaining 20 percent said they are and still 70 percent of women said that they are not involved in collective bargaining.

5.1.8 Women's Participation Seriously Low in Government Structure

State functionaries related to labour sector responsible to promote and protect gender friendly working environment were also examined to perceive the participation of women in those structures.
In Labour Court, Ministry of Labour and Transport Management and in Labour Office, there are no women in gazetted position whereas among non-gazetted, in Labour Court, only 8 percent are women, in Ministry of Labour and Transport Management only 22 percent are women, in Department of Labour and Employment Promotion only 16 percent are women and in ten labour offices only 9 percent are women.

The seriously low number of women’s participation in these government institutions shows that the overseeing bodies that monitor the private sector is yet to prioritize women’s participation in their institution and set itself as an example.

5.2 Discouraging Environment in the Workplace

5.2.1 Women’s Issue Not Raised in Collective Bargaining

Women’s issues are shadowed in collective bargaining process as well. The women interviewed for the study shared that they are facing several problems in their workplaces, for example inadequate maternity leave, time and space for breast-feeding, inadequate or absent childcare facilities, but these issues do not get prioritized in collective bargaining. Collective bargaining has
Gender Friendly Environment in the Workplace

only been used for issues such as low wage, or making employees permanent etc and almost never for specific women's cause.

5.2.2 Sexual Harassment a Problem in the Workplace

Among the women employees/workers 58 percent of them said that they have faced sexual harassment. It was shared that toilet walls are filled with sexually obscene pictures and obscene writings. Sometimes, drunkard colleagues misbehave with women, touching and grabbing them. The high prevalence of sexual harassment in the workplaces is reinforced by the research conducted by FWLD for ILO.\footnote{Sexual Harassment at the Workplace in Nepal, Series 2, ILO/Nepal, 2004.} The experience of sexual harassment is an affront to a worker’s dignity and prevents women from making a contribution commensurate with their abilities.

The women workers said that they fear taking such issue to the management and do not even share it among the friends. However, some women shared that, few women are brave and take actions against the perpetrators themselves.
Gender Friendly Environment in the Workplace

Few employers said that love affair is not acceptable in the office, and if there were office romance both the man and the woman would be fired as an action against sexual harassment. Moreover, the employers were of the opinion that such actions would prevent sexual harassment. There is still a lack of clarity between what constitutes harassment and what is consensual acceptable behavior in enterprises.

"Some guys caress us or throw paper balls provoking us to react but we do not give any attention to them. We have not complained so far. I think the enterprise may take action if we complain but we are scared that we might be understood wrongly."

"We were always harassed by these bunch of guys, they grabbed us when the lights would go off. We went to complain to the manager, the manager listened to us but did not take any action. We again and again complained to him, finally he put an automatic light that lit right after the light off."

Women workers: During the Interview for the study.

5.2.3 Policy on Sexual Harassment Absent in the Workplaces

![Figure 12: Percentage of Enterprises that have Sexual Harassment Policy](image)
Gender Friendly Environment in the Workplace

Among the enterprises that were interviewed 86 percent of them said that they do not have a policy against sexual harassment while, 12 percent said that though they do not have a formal sexual harassment policy but they have informal practices to address sexual harassment in their workplace. Such informal mechanism constitutes that, employees can complain to the management if any incident takes place and that the manager would look into the case for appropriate action. Two percent of the enterprises have a formal sexual harassment policy, which includes complaint mechanism and actions against perpetrators.

Many of the establishment that do not have sexual harassment policy in their enterprises were also of the opinion that sexual harassment policy is not necessary. They stated that if the incident of harassment occurs firing the perpetrators should solve the problem, and it necessarily does not call for a specific formal policy not realizing that firing under such ground is illegal.

5.2.4 Lack of Skill in Women

Illiteracy and lack of training has hindered women’s participation in the private sector. This is one of the reasons that women are confined to jobs such as helpers and cleaners or confined to unorganized sector or stereotyped jobs. They are seldom in higher paying, productive jobs. The employers shared that most of the women are unskilled, illiterate and do not suit the mainstream jobs. Employers shared that though training the women for higher paying jobs would be an option, many a times it is not possible because they are illiterate.

5.2.5 Stigma Attached to Women Working in Hotel and Restaurant Sector

Hotel is often looked at as unconventional working sector for women. During the study it was shared that still women are reluctant to work in hotels. Similarly, many hotels are reluctant to hire women employees. The reason is that women working in prestigious hotels are equated as the women working in cabin restaurants and therefore women face embarrassment and difficulty to share that they work in hotel. Some of the employers said that sometimes customers misbehave with women employees and seek entertainment from them further adding on to women’s difficulties. Some small hotels and restaurants have stopped hiring women to escape the problem.
Gender Friendly Environment in the Workplace

“The working environment in the hotel is good but the perception towards women working in the hotel is negative, however, I am still working in the hotel because I need this job.”

A woman worker-During the Interview

5.2.6 Labour Laws Avoided

Some of the enterprises have found ways to avoid the labor law. The labor law provides that an hour break should be allowed to employee/workers after five hours of work at a stretch. However, the establishment has hired workers in a five hourly basis excusing them from providing an one-hour rest period. Also, the provision of Labor law says that if there are fifty or more than fifty women employee/workers, management should provide a Crèche. And to avoid this provision the enterprises have limited the participation of women below fifty in numbers. Such actions only limit women’s participation in employment.

5.2.7 Negative Interpretation of Labor Laws

Labor laws have provided that a woman should be normally employed from 6 am to 6 pm and if women are to be hired in night they should be given certain facilities. Some of the employers have misinterpreted such provisions and have stopped hiring women in the night interpreting that women should not be hired in the night according to the labor law standard.

5.2.8 Lack of Data Management System in Enterprises

The gender disaggregated data keeping is almost absent in the enterprises, which reflects lack of concern to raise such data. The labor office personnel shared that the labor office had developed a form to collect data gender wise, caste wise etc however, it took a lot of effort to look into the files in the enterprises because systematic data keeping was absent. During the

99 Section 42 (1) and (2) of the Labor Act 1991.
100 Section 5 (2) of the Labor Act 1991.
Gender Friendly Environment in the Workplace

Interview for the study, the labour officers stated that such kind of data collection is very difficult because the enterprise do not have system of keeping gender disintegrated data.

5.3 Inconsistent Implementation of Special Measures Provided by the Labor Laws

Special Measures are a means to achieve equality. Historically and in present women are in disadvantaged position because of prevalent discriminations. Such discriminations need to be addressed and women’s biological difference needs to be recognized. Because only women become pregnant, for example, pregnancy may disadvantage women with respect to job opportunity, career seniority and job security. Special measures are needed to ensure that women’s childbearing role does not result in systematic disadvantage. Special measures are the corrective approach, and recognizes that in order to redistribute the benefits equally between women and men, reasonable different treatment is required. This approach argues that women should be provided special rights to transform the unequal power relations between men and women.  

5.3.1 No Separate Toilets for Men and Women in Many Enterprises

Figure 13 Are there separate toilets for men and women in your workplace?

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Fifty-eight percent of women employees/workers said that they have the facility of separate toilet, however, fifty two percent of the women employee said that they do not have this facility. Women expressed their difficulties for not having separate toilets at workplaces.

"Men go to toilet without locking the door and it becomes embarrassing. Also some men do not finish their business inside the toilet and zipper their pants outside the toilet and it becomes embarrassing."

"Our toilet do not have proper locking system, we always have to be in fear of someone opening the door and some men take this as an opportunity to embarrass or harass us."

Women workers-During the Interview for the Study.

5.3.2 Lack of Creche or Inadequate Creche in the Enterprises

The labor law provides that childcare center/creche is a must where 50 or more women work. Only 25 percent of the enterprises have child-care center among the organizations who have more than fifty women workers. However, 75 percent virtually do not have a childcare center. Many times an empty room is subjected to childcare, which is not functional as it lacks a
Gender Friendly Environment in the Workplace

nanny (dhaiama) or children friendly environment. One of the employee during the research said that these centers sometimes exists only to impress international buyers who enforce on employers to keep a child care center in the enterprise.

"I have to leave my child in the care of my other daughter who is also small because it is not encouraged to bring the children in the workplace though there is a child care center there is no-one to take care of children."

A woman worker- during the interview for the study

5.3.3 No Special Facility for Women Working in Night Duty

Figure 15 Is there a transportation or special facility for women in night duty?

Many women employees/workers said that they are not provided transportation facility after night work and they face difficulty in reaching home. Women also said that they are generally not asked to work in night, however, they said that they feel that if transportation were available they would like to work in night, as it is a necessity for them to earn money and bring food in the house.

Generally, women are not employed for night duty, as it would be more of a burden for employers because it is required by law to provide special facilities
for women working in night. Also, employers viewed allowing women to work at night is risky due to problems like sexual harassment, rape etc.

5.3.4 Equal Wage for Equal Work not Effective in some Enterprises

Eighty eight percent of women said that they are paid equally for their work as their male colleagues in similar jobs, however, most of the time women are not employed in equal status jobs. Women are generally in positions that are paid less. Ten percent of women said that they are sometimes not paid equally as men, whereas, others said that they are not aware that they should be paid equally for equal work and that they thought that men are always paid more.

5.3.5 Breast Feeding Time Yet to be Prioritized

Eighty eight percent of women said that they are paid equally for their work as their male colleagues in similar jobs, however, most of the time women are not employed in equal status jobs. Women are generally in positions that are paid less. Ten percent of women said that they are sometimes not paid equally as men, whereas, others said that they are not aware that they should be paid equally for equal work and that they thought that men are always paid more.
Gender Friendly Environment in the Workplace

Many women said they are not aware that they are supposed to get breast-feeding time, however, they do get time for this when requested. The women expressed their difficulty in asking for breast-feeding time fearing that the employers might get irritated and that they might lose their jobs. Because of the fear, some women said that they sometimes compromise and stay back to work not going for breast-feeding. It is evident that women’s lack of understanding of their rights has an impact in their lives and in the lives of their children consequently. Also, women who brought their children in the enterprise faced difficulty in breast-feeding in absence of proper breast-feeding space.

5.3.6 Maternity Leave a Burden

Among the women employees, 55 percent of them said that they know that they have a provision of maternity leave. However, 45 percent of them were not aware about the provision of maternity leave, as one of the reasons is that many of the women workers in these places were unmarried. Some employers expressed their concern on hiring potential pregnant women. The reason of this is that enterprises preferred hiring unmarried women in order to avoid the burden of providing maternity facilities. Also, employers were of the opinion that unmarried girls are much efficient workers in comparison to married women who are burdened with maternity and household responsibilities.
Though employers acknowledge that maternity leave is a must, it was shared that it is indeed a burden to an enterprise. In some cases the maternity leave is provided as less as 12 days which is seriously low and inconsistent to labor law. Such insensitivity would impact on a women’s and a child’s health. It is yet to be realized that supporting women to fulfill her reproductive role is a social functioning and society needs to support this.

5.3.7 Separate Provision for Men and Women in Carrying Weight Deprives Women from Jobs

The laws taking into consideration the biological difference between men and women have provided separate provision in carrying weight and have provided that women should only be allowed to carry 45 kgs of weight. However, this generally have over-cautioned employers who hesitate to involve women in jobs that would require them to carry or deal with heavy weight. This attitude of employers has cost women their jobs, as men replaced them for such jobs.

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102 Interview with an employer during this study.
Gender Friendly Environment in the Workplace

5.4 Awareness on the Labor Laws among Employers and Employees

5.4.1 Low Awareness on the Existing Labor Laws Among the Employees

Among the employees/workers 53 percent said that they do not know about the Labor Act and that they do not know about their labor rights. And 37 percent of them said that though they have heard of the Labor laws, they do not understand it clearly and do not know about their rights.

“I think it would be really helpful to know about our rights. We are compelled to keep quiet and accept anything because we do not know what our rights are.”

A woman employee during the interview.

5.4.2 Lack of understanding on the Labor Laws among the Employers

Figure 20: Percentage of the women employees/workers aware of the labour laws

Figure 21: Percentage of employers aware of the gender friendly measures
Though most of the employers said that they are aware of labor laws only 51 percent said that they know some of the women friendly provisions provided by the laws. It is evident that still substantial numbers of employers only know that labor laws exist, however, the content of the laws is yet to be understood. It is evident that generally the special measures provided by the labor laws is still only confined to a document and is yet to be used as a guideline to ensure gender friendly environment.

5.5 Perception of Employers on Gender Friendly Environment

5.5.1 Men Employee/ Workers are Easier/Comfortable

The employers expressed that they find much easier to work with men, as they are easygoing, whereas with women lot of precautions need to be taken. Though men need lot of breaks for smoking or chatting, they still can be useful in several different works in enterprises be it night duty or work in unconventional places.

5.5.2 Married Women Lack Focus in Work

During the interview with the employers and employees, it was shared that unmarried women employees/workers are preferred in enterprises. It is said that married women are often burdened with their duties toward husband, children and in laws, therefore, for them work is only a second priority. Women's such role does not match the enterprise's goal that demands focused attention from workers. The employers complained that married women ask for more leave because they would have to attend to their children, husband in laws or to cater to other social obligations.

5.5.3 Women are not Useful for Night Work

The study revealed that employers felt convenient to hire men for night work but not women. Some of the employers said that with men one can be relaxed whereas with women one have to think of extra precautionary measures. In addition, it was expressed that men are convenient to be used as a security guard however; such jobs are not expected out of women as women need protection and not expected protection from. The existing
Gender Friendly Environment in the Workplace

social perception of women as someone to be protected reigns high in the economic sector as well, making it harder for women to be economically active. The absence of realization to view women as a worker irrespective of her sex is a major concern.

5.5.4 Women are Sincere, Hardworking and Honest

The employers during the interview expressed that hiring women have its advantages. Sincerity, hard work and honesty could be expected from women. Women do not go for smoke breaks or for other breaks while in the office. Many employers stated that women's should take charge of account in the enterprises, as they can be trusted with money matters as well.

5.5.5 Lack of Sensitivity of Government towards Private Sector

During the study, the employers said that the government rules are enforced on economic sector not considering the problems the sector is facing. Further it was shared that, they are expected to implement the labor rules strictly, however, it is not realized that an enterprise needs to be economically strong and secure to provide facilities. Taking the country's political situation and declining market economy into consideration, the government is not proactive to strengthen the private sector.

"The Agreement on Textiles and Clothing expired on January 1, 2005, and the future of garment industry is unknown, soon we may have to close down our factories, as we will no longer be able to export garments in absence of quotas. Again women would be highly affected because large number of women will loose their jobs after the closure of garment industries."

A employer – During the Interview for the Study

5.6 Perception of Employees on Gender Friendly Environment

5.6.1 Lack of Employment Opportunity is a Major Problem

Women employee/workers interviewed for this study shared that their primary concern is getting employment. They expressed that, increasingly more and more industries are closing down and people are losing their jobs.
Some women said that they are only seasonal workers and do not get work all year round. Women said they are only concerned about getting a job and not about any other benefits.

“It’s really scary to think how will we survive if we loose our jobs, this is the only source of income for us.”

A woman worker—during the interview of the study.

“It’s very hard getting a job these days, and even tougher getting a decent salary. However, we still work because we can use whatever money we get. Even if it is very little, it will be very useful to us. I would not like to stop my children from going to school, I will be knocking doors everywhere until I find a job that pays me something.”

A woman employee—during the interview for this study.

5.6.2 Lack of Adequate Wage

Women employees/workers interviewed also viewed that getting adequate wage for their work is also one of the major concerns. They feel that their time and job contributed in an enterprise is not complemented by the pay and is very less to cover their expenses.

5.6.3 Doubt on Women’s Capacity to Perform

During this study, women workers/employee shared that they are looked at with doubt in regard to delivering a job. Many women were of the opinion that they are not given a chance to perform their duties and are often underestimated. They are sidelined for less important task rather than important one.

“I feel that my employer thinks that I am not capable of delivering my job and often I find him correcting me or asking me to follow what my male colleague is doing, however, I feel that we women are no less than men and can perform a job as efficiently as men or better.”

A employee—during an interview for this study.
Gender Friendly Environment in the Workplace

“...I am promoted to look after Human Resource Department and I have done a good job, my work is appreciated and compared as better than the previous colleague. Women are capable of performing not only equally as men but also better than men. This needs to be realized by everyone including women themselves."

A woman employee—During the interview for this study.
6. Initiatives to Promote Gender Friendly Environment in the Workplace

6.1 Government’s Initiatives

The labour laws have taken a progressive approach towards women’s empowerment. It has provided special measures to be applied in private sector such as maternity leave, child care center, breast feeding time, separate toilet, limitation of weight to be carried etc. Such measures encourage women to participate and contribute economically ultimately towards their economic empowerment.


Training programme for women are initiated by government however, it needs to be replicated to produce substantial number of women trainees. Ten Vocational and Skill Development Training Centers under Ministry of Labour and Transport Management have been conducting regular training programmes for women. These training programmes specifically target underprivileged and disadvantaged women from Dalit or Janjati groups. Beautician, house management, sewing, cutting, knitting, painting, embroidery, bamboo handicraft, are some of skills that women receive training for. Approximately 600 women receive six monthly residential training who are later provided with one sewing machine to start with. Recently, electricity and other non-tradition training are initiated targeting women. Also, training to develop entrepreneurship in women is initiated under the skill Development Training Centre.

103 Interview with a personnel from Vocational and Skill Development Centre, Bhaisipati, under Ministry of Labour and Transport Management.

104 Ibid.
Gender Friendly Environment in the Workplace

The government has drafted a Foreign Employment ordinance to address the problems in the 1986 Act that restricted women from working abroad. The ordinance has also incorporated provisions to ensure the rights of the migrant women workers.

<table>
<thead>
<tr>
<th>Proposed Ordinance on Foreign Employment (Promotion and Regulate)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Foreign Employment Bill has incorporated some of the significant provisions to promote women's economic empowerment. The bill provides that no discrimination shall be made in the selection of migrant workers. Women and disadvantaged group shall be provided with training required for the job abroad. Also, women would be provided loan with reasonable interest for the expenses required for foreign employment. Reservation would be made for women and disadvantaged groups in the seats allocated to the government for foreign employment.</td>
</tr>
</tbody>
</table>

6.2 Civil Societies' Initiatives

Civil society has been carrying out advocacy for the implementation of the international human rights instruments. Also NGOs have been preparing and submitting the shadow reports to the monitoring bodies. FWLD in coordination with other NGOs presented a Shadow Report to the Government's Combined Second and Third Periodic Report on CEDAW Convention. The Shadow Report carried a specific chapter on Employment (Article 11) and in the areas of critical areas of concern, the report highlighted some gaps and weaknesses prevalent due to stereotyping roles. The report emphasized that women are expected to complete the domestic chores, which lead to double burden on women ultimately affecting their professional contribution. The Shadow Report recommended that the government should take initiatives to enact gender friendly laws. Status review on women's economic rights have been undertaken under the CEDAW Convention and
Beijing Platform for Action. Also, there are specific researches focused to examine Labour and other exploitations in the workplace providing recommendations to address these exploitations.

NGOs have also been providing training programs for women. Women Entrepreneurs Association of Nepal (WEAN) have been providing women with regular women's entrepreneur training. NGOs like ABC, Saathi, Maiti Nepali, Strishakti have provided training to women who have been victims of sexual exploitation providing them with skill training and providing seed money to start small businesses.

IEC materials to advocate and promote women's economic rights are developed. Advocacy leaflets, brochures, posters have been developed for the purpose. In 2005 FWLD developed an advocacy leaflet on women's economic rights which was also widely disseminated in the Beijing + 10 review advocating for Nepali women's economic rights at the United Nations. Demystified materials on women's economic legal rights are disseminated to grassroots as well as to key stakeholders.

Initiative taken by Trade Union Committee for Gender Equality Promotion (TUC-GEP) with the support from South Asia Vietnam Project on Tripartism and Social Dialogue in Action (SAVPOT) collaborated by ILO is praiseworthy as the study has highlighted some of the gender concern at workplace in which Tripartite Declaration has been made on December 16, 2002 and a sub-committee has been formed under the Central Labour Advisory Committee for the promotion of gender equality at workplace.

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7 Challenges in Promoting Gender Friendly Environment in the Workplace

7.1 Weak Implementation of Labour Laws

Though the labour laws have provided special measures for women, it has not been implemented effectively. Also, many establishments have avoided labor laws.

7.2 Labour Laws Inconsistent and Inadequate

Some of the provisions of the labour laws are protectionist towards women rather than rights based. Also, they are inconsistent with the international human rights instruments. The maternity leave provided by these laws are inadequate and does not meet the international standard of 14 weeks of maternity leave. Moreover, the General Conference of the ILO has recommended amending the current ILO provision on maternity leave, increasing it for 18 weeks and also recommended flexible extension provision in event of multiple births.  

One of the problems in the labour laws is that it reinforces gender stereotyping. The Labour Act provides for childcare center in an enterprise where women employee/workers are 50 or more than 50. Such law reinforces that childcare is only a woman's duty and not a man's. Criteria for providing childcare facilities should be on the basis of number of total workers and not only on the basis of the number of women employees/workers ensuring it as a man's responsibility as well.

Also, the labour laws have protective measures for women, which curtails their rights, a provision provides normal working hours for women from 6 am to 6 pm, this provision has stopped employers from hiring women for night work. Such protective measures need to be replaced by rights based laws. Moreover, the Foreign Employment Act, 1986, restricts women from going to the Gulf countries for employment.

### 7.3 Lack of Effective Monitoring Mechanism

Though provision for monitoring and supervision is provided under the labor laws, the implementation is week in absence of adequate human resources allocated in the labor office for this job. Also, monitoring and supervision is focused on health and safety measures and does not include gender as a component of monitoring and supervision.

Often laws are made and left on its own to be implemented. This results in incompliance of the laws, if there would be no follow-up it is bound to be misinterpreted, avoided, and not implemented. There have hardly been any studies to understand the challenges in the private sector. The lack of monitoring system only worsens the situation forcing labor into exploitative work conditions.

Also, though action plans are formulated, elaborate plan on monitoring and supervision is mostly absent. This shows the absence of importance towards monitoring and supervision of the plans and policies formulated.

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7.4 Lack of Specific Workplace Policy

Many enterprises follow labour laws in an adhoc basis and lack specific enterprise policy. The key informants shared that specific enterprise policy is imperative as labour laws are generalized and such generalizations are vague. A transparent and specific policy will be useful to employees in understanding the policy of an organization in terms of employee regulation and employee benefits.

7.5 Low Awareness Among Employers and Employees on Labor Laws

The study showed that though many of the employers knew about the labor laws they were still not familiar with many of the women friendly measures provided by the labor laws. Also, there is lack of clarity in understanding why these measures are necessary for women or why is a private sector liable to provide these measures to women. It is important to understand the objectives of these provisions to implement them successfully. A enterprise may be willing to adopt these measures but not understanding the importance of these provisions act as a hindrances to implement this provision.

7.6 Lack of Skill/ Training for Women

Lack of skill has hindered women’s productive involvement in economic sector. For example, even in women dominated workplace such as garment,

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109 For the purpose of this study, the study team attempted to collect the workplace policy for its analysis, however, as it is not necessary to develop a workplace policy, mostly the policies had not been submitted at the Labour Policy.
Gender Friendly Environment in the Workplace

knitting and sewing industries, women are not in the mainstream work and have been confined as garment checkers or helpers. Lack of skill and effective training programmes have failed to promote women in higher paying jobs, also illiterate women are unable to attend in-house training provided in an enterprise.

7.7 Bias Towards Women

During the interview, it was revealed that many employers gave preference in hiring an unmarried woman to a married woman. The unmarried girls do not need maternity leave, breast-feeding breaks, which works in favour of the enterprises. There is a general conception that hiring employee/workers who have family responsibility would eventually affect on productivity and profitability of an enterprise.

7.8 Women Not Favoured in Certain Jobs

Women are generally not favoured in jobs that involved carrying weight. Also, women are not favoured for night jobs, security jobs or job of a driver etc further curtailing their employment opportunity. They are confined to stereotypical jobs that are related to nursing and caring such as kindergarten teacher, a nurse or a secretary.

7.9 Women Not in a Position to Bargain

Poverty has silenced women from raising concerns against workplace exploitation or violence. They endure problems and are not in a position to demand or bargain for their rights or benefits. Women’s vulnerable situation will stand as a barrier to claim for their due rights.
7.10 Violence against Women

The lack of employment opportunities has many times forced women either to remain in abusive relationships or fall prey of sexual exploitation, trafficking or exploitative work conditions. Also, women are forced to join Maoist forces, data shows that 25 to 30 percent of women are recruited in Maoist forces.  

7.11 Unable to Access the Property Rights

Though the eleventh amendment to the country code has ensured the rights to property for women, data shows that still women have not been able to exercise the right. Data shows that women applying for divorce also do not claim for property. In partition cases, among the 88 decided cases which were filed by women, only in 42 percent of the cases the plaintiff received property share as per their claim. And, in 25 percent women received partial property share, whereas in 5 percent of the cases the plaintiff did not receive any share in property. In divorce cases, among the 65 cases, only 11 percent of the cases were decided with share in property for women, 3 percent with maintenance, whereas majority of the cases i.e. 66 percent of the cases were decided only for divorce where the plaintiff women did not receive any share of property or maintenance from her husband.

110 Women and Children in the Periphery of People’s War, IHRICON, 2001.
Gender Friendly Environment in the Workplace

7.12 Stereotyped Perception Towards Women

Generally, women are perceived as homemakers or housewives. Women are expected to work inside the house, raise a family and provide support. Such expectations and stereotyped perceptions have failed to create a conducive environment for women to work outside the house, develop career and be independent economically. In the studies conducted across South and South-East Asia, domestic work was considered to be primarily the woman's responsibility.

Mostly, women work only when they are pressed against serious financial needs. As women need to seek permission from their family to work outside the house, they are still not in a position to make independent decisions. Commonly, it is said that there is enough food and luxury in the house to send the wife to work. Or many still boast that sending daughter in laws for work would question their economic status, therefore, they choose not to send their daughter in law to work. A woman's decision to work would question a man's capability to look after the family, the economic condition of the house, etc.

"I would like to work overtime because I need money but when I asked my husband his permission to work overtime, he suspected me of having an affair, also he blames me for paying little attention to the house however, I am the only one who looks after the house as well."

A woman employee-During the Interview for the Study

7.13 Lack of Paternity Leave

In our society, a woman have been the sole responsible person for all the reproductive functioning. A man's role in reproductive functioning has been neglected or not expected. However, a husband and a father's presence is important after birth of a child for care and support. Usually, women relatives or elderly women surround the new mother, however, a husband or a father is the appropriate individual to be with his wife and child. Men are isolated from such responsibility isolating women to take up the burden of all reproductive functioning alone.

7.14 Low budget allocation for Women Targeted Programmes

Budget allocation to women-only programs has been very low in Nepal as in other countries. For example, of the total budget for 2000/01, women specific programs accounted for 0.4 percent; and the estimate for 2001/02 shows exclusively women focused budget at 0.6 percent of the total budget. Budget allocation for pro-women programs is about 13-14 percent, but it is limited to a few ministries like the Ministries of Local Development Forest, Agriculture, Education, Health, Women, Children and Social Welfare (MWCSW), and Population and Environment.

7.15 Expiry of the Agreement on Textile and Clothing

The rules of economic and trade liberalization are stacked against women workers. The dismantling of the Agreement on Textiles and Clothing (ATC)
on January 1, 2005 with its guaranteed quotas for textile imports to Europe and the USA is one of its examples. Hundred of thousands of garment workers in Nepal, majority of whom are women, are at the verge of losing their jobs. The government has not taken any serious step to find an alternative market for garment products in which the private sector in Nepal has made heavy investment.

### 7.16 Declining Status of Economic Sector

The ongoing conflict since almost a decade has seriously affected the economic sector in the country. In addition tourist flow has been fluctuating with lesser and lesser numbers of tourist coming to Nepal. The affect in the economic sector is also evident by the closure of hotels, restaurants, carpet and garment factories. Many employers shared that on one hand it is difficult to sustain the business on the other hand there are rules that further burden a enterprise increasing their cost. Moreover, government’s agenda has hardly been focused on strengthening the private sector or addressing the situation in the country. It was shared that an enterprise should be in a position to provide all kinds of facilities to workers.

Nepal already has a problem of high unemployment rate. Moreover, the ongoing conflict in the country has further aggravated the situation. The private sectors have been hit the hardest affecting not only the employers but the employees as well. Many have been forced to stay home as an unproductive individual in their young age unable to support themselves.

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Gender Friendly Environment in the Workplace

themselves and their families. Many are forced to leave the country in search of work away from family and friends.

**Figure 22** Are the initiatives taken by the Government adequate?

Most of the key informants said that the government initiatives are not adequate. There is lack of understanding to create gender friendly environment or encourage women's participation in the workforce.
8. Recommendations to Ensure Gender Friendly Environment in the Workplace

8.1 Initiatives Required by the Government

8.1.1 Ensure Monitoring Mechanism

Gender concerns have not been taken into considerations for monitoring and supervision of the private sector. Monitoring needs to be expanded to monitor the implementation of special measures for women. It is important to monitor and supervise the workplaces to ensure worker’s right making timely interventions. Survey, questionnaire, interview, observations can be used as method to monitor for the gender concerns. Trained human resources are important to sensitively carry out monitoring and provide recommendations.

8.1.2 Allocate Adequate Budget for Women’s Economic Empowerment

Resources are minimal for women’s economic empowerment; adequate budget needs to be allocated for this. MWCSW must be allocated sufficient resources for fulfilling its advocacy roles and for women’s empowerment programmes like training and capacity building.

8.1.3 Capacity Building/Training of Women

Women workers/employees though acknowledged as sincere and hardworking, however, lacks skills or are untrained to suit an enterprise’s need of a worker/employee. A skilled woman would be in a much better position to find a suitable job for her and negotiate for better wage and better working conditions. Capacity building and skill-based training are critical for women’s economic empowerment. Training needs to be provided also in non-traditional areas such as information and communication technology, driver and vehicle management, etc. Such training should target underprivileged, disadvantaged women who also are from minority groups.
8.1.4 Training for Developing Women Entrepreneurship

In addition to ensuring women's participation in economic sector as employees/workers, a step to empower women to take up roles of employers is vital. Apart from providing information on business planning, account keeping etc, the training should also focus on improving the understanding of market policies, market demands, and gender concerns. It is important to allocate adequate budget for such training programmes and to be provided in a regular basis.

8.1.5 Ensure Safe Options of Foreign Employment for Women

The political and economic crisis in the country has further constricted job opportunities making it more difficult for women to survive. In absence of better options women are forced to sell sex, work in exploitative work condition of cabin restaurants and other workplaces. If job opportunities are not created women and children would be seriously vulnerable to various exploitation and crimes.

Therefore, foreign employment needs to be developed as a strong option. However, measures need to be taken for safe working conditions in foreign country as well. It is imperative to ensure protection of human rights of migrant women workers and increase their access to safe work.

8.1.6 Seek Alternate Market Opportunities for Garment Industries

The Agreement on Textile and Clothing (ATC) provided special quotas to the most underdeveloped countries allowing the exports of garments to Europe and the USA. Consequently, several garment factories came up, significantly hiring large number of women.

The ATC expired in January 2005 and as a result, Nepalese garment industries, which provided employment opportunities to thousands of women are in crisis. There is an urgent need
to renew the quota system. In addition to taking initiative to renew the quota system, measures also need to be taken to seek alternate job market for garments in other countries if not only in Europe and the USA. Concerned stakeholders including civil society needs to advocate for urgent action in this area to ensure women’s employment and economic empowerment as large number of women loose jobs.

8.1.7 Provide Incentives for Employers

Though there have been some government policies to provide incentive to enterprises for encouraging women’s economic participation in the form of tax exemption this has not been implemented. In today’s dominant patriarchal society, strategic policies are needed to promote women’s role in different sectors. One of the strategies can be providing tax exemption to enterprises who hires certain percentage of women or who take actions to promote women in decision-making roles, or in more productive roles etc. Such incentives would acknowledge enterprises contribution for promoting gender equality and ensuring women’s economic rights further encouraging the employers.

8.1.8 Address Discriminatory Practices by Employers

The study revealed that special measures for women provided by the Labour laws have not been implemented in many of the enterprises. The special measures for women are important to ensure right to reproductive health, right to work in safe and healthy environment and their economic empowerment. Avoidance of law has gone unnoticed and fostered in absence of necessary actions against the establishments. Actions need to be taken in the form of warning or fine against establishments that have neglected the implementation of Labour Act.

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116 The National Labour Policy provides that policy provision shall be made to give the tax free facility to encourage the institutions that provide employment opportunity to increase women participation in the employment. National Labor Policy, 1999, His Majesty’s Government Ministry of Labor, pg. 5.
Gender Friendly Environment in the Workplace

8.1.9 Placement Services for Women

Placement services need to be developed to provide women with information on job vacancies. Also, the placement service will provide guidance in selecting a job and applying for it. The placement service will also provide orientation for women to face job interviews and to understand basic job etiquettes.

8.1.10 Improve Methodology of Census Study

The ten yearly census study needs to be more concrete in terms of data generating. There have been initiatives to generate four-digit data recording that classifies women's status in different categories. Such data keeping would clearly lay out the percentage of women in different levels and sections.

8.1.11 Ratify the ILO Convention on Maternity Protection, 2000 (C 183) and ILO Convention on Workers with Family Responsibility, 1961 (C 156)

To ensure women's reproductive health rights, adequate maternity leave is imperative. Therefore, ILO Convention on Maternity Protection needs to be provided to meet the standard of maternity leave it provides which is for 98 days.

Most often women in Nepal have to take permission from the family to work outside the house. If the family does not allow their women to work, women have to give up their right to work unless they retaliate, which happens less. This Convention prohibits such discrimination ensuring the right to work to the extent possible, without conflict between their employment and family responsibility.\(^{117}\) Though Nepal has yet to ratify this convention, this convention is important in regard to ensuring equal

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\(^{117}\) Article 3 of the Workers with Family Responsibilities Convention, 1981 C156.
distribution of household responsibility in society like ours where women are deprived of employment opportunities due to heavy family responsibility. The government needs to ratify and implement the ILO Convention.

8.2 Interventions through Law and Policy

8.2.1 Amend and Develop Laws to Promote Women’s Economic Empowerment

Laws are still inconsistent, protectionist and reinforce gender stereotyping. These laws need to be amended and replaced by consistent laws that meet the international human rights standard and are rights based.  

8.2.2 Provide Paternity Leave for Men

Though biologically women bear the reproductive functioning, socially it should be at large a society’s responsibility too. The concept of sharing the responsibility of reproductive functioning needs to be widely disseminated. Employment sector should also share the responsibility by providing adequate maternity leave for women and paternity leave for men. A newborn is future of the society and therefore the society is needs to share the responsibility of reproductive functioning. Enhancement of smooth family system would also help in creating healthy society.

Paternity leave will allow a man to be with his wife and child and provide them emotional and other supports. Also, this period is necessary to form a bonding between a father and a child. Providing paternity leave will also help in breaking the stereotype that only women are responsible for reproductive functioning. Initiatives have started to provide paternity leave, for example the Tribhuvan University.

Providing paternity leave will also help in breaking the stereotype that only women are responsible for reproductive functioning.

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118 See Chapter 7 for Inadequate and Inconsistent law (8.1.2) for specific problems in the labour laws.
provides paternity leave of 7 days for teachers or employees once in service period. In order to encourage men to share responsibilities and to change gender biased roles; there is a need to provide paternity leave to men.

8.2.3 Provision to Provide Incentives to Women Employers
Encouraging environment is vital for women’s participation in economic sector. Such encouragement can come in the form of incentive such as exemption of government fees or taxes. Legal intervention ensuring twenty-five percent of fee exemption for both registration and renewal of private firms, company, security transaction agent, organizations, co-operatives, immovable property etc could motivate women entrepreneurs.

8.2.4 Special Measures to Increase Employment
To integrate women into full-time employment and avoid limiting their participation in the workplace to part-time or low-level jobs, the government, in cooperation with the private sector, needs to take special measures that will help women cope with both family and work responsibility. Special measures should be introduced with appropriate legal intervention to increase women’s participation in government, non-government, semi-government and formal sectors.

8.2.5 Special Provisions for Women in Private Financial Institutions
To further promote an encouraging environment for women to participate in various economic sectors, especially to encourage women entrepreneurs, legal measures should be taken to ensure that banks and financial institutions provide women loans at lesser interest rates. Similarly, banks and financial

119 Rules relating to Teacher’s Employees Service of the Tribhuvan University, 1994.
institutions should also provide better interest rates on deposits made by women.

8.2.6 Labour Court should be established in other Parts of the Country as well

Labour Court must be established in major urban areas considering the level of industrialization and number of labour disputes. For the time being, it is necessary to establish one Labour Court in each of the development regions of the country.

8.3 Initiatives to be Taken by Employers

8.3.1 Adopt Specific Workplace Policies

It's important to develop a workplace policy to suit the specific need of the enterprises/institutions. A workplace policy will detail out its rules to be carried out within the enterprise. Also, employee rules including the special measures, social security and other benefits would be transparent. The key informants of the study said that specific workplace policy would also be important for its implementation, as it would not be vague and unapproachable. In addition to developing an enterprise policy, it is also important to disseminate information on the policy to employee/workers to generate understanding among the employees.

8.3.2 Include Provision to Address Sexual Harassment in Enterprise Policy

The Supreme Court has delivered a directive order to develop a Bill on sexual harassment in the workplace in response to a case filed on the issue. The study on 'Sexual Harassment at the Workplace,' conducted by...

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120 Sarmila Parajuli and et. al. vs. HMG/N and et. al., Writ No. 3434, 2002.
Gender Friendly Environment in the Workplace

FWLD for ILO\textsuperscript{121} shows that women in Nepal have been victims of sexual harassment, however, are forced to remain silent in absence of law or any mechanism in the workplace.

Resolving the problem of sexual harassment in the workplace is also an establishment's responsibility, also this is an issue that could be resolved in enterprise level through a complaint mechanism. Though many establishments shared that policy on sexual harassment is an additional burden, it is actually a preventive measure and may save an establishments an extra cost through lawsuit, recruitment, and loss of productivity and profitability due to employee/workers inability to perform effectively in unhealthy and unsafe workplace.

8.3.3 Encourage Women's Participation in Decision Making

The study reveled that women's participation has almost been negligible in decision making. Also, there has been no significant initiative from the employers to promote women. There is a need for employers to address this problem by hiring women in decision-making level for promoting women. Women's participation in decision-making is an important strategy to ensure gender equality.

8.3.4 Ensure Gender Disaggregated Data Keeping System

Gender disaggregated data is important in all area be it public or private sphere. During the study it was evident that gender disaggregated data keeping is absent in private sector. Maintaining gender specific data is important in providing information to take necessary actions. Therefore, government should encourage public and private sectors to adopt a gender-disaggregated data keeping system.

\textsuperscript{121} Sexual Harassment at the Workplace in Nepal, Series 1, ILO/ Nepal, 2004.
8.4 Interventions Required by Civil Society

8.4.1 Advocacy to Ensure Women’s Economic Empowerment

It is clear that women’s participation has not been able to be in productive area of employment where they benefit in terms of earnings and holding higher positions. Though there have been some positive reformatons in civil service relating to women’s economic empowerment, the private sector is still lot behind in prioritizing women’s participation. There is a need to create a positive environment through legal and policy interventions. The non-governmental organizations, private sector associations and civil society, trade union need to strongly advocate to government to ensure women’s economic empowerment in all sectors.

8.4.2 Gender Sensitization Programmes for Employers

One of the reasons of the poor implementation of the special measures provided by the labor laws is the substantial lack of gender awareness and sensitivity among the employers. Some of the employers said that they do not know why only women and not men are provided with special measures. Such confusions clearly reflect the gender unawareness among the employers. It is not useful to expect that laws and policies alone would derive desired results. It’s also ideal and impractical to expect employers to be gender sensitive on their own. When laws are expected to be implemented, it is also important to educate the implementers to develop understanding on the importance of the laws that are targeted for the empowerment of specific groups. The labor laws alone have not proved effective in promoting gender friendly environment in the workplaces, therefore, efforts also needs to be directed towards educating the actual implementers.
8.4.3 Awareness Programmes for Women Employees

Many women in Nepal are illiterate and uninformed of their rights. It is therefore, common that these women are incapable to claim their rights on their own. Civil society need to provide awareness programmes for employee/workers to develop their understanding of rights and make them able to recognize when their rights are curtailed and report to the concerned authority for appropriate actions in cases when the individuals are unable to address the problem themselves.

8.4.4 Media Awareness

Media can be a strong tool to change the stereotyped perception and behaviour towards women. However, media itself has been reinforcing the stereotyped perception, which is evident in advertisements, where women are shown washing clothes of their husbands and sending their husbands to work. Advertisements in reversal roles should also come through media, showing men taking care of the house or the wife. Such concerns need to be raised with media.

8.4.5 Research on Gender Friendly Workplace

This study is only indicative; a comprehensive study is necessary to further uncover the impact of discriminatory practices in the workplace. The study needs to focus on bringing out specific problems of government, and concerns of employers and the employees. And a follow-up action plan needs to be developed after the study to implement the recommendations given by the study.

8.4.6 Gender Mainstream in Trade Union

Trade Union should increase women’s participation in their policy and decision-making bodies. Gender issues to be raised seriously in collective bargaining process. It needs to ensure and monitor implementation of Special Measure for women provided by Labour Act.

8.4.7 Special Focus Required from ILO for Gender Friendly Environment

ILO, other UN Systems and donor agencies also need to focus their program to create gender friendly working environment so that women can enter and continue their participation for economic empowerment.
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Books/Reports


7. Sexual Harassment at the Workplace in Nepal, Series 2, ILO/Nepal, 2004


Gender Friendly Environment in the Workplace

ANNEX I

List of Interviewees (Key Informants)

1. Mr. Pratap Kumar Pathak, Director General, Department of Labour and Employment Promotion, Kathmandu
2. Mr. Udav Prasad Baskota, Joint Secretary, Ministry of Labour and Transport Management, Kathmandu
3. Mr. Durba Narayan Shrestha, First Vice President, NATA, Naxal, Kathmandu
4. Mr. Laxya Bahadur K.C., General Secretary, PABSON, Minbhavan, Kathmandu
5. Mr. Bishnu Rimal, Vice President, GEFONT, Kathmandu
6. Mr. Megnath Neupane, Executive Director, FNCCI, Teku, Kathmandu
7. Mr. Baburam Regmi, Joint Secretary, Ministry of Law, Justice and Parliamentary Affairs
8. Mr. Lav Prasad Tripathi, Joint Secretary, Ministry of Education, Culture and Sports, Kesar Mahal, Kathmandu
9. Mr. Ram Krishna Timilsena, Joint Registrar, Supreme Court, Ramshahpath
10. Mr. Pushkar Bista, Joint Secretary, Nepal Chamber of Commerce, Jamal, Kathmandu
11. Mr. Rajendra Bahadur Rawut, President, DECONT, Sinamangal, Kathmandu
12. Mr. Achut Raj Pandey, General Secretary, NTUC, Kupondol, Kathmandu
13. Ms. Jayanti Nakarmi, Executive Director, WEAN, Putali Sadak, Kathmandu
Gender Friendly Environment in the Workplace

14. Mr. Suresh Shrestha, Office Chief, Labour Office, Teku, Kathmandu
15. Mr. Tika Prasad Upadhyay, President, NPABSON, Central Office, Mitra Park, Chabahil, Kathmandu
16. Mr. Madav Shrestha, Executive Director, Hotel Association of Nepal, Gairi Dhara, Kathmandu
17. Mr. Nabin Pokhrel, Factory Inspector, Labour Office, Pokhara, Biratnagar
18. Mr. Janardan Nepal, Director, Department of Education, Sanothimi, Bhaktapur
19. Mr. Pawan Ojha, Attorney General, Office of Attorney General, Kathmandu, Nepal
20. Hon'ble Nirmal Kumar Dhungana, Judge, Labour Court, Kathmandu
ANNEX II

List of Enterprises Interviewed

1. Arun Jyoti Bidhya Mandir, Kathmandu
2. Ashok Paper Packaging, Biratnagar
3. Asian Thia Food, Biratnagar
4. Bank of Kathmandu, Kathmandu
5. Banshidhar Fashion Privatre Limited
6. Bidhya Sadan English School
7. Binita Fashion, Kathmandu
8. Blubird Garment, Kathmandu
9. Dugar Spices and Food Produciton Private Limited, Biratnagar
10. Ezeewear Exports Private Limited
11. Fashion Fabric, Biratnagar
12. Garg Packaging Industries, Biratnagar
13. Greenland Secondary Bording School
14. Himalaya Distillary, Kathmdu
15. Himalayan Soap and Chemical Industires Private Limited, Kathmandu
16. Hotel Annarpurna, Kathmandu
17. Hotel Eastern Star, Biratnagar
18. Hotel Himalaya, Kathmandu
19. Hotel Hyatt Regency, Kathmandu
20. Hotel Park Village, Kathmandu
21. Hotel Raddission, Kathmandu
22. Hotel Ratna, Biratnagar
23. Hotel Swagat, Biratnagar
24. Hotel Zenial Private Limited, Biratnagar
Gender Friendly Environment in the Workplace

25. Jaisi Chapal, Biratnagar
26. JD Apparels, Biratnagar
27. Mahabir Garments, Kathmandu
28. Makalu Kashmiri Private Limited, Biratnagar
29. Multifood Industries, Kathmandu
30. Nebico Private Limited, Kathmandu
31. Nobel Diary Private Limited, Biratnagar
32. Om Hospital, Kathmandu
33. Pashupati Prolipralin, Biratnagar
34. Prasuti Griha, Kathmandu
35. Raghupati Jute Mill, Biratnagar
36. Rajmahal Mills, Kathmandu
37. Rijal Tashi Industries, Biratnagar
38. Shabnam Garment Industries Private Limited, Kathmandu
39. St Xavier’s School, Kathmandu
40. Surya Carpet, Kathmandu
41. Surya Nepal Private Limited
42. Teaching Hospital, Kathmandu
This questionnaire is developed for the study of gender friendly environment in the workplace. Confidentiality of the responses would be maintained. Responders would not be held responsible for their answers.

Name ..............................................................................................................
Age ....................................................................................................................
Sex .....................................................................................................................
Designation ......................................................................................................
Organisation .................................................................................................
Address ..........................................................................................................
Gender Friendly Environment in the Workplace

3. Is it important to mention the special measures provided by the Labour laws in the organisation policy?
   Yes ...................................................................................................
   No ...................................................................................................
   If Yes why ..........................................................................................
   If No why ..........................................................................................

4. Apart from the intervention through law and policy what kind of measures are needed to promote gender friendly environment?
   ...................................................................................................
   ...................................................................................................

5. Is there a monitoring mechanism to monitor the implementation of the labour laws?
   ..................................................................................................
   ..................................................................................................

6. What kind of initiatives have been in place from the government to promote gender friendly environment in the workplace?
   ..................................................................................................
   ..................................................................................................

7. Are these initiatives adequate?
   Yes .............................................................................................
   No .................................................................................................
   If No, what kind of initiatives are needed?
   ..................................................................................................
   ..................................................................................................

8. Has there been any initiative from your organisation to promote gender friendly environment?
   If yes what are they?
   .................................................................................................
   .................................................................................................

9. To encourage women for economic participation what kind of measures are needed?
   ..................................................................................................
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**Name** .................................................................
**Age** .................................................................
**Sex** .................................................................
**Designation** ........................................................
**Enterprise** ...........................................................
**Address** .............................................................

1. How many employee/workers are employed in your enterprise?
   .......... in total ( permanent......temporary......)
2. How many women employee/workers are employed in your enterprise?
   .......... total ( permanent .........temporary......)
3. Do you have an enterprise policy regarding the service and security of the employee/workers?
   Yes......... No............
4. Are gender friendly provisions included in the enterprise policy?
   Yes......... No............
   If yes what are the provisions?
   .................................................................
   .................................................................
5. Do you know about the special measures for women provided by the labour laws?
   Yes .......... No............
   If yes what are the special measures?
   Special security for women working in the night
   Creech for children
Gender Friendly Environment in the Workplace

Limitation for carrying weight for women
Separate toilet for women and men
Maternity leave
Time for breast-feeding

6. Are the special measures provided by labour laws provided in the enterprises?
   Yes........ No.........
   If No, Why?
   ........................................

7. What are the difficulties or challenges in implementing the special measures?
   ........................................

8. How has your enterprise taken the implementation of the special measures?
   As a duty........
   Unnecessary Burden........
   Burden but Necessary ........

9. Does your enterprise have a Policy to address sexual harassment in the workplace?
   Yes.......... No........
   If yes, what are the measures?

10. Do you have any complaint mechanism in your organization?
    Yes......... No.......... 
    If yes, what is the implementation status of the complaint received?

11. Do you have equal wage for equal work in your organization?
    Yes........ No.......... 
    If No, Why........

12. Are there any enterprise policies to priorities the following?
    In Vacancy Announcement
    Selection
    Nature of Work
    Promotion

13. Do you have a policy to promote women in decision-making?
    Yes......... No.......... 
    If No, Why........

15. What needs to be done to promote gender friendly environment in the workplace?
    ........................................