

 <p>ISSN 2631-2131</p>	<p><b>1. PARENTAL PROPERTY EQUAL RIGHT POLICY OF NEPAL: A FOCUS GROUP DISCUSSION OF STUDENTS OF LAW FACULTY OF KATHMANDU</b></p> <p><b>-By Acharya C.</b></p>
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**Abstract**

*It is general fact that the parental property equal rights are the rights of son and daughter upon parents' properties, rights to ownership into the parents' properties, rights to get properties earned by parents, rights of properties acquired in accordance with the inheritance, ownership rights to house, money, land and other properties earned by parents and forefather. The property right is a national issue and it is also related to economy, which is one of the important factors for the development of the country. Unless it would not identify the property related issue because it effort to change in society will be meaningless. The main objective of the study is to analyze the Parental property equal right policy of Nepal. To find the objective this article is prepared based on primary information direct group discussion with Law students of different Law Colleges of Kathmandu Valley. Specifically, it is to find the quality information regarding existing policy of parental property equal rights system in Nepal. The researcher has not used the information besides as mentioned objectives. The researcher has applied the analytical research methods and inductive approach to make the meaning full of the information. Obtained information are explained in extended forms without disregards what the participants said. As research results that there have been found lots of changes (19 important issues discussed below) in women's life style after initiating the parental property equal right system in Nepal. The policy program is highly appropriate and welfare for equal existence of women in the society*

**Keywords:** Existing Policy, Parental Property, Equal Rights, Law, Culture.

### **Introduction:**

Paternal property is descending or inheritance coming from parents and other ascendants or linages, or collaterals of the paternal stocks, share investments and its equal share to their son and daughters by legal process is called the parental property equal rights (Farlex 1994). Parental property after death it transfers to children. It is a global practice. But due to the limited practice daughters and old parents who really own the property are in deprive in Nepal. 'My property my right, wherever I want to distribute it is my right but my strong sons are in greed' claim most of the old senior citizens in Nepal. The law of property right still is against human rights of private property. Rights, in any form of property, are claims that are legally and socially recognized and enforceable by external legitimized authority (Agrawal, 2002). The system has created serious problem in women's property rights as well.

Broadly defined, land and property rights can be understood as a variety of legitimate claims to land and the benefits and products produced on that land (Schlager & Elinor, 2002). A property owners do not have right to sell the property independently. It is against the human right. Inheritance, transfers from the State, tenancy arrangements, and land purchase are all constructs of land rights (Allendorf, 2007). These rights can be in the form of actual ownership or usufruct, the rights of use. Jahangir (1987) defined that the property is a set of social relations. Embedded in these are social behavior and gender relations.

Historical parental property rights systems are different systems of property rights among various people; Anthropological and sociological studies have been made about customs of parental property, inheritance, where only male children can inherit or have rights of parental property. Some cultures also employ matrilineal succession, where property can only pass along the female line, most commonly going to the sister's sons of the decedent; but also, in some societies, from the mother to her daughters. Some ancient societies and most modern states employ egalitarian inheritance, without discrimination based on gender and/or birth order. Western societies around the world, finds consistent correlations between the gender and birth order of a child and his or her outcome in life, and these include differences in the degree of property control: the first son, in comparison to other sons, has more control of property (Patric 1998, George, 2009, Dounge, 2006, Dounge, 2006 and Dyck, 2000). Thus civil code 2074 says that, the civil provisions contained in the Country Code and other laws, by also amending and consolidating such provisions, in order to maintain morality, decency, etiquette and convenience as well as economic interest of the public by maintaining law and order in the country and maintain harmonious relationship between various

castes, races and communities, by making just provisions in the economic, social and cultural fields.

Agrawal B. (1994) explained that the property can be acquired through gifts, through inheritance, and through work/earnings. Women's ownership of land not only enhances their livelihood options, but also the socioeconomic well-being of their families and societies. Studies have shown that women tend to spend a larger proportion of their incomes from employment or assets on family or household needs – especially children's needs such as education, health and entertainment – in comparison to men, who tend to spend a significant portion on personal goods. The last also presupposes the ability to work and earn which requires some level of skill/education, and/or access to productive resources (land, capital). For women, these prerequisites are also decided and defined through social-cultural prescriptions. Property rights matter for their effects on economic inequality and economic performance, and they unfold at the intersection of law, the state, politics, and the economy.

Women's rights to inherit, own and control property are determined primarily by the values and norms which are socially acceptable, as well as the mechanisms of intra-household decision-making and distribution. Economic theory seems to have little to offer in understanding these forces. Institutional economics is, by and large, concerned with how institutions develop and decisions are made outside of market forces (Kanakalatha, 1999). The importance of property rights protection for economic performance has long been recognized. The rule of law, political stability, and the protection of property rights enhance economic growth (Mark, 2007). The Government of Nepal has ratified a number of international instruments relating to women's rights to property ownership, particularly after the restoration of democracy in 1990. The Government passed a separate Treaty Act in 1991 to ratify accession to these International Conventions. In Section 9 of the Treaty Act 1991, it states that once a treaty or international instrument is ratified, acceded to, accepted and approved by the Parliament, it shall be enforceable as national law. In the event of contradictions between prevailing municipal law and the treaty, provisions would be implemented as national law in women's issue (Badal, 2020). Men and women will be free and able to hold their own against anyone in the world if they follow the principles of sustainability.

The important ways in which property varies, but property's importance stems from its consequences. Two in particular have been of interest to sociologists: inequality and economic performance. Inequality Property rules govern access and control over things of value, and consequently undergird social inequality (Sorensen, 2000) and Wright (2002) make property rights the center of their class analysis. Property rights matter most for wealth inequality, which tends to be more extreme and stable than income inequality (Islam & Hasan, 2000). According to the

Ministry of Agriculture and Development (MoAD), approximately 73 per cent of women in Nepal are engaged in agriculture compared to only 60 per cent of men (as of 2010). Female-headed households in the country have increased by about 11 per cent from 14.87 per cent in 2001 to 25.73 per cent in 2011 (Central Bureau of Statistics, 2011), which means that the involvement of women in agriculture is increasing. The land transfer patterns in the register, however, showed no increase in the proportion of properties registered by women between 1997 and 2000.

### **Objectives**

The basic objective of this group discussion is to find the quality information regarding existing policies of parental property equal rights system in Nepal before 2017.

### **Limitation**

This article is based on the primary information. Author has not collected and examined information/data rather than related to existing policy of parental property equal rights system in Nepal with the participants of Law students from different Laws collages of Kathmandu Valley. Author has generated the qualitative primary information through focus group discussion with the above mentioned population. The authors have illustrated and described exactly without any editing what the participants said on the related issues. However, author has excessively careful since beginning to end of focus group discussion and during entire research period to avoid the errors as well as misleading information.

### **Methods and Materials**

This article is based on primary qualitative information which are collected through widely used research tool, Focus Group Discussion (FGD) with the 12 students of different level from different Law colleges of Kathmandu valley. The half day focus group discussion was organized to find out the quality information as objectives required. They have extensively participated in the discussion. The author raised the pre-listed 19 key issues sensitively and group has discussed intensively with the inductive approaches. The author has carefully note down the information what participants have discussion on the issues then those have described applying analytical method primarily of key issues in paragraphs and draw the conclusion.

### **Result and Discussion**

To fulfil the discrepancies in policies, The National Civil (Code) Act, 2017 (2074), is in operation. The groups made widely discussed the following major 19 issues and reached in conclusion.

## **1. Leading Cause of Gender Discrimination**

Focus group had conducted long discussion on leading cause of gender discrimination in Nepal. They concluded the socio-culture, norms, value, belief, culture transformation, generation transformation, low education level, joint family system, son preference society, male dominant society, agricultural occupation, dowry system, property unequal distribution between son and daughter, ignorance and other many more reasons are associated with gender discrimination in Nepal.

## **2. The Meaning of Parental Property Rights**

The participants have deeply discussed on the meaning of parental properties rights and they have concluded that the property rights in which son and daughter can claim the property possessed by parents or earned by themselves is called the parental property rights. The population perceived the meaning of parental property right is right of son and daughter upon parents' properties, rights to ownership into the parents' properties, rights to get properties earned by parents, rights of properties acquired in accordance with the inheritance, ownership rights to house, money, land and other properties earned by parents and forefather.

## **3. Reasons to give more Preference of Son Compare to Daughter in Nepalese Societies**

The participants have deeply discussed on the reasons to give more preference to son in Nepalese society, and they have concluded that there are many reasons associated with parental property right to be given more to son i.e. socio-cultural, norms, value, belief, religious, ritual attachment, level of education, conservation society, poverty, poor and dependent economic status of the family, lack of old age security system of government, system of daughter to go to her husband's house after marriage, lack of awareness of the people, traditional trends and male dominant society, no equal distribution system of parental property, agriculture as main occupation and weak and unfavorable government policies to give more preference to son in comparison to daughters in Nepalese societies.

## **4. Cause Factors to Enhancing the Gender Inequality in Property Rights**

The focus group has also concerned and discussed very widely and decided that the socio-cultural norms, value, belief, traditional types of society, low level of female education, low value of daughters in ritual and religious function, types of family, ignorance or no awareness of the

people, no social security system in old age, traditional trends and practices, male dominant society, poor and mal implementation of existing policy program, lack of female participation in decision making process, poor economic status of female, majority of female involvement in agricultural occupations are major causes to enhance the gender inequality in property rights.

### **5. Action Need to be Apply to Make Strong Implementation of Existing Policy and Program for Equal Parental Property Rights in Nepal**

The focus group has concluded that implemented policy program related to the equal parental property right needs to have proper monitoring and evaluation. Furthermore, stable government, female education, women's empowerment awareness campaign in the all over the country could be more effective for proper enactment of the existing policy programs related to parental property equal rights in Nepal. On other hand, incentives and punishment system need to be strongly announced for employees on the basis of their manner. Another obstacle for the enactment of policy program is a political influence which needs to be strongly opposed.

### **6. Knowledge of Parental Properties Rights System in Nepal**

Most of the people have knowledge of parental property rights system in Nepal but they do not have practices for equal distribution between son and daughters because of various factors such as; influences of ignorance, socio-cultural, norms, value, belief, traditional society, transformation of culture, religion, son preference society, weak and mal implementation of laws and policy programs related to parental property rights and on the another hand the policy program has been found to be formulated without social interest.

### **7. Practices of Equal Sharing of the Parental Properties in the Societies**

The focus group had made long discussion on practice of equal sharing of the parental properties in the society and concluded that, in the developed countries, the trend of equal sharing of parental property is not in practice because there is no gender wise discrimination between son and daughter as the parents support them until their age of 18. The free education and other facilities have been provided by government as the social security. In the Nepalese context, either government has provision of free education or has social security. Sons live with parents as their wish but daughters live with them until they get married of them. The provision of practice of sharing the parental property between son and daughter was not in practice few years ago. But,

now we have legal provision but less in practice because the government has been formulating the policy without social conscience. The decisions of the government have been really unsuitable because Nepal is socio-culturally dominated country since ancient period. The majority of the society people even females are not ready to accept the policy. They also mentioned that the policy should be socially accepted for its well implementation. Finally, they have concluded that the practice of equal sharing of parental properties is gradually increasing only in advanced and well educated family.

## **8. Consequences of Parental Property Equal Rights between Son and Daughters**

The focus group discussed on the consequences of parental property equal rights between son and daughters. They concluded that there will be no intimacy between brother and sister, possibility of family division, division of the property into the small pieces, ignoring nature of the children towards their parents and the number of divorce case may increase in ratio.

## **9. Concerned of Parental Property Rights Issues**

The participants have made long discussion whether parental property equal rights system is only women's issue or public issues. The focus group finally concluded that the parental property equal right is related to socio-economic development, socio-cultural development and transformation of cultures, norms, value and beliefs, women empowerment, quality of life, improvement of family life, family education development, social and family development, women employment, minimization of gender discrimination, family health, social welfare, family welfare as well as holistic development of the nation. So, parental property equal right is not only women's issue this is public and concerning issue of all.

## **10. Reasons to Preference of the Son on Parental Property Rights in Nepalese Society**

The focus group concluded that there are many reasons associated with the preference to the son on parental property right in Nepalese context. The purpose of this concept is developed due to the sense of old age security. The socio-cultural has denied women's enrolment in religious functions, daughter has not been accepted to live at maternal home after they get married, male dominated society, dominated by customary laws, and social value, norms and belief. However, the parental property equal right is greatly associated with the old age security of the people. So, the Nepal government should have strongly addressed the policy program on old age security

system to make success of the parental property equal rights law, policy and program in Nepal. There seems to have been misconception and lack of knowledge which promotes the preference to the son on parental property equal right.

### **11. Status of Changing Pattern of Parental Property Sharing System after Restoration of Democracy (2046) in Nepal**

The participants of focus group discussion have concluded that there has been a lot of lot in various sections in terms of parental property equal sharing system between son and daughter, women empowerment, school attainment of female, women participation in decision making of household, holistic development process of nation, women participation in nonagricultural occupation, property ownership rights, parental property ownership rights, abortion rights, divorce rights, and rights for decision of marriage, and child bearing. Furthermore, the socio-cultural, norms, values and belief have also been changed after restoration of democracy in 2046 in Nepal. Furthermore, diffusion of an information, development of communication sources, sensitization of gender equality and equity, globalization, influences of international seminar and conference regarding gender development, establishment of the different non-government organizations, civil society, and increment of women participation in decision making and development process etc.

### **12. Status of Nepalese Women Life Style after Enactment of Parental Property Equal Rights Act and Action Policy in September 27, 2002 in Nepal**

The focus group discussion concluded that there have been a lot of changes in women's life style after enactment of parental property equal rights act enactment in September 27, 2002 in Nepal. It has facilitated women in terms of; women empowerment, increment of the level of women education, women able to participation in policy formulation, planning and decision making process. Women became able to fight for rights compulsorily 33 percent in any sectors even in participation in parliament, and participation in other development process. Furthermore, girl's enrolment in school has an also been increased. The gender discriminations are being minimized. Women have rights of decision making for their marriage, child bearing, using of family planning, household decision making and ownership of household property, participation in non-agriculture occupation, and getting equal wage for equal work. The valuation of household work of women is also being recorded as a monitory activity as their contribution in GDP.



### **13. Major Challenge to get Parental Property Equal Rights by Nepalese Women**

Patriarchal value of society, socio-cultural value, norms, and belief, traditional thought, joint family system, parents mistreatment toward son and daughters, mal implementation of exiting policy program related to parental property equal rights, lack of monitoring and evaluation of implemented policy programs, lack of strong commitment of politicians, less participation of women in decision making process, and low level of female education are the major challenge to get parental property equal rights by Nepalese women.

### **14. Effective Solution for Equal Access of Parental Property Equal Rights**

The focus group discussion made decision when they discussed on effective solution for equal access of parental property equal rights. An equal educational access between son and daughter, equal treatment behavior of their parents, peoples' awareness related to parental property equal right, women's involvement in economic activities, mechanism development of well implementation of exiting policy program, to provide the opportunities for women participation in decision making process, to bring changes in socio-cultural value, norms, value and belief, provision of moral education, access of women employment opportunity could be the effective solutions for equal, and access of parental property rights.

### **15. Roles of Parental Property Rights to Reduce the Poverty in Nepal**

The participants made a long discussion on the role of parental property right to reduce the poverty in Nepal but they concluded that parental property equal rights have been playing a great role to reduce the poverty in Nepal. Many research and even living standard survey report 2011 published by Center Bureau of Statistics (CBS) shows the healthy and happy families are found in the society where the women are taking leading role for household decision making. We also could found the education enrolment of female children is much satisfactory where women are taking ownership of household head. In the patriarchal society the female's do not have property in their ownership. The poverty can be appeared if the husband sells the property without consulting with his family and spends as his wish then the family turns into the poverty. If the women are given right to register the property in her name, then she can be more powerful and make good decision and family member will be more educated and earns money and which can be helpful maintain the basic needs and women could be more economically sounds once they get the parental property as equal base so which helps to reduce the poverty. Furthermore, the equal opportunity

could be milestone of supportive instruments to reduce the poverty and women could use the parental properties for their livelihood provision and which helps in reducing the poverty. Finally, the parental property can also be supportive instruments for economic development of the family.

#### **16. Priority on Parental Property Equal Distribution and Equal Education**

The focus groups have been deeply discussed on whether education or parental properties need to be given for son and daughter as equal but the group has concluded that the equal education for son and daughter is better than providing the parental property equal to them because this is the universal practices except the developing world especially in Nepal. In the More developed countries the parents do nurture equally to their son and daughters and provides the equal education as their wish to both but when their children's age become 18 years old then they live separately and they do themselves for their livelihood. So need to be follow up the same system in Nepal too.

#### **17. Reasons of Exiting Parental Property Rights Laws and Policies Implementation is Less in Practices in Nepal**

The people have deeply discussed on the reason of existing parental property rights laws and policies implementation is less in practices during the focus group discussion, and finally they conclude that the lack of strong policy implementation mechanism, lack of stable government, the issue is socially, culturally unfavorable and unaccepted properly, lack of strong mechanism of monitoring and evaluation systems, political pressurize in implementation mechanism, knowledge gap between rural urban women, lack of well knowledge and practices, influence of traditional type of concept, socio –cultural, norms, value and belief and other many more factors are playing vital role to affecting for implement the existing laws and policies related to parental property equal rights between son and daughters.

#### **18. Social Perception upon Parental Property Equal Rights System in Nepal**

The participants have widely discussed on social perception upon parental property equal right system in Nepal and they concluded that only the educated people would support, urban women to have been benefited, women are feeling difficult to get married in poor family especially of Terai regions where Dowry system has been extremely in practice. Furthermore, the traditional type of family, poor family of rural areas are not ready to accept the existing law and policy related to

parental property equal rights because of possibilities of breaking the family relation, influence of patriarchal thinking of community people and other many reasons. However, the society people are not ready properly to accept the exiting parental property because of the policy program is supposed to have been formulated without social perception. Finally, they concluded that the policy program would be automatically failure when the government formulated the policies programs without the society's interested.

### **19. Relationship between Rural Urban Socio-cultural Structure and Parental Property Equal Rights of Women in Nepal**

When the participants made discussion on the relationship between rural –urban socio-cultural structure and parental property equal rights of women in Nepal they concluded that there is a vast different between these two rural and urban residential women because the urban residential women are highly facilitated and enjoying of their rights but rural women are deprived of all those facilities and enjoyment of the rights. So, there will not be justice to compare the urban - rural women's life style in Nepal.

To fulfil the above analyzed discrepancies in policies, The National Civil (Code) Act, 2017 (2074) is in operation. Thus changes in living standard of women are also increasing.

### **Conclusion**

There have been lots of changes in women's life style after initiating the parental property equal right system in Nepal. The policy program is highly appropriate and welfare for equal existence of women in the society. But some of the socio-cultural phenomenon are still being the major challenging factors of gender discrimination. Likewise, preference of son is also being influencing factor for the less implementation of the exiting policy related to parental properties equal right. The society people are very afraid with possibility of un-intimacy between sister and brother, family clash and division of properties into small pieces after providing the equal parental property. Here equal educational access for both son and daughter can be the alternative solution of properly implementation of the exiting parental property equal right. The parental property equal right policy can be milestone to reduce poverty to some extent, even though these two factors are not related directly; the old age security of society people and rural-urban settlement are also being the major factors for the less implementation and practice of the policy.

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