

A Study on Discriminatory Laws

Against Women, Dalit,
Ethnic Community, Religious Minority
and Persons with Disabilities

Publication No. 142



Forum for Women, Law and Development (FWLD)

2009



1. Background

The codification of laws in Nepal was found to have commenced since the enactment of first Country Code in 1910 under the *Janga Bahadur Rana* regime. This Country Code was promulgated on the basis of Hindu religion and Hindu philosophy. Various epics of Hindu religion had made justifiable both caste based discrimination and treatment of women as second class citizens of the nation. Furthermore the Country Code did not recognized socio-cultural practice of ethnic community and other religious group beside Hindu. With time, the laws were gradually reformed and new laws were enacted on the basis of social as well as political changes of the nation.

In the long span of time remarkable political changes took place, particularly in the years 2007 B.S, 2019 B.S, 2047 B.S, and recently in 2063 B.S. Various Constitutions formulated and laws were promulgated or enacted but sufficient consideration was not given to eliminate the discriminatory laws against women, persons of various ethnicities and with disabilities. Several political changes took place during the year 2063 witnessing the collapse of the *Shaha Dymasty* after 240 years of rule and the declaration of Nepal as republican state. The Interim Constitution was promulgated in 2007 and land mark initiatives taken by the interim parliament resulted in the issuance of the parliamentary declaration on elimination of all forms of discrimination and ensured 1/3 representation of women in every state mechanism. Nepal is now declared as secular country from Hindu Kingdom.

Persons with disabilities continue to be treated as objects of pity and sympathy. Disabilities are still considered to affect the social prestige of families and are therefore often hidden from the world outside. Persons with disabilities are understood to have been aptly punished by God under the Hindu religion. It is assumed that he or she had indulged in malicious acts or worse in their previous birth. Such abstract thought created prejudices and resulted in discriminatory treatment towards the people living with disabilities. Consequently, laws enacted on the basis of such kind of religion thought were discriminatory as well.

FWLD conducted a pioneering study on "Discriminatory Laws in Nepal and Their Impact on Women" in 2000. This study revealed 118 Clauses/Sections/Rules, two Rules in their entirety, and 67 Schedules/Annexes/Forms in 54 different legislations including the Constitution, which have discriminatory provisions. Main areas of discrimination against women are found in relation to nationality, property, trafficking, sexual abuse,

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education, employment, health including reproductive health rights, marriage and family, and legal procedures and court proceedings. The study indicated that the status of Nepali women was far from the *de-facto* equality promised. The impacts of discriminatory laws on women are multifaceted, restricting their options for development in virtually every sphere of their private and social life. In addition, these discriminatory laws deprive women from education and health facilities, and increase their vulnerability to be trafficked and sexually abused. It impedes women from enjoying their basic human rights and fundamental freedoms. Nationality is another major area of discrimination. The impacts of discriminatory citizenship laws includes creation of second class citizens, statelessness, difficulties in acquiring passports, deprivation from employment opportunities, difficulties in transferring property, separation from family and residence and problems to choose residence etc. Huge disparities have been created between male and female from education to employment in public and private life¹.

Thus, the study does not only give evidence of factual discrimination but also develop strategies for reforming the law. Using these strategies many public interest litigations were filed and advocacy was conducted for the reformation and effective implementation of law. A high powered Committee was formed for proposing the amendments on discriminatory laws². All major efforts were conducted in a coordinated manner during this process of law reform.

FWLD updated the study on "Discriminatory Laws in Nepal and Its Impact on Women" in the year 2006. This updated study examined 281 Acts including the Constitution and 278 Regulations. It revealed 173 legal provisions and 102 Schedules/annexes/forms scattered in 83 different legislations including the Constitution, which discriminate against women³. The Study also looked into words that are discriminatory or addresses women in a degrading manner⁴. The study was last updated in the year 2007.

As a result of advocacy and the Supreme Court's intervention in Public Interest litigations, the eleventh amendment to the Country Code took place amending some of the discriminatory provisions on property,

1 For details see An Update of Discriminatory Laws in Nepal and Their Impact on Women, FWLD, 2000

2 Committee was formed in August 2001; However report was submitted only in November 2002. Only after Country Code was amended report was submitted formally to the Prime Minister by the Committee. This Committee also included member from Civil Society.

3 For further details see An update of Discriminatory Laws in Nepal and Their Impact on Women, FWLD 2006

4 See the study of 2006 for the details

abortion, sexual offences and laws relating to marriage and family relations⁵.

Recent political change (Second Peoples' Movement) for inclusive democracy reinstated the House of Representatives that endorsed a landmark resolution on mothers' right to confer citizenship to their children, 33% reservation for women in the state mechanism, combating violence against women, and reformation of discriminatory laws against women⁶. Though the resolution adopted is partially incorporated in Interim Constitution, however, full realization of it is yet to be reflected in practice with effective legislation.

Therefore, in this context, it is imperative to find out exactly where discrimination still remains relating to women, ethnicity, *Dalits* and persons with disabilities, even after the formulation of new Acts and amendments to existing legislations. The study is updated to identify the changes till 2009, to identify existing forms and aspects of discrimination, and to provide recommendations for further reformation.

2. Objective of the Study

The objectives of this updated study were as follows:

- To identify the discriminatory legal provisions against women, persons belonging to various ethnicities and persons with disabilities;
- To identify the changes and opportunities brought by the newly enacted laws for ensuring equality;
- To recommend future action for reformation.

3. Methodology of the Study

This study used the following methods:

Mapping of Existing Laws: The study examine 303 Acts including the Constitution and Country Code and 281 Regulations to identify discriminatory provisions on the basis of sex, caste, ethnicity, religion

The resolution adopted is partially incorporated in Interim Constitution, however, full realization of it is yet to be reflected in practice with effective legislation.

5 Study conducted in 2006 has updated list of discriminatory law based in the Eleventh Amendment of Country Code passed by the parliament on 14th March 2002, Royal Sealed on 26 September 2002

6 Resolution adopted by the parliament on May 30, 2006

The study has only identified discriminatory legal provisions on the basis of sex, ethnicity and disability and does not touch on the absence of law and implementation of the law.

and disability. The laws were reviewed according to established and accepted definition of discrimination against women⁷, racial discrimination⁸ and discrimination on the basis of person with disability⁹.

Data Collection: Secondary information and statistics from published and unpublished sources were collected from the government and non-governmental organization. Data collected from various sources is used particularly to highlight the status of women, ethnic group, *dalit*, religious minority and person with disability.

Selective Judgments Collection and Analysis: Landmark judgments of Supreme Court, including both published and unpublished, relating to gender or racial discrimination and discrimination on the basis of disability were collected. Also the judgements related upholding non-discrimination provision of Constitution or obligation under international human rights instruments was collected. Selected judgements were analyzed and used in the related portion of the study.

Review: Review has been conducted to assess the state's obligation and accountability under various international human rights instruments and national legislation to elimination discriminatory laws and to guarantee equality.

Consultation with Stakeholders: A consultation was held on March 23, 2009 with concerned stakeholders to receive feedback and suggestions and to develop future strategies. Consultation was held with members of organisations for Women, Dalit, Janajati, Religious Minority and Person with disability. (See Annex 1 for the participant of the consultation)

4. Limitation of the Study

The focus of the study is mapping of discriminatory provisions in state enacted laws which include Constitution, Country Code, various Acts and Regulations. The study does not cover by-laws or corporation's regulation and policies of the government. This study has only identified discriminatory legal provisions on the basis of sex, ethnicity and disability and does not touch on the absence of law and implementation of the law.

7 Article 1 of CEDAW.

8 Article 1 of ICERD.

9 Article 2 of CRPD.

1. Non-discrimination as an international principle

The principle of non-discrimination has been developed through several generations of international instruments. Ascertaining discrimination clarifies the content of the concept of equality. The relationship between equality and non-discrimination has been described as constituting positive and negative statements of the same principle, or the different sides of the same coin¹⁰. In other words, equality means the absence of discrimination. And upholding the principle of non-discrimination between groups is understood to result in equality.

Before 1945, the prohibition of discrimination was only dealt with in the so-called minority treaties, which were severely limited in their scope signed between the victorious Allies and Poland, Czechoslovakia, Yugoslavia, Romania, Greece, Austria, Bulgaria, Hungary, and Turkey, and were guaranteed only in so far as they affected members of such minorities.

With the adoption of the UN charter, a non-discrimination clause applying to everyone became a recognized part of international law along with the equal and equivocal rights of all human beings. The UN Charter provides a legal basis for international co-operation among its members for respect for human rights, including the elimination of discrimination. Being the first international treaty to pronounce the principle of equality in specific terms it stated "*promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion*" in its Preamble.¹¹

The Universal Declaration of Human Rights (UDHR) elaborates the UN Charter's equal rights prescriptions and the principle of equality pervades the declaration. Of the thirty articles, some are in one way or another explicitly concerned with equality, and the rest implicitly refer to it by emphasizing the all-inclusive scope of the UDHR, as in the following Articles:

Article 1. *All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood*

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¹⁰ Ann F. Bayefsky, "The principle of Equality or Non-Discrimination in International Law", 11 Human Rights Quarterly, 1990, p. 5.

¹¹ Article 1 (3) United Nations Charter

UDHR failed to provide a concrete definition of "discrimination" under the convention or qualify the concept of "equality of treatment". The lack of a concrete definition of "discrimination" or an understanding of what constituted discrimination was reflected in the second generation of international treaties such as ICCPR and ICESCR.

Article 2. *Everyone is entitled to all the rights and freedoms set forth in the Universal Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

Article 4. *No one shall be held in slavery or servitude.*

Article 7. *All are equal before the law and are entitled without any discrimination to equal protection of the law.¹²*

However the UDHR failed to provide a concrete definition of "discrimination" under the convention or qualify the concept of "equality of treatment". The lack of a concrete definition of "discrimination" or an understanding of what constituted discrimination was reflected in the second generation of international treaties such as International Covenant on Civil and Political Rights (ICCPR) and the International Convention on Economic Social and Cultural Rights (ICESCR). Article 26 of the International Covenant on Civil and Political Rights requiring equality before the law and equal protection of the law states:

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Similarly Article 2 of the International Convention on Economic Social and Cultural Rights requires

"The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

The Sub-commission on the Prevention of Discrimination and Protection of Human Rights that was created by the United Nations specifically to deal with questions of discrimination did not agree upon a legal definition but merely indicated the considerations which should be taken into account in framing the proposed Universal Declaration of Human Rights. "Prevention of discrimination" was therefore described as the prevention of any action which denies to individuals or groups of people the equality

¹² Adopted on December 10, 1948, GA Res. 217A (III), UN Doc. A/810, 1948

of treatment which they may wish. The Sub-commission held that differential treatment of such groups or of individuals was justified when it was exercised in the interests of their contentment and the welfare of the community as a whole. The definition of "equality" in its legal sense was therefore not based on an understanding of 'absolute' equality but fair or justified equality.¹³ These developments therefore while underlining the formulation of "equality" as a formal concept which failed to impose any standard whatsoever as regarding how to assess what constitutes unequal treatment and also failed to acknowledge positive obligations of the state in ensuring equality ultimately resulted in the acknowledgement of group rights under international law.

Non-discrimination as a concept was articulated within specific circumstances to address rights of particular social group under later Conventions such as Convention of the Elimination of Racial Discrimination (CERD) and the Convention on the Elimination of Discrimination Against Women (CEDAW), International Labor Organization (ILO) Convention No.111 Concerning Discrimination in Respect of Employment and Occupation and lastly the UNESCO Convention Against Discrimination in Education.

Article 1 of CERD defines "racial discrimination" as

"Any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on the equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".

Article 1 of CEDAW defines "discrimination against women" as

"Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".

Article 2 of CRPD in outlining definitions states:

"Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental

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¹³ See UN doc.E/CN. 4/S.R.32-41

freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation."

The ILO Convention No.111 Concerning Discrimination in Respect of Employment and Occupation (1958) states:

"For the purpose of the this Convention the term 'discrimination' includes: (a) any distinction, exclusion or preference made on the bases of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation."

According to the UNESCO Convention Against Discrimination in Education,

"For the purpose of this Convention the term 'discrimination' includes distinction, exclusion, limitation or preference which being based on race colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education."

Several forms of discrimination can be identified from established international jurisprudence. It can be seen that CERD, CEDAW and CRPD refer to "purpose or effect" in identifying discrimination thereby articulating direct and indirect discrimination.

From the definitions mentioned above, one can identify certain basic and common elements in the concept of discrimination. These elements can be as following:

- ▶ Stipulation of a difference in treatment such as *distinction, exclusion, restriction*.
- ▶ Having a certain effect whether *intended or unintended* and *direct or indirect*.
- ▶ Based on a certain prohibited ground such as *sex, race, disability*.

Several forms of discrimination can be identified from established international jurisprudence. It can be seen that CERD, CEDAW and CRPD refer to "purpose or effect" in identifying discrimination thereby articulating two of the following forms:

- ▶ **Direct Discrimination** (*de jure*) – It is based on the idea of formal equality and may be defined as less favourable or detrimental treatment of an individual or group of individuals on the basis of a prohibited characteristic or ground such as race, sex, or disability.
- ▶ **Indirect Discrimination** (*de facto*) – It occurs when a practice, rule, requirement or condition is neutral on its face but impacts disproportionately upon particular groups, unless that practice,

rule, requirement or condition is justified. Prohibitions of indirect discrimination require a State to take account of relevant differences between groups.

Two other forms of discrimination have been identified and articulated in international jurisprudence based on regional instruments, domestic practices of nation states as well cases decided at the international level:

- ▶ *Harassment* arises where unwanted conduct takes place with the purpose or effect of violating dignity of person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. It has long been accepted in certain domestic jurisdictions that harassment can amount to discrimination. For example in the US harassment claims first arose in the context of racial discrimination. In some other jurisdictions, the courts have held that sexual harassment amounts to direct discrimination even where it has not been explicitly mentioned in the relevant legislation. There have been several cases on harassment brought and settled at the international level. One example can be found in *Hagan v. Australia*, (No. 26/2002, ICCPR), in which the HRC allowed a complaint by an Australian national of indigenous ethnic origin against the usage of the word "nigger" in a display at an important sporting ground in his town on the basis of Article 1 of CERD.
- ▶ *Victimisation* arises where any adverse measure is taken by an organisation (including employers or public authorities) or individual in retaliation for efforts to enforce legal principles, including those of equality and non-discrimination. Acceptance of victimization as a ground for entertaining a case on discrimination was seen in *Fogarty v the United Kingdom* (No. 3711/97, 21/11/2001) by the European Commission on Human Rights.

Both direct and indirect discrimination impose negative duties/obligations on a State, that is, to refrain from discriminating. However, the international discrimination law also imposes positive duties/obligations on a State to promote equality particularly to overcome the limitations of direct and indirect discrimination. Positive obligation of the State may include obligations to implement, to ensure or guarantee rights as well as respect them. It also includes positive action or affirmative measures (also known as 'special measures') taken by a government or private institutions to remedy the effects of past and present discrimination by providing reverse preferences favouring members of classes previously disadvantaged. Such preferential treatment runs counter to the strictly formal notion of equality. Many

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Two other forms of discrimination have been identified and articulated in international jurisprudence are harassment and victimization.

international instruments explicitly permit positive action without imposing an obligation on States to take such measures.

2. Discrimination against specific groups

■ *Discrimination against women*

The historical development of the rights doctrine finds basis in the traditional understanding of human rights as "men's inalienable right to life liberty and property."

History shows that women as compared to men have been facing many obstacles sanctioned by culture, religion and social practices in achieving equality. These obstacles have resulted in the discrimination that women face at all levels from home to the highest official positions. For years together the discrimination in law and practice were justified on the grounds that women are different from men and differed in physical, mental and psychological aspirations, the result of the formal approach to understanding equality. However, with the emergence of the women's movement in the mid nineteenth century, the impacts of such discrimination on lives of women became conspicuous.

The historical development of the rights doctrine, through the basic international instruments such as UDHR, ICCPR, ICESCR presently considered *jus cogens*, finds basis in the traditional understanding of human rights as "men's inalienable right to life liberty and property" and theories of traditional philosophers that understood men as individuals innately possessing certain natural rights while women were defined not as individuals but as member's of men's households and thus under male control.¹⁴ The entire rights discourse therefore while forging obligations of state had remained restricted to the man's political participation in the state and male perspectives of non-derogability of inherent rights such as right to life, dignity etc. Feminist scholars have thereby opined that "From a woman's perspective, ... the definition and development of the three generations of rights have much in common; they are built on typically male life experiences and in their current form do not respond to the most pressing risks women face".¹⁵

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The need felt by the women's rights movement to develop a framework that could specifically address discrimination against women thereby ensuring mainstreaming of women's rights in the human rights

14 J. Locke, "An Essay Concerning the True Original Extent and End of civil Government" and J.J. Rousseau, 'From the Social Contract', in S. Commins and R. Linscott (eds.) The World's Great Thinkers: Man and the State, Random House, 1947

15 Hilary Charlesworth, *What are "Women's International Human Rights"?*, Chapter 3, p.58, Rebecca J. Cook, ed. Human Rights of Women , National and International Perspectives, 1994

framework took shape in the form of the Declaration on the Elimination of Discrimination Against Women which was adopted in 1967. Though only of a morally binding nature, creating no particular obligations for state parties, Article 1 of the Declaration specifically declares

"Discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offence against human dignity."

This finally resulted in the adoption of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1979. The first comprehensive definition of discrimination against women provided by the Convention can be segregated in phrases to mean the following:

■ ***Any distinction, exclusion or restriction***

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

Exclusion means prevention from being included. In Nepal, the married daughters have no right to parental property or intestate property whereas, married sons have equal share in the property. Daughters are excluded from the family property with the notion that they belong to their husband's family.

Restriction means limiting the extent of something. For instance, girls who wish to study abroad have to obtain prior consent from their parents or guardians. However, there is no such requirement for boys who wish to study abroad.

■ ***Made on the basis of sex***

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

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■ *Of impairing or nullifying the recognition, enjoyment or exercise by women*

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

Nullifying recognition means giving rights by one hand and nullifying their recognition by the other hand.

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

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

Nullifying: Nullifying recognition means giving rights by one hand and nullifying their recognition by the other hand. According to the law relating to property, women can take share of their husband's property and live separately. However, upon doing so, the husband can marry for the second time without divorcing his first wife thereby nullifying the right to property of women.

Women cannot be discriminated against on the basis of their marital status.

Married women have right to husband's property however, they can claim for share in husband's property only if the husband or his parents fail to take care of their needs.

Nullifying enjoyment means giving rights on one hand however in effect nullifying the enjoyment of the rights. Under the present

Nullifying exercise: The "*deuki*" practice in the far western region of Nepal is a practice where a person who wishes to gain personal advantage offers a girl or woman to a temple. Such practice nullifies the girls' right to education and marriage.

■ *Irrespective of marital status*

Women cannot be discriminated against on the basis of their marital status. For instance, in Nepal, married daughters do not have right to inherit their paternal property nor do they have right to intestate property. Though unmarried daughters have right in the paternal property, they have to return their share of property upon marriage.

■ **On the basis of equality between men and women**

Equality is the condition of possessing substantially the same rights, privileges, and immunities, and being liable to substantially the same duties.¹⁶

In an attempt to substantiate the principle of equality to reflect particular concerns of women, the Convention incorporated the following:

Temporary Special Measures to accelerate *de facto* equality : Identifying and differentiating between formal and substantive equality for the first time the convention uses the term *de facto* equality to signify equality in effect and in reality as opposed to *de jure* equality which restricted itself to merely the law and its application irrespective of differences in capability or of the effects of historic discrimination.

Modification of social and cultural patterns of conduct of men and women: By this provision the Convention attempts to bridge the public and private dichotomy that had been created previously by the international human rights framework resulting in rampant discrimination against women within familial spheres. It vests the state with the duty to ensure equality in all spheres irrespective of the situation of women.

■ **Discrimination against on the basis of caste, religion or ethnicity**

Rights of Dalits, and persons belonging to particular religion or ethnicity are guaranteed under several international instruments.

Rights of social groups based on religion and ethnicity have been seen to be protected as "minority rights" under several instruments. The UN Special Rapporteur on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities, F. Capotorti, formulated the following definition for 'minority' under Article 27 of the ICCPR:

"A minority is any group of persons resident within a sovereign State which constitutes less than half the population of the national society and whose members share common characteristics of an ethnic, religious or linguistic nature that distinguishes them from the rest of the population."¹⁷

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¹⁶ *Black's Law Dictionary*, St. Paul, Minn West Publishing Co., 1990, p.536.

¹⁷ Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, UN Doc E/CN.4/Sub.2/384, 1979

ICERD being the only international instrument to define racial discrimination, the concept of 'race' encompasses a whole range of characteristics arising from biological, economic, social, cultural and historical factors.

The UN General Assembly passed Resolution No. 47/135 of 18 December 1992 on the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities focussing on individual rights for persons belonging to minorities. Though not binding on State Parties the Declaration provided the following:

- ▶ Article 1 obliges States to protect the existence and identity (national or ethnic, cultural, religious and linguistic) of minorities.
- ▶ Article 2 grants minorities the right to enjoy their culture, profess and practice their religions and languages freely and without interference and without any form of discrimination. It also grants minority groups the right to participate effectively in cultural, religious, social, economic and public life.
- ▶ Article 3 provides that those rights may be exercised individually and in community with other members of the group and without discrimination.
- ▶ Article 4 obliges States to take positive measures to protect minority culture, language, etc.

Apart from the above mentioned, Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries (1989) provides protection for indigenous groups concerning land rights, recruitment and conditions of employment.

According to CERD General Recommendation 24, 'descent' "includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status."

ICERD being the only international instrument to define racial discrimination, the concept of 'race' encompasses a whole range of characteristics arising from biological, economic, social, cultural and historical factors. While there exists no specific definition of "Discrimination on the basis of caste" in international human rights law, according to CERD General Recommendation 24, 'descent' "includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status." 'National or ethnic origin' concerns linguistic, cultural and historical differences.

CERD has also stated (in General Recommendation 8) that the identification of individuals as members of a particular racial or ethnic group "shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned". 'Race' for the purpose of the prohibition of discrimination can therefore be determined by a group's belief in its separate identity. According to CERD General Recommendation 14, States may not "decide at their own discretion which groups constitute ethnic groups or indigenous peoples."

International and regional systems of human rights protection have recognised other forms of racial discrimination that are not contained in the ICERD definition. For example, the UN Sub-Commission on Human Rights Resolution 2001/11 refers (in paragraph 12) to "other patterns of discrimination such as contemporary forms of slavery, that are based on, inter alia, race, colour, social class, minority status, descent, national or ethnic origin or gender". Other groups that are particularly subject to racial or ethnic discrimination include migrants, indigenous peoples, victims of trafficking, refugees and asylum-seekers.

The prohibition of discrimination on the basis of race, religion, ethnicity and caste is also a peremptory norm of customary international law (*jus cogens*) and therefore binding on all States independently of any treaty obligations. The following actions are some forms of discrimination explicitly prohibited under international human rights law:

- ▶ **Segregation** - Segregation is often categorised as a particularly blatant form of direct racial discrimination under national and international laws hampering equal treatment because it often excludes a vulnerable minority from opportunities that are available to others. In General Recommendation No. 19 ('Racial Segregation and Apartheid') CERD observed (in paragraph 3) that while conditions of complete or partial racial segregation may in some countries have been created by governmental policies, a condition of partial segregation may also arise as an unintended by-product of the actions of private persons.
- ▶ **Hate Speech** - Article 20(2) of the ICCPR provides that "[A]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law." Against this, Article 19(2) lays down the right to "seek, receive and impart information and ideas of all kinds." Article 19(3) provides that the right to freedom of expression in Article 19(2) carries "special duties and responsibilities" and may therefore be subject to restrictions necessary for, inter alia, "the respect of the rights or reputation of others" or the protection of public morals.
- ▶ **Racist Motivation for Crimes** - The existence of racial motivation as an aggravating factor to criminal offences has recently been recognised by the UN Committee against Torture in Dzemajl (No. 161/2000, CAT).
- ▶ **Employment** - Racial discrimination may occur throughout the employment relationship - in the hiring of workers, promotion, job assignment, termination of employment and compensation.

Segregation is often categorised as a particularly direct racial discrimination hampering equal treatment because it often excludes a vulnerable minority from opportunities that are available to others.

The ICERD Committee has expressed its concern over establishment of the National Dalit Commission as an executive body rather than as a legislative body in Nepal.

CRPD being the latest and the most comprehensive instrument relating to persons with disabilities has introduced a paradigm shift in the discourse of disability, from a welfare approach to that of a rights-based approach.

- ▶ **Access to Goods and Services (and Public Accommodation)** - Racial or ethnic discrimination in the provision of goods or services to the public is also prohibited by ICERD. Cases involving the denial of services have included, although are not limited to, things such as the denial of financial services and refusal of entry to a public space.
- ▶ **Racism in the Administration of Justice** - Article 5 of CERD may be violated when no remedy is provided for a claim of bias in the administration of justice (for example, a racist jury).

The ICERD Committee has expressed its concern over establishment of the National Dalit Commission as an executive body rather than as a legislative body in Nepal. In addition it had expressed concern over forced relocation and violations of the indigenous peoples' right to own, develop, control and use their traditional homelands and resources, need for determined enforcement of the criminal justice, lack of information regarding the multiple discrimination against the women belonging to disadvantaged groups and ineffective and inadequate enforcement of Bonded Labor Prohibition Act 2002.

■ *Discrimination with regard to Persons with Disabilities*

The Convention on the Rights of Persons with Disabilities being the latest and the most comprehensive instrument relating to persons with disabilities has introduced a paradigm shift in the discourse of disability, from a welfare approach to that of a rights-based approach. It lays primary emphasis on existing international instruments and established principles of international human rights law to articulate their rights of persons with disabilities.

The definition of "discrimination on the basis of disability" under Article 2 has been formulated in a manner similar to the definition in ICERD and CEDAW thereby comprehensively depicting the means by which discrimination may occur and the effects that can be considered as resultant of such discrimination.

The Convention allows States to discriminate in favour of persons with disabilities when necessary to ensure that persons both with and without disabilities have equal access and opportunities.

In addition to the above and in an attempt to address specific form of discrimination faced by persons with disabilities the definition states that discrimination in such circumstances may also include denial of reasonable accommodation. Article 2 defines "Reasonable accommodation" to mean carrying out, when necessary, appropriate

modifications and adjustments, which do not impose a disproportionate or undue burden, so that persons with disabilities can enjoy their human rights and fundamental freedoms on an equal basis with others.

In acknowledging that rights of persons with disabilities cannot be divided in their enjoyment the Convention draws its principles from all existing human rights conventions and treaties and upholds their indivisibility.

The Convention has also addressed the concern that women with disabilities might experience discrimination on at least two levels: on the basis of sex and on the basis of disability. The principle of equality between men and women requires States to promote equality between men and women and to combat inequality when implementing the provisions of the Convention. Article 6 of the Convention specifically recognizes that women and girls with disabilities are subject to multiple forms of discrimination, including on the basis of disability, on the basis of sex and sometimes on other grounds as well. Equality between men and women is not only a guiding principle of the human rights work of the United Nations, it is also a right in and of itself.

Other principles such as full and effective participation, respect for difference, equality of opportunity, accessibility, gender equality and respect for evolving capacities have been translated into actual and effective measures that can be taken by the Government through the provisions of the Convention. All these principles are aimed to protect, promote, fulfill and respect the overarching right of equality for persons with disabilities.

Nepal though a signatory to the CRPD is yet to ratify the Convention and its Optional Protocol. As one of the first countries in the Asian region to enact a specific law relating to rights of persons with disabilities, the reality has shown extreme laxity in implementation of laws and policies relating to persons with disabilities and use of discriminatory language continues to exist in several laws and regulations.

■ *Non-Discrimination in Nepal*

Nepal is a party to 21 international human rights instruments and it has signed four optional protocols. Under these instruments specially under Article 1 of International Convention on the Elimination of Racial Discrimination, 1965 (ICERD)¹⁸; Articles 3, 16 and 26 of International

CRPD has also addressed the concern that women with disabilities might experience discrimination on at least two levels: on the basis of sex and on the basis of disability.

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¹⁸ The ICERD is critical human rights instruments of the United Nations (UN) that advocates to establish human rights standards for addressing racism and racial discrimination at the domestic level that also includes caste based discrimination.

Social objective of the State is to establish and develop a society by eliminating all types of economic and social inequalities and by establishing harmony amongst people belonging to various castes, tribes, religions, languages, races and communities.

Covenant on Civil and Political Rights, 1966 (ICCPR); Articles 2, 3, 25 and 16 of International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR); Articles 1, 2 and 15 of Convention on Rights of Child, 1989; Articles 1 and 7 of Universal Declaration of Human Rights, 1948; Article 2 of ICERD Convention guarantee right to substantive equality specially to address the disparities and disadvantageous situation of these groups. Hence, these Conventions encourage not only equal opportunity, but also to equality in access and result. For upholding these rights, on one hand it requires the States to refrain from curtailing the rights and on the other hand requires taking some positive initiatives in order to protect and promote these rights. Declaration on Racism, Racial Discrimination, Xenophobia and related Intolerance, 2001; the Beijing Platform for Action; the Beijing Declaration and the Outcome Document and the UN Declaration on the Rights of the Persons belonging to National Ethnic, Religious and Linguistic Minorities, 1992 add to the rights guaranteed by the international bill of rights and other human rights instruments by strengthening and clarifying those rights so as to make it possible for persons belonging to minorities to preserve their cultures and identities. Under these human rights instruments, the State is obliged to respect and ensure non-discrimination on any ground including caste, ethnicity and gender and to bring equality.

3. Non-discrimination under the Constitution

The Interim Constitution of Nepal, 2007 has been promulgated with the objective to secure social, political and economic justice, and to establish system of justice with a view to transforming the concept of the rule of law into a living reality guaranteeing basic human right to every citizen.¹⁹ Following the model of welfare State, the directive principles of State policy aims at establishment of a just system in all aspects of national life. In doing so, the social objective of the State is to establish and develop a society by eliminating all types of economic and social inequalities and by establishing harmony amongst people belonging to various castes, tribes, religions, languages, races and communities.²⁰

In Nepal the Interim Constitution states under Article 13 on Right to Equality:

(1) All citizens shall be equal before the law. No person shall be denied the equal protection of the laws.

¹⁹ Preamble to the Interim Constitution of Nepal, 1990

²⁰ Article 25 (1), (2) and (3) of the Constitution.

(2) *No discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, sex, caste, tribe, origin, language or ideological conviction or any of these.*

(3) *The State shall not discriminate among citizens on grounds of religion, race, caste, tribe, sex, origin, language or ideological conviction or any of these.*

Provided that nothing shall be deemed to prevent the making of special provisions by law for the protection, empowerment or advancement of the interests of women, Dalit, indigenous ethnic tribes, Madhesi, or peasants, labourers or those who belong to a class which is economically, socially or culturally backward and children, the aged, disabled and those who are physically or mentally incapacitated.

(4) *No discrimination in regard to remuneration and social security shall be made between men and women for the same work.*

This provision is therefore both formal and substantive in nature allowing special measures on the basis of identified historically discriminated social groups. Similarly the right to social justice has been guaranteed as fundamental right of the citizen under Article 21 that states:

"Women, Dalit, indigenous tribes, Madhesi community, and oppressed group, the poor peasant and labourers, who are economically, socially or educationally backward, shall have the right to participate in the state mechanism on the basis of proportional inclusive principles."

In addition, the constitution vests the State with the obligation to carry out an inclusive, democratic and progressive restructuring of the State by eliminating its existing form of centralized and unitary structure in order to address the problems related to women, Dalits, indigenous tribes, Madhesi, oppressed and minority community and other disadvantaged groups, by eliminating class, caste, language, sex, culture, religion and regional discriminations. State is also obliged to enable Madhesi, Dalits, indigenous ethnic groups [Adivasi Janajati], women, labourers, farmers, the physically impaired, disadvantaged classes and disadvantaged regions to participate in all organs of the State structure on the basis of proportional inclusion.

The Constitution guarantees that women, Dalit, indigenous tribes, Madhesi community, and oppressed group, the poor peasant and labourers, who are economically, socially or educationally backward, shall have the right to participate in the state mechanism on the basis of proportional inclusive principles.

Even within women, women from marginalized are further discriminated against thus resulting in *double discrimination*.

The second people's movement has explored various hidden agenda which directly concern the women's right and established as national agenda.

1. Status of Women in Nepal

The total population of Nepal is 2, 31, 51, 423 out of which 1, 15, 87, 502 are women constituting 50.05 percent of the population.²¹ However, women face discrimination on the basis of sex and gender in various spheres of life. The overall literacy rate of women is only 42.49 percent that is remarkably low as compared to men, which is 65.08 percent. Even within women, women from marginalized are further discriminated against thus resulting in **double discrimination**. A study on women's status in Nepal reveals their secondary status and resulting oppression because of the dominant Hindu religion and prevailing social and cultural norms in the country.²²

Hindu women and women belonging to indigenous ethnic groups such as *Rai, Limbu, Gurung* etc. have different rights and suffer from different modes of oppression. Women from indigenous groups enjoy more egalitarian rights, with equal or more access and control of resources; relatively higher degree of social mobility, and freedom within the private sphere. However their participation in public sphere is negligible due to the dominant ideology of *Bahunbad* (Bahunism).²³ In contrast, Hindu women have no autonomy within the private sphere, but enjoy limited positions in the public sphere. Their oppression stems from the concepts of hierarchy, the caste system, traditional thoughts about food, and the high value of chastity. While discussing either group of women, one must recognize that the concept of gender equality is not novel in Nepal, though great discrimination prevails.

The second people's movement has explored various hidden agenda which directly concern the women's right and established as national agenda. The restored parliament (House of Representatives) enacted the *Act to amend some Nepalese Act to Maintain the Gender Equality, 2006* (referred to as "Gender Equality Act") and made some amendments in the existing laws which are directly discriminatory to women. The restored parliament endorsed a landmark resolution on mother's right to confer citizenship to her children, 33% reservation for women in the state mechanism, combating violence against women, and reformation in the discriminatory laws against women which were indeed laudable efforts.

21 *Nepal in Figures*, 2003; The Central Bureau of Statistics, HMG/NPC-2003.

22 Cited in *An Update of Discriminatory laws in Nepal and their Impact on Women*, Forum for Women, Law and Development, 2006, see also *Study on the Nepalese Women's Status*, CEDs, 1979 and *Study on the Status of Women, Shtri Shakti (S2)* 1991.

23 *An Update of Discriminatory laws in Nepal and their Impact on Women*, Forum for Women, Law and Development, 2006.

■ *Economic Status*

The dominant Hindu religion and culture have popularized a belief that women should be dependent on men for income right from the time they are born. Men are considered the sole breadwinners of families, and women are viewed only as domestic and maternal. "Women's work" is confined to the household since the very beginning. Though some steps have been taken to include contribution of domestic labour in economic activities of the census 2001 by the Central Bureau of Statistics, women's domestic labour goes unnoticed and unpaid for. The workload of Nepalese women is immense. Nepalese women work about 16 hours every day. Women who are engaged in employment focus mainly in agriculture works, carpet industries, as domestic labour, or other wage labor activities²⁴.

According to the Three Year Interim Plan (2007-2010) of the Government of Nepal, women's labour participation is 48.9 and that of males is 67.6 in the public space. Statistics showed that women were mostly involved in domestic chores, informal sector and that they were not paid for the work carried out. Women and men's contribution in the economic activities of the home are 42.5 and 46.6 hours per-week respectively. The contribution of women and men within home is drastically different namely, 25.1 and 9.7 hours respectively. Participation of women and men in the economic and non economic activities are 103 and 98.8 hours each week.²⁵

Complicated economic disparity is increasing the number of women poor. Women's ownership on house can be found very low, which is only around 11 percent. This system leads to discrimination against girl child in food distribution, and the provision of clothing, health-care, education, and entertainment. This is because the female child is viewed as having no lasting value to the family²⁶.

■ *Socio-cultural Status*

Patriarchy persists and dominance of Hindu religion and culture has treated women as second class citizens from the very beginning. As a result of this, women are treated as a vulnerable group in society. The Hindu religion and its associated culture, norms, and values have prevailed for hundreds of years. *Ram Charit Manas* states, "Drums and idiots, outcasts, beasts, and women are fit only for beating." Hindu

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24 An Update of Discriminatory laws in Nepal and their Impact on Women, Forum for Women, Law and Development, 2006, p 2.

25 Three Year Interim Plan 2064/ 065—2066/067, The Government of Nepal. P...

26 See foot note 6

Nepalese women have been involved in the political movement since the 1950s. As they were excluded from participating in local or national politics, their voice was not heard in the national level politics.

scriptures also suggest that fathers, husbands, and even sons should control women. Popular sayings exemplify these beliefs, "let it be late, but it should be a son," "the birth of a son paves the way to heaven," "a daughter is born with doomed faith," "it's a sin if the groom kill the bride, charity if nurtured," and "women are always shortsighted." Of the various communities within Nepal, Hindu women often are the most oppressed based on this ideology.²⁷ Similarly, some of the socially ill practices have contributed to the vulnerable status of women such as child marriage, violence in marriage, dowry, *chheupadi*, *deuki*, *badi*, and *jhuma* which are still prevalent in Nepalese society. Finally, regional differences affect the status of women. For example, women from the Muslim community are not culturally allowed to participate in various social activities. It shows that women are treated, even today, as second class citizens in the Nepalese society.

■ *Political Status*

Nepalese women have been involved in the political movement since the 1950s. As they were excluded from participating in local or national politics, their voice was not heard in the national level politics. Even when they were represented in politics; they could not occupy key posts and could not influence policy decisions. These factors include: the dominant ideology of patriarchy, male chauvinism, criminalization of politics, lack of equal property rights, restrictions on women's mobility, and domination of men in all the political parties and the media. Politics is commonly thought to be controlled by 5-M, that is, Men, Muscle, Money, Manipulation and Mafia.²⁸

After the people's movement, the issues of inclusion of women in politics have been strongly raised by women's rights activists, civil society members and women wings of the political parties. The Interim Parliament proclaimed to ensure one third representation of women in the state mechanism. Similarly the interim constitution has also ensured women's representation in the Constituent Assembly. 197 women out of 601 Constituent Assembly members have been elected or nominated in the Constituent Assembly. Despite the fact that half of the total population is women, women's representation can be found only one third. However, this is a very remarkable representation in the parliamentary history of Nepal.

²⁷ An Update of Discriminatory laws in Nepal and their Impact on Women, Forum for Women, Law and Development, 2006, p 2.

²⁸ Ibid

Though the present Deputy President of Constituent Assembly is a woman but presence of women is very minimal in the higher public positions including judiciary, secretary, joint-secretary, under-secretary in the other government body. Local Self-Governance Act, 1999 and Constituent Assembly Election Act clearly mention that 1/3 women representation should be ensured in the local level and national level.

2. Areas of Discriminations

Various international human right instruments have defined discrimination and have enumerated the grounds of discrimination. The philosophy of Human rights does not allow any kind of discrimination except positive discrimination which uplifts the vulnerable group and ensures rights of such groups. Convention on Elimination of all Kind of Discrimination against Women has defined discrimination very clearly and comprehensively. Article one of the convention has defined discrimination as follows: the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field²⁹.

The definition has clearly mentioned that any kind of discrimination even on the basis of marital status which is against the right of women and fall into the definition of discrimination. Such discrimination is not only contrary to the United Nations Charter and various international human rights instruments including CEDAW, but also against the basic principle of equality, one of the guiding philosophies of every democratic society. Taking this into this consideration, Forum for Women Law and Development conducted a research on discriminatory laws which discriminate against women in the year 2002 which was updated in 2004, 2006 and 2007. A number of laws and legal provisions were found which were discriminatory on the basis of sex. Even the Interim Constitution, 2007 has guaranteed the right to equality. Several laws, which explicitly discriminate against women on the basis of sex, are still in existence.

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²⁹ Convention on the Elimination of All Forms of Discrimination against Women, 1979, Article, 1

The study examined 303 Acts including the Constitution and 281 regulations. The study identified 103 discriminatory provisions and 92 schedules in various Acts and Regulations which discriminate against women. Substantive discrimination still exists in the field of nationality, marriage and family relations, sexual offence, and property rights. The following statistics depict the areas of discrimination against women:

The study identified 103 discriminatory provisions and 92 schedules in various Acts and Regulations which discriminate against women.

Issues	Legislations	Provisions			Annexes	Total
		Article	Section	Rule		
Nationality	4	2	2	1	3	5+3*
Property	9	0	18	17	-	35
Sexual Offence	1	0	3	-	-	3
Employment	1	-	-	2	-	2
Health	15	-	4	11	-	15
Family	19	-	19	13	-	32
Court proceedings	4			9	1	9+1*
Identity	29	-	2	-	88	2+88*
Total	62**	2	48	53	92	103+92*

The above statistics has depicted that the following areas of the laws mainly discriminate against women;

- ▶ Nationality (Citizenship)
- ▶ Property
- ▶ Trafficking and Sexual Offences
- ▶ Education/Women and Employment
- ▶ Health including Reproductive Health
- ▶ Marriage and Family
- ▶ Legal and Court Proceedings

■ *Nationality (Citizenship) Rights*

The promulgation of Interim Constitution of Nepal 2007 has carried out some changes in the previous constitutional provisions which discriminated women for conferring the citizenship to their daughter

* Annex

** Some of legislations have been repeatedly referred in more than one issues.

and son. However, The Constitution, Citizenship Act, Citizenship Regulations and Passport Rules even today discriminate against women. In conferring citizenship to children, the new law requires that children born from foreign husbands have to be born in Nepal, and be permanent residents of Nepal.³⁰ Even after completion of these two conditions, children will be able to get naturalized citizenship. According to the present Constitution, women of foreign nationality who marry with Nepalese citizens can acquire the Nepalese citizenship after starting the process to denounce their former citizenship. However, a man of foreign nationality who marries a Nepalese woman is not entitled to acquire Nepalese citizenship by virtue of the marriage.³¹ Thus, Nepalese women have been discriminated in comparison to their male counterparts. Passport forms mention only wife and children as accompanying persons.³²

■ *Property Rights*

Economic justice is a crucial goal for women in Nepal. Since these women are economically dependent on their families, they are forced to live in abusive relationships and endure both physical and mental violence as a result of economic dependency.³³ Taking this into consideration, the Interim Constitution 2063 has guaranteed equal right of son and daughter in ancestral property. Article 20 (4) of the Constitution states that "the son and the daughter shall have the equal right to ancestral property".³⁴ Similarly, the Country Code amendment has recognized equal right of women in property; but, married daughters are excluded from right to inheritance and intestate property. They are not considered as coparceners and fall behind in the line of succession.³⁵ The Nepalese law has stated that bigamy is illegal but the law itself recognizes all wives as equal shareholders in the husband's property.³⁶ Remarriage of separated women with property requires returning property inherited from the husband³⁷.

Similarly, unmarried daughters are eligible to file such application only after the sons and married daughters fall much behind in the line of succession³⁸. In the event of the death of the nominee to the savings, the

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30 Article 8 (7) of The Interim Constitution of Nepal 2007 and

31 Article 8 (6) of The Interim Constitution of Nepal 2007 and section 5(1) of Nepal Citizenship Act 2006

32 Application Forms of Passport, Passport Rules, 1970

33 An Update of Discriminatory laws in Nepal and their Impact on Women, Forum for Women, Law and Development, 2006, p 2.

34 The Interim constitution 2063 (2007), article 20 (4).

35 No 5 of Chapter on Women's Exclusive Property of the Country Code, 1963,

36 No 4 of Chapter on Partition of the Country Code, 1963

37 No 4 of Chapter on Husband and Wife of the Country Code, 1963

38 Rule 101(2) of the Civil Services Rule, 2050

Marital rape has been recognized as a crime but the punishment on the marital rape is negligible as compared to rape outside of marriage.

provision of succession is discriminatory as unmarried daughters fall behind sons in the line of succession and married daughters fall much behind in the line of succession.³⁹ Wives of all male police personnel can receive pension upon the accidental death of their husbands, however, in case of women police personnel, Nepal Government has powers to decide whether the husband of deceased women police personnel is eligible to receive such pension.⁴⁰

Similarly, widows of teachers or staff of Tribhuvan University may receive pension benefits only after the recommendation of the Executive Council of the University.⁴¹ Widow of government employees are discriminated in case of allowances: A widow of a government employee is not entitled to the family allowances and gratuity if she wasn't not living together with her husband at the time of his death. Hence a widow, even if she has not taken her share of the husband's property, or is not divorced, is deprived of such allowances.⁴² The other provisions have also discriminated against women on the basis of marital status which have been mentioned in detail in the Matrix.

■ *Sexual offences and Harassment*

The Interim Constitution has, under Article 29, guaranteed the right against exploitation to all its citizens. As such, the Article explicitly states that every person shall have the right against exploitation. Similarly Article 29(3) states that no one shall be trafficked in nor shall be held in slavery or in servitude.⁴³ The Supreme Court has recognized marital rape as an offence and has issued a directive order to introduce a Bill for providing immediate relief by allowing the wife to live separate from or to divorce the rapist husband⁴⁴. After the enactment of The Act to Amend Some Nepal Act to Maintain Gender Equality Act 2063, marital rape has been recognized as a crime but the punishment on the marital rape is negligible as compared to rape outside of marriage. This crime of rape as such, shouldn't get diluted simply if it is committed within the marriage.⁴⁵

39 Rule 11(3) of Postal Savings Bank Regulations, 2033; Rule 101 (2) of Civil Services Rules, 2050; Section 99(2) of the Nepal Health Service Rules, 2055; Rule 58(3) of Armed Police Rules, 2060; Rule 86(2) of Cabinet Secretariat Administration Rules, 2050; Rule 59(2) of Rules of Service of the Tribhuvan University Teachers and Staff, 2050.

40 Rule 107(5) of Police Rules, 2049

41 Rule 57(1) of Rules of Service of Tribhuvan University Teachers and Staff, 2050.

42 Rule 98 (2) a of the Civil Service Rules 2050 (1993), Rule 95(2) of the Nepal Health Service Regulations, 2055

43 Interim constitution 2063 (2007), Article 29

44 Advocate Meera Dhungana Vs HMG Nepal, NKP, vol, 2058

45 Section 3(F) of the Country Code, 1963 on Chapter of Rape.

The Supreme Court of Nepal has also recently issued a directive order to amend the law on marital rape which is discriminatory with respect to the punishment of marital rape.⁴⁶ Similarly, In *Sapana Pradhan Malla for FWLD v. HMG/Nepal*, the discriminatory provision of the rape law was challenged which provided for lesser punishment⁴⁷ to the culprit for the rape of a prostitute against Article 1, Article 11, Article 12(1) and Article 20 of the Constitution of the Kingdom of Nepal 2007 and Article 9(1) of the Treaty Act. The supreme court of Nepal issued an order to declare No.7 of Chapter on Rape as void. The court further stated that the provision provides less punishment for rape of a prostitute, discriminates against them without any reasonable grounds, construing them as lower class. The existence of such laws which are discriminatory and unequal among citizens, does not comply with the spirit of the Constitution. The law relating to incest is based on religion and customs. It is impractical in various situations. According to the existing law, if a person marries a widow within the relation of brother-in-law, it constitutes an offence,⁴⁸ but it is an accepted norm in the society to marry one's sister-in-law.

■ Education and Employment

The Interim Constitution has guaranteed the right to education as a fundamental right of all Nepalese citizens. Similarly, laws have been amended or enacted to ensure the right to education to all Nepalese citizens. Despite that, the literacy rate of women is remarkably below that of men. *De facto* realization of right to education is a crucial task in the context of Nepal.

Army Police Regulation discriminates women requiring them to be unmarried or widowed (single women) for being eligible to apply for the job, and also restricts women from marriage during the training period.⁴⁹ Consequently, women who are married are not eligible to enter Armed Police Services. Similarly legal provisions also prohibit women to marry while on the training period. The previous Foreign Employment Act was directly discriminatory to women but Foreign Employment Act 2063 has ensured right to equality with respect to foreign employment. Even then, women are still facing so many

Army Police Regulation discriminates women requiring them to be unmarried or widowed (single women) for being eligible to apply for the job, and also restricts women from marriage during the training period.

46 Jeet Kumari Pangeni et.al Vs Government of Nepal et.al, Decision date on 10 July, 2008

47 According to No.7 of the Chapter on Rape (before the Eleventh Amendment), in case, any person commits rape in any manner against a prostitute without her consent and through the use of force, he shall be punished with a fine not exceeding Rs.500 or, with imprisonment not exceeding one year, and whereas, No.3 of the Chapter (before the Eleventh Amendment) provides that if any person commits rape against a girl below the age of 14 years, the culprit shall be punishable with a imprisonment ranging between six to ten years and if it a girl above the age of 14 years, the culprit shall be punishable with a imprisonment ranging between three to five years.

48 No. 3 and 4 of the Chapter on Incest of the Country Code of Nepal.

49 Rule 4(3)(h) and 4(4) of Regulation relating to Army-police 2001.

Maternity leave provision in various laws is found highly inconsistent with other laws. For example, the Labour Law has prescribed 52 days, some 60 days, some 98 days and in some legislation there are no provisions for maternity leave.

challenges and discriminatory behavior, even today, with respect to foreign employment.

■ *Health, including reproductive health*

Interim Constitution of Nepal, 2007 has guaranteed the Reproductive right as women fundamental right. Article 20 (2) of the Interim Constitution has stated that "every women shall have the right to reproductive health and reproduction"⁵⁰. Despite that, maternity leave provision in various laws is found highly inconsistent with other laws. For example, the Labour Law has prescribed 52 days, some 60 days, some 98 days and in some legislation there are no provisions for maternity leave.⁵¹ Though the supreme court held that the constitution 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 international human rights instruments, especially the ILO Convention, maternity protection, 2000 provides for 14 weeks of maternity leave.⁵² Despite that, such legal provisions are still remaining in various laws and regulations.

In addition, if women have miscarries as a result of an act of anger or malevolence of another person the punishment is up to six months or fine of up to Rs. 1000 depending on the period of pregnancy and knowledge about the pregnancy as per existing abortion law.⁵³ However, if a woman undertakes abortion in other circumstances, she will be imprisoned up to 5 years depending on the period of pregnancy.

■ *Marriage and Family Rights*

Marriage and family rights are important and inalienable human rights of women. Various international human rights have ensured that marriage with free and full consent is a human right. State parties are obliged to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.⁵⁴

50 The Interim constitution of Nepal, Article, 20 (2) 2063 (2007)

51 Section 65 of Rules Relating to Staff of the Office of Auditor's General, 2050 (1994), section 106 of Education Regulation, 2059 (2002), Section 59 of Civil Service Rules, 2050 (1993), section 105 of Armed Police Rules, 2060 (2003), section 34 of Labour Regulation, 2050 (1993), section 35 of Labour Regulation Relating to Tea Estate, 2050 (1993), Section 51 of Nepal Health Service Regulation, 2055 (1998), Section 244 of Local Self Government Regulation, 2056 (1999), Section 16 of Regulation Relating to Working Journalist, 2053 (1996), Section 8 of Act Relating to Remuneration, Terms and Condition of the Judges of the Supreme Court, 2026 (1969), Section 14 of Act Relating to Remuneration, Terms and Condition of the Attorney General, 2052 (1995), Section 15 of Act Relating to Remuneration, Terms and Condition of the Office Holders of Constitutional Bodies, 2053 (1996)

52 Advocate Praksh Mani Sharma and et.all. vs HMG/Nepal and et.all, writ No.88/ 2059, Decision date September 11, 2003

53 No.32 of the Chapter on Homicide, Country Code

54 Art 16 (1) of CEDAW., Art. ICPD Declaration 1994 (Chapter 7)

The Convention further states that the state parties shall ensure same rights and responsibilities for men and women in marriage and divorce; the same right to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.⁵⁵ Finally, men and women must be given the same responsibilities with regard to their children, irrespective of their marital status.⁵⁶

The various Nepalese laws relating to marriage and family rights are inconsistent with the rights guaranteed by the various human rights instruments and right to equality vested by the Article 13 of the Interim Constitution of Nepal, 2007. The Chapter on Husband and Wife of the Country Code mentions that if a married woman remarries, the earlier marriage is automatically terminated. This provision is discriminatory because in case the husband remarries, the earlier marriage is not automatically terminated and the wife has to apply for divorce.⁵⁷ Bigamy is encouraged by the law: According to the existing law, a man can perform second marriage without divorcing his first wife in the following circumstances:⁵⁸

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

This legal provision is obviously discriminatory because when wife needs love, affection and care the most, the law allows the husband to remarry. In addition to that, the provision has treated women as mere objects that men can take for granted. Although bigamy is illegal, the second marriage is not void and becomes legal after completion of the minimal punishment of imprisonment ranging between one to three years and the payment of a fine between Rs.5000-25000.⁵⁹

Bigamy is encouraged by the law: According to the existing law, a man can perform second marriage without divorcing his first wife in certain circumstances.

⁵⁵ Art 16 (1) (c) of CEDAW.

⁵⁶ Art 16(1) (d) of CEDAW, ICPD

⁵⁷ No.2 of the Chapter on Husband and Wife of the Country Code

⁵⁸ No.9 of the Chapter on Marriage of the Country Code

⁵⁹ No.9 of the Chapter on Marriage of the Country Code

Women's names are not required in legal documents such as: petition, reply, or appeal submitted in the court. The format of the summons, subpoena, notice issued by the court only require the names of fathers or husbands of the people to whom such order is issued.

Moreover, the second wife and her children also have a share in the family property thus affecting the right to property of the first wife.⁶⁰ The limitation provided by law to file a suit in a case of polyandry is one year.⁶¹ However, it is only three months, in cases of bigamy.⁶² It shows that discrimination prevails in the same nature of activities done by men and women. These are few examples of the discriminatory laws in relation with marriage and family. Details on this can be found in the matrix below.

■ Legal procedure and court proceedings

The court proceeding is itself is very import to get legal remedy. The principle of rule of law is based on justice for the establishment of a just society. However women's names are not required in legal documents such as: petition, reply, or appeal submitted in the court. The format of the summons, subpoena, notice issued by the court only require the names of fathers or husbands of the people to whom such order is issued.⁶³ However, there is a recent practice to mention the mother's name in legal documents.

Discriminatory Wordings

The study also revealed that 536 discriminatory or gender biased words have been used in the constitution, laws, regulations and annex of the laws and regulations.

Legislations	Wordings			Annexes	Total
	Artide	Section	Rule		
	28	397	106	5	536

Discriminatory wordings like Chairman (*sabhapati*), Elder Oldman, Girl gift (*kanayadan*), father's obsequies not mothers (*Pitrikarya*), degrading word for women like *Aimai*, Vice-chancellor (*Upkulpati*), Chancellor (*Kulpati*), Industrialist (*Udhyogpati*), *Pati*, Chief of Army (*Pradhansenapati*), *bahinipati Rastrapati and Uprastrapati* are still used in various legislations.

60 No.4 of Chapter on Partition of the Country Code

61 No. 6 of the Chapter on Adultery (Jariko Mahal) of the Country Code reads "No complaint shall be entertained in matters provided for in this chapter unless filed within one year from the date after the matter comes to light.

62 No. 11 of Chapter on Marriage of the Country Code

63 Rules 14, 19, 41 of District Court Regulations, 2052, Rule 6 of Labour Court Regulations, 2052, Rule 16 of Appellate Court Regulations, 2055.

3. Matrix of Discriminatory Laws against Women

A. Nationality

S.No.	Name of the Legislation	No./Section/Article/Rule	Discriminatory Provision
1.	The Interim Constitution of Nepal 2063 (2007)	8(6)	Women cannot provide citizenship to their spouse
		8(7)	Children born to the women citizen of Nepal married to a foreigner, may acquire the naturalized citizenship of Nepal, if s/he is born in Nepal and has been residing permanently in Nepal and has not acquired citizenship of the foreign country by virtue of the citizenship of his/her father.
2.	The Citizenship Act, 2063 (1963)	5(1)	Women cannot transfer citizenship to their spouse
		5(2)	Children born to the women citizen of Nepal married to a foreigner, may acquire the naturalized citizenship of Nepal, if s/he is born in Nepal and has been residing permanently in Nepal and has not acquired citizenship of the foreign country by virtue of the citizenship of his/her father.
3.	Nepal Citizenship Regulation, 2063 (1992)	5	Women cannot transfer citizenship to their spouse
		Annex/Schedule (9)	Application forms for termination of citizenship only state father's or grand father's name
4.	Passport Rules, 2077, (1970)	Schedule 2	Only requires father's nationality
		Page 3 of Passport	Only in husband's passport, it is required to mention that wife accompanies to her husband while going abroad.

B. Property

S.No.	Name of the Legislation	No./Section/Article/Rule	Discriminatory Provision
1.	The Country Code, 2020 (1963) Partition	1A.	Married daughters not considered as coparcener.
		3	Partition between children of brother only
		4	Law recognizes polygamy as all wives are equal shareholders in the husband's property.
		10	Conditional right to property to married women
		11	Daughter born after partition of her father who has rejoin his share of property with some wife and son are denied as heir of parental property.
		19 (1)	Consent of married daughters not required to dispose of more than half of the immovable family property
		19 (2), 19 (3), 19 (5)	Married daughters are excluded in partition.
		19 (1)	Consent of married daughters not required to dispose of more than half of the immovable family property
	Women's Exclusive Property	5	Married daughters fall behind in the line of succession to receiving such property.
	Intestate Property	2, 3, 6, 7, 9, 10, 12	Married daughters fall behind in the line of succession of intestate property.
	Chapter on Husband and Wife	4	A wife who is separated after receiving the share property from her husband, if remarries, remaining property to go with the ex husband or his family.
2.	Civil Services Rule, 2550 (1993)	98(2)	Widow's right to allowances and gratuity of husband conditional
		98(3)	Adopted sisters not included in the line of succession to receive pension
		98(6)	Married daughter's not included in the line of succession to receive extraordinary pension
		102(2)	Unmarried daughters fall behind sons in the line of succession and married daughters fall much behind in the line of succession in receiving pension

S.No.	Name of the Legislation	No./Section/Article/Rule	Discriminatory Provision
3.	Police Rules, 2049 (1992)	107(3)	"Hakwala" doesnot include husband and married daughter.
		107(5)	Widower's right to receive dead wife's (women police personnel) pension is under discretion.
4.	Nepal Health Service Rules, 2055 (1999)	95(2)	Widow's right to allowances and gratuity of husband conditional
		95(3)	Adopted daughters not included in the line of succession to receive extraordinary pension
		95(6)	Married sisters not included in the line of succession to receive extraordinary pension
		99(2)	Married daughters fall behind in the line of succession to pension and other benefits.
5.	Postal Savings Bank Regulations, 2033	11(3)	Unmarried daughters fall behind the sons in the line of succession and married daughters are excluded from the line of succession of receiving savings
6.	Armed Police Rules, 2060	58(3)	Unmarried daughters can receive extraordinary pension only until she attains the age of 21 or until marriage, whichever is earlier whereas boys are eligible to receive the pension up to the age of 21 or until entry into civil services, whichever is earlier
7.	Rules of Service of the Tribhuvan University Teachers and Staff, 2050	56(3)	Married adopted daughters not included in the line of succession to receive extraordinary pension
		57(1)	Widows right to husband's receive pension conditional
		59(2)	Unmarried daughters including adopted daughters fall behind sons in the line of succession and married daughters including married adopted daughters fall much behind in the line of succession
8.	Nepalese Army (Pension, Gratuity and Other Facilities) Rules, 2033	7(6)	Married daughters are discriminated in pension and gratuity.
9.	Legislative Parliament Secretariat act 2064(2207)	53(1)	Married sister are discriminated in pension and gratuity.

C. Health

S.No.	Name of the Legislation	No./Section/Article/Rule	Discriminatory Provision
1.	The Country Code, 2020 (1963) Homicide	32	Higher punishment for woman undertaking abortion than abortion as a result of act of third person.
2.	Rules Relating to Staff of the Office of Auditor's General, 2050 (1994)	65	Discrimination in maternity leave.
3.	Education Regulation, 2059 (2002)	106	Discrimination in maternity leave.
4.	Civil Service Rules, 2050 (1993)	59	Discrimination in maternity leave.
5.	Armed Police Rules, 2060 (2003)	105	Discrimination in maternity leave.
6.	Labour Regulation, 2050 (1993)	34	Discrimination in maternity leave.
7.	Labour Regulation Relating to Tea Estate, 2050 (1993)	35	Discrimination in maternity leave.
8.	Nepal Health Service Regulation, 2055 (1998)	51	Discrimination in maternity leave.
9.	Local Self Government Regulation, 2056 (1999)	244	Discrimination in maternity leave.
10.	Regulation Relating to Working Journalist, 2053 (1996)	16	Discrimination in maternity leave.
11.	Act Relating to Remuneration, Terms and Condition of the Judges of the Supreme Court, 2026 (1969)	8	No provision for maternity leave.

S.No.	Name of the Legislation	No./Section/Article/Rule	Discriminatory Provision
12.	Act Relating to Remuneration, Terms and Condition of the Attorney General, 2052 (1995)	14	No provision for maternity leave.
13.	Act Relating to Remuneration, Terms and Condition of the Office Holders of Constitutional Bodies, 2053 (1996)	15	No provision for maternity leave.
14.	Rules relating to Additional Post Offices, 2034 (1977)	10	No provision for maternity leave.
15.	Army Leave Rules, 2019 (1962)	7B	No provision for maternity leave.

D. Sexual Offence

S.No.	Name of the Legislation	No./Section/Article/Rule	Discriminatory Provision
1.	The Country Code, 2020 (1963) Rape	3(f)	Low punishment, incase husband rapes to her wife
	Incest	3, 4	Discriminatory restriction for marriage within family relationship.

E. Employment

S.No.	Name of the Legislation	No./Section/Article/Rule	Discriminatory Provision
1.	Regulation relating to Army-Police 2058 (2001)	Rule 4(3) (h)	Only unmarried or widow women can file application for women army- police
	Incest	4(4)	Women's police can not marriage during the training period

F. Family

S.No.	Name of the Legislation	No./Section/Article/Rule	Discriminatory Provision
1.	The Country Code, 2020 (1963) Paupers	3 (1), 3(2), 3(3), 3(4)	Deprives mothers from their child's care and guardianship, if marriage.
	Marriage	9	Bigamy encouraged by law as second marriage is permitted under certain conditions without divorcing the first wife.
		9(a)	Bigamy is permitted with consent of the wife, except in case where the wife has become insane with no chance of recovery and she has been living taken her share of property.
		11	Discrimination in the period of limitation in case of bigamy and adultery.
	Adultery	6	Period of limitation in case of adultery and bigamy different.
	Miscellaneous	9	Discrimination in enforcing obsequies rites
2.	Rapti Doon Development Area Land (Distribution and Sales) Act, 2024(1967)	2(c)	Definition of family includes unmarried daughters below the age of 35, only where the parents are alive.
3.	Nepal Health Service Act, 2053 (1997)	2(e)	Married daughters, adopted daughters and married daughters not included in the definition of family.
4.	Act Relating to the Remuneration, Terms and Conditions of the Judges of the Appellate and District Court , 2048	2(d)	Married daughters, adopted daughters and married daughters not included in the definition of family.
5.	Nepal Interpretation of Statute Act, 2010 (1953)	2(f)	Definition of "father" excludes father of adopted daughter
6.	Social Practices (Reform) Act, 2033 (1976)	4(1)& 4(2)	Punishment for accepting dowry and bride price different.
		4(3)& 4(4)	Discrimination on punishment between accepting dowry from bride's family and groom's family.

S.No.	Name of the Legislation	No./Section/Article/Rule	Discriminatory Provision
7.	Bonded Labour (Abolition) Act, 2058	2(e)	Married daughters not included in the definition of family
8.	Children's Act 2048 (1991)	3 (1)	Father has the first priority over mother in naming a child.
9.	Arms and Ammunition Rules, 2028(1972)	2(e)	Married daughters not included in the definition of family
10.	Police Rules, 2049 (1992)	2(d)	Married daughters not included in the definition of family
		83(1)	Second marriage of policemen is permitted under certain conditions without divorcing the first wife during her lifetime
11.	Rules Relating to Staff of the Office of Auditor General, 2050 (1994)	3 (1), 3(2), 3(3), 3(4)	Married daughters and adopted daughters not included in the definition of family
12.	Passport Rules, 2027 (1970)	2(b)	Married daughters not included in the definition of family
		2(c)	Married daughter and married sisters are excluded in the definition of 'dependent person'.
13.	Armed Police Rules, 2060	2(f)	Married daughters and married adopted daughters not included in the definition of family
14.	Rules of Service of the Tribhuvan University Teachers and Staff, 2050	Explanation to Rule 55	Married daughters and adopted daughters not included in the definition of family
15.	Rashtriya Samachar Samiti Regulations, 2041	2(d)	Married daughters and married adopted daughters not included in the definition of family
16.	Rules relating to Payment of Compensation to Non-governmental Persons, 2024	2(f)	Married daughters and adopted daughters not included in the definition of concerned person.
17.	Royal Nepalese Army (Daily and Travel Allowances) Rules, 2033	2(b)	Married daughters not included in the definition of family

S.No.	Name of the Legislation	No./Section/Article/Rule	Discriminatory Provision
18.	Royal Nepalese Army (Pension, Gratuity and Other Facilities) Rules, 2033	2(b)	Married daughters not included in the definition of nearest claimant (Hakwala). Daughters are discriminated in the line of claimant.
19.	Nepal citizenship regulation, 2063 (2006)	4(1) (b) explanation	Married daughter are not included in the definition of family

G. Court Proceeding

S.No.	Name of the Legislation	No./Section/Article/Rule	Discriminatory Provision
1.	Appellate Court Rules, 2048 (1991)	16	Identification by the name of father only in documents relating to legal proceedings
		107	Maintain a record of personal detail only including name of the father
2.	District Court Rules, 2052 (1995)	14(1), 19(1), 19A, 41	Identification by the name of father and husband only in documents relating to legal proceedings
		Annex 4(a)	Reply format assumes that only son can submit it.
3.	Revenue Tribunal Rules, 2030 (1974)	31	Court dress for male judges only.
4.	Labour Court Procedure Rules, 2052	6, 26	Identification by the name of father only in documents relating to legal proceedings

H. Identity

S.No.	Name of the Legislation	No./Section/Article/Rule	Discriminatory Provision
1.	Vehicle and Transport Management Act, 2049	Schedule 5 & 6	Personal identification by the name of father and husband only
2.	Arms and Ammunition Rules, 2028(1972)	Schedule 1(a), 1(b), 2, 3, 4, 5(a), 5(b)	Application forms for purchase, sell or license of arms and ammunition accepts only male as eligible.

S.No.	Name of the Legislation	No./Section/Article/Rule	Discriminatory Provision
3.	Rules Relating to Voter's Name List 2052 (1996)	Form No. 1, 2,3, 6, 11, 12, 14, 19, 20, 23, 24	Various forms mention only father's/husband's name
4.	Rules Regarding Voter's Identity Card, 2053 (1996)	8(2) Form No.1,1(a), 2, 4 &5	Voter's identity card only mentions father's/husband's name
5.	Employees Provident Fund (Identity Card) Rules, 2020 (1963)	Annex of Rule 2	Identity card only mentions father's/grandfather's name
6.	Civil Service Rules, 2050 (1993)	Form no. 1 of Schedule 7	Personal identification by name of father and grandfather only
7.	Police Rules, 2049 (1992)	Annex (2)	Identification by the name of father and grand father only.
8.	Rules Relating to Staff of the Office of Auditor General, 2050 (1994)	Annex 5	For personal identification, recognition by the name of father and grandfather only
9.	Government Contract Rules, 2022 (1964)	Annexes(1)&(2)	Identification by the name of father only
10.	Rules Regarding Auditors, 2032(1975)	Annex A	Application for obtaining Certificate of the Auditor requires the name of father only
11.	Marriage Registration Regulations 2028 (1972)	Annex 1, 2, 4, 6, 7, 8	Personal identification by the name of father and grand father only in application forms for registered marriage, record book of marriage application and registration
12.	Nepal Health Service Rules, 2055(1999)	Form 1 of Annex 10	Personal identification by the name of father and grand father only
13.	Nepal Medical Practitioner Council Rules, 2053(1997)	Annex 1 & 3	Personal identification by the name of father and grand father only in the application form and record book
14.	Land Administration Rules, 2024 (1968)	Annex 2& 3	Personal identification by the name of father and grand father only in the land record book and tenancy record book
15.	Land Measurement and Verification Rules, 2058	Schedule 2,3,4, 5, 8, 9, 10, 11 and 14	Personal identification by name of father/grandfather/husband/ father-in-law
16.	Rules Relating to Security Exchange, 2050 (1993)	Annex 11	Personal identification by the name of the father and grandfather in the application forms to apply for membership of security exchange.
17.	Armed Police Rules, 2060	Annex 2	Personal identification of armed police by name of father and grandfather only

S.No.	Name of the Legislation	No./Section/Article/Rule	Discriminatory Provision
18.	Vehicle and Transport Management Regulations, 2054	Schedule 1, 4, 12, 17, 19, 25, 27, and 56	Personal identification by the name of father and husband only
19.	Education Rules 2059	Schedule 16	Personal Identification of teachers by name of father and grandfather only in personal description and application forms for terms of service
20.	Nepal Medical Council Rules 2024	Schedule 1, 3, 5 & 6	Personal identification by name of father and grandfather only in application forms and record book
21.	Rules relating to Slaughter House and Inspection of Quality of Meat, 2057	Schedule 2 & 4	Personal identification by name of father and grandfather only for establishing and running slaughter house
22.	Hotel, Lodge, Restaurant, Bar and Trekking Guide Rules, 2038	Schedule 2	Personal identification by name of father and grandfather only in application forms
23.	Alcohol Rules, 2033	Schedule 1 & 2	Personal identification by name of father and grandfather only in application forms for production and sale of alcohol
24.	Financial Administration Rules, 2056	Schedule 15	Personal identification by name of father and grandfather only
25.	Rules relating to Government Cases, 2055	Schedule 3	Personal identification by name of father only in the criminal record book
26.	Kidney Transplantation (Regulation and Prohibition) Rules, 2058	Schedule 13, 14, 15 and 16	Personal identification by name of father and grandfather only in consent forms for donation/transplantation of kidney
27.	Jala Yatra Regulation, 2063 (2203)	Scheduled 3,4 and 5	Personal identification by name of father and grandfather and husband only in application forms for license and contract paper
28.	Scholarship Rules	Schedule 4 & 6	Personal identification by name of father in application forms
29.	Regulation relating to election constituent assembly, 2064	Annex 3, 5, 7, 10, 12, 18	Personal identification by the name of mother/father and husband

I. Wording

S.No.	Name of the Legislation	No./Section/Article/Rule	Discriminatory Provision
1.	Interim Constitution, 2063(2007)	36(a), 36(1), 36(2), 36(3), 36(b), 36(b/1), 36(b/1), 36(b/2), 36(b/3), 36(b/4), 36(c), 36(d), 36(e), 36(e/1), 36(f), 36(g/1), 36(g/2), 36(g/3), 36(h/1), 36(h/1), 36(l /1), 36(i/2), 36(j), 36(k/1), 36(k/2), 62, 81, 144(2)	“Chairman” and President (Sabhapati and Rastrapati)
2.	The Country Code, 2020 (1963) Homicide	25	Male oriented words such as “Elder Oldman” (Jetha Budha) etc. are used.
3.	Social Practice (Reform) Act, 2033 (1976)	2(a), 21	Word considering women as commodity “Girl gift” (Kanyadan) is used. Male oriented word “Father’s Obsequies” (Pitrikarya) is used.
4.	Defamation and Libel Act, 2016 (1989)	8	Degrading word for Women “Aaimai” is used.
5.	Nepal Administration Training Academy Act, 2039 (1983)	7(1)(d)	Male oriented word “Vice-Chancellor” (Upakulpati) is used.
6.	Royal Nepal Academy Act, 2050 (1994)	2(d), 2(e), 2(f), 7(2), 7(3), 9(2), 10(1), 10(2), 15(1), 15(2), 16(1), 16(2), 16(3), 17(1), 17(2), 17(3), 17(4), 17(5), 17(6), 17(7), 18(2), 23, 25, 26(1), 26(2)	Male oriented words “Chancellor, Joint-Chancellor” (Kulpati, Sahakulpati and Upakulpati) are used.
7.	Royal Nepal Academy of Science and Technology Act, 2048 (1992)	2(b), 2(c), 2(d), 7(2), 8(1), 8(2), 8(3), 8(4), 9(1), 9(2), 9(3), 10(1), 10(2), 10(3), 12(2), 12(3), 15(1), 18(1), 18(5), 19(1), 19(1)(a), 19(2), 19(3), 19(4), 19(5), 19(6), 19(7), 19(8), 19A(1), 19A(3), 20(1), 20(4), 22(1), 26	Male oriented words “Chancellor, Joint chancellor and Vice-chancellor” (Kulpati, Sahakulpati and Upakulpati) are used.

S.No.	Name of the Legislation	No./Section/Article/Rule	Discriminatory Provision
8.	Tribhuvan University Act, 2049 (1992)	2(k), 7(a), 7(b), 7(c), 8(2)(a), 8(2)(b), 8(2)(c), 8(2)(e), 8(2)(k), 8(2)(u), 8(2)(x), 8(3), 11(1)(a), 11(2), 11(3), 11(4), 13(1)(a), 13(2), 15(1)(a), 15(2), 16, 16(1), 16(2), 16(3), 17, 17(1), 17(2), 17(3), 18, 18(1), 18(2), 18(3), 18(4), 18(5), 18(6), 18(7), 18(8), 19(1), 19(4), 19(7), 20(1), 20(4), 30(1)	Male oriented words "Chancellor, Joint-chancellor and Vice-chancellor" (Kulpati, Sahakulpati and Upakulpati) are used.
9.	Nepal Sanskrit University Act, 2043 (1986)	2(f), 2(i), 4(1)(a), 4(1)(b), 4(1)(c), 4(1)(d), 4(1)(g), 4(1)(h), 4(1)(i), 4(1)(k), 4(1)(y), 4(2), 6(1)(a), 8(1)(a), 10(1), 13(a), 13(b), 13(c), 14(1), 14(2), 14(3), 14(4), 14(5), 15(1), 15(2), 16(1), 16(2), 16(3), 16(4), 16(5), 16(6), 16(7), 16(8), 16(9), 16(10), 16(11), 16(12), 16(13), 16(14), 17(1), 17(3), 18(1)	Male oriented words "Chancellor, Joint-chancellor and Vice-chancellor" (Kulpati, Sahakulpati and Upakulpati) and "Industrialist (Udyogpati) are used.
10.	Kathmandu University Act, 2048 (1992)	4(1), 4(2), 5, 6(1), 8(1), 10(1), 12, 13(1), 13(2), 13(3), 13(4), 13(5), 13(6), 13(7), 14(1), 14(2), 14(3), 14(4), 14(5), 14(6), 14(7), 14(8), 14(9), 15(1)	Male oriented words "Chancellor, Joint-chancellor and Vice-chancellor" (Kulpati, Sahakulpati and Upakulpati) and "Industrialist (Udyogpati) are used.
11.	Purbanchal University Act, 2050 (1994)	6, 7(2)(a), 7(2)(b), 7(2)(c), 7(2)(e), 7(2)(o), 7(2)(s), 7(2)(u), 7(3), 7(4), 8(2), 10(1), 10(2), 12(1), 12(2), 14(1), 19(1), 19(2), 22(1), 22(2), 22(3), 23(1), 23(2), 24(1), 24(2), 24(3), 24(4), 25(1), 26(1), 27(1)	Male oriented words "Chancellor, Joint-chancellor and Vice-chancellor" (Kulpati, Sahakulpati and Upakulpati) and "Industrialist"(Udyogpati) are used.

S.No.	Name of the Legislation	No./Section/Article/Rule	Discriminatory Provision
12.	Pokhara University Act, 2050 (1994)	6, 7(2), 7(3), 10(1), 10(2), 12(1), 12(2), 14(1), 14(2), 21(1), 22(1), 22(2), 22(3), 23(1), 23(2), 23(3), 24(1), 24(2), 24(3), 24(4), 24(5), 25(1), 25(2), 25(3), 26(1), 26(2), 38(1)	Male oriented words "Chancellor, Joint-chancellor and Vice-chancellor" (Kulpati, Sahakulpati and Upakulpati) and "Industrialist (Udyogpati) are used.
13.	Lumbini Boudha University Act, 2063 (2006)	6(a), 6(b), 6(c), 7(a), 7(b), 7(c), 8(5), 10(2)(a), 12(2)(a), 12(3), 12(5), 19(1), 19(2), 19(3), 20(1), 20(2), 21(1), 21(2), 21(3), 21(4), 22(1), 22(2), 22(3), 23(2), 24(2), 28(1), 28(2), 28(3), 28(4), 28(6)	Male oriented words "Chancellor, Joint-chancellor and Vice-chancellor" (Kulpati, Sahakulpati and Upakulpati) and "Industrialist (Udyogpati) are used.
14.	University Grant Act, 2050 (1993)	5(1)(b)	Male oriented words "Vice-chancellor" (Upakulpati) is used.
15.	Army Act, 2063 (2006)	2(d), 2(j), 6(2), 7(3), 7(4), 8, 8(1), 8(2), 8(3), 9(1), 9(2), 10(1), 10(2), 10(3), 11(1), 11(2), 11(3), 11(4), 17(3), 18(2), 18(3), 26(4), 27(2), 27(3), 27(4), 27(7), 29(3)(a), 29(3)(c), 73(1)(a), 73(1)(b), 75(3), 78(1), 89(c), 94(1), 97(3), 105(1)(a), 105(1)(b), 107(1), 115(2), 115(3), 118(b), 119(6), 119(7), 123(h), 129, 133(1), 133(2), 133(3), 133(4), 133(5), 133(6), 134(1), 134(2), 134(3), 134(4), 134(5), 134(6), 134(7), 134(8), 134(9), 134(10), 134(11), 141(1), 141(2), 141(4), 142(1), 142(2), 144(1)(c)	Male oriented word "Commander" (Pati), Chief of Staff Army" (Pradhan Senapati), "Bahinipati" are used.
16.	National Service Party Act, 2027 (1970)	2(d)	Male oriented word "Commander" (Pati) is used.

S.No.	Name of the Legislation	No./Section/Article/Rule	Discriminatory Provision
17.	Local Self Governance Act, 2055 (1998)	2(m), 2(n), 11, 18, 86, 179(1), 179(2), 180(1), 180(2), 183, 186(2), 186(3), 187(2), 191(1), 191(2), 191(3), 192(1), 192(2), 194, 198(2), 210(1), 222(2), 241(1)	Male oriented words "Chairman and Vice-chairman" (Sabhapati and Upasabhapati) are used.
18.	Local Development Training Academy Act, 2049 (1993)	7(1), 10(1)	Male oriented words "Chairman and Vice-chairman" (Sabhapati and Upasabhapati) are used.
19.	Local Bodies (Election Procedure) Act, 2048 (1992)	2(d), 2(g), 9(4), 11(1), 15 and 67(1)	Male oriented words "Chairman and Vice-chairman" (Sabhapati and Upasabhapati) are used.
20.	Act Relating to Remuneration and Terms and Benefits of Service of Officer Holders and Members of Parliament, 2052 (1996)	2(j), 2(l), 21(1), 21(2)	Male oriented words "Chairman and Vice-chairman" (Sabhapati and Upasabhapati) are used.
21.	Consumer Protection Act, 2054 (1998)	3(2)(b)	Male oriented words "Chairman and Vice-chairman" (Sabhapati and Upasabhapati) are used.
22.	Press Council Act, 2048 (1992)	6(1)	Male oriented words "Chairman " (Sabhapati) is used.
23.	Bonded Labour (Abolition) Act, 2058 (2001)	8(2)	Male oriented words "Chairman " (Sabhapati) is used.
24.	High Secondary Education Act, 2046 (1989)	4(a)2	Male oriented words "Chairman and Vice-chancellor" (Sabhapati and Upakulpati) are used.
25.	Kathmandu Valley Development Agency Act, 2048 (1992)	13(1)	Male oriented words "Chairman " (Sabhapati) is used.
26.	Tribal and Indigenous Upliftment Academy Act, 2058 (2001)	7(1)(f), 7(1)(n)	Male oriented words "Vice-chancellor " (Upakulpati) is used.

S.No.	Name of the Legislation	No./Section/Article/Rule	Discriminatory Provision
27.	Guthi Sansthan Act, 2033 (1976)	7(1)	Male oriented words "Chairman" (Sabhapati) is used.
28.	Academy of Medical Science Act, 2063 (2006)	2(g), 2(j), 2(i), 7(2)(a), 7(2)(b), 11(2)(a), 11(3), 16(1), 16(2), 17(1), 17(2), 18(1), 18(2), 18(3), 18(4), 18(5), 18(6), 19(1), 22(1), 22(2), 22(3)	Male oriented words "Chancellor, Joint-chancellor and Vice-chancellor" (Kulpati, Sahakulpati and Upakulpati) are used.
29.	Legislative Parliament Secretariat Act, 2064 (2007)	2(h), 6(2)(a)	Male oriented words "Chairman and Vice-chairman" (Sabhapati and Upasabhapati) are used.
30.	Army Leave Rule, 2019 (1962)	11, 26(1)	Male oriented word "Chief of Staff Army" (Pradhan Senapati) is used.
31.	Local Self-Governance Rules, 2056(1999)	153, 169, 174, 194, 195, 196, Annex 22	Male oriented words "Chairman and Vice-chairman" (Sabhapati and Upasabhapati) are used.
32.	Local Bodies (Financial Administration) Rules, 2056 (1999)	40(1), 41(1), 42, 130	Male oriented words "Chairman and Vice-chairman" (Sabhapati and Upasabhapati) are used.
33.	Rules Relating to Army Police, 2058 (2001)	2(b), 3(1), 4(b)(1)	Male oriented words "Commander" (Pati) and "Chief of Staff Army" (Pradhan Senapati) are used.
34.	Retired Army Appointment (Special Provision) Rules, 2059 (2002)	9(1)	Male oriented word "Chief of Staff Army" (Pradhan Senapati) is used.
35.	Prisoner Regulation, 2020 (1963)	22(1) 25, 29(2), 53	Word "Mardana" for man and "Janana" for woman are used. Male oriented words "Bhai-naike" is used.
36.	Kharka Land Nationalization Regulation, 2033 (1976)	5(2)	Male oriented words "Chairman " (Sabhapati) is used.

S.No.	Name of the Legislation	No./Section/Article/Rule	Discriminatory Provision
37.	Drinking Water Regulation, 2055 (1998)	23(1)	Male oriented words "Chairman " (Sabhapati) is used.
38.	Rules Relating to Payment of Compensation to Non-governmental Persons, 2024 (1967)	4(1)	Male oriented words "Chairman " (Sabhapati) is used.
39.	Land Measurement and Verification Rules, 2058 (2001)	20(2)(b)	Male oriented words "Chairman " (Sabhapati) is used.
40.	Royal Nepali Army Aircraft Maintenance Group Rule, 2042 (1986)	3(b)	Male oriented words "Chief of Staff Army" (Pradhan Senapati) is used.
41.	Royal Nepal Army Outdated and Useless Restricted Materials Disposal and Write Off Rules, 2026 (1969)	3(1), 4(2), 9	Male oriented word "Commander" (Pati) is used.
42.	Education Rules, 2059 (2002)	53(1), 54(1), 61	Male oriented words "Chairman" (Sabhapati) is used.
43.	Army Legal Department (Recruitment, Promotion and Terms of Service) Rules, 2019 (1962)	3, 4(1)	Male oriented words "Chief of Staff Army" (Pradhan Senapati) is used.
44.	Army Nurse Rules, 2049 (1992)	5(2)	Male oriented words "Chief of Staff Army" (Pradhan Senapati) is used.
45.	Army Parachute Folder Women Rules, 2046 (1989)	2(1)(1), 2(1)(2), 6(1)	Male oriented words "Folding Commander" (Pati), "Commander"(Pati) and "Chief of Staff Army" (Pradhan Senapati) are used.
46.	Army Entertainment Grant (Release) Rules, 2021 (1964)	5, 6(1), 7	Male oriented words "Chief of Staff Army" (Pradhan Senapati) is used.

S.No.	Name of the Legislation	No./Section/Article/Rule	Discriminatory Provision
47.	Public Document (Deed) Verification Regulation, 2063 (2006)	3(j)	Male oriented words "Chairman" (Sabhapati) is used.
48.	Regulation relating to Constituent Assembly 2065	2 (b), 2(k), 12(1), 19(3), 24(1), 24(2), 24(3), 25(1), 70(1),72(3), 75(4), 88(1), 111(2), 118(1), 122(5), 122(5), 128(1), 171(4), 1729B), Annex (2), Annex (3), annex (5)	"President and deputy – president" word have been used
49.	Regulation relating to constituent assembly (legislative - parliament working function) 2065	2(f), 2(q), 3(1), 3(2), 7(1), 9, 10,10(2), 11, 12, 70(3), 83(1), 83(2), 83(4), 105(1), 106(4), 113(1), 113(2), 113(4), 113(6), 113(9), 113(11), 114(1), 114(2), 114(4), 114(5), 116(3), 116(4), 120(2), 120(3), 120(4), 121(2), 122, 124(1), 124(3), 128(1), 128(5), 128(6), 128(7), 129(1), 129(2), 130, 132, 135, 143(1)	President and deputy president (Savapati and Upsavapati) words have been used
50.	Regulation Relating to Registration of Political Party (For Election), 2063 (2006)	6, Annex 4	Male oriented words "Chairman" (Sabhapati) have bee used.

Nepal has a multiethnic and multilingual society and there are over 100 ethnic/ caste groups in the country.

The fact speaks itself that ethnic minority groups were excluded from mainstreaming of the national development.

1. Status of Ethnic Community, *Dalit* and Religious Minority

Nepal has a multiethnic and multilingual society and there are over 100 ethnic/ caste groups in the country. The ten major ethnicities/ castes of Nepal are Chhetri/ Thakuri (15.8%), Hill Brahmin (12.7%), Magar (7.1%), Tharu (6.8%), Tamang (5.6%), Newar (5.6%), Kami (4%), Yadav (4%), Muslims (4.3%), and Rai/ Kiranti (2.8%). Similarly around 85 ethnic communities have less than 1% of the total population. The statistics also demonstrate that 46.61% of the total population speaks Nepali language as mother languages, Maithali, Bhojapuri languages are second and third language (12.3% and 7.53%) respectively. Statistics further spelt out that about 92 languages are found to have been used as mother language in various ethnic communities within the country. The large majority of the country's population follows Hindu religion (80.6%). Buddhist faith is believed by about one-tenth of the population (10.7%) while the percentage of those following Islam (Muslim) is very low (4.3%) (CBS, 2001).

The fact speaks itself that ethnic minority groups were excluded from mainstreaming of the national development. In addition, Nepalese society has treated a group as so called untouchable. They are facing multiple challenges as well social exclusion. Further more national laws has been enacted based on the Hindu religion which not only discriminates *dalit* and ethnic communities but also doesn't recognize other religious groups.

■ *Social status*

The interim constitution has ensured the right to equality and guaranteed right to equality as fundamental rights of citizens⁶⁴. The constitution has also ensured that the state shall not discriminate against citizens among citizens on grounds of religion race, caste, tribe, sex, origin.⁶⁵ Various international human rights instruments also endorsed that no discrimination shall be made on the basis of sex, caste and ethnicity and guarantee equality⁶⁶. Despite that, some groups or persons are still treated as untouchables in the Nepalese society. Similarly, some of the ethnic communities like *Raute* are still living in the jungle even today and others are living in very miserable conditions. Similarly the life-expectancy of Dalit is 50.8 year which is quite below in comparisons with other's 59

64 Article 13, the Interim Constitution 2063.

65 Ibid (Article, 13(3))

66 Article 2, International Covenant on Civil and Political rights (ICCPR), Article 2(2) International Covenant on Economic, Social and Cultural Rights (ICESCR) article 2, 21, Declaration of Human Right 1948 etc.

years. Literacy rate of the Dalit people is comparative below than the other people which is 33% and whereas other is 54%.⁶⁷ The statistics also showed that 31% of the total population is below the poverty whereas 47 % of the *dalit* people are below the poverty line⁶⁸.

Constitution prohibits untouchability on the basis of caste or denial of access to any public place, or be deprived of the use of public utilities. Any contravention of this provision is punishable by law and victim shall be entitled to such compensation as determined by law.⁶⁹

■ Cultural status

Nepal is multilingual, multiethnic and multicultural state. Around 102 ethnicities were identified and 92 languages are spoken as mother tongue. They have own culture; own identity and traditional practices as well as script of language. Such language and culture have been found to have been practiced since the very beginning. For example *DhanNach*⁷⁰ *Changbu Nach*⁷¹ of Kiranta community (Limbu), *sticks dance of tharu community*⁷², *Maruni Nach of Magar community*⁷³, *Ghatunach*⁷⁴ of Gurun, *Magar and Dura community*, *kartika Nach*⁷⁵ etc. are some of the famous dances of the such community which have been exercised since the very beginning. Similarly, they have different and famous festivals which have been practiced for a long span of time such: *Bisket Jatra*⁷⁶, *Ghode Jatra*,⁷⁷ *Eead in the Christine community*, *Gaura Parba*⁷⁸, *Dashain and Tihar*⁷⁹ etc. It shows that Nepal is rich in art, culture and religion. Similarly, dozens of languages are in a crucial stage and on the verge of extinction. In addition, various historical culture and original identity are going to be

Nepal is multilingual state, however, dozens of languages are in a crucial stage and on the verge of extinction.

67 Three Year Interim Plan 2064/ 065—2066/067.

68 Ibid

69 Article 14 (1/2) of the Interim Constitution of Nepal, 2007.

70 *Dhan Nach* (dance) is a kind of Traditional cultural dance which is very popular in the eastern part of Nepal (especially in Taplejung, Panchthar, Ilam Tehrathum and Dhankuta districts) in Limbu or Kiranti community.

71 Chanbu Nach (dance) is a kind of another Traditional cultural dance which is very popular in the eastern part of Nepal. This dance is conducted while happening marriage, chudakarma or sifting new house.

72 Stick dance is popular in the Tharu community.

73 Maruni Nach (dance) is a kind of Traditional cultural dance which is very popular in Magar community in hilly areas of Mid reason.

74 Ghatu Nach (dance) is popular as a kind of Traditional cultural dance in the Dura, Gurun and Magar community of Gandaki Zoon.

75 Kartik Nach (dance) had been commenced from 1697 BS, At the beginning the dace was being conducted for 8 days. King Shreeniwas Mall added 7 days of the dancing days. So, it has been doing for 15 days each year since the regime of king Shreeniwas Mall.

76 Biskat Jatra, a kind of traditional culture is so popular in the Bhaktapur district specially in city areas. This is too historical and the commencement of the Jhatra has been assumed since the begging of the Bhaktapur state. Philosopher said it was started in the regime of king Ananda Deve and some of philosopher said it was commenced in regime of Lichchhabi king, Nirvaya Deve so on.

77 Gode Jatra, this is too popular in the Katmandu district. In this festival, Horses are run up and it has also historical importance and also linkage with previous king regime

78 Gaura parba (festival) this festival is too popular in the western part of Nepal.

79 Dashain and Tihar is the greatest festival too popular of the Hindu community.

withered away due to lack proper consideration of the state. Some of the indigenous group is living very crucial stage and they are not able to afford for the protection their culture. Even laws and the Constitution were framed to give discourses on enrichment of social and cultural diversity.

■ *Economic status*

The statistics showed that a large number of *Dalit* and indigenous community are living below the poverty line and their economic status is very miserable.

The Indigenous people have a special relationship with their lands; they depend largely on the natural resources available on their ancestral territories. As almost 80% are marginal cultivators (with less than 1 acre) or small cultivators (having 1-2 acres), they tend to experience enormous food insecurity. Data on operational land holdings reveal that huge proportions of indigenous population are wage labours with no land of their own for farming within the districts in which they live. Only some 2.8% of the Tharu, 0.3% of the Tamang, 0.76% of the Rai, and 0.63% of the Magar communities, respectively, have self operated land of more than 10 acres. Being landless, the vast indigenous majority therefore has no access to resources related to land ownership⁸⁰. About 15% of the hill *Dalits* and 44% of the *Tarai Dalits* are land less. Similarly, 54% of the *Dalit* population engages in agriculture activities, another 15.7% in services, an additional 14.2% in non farm casual farm labour and other low wage activities.⁸¹ The statistics showed that a large number of *Dalit* and indigenous community are living below the poverty line and their economic status is very miserable.

2. Areas of discrimination

The study examined 303 Acts including the Constitution and 281 regulations. Similarly, the study revealed 26 legal provisions which discriminated on the basis of ethnicity, caste and religion.

The study revealed 26 legal provisions which discriminated on the basis of ethnicity, caste and religion.

Issues	Legislations	Provisions			Total
		Artide	Section	Rule	
Language	2	2	1		3
Untouchability	2	1	2		3
Religion	2	2	13		15
Cultural	2		2		3
Land	2		2		2
Caste	1		1		1
Total	7	5	21		26

⁸⁰ Nepal human Development Report 2004, empowerment and poverty reduction, UNDP Nepal, page 63

⁸¹ Ibid, page 60

■ *Prevalence of Untouchability*

The Interim Constitution guarantees that “No person shall be discriminated against as untouchable and subjected to racial discrimination in any form on grounds of caste, race, community or profession. Such discriminatory treatment shall be punishable and the victim shall be entitled to such compensation as determined by law. Similarly, the constitution further states that no person shall, on the grounds of caste or race, be deprived of the use of public services, facilities or utilities or of the access to any public place or public religious sites or of the performance of any religious function⁸². This constitutional provision is clearer than the previous constitutional provision. However, the Constitution is silent as to eliminating such discriminatory practices taking place in the private sphere, even today. In addition, there are still such ill practices in the Nepalese society. Similarly, the Miscellaneous Chapter of Country Code 1963 has also prohibited the discrimination, exclusion or prohibition on the basis of caste religion race etc., including untouchability. However, there is open texture in the law which states that “No one has right to disrupt other culture practices”⁸³ on the basis of such legal ground, *Dalit (stigmatized as untouchability)* were discriminated in the private spare. In addition, it has been realized that law is necessary, but along with it, discriminatory mechanism need to be changed.

■ *Freedom of religion is not guaranteed*

The Interim Constitution has ensured the right to religion that “Every person shall have the right to profess practices and protect his or her own religion handed down to him or her from ancient time having due regard to the existing social and cultural practices”. It also provides the right to maintain manage and protect religious places and trusts.⁸⁴ The freedom of religion comprises freedom of conscience, to profess, practice, and propagate the religion of one’s choice. However, Constitution is absolutely muted about the right to choose the religion. In addition that forceful conversion from one religion to another is prohibited.⁸⁵

In *His Majesty’s Government vs Charels Mendiz*⁸⁶, the informant claimed that defendant Charles Mendez and others tried to convert or converted Hindu into Christianity by giving various incentives. In this case, the

The Constitution is silent as to eliminating untouchability and discriminatory practices taking place in the private sphere, even today.

Constitution is absolutely muted about the right to choose the religion.

82 Article 14(1/2) Interim Constitution of Nepal 2007

83 Chapter on Miscellaneous, Country Code 1963, No 10

84 Article 23 (1/2), Interim Constitution of Nepal 2007, and section 7 of the Civil Rights Act, 2012.

85 No. 1 of the Chapter on Miscellaneous Provisions, the Country Code, 1963.

86 NKP 2046 (1989), Vol 6, p. 648.

The first codified law has mentioned in it's preamble that being based on Dharmashastras, it reinforces Hindu religion especially in matters relating to personal law.

Supreme Court held that right to religion provided by the Constitution provides freedom to profess and practice one's own religion as handed down to them from the ancient period. So, the defendant was punished with six years imprisonment in accordance with No. 1 of Chapter on Miscellaneous Provisions of Country Code.⁸⁷ The judicial reasoning is quite limited to expand the freedom of religion.

■ *Non-recognition of Different Religious Practices*

Codification of law in the Nepalese legal history commenced in BS 1910 which started under Rana autocrat *Jangbahadur Rana*. The codified Country Code of Nepal was guided by the Hindu Philosophy. Consequently, concerns and spirit of various religions were excluded from the legal system of Nepal. The first codified law has mentioned in it's preamble that being based on Dharmashastras, it reinforces Hindu religion especially in matters relating to personal law.⁸⁸ Consequently, the concern and spirit of other religion were excluded. Similarly new country code 1963 has also followed same path of law of previous country code. Supreme Court of Nepal also endorsed that this preamble is not active the part of the law⁸⁹, the petition challenged the Constitutionality of the language used in the Preamble to the Muluki Ain (Country Code). The Preamble of the Country Code has Stated “.... *in order to provide the uniform type of punishment to lower and higher class people as per the offence*”.

Even though the Interim constitution has recognized multiethnic, multilingual, multi-religious and multicultural society⁹⁰, such legal provision is found incontinence with the constitutional provision. It showed that the law failed to address the concern and spirit of the various religions. Similarly, the above decision of the Supreme Court also represents insensitivity of the court towards invalidating the laws that tend to continue discriminatory language used on the basis of the so called higher and lower class people.

■ *Killing of cow/bullocks as a serious offence*

Under Hindu religion, cows/bullocks are considered as consecrated animals. The Nepalese law criminalizes the acts of slaughtering, killing, poisoning, beating cows/bullocks or attempting to do so as an offence.⁹¹

87 Citizens with (out) Rights, Nepal Gender and Social Exclusion Assessment, FWLD, 2005.

88 Preamble to the Country Code,1963

89 *Durga Sob v. HMG* Writ No. 3125 of 2057 BS.

90 Article 3 (2), Interim Constitution of Nepal 2007.

91 In case of killing, 12 years imprisonment. For details see No 1, 2,4,5,9,10,11,12,13,14,15,18,19 of Chapter on Quadrupeds of the Country Code of Nepal, 1963

In addition, it creates a duty to stop a person from killing a cow/bullock, if any one trying to so. Law states that if the person so killing raises arms against the person intervening, the person so intervening shall not be liable if he/she kills such a person. In such a way, the law has given even right to self-defence justifying homicide of the person killing a cow/bullock to protect religious belief of one particular religion.⁹²

Similarly, the interim constitution has clearly stated that cow is national animals⁹³ and law strongly prohibits slaughtering or beating of cow and bull. Taking this into the account, other religions were also prohibited, whereas the slaughtering of cow is not considered as sin or justifiable under their religion. Consequently, the law and constitution discriminates to the other religion. Supreme Court of Nepal delivered its judgment by declaring the imprisonment on slaughtering of cows or bullock⁹⁴, and defendant was charged for poisoning to his bullocks. Taking this into the consideration the Nepalese laws entirely failed to incorporate the values and norms of other religion.

■ *Customary practices threat Dalit community*

Preserving the customary practices by laws, social ill practices are getting validity on the basis of custom and treated discriminatory towards citizen. Taken example, the Ancient Monument Protection Act provides that a person may enter a place of historic, religious or artistic importance without disrupting customs/traditions that have been running through history.⁹⁵ Similarly, Chapter of Country Code 1963, has also stated that “no one has right to disrupt other culture practices”⁹⁶. Such legal provisions are problematic to remove the untouchability and establish the just society. Hindu religion has been denied access to temples on notions of so-called inferiority at birth and implies that there shall be no change in that respect.

■ *Non recognition ethnic languages as national level official language*

The Constitution recognizes Nepali language in the *Devanagari* script as the language shall be the official language⁹⁷. Though, the constitution recognizes that all the languages spoken as mother tongues in Nepal are the languages of the nation. Despite the fact that the constitution has failed to ensure that the people who are unable to understand the Nepali

Law states that if the person so killing raises arms against the person intervening, the person so intervening shall not be liable if he/she kills such a person. In such a way, the law has given even right to self-defence justifying homicide of the person killing a cow/bullock to protect religious belief of one particular religion.

92 No. 4 of Chapter on Quadrupeds, the Country Code, 1963.

93 Article 7 (2) of the Interim Constitution of Nepal 2007.

94 HMG vs Prem Bahadur Karki NKP 2059 Vol 9, criminal R.N. 1990.

95 Section 10, Ancient Monument Protection Act

96 No. 10 Chapter of Country Code 1963

97 Article 5 (2) of the Interim Constitution of Nepal 2007.

Although the Constitution guarantees right to preserve language, script and culture of each community and to operate schools in mother tongue, this right is limited to primary level.

Education Act further emphasises this limitation and stated that medium language of education shall be Nepali language.

language, in that situation, the translator shall be provided while coming to get the official services. Similarly, the Interim Constitution breaks the ice and opens the door to use the other language as official language in local level.⁹⁸ Although the Constitution guarantees right to preserve language, script and culture of each community and to operate schools in mother tongue, this right is limited to primary level.⁹⁹ In addition that the Education Act further emphasises this limitation and stated that medium language of education shall be Nepali language.¹⁰⁰ Such a provision is deliberately discriminates and around 51.2% ¹⁰¹ population have been facing difficulties in competing with those who have Nepali as the mother tongue¹⁰².

■ *Rights to land and resources of janjati's not recognized*

Right over the land is essential elements for economic sustainability in the least developing country. Some times land right of various castes and ethnicity are linkage with their identity and history of their origin. As being least developing country, Nepalese various caste and ethnicity's livelihood is dependent on agriculture-related activities. Since this right is a part of the right to property, which is a legal right subject to provisions of laws framed in different times, it is often transgressed by various governments over different periods. It has been often criticized that the State has failed to take into note of the special needs and requirements of these people.¹⁰³ For example, the *Kipat* system under which ethnic community of *Limbus* in the east of the country were given right over land of their areas to themselves during the time of unification of Nepal by late King Prithvi Narayan Shah the Great but it was subsequently taken back by the government. An interesting point to note here is that the State has been still giving recognition of royal title and certain immunities and benefits to the former kings of various principalities existing before the unification of the country but it has not afforded such benefits to the *Limbus*. The biased attitude of the State authority based on ethnicity and origin seems to be dominant here, *Limbus* were not afforded protection simply because they are *Limbus* and not *Chhetri*.¹⁰⁴

98 Ibid Article 5(3)

99 Ibid, Article 17(3)

100 Section 7 of Education Act, 2028

101 Statistical Year Book of Nepal 2003, Central Bureau of Statistics, HMG/Nepal, page 21

102 Citizens with (out) Rights, Nepal Gender and Social Exclusion Assessment, FWLD, 2005.

103 *Comparative Legal Analysis of National Legislation and Indigenous and Tribal Peoples: A Report* submitted to the ILO by LAHURNIP in 15th January, 2005; pp41-49

104 Citizens with (out) Rights, Nepal Gender and Social Exclusion Assessment, FWLD, 2005.

3. Matrix of Discriminatory Laws on the Basis of Caste, Ethnicity and Religion

S.No.	Name of the Legislation	No./Section/Article/Rule	Discriminatory Provision
1.	Interim Constitution of Nepal 2063	5(2)	Only Nepali language is recognized as national level official language
		7(2)	"Cow" is stated as a national animal according to Hindu religion, which discriminates other religions
		14(2)	Non discrimination on basis of caste or race (regarding to untouchability) in the private spare is still silence.
		17(1)	Education in mother tongue has only be ensured in the basic education
		23	Right to choose and denounce the religion is not clearly mentioned
2.	Country Code 1963	Preamble	Caste based social hierarchy has been recognized (<i>Chhota Bada</i>) words has used)
3.	Chapter of Miscellaneous	1	Conversion of religion is punishable
		10	Based on this legal provision "no one has right to disrupt other culture practices" untouchability is still remaining.
4.	Chaupayako (Animals)	(1)	Prohibition of slaughtering or instigate or attempting cows or bullocks has been criminalized on the basis of Hindu religion, and the sprit and concern of other religion has not been properly addressed
		(2)	No punishment shall, even cow and bullock died while doing something for the purpose of treatment, be imposed.
		(4)	No punishment even died people, if perpetrator trying to kill the cows
		(9)	Prohibition of the transaction of branded and scattered Calf or Bull and the money will be confiscated
		(10)	Up to Six year imprisonment if the cows and bull killed at foreign and denial of the sprit of other religion
		(11)	Up to 12 year imprisonment if the cows and bull killed intentionally and denial of the sprit of other religion

S.No.	Name of the Legislation	No./Section/Article/Rule	Discriminatory Provision
		(12)	Punishment to poison cows and denial of the spirit of other religion
		(13)	6 years Imprisonment for attempted to kill the cows
		(14)	Beating cows and bullocks also punishable
		(15)	The amount shall be reimbursed form the person who beat the cows
		(18)	Prohibition for the cultivation by using the scattered bull
5.	Chapter on Arson	2, 12	If cows were killed due to the arson in that situation, limitation shall be based on the animals chapter, this provisions also guided by the Hindu religion
6.	Land Administration (Jagga Pajaniko)	Section 1	This provision relating to Kipat land is under the consideration of government tax which is against indigenous group
7.	Education Act, 2028	7(1)	Nepali language has been mentioned as medium language of the education to all
8.	Land Reformation Act 2021	3(A)	Kipat land is under the consideration of land transaction and tax.
9.	Nepal Sanskrit University Act	Preamble	Only Sanskrit education has been promoting by making law and no law has been enacted to protect the other language or education
10.	Ancient Monument protection Act 2013 (1956)	10	Protecting the discrimination of untouchability on the basis of cultural ritual
11.	The Act relating to Pasupati Area Development Fund, 2044	17 (a)1	The Main priest (<i>Mul-Bhatta</i>) shall the duty to pray the <i>Pasupati</i> temple Note: Bhatta is specially selected from Brahmin community,

1. Status of Persons with Disabilities

About 10% of the world's population, some six hundred million people, have some or the other form of disability. Disabled persons account for 20% of the world's poor, a phenomenon that exists across developing and developed countries¹⁰⁵. According to a UNDP report, 80% out of total population of disabled persons is living in developing or least developed countries. Unfortunately, there is no actual statistics of persons with disability in Nepal. However, National Census of 2001 recorded only 0.45% of the population as disabled while UNICEF's 2001 Situational Analysis of Disability in Nepal found that 1.63% of people were disabled.

One of the later studies conducted by Japan International Cooperation Agency in 2002 depicts the total population of persons with disabilities in Nepal to be 3,71,400. According to the report, while 1,31,100 were in the Terai region, 1,21,000 were in the hills and 1,19,200 in the mountains. They have estimated 30.5% of disabilities to have been caused by diseases, 44.8% to be congenital, 15.1% by accidents, 8.6 percent to have been caused by other reasons, and 1.0% to be unknown. Out of the total, 1,72,300 persons with disabilities were women.

In addition, according to a UNICEF Report, around 30% of the total street children are living with disability. In the context of Nepal, the population census (2001) did not reveal the actual statistics of the persons living with disabilities. It has been assumed that 7-10% of the total population has some or the other form of disability. Similarly, a study conducted by New Era organization showed that 70.1% out of total persons with disability were living without social dignity. Despite that, no comprehensive study of research has been made to spell out the actual situation of disabilities.

The government has taken the initiative to bring about a change in the perception of the Nepalese people towards persons with disabilities. The process started in 1977 after the formation of the Social Service National Coordination Council that was headed by the then Her Majesty Queen *Aishwarya Rajya Laxmi Devi Shah*. It was followed by several important changes like establishment of the Ministry for Social Welfare; the enactment of a legislation for the Rights and Welfare of the disabled,

The population census (2001) did not reveal the actual statistics of the persons living with disabilities.

A study conducted by New Era organization showed that 70.1% out of total persons with disability were living without social dignity.

105 Michael Ashley Stein and Penelope J.S. Stein, *Hastings Law Journal*, Vol. 58/2003, p. 1204 . see also *The second Annual Report on the Implementation of USAID Disability Policy*, 2000

The notion that people with disabilities have equal rights and duties as any other individual, is largely absent from the popular mindset.

Discrimination against person with disability is rampant in all communities in general and in rural/remote communities in particular.

establishment of Social Welfare Council etc. In Nepal, since 1992, every year December 3rd is celebrated as International Day of Disabled persons with various programs like procession of disabled persons, talk programs, workshops, seminars etc.¹⁰⁶

Various surveys have been conducted in Nepal to find out the prevalence and causes of disability, socio-economic status, education and employment of disabled persons. Examples of some of those important studies are National Census 1971, Sample Survey of Disabled Persons in Nepal 1980, National Survey of Blindness 1981, National Survey of Mental Retardation 1989, National Survey of the Prevalence of Deafness and Ear Disease in Nepal 1991, disability survey of Kanchanpur District 1995, Survey of persons with disability in *Sindhuli* District 1998, Situation analysis of disability by National Planning Commission 2001 etc.¹⁰⁷

■ *Social status*

Nepalese society has been guided by the Hindu philosophy since the very beginning. Nepalese society still views disability as a penance to the sins committed in previous births. Persons with disability are treated as objects of pity. The notion that people with disabilities have equal rights and duties as any other individual, is largely absent from the popular mindset¹⁰⁸. Persons living with disability are treated as punishments of God because they are said to have committed sins in the previous birth. Such sayings and beliefs are also the reason these people are treated in a discriminatory fashion.

Discrimination against person with disability is rampant in all communities in general and in rural/remote communities in particular. Even their families tend to neglect their basic needs (enough food, clothing, care concerning personal hygiene and medical treatment equal to that of the non disabled). Person with disability often languish in a corner or an isolated room or outside homes altogether (here they can be housed separately), without proper care and participation in day to day household activities or in any other cultural and religious activities¹⁰⁹. The problem is heightened in the most socially marginalized. Even within the disability sector, women, ethnic minorities for example, face further discrimination resulting in *double discrimination*.

106 Joshi, KC, Katmandu University Medical Journal (2004) Vol. 2. No.1 P. 1-5 see (http://member.wnso.org/drsunilkj/new/index1_files/disability.pdf)

107 Ibid

108 http://www.disabilityworld.org/06-08_04/gov/nepal.shtml,

109 Nepal Human Development Report 2004, UNDP, page64

■ Education status

Right to education is the most important component of human rights. Despite that, people living with disability are hardly getting to exercise the right to education even today. Similarly, according to the finding of New Era most of disabled persons have no education (68.2%) as compared to the general population, where 4.8 percent have no education. The literacy rate is considerably lower for females than males, with 77.7 percent of the females and 59.6 percent of the males having no education.¹¹⁰ According to the study *A Situation Analysis on Disability in Nepal* 68.2 % of persons with disabilities in Nepal have no education. Among the disabled male population, 59.6 % have no education, while 77.7 % of disabled females have no education. However, the special education unit (MOE) has been promoting special education among school-aged children. Among the Persons with Disabilities from 6-20 years old, 43.7 % have never enrolled in school and the drop out rate is around 30%. Nearly half of all children with disabilities have not been able to benefit from education services. The high drop-out rate is said to result from inability of children with disabilities to perform as well as other children¹¹¹. The government of Nepal commenced to provide the inclusive education targeting to people living with disability since 2021 B.S. at Laboratory School, Katmandu. More than 241 inclusive schools were already established with the support of Danish government and other Donor Organizations. The statistics shoed that 245 blind students were enrolled in 11 schools, 518 students were enrolled in 6 schools, 572 physical disable students were enrolled at 5 school and 470 mental retardation students were enrolled at 12 school¹¹². However, a large number of people living with disability don't have access to education and any formal education.

The study examined 303 Acts including the Constitution and 281 regulations. The study reveals that 23 legal provisions discriminate to person with disability. Substantive discriminations were found in the areas of marriage, treatment and using degrading words etc.

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110 http://www.disabilityworld.org/06-08_04/gov/nepal.shtml

111 Country profile on Diablity, Nepal, Japan International cooperation agency planning and evaluation Department, see http://siteresources.worldbank.org/DISABILITY/Resources/Regions/South%20Asia/JICA_Nepal.1.pdf

112 Advocate Sudershan Subedi, laws relating to disability, p.12,2060

Issues	Legislations	Provisions			Total
		Article	Section (provisions)	Rule	
Language	1	1	0		1
Marriage life or ground for bigamy	1	0	1		1
Degrading words	7		17	1	18
Medicine	1		1		1
Social justice and realization of right	1	2			2
Total	6	5	14	1	23

2. Areas of discrimination towards the persons with disability

Right of equality and equal protection has been guaranteed by the Interim Constitution of Nepal. Equal treatment before unequal is a tough situation to reconcile with. Consequently, the human right philosophy and modern constitutionalism has developed the principle of substantive equality. Protection, promotion and empowerment of person with disabilities is quite crucial and important in the human rights realm.

The most progressive human rights model put forward in international instrument in the human right to development. The United Nations General Assembly officially recognized in 1986 declaration and this framework combines civil and political rights, and economic, social, and cultural rights within a single instrument, and emphasizes the interrelation ship and indivisibility of all human right protection. The disability human rights paradigm also imposes on states a moral obligation to enable disability friendly employment that is not vitiated by limited national socio-economic development or capacity. When resources are lacking within a state, the moral responsibility continues to fall on outside states and non state actors.¹¹³ UN disabilities right convention specifically endorses the use of equality as well as antidiscrimination measures ensuring the right to employment as well. Nepal has ratified 21 international human rights instruments is also going to ratify the UN Convention on Rights of Persons with Disabilities.

The disability human rights paradigm also imposes on states a moral obligation to enable disability friendly employment that is not vitiated by limited national socio-economic development or capacity.

¹¹³ Michael Ashley Stein and Penelope J.S. Stein, Beyond Disability civil Rights, Hastings Law Journal, Vol. 58/2003, p. 1204 . see also The second Annual Report on the Implementation of USAID Disability Policy, 2000

The Interim Constitution states that “Nothing shall be deemed to prevent the making of special provisions by law for the protection, empowerment or advancement of women, *Dalit*, indigenous peoples (*Adibasi Janajati*), Madhisi or farmers, workers economically, socially or cultural backward classes or children, the aged and the disabled or those who are physically or mental in capacitated”¹¹⁴. In addition that, various laws, regulation and program were enacted or planned for the ensuring right of persons with disabilities. some of the key legal frameworks are as follows: Interim Constitution, The Disabled Persons (Protection and Welfare) Act and the National Code or Muluki Ain, several other legislations have incorporated provisions for the welfare of persons with disabilities as well. Even then, some of the state made laws are discriminately towards persons with disabilities.

■ *Non recognition of sign language*

The Article 5 of the Interim Constitution of Nepal has mentioned the official language of the nation. Sub article 1 of article 5 of the constitution states that all languages spoken as mother tongue in Nepal are the language of the nation¹¹⁵. It shows that only spoken languages are considered as the language of the nation. But the constitutional provision has failed to incorporate sign and other means of communication used by persons with disabilities as language of the nation. This provision is directly discriminatory to persons with disability and has failed to address their concerns. The CRPD has defined languages as follows: “**Language**” includes spoken and signed languages and other forms of non spoken languages; “**Communication**” includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology.¹¹⁶

■ *People with disabilities ground for the second marriage*

Marriage with free and full consent and family life are important and inalienable human right which has been ensured by various international human rights. CRPD also states that the right of all persons with disabilities who are of marriageable age and ready to found a family on the basis of free and full consent of the intending spouses is recognized.¹¹⁷ In addition to that, the Convention prohibits discrimination in marriage

Only spoken languages are considered as the language of the nation. But the constitutional provision has failed to incorporate sign and other means of communication used by persons with disabilities as language of the nation.

114 Article 13 (3) the Interim Constitution of Nepal 2007

115 Article 13 (3) the Interim Constitution of Nepal 2007

116 Article 2 , UN Convention on Rights and Dignity of persons with disabilities 2006.

117 Article 23 (1) a, UN Convention on Rights and Dignity of persons with disabilities 2006.

The law directly discriminates woman with disability and provides the ground for second marriage. This legal provision explicitly discriminates women, when wife needs love, affection and care the most.

with disability and the Convention states that state parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others. The convention further ensures that the right of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age appropriate information, reproductive and family planning education are recognized and the means necessary to enable them to exercise these rights are provided¹¹⁸.

Similarly, Nepalese law has also adopted the principle of free and full consent of marriage and also prohibits bigamy. Despite that, the law directly discriminates woman with disability and provides the ground for second marriage. According to law a man can remarry without divorcing his first wife in the following circumstance:¹¹⁹

- ▶ If the first wife gets non curable sexually transmitted disease
- ▶ Insanity
- ▶ Blind in both eyes
- ▶ If separated after taking the share of property
- ▶ If a medical board recognized by Nepal Government certified that the women is infertile.

This legal provision explicitly discriminates women, when wife needs love, affection and care the most, the law allows the second marriage. Similarly, it is against with the right vested to person with disability by CRPD.

■ *Excluded in the social justice*

The constitution has guaranteed right to equality¹²⁰ and also ensured participation of Madhesi, *Dalit* indigenous people, women, labour farmers, disabled, backwards classes and regions in all organs of the state structure on the basis of proportional inclusion.¹²¹ Unfortunately right to social justice for persons with disability has not been spelt out in the constitution. The Constitution has stated that economically, socially or educationally backward women, *Dalits*, indigenous, peoples, Madhesi communities, oppressed classes, poor farmers and labours shall have the right to take part in the structure of the state on the basis of the principle

118 Ibid Article 23 (1) b.

119 No. 9, Chapter on Marriage, Country code 1963

120 Article 13 the Interim Constitution of Nepal 2007

121 Ibid. Article 33 (d1)

of proportional inclusion.¹²² This shows that the state has denied participation of persons with disability.

Education is an important tool for the empowerment of human beings as well as ensuring social justice. Person with disability needs specific teaching methods as well as facilities for enhancing their education. Taking this into the account, the law and policy has ensured to provide the facilities to the person with disabilities on the basis of their nature of disabilities. Despite the fact that, laws are not found to have properly implemented. In, Sudershan Subedi, president of Nepal Disability's Human Right Protection Center et. all. vs. HMG Nepal et. all., Supreme Court of Nepal issued a directive order¹²³ not to take any fee or training charges in school or university or training center from the physically or mentally disabled person (deaf, blind, disabled, or mentally retarded person). The landmark decision has re-ensured right to education of person with disability. Though, persons with disabilities are facing so many challenges to get education even today and also they do not have easy access to the academic center as well as teaching or reading materials.

■ *Using degrading words*

Dignified identity is a component of human right and it also gives the dignity of the persons or citizen. Language or the words should be used in the law and address them in a very dignified way. Unfortunately, numbers of Nepalese laws have incorporated various disappointing or degrading words regarding persons with disability.

Even though the following definition has been adopted by the government which was defined by the committee formulated under section 3 of the Protection and Welfare of Disabled Persons Act 2039; **Physical Disability:** A person who is unable to perform the activities of daily life due to physical deficiency, defect or deformity by birth, or by accident after birth, or due to disease; **Visually Impaired:** A person who even after treatment (medical, surgical or use of spectacles) cannot count or detect fingers with the better-sighted eye from a distance of ten feet 'or cannot read the characters of the Snellen chart (3/60)⁶ is defined as "blind" **Intellectual Disability:** A person who cannot perform the activities expected of his/her age and environment due to the lack of mental development prior to the age of 18 years. **Hearing Impaired:** A person who cannot hear, speak clearly or cannot speak at all and has to

Persons with disabilities are facing so many challenges to get education even today and also they do not have easy access to the academic center as well as teaching or reading materials.

Unfortunately, numbers of Nepalese laws have incorporated various disappointing or degrading words regarding persons with disability.

122 Ibid Article 21,

123 Sudershan Subedi, president of Nepal Disability's Human Right Protection Center et.all. vs. HMG Nepal et. all., wirt No. 3586, 2057, Decision date on 14 November, 2003.

Very rude and degrading words such as *Maharogi, Aandha, Lula, Langada, or Kunja* to address the person with disabilities are used in the various laws including the Constitution.

use sign language for communication with a hearing capacity of 80 decibels or less is defined “deaf”, whereas those who cannot hear properly, speak clearly or can only speak very little, or requires a hearing aid and have a hearing capacity between 65 to 80 decibels is defined as “hearing impaired”. **Mental Disease:** A person who is unable to perform the activities of daily life due to mental deficiency, defect or deformity by birth, by accident after birth, or by disease.

Despite that, very rude and degrading words such as *Maharogi, Aandha, Lula, Langada, or Kunja* to address the person with disabilities are used in the various laws including the Constitution¹²⁴.

■ *No Implementation of the laws*

Various Acts and Rules including Protection and Welfare of Disabled Persons Act 2039 have recognized the right of person with disability and have made some positive provisions to uplift the Persons with Disability. Some of them are as follows; **Education** – Mandating that no education fees be charged from persons with disabilities and 5% of all government institutions providing vocational and technical training must be reserved for such persons. Special facilities must be provided for people with sensory and intellectual impairments and in addition institutions providing special forms of education are entitled to demand assistance from the government. **Health** – All hospitals with 50 or more beds are mandated to reserve at least 2 beds for the disabled; **Employment** - Discrimination against persons with disabilities was prohibited in employment and industrial enterprises of 25 employees or more are required to allocate at least 5% of their posts to such persons in accordance with their physical capacity, training, qualifications and experience. The Act also directs the government to conduct programmes enabling persons with disabilities to become self-employed and to set up hostels supporting them in such employment. **Tax Exemption** – The Government was given powers to exempt disabled persons from income tax and such other taxes. Such exemptions can also be extended to any organization established for rehabilitation of disabled persons. **Free Legal Aid** – The Act and its Rules contain provisions for legal counseling to persons with disabilities if demanded by such person in cases pending before the court. In such instances the Government would appoint a lawyer. **Transport** - The Act allows for half fares on buses, trains, and planes for persons with disabilities along with a care provider. **Social Security** – The government

124 No. 25, Chapter on court management, Country Code 1963; No 8, Chapter on Pauper, country code 1963; No. 4, 5 and 9, Chapter on Marriage, country code 1963; No. Section 2, Education Act 2028; section 43(20 Children Act 2048; Section 2, 5(3) Disable protection and Welfare Act 2039, Rule 9, Education rule 2059 etc.

is empowered to introduce disability allowances for persons with disabilities. Even then, de facto realization of these rights is yet to be achieved.

Taking this into the account, the Supreme Court of Nepal has issued a mandamus order¹²⁵ to implement the law and provide the facilities to the person with disability in accordance to the law from the financial year 2061 when the order was issued. The further stated that government failed to fail to provide the facilities to person with disability and also found lack of commitment to implement law. In Advocate Prakasmani Sharma et.al vs. Ministry of Women, Children and Social Welfare et.all, the supreme court of Nepal issued a mandamus order¹²⁶ to form a committee consisting the persons or institutions who are working in the areas of person with disability to prepare the policy and determine the parameter for the implementation right vested by the constitution and disabled protection and welfare act. The court further stated that the report or information of the implementation of laws and polices such should be given in each six month since the issuance of order.

■ *Political participation*

Finally, the disability human rights paradigm applies to both the process and outcome in the modern human right realm. It necessitates the participation of people with disabilities (along with other stakeholders) in the process of societal reconstruction so that they may claim and raise their right to comply with this framework, states must collaborate in policy design, implementation, enforcement, and monitoring with people with disabilities, their families, advocates, and organizations, as well as other aspects of civil society.

Taking into this consideration the Interim Constitution has stated that the state shall have the following obligation “To have participation of Madhesi, Dalit indigenous peoples, women, labors, farmers **disabled**, backwards classes and regions in all the organs of state structure on the basis of proportional inclusion”.¹²⁷ Notwithstanding having mentioned in the constitution about the proportional representation of person with disability, law and policies are not found to have enacted for ensuring their participation. Similarly physical in fracture or official building are not found favorable for person with disability. In addition, the study showed that laws and policy itself discriminate to the person with disability (see detail in matrix)

The proportional representation of person with disability, law and policies are not found to have enacted for ensuring their participation.

125 Babu Krishna Marjan vs. HMG Nepal et.all, writ no. 3666, decision date on 18 January, 2005(2061-10-5)

126 Advocate Prakasmani Sharma et.al vs. Ministry of Women, Children and Social Welfare et.all, writ No. 3564, 2063, Decision date on 8 May, 2007 (2064-1-25)

127 Article 33(d1), The Interim Constitution 2007.

Finally it bears noting that by assuring the inclusion and equality of persons with disabilities, states also benefit other socially excluded group, such as ethnic minorities, women and the poor. This is due to two reasons first that group classified as disabled often overlaps significantly with other socially marginalized groups. Second because focusing on individual needs in the manner required by the disability human right paradigm allows states to develop the individual talents of other excluded groups.

2. Matrix of Discriminatory Laws against Peoples with Disabilities

S.No.	Name of the Legislation	No./Section/Article/Rule	Discriminatory Provision
1.	The Interim Constitution of Nepal 2007	5(1)(2)(3)	Non recognition of Sign Language, Braille script or other communication means of disabilities as language or mother tongue of the nation.
		12(3) (e)	Not having de-facto realization of right to movement
		21	People with disability has not directly been included under the right to social justice and their participation in the state mechanism
2.	Children's Act 2048	(43)2	Degrading words have been used to address the people with disability such as Andha ,Andhi and Wakka Lati
3.	Country Code, 1963 Chapter on court management	24	Degrading word has been used as Bahulako
		25	Degrading words have been used to address the people with disability such as Andha ,Andhi and Wakka Lati
		42	Degrading word has been used as Bahulako
		45	Degrading word has been used as Bahulako
		62	Degrading word has been used to address the people with disability such as: Bahulaako
83	Degrading words have been used to address the people with disability such as Andha ,Andhi and Wakka Lati		

S.No.	Name of the Legislation	No./Section/Article/Rule	Discriminatory Provision
4.	Chapter on Medicine	6	The legal provision is against the human right of person with mental disability, Law has provided the authority to kept into the jail to the person with mental disability for the medicine purpose.
5.	Chapter on Pauper	8	Degrading words have been used to address the people with disability such as: <i>Sidha, Maharogi, Aandha, Lula, Langada, or Kunja</i>
6.	Chapter on Marirage	4	Degrading words have been used to address the people with disability such as: <i>Wakka Lato, Maharogi, Lulo, Kungi, Andho, Mad</i> etc
		5	Degrading words have been used to address the people with disability such as: <i>Wakka Lati, Maharogi, Luli, Andhi, Mad</i> etc
		9	Having a disability or women with disability is to be ground for sedond marriage And also Degrading words have been used to address the people with disability such as <i>Andhi Kungi Bahulako,</i>
		9(a)	Bigamy has been recognized and also Degrading words have been used to address the people with disability such as <i>Bahulako</i>
7.	Education Act 2050	2	Degrading words have been used to address the people with disability such as <i>Andha, Lata, Disable, Mental retarded</i>
8.	Disablity Protection and Welfare Act 2039		Degrading words have been used to address the people with disability such as <i>Kano, Andho, Bahiro, Lato, Lathebro, Lulo, Kungo, Langado, Khorando, Dundo, or Mental retarded</i>
9.	Education Rule 2059	Rule9((60)	Degrading words have been used to address the people with disability such as <i>Andha, Bahira, Mental retarded</i>
10.	Police Act 2012	15 (1) G	Degrading word has been used as <i>Bahulako</i>
11.	Local Administration Act 2028	9(7)	Degrading word has been used as <i>Bahulako</i> and also discriminated the action taken for the treatment under the chapter of Medicine of country code

1. State Accountability and Obligations to Eliminate Discriminatory Laws

State responsibility to protect against discrimination is rooted in the State's international obligations. Treaties, Conventions and Statutes encompass binding agreements. The essential idea is that states are bound by what they expressly consent to. According to the fundamental principle *pacta sunt servanda* as enshrined in Article 26 of the Vienna Convention on the Law of Treaties, "Every treaty in force is binding upon the parties to it and must be performed by them in good faith" By becoming a party to a treaty, a state pledges that it will uphold and implement all the provisions of the treaty.

A State's failure to enforce laws against discrimination or to provide the mechanisms and resources to make the law function, on the basis that it is a domestic or private matter may be a form of discrimination in itself for which States are internationally accountable.

In other words state obligation towards elimination of discrimination within its domestic jurisprudence can be classified in two of the following forms:

1. **Negative Obligation** – Based on the traditional human rights jurisprudence of primarily protecting private individuals from violation and abuse of rights by public authority, this form of legal obligation propagates a policy of non-interference or that of non-enactment of specifically discriminatory laws or provisions by the state. In addition it encompasses an obligation not to discriminate. This obligation is primarily based on General Comment 18¹²⁸ in which the UN Human Rights Committee stated that: "Article 26 [of the ICCPR] is... concerned with the obligation imposed on States parties in regard to their legislation and the application thereof. Thus, when legislation is adopted by a State party, it must comply with the requirement of Article 26 that its content not be discriminatory."
2. **Positive Obligation** – Positive obligations of the State under international instruments may include obligations to implement, to ensure or guarantee rights as well as respect them. While not explicitly mentioned in international instruments jurisprudence has developed based on provisions such as Article 2 of the ICCPR which obliges each State party to "respect and to ensure to all individuals

A State's failure to enforce laws against discrimination or to provide the mechanisms and resources to make the law function, on the basis that it is a domestic or private matter may be a form of discrimination in itself for which States are internationally accountable.

128 <http://www1.umn.edu/humanrts/gencomm/hrcomms.htm>

within its territory and subject to its jurisdiction the rights in the Covenant.” Or other similar clauses in CEDAW, ICERD have expanded this obligation to include affirmative measures ensuring equal opportunity in realising individual capabilities and equality of results. In addition they have incorporated state responsibility in adopting measures to protect rights from being violated by private (non-state) actors.

The manner in which a state fulfills its obligations is however dependant on a state’s basic domestic legislative framework. In Nepal Section 9 of the Nepal Treaty Act, 1990 clearly states that in case of conflict between any provision of the domestic law and provision of the treaty or international human rights instrument that Nepal is a party to; the provisions of the treaty or the human rights instrument shall prevail. In *Reena Bajracharya*,¹²⁹ the Supreme Court upheld Section 9 of the Treaty Act said that it provides a higher status to the Conventions that Nepal is a party to than the domestic law, thereby making their implementation easier and efficient. However as per the new jurisprudence developed by the Supreme Court, the facts that Conventions cannot overrule the Constitution have been clearly spelt out.¹³⁰

Despite the positive circumstances demonstrating a commitment to human rights in Nepal, many discriminatory legal provisions continue to remain. This chapter attempts to outline Nepal’s accountability and obligations based on various commitments to eliminate discriminatory laws.

2. International instruments imposing obligations on Nepal

As a member of the United Nations, Nepal is a party to a large number of international human rights instruments including various Conventions adopted by the International Labour Organizations (ILO) (listed in the Table 1 and Table 2) without any reservations.

Table 1

S. N.	International Instruments	Ratification or Accession Date
1	Slavery Convention, 1926	7 Jan. 1963 (A)
2.	Protocol Amending the Slavery Convention	7 Jan. 1963 (A)
3	Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institution and Practices Similar to Slavery, 1956	7 Jan. 1963 (A)

129 *Reena Bajracharya v. HMG/Nepal*, NKP 2057 B.S. Vol.5, p.376

130 *Chandra kant Gwyawali v HMG Nepal*, writ no 3368/2057, decided on 2058.10.25

Nepal Treaty Act states that in case of conflict between any provision of the domestic law and provision of the treaty or international human rights instrument that Nepal is a party to; the provisions of the treaty or the human rights instrument shall prevail.

4	Convention on the Political Rights of Women, 1952	26 April 1966 (A)
5	Convention on the Prevention and the Punishment of Genocide, 1948	17 Jan. 1969 (A)
6	International Covenant on the Elimination of All Forms of Racial Discrimination, 1965	30 Jan. 1971 (A)
7	International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973	12 July 1977 (A)
8	International Convention Against Apartheid in Sports, 1985	1 March 1989 (R)
9	Convention on the Rights of the Child, 1989	14 Sept. 1990 (R)
10	Convention on the Elimination of All Forms of Discrimination Against Women, 1979	22 April 1991 (R)
11	International Covenant on Economic, Social and Cultural Rights, 1966	14 May 1991 (A)
12	International Covenant on Civil and Political Rights, 1966	14 May 1991 (A)
13	Optional Protocol to the International Covenant on Civil and Political Rights, 1966	14 May 1991 (A)
14	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984	14 May 1991 (A)
15	Convention on the Suppression of Immoral Trafficking and Protocol, 1949	27 Dec. 1995 (A)
16	Second Optional Protocol to the International Convention on Civil and Political Rights/aiming at the abolition of Death Penalty, 1989	26 Sept. 1997 (A)
17.	Optional Protocol to the Convention on the Elimination of Discrimination against Women	15th June 2007
18.	Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict	31 Oct. 2005
19.	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography	20 June, 2006
20.	SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia	15 Nov. 2005
21.	SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution	15 Nov. 2005

Table 2 (ILO Conventions)

S. N.	International Instruments	Ratification or Accession Date
1	The Discrimination (Employment and Occupation) Convention, 1958 (No 111)	19th Sept., 1974 (R)
2.	The Minimum Wage Fixing Convention, 1970 (No 131)	19th Sept., 1974 (R)
3	The Equal Remuneration Convention, 1951 (No 100)	6th Oct., 1976 (R)
4	The Weekly Rest Convention, 1921 (No 14)	10th Dec., 1986 (R)
5	The Tripartite Consultation (International Labour Standards) Convention, 1976 (No 144)	21st March, 1995 (R)
6.	Convention Concerning Minimum Age for Admission to Employment, (No 138)	4th Oct., 1996 (R)
7.	Convention concerning the application of the Principles of the right to organize and bargain collectively (No 98)	4th Oct., 1996 (R)
8.	Worst Forms of Child Labour Convention, 1999 (No. 182)	3rd Jan., 2002
9.	Indigenous and Tribal Peoples Convention, 1989 (No. 169)	22nd Aug., 2007
10.	Forced Labour Convention, 1930 (No. 29)	3rd Jan., 2002
11.	Abolition of Forced Labour Convention, 1957 (No. 105)	30th Aug., 2007

3. Observations by some of the Treaty Bodies towards Nepal's Commitment in Implementation

■ *Concluding Comments on Second and Third periodic reports to CEDAW*

The CEDAW Committee considered the combined second and third periodic report of Nepal (CEDAW/C/NPL/2-3) at its 630th and 631st meetings, on 13 January 2004 (see CEDAW/C/SR.630 and 631). Some of the key concerns that remain to be addressed till date are:

- ▶ The Committee urged the State party to expedite action and to establish a specific timetable for amending discriminatory laws without further delay in order to comply with its obligation under article 2 of the Convention.
- ▶ The Committee recommended that the existing national machinery for the advancement of women be strengthened by providing it with adequate financial and human resources.
- ▶ The Committee called on the State party to ensure full and equal participation of women in the process of conflict resolution and

Human Rights Committee stated that it was particularly disturbed by the fact that the principle of non-discrimination and equality of rights suffers serious violations in practice and deplors inadequacies in the implementation of the prohibition of the system of castes.

peace-building through allocation of sufficient resources to meet the needs of women who have suffered damage as a result of the conflict and to ensure their security and protection from violence.

- ▶ The Committee urged the State party to intensify its efforts to eliminate discriminatory cultural practices and stereotypes and to encourage men to share family responsibilities and direct its awareness raising programmes to men as well as women, and to take action to change stereotypical attitudes and perceptions as to men's and women's roles and responsibilities.
- ▶ The Committee recommended that the State party take further measures to improve women's access, particularly rural women, to health-related services and information, including in regard to sexual and reproductive health, in an effort to reduce maternal mortality. It also recommended that programmes and policies be adopted to increase knowledge of and access to contraceptive methods, taking into account that family planning should be the responsibility of both partners. It further recommended that sex education be widely promoted, particularly targeting boys and girls, with special attention to the prevention and further control of sexually transmitted diseases and HIV/AIDS.
- ▶ The Committee requested the State party to provide in its next report comprehensive information on the situation of refugee women in Nepalese camps, including in respect of the registration process for refugees and the means used to protect refugee women from gender-based violence and the avenues available for redress and rehabilitation.

■ ***Concluding Observations of Human Rights Committee on Initial Report of Nepal***

- ▶ The Human Rights Committee stated that it was particularly disturbed by the fact that the principle of non-discrimination and equality of rights suffers serious violations in practice and deplors inadequacies in the implementation of the prohibition of the system of castes.
- ▶ The Committee expressed its concern over the situation of women who, despite some advances, continue to be de jure or de facto the object of discrimination as regards marriage, inheritance, transmission of citizenship to children, divorce, education, protection against violence, criminal justice, and wages.

■ ***Concluding Observations of the Committee on the Rights of the Child to the government of Nepal***

- ▶ The Committee showed its deep concern about the absence of a specific law and policy to combat the problem of trafficking and recommended the government to take all appropriate measures, including of a legislative nature, to combat any form of ill-treatment and sexual abuse of children including within the family. It also suggests that the government take all appropriate measures, including legislative and administrative, to combat inter-country trafficking and sale of children.

■ ***Concluding Observations of the Committee on Economic, Social and Cultural Rights on the Initial Report of the government of Nepal***

- ▶ The Committee noted its concern the legal inequalities between women and men in the field of inheritance, the regime of shared assets in marriage, divorce, child custody in case of divorce and remarriage, and the conferring of nationality to children on equal terms. It expressed its concern also about the de facto inequality that exists between men and women in the Nepalese society, despite legislative guarantees of equality. It further noted with concern the low representation of women in public service, the high female illiteracy rate and the unequal wages for equal work.
- ▶ The Committee showed its deep concern at the high number of women and girls being trafficked for prostitution. The Committee also regretted the continuation of polygamy and the practices or dowry, deuki and prostitution among the Bedi caste, particularly in rural areas.
- ▶ The Committee showed concerned at the high rate of domestic violence and the absence of specific legislation in this field.
- ▶ The Committee urged the State party to implement more vigorously existing legislation on gender equality and to incorporate a gender equality perspective in legislation, with a view to ensuring greater equality of men and women, especially in the areas of family, employment, labour conditions and representation in public services and administration.
- ▶ The Committee urged the State party to enact or enforce legislation prohibiting customary practices, such as polygamy, dowry, Deuki and prostitution among the Bedi caste, and restricted ownership by women of land and family property, which violate the rights of

The Committee on Economic, Social and Cultural Rights expressed its concern also about the de facto inequality that exists between men and women in the Nepalese society, despite legislative guarantees of equality.

women and girl children and to take measures to combat such practices by all means, including national educational programmes.

- ▶ The Committee recommended that the State party adopt specific legislation on domestic violence against women and children.
- ▶ The Committee recommended that the State party enforce its legislation in an effective way and establish administrative mechanisms and monitoring systems to prevent and combat trafficking in women and children. It further recommended the strengthening of measures to allow the return, rehabilitation and reintegration into society of trafficked women

■ *Concluding observations of the Committee on the Elimination of Racial Discrimination on the Fifteenth and Sixteen Periodic Report of the government of Nepal*

- ▶ The Committee noted the lack of information in the periodic report on the situation of women who belong to disadvantaged groups as victims of multiple discrimination, and expresses concern over the situation of forced prostitution of girls and women of the *Badi* communities.
- ▶ The Committee recommended that the State party consider issues of political representation, personal security, employment and education, in line with General Recommendations XXV and XXIX, in taking measures to eliminate multiple discrimination against women who belong to vulnerable groups. The Committee further requested the State party to include in its next report the measures taken in this regard, including specific action taken to eradicate forced prostitution of Badi girls and women.

The Committee recommended that the State party consider issues of political representation, personal security, employment and education, in taking measures to eliminate multiple discrimination against women who belong to vulnerable groups.

Recommendations for Future Action

The following recommendations have been formulated on the basis of the study conducted as well as inputs from stakeholders at the Consultation on the Draft Study held on 23rd March 2009 at Kathmandu:

- Detailed analysis of discrimination and the impact of discriminatory laws and provisions on women, ethnic minorities and persons with disabilities need to be conducted and illustrated with case studies for purposes of internalizing the issue and conducting advocacy.
- Keeping in mind the recent initiative taken by the civil society organizations in conducting and compiling the Shadow Reports on CEDAW, CERD, CRC, ICCPR findings of these studies in particular regarding the emerging issues of concern would also require to be incorporated in the above-mentioned analysis.
- Amendment proposals would need to be drafted and prepared with justifications based primarily on the principle of state accountability in Nepali language. It should then be registered with concerned ministries in collaboration with other concerned partners and stakeholders.
- Keeping in mind the ongoing process of drafting a new constitution by the recently elected Constituent Assembly, a framework for non-discrimination and equality would need to be formulated and recommended for incorporation in the upcoming constitution.
- Social mobilization would need to be conducted to lay pressure on political parties, law makers and the government.
- To ensure mobilization of positive public opinion for law reform advocacy materials would need to be prepared explaining and reasoning the demand for amendments.
- Positive public opinion would also need to be built through media campaigns and public hearings for internalizing the issue and creating an enabling environment for legal reformation.
- Press meetings should be conducted to discuss issues of discrimination and exclusion of women, ethnic and religious

Positive public opinion would also need to be built through media campaigns and public hearings for internalizing the issue and creating an enabling environment for legal reformation.

minorities and persons with disabilities under the legal framework based on the findings of existing studies that have been conducted.

- With regard to submission of proposals for amendments, recommendations relating to amendment of relevant discriminatory provisions under the constitution should be provided directly to the Constituent Assembly. Similarly recommendations for amendments to specific legislations would need to be submitted to the concerned ministries, law ministry, the parliament and political parties. Lastly recommendations for amendment to rules and regulations would need to be submitted to the concerned ministries and the central cabinet.
- In the event that the desired amendments are not effected through the abovementioned processes, court action in the form of public interest litigations would need to be instituted in partnership with other stakeholders both individuals and organizations, requesting for issuance of directives to the concerned agencies of the government.

Court action in the form of public interest litigations would need to be instituted in partnership with other stakeholders both individuals and organizations, requesting for issuance of directives to the concerned agencies of the government.

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Annex 2 : Media Coverages



सौगात
 काबुलै विभेदकारी
 नेपालको स्वतन्त्रता, समता, शान्ति, शान्ति सुरक्षाका लागि कानूनको विकास गर्नुपर्ने आवश्यकता छ। यो कानून अझै परिवर्तन हुनुपर्ने देखिन्छ।

राजधानी
 बिहीबार, २० वैत, २०६५
‘महिला सवालमा अझै विभेदकारी कानून’
 राजधानी समाचारदाता काठमाडौं, १९ वैत
 महिला कानून र विकास मन्त्राले नेपालको संविधान र कानूनमा उल्लेखित व्यवस्था महिला विरोधी भएको निष्कर्ष निकालेको छ।
 नेपालको अन्तरिम संविधान तथा अन्य कानूनमा महिला स्वास्थ्य, रोजगारी तथा पहिचानको अधिकारमा विभेदकारी कानूनको पालना गर्नु परेको छ। यस्ता अधिकारमा आधारित कानूनी व्यवस्थामा पाँच सय ३६ वटा लैंगिक पूर्वापेक्षी शब्दहरू राखिएको तथा अप्रत्यक्ष रूपमा महिलालाई बेफाइदा गर्ने वंशानुसार राखिएको निष्कर्ष प्रतिवेदनको

विभेदकारी कानून सुधारमा जोड
 काठमाडौं, १९ वैत, २०६५
 महिलासम्वन्धित विभिन्न प्रकारका विभेदकारी कानूनको सुधार गर्नुपर्ने आवश्यकता छ। यो कानून अझै परिवर्तन हुनुपर्ने देखिन्छ।

विकल्प
भेदभावपूर्ण कानुनी व्यवस्थाहरू संशोधनको आवश्यकता
 काठमाडौं, १९ वैत, २०६५
 नेपालको अन्तरिम संविधान तथा अन्य कानूनमा महिला स्वास्थ्य, रोजगारी तथा पहिचानको अधिकारमा विभेदकारी कानूनको पालना गर्नु परेको छ। यस्ता अधिकारमा आधारित कानूनी व्यवस्थामा पाँच सय ३६ वटा लैंगिक पूर्वापेक्षी शब्दहरू राखिएको तथा अप्रत्यक्ष रूपमा महिलालाई बेफाइदा गर्ने वंशानुसार राखिएको निष्कर्ष प्रतिवेदनको

महिला कानून र विकास मन्त्राले नेपालको संविधान र कानूनमा उल्लेखित व्यवस्था महिला विरोधी भएको निष्कर्ष निकालेको छ।
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महिलाविरुद्ध विभेदकारी नीति कायमै
 गोरखापत्र समाचारदाता काठमाडौं, चैत १० गते।
 लोकतन्त्र स्थापना भएको लामो समय भइसकदा पनि कानून र व्यवहारमा विभेदको अन्त्य हुन सकेको छैन। नेपालको अन्तरिम संविधान, २०६३ मा सबैखाले विभेदको अन्त्यको घोषणा गरिए पनि देशका ६२ कानूनमा ९६ प्रावधान र ९२ वटा अनुसूची अर्भै पनि महिलाविरुद्ध विभेदकारी रहेका छन्।
 महिला कानून र विकास मन्त्राले गरेको अध्ययनमा धर्म, लिङ्ग, जातजाति, अपाङ्गतागायतका आधारमा कानूनमा विभेद पाइएको उल्लेख छ। विभेद राष्ट्रियता, सम्पत्ति, यौन अपराध, रोजगारी, स्वास्थ्य, परिवार, अदालती बन्दोबस्ती, पहिचानसँग सम्बन्धित रहेका छन्।
 अध्ययनअनुसार प्रजनन स्वास्थ्यको अधिकारमा पनि फरक पाइएको छ। लैङ्गिक समानता संशोधन ऐनले न्यायाधीशको हकमा ९८ दिन कायम छ भने अन्य धेरै सेवामा ४५, ५२ र ६० दिन मात्र सुत्केरी विदा कायम गरिएको छ।
 शिशुको नामकरण गर्दा बाबुलाई प्राथमिकता दिने व्यवस्था कायम छ भने बहुविवाह दण्डनीय भए पनि बदरयोग्य छैन। यौन तोग, कौजी, नेत्रहीन भएमा सहमति लिई वा अंग लिई भिन्न बसेमा वा निको नहुने गरी बहुलाएमा बिना सहमति दोस्रो विवाह गर्न कानूनले पुन्यलाई छुट दिएको छ।
 महिला, बालबालिका तथा समाज कल्याण मन्त्रालयका सचिव विन्दा हाउलेले नेपालका महिलाको अवस्थामा धेरै सुधार आएको र कानूनका दृष्टिले संसारका अधिकांश देशको तुलनामा नेपालको कानून राम्रो छ तर व्यवहारमा प्रयोग भएको छैन भन्नुभयो। अध्ययन र सार्वजनिक गर्दै अधिवक्ता दुङ्गानाले कानूनमा प्रत्यक्ष अप्रत्यक्ष रूपमा विभेद रहेको चर्चा गर्नुभयो।

Sexist bigotry sparks semantic row
 Himalayan News Service
 Kathmandu, March 29
 Even as efforts are being made to eliminate all discriminatory practices in the country, a study revealed that as many as 536 discriminatory words still found their place in the present Constitution and several Acts, Regulations and annexes of the Acts.
 According to the study, sexist terms such as sabbah (girl gift), aimal (female), kulpati (chancellor), udhyogpati (industrialist), pradhanenapati (chief of Civil Code), army), rastrapati (President) and uparastapati (Vice President), to name a few, are still being used in the country.
 The study was carried out by the Forum for Women, Law and Development, an NGO working in the field of justice for women, was made public recently.
 The study was conducted following the promulgation of the Interim Constitution of Nepal, 2007, including the Nepal Citizenship Act, 2006 and amendments in chapters of Civil Code.
 "We will make public the report in Nepal and the concerned departments for their attention," advocate Meera Dhungana affiliated with FWD told this daily. The study stated that laws related to court procedures were also discriminatory against women.
 According to the study, the person registering any submitted to the court must mention the names of fathers or husbands. "We want an end to such discriminatory practices," Dhungana added.

Media Coverages



महिलाप्रति कानूनम पनि विभेद

● तारा बाग्ले / राजधानी
संस्करण : एकेमी



नयाँ महिलाप्रति कानूनमा आफ्नो अधिकार विचलन गराउन पाउने विभिन्न प्रकारका विभेदहरू विभिन्न कार्यक्रम गर्ने नहुने छन्।

नेपालको संविधान तथा विभिन्न कानूनले व्यवस्था गरेको अधिकारहरू अल्पमात्रमा मात्रै पुगीरहेका बाकी महिलाहरूमाथि खेरमा महिलाको पूर्ण अधिकारको हद नपुग्ने माग गरिरहेका छन्। महिला अधिकारकर्मीको नेतृत्वमा संविधानको सवावामा संशोधनको माग गर्दै कानूनको समान बराबरीको माग गरिँदै आएको छैन। अधिकार माग हुँदाको भन्दाभन्दा संशोधन माग आएका कानून र कानूनको अन्तर्गत अल्पमात्रमा मात्रै बाँचेका छन्। दुई पल्लोहरूमा मात्रै बाँचेका छन्।

कानूनका प्राथक प्राथकहरू नैतिकताको दृष्टिले तथा कानून र कानूनको दृष्टिले विभिन्न प्रकारका विभेदहरूको व्यवस्था गरेको पाइन्छ।

नेपालको संविधानको अन्तर्गतमा महिलाप्रति अधिकारकर्मीहरूले अनेकौँ अधिकारको माग गर्दै आएका छन्। कानूनको अन्तर्गतमा अनेकौँ अधिकारको माग गर्दै आएका छन्। कानूनको अन्तर्गतमा अनेकौँ अधिकारको माग गर्दै आएका छन्।

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