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Nepal's Gender Policies: Achievements and Challenges

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Abstract

Nepal has experienced extraordinary political and social changes in the last 25 years. Since the Constituent Assembly (CA) election in 2008, progress has been noted in increasing women's access to literacy, education, and healthcare services. Despite significant gender reforms in policies and strategies, Nepali women continue to experience discrimination and violence mainly because of their gender. Drawing upon six different cases – constitutional and international framework, participation of women, women peace and security, sexual and reproductive health rights, gender-responsive budget and citizenship law – this paper highlights some of the achievements and gaps in the area of gender reform policies and practices. Methodologically, the study adopts document review and personal reflections of authors as the main source of information. The paper concludes with some key recommendations to address existing challenges and gaps of these selected policies/strategies.

Keywords: gender policies; gender based violence; participation of women; sexual and reproductive health

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1. Introduction

Nepal has experienced extraordinary political and social changes in the last 25 years. Following the end of the Maoist insurgency in 2006 significant progress in gender equality has been observed. Since the Constituent Assembly (CA) election in 2008, progress has been noted in increasing access of women to literacy, education, and healthcare services. The wartime turmoil also paved the way for landmark achievements in women's inclusion in politics (Upreti and Kolås, 2016).

The United Nations Charter recognizes the equality of rights for women as fundamental human rights. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) provides the basis for realizing equality between women and men through ensuring women's equal access to, and equal opportunities in, political and public life – including the right to vote and to stand for election – as well as education, health and employment (UN Women, n.d.). As a state party to the convention, it is an obligation of the Government of Nepal (GoN) to end all discriminatory laws against women and to create a conducive environment for women to enjoy basic human rights and ensure their security.

This paper aims to analyze some of the selected gender-related policies/strategies while highlighting their achievements and gaps. The paper concludes with some key recommendations to address existing challenges and gaps in these policies. Methodologically, the study adopts document review and personal reflections of authors as the source of information.

Nepal has experienced several popular movements in the last three decades. They include the movement against the absolute monarchy and for multi-party democracy and then a federal democratic republic. The country also witnessed the decade-long armed conflict – between 1996 and 2006 – and the subsequent peaceful people's movement in 2006. As an outcome of these movements, two constituent assemblies were elected which promulgated the Constitution of Nepal in 2015 and established Nepal as an inclusive, just, democratic and federal republic.

2. Constitution of Nepal

The Constitution of Nepal has guaranteed equal rights for every citizen and some special rights for women and disadvantaged groups. It strictly prohibits violence and discrimination against women and girls. It also contains provisions for institutional mechanisms relating to gender equality. Under Article 18 of the Constitution of the Nepal 2015, it guarantees that all citizens are equal before the law and are entitled to equal protection of the law without any discrimination on any ground.

Under Part – Fundamental Rights and Duties – the Constitution enlists a comprehensive set of civic, political, social, economic, cultural and other rights.

Some of the rights guaranteed under Article 38 of the Constitution are:

- i. Equal lineage right without gender-based discrimination
- ii. Right to safe motherhood and reproductive health;
- iii. Right to participate in all bodies of the State based on the principle of proportional inclusion;

- iv. Right to obtain special opportunity in education, health, employment and social security based on positive discrimination;
- v. Equal right for the spouse to property and family affairs.

3. International Framework

Nepal has ratified/signed/acceded to 23 international human rights instruments, including seven of the nine core human rights treaties, some important optional protocols, and seven of the eight core ILO Conventions. Nepal ratified CEDAW as far back as 1991. The Government has been implementing the prescribed areas of the Beijing Platform for Action (BPfA) in its domestic processes since 1997 with a multi-stakeholder partnership approach that engages government organizations, international donor partners, NGOs, and the private sector.

Nepal is also a party to regional instruments and mechanisms such as the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002)¹. It also ratified, in June 2020, the Palermo Protocol to prevent, punish and suppress trafficking in persons, especially women and children. Substantial efforts have been made to domesticate the provisions of the international treaties and implement them. It is important to note Article 9 of the Nepal Treaty Act, 1990, which establishes that international treaty provisions would prevail over domestic laws in case of inconsistencies. This provision of the Nepal Treaty Act has had substantial implications in public interest litigations and subsequent Supreme Court rulings.

Despite these legal guarantees and international commitments for gender equality, the effective implementation of existing laws remains a major challenge. The deep-rooted patriarchal mindset and lack of information on the implementation status of the laws and policies are some other challenges (NAWHRD, 2008). There are numerous policies in the area of gender equality. However, given the limitation of this paper, only some selected strategies and policies have been included.

3.1 Participation of Women

One of the most visible achievements in the area of gender equality is the political participation of women in all three tiers of the government. The quota provision introduced in the Interim Constitution 2007 not only contributed to increased women's participation in the Constituent Assembly but also paved the way for the future. The Constitution of Nepal (2015) has guaranteed the right of women to participate proportionately in all state bodies as a fundamental right; to have 33 per cent representation in central and federal parliament and 40 per cent in local government. Article 283 states that the appointment to constitutional bodies and agencies shall be made based on the principle of inclusion. Likewise, Article 269 makes it mandatory for all political parties to abide by the policy of inclusion.

The participation of 34 per cent of women in the Federal Parliament is the highest in Asia (Dhital, 2020). Similarly, in provincial assemblies and local level assemblies, women's participation has reached 34 per cent and 41 per cent respectively. Likewise, there has been visible progress in women's participation in civil services as well as in private sectors.

1 SAARC Convention <https://evaw-global-database.unwomen.org/fr/countries/asia/india/2002/south-asian-association-for-regional-cooperation>

the reservation policy, women's participation in civil services has increased to around 24 per cent as of 2020 compared to 11 per cent in 2008 (Dhital, 2020).

Despite favourable legal and policy frameworks, women's representation in higher positions remains low. Most political parties and the bureaucracy are still dominated by high-caste males. Likewise, women politicians continue to face challenges and are often sidelined by their male counterparts. Women's participation in the civil service is limited to non-gazette posts. In cabinets and other state-organs, women's participation is negligible due largely to the existing patriarchal mindset and the lack of political will to promote women in leadership and decision-making roles. Overall, the participation of women in the public sphere is concerningly negligible.

3.2 Women Peace and Security

The Women Peace and Security (WPS) agenda makes gender equality, women's empowerment and representation central to conflict processes, conflict-prevention, post-conflict reconstruction and peacebuilding processes. After ten years of armed conflict (1996-2006) and more than 15 years of the signing of the Comprehensive Peace Accord (CPA) between the Maoists and the government of Nepal, the execution of the WPS agenda remains crucial in Nepal. Acknowledging the challenges faced by women during and after conflict Nepal became the first country in South Asia to launch the National Action Plan (NAP) to implement UNSCR 1325 in 2011 to achieve sustainable peace and a just society. The NAP is contextualized within a broader set of government politics and initiatives that seek to mainstream gender and implement the WPS agenda in Nepal (Peacewomen, n.d.). Nepal's NAP was globally noted as an exemplary process of extraordinary levels of collaboration between the government and non-governmental organizations (Kaya, 2020).

The implementation of the NAP from 2011 did make some significant progress in terms of greater awareness on WPS, collaborative mechanisms and some relief and recovery programmes under the aegis of the Ministry of Peace and Reconstruction. However, the implementation was not as expected mainly due to issues related to costs and budgets and the lack of clarity in addressing conflict-related sexual violence. The second phase of Nepal's NAP has been developed and revised several times through a wide consultative process. However, it is yet to be adopted by the government. The second NAP commits to paying greater attention to conflict-related sexual violence and mainly aims:

- To ensure proportional and meaningful participation of women at all levels,
- To guarantee the direct and meaningful participation of conflict-affected women in the formulation and implementation of relief, recovery and rehabilitation programs
- To address the specific needs of women and girls (Leclerc and Rana, 2017).

3.3 Sexual and Reproductive Health Rights

Sexual and Reproductive Health Rights (SRHR) is related to multiple human rights, including the right to life, bodily autonomy, to be free from coercion and torture, to health, to privacy and to be free from gender discrimination and violence (OHCHR, 2017). Nepal is among the very few countries in Asia-Pacific to have a standalone law on safe motherhood and reproductive health (OHCHR, 2017).

The government has also developed and amended various laws and policies governing child marriage (2016) and *chhaupadi* (2017). The Safe Motherhood and Reproductive Health Rights Act includes provisions for free abortion care in public health facilities. Under this Act, pregnant women have the right to safe abortion of pregnancy up to twelve weeks (Nepal Law Commission, 2018).² Abortion is also permitted up to 28 weeks of gestation in cases of rape or incest if the woman is HIV positive or has an incurable disease or in cases of fetal malformation (Nepal Law Commission, 2018). Despite health policies and plans implemented over the last decade, gains made in advancing sexual and reproductive health and rights in Nepal have been uneven. Where services are available, social norms prevent women and adolescent girls from accessing them.

COVID-19 has also had a devastating impact on women's and girls' health. In the coming days, the government needs to ensure adequate financial and human resources to safeguard the lives of the most vulnerable women and girls and pave the way forward to realizing the collective vision of the ICPD Program of Action, of rights and choices, for all women and girls in Nepal.

3.4 Gender-based Violence

Gender-based violence is well recognized as a human rights violation. Women, girls and people from gender/sexual minorities in Nepal are exposed to a variety of forms of violence.

While the 2011 Nepal Demographic and Health Survey found that more than one in five (22%) women between 15 and 49 years of age reported experiencing physical violence at some point since the age of 15 years, the actual number is estimated to be larger. Women's lack of autonomy, high economic dependency on their husbands and lack of legal support to women, among others, are all noted to contribute to the risk of violence (IFRC, 2017).

In order to prevent and control gender-based violence and discrimination, several laws have been enacted, some of them are as follows:

- i. The National Penal (Code) Act, 2017,
- ii. The National Civil (Code) Act, 2017,
- iii. Sexual Harassment at Workplace (Prevention) Act, 2014,
- iv. Domestic Violence (Offence and Punishment) Act, 2009,
- v. Human Trafficking and Transportation (Control) Act, 2007.

The National Penal Code is a landmark in the criminal justice system of Nepal and encompasses many facets of crimes including violence against women and girls (VAWG) (Dhital, 2020). It criminalizes acts of violence and willful discrimination, harmful social practices and gender stereotypes perpetrated against women, which include rape, sex-selective and forced abortions, trafficking of women and sexual harassment at the workplace among others. The Act not only penalizes the offenders but also provisions compensation to the victims in many cases.

The National Civil Code prohibits discrimination on any ground in public places and in the use of public services and utilities. It forbids discrimination in wages and social security based on gender. It establishes equal inheritance rights for daughters and sons and equal spousal rights to property (Articles 205 to 220) (Dhital, 2020).

2 <https://www.lawcommission.gov.np/en/wp-content/uploads/2019/07/The-Right-to-Safe-Motherhood-and-Reproductive-Health-Act-2075-2018.pdf>

Physical touch with sexual intent, demonstrating sexual objects, expressing sexual motives or showing and displaying of pornographic material by any person in abuse of his/her position, power or by the imposition of any type of coercion, undue influence, or enticement constitutes sexual harassment under Sexual Harassment Prevention Act 2015. The act ensures a secure and dignified working environment for women by protecting them from sexual, physical and psychological harassment at workplaces.

Similarly, domestic violence has been classified as a criminal offence punishable under the law. The complainant can be the victim or anybody who knows about the crime, and the complaint can be lodged at the Nepal Women Commission, local governments or the Police, looking at the situation and severity of the crime.

The Human Trafficking and Transportation Control Act criminalizes trafficking in persons for prostitution, organ extraction and engaging women and girls in prostitution or sexual exploitation. Under Section 3 of the Act, there is a provision of rescue, rehabilitation and reunion of the victims for which mutual legal assistance treaties can be signed with cross-border trafficking destination countries.

There are a wide variety of legal provisions designed to protect and promote women and girls against violence, discrimination and abuse. However, women's access to justice and protection continues to be one of the major challenges. A large number of women still lack crucial knowledge about existing laws against gender-based violence and continue to be the victims of sexual violence and impunity.

3.5 Gender Responsive Budget System

Gender-responsive budgeting (GRB) contributes to the mainstreaming of gender into macro-economic policy and the national budgeting system to achieving national commitments to gender equality and women's empowerment (Ministry of Health and Population, 2019). The GRB system was put into practice since the FY 2007/08 budget. It is not a budget for women but a budget that works for everyone by ensuring gender-equitable distribution of resources and equal opportunities for all (Ministry of Health and Population, 2019).

In the last 13 years, there has been a three-and-a-half-fold rise in direct gender-responsive budgeting, from 11.03% in 2007/08 to 38.17% in 2019/20. Similarly, there has been indirect gender-responsive budgeting, rising year-on-year, reaching over 48% of the total budget in 2016/17. In the last fiscal year, it stood at 35.56 %, which together with the direct budgeting, amounts to 73.73 %.

Despite mandated gender-responsive budgeting in seven provincial social development ministries, local and district-level gender-responsive budget committees are lying dormant and are unclear about their roles and responsibilities (Climate and Development Knowledge Network, 2021). Within a project's budget, gender responsiveness is largely missing at present and needs to address equity issues manifested in widespread discrimination against women in the form of early marriage, gender-based violence and differential access to infrastructure and livelihood (Climate and Development Knowledge Network, 2021). Ineffective implementation of gender-responsive budgeting at the local level – mainly due to the knowledge gap among policymakers and decision-makers – is another major challenge that needs to be confronted. While the focus of GRB has been on women, it fails to acknowledge the diversity of women in the name of caste, class, religion, sexuality and others.

3.6 Citizenship Law

Article 10 (1) of the Constitution recognizes as a right the acquisition of citizenship by all Nepali citizens. The Constitution also guarantees the equality of rights (under Part 3) and prohibits, through Article 18, gender-based discrimination. Yet, Article 11(5) provides for unequal rights for Nepali men and women in conferring citizenship to their children. According to this article, children born to a Nepali father and a foreign-born mother are eligible for citizenship by descent, while the children of Nepali women married to a foreign man will get only naturalized citizenship, that too, only after producing the proof of them not already being citizens of their father's country. Also, children born to Nepali women in Nepal, and having permanent residence in Nepal, can acquire citizenship by descent only if the father of such children cannot be traced (FWLD, 2016). We argue that this provision is directly contradictory to Article 11(2)(b) as well as Article 18 of the Constitution. Gender-based discriminatory citizenship law also contradicts Article 38(1) of the Constitution which has established equal lineage rights for women and also Article 9 of CEDAW.

During the first phase of the Covid-19 lockdown in June 2020, the ruling Nepal Communist Party tabled a revised Citizenship Bill in the parliament. According to the bill, foreign women are required to spend a minimum of seven years in Nepal before being eligible for naturalized citizenship through their Nepali husbands. However, the bill is quiet on the issue of foreign men marrying Nepali women, ruling out the possibility of Nepali women extending citizenships to husbands of foreign nationalities.

The CEDAW committee along with different organizations and civil society members have expressed deep concern regarding discriminatory laws on Nepal's nationality as provided in the Constitution and Citizenship Act 2006.

3.7 CEDAW as a Guiding Framework to End Discrimination against Women

The role of CEDAW as the principal legal framework for assessing discrimination against women and girls and establishing gender equality is very crucial. Nepal has attached great importance to the CEDAW reporting mechanisms. In fulfilling its agenda the Ministry of Women Children and Senior Citizen has been found to be mainly guided by the CEDAW principles and the concluding observations provided by the CEDAW Committee.

CEDAW Committee's Concluding Observations on the sixth periodic report of Nepal in 2018 provided recommendations on 21 issues. According to the monitoring report of the National Women Commission, of the 84 recommendations, less than five have been fully implemented, while 60 recommendations are in the process of implementation, with steps being actively taken. The remaining 20 recommendations have not been implemented yet. These relate to the formulation of non-discriminatory laws, the amendment of discriminatory laws and the ratification of international treaties (National Women Commission, 2021).

The recommendations of the CEDAW Committee that are in the process of being implemented are mostly about drafting laws and policies; conducting programmes on different gender issues (including eliminating gender-based violence and harmful traditional practices), as well as capacity development and awareness-raising programmes; making institutional arrangements; and allocating an adequate budget and targeted financial support to women facing intersecting and multiple forms of discrimination. Some of the 20 recommendations (National Women

Commission, 2021) which have not been implemented are:

- i. Repeal all remaining constitutional provisions that discriminate against women and girls in the area of nationality
- ii. Adopt comprehensive anti-discrimination legislation that includes a definition of discrimination against women – which encompasses elements of direct and indirect discrimination and multiple and intersecting forms of discrimination in the public and private spheres – and guarantees effective remedies for survivors.
- iii. Repeal all remaining legal provisions that discriminate against women and girls, in particular in the areas of the distribution of marital property upon divorce and access to employment abroad.
- iv. Guarantee all women equal access to employment within and outside the State party, including by repealing discriminatory restrictions imposed on women endeavouring to work abroad and by expediting the ongoing revision of the guidelines on women
- v. Strengthen the mandate and capacities of local governments to address women’s rights and gender equality and reintroduce the allocation of targeted budgets at the local level for women’s leadership.

4. Recommendations

The analysis of various gender-friendly policies and laws adopted shows that Nepal has taken progressive steps towards gender equality. Important legal provisions have been made to strengthen women’s rights in such areas as politics, health and inheritance, among others. However, despite the provisions of equal rights in the Constitution, the lack of effective implementation and monitoring mechanisms of these provisions poses a great threat to equality.

A majority of women in Nepal continue to be victims of violence and are forced to experience poverty and marginalization mainly because of their gender. Women from ethnic minorities and low-caste groups are further marginalized. On the basis of the review of existing gender-related policies and different studies conducted to evaluate the situation of gender equality, this review paper proposes the following recommendations:

- Provide full and equal citizenship rights for women, including the right to transfer citizenship to their foreign husband and children
- Ensure the effective implementation of existing laws on women’s rights and gender equality through institutionalized monitoring mechanisms
- Prioritize the implementation of the CEDAW Committee’s recommendations to amend discriminatory laws against women and formulate non-discriminatory laws.
- Guarantee proportional and meaningful participation of women at all levels, acknowledging the diversity of women and addressing the concerns of the marginalized community
- Enhance women’s level of knowledge about their rights and increase their agency to act

- Allocate adequate resources to address gender-based violence
- Enhance the capacity of provincial and local governments to formulate and implement a gender-responsive budget with an institutionalized system to assess the impact of the budget on the lives of women and girls
- Improve every woman and girl's access to adequate information and services that protect and promote their reproductive health and rights.

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