



Southasia Institute of Advanced Studies

**Gender reforms in Nepal: Retreat or Predicaments?
A review of the politics and practice of women's rights**

Kalpana Giri, PhD

Kathmandu, Nepal

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ACKNOWLEDGEMENT

To being with, this paper is one of the most challenging and daunting writing piece for me. Challenging because I; a woman, forester, researcher and gender activist had the opportunity to highlight the problems and propose potential solutions for gender reforms through this paper. The writing process was daunting for I was (too) cautious not to fall into the mid-way traps of a utopian researcher (whose ideas may be liberating but pragmatically unrealistic) or a pragmatic implementer (who would support the discriminative status quo in any forms for the sake of implementation). Amidst such conflicts and conundrums, the writing process was taxing and equally time-consuming, wherein my new responsibilities at work allowed me little time to finish this paper in time. Had I not received the support, motivation, critical comments and timely push from many colleagues, friends and family, I would have surely tempted for something less, compared to the paper that stands here.

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Abstract

Gender reform is one of the recurring agenda in the present policy context of Nepal where Nepal aims to consolidate its preparedness to end discrimination between men and women in Nepalese societies, among others. This holds urgent importance in Nepal, where women despite constituting for about 50% of its total population, still face rampant and recurring discrimination. Previous attempts of gender reforms have while spurred noteworthy policy and structural changes, and yet everyday practice and power relations between men and women remain largely unchanged and discriminatory (to women). Drawing upon experience of gender reforms in three cases- community forestry, land rights and abortion rights, this paper analyzes the discursive framework that informs the gender reform policies and practices with subsequent effects to abating gender discrimination in Nepal.

The findings indicate that early calls for gender reforms has largely been capital centric and driven by some external-donor agenda of reform. While an early call of reform is essential to challenge the status quo-irrespective of the sources and actors, there are practical process-related gaps to contextualize those gender reforms as an urgent and everyday need arising out of everyday contestations in a changing Nepalese society. As a result, gender reforms have been labeled as an external and western driven agenda and were not internalized by men and women in the society. Such lack of internalization for gender reforms neither evoked responsible behavior on part of men, women and society nor was responsive institutions put in place for adequate enforcement and monitoring. As a result, while enacted policies granted greater rights to women, there was little space wherein the granted rights could be implemented, consolidated and enjoyably claimed by the very women who are entrusted with those legal rights.

The paper points out the need to blend gender reforms into everyday practice of Nepalese society and proposes recommendations.

Key words: Gender discrimination, equality, rights, discourse, CEDAW.

INDIVIDUAL STANCE AND PROCLAMATION

I intend to write this policy paper with a blended approach of ethnography and review of case studies. I write about discrimination and equality among sexes (male and female) in this paper. Before I delve further into the contents, I wanted to clarify my position and stance in the paper, for I believe that the process of writing itself is a political and subjective process and that individual stance and proclamation of rights are closely related. Thus, some aspects of clarification are essential here.

My individual stance also comes from my sex and gender experience: I am a woman, in my early thirties and thus, my identity of a woman has provided me ample of ethnographic experiences around discrimination and equality. While I have grudges against abusive treatment of women (mostly by men), I must admit that I have equally enjoyed the support and encouragement from many women and men alike, within and beyond family. I have firsthand research, policy and development experiences as a forester and gender specialist.

I strongly affirm with the idea that equality amongst sexes is a democratic principle in this paper and beyond. While I delineate the loopholes in the existing approaches of gender reforms, I do not intend to encourage existing patriarchal privilege that allows/explains/valorizes discrimination to women in Nepalese (or any other society). Likewise, I do not aim to demean/devalorize/disappear or negate the required emphasis on women's rights to attain equality among sexes. Rather, by exemplifying the processes within and beyond women's rights, I wish to illustrate ways in which efforts to gender mainstreaming applied in Nepal and around the globe can lead to enhanced and enjoyable practices for men and women.

BACKGROUND AND POLICY RELEVANCE

I start with an understanding of discrimination and equality. In simple terms, discrimination is against the basic principle of equality, and forms one of the guiding philosophies of every democratic nation and society. Disadvantageous treatment to women and men based on categories of sex is known as gender discrimination. Attempts of reforms against gender discrimination (henceforth read as ‘gender reforms¹) have long been a quest in Nepalese and international history.

An example of gender reforms dates back to as early as 1850s in Nepal, when Jung Bahadur Rana made a set of rules to try to control and discourage the “sati”². While Rana introduced several measures to discourage “sati” and was considered successful in preventing the wives of his brothers from committing sati, his own wives committed sati upon his death³. While the Sati has been long abolished, many other discriminatory practices against women are still prevalent in contemporary Nepal. A recent study (2007) that examined some 303 Acts including the constitution identified 103 discriminatory provisions and 92 schedules in various Acts and Regulations which discriminate against women, notably in nationality, marriage and family relations, sexual offence and property rights, legal and court proceedings⁴.

To combat with gender discrimination and promote gender equality, Nepal has already used various means of gender reforms over the years, as evidence to this are the constitution, national policies and laws, judicial pronouncement and international human rights instruments that obliges the state to recognize the role of women in society and provide for spaces wherein women can assert their rights. Seemingly for all these attempts, as recently as of July 20, 2011,

¹ Gender reforms can imply various connotations viz. gender mainstreaming, gender equality, women’s empowerment women’s empowerment etc. While I am aware of such differences, in this paper, I take a common standpoint that all these approaches aim to enhance gender-just societies through several mechanisms. Definitions of these terms are provided in the latter section of the paper.

² Sati is the ancient tradition where the widow, mistresses and female servants used to take their own lives by jumping into the funeral pyre of a deceased man. The basic justification for sati was that a deceased man still needed the "services" of his wife or wives, mistresses and female servants in his "after-life". It was further justified on the grounds that a woman's life had no value after the death of her husband.

³ “Sati”, January 2006. Accessed from the website of http://www.ecs.com.np/heritage_tale.php?tale_id=27 on 30 June, 2011.

⁴ Shadow Report on the 4th& 5th Periodic Report by The Government of Nepal on CEDAW. 2011. 120 pages.

Nepal reported its approach against gender discrimination in the 49th Session of the Committee on the Elimination of all Forms of Discrimination against Women, in New York, USA as:

“...the principles of CEDAW (Convention on Elimination of Discrimination Against Women) have found expression in our development policy, too. Broadly speaking, Government of Nepal has pursued the policy of mainstreaming gender considerations in all sectors of development as well as encouraging women’s presence at all levels of authority. Women’s representation is valued not only in ownership terms but also in terms of making a difference in policy initiatives and their outcomes. Therefore, we (Nepal) have taken a comprehensive approach to it⁵.”

These examples indicate that gender discrimination and reform attempts span over a time period of 150 years. Both the forms of discrimination (e.g. ‘sati’ to ‘property rights’) and approaches (e.g. national policies and international conventions) vary over the years. Also, during the time-span and notably in the last 50 years, Nepalese society has undergone through massive socio-political changes (e.g. onset of democracy, civil war, peace process, labour migration beyond India etc.), massive foreign assistance, promulgation of domestic legislation (e.g. abortion rights), and adoption of international policy instruments (e.g. CEDAW ratification in 1991). Even at present, Nepal is undergoing through constituent reform process, whereby, debates on relations (& discrimination) of gender, caste, and ethnicity are in flux, with concerns of social exclusion receiving extraordinary attention in public discourse and individual consciousness⁶. The constituent reform process is expected to generate strategies that will end discrimination and ensure equality among its citizens, irrespective of sex, amongst others form of inequality (e.g. ethnicity, geographic location etc.). Gender reform is a cross-cutting agenda of the constitution write-up, with about 33% women's political representation in the interim draft constitution making process of Nepal⁷.

Despite such fluidity of socio-politics and variety of reform attempts over the years, attempts of gender reforms have been rarely internalized as a basic mantra in Nepalese society. More commonly, attempts of gender reforms have been rather labeled as a ‘western (donor-

⁵Statement by H.E. Mr. Gyan Chandra Acharya, Permanent Representative of Nepal to the United Nations at the 49th Session of the Committee on the Elimination of all Forms of Discrimination against Women, July 20, 2011, New York, p:3 in ‘CEDAW press release’ 28 July 2011 at <http://www.mowcsw.gov.np/uploads/> (cited on September 7, 2011)

⁶ USAID Nepal 2007. Gender and Inclusion Assessment.

driven)agenda' for 'modernizing Nepali women'. Gender has been largely understood as "woman/women" and a common colloquial in many public (also official) meetings goes with the statement like, "we have gender (meaning woman/women) in our team". Likewise, concepts of women's rights, women's empowerment, and gender equality are while evidently found in several of Nepal's domestic policies, laws, project documents, and political manifesto etc., those very rights are either not implemented in practice or has made limited gains in abating discriminatory power relations between men and women. Such limited application and rare gains of gender reforms in everyday practice indicates a need to further understand the associated problems and by doing so, explore possible mechanisms of enhancing practice.

Such understanding can serve to the constitution making process that envisions to abate/abolish gender discrimination. As constitution gets operational in future, some related prominent questions are: How can gender reforms be better tailored to policy and everyday practice of Nepalese society? what kind of policy/constitutional/legal arrangements are required to adjoin policies and practices in a way that provisioned rights are practiced, and enjoyed by both men and women leading to discrimination free society?

KEY RESEARCH QUESTIONS

The general research question is *to what extent and how do diverse discourses on gender reforms affect national policies and practices on women's rights? Why didn't the attempts of gender reforms make appeal to the everyday practices? How can it be achieved?*

1. How have different discourses on gender mainstreaming emerged in Nepal in general and in Community Forestry, Abortion and Land rights in particular, over the past few decades?
2. How are discourses affecting the policies and practices of gender reforms and who controls these processes?
3. What conditions will increase the possibility of effective gender reforms in everyday practices? How to enforce it?

In question 1, I explored different impetus for policy change that has emerged in the global discourse on development, the carrier actors and its effects on national politics of Nepal. In question 2, I analyzed the policy-practice dynamics. Based on these analyses, I pooled insights into the context and conditions for enforcing gender mainstreaming into practice from Question 3.

CONCEPTS AND ANALYTICAL FRAMEWORK

Discrimination is often associated with inequality. *Gender discrimination* results from inequality between sex. “Sex” refers to the immutable biological differences as male and female, “gender” is the social construct that frames physical and emotional forms of behavior and relations of power of men and women in given space and time⁸. To be able members of the society, both men and women are encouraged to transmit its framed culture and participate in the established power relationship. Confirming to the process inculcates a process of ‘patterned consistency’ of

⁸Gendered consequences can also innate and integrate on several other factors such as caste, ethnicity and economy, however, gender is pervasive across these factors.

behaviors and actions for men and women and such patterned consistency is considered as default way a society can function. Such specific attributes frame masculinity and femininity, and provide a *meaning* to the identity of being a man and a woman⁹. “Through the incorporation of a dominant form of masculinity and femininity particular to his/her class, race, nationality, era, religion, a man and a woman gains real benefits and an individual sense of self-worth¹⁰.” Such process (also known as gender socialization process) naturally establishes gender roles with rigid categories of space and labour specific to sexes (male and female). As examples are strict distribution of activities and sexual division of labour, structural access to private and public spheres for men and women.

However, it is important to note that gender is dynamic and has propensity to change. Thus, both masculinity/femininity is not static and an ‘achieved’ status; rather is a form of ongoing interaction with the structures of the surrounding world, interacting and responding to the changing notion of power. It is also noteworthy to underscore that not all notions of masculinity/femininity are problematic per se and can be assumed to lead to discrimination, but if these notions are permitted to justify inequality of treatment to either of the sex, that denotes discrimination. It is the consequences of the gendered differences that matter to discrimination—not their sources. Thus, gender can be both positive and negative as:

“gender is like an infection touching everyone: devastating when it is operating on negative stereotypes and healing when it is positive sensitizing. The purpose of incorporating a gender perspective is to rid the system and the society of the negative particles and replace them with healthier understanding and action”.

Thereby, gender discrimination is defined as any differentiation, whether by way of distinction, exclusion or restriction, on the basis of sex, which aims or has the effects of preventing or hampering the enjoyment by women, whether married or unmarried, of their *human rights*¹¹ to same extent as men¹². Thus, gender equality, wherein women and men enjoy the same rights, resources, opportunities and protections. Gender equality is expected to lead to women’s

⁹ Men and women needs to be understood as a gender construct and also denote girls and boys.

¹⁰ Kaufmann, Michael 2003. The AIM framework: Addressing and involving men and boys to promote gender equality and end gender discrimination and violence.p:8

¹¹Human rights are commonly understood as inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being. Human rights are thus conceived as universal (applicable everywhere) and egalitarian (the same for everyone).

¹²CEDAW convention.

empowerment, whereby women expand/increase their ability (also known as women's agency) to make choices about their lives.

Despite gender being a dynamic concept, the source of inequality can change and take new forms at spaces and time. Thus, a same country can move from one type of gender inequality to harboring other forms. Some scholars, however, suggest that gender discrimination continues in a society because the domain of masculinity inculcates a deeply-held system of beliefs which naturalizes women's position of low rank and power. Masculine order (also known as gender order=gender socialization process) imposes itself as neutral and has no need to spell itself out in the discourses aimed at legitimating it^{13,14}. Further, affirmation to such order harbors an 'honor economy', wherein those prescribing to the order gain respect, while those challenging them are seen as 'deviants'. The deviants can be both men and women and there are associated risks/threats to both of them. There can be several social costs to such deviants ranging from family conflicts, social outcast and in extreme forms to honor killings.

Not only there are costs, there are often several predicaments (dilemmas) associated with gender reforms. When men and women loses contact or do not adhere with the cultural idea of masculinity and femininity, there is danger of being emasculated; both will thus struggle to fulfill the cultural understanding of manhood and womanhood within their culture¹⁵. Thus, to be a man and act like a man according to cultural patterns seems important for many men across the world, as it seems for many women, and both of them (mainly men) may react with hysteria against change. The mix of costs and predicaments makes gender reforms prone to resistance.

Yet, when gender reforms and change are discussed, it must be clearly and precisely expressed that it is not men as such who are the problem, but certain ways of being and behaving, and thus, to promote change, we have to be very specific about this and what men will achieve from a different type of behavior. Andrea Cornwall is very precise when she writes: "If certain ways of

¹³Bourdieu, Pierre .2001. *Masculine Domination*. Stanford, CA: Stanford University Press.p:11.

¹⁴Jeji Varghese and Maureen G. Reed, 2012. Theorizing the Implications of Gender Order for Sustainable Forest Management. *International Journal of Forestry Research*, Vol. 2012, 11 pages.

¹⁵ Jorgen Lorentzen 2011. Masculinities, power and change. *Nordic Journal for Masculinity Studies*. Vol. 6, Issue 2, pp:110-223.

being a man are culturally values, then asking men to abandon these identities altogether without having anything of value to hold on to is clearly unreasonable¹⁶”. Nevertheless, promoting alternative identities is not resistance or predicament free, and in many societies, there may be vigorous resistance to change.

Calls against gender discrimination have been made both through academic theories and development practices. Feminist theories denote a range of theories with the basic principles of “Feminism”, which asserts equal rights and demands legal protection for women. Feminism claims to provide new epistemic knowledge alternative to the dominant and rocentric knowledge. The early claims of feminism on women as ‘pro-change homogenous’ unit was later criticized through post-structural feminists and gender theories. Likewise, “women in development (WID) approach” in early 1970s and 1980s focused on “women” and named women both as a specific object and subject of development and led to women-centered programs. But many argued that WID often led to token or add-on efforts, as if women could be empowered in isolation of all else¹⁷. The follow-up is gender and development (GAD) approaches that focused on gender as a social relationship and efforts aimed at challenging discrimination and improving the lives of women were brought into the mainstream of development organizations. Later emerged approach increasingly indicates the need to involve men to support gender equality and women’s empowerment.

Irrespective of the epistemic knowledge or development approach, the calls for gender reforms are backed with four main reasons. First, women as half of the population need to have equal rights as that of the other half (e.g. men). Second, women bear special merits and their inclusion adds meritocracy and efficiency, especially in agriculture and natural resource management sectors. Third, women bring compassion and relational value to organizations and improve working environments. Fourth, women add diversity to organizations. While each of these reasons have its own assumptions and critics, these provide the rationale for much of the gender mainstreaming work in both theory and development practice.

¹⁶ Andrea Cornwall 1997. Men, masculinity and ‘gender in development’. *Gender and Development*. Vol. 5, Issue 2, pp:8-13.

¹⁷ Chant and Guttman, op.cit., C. Moser 1993. *Gender, planning and development: theory, practice and training*. Londong:Routledge.

Gender mainstreaming is means to achieve gender equality and women's empowerment. The earlier models of gender mainstreaming used to adopt the 'the sameness approach with neutral legislation and treatment to either of the sexes'. These approaches assume that a person's sex would not carry any expectation and obligation with it and thus, with equal opportunity, both men and women can benefit and lose at the same manner. However, treating everybody in the same manner when they are in fact in unequal situations perpetuates inequality. Thus, a new approach of fairness (also known as gender equity) is developed to level the field by providing affirmative measures to compensate for historical and social disadvantages to achieve gender equality.

One of the common approaches to rectify fairness is by fostering greater rights to women to abate the prevailing discrimination. *Rights* can be broadly understood as variety of legitimate claims, and can emanate from both individual experience and universal entitlement of rights claims. This means that while one can feel the need to have rights, some rights are conceived as universal (applicable everywhere) and egalitarian (the same for everyone). Policy making processes, involving statutory structures provide overall guidelines to enforce rights in practice. In practice, various customary practices affect the degree and extent to which such provisioned rights can be operationalized. Indeed, both policy making process and practicing of policy are subjective, political processes.

There are various ways to look at policy making processes. Policy scholars recognize that discourses form integral element of policy making process and can affect social practices¹⁸, both in resulting policies and its effect on social practices. Discourses provide knowledge and knowledge is power. Using knowledge as power, discourses can prescribe specific perception¹⁹ and inculcate explicit framing of policy agenda through articulation to broader audience. Knowledge does not simply emerge from scholarly work, but it is produced and maintained

¹⁸ Foucault, M. 1972. *The Archaeology of Knowledge and The Discourse on Language*. New York: Pantheon Books.

¹⁹ Hoy, D.C. 1986. "Power, repression, progress: Foucault Lukes and the Frankfurt School". In David Couzen Hoy (ed.): *Foucault- a critical reader*, pp: 123-148. Oxford: Basil Blackwell.

through the work of different actors, organizations and social practices²⁰. Power amidst those actors is relational, which means that certain actors wield more power in making certain discourses dominant. Also, engaging single knowledge perspective can sustain non-transformatory thinking. The power relationships between actors allow some of them to deliberately change the incentive structure of others in the policy making process.

Discourses can shape the policies, which in turn, can affect practices leading to both intended and unintended outcomes. Such process can both reproduce discrimination and lead to transformation or a variety of other settings involving both²¹.

Building upon these concepts of discourse, politics and practice, I explored and analyzed the policy making process on gender mainstreaming and its effect on everyday practice of abating gender discrimination. While definitions vary, discourse signifies the communicative arena viz. language, talks, debates etc. and the actors involved into it. Women talks of rights to abortion and mass demonstrations are some examples of discourse. Politics implies about legal provisioning, constitution, laws and court cases and institutions' preparedness to implement those policies. Nepal's constitution that identifies men and women as equal right holders and Courts' summon on enforcement of practices can be understood as examples surrounding politics. Practice embrace everyday actions taking into account of how these policies are claimed and if enjoyed as well. This notion of practice extends beyond women's right to equal access and treatment to equality but instead focus on what essence does it bring to bring to the practice and enjoyment²². Such distinction is particularly important for Nepal and in many other parts of world where traditional gender norms are usually in conflict with legally vested rights to women.

²⁰ Gordon, C. (ed.) 1980. *Power/Knowledge*. Selected interviews and other writings 1972-1977. Michael Foucault. New York: Pantheon Books.

²¹ Hemant R. Ojha. 2009. *Reframing Governance : Understanding Deliberative Politics in Nepal's Terai Forestry*. Adroit publishes: New Delhi.

²² Sen, A. 1999. "Women agency and social change". In *Development As Freedom*. New York: Anchor Books. Chapter 8, Pp. 189-203.

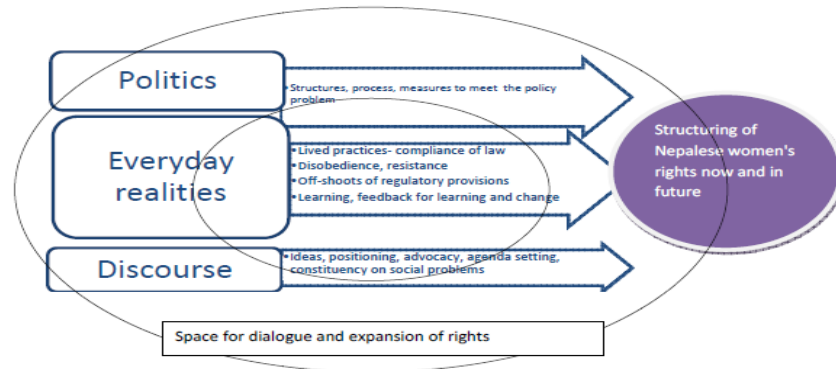


Figure 1: Analytical Framework

METHODS

I purposively chose three cases of Community Forestry, Land rights and Abortion laws to analyze the discourse, politics and practice of gender reforms. These cases allow for significant variation in the levels of discourse, politics and practice and cross-cults both private (e.g. parental property, abortion rights) and public spheres (e.g. public participation and decision-making in Community Forestry). Women's right to Community Forestry entails of both discourse and politics resulting to practices of increasing women's engagement in public sphere. Land rights to women have been one of the most discursive and opposed agenda for gender mainstreaming, but with little politics and practice. Abortion laws entail rather unopposed agenda of discourse with transformative politics and practices.

This study primarily builds upon desk reviews of policy acts, UN conventions (e.g. CEDAW), journal papers and grey articles. The desk review follows the major discourses that influenced the gender mainstreaming agenda in the form of statements in policy documents, women's movements, policy documents, laws, press materials, and experiential reflection and everyday narratives captured through existing research. The author's work on gender and natural resource management and her participation in broader policy and grassroots experience has also added to the experiential reflection and everyday narratives. Additionally, about 10 key expert interviews were conducted to gain insights about limited applicability of rights into practice and the measures to enhance it.

Resulting data is analyzed using the analytical framework of discourse, politics and practice on gender mainstreaming. Trajectory of key policy events, surrounding discourse, and carrier actors were analyzed to understand the policy making processes on three cases. Various mechanisms to enhance women's rights in three cases and the resulting (both intended and unintended) outcomes in everyday practice were drawn. Finally, cross-cutting lessons were drawn highlighting the mechanisms through which gender mainstreaming can be better linked to maneuver with discriminatory relations, while simultaneously building of a gender-just society in Nepal.

ANALYSIS

5.1 An overview of gender reforms in Nepal and women's status

History of women's movement in Nepal dates back to 1814 at the Nalapani war when women struggled against British imperialism. Women marched shoulder to shoulder with men in the civil right movement of 1948. Women took active part in the democratic revolution of 1951 which overthrew the 104 year autocracy of the Rana family. The first women organization the "Nepal Women Association" was established in 1948, it worked to inculcate political awareness among women. During the thirty year rule (1960-1990) of the party-less Panchayat system, all political parties and independent women organizations were banned.

1990's political system reform with democracy in Nepal gave larger roles to multi stakeholder forums and grass-root mobilizations and movements. Several NGOs sprung up and started seeking a role in the social change process. Through grass-roots mobilization, women's nongovernmental organizations (NGOs) have emerged as dynamic institutions working against deeply ingrained gender inequities to address violence over the last two decades. The 1990 also witnessed intensified campaigns in the international arena for women's rights, the 1995 Beijing conferences that led forth the formulation of CEDAW. In this new environment, many women's rights groups emerged and could network with national and international organizations with similar goals. Over time, the women's groups grew stronger and more effective in putting pressure on the government to protect and promote many rights for women.

With the restoration of democracy in 1990, the political reform provided a space whereby any *Nepali citizen may file a petition in the Supreme Court to have any law void on the ground of inconsistency with respect to the provisions mandated in the Constitution*. It also made it possible for members of Parliament to tabulate private bills to amend the Constitution. With the people's movement (also known as Maoist war), the issue of women's inclusion in politics have been strongly raised by women's right activists, civil society members and women wings of the political parties. At present, the Interim Parliament formed through coalition of several political parties, including Maoist party is drafting the constitution. 197 out of 601 Constituent Assembly members are women. This is considered a very remarkable representation of women in the parliamentary history of Nepal and in South Asia.

Nepal has attempted for various reforms agenda to abate gender discrimination (see Table 1). Some notes means of reform are constitutional amendment (men and women as equal citizen, substantive equality measures), political mobilization (democracy, voting rights, women combatants, women's right to voting and representation in politics), development programs (women in development to gender in development- NGO, women focus, equality as the right).

Table 1: Legal and policy framework for women's rights in Nepal²³

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| <p>NATIONAL LEGISLATION/POLICIES PROTECTING WOMEN</p> <ul style="list-style-type: none"> • No one shall be discriminated on the basis of sex (Article 11, Nepal's Constitution 1990). • Special measures to be taken for the protection and advancement of interests of women (Article 11(3) of the Constitution). • Rights to acquire, own, sell and dispose of property (Article 17). • Elimination of social and economic inequalities among the citizen (Article 25). • Interim constitution recognizes equal rights of women to property, including the right to reproductive functioning and health. • Article 33 of Interim Constitution vests responsibilities in the state amongst others require the state "to enable women (among others including disadvantaged classes and disadvantaged regions) to participate in all organs of the state structure on the basis of proportional inclusions". • Effectively implement the law providing property rights to women (national Planning Commission, Tenth Plan (2002-2007)). • Eliminate all discriminatory laws by 2005 (National Plan of Action for the empowerment of women prepared by Ministry of Women and Social Welfare, 1997²⁴) |
|--|

²³ The table provides an indication to existing women's right in Nepal and does not exhaustively covers all possible policies and laws on women's rights.

- "Gender Equality Act 2006" made some amendments in the 56 discriminatory provisions of the various Acts and has incorporated new provisions to ensure women's rights.
- Nation Women's Commission Act 2007 outlined wider functional autonomy to the commission to work for protection and promotion of women's rights.

INTERNATIONAL INSTRUMENTS

- All are equal before the law and are entitled without any discrimination to equal protection of the law (Article 7 of Universal Declaration of Human Rights(UHDR), 1948).
- Prohibition on distinction, exclusion or restriction made on the basis of sex irrespective of marital status (Article 1 of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) 1979).
- Condemn discrimination against women in all its forms by taking all appropriate measures, including legislation, to modify or abolish discriminatory existing laws, regulations, customs and practices against women (Article 2 of CEDAW).
- Equal rights for women to administer property (Article 15 of CEDAW)
- Same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property (Article 16 of CEDAW).

Nepal has used 'monastic approach' in giving legal validity to the international rights instruments it ratifies. Under this approach, once ratified, the treaty automatically becomes the law of the ratifying state and prevails over any domestic legal provisions inconsistent with the international instrument (conventions)²⁵. Those conventions (such as CEDAW) provide 'general recommendations' to assist state parties in understanding more intricate meanings and intent of the articles of the convention. State parties are required to include information regarding the General Recommendations in their initial and periodic reports to the committee. The expert committee monitoring under various treaties provides its recommendations to the government in the form of concluding comments/observation after evaluating the State's initial or periodic reports on the convention as well as alternate/shadow reports of NGOs on the government reports. Those concluding comments/observation function as a monitoring apparatus to check upon the status of implementation of the convention by the state parties. In many court cases, the judiciary has already interpreted the obligation of the government of Nepal with reference to its obligation mandated through CEDAW.

Despite such attempts of reform, women face discrimination on the basis of sex and gender in various spheres of their life. Women and men's roles are socially and culturally recognized

²⁴Beijing 1995 + 5, Outcome Document Nepal, p-31.

²⁵Pradhan, Sapana Malla. 2003. *Inheritance rights of Nepali women: Journey towards equality*. Forum for women, law and development. Publication No. 74. Kathmandu, Nepal P. 23.

within certain activities and spheres. As examples, identity of men as the breadwinner of a household enforces responsibilities to fetch economic resources to sustain household livelihoods. Also, public sphere such as public meetings are socially and historically constructed as male domains. Women's identity is associated with their domestic responsibility. The concept of home (family) beholds particular importance as a social institution in Nepalese society. Family is also the center for cooperative conflicts as it offers love, care, support, identity as well as defacto (with natural meaning) discrimination, mostly to women. Many socio-cultural expectations on women are considered as the 'usual responsibilities' that women need to perform in the family, despite they discriminate women. Nepalese society strongly prefers sons over daughters. Nepal has one of the high index for son's preference in SouthAsia²⁶. Various adages rationalize and exemplify such preferences. Various malpractices such as child marriage, dowry, domestic violence, and socially accepted women trade viz. badi, deuki and jhuma contributed to the vulnerable status of women.

Women lag behind men in terms of education. Women's literacy is 42.5% compared to 65.1% for men (FWLD 2009). Likewise, women's access to and control of land is limited. Land embodies important source of power and status in Nepal and is transcended from fathers to sons but not to daughters. With policy amendments, daughters can now claim to parental property under certain circumstances. Land is more than a physical entity; it has been, and continues to be, the economic backbone of the agrarian system and the rural power structure. Despite their active role in agriculture, however, women have limited land rights. While it is not the norm for Nepali women to own land, there are some women that do. In 2001, 11% of all households and 14% of land owning households in Nepal comprised women landowners²⁷.

5.2 Women's right to participation in Community Forestry

In the late 1970s, the concept of Community Forestry (CF) emerged, due to the failure of earlier approaches to address socio-economic development and to increasing deforestation and

²⁶ United Nations Children's Fund (UNICEF) 2006. Situation of women and children in Nepal 2006. <http://www.un.org.np/reports/UNICEF/2006/situation-analysis/> (accessed 10 July 2008).

²⁷ Central Bureau of Statistics (CBS). 2001. National population census 2001. Kathmandu: Central Bureau of Statistics.

degradation²⁸. Concomitantly, discourses on “eco-feminism” emerged in the mid-1970s that attempted to theorize “women-nature connections^{29,30}” and challenged the androcentric masculine order prevalent in forestry. Eco-feminism highlighted women’s innate superiority to nature and environment, with evidence of “Chipko” movement from Indian Himalayas³¹. The concomitant mix of participatory and eco-feminism discourses increasingly recognize the need of involving local people, including women to achieve socio-economic development.

The need of alternative pathways at the global context matched closely with Nepal’s problematic context in forestry. After nationalization of forest in 1957, Nepal experienced massive deforestation and degradation leading to regional flood disasters in the lower plains. Nepal’s situation was highlighted by the World Bank’s prediction that all the accessible forests would disappear in the Mid-hills by 1993 and in the Terai by 2003 unless immediate movement to counteract the deforestation rate was commenced (also known as ‘Theory of Himalayan Environmental Degradation/Doom’). The doom theory brought immense global attention on the associated problems of forest Deterioration. The influence of external agent, especially the World Bank, is crucial through its financial leverage to large sectoral funding³². Amidst the prevailing discourse and the funding support, Nepal government enacted plans, acts and regulations mandating recognition and role of local people’s participation in forestry.

The National Forestry Plan of 1976 recognized people’s participation as critical; followed after with the provision of handover of forest to local political administrative bodies with forest policies in 1978³³. The first national conference on forestry analyzed the progress and

²⁸Gilmour, D. A., and R. J. Fisher. 1991. Villagers, forests and foresters: The philosophy, process and practice of community forestry in Nepal. Kathmandu: Sahayogi Press.

²⁹Shantz, J. 2002. Judi Bari and the feminization of “Earth First!”: the convergence of class, gender and radical environmentalism. *Feminist Review* 70: 105–122.

³⁰Benerjee, D., and M.M. Bell. 2007. Ecogender: Locating gender in environmental social science. *Society and Natural Resources* 20(3):3–19.

³¹Termed as the “feminine principle”, such notion of women’s innate superiority to nature and environment became popularized with Vandana Shiva’s reports on “Chipko” indicating women’s successful movement against tree loggers in Indian Himalayas. Though there are still debates on whether “chipko” were an eco-feminist movement, eco-feminist approaches led to the recognition of women’s knowledge and role in environmental management. A similar approach in development is known as Women in Development (WID) approach.

³²Rowchowdhury, A. 1994. Serving notice on Indian forests. *Down to Earth* 31: 5–8.

³³Fisher, R. J. 1999. Anthropology and community forestry in Nepal. In *Applied Anthropology in Australasia*, eds. S. Toussaint and J. Taylor, pp. 63–87. Portland: UWA Press.

shortcomings and recommended for user group model of forest management, now known as community forestry. The ultimate challenge was to curb deforestation in Mid-hills of Nepal. This necessitated that those who mostly use the forest, need to be convinced about alternative management as provided by community forestry. This also meant that women (owing to culturally-mediated household responsibilities), who were heavily dependent on and used forest resources need to be convinced for success of the program. As a result, women were recognized as the 'primary users' of forest and provisioned for (at least) 33% of women's participation in decision-making (executive) committee of Community Forest User Groups³⁴. Also, since rural village women may shy off from male foresters, more women facilitators to work with rural women in community forestry were needed. This resulted to women's entry into forestry school in 1982 (the school was opened to men only (and not to women) until 1981) with massive encouragement and financial support was provided by donor agencies (e.g. USAID, SDC, DFID) for women's education in forestry.

Additionally, Nepal's development plan, Forest Act and regulations have recommended several measures to promote women's participation in forestry³⁵. These measures range from increasing the numerical representation of women in decision-making committee (33% to 50% quota system), to increasing social recognition of women as users³⁶ conducting meetings taking into women's preferences, to using community funds for women's needs. Recently enacted (on 2008) 'Gender equality and social inclusion strategy paper' and 'community forestry guideline' has specified that along with 50% women in executive body, one of the two most decisive positions of chairperson or the secretary should be filled by a woman.

It is important to note here that since the inception of community forestry, women's participation in community forestry has never been opposed since women's participation was considered instrumental for the program's success. What has been debated, mainly in the latter years, is the

³⁴ Government of Nepal (HMG). 1988. Master plan for the forestry sector, Nepal. Ministry of Forests and Soil Conservation, Kathmandu, Nepal.

³⁵ See Master Plan for Forestry Sector 1980, Forest Act 1993, Forest Regulations 1995, Operational Guideline of the community forestry program 2002, Community Forestry directive 2005.

³⁶ Names of a man and a woman from participating household in the user group need to be included as household head in the constitution of the forest user group as opposed to the situation in previous arrangement where only men's name used to be listed as household head (in turn locally interpreted as men's and not women's right to decision-making forums).

nature and extent of women's right to participation. There were arguments against community forestry's conviction of women as deforestation agents that highlighted the need to understand the social context that puts women into such predicament³⁷. Equally important issues are the lack of recognition of women as instrumental forest managers owing to their knowledge, role, and contribution in forest management. Federations on 'women' (HIMAWANTI- the 'Himalayan Grassroots Women's Association for Natural Resource management) and 'community' (Federation of Community Forestry User Groups) were established, to safeguard and demand proactive rights to their constituencies in forestry.

Within a decade experience in community forestry, while restoration of denuded hills were significantly restored, issues of equity, gender and livelihoods became apparent. Various research studies (community forestry is one of the most extensively research subject in Nepal) indicated the inadequacy of treating community as a 'homogenous' one and reported on problems of elite capture, corruption, disenfranchisement of the women, low caste and the poor³⁸. These studies also indicated about women's token participation in community forestry, particularly in decision-making³⁹. Governance approach became popular and is used to address such limitations. Different other constituencies' viz. indigenous groups, so-called low caste groups formed their own federations demanding greater rights to their constituencies. During the constitution write-up process, issues of community rights in NRM received much attention, wherein various constituencies (FECOFUN), indigenous groups demanded rights of their constituencies in NRM management. Yet, those constituencies generally do not differentiate/locate prevalent gender based discrimination within themselves.

Along with global discourse on climate change, attention to carbon trading possibilities in community forestry has recently begun such as 'Reducing Deforestation and degradation (REDD+)'. These programs portray women as "victimized/vulnerable women" and not as active

³⁷ Agarwal, B. 1994. *A Field of One's Own: Gender and Land Rights in South Asia* Cambridge: Cambridge University Press.

³⁸ Timisina, N. 2003. Promoting social justice and conserving montane forest environments: a case study of Nepal's community forestry programme. *The Geographic Journal*. Vol. 169, Issue 3, pp: 236-242.

³⁹ Buchy, M., and S. Subba. 2003. Why is community forestry a social- and gender-blind technology? The case of Nepal? *Gender, Technology and Development*, Vol. 7, Issue 3, pp: 313-332.

agents of forest management⁴⁰. This is despite the fact that several empirical studies associate women's unique role, knowledge and contribution to the success of community forestry⁴¹. As Manohara Khadka states- the dynamics and complexity of actors' interactions, perceptions and power/knowledge in participatory forestry play a role in the exclusion of the poor, *dalits* and other disadvantaged social groups. She illustrates that actors' interactions and power relationships at the policy level impact negatively on the poor and other marginalized groups. The extent to which CF policy supports these depends on power relationships between national and international actors, structures and knowledge within the government, and relationships, behavior and power positions of individual actors. Progressive ideas introduced through external forces will not benefit the poor and other disadvantaged groups unless actions are taken to overcome the current hurdles of actions and behavior put up by key CF actors⁴².

The combined effects of such discourses and politics have led to some positive outcomes. Women are identified as primary users of community forestry. Community forestry has increased women's ease of access to forest products, entry and decision-making to public space and leadership positions, community benefits, capacity enhancement and saving schemes. More importantly, it has facilitated women's entry to public spheres of decision-making (a sphere long associated with men's identity) and lead to increasing contestation for social change. Likewise, owing to Community Forestry, a pool of professional women foresters and grass-root facilitators working in women and forestry issues is equally evident⁴³.

And yet, even with such sweeping policy changes to foster greater women's participation in community forestry, there has been limited success in establishing mechanisms to effect structural change in practice. Government policy makers give low priority to the voices of grassroots NRM NGOs run by women⁴⁴. While women's numeric participation in decision-making bodies has increased, women still tend to use informal negotiation mechanisms to lead

⁴⁰Giri, K. and J. Thapa, 2011. Gender dimensions in REDD policy process in Nepal (in Nepali). *Journal Hamro Ban Sampada*, Volume 8, Issue 2, pp: 107-114.

⁴¹Agrawal, Bina. 2010. *Gender and green governance. The political economy of women's presence within and beyond Community Forestry*. Oxford: Oxford University Press.

⁴²Khadka, Manohara. 2010. Actors' Interactions at the Policy Level and Implications for Exclusion: Nepal's Community Forestry. In Georgina M. Gómez, Ariane A. Corradi, Pedro Goulart, Rose Namara (eds.) *Participation for what: Social change or social control*. The Hague: ISS and Hivos. Pp. 76-92.

⁴³Christie, M. E and K.Giri. 2011. Challenges and Experiences of Women in the Forestry Sector in Nepal. *International Journal of Sociology and Anthropology*, Volume 3, Issue 5, pp. 139-146.

⁴⁴Rajbhandari, R. 2001. *Challenges to development of HIMAWANTI*. Kathmandu: ICIMOD.

decisions into their favor rather than directly using the power of their status quo or directly confronting the community men⁴⁵. Likewise, while women's attending public meetings has been a common acceptable phenomenon, the challenges to maintain the household and public chores lead to increased work-burden to women, family conflict and domestic violence.

Yet, many suggest that the life of women forester and women leaders in villages are no different- when it comes to recognizing their role in public spheres. *“For us, it is our office work that does not get proper recognition, for village women- it is their role as leaders or participants in public meetings. Both of us struggle to gain support of household members to avoid overburden of work...in those tasks which are default ascribed to us because of our same sex (as women)...because they (household members, both men and women) do not recognize our role and contribution in public tasks (default task place for men in Nepal). Of course, the numbers have increased and women gained confidence, and yet the next level of challenge is to negotiate how we (both women professionals and grass root leaders) get support of family members to share the (household care) work”*⁴⁶.

For many development projects, it also meant a criterion to fulfill the ‘project’ requirements on gender mainstreaming, which in their minds, is a simple and straightforward task that would not require extra expertise or resource⁴⁷. As such, affirmative measures for women were neither understood nor tailored in the larger context of benefits for the society. Gender has been colloquially equated with ‘women’. I personally have seen many community forestry groups claiming their stands on gender-sensitivity on the basis of numerical representation of women in the committees. Such reflections are common and are widely reported, calling for the need of men's support in household chores to support women's effective participation in public spheres⁴⁸.

⁴⁵Giri, K. and I. Darnhofer. 2010. Nepali women using Community Forestry as a platform for social change. *Society and Natural Resources*, Volume 23, Issue 12, pp.1216-1229.

⁴⁶ Interview with Dibya Gurung, National Co-ordinator, WOCAN Nepal.

⁴⁷ Interview with Kanchan Lama, Gender specialist, NEAT project.

⁴⁸Bhattarai, Basundhara. 2011. Rhetoric and Reality: Enacting gender-based inclusion in managing the Commons in Nepal. 13th Biennial Conference of the international association for the study of the commons. 10-14 January 2011. Hyderabad, India.

5.3 Abortion rights

From the medical point of view, abortion is the termination of pregnancy and is legal under some circumstances in Nepal (see Box 1). Abortion is, however, punishable if performed without the consent of the pregnant women. There is no restrictive policy or norms of the government on the number of child.

For years, Nepal banned abortion under any circumstance, and did not explicitly permit it even to save a woman's life or in cases of unwanted pregnancy resulting from rape or incest. Abortion was equated with infanticide, and with other kinds of murder or homicide, and many women were routinely thrown into prison for having abortions, and many died from unsafe abortion procedures. Women who sought abortions did so clandestinely with the providers.

Efforts to liberalize the abortion law in Nepal began in the 1970s; however, discourse surrounding the reform was contrastingly different. In 1970s, abortion has been largely discussed as an effective method of regulating fertility. Government of Nepal, with assistance from the US, initiated two national level, consensus-building conferences on the need to regulate population growth through maternal and child health programmes. Family Planning Association of Nepal (FPAN)-an affiliate of the International Planned Parenthood Federation, together with programme managers, providers and policymakers representing the public and private sectors discussed the medical rationale and relevance of making abortion legally accessible and available to women with unwanted pregnancies. The Nepal Law Commission, a government body responsible for reviewing and recommending timely changes in existing laws, and the Institute of Law, the national university's school of law, led the Law Reform Commission to recommend that existing abortion-related law be reformed and liberalised. National Commission on

Box 1: Short summary of abortion law in Nepal

Only listed (trained) doctors or health workers can provide safe abortion services at listed (approved) health facilities, under the following conditions:

- Legal upto first 12 weeks of pregnancy for any woman with woman's voluntary consent. The permission of husband or guardian is not required for women above 16 years of age.
- Legal upto first 18 weeks of pregnancy in cases of rape and incest
- Legal anytime if the pregnancy poses danger to the life of the pregnant woman or to her physical or mental health or if it leads to the birth of a disabled child.
- Illegal on the basis of sex identification.

Population recommended to the government that abortion be made legal for pregnancies resulting from contraceptive failure.

In the mid-1980s, the Nepal Women's Organization⁴⁹(NWO) organized a national forum to address abortion issues with prominent justices, judicial administrators, legal and administrative authorities, law professionals, social workers and social scientists. Subsequently, NWO convened a meeting of prominent jurists to examine the legal status of abortion and make concrete recommendations for reform. The consensus indicated that abortion should be made legal and available in cases of pregnancy resulting from rape or incest or where the woman's life may be at risk. These notions reflect that abortion was perceived as matter of justice (in case of rap/incest) and an issue related to maternal health. However, none of the recommendations were taken up by the national legislature, probably because the issue was considered too sensitive and the movement did not yet have the momentum or popular support to push the legislature into action. The lack of response may also be related to the change in US policy on abortion that restricted non-US NGOs that receive US family planning funds from using any funds to provide legal abortion services, lobby their own governments for abortion law reform, or provide counseling or referrals for abortion⁵⁰.

The discourse of abortion as a part of safe motherhood picked momentum in 1990s. Nepal became involved in international Safe Motherhood initiative launched by WHO. In 1993, the Family Health Division, Nepalese Ministry of Health, took responsibility for developing a Safe Motherhood policy and plan of action, as an integral part of the National Health Policy, with technical support primarily from WHO. This involved compiling and reviewing evidence, bringing together key providers, international and national organizations, raising awareness and eventually preparing a framework for a programme plan for 1994–97. The 1994 International Conference on Population and Development (ICPD) and the 1995 Beijing Conference on Women, where Nepal was a co-signatory to both declarations, also provided international impetus and greater legitimacy to the women's rights movement that was beginning to gain momentum in Nepal. Availability of and access to safe abortion services increasingly began to

⁴⁹ NOW is the only officially recognized women's organization prior to 1990.

⁵⁰ Shakya, Ganga, Sabitri Kishore, Cherry Bird and Jennifer Barak. 2004. Abortion Law Reform in Nepal: Women's Right to Life and Health. *Reproductive Health Matters*. Volume 12, Issue 24, Supplement , Pages 75-84.

be understood in the context of women's rights. Around the same time, introduction of manual vacuum aspiration (MVA) technology to Nepal's largest maternity hospital in Kathmandu to treat incomplete abortion brought the health and abortion related issues to the forefront of maternal health service delivery in the country. Ministry of Health in the mid-1990s developed guidelines for maternal health care services, with the objective of helping to improve equality of care. In 1997, a 'Safe Motherhood Network' involving the government, NGOs and other private sector was formed to provide continued momentum to Safe Motherhood-related issues.

Involvement of Ministry of Health was crucial in Safe Motherhood work, the findings of which led the Ministry to build consensus and earn political commitment around the reform effort, by collaborating with other relevant government entities, such as the Law Reform Commission and the Ministry of Education, civil society institutions working in law and health etc. Eventually, a paper outlining a Safe Motherhood policy and work plan was prepared and adopted by the Ministry⁵¹. An important element in it was the liberalization of the existing abortion law, to reduce the high levels of maternal mortality and morbidity from unsafe abortions in the country.

Alongside the discourse of Safe Motherhood policy were efforts to educate wider stakeholders and general public regarding the plight of Nepalese women and the feasibility and necessity of improving their status and conditions through policy, legislative and programmatic interventions. Law professionals and women's groups constantly demanded for reforms. Various means of evidence- gathered through nation-wide survey and oral stories of medical professionals were used to create awareness and urgency required to maintain the political will towards abortion reforms. Such studies indicated significantly high maternal mortality (upto 50%) due to abortion-related complications and showed⁵² that at least one-fifth of women in prison had been convicted for illegal abortion and others were serving jail sentences for crimes they had not committed, while many had been charged with murder⁵³. The role of media and community radio was also instrumental to disseminate the evidence of public health consequences of unsafe abortion, also through description of victim's story. The commonly endorsed view is that, while unrestricted

⁵¹Ministry of Health. 1998.*Safe Motherhood Policy*. Kathmandu: Family Health Division, Ministry of Health.

⁵²Thapa, Shyam. 2004. Abortion law in Nepal: The road to reform. *Reproductive Health Matters*, Vol. 12, No. 24, pp: 85-94

⁵³Ramaseshan, Geeta. 1997. Women imprisoned for abortion in Nepal: Report of a forum Asia fact finding mission.*Reproductive Health Matters*. Volume 5, Issue 10 , Pages 133-138.

abortion was neither desirable nor right for Nepal, abortion for first trimester pregnancies should be made legal, if performed by registered and trained medical practitioners.

1990's political system reform with democracy in Nepal made it possible for members of Parliament to tabulate private bills. With such common consensus on abortion, two bills in Parliament on abortion (presented by FPAN-member of the assembly- the upper house) were tabulated. The law was called "pregnancy protection bill" and describing as "protecting wanted pregnancies". The parliamentary process in the Parliament from introduction to final passage of the Civil Code 11th Amendment Bill and the assent of the King took about four years⁵⁴ (see Table X). Abortion was legalized under the 11th Amendment to the Civil Code in March 2002 and operated as law in September 2002. The development of operational policies, regulations and guidelines took another six months. At present, the Interim Constitution of 2007 also recognizes women's reproductive rights as fundamental rights.

Table 2: Trajectory of major legislative events related to abortion law reforms in Nepal

⁵⁴This delay is mainly due to the continuing disagreements over women's property rights, also presented in the same Bill.

| Time line | Road to abortion reforms |
|------------------|---|
| 9 JUL 1996 | Private Bill to reform abortion laws introduced in the National Assembly. |
| 3 SEP 1997 | The National Assembly Special Committee debates many times to review and discuss the Bill and recommends it to National Assembly. |
| 20 JUN 1999 | Private Bill declared null and void. |
| 25 SEP 1999 | Ministry of Law, Justice and Parliamentary Affairs introduce the Civil Code-11th amendment Bill in the House of Representatives. |
| 18 AUG 2000 | House of Representatives sends the Bill to the Law, Justice and Parliamentary Committee for discussion and recommendation. |
| 8 AUG 2001 | Law, Justice and Parliamentary Committee returns the Bill with its recommendation to the House of Representatives |
| 9 AUG 2001 | House of Representatives passes the Bill and sends it to the National Assembly. |
| 13 OCT 2001 | National Assembly votes down the Bill because of National Assembly's controversies over permission on women's rights. |
| 14 MAR 2002 | House of representatives takes up and passes the Bill. |
| 6 SEP 2002 | The Bill receives Royal Assent and becomes Law. |
| 25 DEC 2003 | Cabinet approves the implementation. |
| 2004 | Safe abortion policy on abortion developed. |
| 18 MAR 2004 | First legal abortion services opened at the Maternity hospital in Nepal. |
| Nov, 2004 | First amnesty to a jailed victim on charge of abortion. |
| 2007 | Court case demanding effective enforcement of abortion laws. |
| 20 MAY 2009 | Court mandates the government of Nepal for effective enforcement. |

With increase in case studies and evidences, the reform movement moved towards social justice and human rights, gaining wider attention and support of human rights activists and social justice groups, among others. In 2002, the Center for Reproductive Rights (the Center) and the Forum for Women, Law and Development (FWLD) published a report showing that the criminal ban violated women's human rights.¹ The findings were used both to lobby lawmakers to amend the ban and to mobilize civil society to secure the release of women imprisoned for abortion. Reproductive rights, including the right to safe abortion, and human rights together provided yet another dimension to the rationale for reform of the abortion law.

It should be noted that the absence of any significant opposition to the movement for abortion law reform was as important as overt support. In fact, there was never much organized opposition to the reform movement, at the same time, there was no strong, consistent or massive support in its favor. One reason for the lack of opposition may be the use of empirical evidence of the public health consequences of unsafe abortion that backed up the discourse of abortion reforms. Another reason may be that abortion had already been legalized for many years in

neighboring India, the world's largest democracy and undoubtedly a major source of influence for Nepal – culturally, politically and otherwise.

Despite the reforms, multiple barriers have prevented women from accessing abortion services. On February 2007, FWLD, Pro-Public, and a group of human rights lawyers filed a public interest case of *Lakshmi Dhikta v. Nepal* before the Supreme Court of Nepal to address the unaffordability of abortion services, among other issues (see Box 2). This case held government accountable for failing to ensure the affordability of abortion services. The judgment was made in favor of Lakshmi Dhikta, with the Court instructing the government to take steps to guarantee that no woman is denied an abortion solely on financial grounds.

Box 2: LaskshmiDhikta Vs. GoN- operationalizing legal practices in Abortion)

The Lakshmi Dhikta case centers on a mother of five children, who, when became pregnant for the sixth time, attempted to get an abortion but was unable to due to lack of funds. She was forced to carry an unwanted pregnancy to term. On May 20, 2009, the Nepal Supreme Court ordered the government of Nepal to enact a comprehensive abortion law for safe and affordable enforcement. Some of the key decision points delineating the state's obligations to ensure the rights⁵⁵ are:

- Government must guarantee access to safe and affordable abortion services.
- Right to abortion are an essential component of reproductive rights.
- Forced pregnancy violates women's fundamental human rights.
- Fetus does not have legal status of a human life.
- Comprehensive abortion law needed to fully protect women's rights.
- Compensation warranted for women forced to carry unwanted pregnancies.

The result of such discourse and politics has, at its best, saved mother's life (those at risk without abortion). Demographic and Health Survey, Nepal 2006 show a steady decline in the Maternal Mortality Ratio (MMR) from 539 in 1996 to 281 in 2006. Many in Nepal commonly agree that legalization of abortion and provision of safe and legal abortion service may be one of the crucial factors that may have contributed to this decline since the legal provision has helped to get rid of unwanted pregnancies that put the life of mother/infant at risk. Likewise, rape victims that got pregnant out of rape are no longer jailed for wanting to abort their fetus. Government of Nepal has mandated government funds for safe and easy access to abortion. While these are real gains, some offshoot were also evident.

⁵⁵ Lakshmi Dhikta v. Government of Nepal, Writ No. 0757, Jestha, 2066 (2009) (Supreme Court of Nepal).(Melissa Upreti, Regional Director for Asia at the Center for Reproductive Rights was a co-petitioner in the case.).

In addition to saving lives of mothers, it has become a way of temporary family planning with increased rates of female foeticide. As the case of Maya⁵⁶ (name changed) indicates, even educated women prefer to have son (instead of daughter) as a sign of marital security.

Maya, a 35-aged women, educated (till 12 years of schooling) had two daughters and a supportive husband who loves the daughters and does not want any more children. However, Maya is unsure whether the support (of her husband) will remain throughout the coming years amidst the social pressure from her in-laws. Recently, one of his husband's uncle (aged around 55) married again, since he could not have son from the earlier wife and he increasingly believed (over the years) that he needed a son to attain "moksha". Amidst such fear and dilemma, Maya is negotiating with her husband to have a 'son'. Without any hesitation, she says that she will use abortion as a family planning measure, in case the (prospective) conceived child turns out to be 'girl'.

The case of Maya also indicated that she perceives abortion rights as a means to safeguard her marital status, rather than to claim independence over her reproductive rights. Though her greater reproductive rights should have promoted her health and well-being, she, under the risk of marital security, is using the same rights to jeopardize her health by taking decision to abort femal foetus, until she conceives a 'son'.

Indeed, Nepalese society still harbors strong preference for sons, and abortion has also served a means to abort female foetus after prenatal sex determination. The exact data of female foeticide from Nepal is not yet available but estimates indicate that more than 200,000 females are "missing" from Nepal and the problem is on the rise⁵⁷. Women undergoing repetitive abortions to terminate unwanted 'female foeticide' can have disastrous consequences on women's health. Further, this raises other puzzling question as: whether women's right to abortion did necessarily enhance women's agency over reproductive choices? If so, whether women need to be held accountable for the massive female foeticide? Many claim that health policies on women's right should go hand-in-hand with broader involvement of husbands and other family members⁵⁸.

⁵⁶ One of the local respondents in Kathmandu and her experience with abortion. (Interview on 5 July 2011).

⁵⁷ Shrestha NS. 2010. Gendericide: A scary truth. *Kathmandu University Medical Journal*, Vol. 8, No. 2, Issue 30, pp. 153.

⁵⁸ Nafisa Halim, Alok K Bohara and Xiaomin Ruan. 2010. Healthy mothers, healthy children: does maternal demand for antenatal care matter for child health in Nepal? *Oxford Journals Medicine Health Policy and Planning*, Vol. 26, Issue 3 Pp. 242-256.

There are other unexpected off-shoots to relaxed abortion laws. (Unmarried) teen women pregnancy and abortion owing to increased sex behavior among unmarried teens is also becoming an increasing phenomenon, particularly with college students in the cities. This is despite the fact that pregnancy without wedlock is unwanted and socially unacceptable in Nepalese society. Also, the concept of surrogate mothers, already legal in India, had been discussed in Nepal⁵⁹. A surrogate mother is one who gets paid for carrying the babies of other couples. Surrogacy is the process by which an embryo (fertilized egg and sperm of the couple) is transferred to the surrogate mother's womb using modern technology. Dr. Bhola Rijal says that "...surrogacy has long been in practice in Nepal and many Nepali women go to India to act as surrogate mothers. Therefore, it is better to give legal recognition to surrogacy here,⁶⁰". While some criticize that surrogacy involves trade of women's wombs, and thus, reinforces patriarchal notion of pushing women into a form of slavery or prostitution, others argue that surrogacy has provided avenues of financial support to the poor surrogate mothers and more reproductive choices for those women who are unable to have their own children and are bound to face various forms of hatred in patriarchal societies.

5.4 Land rights

Women's right to land are defined as 'claims that are legally and socially recognized and enforceable by an external legitimized authorized, be it a village-level institution or some higher-level judicial or executive body of the State (p:19)⁶¹'. Ideally, an analysis of women's land rights should take different aspects of rights into account, including whether women own land and exercise control over land in practice. In simplest terms, this denotes women's ownership to rights. In simplest terms, this denotes women's ownership to rights.

Land is an asset closely associated with power structure in Nepalese society. In Nepal, the main means of gaining land is through inheritance, which is largely patrilineal. Thus, when discussing land rights and inheritance, women's rights are usually defined in terms of their relation to men.

⁵⁹Womb for sale debate surfaces in Nepal. March 8, 2011. http://articles.timesofindia.indiatimes.com/2011-03-08/south-asia/28667774_1_surrogate-mother-commercial-surrogacy-surrogate-child. Accessed on 25 July, 2011.

⁶⁰Surrogacy issue has a legal hole. April 30,2011. <http://www.ekantipur.com/the-kathmandu-post/2011/04/30/nation/surrogacy-issue-has-a-legal-hole/221189.html>. Accessed on 5 June, 2011.

⁶¹Agarwal, B. 1994. *A Field of One's Own: Gender and Land Rights in South Asia*. Cambridge: Cambridge University Press.

As reflected in the 11th amendment of the Civil Code, widows have a right to a share in their husband's property. Daughters, on the other hand, only have a right to a share in their father's property if they are unmarried. Further, if daughters marry after inheriting parental property they are supposed to return their share to the other heirs.

Equal property rights to women is always one of the most debated, sensitive and burning issue of the women's movement in Nepal. The discourse of property rights to women dates back to The *Muluki yen* (the Country Code) of Nepal. Under the 1853 version of the Country code, at the time of property partition, the fathers were required to give marriage expenses to unmarried daughters below the age of 35 and unmarried daughters above the age of 35 years were entitled to an equal share of the property. They were entitled to keep their share, even if they married after the partition, except in case of elopement⁶². However the 1963 version of the Country Code narrowed the scope of a daughter's rights in the ancestral property on the basis of marital condition⁶³. This meant that only unmarried daughters above the age of 35 were entitled to share ancestral property which needs to be returned upon marriage. Even in case of a parent with no son but daughters only, the parent has to institute her daughter as 'dolaji' to enjoy the property she received^{64, 65}. Also rights of women to husband's property or on divorce or widowhood were discriminatory.

The movement to ensure equal inheritance rights for women took significant turn, legally and strategically in 1993 when Advocate Meera Dhungana and Meera Khanal challenged the inheritance law⁶⁶ in the Nepali Supreme Counter, starting a process that led to the introduction of a bill on inheritance of parental property to parliament. Lawyers were the key actors involved in the process, with about 70 prominent lawyers of the country including the then president of Nepal Bar Association, signing in favor the petition. The court issued a directive order to the

⁶²No. 15 of Country Code, 1853.

⁶³Only unmarried daughters above the age of 35 were entitled to share ancestral property, albeit the share was half the property entitled to a son. Such a daughter on marriage was required to return the property to her maternal house after deducting her marriage expenses.

⁶⁴'Dolazi' is a process adopted by sonless parent to give their daughters full rights over the property. However, the husband of 'dolaji' girl was not given any right to claim any moveable or immovable property of his wife.

⁶⁵No. 4 of Chapter on Partition, the Country Code 1963 (before Eleventh Amendment).

⁶⁶MeeraDhungana vs. HMG/Nepal, NKP 2052 B.S.(1995), Vol. 6, pp. 462-469.

government to submit a Bill in the parliament within a year after necessary consultations and studies.

The case triggered wider national debate and gave momentum for wider dissemination to contest and consolidate women’s rights to property at community and household level⁶⁷. There were people for, against and neutral to the decision. *“There was a kind of prevasion in the whole debate on equality introduced by those who argued that granting women equality in their inheritance rights was against the cultural right of the majority of the population that was guided by Nepal’s prevailing social hierarchy and value-systems. Some others thought it of no value as in their opinion it was only the few elite and privileged women from the cities who were demanding equal inheritance rights”*. Women movements criticized such discourses for bringing in social, cultural, patriarchal arguments (counter discourse as noted above) to justify prevailing discrimination against women and turning a blind eye to the central message of the whole movement: equality between sexes⁶⁸. Some of the major discourse and counter discourses were as follows:

Table 3: Discourse relating to women’s inheritance rights in Nepal

| Discourses | Counter Discourses |
|--|--|
| Provision of ‘marital conditionality’ requiring women to choose between right to marriage and the right to property is discriminatory and violates human rights. | Provision is not discriminatory against daughters as they got property from their father, if they remain unmarried and from their husband if they got married. Dual property for women will discriminate men. |
| Change the attitude of society towards women and can bring gender equality in society with equal treatment and opportunities between men and women e.g. equal opportunity for daughters to get education, increase women’s self-confidence. | Laws on inheritance can lead to adverse impacts on social structure- Increase of child marriage, only rich will be married, land fragmentation, increase number of divorces, dual property for women, infanticide, dispute between brothers and sisters, increased polygamy, destruction of social structure, women need education not the property, women cannot manage the property. |
| Women’s independent identity permeates agency and empowerment. Decrease problematic issues as domestic violence against women, decrease trafficking of poor women etc. | Due to open border system with India and existing cross-boarder marriages, equal property rights to women may pose a threat to national security. |
| Will system of partition would accord right of the priority of right to son and thus, can not bring gender equality under current social cultural structure and guaranteing equal inheritance rights would discourse cross boarder marriages | ‘Voluntary/system of will’ in partition is appropriate. |

⁶⁷See Keera Allendorf. 2007. Do Women’s Land Rights Promote Empowerment and Child Health in Nepal? *World Development*, Vol. 35, No. 11, pp. 1975–1988.

⁶⁸Pradhan, Sapana Malla. 2003. *Inheritance rights of Nepali women: Journey towards equality*. Forum for women, law and development. Publication No. 74. Kathmandu, Nepal. P. 29

Such discourse and counter-discourse lead to a political battle of reform (see Table 4) involving variety of actors ranging from lawyers, political parties (UMNL), UNIFEM, NHRC, IWRAW-Asia Pacific, Forum for Women, Law and Development (FWLD), Legal Aid and Consultancy Center (LACC), Sancharika Samuha, ILRR, SAP Nepal, LACC, Caritas, FEDO in favor. Hindu groups were opposing the decision and many of the political parties did not articulate their position. Government (then led by Nepali Congress Party) did not actively take up any actions responding to the court verdict. Several NGOs led by Legal Aid and Consultancy Center (LACC) took up the initiative forming ‘Bill drafting task force’ under the Ministry for Women and Social Welfare (MWSW) to draft the Bill. The fact that India having similar social, religious and cultural context, with legal amendments to Hindu Succession Act of India has provided inheritance rights to women without much difficulty in practice was used as a strong argument for similar action in Nepal. The Bill was registered as a ‘Finance Bill’ and the indicated entirely different recommendations than drafted by the Committee. FWLD filed a legal petition against the government for not confirming with the court’s decision on the reform Bill.

Table 4: Trajectory of women’s right to land in Nepal

| Timeline | Road to Land reforms |
|-------------|--|
| 31 May 1993 | Legal petition by female lawyers challenges the existing inheritance law. |
| 3-Aug-95 | Supreme court issued directive order to the government to submit a Bill within a year. |
| 19 May 1996 | Bill Drafting Task Force submits the Bill to the Ministry of Law, Justice and Parliamentary Affairs. |
| 13-Jan-97 | Registration of the Bill as a 'Finance Bill' in the Parliament. |
| 5-Feb-97 | FWLD filed the case on contempt of court. |
| 12-Mar-97 | Bill lapsed due to change in government. |
| 31-Jul-97 | Re-registration of Bill in the Parliament. |
| 11-Aug-97 | Bill presented in the House of Representatives. |
| 20-Aug-97 | Discussion and forwarded to the Foreign Affairs and Human Rights Commission for further amendments. Amendment proposals by 109 parliamentarians on the Country Code (Eleventh Amendment) Bill-1997 and discussion in Foreign Affairs and Human Rights Committee. |
| 1 Set 1998 | Bill transmitted to Law, Justice and Parliamentary Committee. Failed to discuss. |
| 1998 | Nationwide demonstrations when Parliament failed to discuss the Bill- women activists GHERAO the parliament. |
| 15-Jan-99 | Bill lapsed due to the dissolution of the House. |
| 20-Sep-99 | Re-registration of the Bill. The Bill was not brought for discussion. |
| 28-Jun-00 | Bill presented on the House of Representatives, also owing to the demand of women parliamentarians to present and discuss the Bill. Political parties divided on their opinions. |
| 18-Aug-00 | Bill presented and discussed in Law, Justice and Parliamentary Affairs Committee. Resulted to 72 amendment proposals on the Country Code (Eleventh Amendment) Bill-1999. |
| 5-Oct-01 | Law, Justice and Parliamentary Affairs committee recommends to pass the Bill with some amendments, after conducting a nation-wide opinion poll with significant positive results in favor of the reform. |
| 9-Oct-01 | Bill passed by the House of Representatives. The Bill states that daughter must return her share of parental property after marriage. |
| 13-Oct-01 | National Assembly rejected to consider the Bill. This created the need for the Bill to be passed by the House of Representatives once again. |
| 14-Mar-02 | House of Representatives passed the Bill again with overwhelming majority (147:1). |
| 26-Sep-02 | Royal Assent to the Bill and becomes law. |
| 4-Mar-03 | Legal petition (by male lawyers) challenge that legal land rights' provision to divorcee women serves discrimination to men. |

During the period of two years (1997-1999), the Bill was re-registered since the government either lapsed or the House of Representatives was dissolved. Political parties showed very lukewarm response to the Bill and the Bill was not even presented for discussion in House of Representatives. The focus of the political parties, as always, was on the male members of the voting population and these parties believed that the male vote bank would not take support for equal inheritance rights positively⁶⁹. This is despite the fact all those political parties have used 'equal property rights to women' as the election agenda during the election periods (e.g. 1993/1995)⁷⁰. While political parties had their differences and confusions on their position

⁶⁹Pradhan, Sapana Malla. 2003. *Inheritance rights of Nepali women: Journey towards equality*. Forum for women, law and development. Publication No. 74. Kathmandu, Nepal. p. 31.

⁷⁰Elimination of discrimination against women and providing equal inheritance rights to Nepali women was one of the agenda of Maoist while initiating Maoist people's movement in Nepal and during constitution write-up process.

regarding the inheritance rights of daughters, woman's organization affiliated to those very political parties was solidly behind the movement from the very beginning to the end. The women MPs from all political parties formed a women's caucus to lobby their respective parties and to raise these issues more vigorously. Women parliamentarians also pressurized government to bring the Bill for discussion. Women activists staged nationwide demonstrations, including *Gherao*⁷¹ of parliament. Also, owing to such massive discourse and struggle, government recognized land rights as a source of discrimination to women in its initial report to CEDAW. In 1999, the CEDAW committee in its 'Concluding Comments'(to the initial reports of Nepal) recommended the government to amend, as a matter of priority, discriminatory laws on property and inheritance⁷².

Bill was then presented and discussed in Law, Justice and Parliamentary Affairs Committee, resulting into 72 amendment proposals on the Country Code (Eleventh Amendment) Bill-1999. The Bill was persistently criticized for a handful of elite and urban women's movement with no support among the public mass. Amidst such contestations, Law, Justice and Parliamentary Affairs Committee conducted collected nation-wide public opinion poll on inheritance rights to women. The poll led to unexpected positive result with about 92% respondents favoring amendments to existing discriminatory legal provisions to inheritance rights, with about 85% expressing that daughters should not return her share of maternal property after getting married. Based on such massive public support, Law, Justice and Parliamentary Affairs Committee recommended passing the Bill with some amendments.

The proposed Bill was passed by the House of Representatives but the National Assembly rejected to consider the Bill. This created the need for the Bill to be passed by the House of Representatives once again. To build national consensus and to maintain pressure on the government to facilitate the passage of the bill, several programs in the form of workshop, discussion, lobbying various rallies, workshop and conference were organized by several NGOs. A national conference held on February 2002, brought together 1200 people, with representations from various ministries and wider stakeholders including grassroots people. This conference using empirical evidences indicated that existing legal provisions discriminate

⁷¹ Gherao is a nepali word that indicates a form of protest, whereby the protestors would circle around a certain arena and prevent it from functioning.

⁷² Concluding Comments No. 23 of the CEDAW Committee in 1999.

various groups of women (viz. married, unmarried, divorcee, and widow). Also, a public hearing session was conducted wherein women victims shared their heart-rending stories of suffering owing to the

| Women's right to land in Nepal |
|---|
| Unmarried- Rights by birth. |
| Married- access to property, even before divorce/age limit of 35 years removed. |
| Widow- Any time with full ownership, no need to return after remarriage |
| Divorcee- One share before the decree of divorce is given. |

ill-effects of the existing discriminatory laws. This left most of the audience tearful and emotionally charged and also led to a realization by the government and citizens to internalize the seriousness of the issue⁷³. Soon after the event, House of Representatives passed the Bill again with overwhelming majority (147:1). District level conference, rallies, press meetings etc. continued to build grass-root level pressure to get the royal seal in the Country code. The Bill received Royal Assent on September 26, 2002 and became law.

Not soon after the law (in March 4, 2003), some male lawyers challenged the legal provision of rights to divorcee women. They claimed that existing provision provides double/tribal partition property to divorcee women, if they remarry/marry again and again. This provision contradicts with the Constitution on equality between sexes as it discriminates men⁷⁴.

Also, during the constitution write-up process, women's right to inheritance issue was again discussed and women MPs have to struggle to maintain those rights⁷⁵. Recent discourse⁷⁶ on women's land rights present intersecting differences within women (e.g. right of land to women farmers etc.).

Despite such legal reforms, legal awareness and sensitization about rights to property rights is rather low. Also, there are numerous psychological challenges to claim the property that involve calculating the risks and gains. Many girls do not want to be a bad girl for parents. Even in dreadful situations, gaining justice is not easy. Complications in court systems are many, ranging from complex procedure for divorce and partition, court fee and long waiting time to gain justice

⁷³Pradhan, Sapana Malla. 2003. *Inheritance rights of Nepali women: Journey towards equality*. Forum for women, law and development. Publication No. 74. Kathmandu, Nepal.

⁷⁴ Advocate Shyam Krishna Maske et al. vs. HMG/Nepal, writ No. 114, 2059/11/20 B.S.

⁷⁵Giri, K. 2010. Natural Resources and Decentralization: Gender Justice in New Constitution. Workshop Proceedings. Kathmandu, Nepal: ForestAction Nepal and HIMAWANTI.

⁷⁶ ANGOC and ALRD, 2011. Asian Regional Workshop on Women and Land Rights: Workshop Proceedings. AsianNGO Coalition for Agrarian Reform and Rural Development (ANGOC) and Association for Land Reform and Development (ALRD). 78 pages.

for inheritance of rights. This results into women opting for reconciliation without claims to property. A survey indicated high ratio of conciliation in divorce cases filed by women, mostly within a week after the women withdraws the right to property⁷⁷.

OVERALL FINDINGS& DISCUSSIONS

The 3 cases indicate that there has been definitive struggle to attain, claim and enjoyably practice women's rights in Nepal. Discourses, politics and practice offer the circle that is promoted to safeguard gender reform agenda, and assertion of greater rights to women.

Discourses served critical entry spaces to tabulate and influence gender reform agenda. In all the 3 cases, several discourses reframed women's right in different ways. In cases of Community Forestry and Abortion Rights, attempts of gender-reforms was called to serve various agendas in response to the then pressing national/global agenda. As examples, the perceived crisis of 'Himalayan Doom' framed women's participation in public spheres of Community Forestry as essential for the rehabilitation of the then denuded forest in Nepal, whereas right to abortion initially kicked up around 'western' discourses of family planning. In case of land rights, existing legal provision on land rights was framed discriminatory through a court case.

In all 3 cases, these discourses kick off through national conferences (court case in case of land rights) in Kathmandu, wherein few actors notably from NGOs and donor agencies assume a greater role. Funding from various INGOs and donor agencies was instrumental to kick off such discourses and undertake the initial assessments. Court case and public litigation play crucial role in discourses. As the Dhungana's litigation on inheritance rights to GON indicates, court case can bring indicate substantive lapses in current policy, and has potential to trigger debate and restructuring of policies. These discourses demand for legal reforms in existing discriminatory practices, with greater emphasis on women's rights. This is followed with assessments indicating lapses in current policy and formulation of new policies.

Irrespective of the methods used, these cases illustrate that discourses can affect the framing of existing socio-cultural practices as 'discriminatory', while also inculcating an alternative framing

⁷⁷Pradhan, Sapana Malla. 2003. *Inheritance rights of Nepali women: Journey towards equality*. Forum for women, law and development. Publication No. 74. Kathmandu, Nepal.

of rights. As example in the land rights case, women not having property at birth were framed as 'discriminatory', while inculcating an alternative perspective of equal rights to both children, irrespective of sex. Women's (public) participation in community forestry is provided as an alternative towards achieving sustainable restoration of the denuded hills in Nepalese forests. Likewise, abortion rights were framed as 'essential' element for family planning and women's independence over their own bodies. Discourses are equally essential to keep the demand for gender reforms intact, to lay pressure on political parties, law makers and government.

It is important to note here that; discourses can be severely challenged, supported or negated depending upon the extent to which discourse call for transformation in practical and strategic needs of women. As examples, women's participation in Community Forestry was never challenged; abortion rights for women did not face significant opposition, whereas land rights reform processes were fiercely challenged. Reforms in community forestry and abortion rights were understood as greater leverages to promote women's practical needs, contrasted to the land rights that demanded for transformation of strategic need by demanding women's access and control to an influential factors of production i.e. land. Also, women's domestic-owed responsibility and its connection to forestry can be easily conceptualized and understood in the country, as such there was no dispute on referring to women as users of forestry as early as 1980s. Abortion was a common practice despite it being illegal in the country, and strong support of medical doctors through their evidential testimony helped gaining public support. The case of

Also, the language used to demand reforms in these cases can affect the degree of response they evoked. The language of discourse, in community forestry and abortion rights, was not 'women-prone' but rather an indirect one that emphasized other problems, wherein women's greater rights could help solve the problem. Women's greater involvement in community forestry and abortion rights was projected as a necessity to serve existing practical problems (of deforestation, curbing population rate etc.). This subtle language of rights was in total contrast to the demand of rights used in land rights case. The case of land-rights to women was a very bold and visible attempt that indicated the prevailing discrimination (owned due to existing socio-relations mediated through a patriarchal society in Nepal) and thus, claims for greater rights to women

through massive transformation of land rights. The result is that land rights reforms faced fierce opposition compared to rights of women in community forestry and abortion.

Not only that different needs and modes of languages were used to create and maintain the discourses, the language of discourse to claim greater gender reforms in these 3 cases, has been changing towards 'women-prone'. It happened more so after 1990's democracy and ratification of CEDAW by Nepal under 'monastic approach'. It is likely since with CEDAW, women's rights got greater impetus and legitimacy in national discourses and politics and women's movement has increasingly centered on projecting women's rights as fundamental rights. However, as the movement got strong and vocal over years, the call for gender reform strategies solely used the 'language of blame' to existing societal structures, men etc., with potential solution as the greater legal rights to women.

While women-prone language and assertion of greater rights are indeed essential, the sole use of these as the basic mantra for gender reforms in Nepal has created some misconceptions. First, the women-prone language used in discourses situated men and women in conflicting and opposite categories. Such language of conflict (men/society as discriminators/perpetrators vs. women as victimized/protagonists) did not allow for discourses on 'collaboration', in looking for avenues in which men and society can be effectively used to abate the discriminatory norms in Nepal. This is not to negate that many of the perpetrators (against women) are usually men, and that strong political actions and sensitization created through discourse and reform structures is utmost required. Nonetheless, while discourses framed men as potential perpetrators and situated their positions in contrast opposition to women, it is very likely that such discourses were not able to pull up the support and mobilization from a group of men as potential supporters. Rather, the continuation of 'pro-women' mantra somehow could not mobilize the need of men's support for gender reforms, lead to a massive common understanding of gender as an attribute associated with 'women only'. As such, calls for gender reforms have been increasingly recognized as women-led, women-versioned movements and became synonymous with 'women'. This conception has not only left-out men as potential allies towards gender equality, but also loses out the opportunity for reframing gender identities of men and women to abate gender discrimination.

Likewise, these discourses main focus was on demanding legal reformation, in the form of enacting new or amending existing policies. While good policies can be useful in bringing about changes, fundamental changes in social norms and attitudes are necessary to create an environment favorable to implementing the policies in practice and claim greater rights. However, most of the discourses for gender reforms were limited to the extent of framing policies/laws only. There was less attention and discussion on how those laws would translate into practice, what sort of predicaments would these 'new' laws pose to women, men and society, and what type of institutional support needs to be simultaneously crafted to enhance institutions' responsiveness for facilitating the early encounters, so that when women (and men) claim the newly formulated rights, they may enjoy those rights as well.

As a result, there is limited conceptual clarity on how to implement the newly reformed policies, even by the policy makers, judiciaries etc., and lack of proper understanding of what these rights would actually mean into practice, and how to comprehend with the implementation of these rights. As a result, even when policies are endorsed as law, they usually lack apparatus for implementation, monitoring and corrective measures. This compromises periodic review and appraisal of the new rights, to consolidate the good lessons and to mitigate the unintended (negative) off-shoots (e.g. increased workload, domestic violence to women leaders, repetitive abortion and its effect upon women's health etc.) as commonly evident in the three cases. Counter-discourses provided important hints on associated predicaments to new set of rights, however, those have not been meticulously used to build responsive implementation and monitoring apparatus.

All the three cases used legal reforms as the instrumental step towards ensuring equality of rights to women. However, there is limited exercise on improving the implementation and monitoring apparatus to exercise those rights in practice. Most of the times, greater rights to women have been taken as a means to earn the 'feel good' of demanding constituencies (as women's group) and to show (national government's) affirmation with international conventions as CEDAW. As a result, while political parties normally use 'gender equality and women's empowerment' for political popularity, those parties rarely come up with strategic proposals for implementation and monitoring. The skepticism of some female parliamentarians on whether 'the drafted version on women's rights' will be supported (by male parliamentarians) and then after passed by the

interim constitution reflects such dilemmas. Of lately, especially in case of abortion, court have been active and efficient for better enforcement and effective implementation to enjoy the rights. The Dhikta case Vs. GON has led the GON to ensure that implementation apparatus are in place for effective abortion implementation.

Such discourse and politics affect everyday practices of proclaiming rights (by women). Despite the existence of legal rights, women tend to avoid direct proclamation of rights. Rather, they use subtle ways to negotiate their rights (often by invoking the morality of men etc.). These women also indicate that they do it rationally as they are aware of potential benefits and loss associated with claiming rights in direct and indirect ways⁷⁸. Particularly, in Nepal where home serves as the lacuna of both privileges (respect, care, support) and discrimination, women tend to ward-off direct encounters and proclamation of rights so as to maintain privileges, lower risks, and yet negotiate with existing discrimination. The predicament associated here, is that in pursuit of women claiming greater rights, they wish not to ward off the existing social protection and security or bear excessive risks. However, some words of caution are important here. Women using men's compassion to attain their rights should not be seen as a 'practical' strategy that transforms gender relations. Rather, women resorting to such strategy indicate the lack of institutional support that could have been used to abridge the early encounters when new laws are practiced.

In practice, this meant a woman opting to proclaim the (greater) rights (mandated through legislation) is likely to face severe predicaments of conflicts and loss, since men continue to use the (old) rights and held the same beliefs. As such, rights are not proclaimed, or when proclaimed are not enjoyed. Thus, women participating in community forestry face increasing work burdens due to lack of men's support in household chores. Women with fundamental reproductive rights face the burden of frequent abortion, further jeopardizing their health condition. Despite the legal rights, the frequency of women herself⁷⁹ proclaiming inheritance rights is rather low.

⁷⁸Giri, K. and I. Darnhofer (2010). Nepali women using community forestry as a platform for social change. *Society and Natural Resources*, Vol. 23, Issue 12, pp. 1216-1229.

⁷⁹This is different to the frequency when parents willingly divide their property amidst their children, including daughter.

Such predicaments to exercising rights remained since socio-cultural norms and their contestation on gender-based identities, roles and expectations owing to masculinity and femininity has not been brought into discursive and policy framework. As such, values associated with masculinity and femininity remained intact, though legislation were provisioned gender-sensitive. Some critics argue that “pro- women rights” reform ignores the need to change socio cultural beliefs held by the mass of society, including women, which support gender-based discrimination⁸⁰. This is indeed true in Nepal’s attempts to gender reforms. Social norms still provides a ‘legitimate’ meaning to women’s active role within the private sphere, but not in the public sphere, that in turn added to greater workloads. Abortion rights are used as a family planning and sex-selective measure, since Nepalese societies, including both men and women, have a strong preference for sons and not for daughters. As examples, daughter do not wish to be called as ‘bad daughters’ while claiming their rights to parental property.

The current discourse, politics that uses language of blame and puts women in contrast opposition to men has not been effective to generate men’s/family’s support, responsibility and accountability towards gender reforms. While women’s reproductive rights can be closely associated with her (biological) ability for motherhood⁸¹, abortion rights are commonly understood as (only) women being the right holder (and thus also responsible and accountable) for abortion. The current legislation on abortion neither specifies responsible (moral) sexual behavior on parts of women and men, nor identifies the role and responsibility of men (to support women’s health and maintain a healthy family (for married ones). Since men are not recognized and women have the ‘sole’ rights, such legislation does not provide space to demand men’s and women’s accountability in case of repetitive abortions (to abort female fetus). Increasing teen pregnancy can also be an indication of abortion ‘right’ being used for unsafe and irresponsible measures of sexual acts resulting to pregnancy. Likewise, there is equal risk that such ‘rights’ can further commercialize women’s body in discriminatory ways (e.g. surrogacy, prostitution).

Even when women want to demand enforcement, it is not easy due to lack of responsive enforcement. Many women lack the mobility and time to engage with the legal system and are

⁸⁰Van Willigen, J. and Channa, V. C. 1991. Law, custom, and crimes against women: The problem of dowry death in India. *Human Organization*, Vol. 50, pp. 369–377.

⁸¹ Motherhood is used here in a strict sense, of being able to conceive and give birth to a child.

wary of the social stigma and psychological trauma associated with bringing claims. This scenario is especially likely where outcomes are not predictable, where legal institutions lack proper, economical and timely enforcement mechanisms. Many women filing for divorce without claims to share of husband's property can be an example. This makes claiming of rights unwanted by those very women for whom these rights were granted.

The unexpected off-shoots in these 3 cases also indicate that the envisioned effects of women's rights may be quite different from the early envisioned impacts. Increased household burden and family conflicts owing to women's participation in the public spheres of community forestry, increased rates of female foeticide and teen pregnancy are some examples. Such associated off-shoots in these cases also indicate that gender reform agenda need to move beyond a simple add women and stir approach, and focus to address those constraints that limit effective participation. Indeed, despite goals for gender equity, the relationship between gender-sensitive policies and the empowerment of women is complex and requires an analysis of how policies align with a broad set of social, cultural, political, and economic factors that relate to gender mainstreaming in South Asia⁸².

CONCLUSION

In this paper, I analyzed diverse discourses on gender reforms affect national policies and practices on women's rights, in pursuit of abating gender discrimination. Using the analytical lens of discourse, politics and practice in in three cases viz. community forestry, abortion rights and property right, I have analyzed the policy making process and its resulting effects in practice. I did so by capturing the trajectory of key policy reforms surrounding discourses, carrier actors and the resulting intended and unintended outcomes in practice.

The findings indicate that gender discourses affect national policies and practices on gender equality and women's empowerment. Discourses provide 'alternative' framing to existing practices as discriminatory and thus, demand for reforms. These discourses emphatically focus on 'pro-women rights' approach, and has led forth to formulation of substantive policies that grant women greater rights to abate prevailing gender discrimination. In practice, while some

⁸²Gill R and Stewart DE. 2011. Relevance of gender-sensitive policies and general health indicators to compare the status of South Asian women's health. *Women's Health Issues*, Vol. 21, Issue 1, pp:12-18.

noteworthy gains are visible, women proclaiming and enjoying those vested rights is rather limited.

Such limited effects on enjoyable practice of rights resulted due to dissonance between discourses, politics to practice. The current practice of policy framing on gender reforms and surrounding discourses limitedly undermine the gender reform agenda as an everyday need, arising out of everyday contestation for rights and historical experience with discrimination and inequality (e.g. Sati abolition). However, due to lack of responsive institutional structure to highlight the local demand, calls for greater gender reforms has been largely understood as an external phenomenon, mostly driven to meet up obligations as agreed in UN conventions e.g. CEDAW amongst others. While CEDAW provides an instrumental benchmark and external push to support gender equality, the misconception of understanding women's rights discourse as an externally (western)-induced phenomenon is problematic and naïve for it not only fails to identify the pervasive patterns of existing discrimination in social relations, but also comprises the experiences and learning that could be derived through history of inequality and attempt for reform measures.

The government of Nepal's position as a heavily aid-dependent and externally influenced country, with excessive dependency on western knowledge system may also have perpetuated such patterns in discourse-policy-practice interface. Indeed, international involvement, western experience and scrutiny of rights is essential, for these allow for providing impetus and deriving collective consciousness and legitimacy of rights across the globe. Equally important yet currently lacking in discourses is locating local modes of struggles against gender discrimination and bringing those lessons to contextualize the implementation of CEDAW in Nepal. However, as the existing practice of discourse is set up in Nepal- where only a few capital centric actors perpetuate the externally-based knowledge assumptions with limited attention to contextual conditions, leads to maintain the general assumption that right-based discourse and politics are created due to external demands. Such process, in turn, compromised the general public's understanding of recognizing gender discrimination as an area requiring urgent reforms to rectify prevalent gender discrimination in Nepalese societies. Consequentially, gender reforms and call for equality between men and women are commonly understood as western influence, whilst

strategies to abate existing discrimination are mocked as process of modernizing Nepalese women.

Such understanding of discourse shape politics and standards of equality are prescribed mostly in the form of policy reforms. Undoubtedly, policy reforms form the entry steps to safeguard rights, as these provide legal framework to 'minimize losses' and ensures a mechanism of justice against gender discrimination. However, in a country like Nepal, where law compliance is rare and impunity common, a concomitant focus is required to build robust and responsive national institutions that can successfully implement the reformed policies. Increasing the preparedness and responsiveness of national institutions for enforcement and monitoring can play instrumental roles to ensure that the entrusted rights are claimed, enjoyed and safeguarded. However, current discourse and politics on women's rights are limited to policy making only, does not deliberate about the practical predicaments that comes with practice of those rights, and pays little attention to enhance institutional responsiveness through strengthening of implementation and monitoring apparatus.

Thus, in practice, neither demands for rights were internalized to evoke responsible behavior on part of women and men, nor responsive institutions were in place for enforcement and monitoring. As a result, those greater rights (to women) did not provide women much 'retreat', but rather placed them in a situation of predicaments. As a result, despite the legal provisions to proclaim the greater rights, most women used indirect ways of claiming those rights and avoided direct proclamation. Such process compromised proclamation and practice of rights and avoided challenge to discriminatory social relations between women and men. Consequently, the rights are not practiced in essence since those are not contested, consolidated or enjoyed. Additionally, lack of periodic monitoring and reflection of rights does not allow for reflection on successful and/or reproducing modes of discrimination. Such reflections and lessons are not linked back to discourse and politics for amendments and rectifications.

This lead into a vicious circle: discourse and politics remain disjointed, leading to compromise in practicing of rights. Such circle leads to closure of space due to which laws cannot be interpreted, contested, implemented, consolidated, and enjoyed. The result is then obvious:

progress in negotiating discriminatory socio-cultural norms and behavior in everyday practice cannot keep pace with revolutionary policies enacted through massive discourse. Consequently, seemingly revolutionary gender reform policies have limited application in abating gender discrimination.

PROSPECTIVE AGENDA FOR GENDER REFORMS

Nepal is at the verge of crafting its new constitution and put an end to all forms of discrimination. If well-cashed, such moments can make an end to discriminatory practices and seriously pave solid strategies for social change. The ultimate challenge is thus to ensure that policy gains are conceptualized and implemented in a way that it provides enjoyable practice of those entrusted rights. Nepal with its history on gender mainstreaming and currently with constitution making exercise provides a tight yet opportunistic space to restructure promising avenues that empowers the Nepalese society, including men and women.

Only by recognizing the rights discourse as a contextual and everyday need, gender discourse and politics can ensure internalization of gender reforms agenda as a Nepalese issue. The need for gender reforms needs to be contextualized, discourses need to be properly internalized or else these cannot lead to enjoyment of rights, though these have potential to generate revolutionary policies on gender. Localized rights struggles are easy to understand and internalize by the common mass and also efficient to invoke societal responsiveness. Successful policy building process will almost always be the product of domestic action, though it can be significantly enabled by well-targeted, responsive international assistance and conventions as CEDAW. Deeper, context-specific analysis of the historical and contemporary dynamics of social contract negotiations must be the basis for policy-building efforts.

Along with such recognition are also required contextually fit standards of equality between men and women. While western standards and conventions can definitely serve as examples, proper attention needs to be paid to modify/alter/negate/create contextually fit standards of equality for Nepal. As examples, high rates of gender collaboration between men and women can be an indication to gender equality rather than a snap shot on women's labor participation(as currently measured) in Nepal. Also, rather than taking a static viewpoint on inequality, evidence and

reflexive orientation on new factors of inequality between men and women, and within women is to be generated by research informed through grass-root evidences and advocacy. With such social mobilization, gender reform agenda can be contextualized and internalized.

When new laws are claimed, it is bound to entail shifts in existing practices through leveraging new forms of behaviors and actions. Also, since legally entrusted rights are filtered through social norms, encounters to practicing policies are bound to happen. Such shifts have to be understood and internalized by both women and men. The early encounters are not expected to be easy and may pose several risks to those claiming for rights. The result is that rights are not enjoyed, even if when claimed. Provisions to claim rights and enjoying rights are two different things. Such predicaments to rights require closer understanding of both collaborative and conflicting framework of relations that women together with men may encounter, as they start to assert their new rights.

A basic step to increase their understanding about these shifts is by sensitizing them about the gender roles and gender relations that discriminate one sex against the other. Only by enhancing existing institutions' preparedness and responsiveness to facilitate the early encounters, rights can be both claimed and enjoyed. This requires that the discursive framework to facilitate women's right also need to prescribe mechanisms to promote institutional responsiveness, enforcement and monitoring. Thus, while discourses can foster public awareness and positive opinion for reforms, there is consequential need to craft required apparatus of implementation and monitoring to facilitate friendly encounters in practice. Thus, gender reform agenda need to move beyond a simple add women and stir approach, and also focus to address those constraints that limit effective participation by identifying and modifying the underlying discriminatory power relations that determines masculinity and femininity in Nepalese societies.

Once such standards are set, discourse and politics should work at tandem across national and grass-root level to ensure that rights are framed/implemented in a way that invokes/ensures social responsiveness. These require adopting a language of responsibility, with strategies in place to reframe the discriminating notions of masculinity and femininity in Nepalese society. As examples, women's rights to abortion should also recognize men's role and responsibility as a responsible spouse towards maintaining better parenthood/family health. Likewise, equal

inheritance can be promoted as ideal Nepalese parenthood that ensures equal opportunity for their children, irrespective of sex.

Likewise, periodic monitoring of achievements and off-shoots of policies together with corrective measures can timely indicate whether the rights has been enjoyed by the right actor in a responsible way. Some units (such as women's commission) can monitor to ensure that rights are not only in paper and are only proclaimed, but are also enjoyed by the majority of population, both men and women. Such monitoring can reflect both gains and gaps, and locate mechanisms to property address the genuine issues related to gender discrimination. Massive discourses and movements for reorientation should be in place so that negative off-shoots can be addressed, ensuring that policies sustain the positive effects.

Such reforms are possible only when there is resonance of discourse, politics and practice. This requires that both discourse and politics on women's right need to be informed with lessons obtained through practice and vice-versa. Positive public opinion would also need to be built through media campaigns and public hearing for internalizing the issue and creating an enabling environment for legal reformation. Court actions 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. Such federated recyclable approach is essential to ensure that legislated rights extend from paper to practice, and are claimed and enjoyed to build gender-just societies as the current restructuring process aims to envision.