Chapter II
Status of Women in Nepalese Society
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To understand the status of Nepalese women in the society, it is imperative to study and focus on the various forms and sources of discrimination – social, cultural, religion, economic and political - both at the household as well as State level. In this chapter the study will emphasise some of the factors/legal provisions relating to inheritance of parental property, citizenship, prejudiced religion and customs, domestic violence, discrimination against women since their birth, child marriage, polygamy, dowry system, etc. that force women into such a position that it becomes difficult for them to fight against the social injustice.

Nepal is a landlocked country sandwich between India and China with a population of 27 million people and women comprise more than half of its population.\(^{137}\) It covers an area of 147,181 sq. km. that is divided into three ecological zones – the Hills, the Terai and the Mountains. Nepal has five development regions: Eastern, Central, Western, Mid-Western and Far-Western. The country is further divided into 14 zones and 75 districts. The districts, with equal number of District Development Committee (DDCs), have a total of 3913 Village Development Committee (VDCs) and 58 Municipalities which are further divided into smaller political units called wards.\(^{138}\)

According to UNDP (2004: 19), Nepal is renowned for its socio-cultural diversity with more than 100 ethnicities, 92 languages and nine religions.\(^{139}\) As per the survey done by the CBS/NPC/HMGN\(^{140}\) (1996: 10), the religious composition of the population shows that 81 percent of the population are Hindu, 11 percent Buddhist, 4 percent Muslim, and 4


\(^{139}\) The status of women of various linguistic groups differs from one another. Nepali being the only official language, women with other mother tongues has been deprived from literacy and education, both formal and non-formal. Lack of government support for literacy and education in mother tongues is one of the main reasons for low literacy rate of women in Nepal.

\(^{140}\) CBS/NPC/HMGN refers to Central Bureau of Statistic/National Planning Commission/His Majesty's Government of Nepal. These abbreviations will be used in all in text-reference in the study.
percent Kiratas. The people of Nepal are divided into two broad cultural groups: Indo-Aryan and Tibeto-Burman. The Indo-Aryan group includes high and low caste Nepali speaking hill groups like Brahmin, Chhetri as well as Maithali, Tharu and Newar. The Tibeto-Burman group includes Mustang Bote, Gurung, Khas Magar, Rai, Limbu and Tamang.

According to the Nepal Human Development Report (2001), the Human Development Index (HDI) of Nepal is one of the lowest (0.466) in the world. When the Gender-related Development Index (GDI) is considered, it is even lower (0.452). Furthermore, the gender disparity is not confined to the rural areas only, but is widely prevalent in the urban areas too. “Women are in an equally disadvantaged position irrespective of their place of residence i.e., the magnitude of gender disparity is similar in the rural and the urban areas. Hence, gender disparity is extensive both in urban and rural areas.”141 Women are less educated and work longer hours than men and have little control over resources. This has resulted in their lower social and economic status. According to Nepal Human Development Report (2004: 53), the overall female literacy rate in 1991 was 25 percent as against 55 percent of male literacy that has increased considerably to 43 percent (female literacy rate) as against 65 percent of their male counterparts.

In Nepal, the ruling elite have always been from Indo-Aryan groups and it has resulted in State mechanisms being controlled by their values, norms and beliefs, that are patriarchal and hence the status of women has been low. As the patriarchal culture prevails over time, gender egalitarian communities also became co-opted to patriarchal values and norms through education and legal systems.142 The study conducted by Shakti (1996: 36) on women’s status in Nepal shows their secondary status and resulting oppression because of dominant Hindu religion and prevailing social and cultural norms in the country. Therefore, in spite of cultural and ethnic diversity, pervasive discrimination against women was upheld.

A single statement applicable to all the women in Nepal cannot be made, as different groups of women enjoy different status. Hindu women and women belonging to indigenous ethnic groups such as Rai, Limbu, Gurung, etc. have different rights and suffer from different mode of oppression. Women from indigenous groups enjoys equal rights, with equal or more access and controls of resources; relatively higher degree of social mobility, and freedom within the private sphere such as, choice of partner, age of marriage etc. However, their participation in public sphere is negligible due to the dominant ideology of Bahunbad (Bahunism). The practice of bride price also prevails among these Tibeto-Mongoloid groups; it is the daughter’s parents who are the beneficiaries when daughters get married. Therefore, a daughter is symbolic of some kind of property of the father’s family. A wife who divorces her husband and returns to her parent’s home has to return the bride price to her husband. Among the Kiratas, when a married daughter leaves her husband and returns to her parent’s home, she again becomes a member of her parent’s family. In contrast, Hindu women have no autonomy within private sphere, but enjoy limited position in the public sphere. Their oppression stems from the concepts of hierarchy, the caste system, traditional thoughts about food, and the high value of chastity. Therefore, it is important to recognise that the concept of gender equality is not novel in Nepal, though great discrimination prevails.

History has shown that women face many obstacles to achieving equality with men. These obstacles, which are sanctioned by culture, religion and social practices, have resulted in the discrimination that women face at all levels – from home to the highest official positions. For many years discriminations in law and practice were justified on the ground that women differ from men in their physical, mental and psychological

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143 In Nepal because of the socio-cultural diversity different groups of women enjoy different status. For more information on the diversities of socio-cultural status of women in Nepal see Haq, Mahbub Ul Development Centre (2002); Bennett, Lynn (2003); Shtri, Shakti (1996).

144 The term Bahunbad (Bahunism) refers to the dominance of the one caste, one language, one religion and one culture over other in a multi-caste/ethnic, multilingual, multi-religious and multi-cultural Nepalese society.

145 Bride price refers to a custom which is just the opposite of dowry. Here, the bridegroom or his parents customarily pay wealth to material to the bride’s parents.

aspirations.\textsuperscript{147} With the emergence of the women's movement in the mid nineteenth century, the impact of such discrimination on women’s lives became prominent.

In Nepal, the social and cultural oppression against women is believed to be rooted in Hindu religion based on caste system that disparages women in relation to men. Thus, women are looked upon as mere 'daughters' before they become 'wives' until they die as 'mothers' of children (particularly sons). Hindu scriptures also suggest that fathers, husbands and even sons should control women. There are also popular saying that further exemplify these beliefs...“let it be late, but it should be son,” “the birth of a son paves the way to heaven,” “a daughter is born with doomed faith,” “it’s a sin if the groom killed the bride, charity if nurtured,” and “women are always short-sighted.”\textsuperscript{148}

Because of patrilinear inheritance law, women are seen as a means to beget son/sons to inherit the private property hence women are forced to go to any extent for begetting sons even at the cost of their own health, in order to secure their marital life and to ensure their share of land via their sons.\textsuperscript{149} Thus women without sons are mostly abandoned or socially ostracized or co-wives. According to Nepal South Asia Study Centre (NSAC 1998), Nepal has one of the highest mortality rates in the world as women die younger than men (52 years for women and 55 years for men) because of son preferences. It also has high child mortality rates, nearly one child in every 10 die before reaching the age of one. This is due to early marriage, early pregnancy, and multiple pregnancies posing great risk to women’s mental and physical health.\textsuperscript{150}

The imposition of Hindu culture on the society has affected Nepalese women belonging to the scheduled caste (or untouchable) economically, socially and sexually. An

\textsuperscript{147} Similar kind of impression was shared by Sapana Pradhan Malla on 16\textsuperscript{th} June 2008 at the time of researcher's visit to Kathmandu. Malla feels that such kind of law is the result of narrow approach to understand equality. Malla is a Nepalese lawyer and member of the Nepalese Constituent Assembly. She is the Coordinator of the Forum for Women, Law & Development (FWLD) and also a Party member of CPN (UML). In 2008, she was a joint winner of the Gruber Prize for Women’s.

\textsuperscript{148} Some people follow a more egalitarian form of Hinduism. They rely on religious scriptures and Smritis, such as Manusmritis which offers contradictory views on the status of women. Women are sometimes portrays as a symbol of power and compassion. Manusmritis states, “Gods rejoice where women are worshipped.” Many follow other world religions. For a study on religion based oppression see Upadhya, Shri (1996).

\textsuperscript{149} Kasarda. J. et al. (1986), Status Enhancement and Fertility, New York: Academic Press Inc, pg.ii

\textsuperscript{150} Acharya, Meena (1994), The Statistical Profile on Nepalese Women: An Update in the Policy Context, Kathmandu: Institute for Integrated Development Studies, pg. 7
example of such practices is the fact that Hindu women are treated as untouchables during menstruation and for a maximum period of 22 days after birth of a child.\footnote{151} Further distinctions are made with castes. The social practice of untouchability against \textit{dalit} women is still prevalent despite being abolished by the Country Code of Nepal in 1963.\footnote{152} Gender discrimination in Nepal has actually increased, despite the country's accession to the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) on 5 February 1991\footnote{153} and other international instrument. Women still suffer from 23 discriminatory laws in Nepal and the country's tops South Asia's gender inequality ratio at 1:6 – a notch above India 1:5 and way above Sri Lanka at 2:3.\footnote{154}

The regional differences also affect the status of women. The situation is worst for those women who live in the far-western and mid-western development regions as the government has continually ignored implementation of development programs and allocation of adequate budget.\footnote{155} Also, casteism is deeply prevalent these regions due to the existence of discriminatory traditional practices between the so called "high" and the

\begin{itemize}
  \item to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;
  \item to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and
  \item to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.
\end{itemize}

\footnote{152}Nepal’s \textit{dalit} or untouchable population which numbers a little over 3 million continue to suffer from centuries old discrimination based on a rigid social caste structure. In many parts of the country, they are not allowed to enter temple premises, drink from the village tap or engage in community programs. Widespread illiteracy among \textit{dalis} and developmental neglect ensures they remain backward. For government policies and programme to abolish the practice of untouchability see His Majesty’s Government Nepal (HMGN) (1963), \textit{Country Code, 1963}.
\footnote{153}The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. The Convention defines discrimination against women as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." By accepting the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms, including:
\footnote{154}Manchanda, Rita (2001), \textit{Women, War and Peace in South Asia: Beyond Victimhood to Agency}, New Delhi: Sage Publication, pg.13
“low” castes. Besides, the subordination of girls and women, practices like child marriage, violence in marriage, dowry, chheupadi\textsuperscript{156}, deuki\textsuperscript{157}, badi\textsuperscript{158} and jhuma\textsuperscript{159} are still prevalent in Nepalese society.\textsuperscript{160}

In Nepal, there are various laws relating to marriage and family rights that are not only inconsistent with CEDAW Convention but also inconsistent with Article 11 of the Constitution of Nepal,\textsuperscript{161} 1990 (HMGN 1990). According to Article 16 (1) of CEDAW Convention, marriage and family rights are important and inalienable rights of women and state parties are obliged to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations. They are obliged, in particular, to ensure that men and women have identical rights to enter into marriage;\textsuperscript{162} state parties pledge to ensure the same rights and responsibilities for men and women in marriage and divorce.\textsuperscript{163} Moreover, men and women must be given the same responsibilities with regard to their children, irrespective of their marital status.\textsuperscript{164}

Despite these existing laws, majority of the communities in Nepal are still patriarchal where a women’s life is strongly influence by her father and husband. Such patriarchal practices are further reinforced by the legal system (Hindu law). Marriage has

\textsuperscript{156} Chheupadi is a practice in the western region of the country where women during menstruation and delivery are kept separately in the cowshed, as they are considered impure.
\textsuperscript{157} Deuki is a practice, where a person who wishes to gain personal advantage offers a girl or women to temple.
\textsuperscript{158} Badi is a community where the father and husband live on the earning of the women earned through sexual services. Usually, the father and husband cause their daughter and wives to carry on prostitution.
\textsuperscript{159} Jhuma is a tradition in the mountain region of Nepal, where second daughter of Sherpa community is sent to the monastery at young age.
\textsuperscript{161} Constitution of Nepal 1990, Article 11: Right to Equality says – (i) All citizens shall be equal before the law. No person shall be denied the equal protection of the laws. (ii) No discrimination shall be made against any citizen in the application of general laws on grounds of religion (dharma), race (varya), sex (liga), caste (jat), tribe (jati) or ideological conviction (vaicarik) or any of these. (iii) The State shall not discriminate among citizens on grounds of religion, race, sex, caste, tribe, or ideological conviction or any of these. Provided that special provisions may be made by law for the protection and advancement of the interests of women, children, the aged or those who are physically or mentally incapacitated or those who belong to a class which is economically, socially or educationally backward. (iv) No person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities. Any contravention of this provision shall be punishable by law and (v) No discrimination in regard to remuneration shall be made between men and women for the same work.
\textsuperscript{162} Article 16 (1) (a) of CEDAW: The same right to enter into marriage
\textsuperscript{163} Article 16 (1) (c) of CEDAW: The same right and responsibilities during marriage and its dissolution
\textsuperscript{164} Article 16 (1) (d) of CEDAW: The same responsibilities with regard to their children, irrespective of their marital status
an overwhelming importance in a women’s life as it determines almost all her life’s option and subsequent livelihood. According to the Hindu tradition, marriage is essential for all, whether man or women. While a man’s life is not considered complete without a wife, a woman has no option but to marry. Among the Indo-Aryan culture, girls are encouraged to marry in their early teens or even earlier by their parents as early marriage are rooted in both the concept of purity of the female body and the need for helping hands in farming households in general. In most cases of early marriage, the children concerned are too young to comprehend the issues involved and by the time they understand the reality, they are tied for life. Marriage is considered as a social contract between two clans rather than the personal affair of the bride and the groom. Women (and also men) rarely have any role in the choice of their own life partners among the Indo-Aryan group. Hence, a women’s power to accept or reject marriage partnership is evident in the index of freedom to exercise in the management of her life, and also of her status. In addition, polygamy, though outlawed, is still observed especially in the rural areas of the Terai.

On the other hand, women from Tibeto-Burman groups enjoy greater freedom in their choice of marriage partners, premarital sexual relations and socialising occur. But these women also face the risk of being left with young children without assets or helping hands to provide for them. Child marriages are rarer than with their counterparts in the Indo-Aryan groups. Nevertheless, a majority of the population is dominated by patriarchal value system that accords overwhelming importance to early marriage and male children.

According to NSAC (1998), the mean age of marriage for women in Nepal has increased significantly from 15 years in 1961 to 18 years in 1991, indicating a slow but steady change in social perceptions about the institution of child marriage. Early widowhood with little possibility of remarriage, particularly in the Indo-Aryan culture, is

166 Acharya, Meena and Basnnett (1981), op.cit., No. 146, pg. 155
168 Ibid, pg. 202
another curse upon women.\textsuperscript{169} While a higher proportion of divorced women indicate the increased determination of women to escape from oppressive marriages and situations of polygyny, it also indicates increasing abandonment by men.\textsuperscript{170} In many laws\textsuperscript{171}, the definition of family does not include married daughter. This is also discriminatory as it reinforces the traditional notion that the daughter’s place is her husband’s house.\textsuperscript{172}

In a patriarchal society, women derive social status primarily from fertility as carriers of "clan seeds" and mothers of the male progeny.\textsuperscript{173} But Nepalese women have little control over their own fertility or children.\textsuperscript{174} The survey conducted by Nepal Fertility, Family Planning and Health Survey (NFHS, 1996) shows that there has been a continuous decline in the Total Fertility Rate (TFR)\textsuperscript{175} since 1970s. The TFR for 1996 estimated at 4.6 per woman as compared to 5.1 per women in 1990s indicates an accelerate decline, though still high even compared to other South Asian countries (regional average of 3.4 in 1996).\textsuperscript{176} There is a significant difference between the fertility behaviour of urban and rural women. Urban women give birth to 2.9 fewer children during their lifetime than their rural counterparts whose TFR is 4.8. It also differs perceptibly by education levels; women with no primary education have as much as 2.6 children more than those with some secondary education. Higher school education also makes a substantial difference. The

\textsuperscript{169} At the time of researcher’s visit to Surkhet, a hill town in western on 14\textsuperscript{th} May 2009 local women shared that a women who are divorcees are stigmatised even today in the Hindu tradition. Women who are divorced have very little chance of remarriage within her socio-economic group.
\textsuperscript{170} Forum for Women, Law and Development (FWLD) (2006), op.cit., 160, pg. 35
\textsuperscript{171} Section 2 (h) of the Working Journalists Act, 2051 (1994); Section 2 (e) of Land Act, 2021 (1964); Section 2 (e) of the Health Service Act, 2053 (1996); Section 2 (d) of the Civil Service Act, 2049 (1992); Section 2 (d) of the Act relating to the Remuneration, Terms and Condition of the Judges of the Appellate Court and District Court, 2048 (1991), Section 2 (e) of the Bonded (Kamaiya) Labour (Prohibition) Act, 2058 (2001); Rule 2 (e) of the Arms and Ammunition Rules, 2028 (1971); Rule 2 (d) of the Rastriya Samachar Samiti Rules, 2041 (1984); Rule 2 (f) of Armed Police Rules, 2060 (2003); Rule 2 (b) of Passport Rules, 2059 (2002); Rule 2 (d) of the Police Rules, 2049 (1991); Rule 2 (f) of the Rules to Provide Compensation to non-governmental Persons, 2024 (1967); Rules 2 (b) of the Royal Nepalese Army (Daily and Travel Allowances) Rules, 2033 (1976); Rule 2 (f) of the Rules Relating to the Staff of the Office of the Auditor General. 2050 (1993); Explanation to Rule 55 of the Rules Relating to Terms and Condition of Service of Teachers and Staff of Tribhuvan University.
\textsuperscript{172} Forum for Women, Law and Development (FWLD) (2006), op.cit., 160, pg. 36
\textsuperscript{174} In Nepal, women are worshipped for their fertility, in the exalted status of mother goddess according to the Hindu tradition but on the other hand, the same tradition controls over women’s fertility or children.
\textsuperscript{175} Total Fertility Rate (TFR) refers to average number of children women of age 15-45 years deliver s in their life. The abbreviations shall be used in all in-text references in this study.
\textsuperscript{176} Progress Report (2005), Nepal Millennium Development Goals (MDG), Kathmandu: United Nation Development Programme (UNDP), pg. 73
TFR for women with secondary education is only 2.5 while for those with primary education it is 3.8, and for those with no education, it is 5.1.\textsuperscript{177}

According to Nepal Living Standards Survey (NLSS, 1996), the effect of income on fertility behaviour seems to be low. Decline in fertility behaviour is slowest in the mountains and this may be attributable to the access factor. In spite of greater access to family planning services, the Terai population exhibits a slightly slower pace of fertility decline. In terms of development region, the mid-Western region lags far behind other regions due to lack of accessibility. Nepal Fertility, Family Planning and Health Survey (NFHS, 1996) also show that use of contraceptive varies from 15 percent to 29 percent of reproductive age women. Similarly, there is very little awareness on the health and specifically on reproductive health issues. Although, educated women to a large extent influence on awareness of contraceptive use, and birth intervals, illiterate women have very little or no access to contraception and hence many a times to get rid of unwanted pregnancy, abortion is used as a means of family planning. Awareness to a large extent also varies significantly with income. But due to frequent childbirth and lactation, women are also forced to withdraw from active economic work, thus making them dependent on other members of society.\textsuperscript{178}

According to Ministry of Health/HMGN (2002), Nepal has one of the highest maternal mortality rates in the world as 539 women die per 100,000 live births due to pregnancy related complications. Besides death, unsafe abortion also leads to medical complications including haemorrhage and abdominal injuries such as tearing and puncturing of uterus resulting in infertility in most of the cases. About 20-40 percent of women admitted as obstetric and gynaecological patients in the major hospitals of the country are those with complications of unsafe abortions.\textsuperscript{179} Due to the stringent legal provision, women usually do not tell even the doctors about the unsafe abortion, which at times result in wrong medication and side effects.

\textsuperscript{177} Forum for Women, Law and Development (FWLD) (2006), op.cit., 160, pg. 33.
\textsuperscript{178} Forum for Women, Law and Development (FWLD, 2005), Activities on Release of Women Imprisoned on Charges of Abortion and Abortion Related Offences, Kathmandu: FWLD, pg. 6
\textsuperscript{179} There were reports of stick with mud or cow-dung and even poisonous grass sometimes is inserted inside the vagina to induce the contraction of the uterus and cause the fetus to be expelled. Sometimes the abdomen of the women is massaged with hand or feet so that the fetus is expelled.
## Table 2.1: Family Planning

<table>
<thead>
<tr>
<th>Year</th>
<th>Contraceptive prevalence rate</th>
<th>Births attendance rate</th>
<th>Maternal mortality rate</th>
<th>Age at first marriage of women</th>
<th>Total fertility rate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Trained health personnel</td>
<td>Traditional birth attendant</td>
<td>Relative, friend &amp; other</td>
<td>No one</td>
<td></td>
</tr>
<tr>
<td>1991</td>
<td>30% (1997)</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>2001</td>
<td>37%</td>
<td>13%</td>
<td>23%</td>
<td>55%</td>
<td>9%</td>
</tr>
<tr>
<td>2005</td>
<td>42%</td>
<td>20%</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
</tbody>
</table>


Although, the Eleventh Amendment to the Country Code, 1963 has liberalised the law related to abortion, it is only permitted in limited circumstances with the consent of the concerned pregnant women.\(^\text{180}\) It is permissible to carry out abortion in the first trimester (12 weeks). Secondly, in case the pregnancy results from rape or incest, it is permissible up to 18 weeks and lastly, if the life of the women is at risk or affects her physical or mental health or if the foetus is deformed, abortion is permissible at any time during the pregnancy, with the recommendation of an authorised medical practitioner.

Moreover, medical abortion is not recognised, limiting women’s access to safe and affordable abortion services. Economic reasons, HIV/AIDS and trafficking\(^\text{181}\) are also not recognised as ground for abortion. According to the law, if someone causes abortion as a result of an act of anger or malice towards another person, the punishment is up to six months or fine of up to Rs.1000 depending on the period of pregnancy and knowledge of the perpetrator that the women is pregnant.\(^\text{182}\) However, if a woman undertakes abortion in other circumstances, she is punishable to imprisonment of up to 5 years depending on the period of pregnancy.\(^\text{183}\) This provision blatantly discriminatory as a woman who undertakes abortion on her own is punishable much higher than any one else committing the same act.

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\(^\text{180}\) No. 28 B of the chapter on Homicide, the Country Code, 1963
\(^\text{181}\) According to SAARC convention - ‘Trafficking’ means the moving, selling or buying of women and children with and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking; South Asian Association for Regional Cooperation (SAARC), SAARC convention on Preventing and combating Trafficking in Women and Children for Prostitution, Kathmandu: SAARC Secretariat, pg. 2
\(^\text{182}\) No.28A and 32 of the Chapter on Homicide, the Country Code, 1963
\(^\text{183}\) No.28 of the Chapter on Homicide, the Country Code, 1963
Abortion is still very expensive due to non-implementation of the abortion procedure order and hence conducted secretly in most cases. It is far from reaching the poor and needy women, especially those from the rural areas. Sometimes, women are even compelled to go across the border to India to receive such services. Moreover, the price for abortion is often very high thus, women to unsafe abortion. In rural areas, even if a woman wants to abort the foetus on health grounds, she is unable to do so and has to resort to quacks, increasing risk to her health.\footnote{Forum for Women, Law and Development (1996b), Monitoring Framework for Implementation of Abortion Law in Nepal, Kathmandu: FWLD, pg. 5}

According to New ERA (1996), over the past two decades, with the overall progress in the general health situation, there have been some significant improvements in the health status of Nepalese women. Firstly, the mean age of marriage for girls increased by more than 2.5 years between 1961 and 1991. Secondly, the fertility decline has accelerated during the 1990s, with the TFR falling from 6.3 in 1976 to 4.6 in 1996. Thirdly, the maternal mortality rate has fallen to 539 per 100,000 women compared with more than 800 reported during the 1980s (though it remains still high by South Asian standards). Fourthly, the life expectancy of women has increased by more than 11 years between 1975 and 1993, though still remaining lower by 1.5 years compared to that for men\footnote{Life expectancy rates cannot be used for comparison of male/female gender status of health since birth and death registration is not practiced widely. Male life expectancy is derived from an estimate of female life expectancy and an assumption that men live longer than women in South Asia (see CBS, 1995, p 94).} and lastly there is improvement in overall sex ratio in the country and in all ecological regions.\footnote{Ecological regions refer to the three geographical regions i.e. the Hill region, the Terai region and the Mountain region.} However, Nepalese women still suffer from lack of medical facilities compared to their male counterparts in case of pregnancy complications, malnutrition, anaemia, and many other diseases related to their reproductive functions.\footnote{Nepal South Asia Study Centre (NSAC) (1998), Nepal Human Development Report. Kathmandu: NSAC, pg. 119} Based on the survey conducted by Department of Health (NSAC 1998) in small hospitals (since nationwide data on anaemia was not available), it was estimated that more than 50 percent of women between 15-49 age groups were anaemic. Deaths due to pregnancy and child delivery are very high in Nepal. According to Beijing+10 Country Report (2004), three out of four women die due to delivery complications. It was also reported that educated women have better treatment and access to doctors and medical workers then illiterate
women. NFHS (1996) reports also shows that doctors and nurses assisted only nine percent of mothers during delivery, Village Health Workers (VHWs) and Mother and Child Health Workers (MCHVs), assisted another one percent. Over 90 percent of women deliver at home and only five percent of rural women delivered at a health facility. Even in urban areas, this proportion is below 50 percent. Antenatal care in Nepal is rare, with only 2.8 percent of mothers receiving it. Moreover, there is a large discrepancy between urban and rural women in terms of their access to health services.

In Nepal, high level of malnutrition and lack of health awareness has lead to high infant and child mortality rates. However, sex discrimination and the strong preference for sons in Nepal are not translated into differential behaviour towards the health status of male and female infants. The difference in male/female immunization rates is not significant either in urban or rural areas. However, according to NLSS (1996), the Terai and hill populations show higher differences in male/female immunization rates than that of mountain population. Similarly, the middle two income quintiles (3rd & 4th) show larger gender gaps in immunization rates than the top two and bottom quintiles. This indicates that gender discrimination is not directly linked to economic status.

Infant and child mortality rates are important indicators of women's status for two reasons. First, they reflect social attitudes towards male and female children. Second, they also provide an outstanding of the health situation of women as mothers. A comparatively higher female infant and child mortality rate signifies social neglect of female infants and children. At the same time, a high infant and child mortality rate forces women towards multiple and wasted pregnancies, thus depleting their strength.

<table>
<thead>
<tr>
<th>Mortality rate</th>
<th>% of the vaccinated (age 12-23 months)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Infant</td>
<td>BCG</td>
</tr>
<tr>
<td>1991</td>
<td>107%</td>
</tr>
<tr>
<td>2001</td>
<td>64%</td>
</tr>
<tr>
<td>2005</td>
<td>-</td>
</tr>
</tbody>
</table>

Table 2.2: Child Health

188 His Majesty's Government Nepal (HMGN) and New ERA (1996), Family Health Survey, Kathmandu: HMGN/Ministry of Health (MoH), pg. 7
Infant Mortality Rates (IMRs) do not indicate any discrimination towards female children. The Demographic Sample Survey (DSS, 1976) estimated the IMR at 141 per 1,000 live births for males and 123 for females. Thus, strong preference for sons reported in various studies is not reflected in the IMR. On the other hand, gender discrimination in the family behaviour towards male and female children is captured distinctly by the gender difference in child mortality rates. Contrary to the popular scientific beliefs female children are stronger than male children during their infancy and early childhood – resulting in higher mortality rates worldwide for male infants and young children – the under-five child mortality rate is still higher for girls than for the boys in South Asia. In Nepal, 125 per 1,000 boys under five die each year, compared with 139 per 1,000 girls.

In Nepal, the life expectancy of women is shorter than men, contrary to the international and even the South Asian trends, both of which indicate higher mortality rates among men. The higher mortality rate for women in Nepal is attributed to higher female child and maternal mortality rates.

In Nepal, the sex ratio of males per 100 females (100/1000) had decreased in almost all age groups in 1991 as compared to 1981. UNDP (2006) report shows an excess of females in the prime fertility age range (20-34 years of age) from 1971 through 1991 that would seem to be clear evidence of male out-migration from native areas, probably to the Terai and other parts of Nepal. Among the ecological regions, the Terai had the highest sex ratio both in 1981 and 1991 while the Central Hill region – which includes the

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189 Infant Mortality Rate (IMR) refers to total number of new born babies among 1000 who die within 12 months of their birth. The abbreviations shall be used in all in-text references in this study.

190 United Nations Development Programme (UNDP, 2006), Human Development Indicators Nepal, New York: UNDP, pg. 164

191 Ibid, pg. 165


193 Sex ratio defines as the number of males per 100 females (or females per 100 males). It is an important indicator of women's status because it is a cumulative product of demographic and social behaviour patterns. A sex ratio over (below) 100 denotes an excess of males (females) over females (males) and a ratio below 100 denotes an excess of females (males) over males (female). As a natural rule, there is a preponderance of male births over female births among the human population in general. By the age of five, the sex ratio is about equal since, by nature, male children are physically weaker than female children are, and thus a smaller proportion of males than females survive (United Nations 1991). Furthermore, universally, a larger proportion of women than men survive to old age. Consequently, there are more women in the world than men. However, in South Asia, the economically more backward countries such as Nepal, Bangladesh, and India used to have opposite overall sex ratios due to the socioeconomic discrimination against female children and against women in general. In Nepal, however, while the overall sex ratios observed in 1971 and 1981 were in favour of males, the 1991 census shows a slight dominance of females.
Kathmandu Valley—had more men than women. An additional reason for the highest sex ratio in Terai is related to the relatively lower socio-economic status of women among the Terai communities of Indo-Aryan origin. This leads to a higher death rate among women. Nevertheless, even in this region, the sex ratio declined from 108.3 in 1981 to 103.9 in 1991, indicating a general improvement in the health status of women.

Although, education to both girls and boys has been promoted by the State, no strong steps have been taken to guarantee this right. As a result of the lack of comprehensive educational policy laws relating to compulsory education, girls are deprived of education in comparison to boys. Education becomes the priority for sons and marriage for daughters for families with limited income. Nevertheless, Nepalese women have made substantial gains in literacy over the last 30 years, partly due to vigorous government programs for girls’ education starting in the early 1970s, including the training of female teachers from backward areas. Female literacy rate (six years and above) has increased from a meagre four percent in 1971 to 43 percent in 2001. Despite the gains in overall educational opportunities, however, the level of literacy is still low, and the gender gap in the literacy rate remains enormous.

According to NLSS (1996), 47 percent of adult urban women can read and write while only 17 percent of adult women can do so in rural areas. This shows that the difference between urban and rural women literacy ratio is still high. There is also a significant difference in female/male literacy gap among various ecological and 'development regions.' According to ADB (1999) report, Kathmandu Valley has the highest female literacy rate and also the highest female/male literacy ratio. There are 68 literate adult women to 100 literate adult men in the valley, while there are only 34 literate women to 100 literate men in rural areas.

As a result of lack of effective educational policy for girls, they are deprived of education contributing to the rampant illiteracy. Enrolment levels still show a severe

195 Acharya, Meena (1994), op.cit., No.150, pg.76
196 Development regions refer to the geographical region of Eastern, Central, Western, Far Western and Mid-Western Regions in Nepal.
gender gap in access to education. Burdened with domestic responsibilities, girls do not have enough time to study and hence their performance in the school is affected, leading to high drop out and repetition rates for girls. UNDP (2005) Nepal Millennium Development Goals reports shows that for each two boys, four girls drop out, and for each 22 boys repeating, 25 girls repeat. The risk of dropping out is higher for girls across regions. As in the case of literacy, regional variations in school enrolment levels are quite significant, and urban-rural differences are also quite high. Only the community schools provide free education to girl students.

Table 2.3: Net Enrolment Rate 2005

<table>
<thead>
<tr>
<th>Level</th>
<th>Total</th>
<th>Girls</th>
<th>Boys</th>
<th>Gender Equity Index</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary</td>
<td>86.8</td>
<td>83.4</td>
<td>90.1</td>
<td>0.9</td>
</tr>
<tr>
<td>Lower Secondary</td>
<td>46.5</td>
<td>43.1</td>
<td>49.8</td>
<td>0.9</td>
</tr>
<tr>
<td>Secondary</td>
<td>32.4</td>
<td>29.2</td>
<td>35.5</td>
<td>0.8</td>
</tr>
</tbody>
</table>


Children in the rural and remote areas have less opportunity for secondary education. Apart from social factors, distance of school from the house or village, lack of physical facilities (such as toilets and hostels) and a lack of trained teachers (especially female teachers) are considered to be major constraints in increasing girls' enrolment in secondary education, as the parents do not feel comfortable sending their daughters to the school.\textsuperscript{197} Hence, after puberty, there is increased drop out rate. Moreover, as the level of education increases, the female enrolment rate declines progressively. Household income, workload, and the level of concern with the purity of the female body (that leads to early marriage) are some of the important factors influencing the decision on girls to school. NLSS (1996) also shows that, for those who attended school the mean number of years of schooling (primary + secondary + higher secondary) was uniformly lower for girls by about one year, with little difference according to socio-economic variables, such as ecological zone, rural or urban residence or consumption levels. As long as there are no financial constraints for the family, girls are allowed to go to school but, as soon as it arises, the first casualty is the female child's education.\textsuperscript{198} Girls in lower income families

\textsuperscript{197} Acharya, Meena (1994), op.cit., No. 150, pg. 10
get little opportunity to go to school and those who do go to school hardly get any further education beyond the secondary level.

One of labourer said:199

“...In Simarbanan, a dusty little village in southern Nepal, government’s effort to reduce poverty by providing free primary education to the marginalised communities. Jaleshwore Sardar, a wage labourer, who realises the importance of educating his children but says he’s too poor to send his children to school. His thirteen years old twin daughters Ganga and Jamuna Sardar have never stepped foot inside a school.”

Like Ganga and Jamuna there are many girls who have never seen the inside of a classroom. Besides, children (girls) are a source of income for their families since they make money by working in other peoples’ homes. Another compelling factor hindering women's education in general is arkako ghara zane,200 with the result that parents have no claim on their work or income as adult women.

There are also those with the primitive thinking that giving birth to a girl is like adding a burden on the shoulder. Since her ultimate place of living is her husband’s house, there is much less that she can offer. Hence, being a daughter, she would be expected to live in a constrained environment that offers her little chance of exposure, shoulder the responsibility of taking care of her siblings, do the household work till she ultimately gets married to a person of her parent’s choice, have kids, raise them and the cycle goes on.201 Parents believe that household work is more important than education. Majority of the women interacted during field visit in the Maoists affected village agreed that they are uneducated as a result of deprivation of education.

Nepalese women are much more disadvantaged educationally than men due to discrimination in education. All the maladies that lead to subordination, subjugation, and exploitation arise due to lack of education. In Nepal, majority of the women are unpaid family workers due to lack of vocational education/training. And those who are employed are engaged in unskilled/informal sector where the nature of work is very exploitative. Lack of education plays a major role in women’s economic dependency and their

199 Based on the interaction with one of the labourer near Nepalgunj on 18th July 2009 at the time of researcher’s visit to Nepalgunj, Nepal.
200 Arkako Ghara Zane means girls will go to other people’s houses after marriage.
victimisation in various ways. Most girls/women fall easy prey to trafficking. They are unaware of basic reproductive health and reproductive rights, which contributes to high morbidity and mortality rates. They also become victims of domestic violence due to lack of educational opportunities. Hence, lack of education has forced most women to live an inhumane life with no individual identity, lack of self-esteem, and loss of dignity.\footnote{Forum for Women, Law and Development (FWLD, 2006), op.cit., No. 160, pg. 16.}

In Nepal, violence against women takes various forms, ranging from verbal "eve teasing", physical/sexual abuse within the household, to rape and trafficking. Nepalese women in general and rural women in particular are vulnerable to both domestic violence\footnote{Domestic violence is manifested as wife battering, neglect and physical abuse of the girl child, female infanticide, early marriage, dowry related violence, sexual abuse in the household, polygamy and the marital rape.} and the public violence.\footnote{Violence in public arena is manifested in rape, sexual abuse and sexual harassment in the workplace, trafficking in women and girls, forced prostitution and traditional harmful practices such as Dewki, Badi, Jhuma and the witchcraft.} But lack of comprehensive data and people’s awareness of these issues, as well as effective law enforcement, has left these cases almost untouched.\footnote{Acharya, Meena and Basnnett (1981), op.cit., No. 146, pg. 151.} According to SAATHI and the Asia Foundation (1997) report, 95 percent of the women and girls reported first-hand knowledge of violence, of which 77 percent were from their own family members. Such violence is reported across all ethnic and lower-caste income groups. Beating is one of the most common forms of violence on women and girls (82 percent) followed by assault, rape, and forced prostitution.\footnote{Gautam, Shobha (2001), Women and Children in the Periphery of The People’s War, Kathmandu: Institute of Human Rights Communications, pg. 38.} Women also faced sexual harassment in the workplace and in public but are unable to complain due to lack of provision for grievances.

Lack of women’s economic and bargaining power in the household is another underlying cause of domestic violence. According to New ERA (1997), one of the major causes of women leaving the married household has been polygyny and subsequent violence against one of the co-wives. Alcohol-related violence in another domestic violence that is high all over Nepal and across all communities. Since there are no laws to prohibit domestic violence, domestic violence against women is on the rise. Moreover, law still law does nothing to discourage bigamy resulting in domestic violence against women.
similar to the dowry system is still prevalent. Among the Maithili communities of Western Terai a system called *Tilak*\(^\text{207}\) is practice. Traditionally, a milder form of dowry has been prevalent among the Brahmins, Chetris and Newars in hill region. The dowry usually consists of bed and bedding and some utensils. But over the years, the demand from the groom’s family for a larger dowry has increased, adding further psychological pressure on women. The old tradition of nominal dowries is being converted into a new channel for accumulating business capital and acquiring modern consumer durable goods, such as motorcycles, televisions, furnishings, freezers, etc. A situation analysis of violence against women and girls in Nepal conducted by SAATHI (1997) indicates that 37 percent reported dowry-related violence among traditional forms of violence against women and 73 percent cited financial dependence as the reason that prevents women from reporting an incidence of violence.

Lack of effective laws to prohibit the practice of dowry has resulted in physical and mental violence against women. There have been extreme cases of stove-bursting, women's "dowry death" and women committing suicide due to practice of dowry. For instance,

> "...In 2000, 23 year old Indravati got married to Rampunit Mahato of Hetauda. It was a customary marriage and she didn’t get enough dowry as expected by her husband. Within a week of their marriage, her husband started harassing her by raising the issue of dowry. Indravati is a mother of two children. Although she was used to being harassed constantly by her husband, the limit crossed when she tried to kill herself by throwing herself down form the first floor of the house. As a result she suffered severe head injury but was able to survive with the help of her neighbours who made arrangement for her timely medical care. Rampunit was arrested by the police for his act. Indravati did not allow police to take any action against her husband and freed him from the police custody. After one year of this incident, he threw her out of the house with her two children of 4 years and 6 years and filed a suit of divorce against her by presenting a photograph alleging illicit sexual relationship of Indravati with her god-brother. There was no legal provision to question anybody’s character on the basis of photograph only but such unfortunate incident robbed her life."\(^\text{208}\)

Commercial Sex Workers (CSWs) and trafficking are distinct but related problems. In most cases, women are forced into prostitution in the later stages of their lives to earn a living after having earlier been raped or sold. According to New ERA’s (1997), trafficking

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\(^{207}\) *Tilak* refers to a bride’s price which is negotiated and received by the groom or his family before marriage. This system is practice by communities in Western hills and in some Indo-Aryan communities.

\(^{208}\) *Kantipur Daily*, July 8, 2000.
and CSWs in Nepal is widespread and deeply rooted in society. CSWs are found all over Nepal, but they tend to be concentrated in large cities, border towns, trunk route townships, and bazaar areas in the villages.\textsuperscript{209} Women of all ethnic groups and castes are involved in this trade, but the largest number comes from low-service castes and high-caste Brahmin, Chhetri communities. The middle castes of Tibeto-Burman groups like Tamang, Magar, Gurung, and Rai, Limbu and communities such as Tharu, Chepang, Dhimal, Batar, Satar, Jhanger, Dhanger and Mushars are also involved in large numbers.

In Nepal, \textit{tsukri} \textsuperscript{210} or a person in debt is common among the \textit{kamaiya}\textsuperscript{211} (bonded labour), \textit{dalits} or the low caste communities. These communities encourage their women and children (especially girls) or even sell them to traffickers by their family members to work in sex industries and make quick money in order to pay off 'debts.'\textsuperscript{212} The \textit{kamaiya} system was outlawed in 2000, yet the system still has strong effects on the Nepalese economy and livelihood of the people. More specifically related to the sexual exploitation of women are the practices in the \textit{badi} and \textit{deuki} communities. In a study done by Save the Children, Norway (2005), it explains the wide acceptance of body trade by women in these two customs as follows:

"The badi society is an example of a culturally accepted model - where daughters are brought up with the notion they earn their living by trading their bodies. Another example is the deuki culture - which marries off a girl child to the temple Gods, expecting her to make a living by visiting houses, performing cultural shows and pleasing the hosts by selling her body. These are manifestations of culturally accepted trade where oftentimes girls are compelled to follow their mothers' footsteps."

Thus, in these cultural communities where the practice of bondage and enslavement has been continuing for generations - sales of human beings and forced labour becomes an

\textsuperscript{209} Action AID (1998), \textit{A Public Secret: An Exploratory Study on Hidden Sex Work in Kanchanpur District}, Kathmandu, pg. 54.

\textsuperscript{210} The word \textit{tsukri} is used to describe an individual in debt-bondage or in enslavement. In debt bondage, "labourers are forced to accept exploitative conditions of work until the 'debt' is repaid.

\textsuperscript{211} On July 17, 2000, the government of Nepal made an historic announcement. It declared the \textit{Kamaiya} or bonded labour system that affected some 100,000 members of the Tharu ethnic community in west Nepal was abolished.

\textsuperscript{212} A report by an NGO \textit{Terre des hommes} indicated that brothel business utilising \textit{tsukris} are more profitable because owners can retain all the fees for women's services. Purchasing a \textit{tsukri} is an investment - for instance, the cost of a Nepalese \textit{tsukri} in Mumbai in 2004 was approximately 100,000 to 120,000 Indian rupee (US$ 2,270 to 2,720) - brothel owners can generate a considerable amount of profit during her two to ten years of enslavement, through selling her virginity, forcing her to perform oral and anal sex, and not giving her any payment.
acceptable way of living. Among the most vulnerable populations are the poor, the low castes, and considerably, women and children.

Poverty and the search for jobs are the immediate cause for women becoming CSWs. The progressive decline in the demands for the services of village craftsmen, and the accelerated impoverishment of the lower peasantry due to land division and subdivision have pushed women from both low-service castes and high caste families into prostitution.\textsuperscript{213} Moreover, since women have very little means of livelihood and social status outside marriage, prostitution becomes the quickest way to access economic resources for single women. Large number of women and children especially from poverty-stricken hilly districts are also being sold to the brothels in the major Indian cities every year. There are about two hundred thousand girls in the brothels of India and every year about five to seven thousand girls are being trafficked to India.\textsuperscript{214} A considerable number of them have either been forcefully abducted or trafficked to India under the pretext of finding a good job or marriage. Most of the girls taken from the rural villages have no idea where they are being taken until they are sold and abused. Use of drug among youngsters also lured young women of middle class families into prostitution even though they are not necessarily illiterate or from poor family backgrounds. Violence against girls and women on a large scale by husbands and other members of the affiance household, as well as occasionally by maternal relatives – particularly uncles, brothers, and aunts – is another major cause of pushing women into prostitution, especially for those in low-caste households.\textsuperscript{215}

The victims of trafficking are generally teenagers and most of them are forced into flesh trade, where they face both physical and mental abuses. In many cases, trafficked women are forced with unwanted pregnancies or their pregnancies are terminated in non-medical settings leading to health problems. These girls are deprived of health facilities either due to their low economic status or fear of HIV/AIDS. Also, in cases of sexual

\textsuperscript{215} Hausner, Sondra L. (2005), The Movement of Women: Migration, Trafficking, and Prostitution in the Context of Nepal’s Armed Conflict, USA: Save the Children, pg. 112
abuses, very few of the victims have access to health facilities either due to fear of social stigma.\textsuperscript{216}

Apart from that, many trafficked girls/women suffer from various types of diseases and they do not have enough resources for medical care. As a result of lack of provisions relating to rehabilitation and health facilities in the present law, victim of trafficking forced into prostitution are deprived of specialised health facilities.\textsuperscript{217} Hence even upon their rescue, these women are deprived from educational and health facilities. The stigmatisation attached to the sex workers also leads such victims to further isolation. They also face the problems of identity crisis as they are deprived of their family and cultural rights.\textsuperscript{218} In many cases, these women face problems in filing cases against the culprit. Due to the high-handedness in the business of trafficking, police refuse to register their cases. Even if their cases are registered, the trafficked woman has to repeat her case before the police, the public attorney and the open court. The victims are subjected to humiliating question during the examination and cross-examination in the open court, which is equal to reliving the entire set of torture. Although, the provision of in-camera hearing has been adopted by various regulations of courts in Nepal,\textsuperscript{219} actual implementation needs to be observed (FWLD and UNIFEM 2005). There are very few instances of the culprit being punished, leaving the victim without justice and eventually in frustration. In most cases women prefer not to file their case in order to escape humiliation in the open court.

Also low record of the cases related to trafficking\textsuperscript{220} is a result of the discriminatory law against women. Due to societal fears, there is minimal reporting of cases and the

\textsuperscript{217} Sarup, Kamala (2005b), \textit{op.cit.}, No. 213
\textsuperscript{218} Forum for Women, Law and Development (FWLD) and United Nations Development Fund for Women (UNIFEM, 2005), \textit{Effectiveness of Existing Laws and Institutional Mechanism to Combat Trafficking in Women and Children in Nepal}, Kathmandu: FWLD and UNIFEM, pg. 2
\textsuperscript{219} Rule 46 (b) of the District Courts Regulations, 2052 (1995) adopted on 2060 (2003)/8/1, Rule 60 (a) of Appellate Court Regulations, 2048 (1991), adopted on 2060 (2003)/8/1, Rule 67 of the Supreme Court Regulations.
\textsuperscript{220} Ministry of Law and Justice/HMGN has passed the Human Trafficking (Control) Act, in 1986. The South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002) represents significant and substantial progress in the fight against trafficking. Although efforts to draft a convention to combat trafficking began at Ninth SAARC Summit in 1997, it was adopted by SAARC during Eleventh SAARC Summit on 5th January 2002 recognising the pernicious problem of trafficking and detailing out majors in which members state should carry out to combat trafficking in women and children from the region. But despite these law and conventions, movement of women’s trafficking is still a major problem in the Nepali society.
offenders are not convicted. It also results from gender insensitive court procedures where many insulting questions are posed to the victim. According to FWLD and UNIFEM (2005) report, only 150 cases were reportedly investigated by enforcement agencies in the fiscal year of 1994-95. The number of cases has decreased in subsequent year as only 133 were investigated in 1995-96, and 107 in 1996-97. As learnt from the Government Attorney’s Office, out of 150 cases reported in the fiscal year 1994-95, only 39 were presented in courts of law. Similarly, in 1997-98, 130 cases were registered at the Police station and only 125 were initiated by the Government Attorney’s Office.

In 2002, FWLD filed a case\(^{221}\) challenging the validity of the definition of rape in the Country Code, 1963 the Supreme Court recognised marital rape as an offence and issued a directive order to introduce a Bill for providing immediate relief to the victim. However, to this day, the rape law has not been amended to include marital rape in the definition of rape. The Constitution of 1990 under Article 20 (1) also guaranteed the right against exploitation to all its citizens. As such, the Article explicitly prohibits “the trafficked of human being, slavery and serfdom or forced labour in any form.” Any act contravening this provision is, therefore, punishable as an offence under the existing law. But substantive and procedural laws enacted to make this constitutional spirit into a living reality are not adequate and effective.

Government policy and the legal framework against GBV in Nepal are far from complete. The area where most progress has been made is girl trafficking, for which the Government initiated a new policy in 1997.\(^{222}\) The policy lay down that the Government will,

i. Initiate an extensive campaign against girl trafficking,

ii. Promulgate laws to end discrimination against women,

iii. Strengthen cooperation with Non Government Organizations (NGOs) and International Non Government Organization (INGOs) to implement programs for controlling trafficking and

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\(^{221}\) Meera Dhungana for FWLD vs. HMG/Nepal, Publication of Decisions relating to Human Rights, Special Issue, Supreme Court, 2002

\(^{222}\) Forum for Women, Law and Development (FWLD) (2006), op.cit., No. 160, pg. 34
iv. Initiate cooperation with other countries at bilateral and multilateral levels to control girl trafficking and Acquired Immune Deficiency Syndrome (AIDS).

In addition, the Government committed itself to further actions including increased compensation for the victims of sexual exploitation, the creation of a national commission on girl trafficking, building up of consensus among all political parties on the issue of girl trafficking, and adopting appropriate measures for alternative employment. The Government has also promised the creation of family courts to resolve family disputes. After 10 years of Government policy that was passed in 1997, another Interim Constitution was formed in 2007 recognizing the rampancy of the violence against women where it has spelled out under the Women's Right that physical, mental or any other form of violence against women shall be legally punishable. Malla was quite critical with the policy that the government has laid down against GBV. According to her,

"...Most of the times these policies are often part of the problems rather than the solution to stopping GBV because the policies themselves are often involved in illegal practices such as polygynous and child marriages and trafficking of women. She further add by saying that in most cases, law take the sides of men in cases of domestic violence while in cases of force trafficking, it is often the CSWs who are penalised rather than the traffickers or the clients."

Nepal has adequate laws on trafficking, but this is the only area for which an adequate legal framework exists among all other GBV issues. According to Ministry of Law and Justice/HMGN, human trafficking, particularly among minors, is punishable by up to 20 years of imprisonment. However, the punitive provisions of the law on rape are not considered to be equal to international standards. For example, the rape of girls below 14 years of age is punishable by imprisonment of 6 to 10 years while, in the case of women above 14, by imprisonment of 3 to 5 years. The punishment provisions for rape criminals are considered to be insufficient, and accordingly, amendments for more strict treatment have been introduced in the Parliament. The bill of the Parliamentary Secretariat (1996) proposes imprisonment for 10 to 20 years in the case of victims below 10 years of age, 7 to 14 years of imprisonment in case the victims is between 10 to 16 years of age, and 5 to 10 years of imprisonment in case the victims is above 16 years old.

223 Kamala (2005b), op.cit., No. 213
Violence against women both in the domestic and public spheres (i.e., workplace) is hardly touched by current laws. The only available redress to women victims of domestic violence is their share of property in the affiance household. According to Amnesty USA (2006), mental violence is almost completely ignored as a human rights issue in Nepal. Although, the antiliquor campaign brought together women at different levels – including a national coalition of women’s pressure groups, women’s wings of various political parties, and district and village offices – and put pressure on national policies on GBV, positive results are yet to be achieved.

II

The dominant Hindu religion and culture have popularised a belief that women should be dependent on men for income. Men are considered as the sole breadwinners of families, and women are viewed only as domestic and maternal. “Women’s work” is confined to the household, and goes uncounted for by the state and the family itself. Though steps were taken to include contribution of women domestic labour in economic activities in 2001 census by the Central Bureau of Statistics (CBS), it never happened. UNDP (2005) report indicates that the workload of Nepalese women is immense; they worked for about 16 hours everyday especially those engaged in agriculture work.

Despite equal rights and opportunities guaranteed by the Constitution, women in real life have not been able to enjoy the same. Government policies have tried to respond to women’s problems by emphasising women’s involvement in development programs and projects, by recognising the legal impediments to their economic empowerment, and by enunciating special programs for meeting their needs. The Government’s tenth plan

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224 At the time of researcher’s visit to Nepal in June-July 2008, establishment of women’s cells at the centre and in the district police offices in Kathmandu, Lalitpur, Morang and Kaski to provide more women-friendly services on issues of trafficking, rape, polygyny, child marriage and abortion were noticed but one is left to wonder as to how effective these cells are in terms of giving justice to women.

225 Household chores like cooking, washing, collecting fuel and firewood, fetching water, engaging in agriculture, maternity, and service to family members are considered as women’s duty. These domestic labours of women are not recognised or noticed by men and also by the state as economic activities.

226 In Nepal, women contribute 70 percent of Nepal’s agricultural work.

227 The Ninth Five-Year Plan puts special emphasis on mainstreaming gender in the national development process. It states that the objective of women and development shall be to "encourage active participation of women in various development activities, to enhance their accessibility to potential economic and social sectors and in order to make such access effective, bring about legal reforms to ensure equal rights of women with a view to creating an egalitarian and democratic society." The government’s 10th plan, also its Poverty
(2002-2007) (HMGN 2002) as also its Poverty Reduction Strategy Paper, identifies women as a focal point for development in order to increase national economic growth and to reduce poverty. While some women are benefiting from this approach, the vast majority remain untouched. The condition in rural areas is even worse. Women are discriminated and lag far behind in many areas barring a few exceptions, mainly because of their long-held social and cultural structure and attitude. Women are in the frontline of household and community efforts to alleviate poverty and therefore, it is important for the society to change and realise that without development of women, long-term and sustainable development of the country is not possible.228

Nepalese women still remain illiterate, under-represented, and unaware of their rights. Moreover, the economy of Nepal continues to suffer the consequences of foregone production, diminished family welfare and rapid population growth (UNDP, 2004). The critical contribution of women to Nepal’s economy mandates their empowerment as a crucial element of political, economic and social development. According to 2001 census, 44 percent women participated in the labour force. Government and non-governmental also initiated micro credit programs to cater to the needs of women but it only serves 30,000 women who participated in the labour force. Women's workload increased with the addition of development programs, including micro-credit programs, designed for their benefits. Women are now forced to perform triple roles: that of mother, of traditional wife and of community participation. Lack of equal property rights increased economic disparity for women in Nepal. This also leads to discrimination against girl child in food distribution, and the provision of clothing, health-care, education, and entertainment as female child is considered to have no lasting value in the family.

According to Nepal Human Development Report (2004), Nepal is predominantly a feudal country with more than 80 percent of its total population living in rural areas and more than 70 percent of its population engaged in agriculture sector with agriculture contributing to 42 percent of the total Gross National Product (GNP). Food and Agriculture Organisation (FAO) study also shows that the rich peasants make up 10 percent of the total

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Reduction Strategy Paper identifies women as a focal point for development in order to increase national economic growth and to reduce poverty.

228 United Nations Development Programme (UNDP, 2005), op.cit., No. 137, pg. 214
population and own 65 percent of the land; poor peasants make up 65 percent of the population and own 10 percent of the land while eight percent of the peasants are landless.\textsuperscript{229} This is reinforced with gender-bias in the production relations between men and women as women are barred from inheriting their parental property. Nepal remains a feudal, subsistence agriculture economy with low productivity and high underemployment. Seventy percent of its population still lives below the poverty line and the number of the absolute poor has doubled in two decades.\textsuperscript{230}

Land being the chief means of production, the impact of women's economic oppression is firmly rooted in the feudal and semi-feudal mode of production that is dominated by petty-peasant production.\textsuperscript{231} Women's chief sources of contradiction, hence alienation within the present production relation, lies in the fact that despite bearing double workloads at household level and farm level they cannot legally own land or tenancy rights in equal terms with their male counterparts.\textsuperscript{232} As a result women have no access to banking transactions, thus further limiting their scope for economic upliftment. This puts them strategically at a highly disadvantaged position vis-à-vis the men. Moreover, the remnant of medieval relations such as serfdom and debt slavery in Terai and hill region makes women's position most vulnerable as they are often compelled to provide 'voluntary' sex and labour services to landlord's households in addition to labour in their farmland.

Women's economic oppression is further reinforced by the low level of productive forces in Nepalese agriculture that is extremely backward with hardly any modern inputs. Labour in agriculture is thus predominantly human labour supplemented by animal labour with the help of most primitive equipment like sickle, hoe, shovel etc. The absence of basic infrastructure within the household (such as absence of fuel, water sources and dependence

\textsuperscript{229} The landholding pattern of Thabang village, one of the 'liberated zone' village in Rolpa district gives an insight into the relative deprivation of the peasants. Landholding of a third of the households was more than subsistence, a third was barely subsistence and a third was less than subsistence, with one member in active service and 10 percent who drew pensions from the Nepal, Indian or British armies. See Baburam Bhattarai (1998).

\textsuperscript{230} According to official statistic 45 percent of the population is below the poverty belt. However, Nepal Human Development Report (1998) (a study submitted to UNDP, Nepal), estimates it to be more likely 70 percent.

\textsuperscript{231} Ikeda, Mitsuko (2008), \textit{Prevention of Human Trafficking in Nepal: Protecting Economic and Social Rights of the Most Vulnerable}, Human Rights Advocacy Report, Human Rights Advocacy Clinic Practicum, pg. 10

on manual processing of agricultural products) makes household work tire-some and time-consuming for women. Moreover, mass migration of able-bodied male members to urban areas of Nepal and India due to subsistence nature of agriculture and the semi-unemployment state generated by the rain-fed cultivation also left women and children to toil in both land and the household. Thus Nepalese women are considered as the backbone of subsistence rural agriculture economy. It is a well-known fact that in an unequal society the more labour intensive the work is, the more the work burden falls upon women. Because women are marginalised at household level, they are also paid less in labour force; sometimes as low as half the amount paid to men for the same job and same amount of farm-work.

Women's position in urban areas is no better. While women in rural areas suffer from backward medieval feudal oppression, then women in urban areas suffer under modern imperialist oppression. Apart from being underpaid, women are also sexually exploited in sweatshops, garment and carpet factories etc in cities.

In Nepal, property is inherited only through the male line. Discriminatory property laws result in women's economic dependency on male family members leading to in domestic violence, domination and harassment for dowry. Thus, Nepalese women are forced to live in an abusive environment (both physical and mental). Women are deprived of education, health care and social participation. SAATHI (1997) revealed that 78 percent cases of domestic violence against women in Nepal are due to economic dependency where dowry is one of the main causes for domestic violence. There were no clear provisions regarding Nepalese women and property rights until 1975. Following the UN Declaration of 1975, which was International Women's Year, the Nepali government began to celebrate International Women's Day on the 8th of March. That same year, the Country Code, 1963 was amended and a clause on women's inheritance and property rights was included. The clause states that if a woman remains unmarried up to 35 years of age, she would have a right to inherit property. However, the amendment limits itself as it continues "if she gets

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236 Forum for Women, Law and Development (FWLD) (2006), op.cit., 160, pg. 2
Status of Women in Nepalese Society

Marriage after having property that should be returned back to the brothers by deducting the marriage cost.

With the restoration of multiparty democracy in 1990, the new constitution guaranteed that no one should be discriminated against on the basis of sex. In 1991, the government ratified the UN Convention on the Elimination of all forms of Discrimination against Women (CEDAW-1979). However, discrimination against women in Nepal still persists - legal provisions relating to the inheritance of parental property, divorce, citizenship, tenancy rights are such examples that still violate the letter and spirit of the Constitution.

Ministry of Education/HMGN (1986) acknowledges that women's access to education and training and, consequently, modern avenues of income are limited due to restrictions on their mobility. Economic justice is an important goal for Nepalese women because if they have an economic base, they will have more autonomy, more choices and opportunities and will not have to endure abusive conditions. In the eighteenth session of the Parliament, a bill was tabled to make the Eleventh Amendment to Muluki Ain that guarantees women equal rights to parental property before marriage. The lawmakers expressed mixed comments on this bill and it remained in the pigeonhole for a long time, finally begin tabled after the women MPs of both the ruling and the opposition parties pressed the government with the ultimatum to capture the rostrum. With the Eleventh Amendment to the Country Code, 1963 daughters by birth have been recognised as coparceners in the ancestral property. However, this right is limited because upon marriage, daughters have to return their remaining share of the property to the maternal

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238 Article 11 states that every citizen is equal before the law and no citizen shall be deprived of the protection of law, nor be discriminated against because of religion, colour, sex, caste and ideological faith.
239 CEDAW is a comprehensive document that encompasses the political and civil rights as well as social and economic rights of women. It defines discrimination against women, as not just a legal distinction between women and men, but includes any form of treatment that has the effect or purpose of discrimination leading to a denial of choice. It promotes the model of substantive equality and outlines steps that the government must take to bring about real equality and not just 'formal-paper' equality. Nepal ratified CEDAW on 22 April 1991, only after ten years of its tabling in the UN by the Interim Government immediately after 1990's political change to Multiparty Democracy from the former Party less Panchayat System.
240 Muluki Ain refers to the National Code of Nepal of 1963 which codifies the inheritance system, derives from the Hindu system of beliefs emphasizing patrilineal descent and a patrilocal residence system.
241 No.1 of Chapter on Partition, the Country Code, 1963
family whereas in case of the son, there is no such limitation.\textsuperscript{242} In addition, married daughters do not have rights to share in ancestral property.\textsuperscript{243} The law provides that amongst the children born to brothers living together, the children are entitled to share of property from their respective father.\textsuperscript{244} But the law does not provide anything with regards to children of sisters living together. Similarly under the Chapter on Partition of Property, the law does not include married daughter as coparcener of parental property.\textsuperscript{245} Moreover, consent of married daughter is not required to dispose of more than half of the immovable parental property of the family.\textsuperscript{246} Even after the Eleventh Amendment to the Country Code, 1963 it seems that women’s entitlement over ancestral property looks more illusory than real.\textsuperscript{247} Moreover, the second wife and her children also have a share in the family property thus affecting the rights to property of the first wife.\textsuperscript{248} Similarly, married women can inherit share of property only under certain conditions from her husband’s property\textsuperscript{249} and daughter born after partition of her father who has mixed up his share of property with wife and son are denied as heir of parental property.\textsuperscript{250}

In 2005, Supreme Court has invalidated the provision that upon marriage, daughters have to return remaining share of intestate property to their maternal family\textsuperscript{251} and directed the government to review such discriminatory provision (Meera Dhungana vs. HMG, writ No. 110/2059, 2004). Moreover, the provision relating to succession of intestate property is discriminatory against married daughters as they fall much behind in the line of succession.\textsuperscript{252}

\textsuperscript{242} No.16 of Chapter on Partition, the Country Code, 1963  
\textsuperscript{243} No.1 (a) of Chapter on Partition, the Country Code, 1963  
\textsuperscript{244} No.3 of Chapter on Partition, the Country Code, 1963  
\textsuperscript{245} No.19 (2), (3), (5) of Chapter on Partition, the Country Code, 1963  
\textsuperscript{246} No.19 (1) of Chapter on Partition, the Country Code, 1963  
\textsuperscript{247} Nepal Smacharpatra – a National Daily on January 10, 2003 covers one of the first instances in Pyuthan, a district of remote western part of Nepal where a daughter gets share form her father’s property after Eleventh Amendment to Country Code, 1963. Pahal Signh Pachai gave four Ropanis of land to her daughter Yam Kumari Pachai, and bandapatra (document of partition) was registered in District Land Revenue Office.  
\textsuperscript{248} No.4 of Chapter on Partition, the Country Code, 1963  
\textsuperscript{249} No.10 of Chapter on Partition, the Country Code, 1963  
\textsuperscript{250} No.11 of Chapter on Partition, the Country Code, 1963  
\textsuperscript{251} No.12 of the Chapter on Intestate Property, the Country Code, 1963  
\textsuperscript{252} No.2,3,6,7,9,10 and 12 of the Chapter on Intestate Property
The Chapter on Intestate Property has regarded the nearest relative within seven generation of the male side as *Hakwala* (successor or rightful claimant).\(^{253}\) Such provisions do not accept existence of women and deprive them from getting a share of intestate property. Moreover, it is also discriminatory as even if the sisters of a deceased’s person are living together, they are not entitled to receiving property but the same property can go to seven generations on male side like uncle’s sons etc.

The law has provided that property such as *daijo* and *pewa* are woman’s exclusive property. But after the death of a woman, such property goes to the person willed, if any. If no person is willed, such property belongs to the sons and daughters living together or living separate, but such property is entitled to married daughter only if there are no sons and other daughters or if there is no husband.\(^{254}\)

Most of the women have agreed that discriminatory legal provisions related to property rights affect women in many ways — for instance, economic dependency, domestic violence, no access to resources, daughter being considered as a liability, negative impact on women’s health and other psychological effects etc. Unequal and conditional right to property creates an environment of complete lack of access to resources for Nepalese women. Women in the family have very little say in the mobilisation of household resources and their participation in decision-making is negligible as men are considered to be head of the family. It is male household members who control family income.\(^{255}\)

Women's access to credit is also limited because all formal credit institutions seek tangible collateral for loans. As a result, women are effectively excluded from institutional credit since they have little access to inherited property. Production credit for rural women

\(^{253}\) No. 1 of the Chapter on Intestate Property, the Country Code, 1963

\(^{254}\) No. 5 of the Chapter on Women’s Exclusive Property reads “A woman may use her *Daijo* or *Pewa* as she likes. After her death such properties is treated in accord with her written will if she has made any. If such a document does not exist, her property shall go to the son or daughter living with her if there is any, if such son or daughter are dead, it goes to the son or daughter living separately if there is any, if there is no such son or daughter, it goes to the husband, if there is no husband, it goes to an unmarried daughter if there is any, if even an unmarried daughter is not there, it goes to a married daughter, there is no married daughter, it goes to a son’s son or unmarried daughter if any, in their absence it goes to other rightful claimants.”

in Nepal is the most successful credit programme. Village moneylenders are also more interested in earning high interest or in acquiring the debtor's property than in financing the people in need. Thus, women's access to institutional credit is further restricted by their confinement to household activities, their lack of mobility, and their lower level of awareness and educational attainment. Women are more prone to fall prey to the exploitative conditions of village moneylenders than of men. Dr. Sumitra Manandhar Gurung, founder of Women Cooperative Society Banking in Nepal summed up on the women's access to credit thus:

"...In Nepal, even if there are development programs for women in the remote areas it has limited impact since they are not encourage to come out of their homes...Micro credit has made a useful intervention in providing assistance to some women but at the same time it has failed to cover majority of the women folks in other parts of the county due to lack of mobility and women's confinement to home. Even if they are aware of such credit, they are the last one to get..."

Access to institutional credit is one of the major stumbling blocks for women entrepreneurs in all sectors, including agriculture. According to Institute for Integrated Development Studies (IIDS 1997), only 15 percent women take loans from institutional sources such as the Agricultural Development Bank and Commercial Banks while 85 percent borrowed from non-institutional sources mostly from the moneylenders, friends and relatives.

Lack of systematic information on women’s economic participation has been much debated at the women forums. The underlying reason was well summarised in the Platform for Action adopted during the United Nations Fourth Conference on Women (Beijing, 1995) as follows:

...Women contribute to development not only through remunerated work but also through a great deal of unremunerated work. On the other hand, women participate in the production of goods and services for the market and household consumption,

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257 Asian Development Bank (ADB) (1999), op.cit., No.173, pg. 21
258 Based on the interview with Dr. Sumitra Manandhar Gurung on 16th June 2008 at the time of researcher's visit to Nepal. Dr. Sumitra Manandhar Gurung is a development activist. She has started a Micro Credit Institute (MCI) – an institute that has started a Centre for Self and Development in the Terai region (Jumla, Siraha and Lahan) some 15 years ago with its mainstay as savings and credits that has now spread across to more than 66 VDCs in the Kathmandu Valley.
in agriculture, food production, or family enterprises. Though included in the United Nations system of National Accounts and, therefore, in international standards for labour statistics, this unremunerated work — particularly that related to agriculture — is often undervalued and under-recorded. On the other hand, women still also perform the great majority of unremunerated domestic work and community work, such as caring for children and older persons, preparing food for the family, protecting the environment, and providing voluntary assistance to vulnerable and disadvantaged individuals and groups. This work is often not measured in quantitative terms and is not valued in national accounts. Women’s contribution to development is seriously underestimated, and thus its social recognition is limited. The full visibility of the type, extent and distribution of this unremunerated work will also contribute to a better sharing of responsibilities.

In Nepal, definitions of economic activity rates vary among various censuses; in spite of these shortcomings, a fairly high proportion of women are reported as being economically active in Nepal.\footnote{Progress Report (2005), op.cit., No. 176, pg. 89} One notable aspect shown by Agriculture Projects Service Centre (APROSC) and John Mellor Association, Inc. (1995) from the gender perspective is that, while male economic activity rates fell significantly between 1981 and 1991 due to definitional changes, female rates remained almost constant. According to Niraula (1994), this could be due to a more accurate recording of economic activity rates. It is quite possible that, in earlier censuses, all males were recorded as economically active, irrespective of working months, age or work status, while women were mostly recorded as homemakers. And, in 1991, the definitions could have been more accurate. Moreover, women’s economic activity rates even by conventional definitions are estimated to be much higher than those reported in the census data. A scrutiny of regional data clearly indicates a persistent reporting bias in economic activity rates. While the overwhelming majority of mountain (74 percent) and hill (58 percent) women were reported as economically active, only about 27 percent of the Terai women were so reported (UNDP 2004). However, \textit{The Status of Women} report series by Acharya, Meena and Basnnett (1981) shows that women in the Terai were equally active in the economic sphere, albeit invisibly, but that their activities were not reported as being economic.\footnote{In Nepal, women are active in the household production system, e.g., in food processing and cooking for farm labour; post harvesting cleaning and storing of farm products; kitchen gardening; and cooking food for village shops run by male members of the family. These are not reflected in any economic statistics.}

UNDP (2006) \textit{Millennium Development Goals} report shows that in Nepal, women economic activity rate in the urban areas is declining, which is an area of concern. From 32
percent in 1981 it has fallen to 20 percent in 1991. This decline and its association with the modernisation process have also been noted in other countries. As distinction between activities outside and inside the household become clearer during the process of modernisation and urbanisation, women tend to be driven towards the household, being confined to reproductive and consumption activities. Such a "domestication of women" has caused a decline in women’s decision-making power inside the household.\footnote{Shtri, Shakti (1996), Women Development Democracy (A Study of the Socio-Economic Changes in the Status of Women in Nepal (1981-1993), ), Kathmandu: Shriti Shakti, pg. 9}

Nepal’s agriculture is dominated by small-scale subsistence farming. Majority of the households (66 percent) have less than one hectare of land on average while 40 percent have less than 0.5 hectare. The size of land holding is smaller in Terai region but less productive in the hills and mountains. In Terai, majority of the women contribute substantial input to agriculture, both in terms of labour and decision making.\footnote{Acharya, Meena and Basnnett (1981), op.cit., No. 146, pg. 233} While in the hills and mountains, agriculture is totally dependent on women due to male migration, leaving women to operate most of the farms. These women from the hill and mountains also travel widely for various income-generating activities like trading, businesses, etc. They operate lodges and teahouses along the trekking routes, highways and tourist areas.

According to Ministry of Agriculture (1993c), women play a major role in raising livestock in Nepal by contributing 70 percent of the labour, up to 26 percent of the farm level labour/productions, etc. and 31 percent in the livestock sub-sector. While boys and girls are engaged in herding activities on a large scale, care of livestock stall is primarily an activity of women. Men are engaged on a large scale only in the case of the big herds in the mountain areas that requires seasonal movement for grazing. While men are also involved in animal care and herding as hired labour, it is mainly women who are hired for fodder collection.\footnote{Haq, Mahbub Ul Development Centre (2002), Human Development in south Asia: Agriculture and Rural Development, Karachi: Oxford University Press, pg. 14} Agricultural Perspective Plan (APP 1993) report also shows that women are found to have more knowledgeable in treating sick animals than men. The table 2.4 shows the number of households reporting female ownership of land, house and livestock.
Table 2.4: No. of Households Reporting Female Ownership of Land, House and Livestock, 2001

<table>
<thead>
<tr>
<th></th>
<th>Total households</th>
<th>Land, house &amp; livestock</th>
<th>House &amp; land</th>
<th>House &amp; livestock</th>
<th>Land only</th>
<th>House only</th>
<th>Land only</th>
<th>Livestock only</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of household</td>
<td>4,174,374</td>
<td>32,766</td>
<td>161,204</td>
<td>3,709</td>
<td>39,259</td>
<td>32,518</td>
<td>219,196</td>
<td>226,320</td>
</tr>
<tr>
<td>Percent</td>
<td>100</td>
<td>0.8</td>
<td>3.9</td>
<td>0.1</td>
<td>0.9</td>
<td>0.8</td>
<td>5.3</td>
<td>5.4</td>
</tr>
</tbody>
</table>

Note: Households not reporting ownership of female on house, land and livestock = 83%

Agriculture is becoming progressively feminised. Nepalese women still holds the largest sectoral share in agriculture. The share of agriculture in Gross National Product (GDP) is declining perceptively. This declining relative importance of agriculture sector, together with the "feminization of agriculture" suggests that women at large are being left out of structural changes in the Nepalese economy, further contributing to women's economic marginalisation. The next largest group of women is in the commerce sector. Manufacture occupies only a remote third position for employment for both men and women and finally, women comprise a smaller proportion of the total number of professional and technical workers, indicating the relatively lower access of women to education and knowledge. An increasing number of women are entering the workforce in the formal manufacturing sector because of acute economic necessity. However, women are mainly concentrated in low-skilled, menial and repetitive jobs and in the lower echelons of the industrial hierarchy in what is virtually an extension of their household activities which also shows that female workers are paid lower than their male counterparts. Lack of education and training opportunities, employer biases, and limited mobility due to social responsibilities combine to keep them at these lower echelons. Most of the women employed in manufacturing are from the hill region. For instance, although most of the women are engaged in large numbers of tourism (e.g. hotels, airlines,

264 Feminization of agriculture is depicted by women comprising a greater proportion of the agricultural labour force; greater proportion of women engaging in agriculture; women performing majority of the agricultural tasks; and women spending majority of their working hours/time in agriculture.
restaurants and travel and trekking agencies), carpet/garment industry and other tourist related services, very little information is available on the extend of their involvement.

Women's involvement in non-wage employment – self employed and agriculture is much more than men. According to Haq, Mahbub Ul Development Centre (2003), the percentage of self-employed workers, which remained more or less constant at about 86 percent till 1981, had decreased to 75 percent in 1991. Though, it is slow but perceptible change taking place in the employment status. The proportions of both male and female employees in the population are increasing, while those of the self-employed and unpaid family workers are decreasing. This indicate a positive as well as negative trend, depending on whether those who move out of self-employment are getting better jobs or moving out simply because of impoverishment caused by competition from factory produced goods. For instance, the flood of plastic goods in the market is another factor that has ruined many traditional craft workers.

Most males and females working as unpaid family workers are below 20 years of age and the proportion decreases as age increases. In higher age groups, the percentage of male unpaid family workers is negligible. Further, with an increase in age the percentage of male employees expands. This is also true for female employers although the increase is less significant as most of the women who are self-employed are actually working as unpaid family workers.

Majority of the self-employed and unpaid family workers, both men and women, are in agriculture. There are numerous small, unregistered production entities engaged in the production of a variety of products both for home consumption and local sales. In Nepal significant proportion of manufacturing takes place within the household. Also, the production of a few selected export products, such as carpets, is widely dispersed, and is generally undertaken during off-farm hours by part time workers. The production units are widely scattered, but predominantly located in the hills and mountains, along with major

clusters in urban areas. Very few women earn more than NRs 2,000 per month from such activities, even from full-time employment.\textsuperscript{269}

Women have limited opportunities in police and no opportunity in the military service. As a result there is a restriction on the employment opportunities of women. While the recent amendment to the Military Police Rules (2001), has incorporated a new provision of appointment of women as soldiers of the Military Police,\textsuperscript{270} it is limited to unmarried women or widows only. The employee percentage of women in every sector including teaching, tourism, sports and technology is very low. According to CBS (2001), there are only 6 percent women in public services, 11 percent in foreign employment whereas there are 61 percent women in agricultural sector, most of them as unpaid labourers. Women spend much more time (about 13 to 14 hours per day as unpaid family workers) than men in subsistence activities and domestic work. Due to lack of technical/vocational skills training, most women are involved in low paid or clerical jobs. Statistics reveals that 63 percent of women are involved in unpaid work.

Even though Constitution guarantees equal remuneration for equal work, as a result of lack of effective policy to regulate wages in unorganised sector, there is \textit{de facto} discrimination against women in wages/remuneration for the same work. General working conditions are governed by the Labour Act\textsuperscript{271} and the Trade Union Act;\textsuperscript{272} both promulgated in 1992 and replaced old acts that had placed restrictions on the freedom of association. The Trade Union Act has no gender-specific provisions but the Labour Act and the Labour Regulations (1993) formulated under the Act have provisions specifically relevant to women.

\textsuperscript{269} Nepal Human Development Report (2004), op.cit., No. 233, pg. 44
\textsuperscript{270} Com. Parvati (2004), "Women’s Participation in People’s Army", \textit{The Worker}, No. 9, pg. 42
\textsuperscript{271} The Labour Act, which replaced a 1959 Act, incorporates provisions for job security, minimum wages, environmental health, security, welfare measures, a code of conduct and penalties, consultative and cooperative management, and labour courts for dispute settlement.
\textsuperscript{272} The Trade Union Act is primarily geared at maintaining industrial peace while, at the same time, protecting the constitutional rights of workers to organize for collective bargaining and to redress their legitimate demands according to ILO standards.
Women Workers' Special Rights
(Labour Act and Labour Regulations, 1993)

i. Fifty-two days of paid pregnancy leave up to two pregnancies, replaceable in case of death of either of the previous children.

ii. Crèche facilities equipped with necessary toys and staffed with trained caretakers for babies and children of the women workers, in cases where the factories employ more than 50 women and necessary breast-feeding time for women with breast-feeding babies.

iii. Separate toilet facilities for women and men in factories employing more than 50 women.

iv. Working hours fixed at 48 hours per week or 8 hours per day, including a half-an-hour lunch break and allowing only 5 hours of continuous work.

v. Overtime work allowed for four hours per day only, paid at 1.5 times the regular daily rate.

vi. Women and under-aged children may not be generally employed outside 6 a.m. to 6 p.m., except in cases of special agreements between the management and the workers, and in hotel, travel, tourism, and related businesses. In such cases, women must be provided with necessary security.

vii. Individuals may not generally be required to carry loads larger than their own body weight, except in cases of adult male workers carrying pre-packaged loads. Allowable load for girls of 16—18 years of age is 20 kg. Boys in similar age groups may carry 25 kg. Adult men and women may carry 55 kgs. and 45 kgs., respectively.

viii. Current minimum wages, including allowances, fixed by the Government on the recommendations of the Minimum Wage Board constituted under the Act, range between NRs1,400 for minor workers and NRs2,150 for highly skilled workers. For workers in the tea estates, the rates are lower.

As per the provision of Labour Act and Labour Regulation (1993), women are legally entitled to equal pay for similar jobs and to enjoy a series of gender-related privileges such as pregnancy leave, feeding intervals during work hours, and crèche facilities. However, in practice, women are discriminated against the law, because they are concentrated in lower-paying jobs and are hired mostly at piece rates. Even official fixed wage rates are lower for tea estate workers, where women are predominant.273

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There is no proper information on the working conditions of women in industrial establishments. In Nepal, 55 percent of women workers have permanent jobs, 17 percent temporary employees and 29 percent work as casual labourers. Only 20 percent were promoted and about 29 percent believed that they were getting as much pay as male employees. These women worked under difficult physical conditions and most of them suffer from work-related health problems and only few women received certain benefits additional to their wages. Even in the carpet industry,\textsuperscript{274} women are still treated as unskilled and are exploited by the factory owners though some of them are highly skilled. Additionally, as international competition in such industries is keen, wages are kept low.\textsuperscript{275}

In Nepal, women have limited access to credit due to lack of property, a prerequisite for collateral. As a result there are few women entrepreneurs in the country. Moreover, social custom restricts women's role to the household, as a result majority of them are involved in home-based industries,\textsuperscript{276} such as food processing, garments, hosiery and crafts. However, these industries are gradually closing due to competition from imported products, or are being replaced by organised formal units. According to Rana and Shah (1987), on the one hand, the displacement of traditional crafts by light industry is causing the replacement of female workers by male labourers; women are also being converted into wage labourers in carpet and handloom industries. There are some cases where women function as managers, supervisors, entrepreneurs, and even as skilled workers in home-based craft enterprises. But as industrial activities become increasingly commercialised, both male and female workers lose control over the production process and become transformed into wage labourers. In the process, women are affected more since newly emerging organised industries not only need more capital but also lay more emphasis on educated and mobile labourers. The managerial class in these industries,

\textsuperscript{274} Women constitute 66 percent of the workers in the carpet industry in the Kathmandu Valley where 98 percent of these women are piece-rate workers while only 14 percent are men. Majority of these women are overwhelmingly young (below 22 years of age) and illiterate, and worked for reasons of poverty cheated by employers on payments of salary and wages.
\textsuperscript{276} Basnet, Prabha (1992), op.cit., No. 266, pg.42
which is dominated by the Indo-Aryan and western concept of gender specialisation, reinforces its own biases in hiring and firing.277

The increasing trends among those few women who remain proprietors suggests that time is not far away when the women factor would also have an important role in the economic growth of the country. However, women are handicapped when it comes to entrepreneurship because of lack of access to capital, institutional credit, marketing networks, marketing information, risk of sexual harassment and appropriate business training and education. Other constraints include limited access to modern management methods and technology and the high cost of production leading to less competitive pricing.278 Apart from that, women also lack self-confidence and risk-taking capacity as they have access to very little capital and face family problems in their enterprise.279

Knowing its limitation and weaknesses, Women Entrepreneurs Association of Nepal (WEAN) was established in 1997 with the sole objective of uplifting women and developing entrepreneurial abilities. WEAN stands today as one of the most reputed non-profit organisation giving assistance to Nepalese women with services ranging from training, credit facilities, marketing assistance as well networking in various parts of Nepal.

Today, Nepalese women have slowly started entering non-traditional fields such as medicine, law, engineering, science and so on. As per the latest data provided by the Ministry of Women and Children and Social Welfare (2001), proportion women in government jobs is still low (9 percent) while it is highest in health sectors (46 percent).

Poverty has been on the increase from year to year with 49 percent of the population in Nepal estimated to fall below the poverty line. The fundamental reason behind poverty is the lack of employment opportunities and underdevelopment. According to UNDP (2006) at present 14 percent of Nepal’s population is estimated to be unemployed.

with another 40 percent underemployed. The unemployment and underemployment of women is even higher.

Since early 1990s, there has been a major concern over the "feminization of poverty" all over the world. In Nepal, despite many disadvantages faced by women (in access to resources, employment, and income) recorded data does not indicate comparatively disadvantaged positions for women or female headed households in terms of poverty status. NLSS (1996) and Population Census (1991) shows that the proportion of female-headed households (FHHs) is higher in the hills and mountains (14 percent) than in the Terai (13 percent). The overwhelming majority (93 percent) of these women were married. According to the Sample Agricultural Census (APROSC, 1991), women owned 6 percent of the 3 million farm households in Nepal. The proportion of female owned farms was highest in the hills (9 percent) and lowest in the Terai (4 percent). Therefore, "feminization of poverty" in Nepal is viewed in terms of the concentration of women in low-productivity agriculture and in unskilled low-paying jobs in non-agriculture sector, and in terms of the impact of poverty on women and girls. Because of social discrimination, the impact of poverty on access to food, health, nutrition, and educational facilities, as well as on workload, is more severe on women and girls in poor households. Women have less access to employment opportunities and earn lower wage rates, facing greater difficulty in escaping poverty. Proportionately more girls than boys have to work for survival.

With financial problems in the household, girls are forced to work earlier than boys. According to the CBS (1995), there are more than 5 lakhs economically active children aged 10-14 years where girls were more economically active (28 percent) than boys (18.1 percent). Girl labour rates surpass those of boys in all 75 districts. For every 100 boys who work, there are 219 girls in the mountains, 217 girls in the hills, and 177 girls in the Terai.281

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280 Feminisation of poverty indicates that more women and girls are poor than men and boys because they bear the brunt of poverty resulting in the human deprivation of food/nutrition, access to education, medical care and adequate clothing, and heavy workload; even in households that lie above the poverty line women and girls remain in human deprivation situation; that (de facto) female headed households are poorer than male headed households; and women do not have access to earned income resulting in income poverty; for more detailed on female-headed households and poverty in Nepal, see Sharma (1996).

281 The gender imbalance ratio is higher in Western hill and mountain regions than other parts of country.
Children work mainly on farms helping their parents. Carpets, tea estates, brick factories, stone quarries and the service sectors (particularly hotels, teashops and restaurants, domestic servants and porters) also employ a high proportion of child labourers. The working conditions in these industries are often appalling. Poverty, family disruption, parental illiteracy, and agrarian relations forcing families into bonded labour are the major causes of child labour. Legislation against child labour, although adequate is rarely enforced. Child labourers face long hours of work in unhealthy environments, low wages, and hazardous conditions of work. This leads to various diseases among child labourers and also denies them access to educational opportunities. Moreover, employers do not devote any resources to improve the situation. Many families are too poor to support their own children; others abandon them while some child workers are orphaned, with no relatives to bring them up. In such a situation, the main challenge for the Nepalese Government is how to improve the situation of child labourers and increase their access to education and better opportunities without stopping their sources of income.

III

Nepalese women have been involved in political movement since 1950s but factors like – dominant ideology of patriarchy, male chauvinism, criminalisation of politics, lack of equal property rights, restrictions on women’s mobility, and domination of men in all political parties and the media have prevented women from actively participating in the local and national politics. As a result, women’s participation in these crucial bodies of local self-governance is lacking. Moreover, women lack the power to contribute significantly even within these roles as their male colleagues control most of the resources. Equally problematic are the nominal representation of women in Village Councils, Village Development Committees (VDC), Municipalities, District Development

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282 Young girls are also recruited into forced prostitution on a wide scale. For study on child labour in Nepal see Sattaur, Omar (1993).
283 Forum for Women, Law and Development (FWLD) and United Nations Development Fund for Women (UNIFEM, 2005), op.cit., No. 218, pg. 25
284 Pradhan, Gauri (ed.) (1993), Misery Behind the Looms: Child Labourers in the Carpet Factories in Nepal, Kathmandu: Child Workers in Nepal Concerned Centre (CWIN), Kathmandu, pg.98
The right to citizenship is a basic right to every individual, which cannot be denied and deprived to any one in any case. It is a right to identity and nationality of a person that establishes a relationship with his/her nation. Moreover, it is the right that makes it possible to create other rights and thus, it is the right to have other rights.\textsuperscript{287} In political, administrative and socio-economic situation of the country, citizenship right has multi-dimensional consequences. It has been directly linked with the basic fundamental rights of citizens, in the sense there are several rights that are preserved for the citizens of the country only. Such rights includes: freedom of movement and residence within the country, the right to leave and return to one's own country, the right on nationality, the right to marriage and family life, the right to property, the right to participate in politics and the right to employment in public and private enterprises. Therefore, citizenship right is the basic right for it is nothing less than the right to have rights (Warren CJ dissenting opinion in Perez vs. Brownell, 356, US 44, 64, 1958). Chief Justice Warren has rightly said, "Remove this priceless possession and there remains a stateless person, disgraced and degraded in the eyes of his countrymen". In the Concluding Comments on the Initial Report of the Government of Nepal on CEDAW Convention (2003), the CEDAW Committee urged the government to amend discriminatory laws on nationality and birth registration as a matter of priority.

As a State party to CEDAW Convention, Nepal has made a commitment to provide women equal rights in their ability to acquire, change or retain their nationality. It has been ensured in particular that neither marriage to a foreigner nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless, or force upon her the nationality of her husband.\textsuperscript{288} Similarly, Nepal has expressed its commitment by ratifying CEDAW Convention to provide women equal

\textsuperscript{286} Asian Development Bank (ADB) (1999), op.cit., No.173, pg. 41
\textsuperscript{287} Forum for Women, Law and Development (FWLD) and The Asia Foundation (2006), \textit{A Movement for Equal Citizenship Right of Women}, Kathmandu: FWLD and The Asia Foundation, pg. 1
\textsuperscript{288} Articles 9 (1) of CEDWA
the concept of single parents is growing, such discriminatory provisions act as a hurdle in the upbringing of children of single mother. The law fails to recognised independent identity of the women and make them dependent on their parents or spouses for their most personal choices. Such discriminatory laws not only go against the fundamental right to equality guaranteed by the Constitution of Nepal, but also conflict with the equal right to the nationality provided under international instrument to which Nepal is a party specifically Article 9 of the CEDAW.

**Spouse not entitlement to citizenship:** According to the Nepalese law, children acquire citizenship through father but they cannot acquire citizenship through the mother. Thus, Nepalese women have been discriminated in comparison to their male counterparts. The Citizenship Act 2020 (1963) and the Citizenship rules, 2049 (1992) have similar discriminatory provisions like that of the Constitution of Nepal. In case the father is a foreigner, the child is also at risk of being a stateless person. This has also affected the children sex workers and badi women who are unable to confer citizenship to their children. Even registration of the birth of the child requires name of the father and as a result children of these women are unable to pursue their education as birth certificate is a pre-requisite to the admission to schools. C.Lisa Stratton (1992) rightly said, “If the children of any national who married a foreigner will have only the citizenship of their father, the children of such women married to a refugee or stateless person will have no nationality”.

Although, the Constitution guarantees equal rights to all citizens, the Citizenship Chapter of the Constitution and the subsequent Act discriminate against women. First, they do not recognize maternal descent for natural citizenship rights and, secondly, they accord unequal treatment to the foreign spouses of male and female citizens (The Himalayan Times 2003). Equal property, rights to earn, enjoy, and transact wealth are guaranteed to all citizens within the laws, which themselves are discriminate against women.

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294 Article 9 (5) of the Constitution of Nepal which reads “....a woman of foreign nationality who has a matrimonial relationship with a Nepalese citizen and who has initiated proceedings for renunciation of her foreign citizenship, and any other person who has renounced the citizenship of Nepal and has gone to a foreign country but who has renounced his foreign citizenship, may acquire the citizenship of Nepal.”

295 Section 6 (2) of the Citizenship Act, 1963 and Rule 4 (2) of the citizenship Rule 2049 (1992).

296 Section 4 (1) (a) of the Birth, Death and Personal Incidents (Registration) Act of 1976.
The Constitution of Nepal recognises the socio-economic disadvantage faced by women, and incorporates specific provision to provide some political support to women. The Constitution of Nepal 1990 provides five percent candidature of women for the Lower House election and five percent nomination for the Upper House. This was a very positive and important beginning towards ensuring women's representation and participation in the decision-making level in Nepal. Apart from that, initiatives were taken up at both governmental and non-governmental levels for the rights and welfare of women. A separate ministry (Ministry of Women and Children Social Welfare) was created to deal with women’s issues and work for their development as part of translating Nepal’s commitment made at the international level into action.\(^{297}\)

The system of development administration is decentralised to the Village Development Committee (VDC) and municipality levels, which comprise several wards. VDCs consist of nine wards, while the number of wards in the municipalities depends on the population and area under their supervision. Each ward has an elected ward committee of five persons chaired by the elected ward Chairperson. According to the Ordinance, passed as the Act on Election to the Local Institutions (1997), each ward must have at least one woman on the ward committee. All ward members constitute the VDC assembly, while the ward chairpersons constitute its executive committee where one woman must be nominated to each VDC or municipality executive committee that is responsible for day-to-day operations. Further, VDC chairpersons and vice-chairpersons, parliamentarians elected from the districts and six nominated members, including one woman, constitute the district assembly and they elect the District Development Committee (DDC) chairperson, vice-chairperson, and members of its executive committee. Each DDC must have at least one woman nominated to it. Ensuring participation at the grassroots level alone is not adequate for representing the population.\(^{298}\) It is mandatory to nominate at least one woman to VDCs and DDCs, but representation by nomination is unlikely to bring appropriate people to these bodies, because party interest or nepotism is likely to be an overriding factor in such nominations.

\(^{297}\) Forum for Women, Law and Development (FWLD) (2006), op.cit., 160, pg. 4

In 2004, Women activists from different parts of Nepal demanded proportional female representation in the cabinet during Prime Minister Sher Bahadur Deuba's government. Speaking at an interaction programme on "Proportional Representation of Women in the Cabinet" jointly organised by Sancharika and UNDP's (2004) in Kathmandu, women speakers demanded proportional representation considering the fact that commitments like 33 percent representation would not work properly. Bandana Rana, president of Sancharika said;

"...This time, we (women) want proportionate representation actually happening" and claimed that there was no dearth of efficient women to hold ministerial portfolios, adding, "it is time for us to test whether the political parties just used women in the street protests, or are also ready give power to them."

Roshan Karki, spokesperson of Rastriya Prajatantra Party (RPP), however, suggested that women activists should not demand proportional representation, claming that the parties were not even genuinely ready for ensuring the 33 percent representation of women as pledged earlier. Instead, he stressed on the need of providing women with at least 25 percent representation in the cabinet. Bamdev Gautam, standing committee member of the CPN-UML, suggested women to continue their demand for proportional representation and said, "proportional representation is not possible at present, but we are committed to ensure at least 33 percent." While Nepali Congress Spokesperson Arjun Narsingh KC had a different suggestion to women: Don’t ask for ministerial posts in this regressive government, but rather join the street protest. "I suggest women not to join this government as it is a continuity of regression," KC said. "I would rather suggest you to support the ongoing movement for the return of democratic rights." (http://www.kantipuronline.com, 2004).

Women's political participation and representation at decision-making levels are two different issues. Participation is a necessary but insufficient condition for

299 In June 2006, Lower House of the Parliament declared its policy of 33 percent representation of women's immediately after its reinstatement. But it could not materialise, as the operational plan of action was not formulated. With a positive note for including the women's right in place in the Constitution, the women's movement is asserting for at least 33 percent representation. The advocacy for women's representation should be for executive, legislative, judicial and at all levels and forms of State structures through affirmative actions and reservations including the 'reservation of constituency for women' instead of reserving candidature for the Constituent Assembly.
representation because representation does not flow automatically from participation. Women all over the world have participated widely in political movements in times of crisis but, once the crisis is over, they are relegated again to the domestic arena. Such a situation is also evident in Nepal. Nepalese women participated widely in the political movements of 1951, throughout the underground struggle for democracy during the Panchayat era (1960-1990) and in the mass movement of 1990. In fact, it was women who were instrumental in revitalising the mass movement in April-May 1990. But once the multiparty system was restored in the formulation of the Constitution and subsequent allocation of ministerial positions, the bargaining of various male-dominated interest groups – centring on ethnic, religious, and other issues – drowned women’s voices. Constitutionally, the provision of equality applies only partially to women as they face discrimination in citizenship rights.

Over the years, women’s participation as voters and their awareness about their own rights have increased. Besides, their willingness to participate in the political process has also increased in the last decade. Nevertheless, despite constitutional provisions and the participation of women in the 1990 movement for democracy, women have not been able to increase their political representation at various levels. Neither have they increased their access to positions of power and decision-making. Women still comprise less than 10 percent at all levels of the political leadership. Although the Act on Local Election (1997) required all political parties to fill at least one woman candidate at the ward level, the proportion of women in Parliament of 1996 was actually smaller than in the 1989 Panchayat parliament. Similarly, the representation of women at VDC and district levels has not changed much until 1996. Only recently the situation has changed substantially at the grassroots level. In 1997, more than 100,000 women have participated in VDC level elections as candidates and more than 36,000 have been elected to the village assembly. But till now there has been no a women mayor or DDC chairpersons except one woman.

300 Shrestha, Kapil (1998), Women’s Political Participation in Nepal: Perspectives and Challenge, Kathmandu
elected to the position of vice-chairperson of a DDC.\textsuperscript{303} Out of 205 members of the House of Representatives elected in the election in 1999, only 12 were women. Similarly, out of 60 members of the National Assembly, only 9 are women. Among the dozens of cabinet members and other ministers, there are only one women minister, and she too was given a trivial portfolio. Although the Deputy Speaker of the House of Representatives is a women, presence of women in grossly minimal in the higher public positions, including secretary, joint secretary and under-secretary. This also shows that the proportion of women declines progressively as one move to higher decision-making positions.\textsuperscript{304} Moreover, women also remained voiceless in the overwhelmingly male-dominated and Patriarchal politics. Their participation may improve, but without addressing any of the gender discrimination issues at local and national levels the gender situation is unlikely to improve fast.

Women's representation in judiciary\textsuperscript{305} and administration is very low, both at the gazetted and non-gazetted levels. In 1997, the percentage of women gazetted officer was only three percent while non-gazetted officer was 4 percent. This is because the level of representation itself is low for both positions.\textsuperscript{306} The revisions to the Civil Service Act in 1998 was expected to facilitate the entrance of women into civil administration including revisions to facilitate the regularisation of personnel who have been working for a long time in projects such as Production Credit for Rural Women (PCRW), to increase the maximum age limit for entry to government services to 40 years and certain other preferential provisions for women.\textsuperscript{307} According to the 1998 revision to the Civil Service Act (1994), some of the Special Facilities to Women in Public Administration are;

\begin{itemize}
\item \textsuperscript{303} Ibid, pg. 179
\item \textsuperscript{304} Keshari, L. and K. B. Bhattachan (2001), \textit{Gender and Democracy in Nepal}, Central Department of Home Science – Women’s Studies Programme, Padma Kanya Multiple Campus, pg. 9
\item \textsuperscript{305} As of 1997, women constitute around four percent of the judiciary’s decision makers. There was one secretary, two women judges (special class), and a district judge. In spite of the independent Judicial Commission and the Act for Judicial Service, which provide more scope for recruitment and promotion than Public Service Commission and the Civil Service Acts, women’s participation is not encouraging. Among the total number of registered legal practitioners, women constitute only 5 percent and 25 percent of pleaders and agents, respectively.
\item \textsuperscript{306} Bhattachan, Krishna B. (2002), \textit{Traditional Local Governance in Nepal}, Paper Presented in A National Seminar on Strengthening Decentralisation and Good Governance in Nepal, Kathmandu: Political Science Association of Nepal (POLSAN) and Friedrich-Ebert-Stiftung (FES)
\item \textsuperscript{307} Goonting D. (1994), \textit{An Impact Study of Micro-Credit Intervention for Disadvantage Groups: The Case of PCRW in Nepal} (Preliminary Research Findings), Canada: University of Guelph, pg. 26
\end{itemize}
i. The maximum age for entry has been set at 40 years for women and 35 years for men.

ii. The maximum age for lateral entry in second and first class posts has been set at 45 years.

iii. No maximum age limit for those already in public service.

iv. A one-time waiver of the maximum age limit for sitting in Public Service Commission examinations has been provided to those women who have been in public service without a break for last five years.

v. The time limit for probationary periods has been set at six months for women and one year for men.

vi. Efforts have been made to transfer husband and wife to the same district when both are in government service.

vii. Women become eligible for promotions one year earlier than men.

The table (2.5) below shows the involvement of women in decision-making in Nepal. Women's political participation and access to positions of power are restricted for several reasons. Firstly, women's mobility is restricted, secondly, they have fewer opportunities to mix with those in power thirdly, they have the sole responsibility for household maintenance and child care activities and lastly, they face a political nepotism that favours men. Women's access to positions of power is further restricted by the inflexible entrance and promotion rules of the civil service, their own relatively poor educational status, and the primacy of family responsibilities in women's lives.308

Table 2.5: Women in Decision Making

<table>
<thead>
<tr>
<th></th>
<th>Members of Parliament</th>
<th>Ministries</th>
<th>Managers</th>
<th>Technicians</th>
<th>Civil Service (Gazetted Posts)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>6%</td>
<td>-</td>
<td>17%</td>
<td>22%</td>
<td></td>
</tr>
<tr>
<td>2005</td>
<td>5.9%</td>
<td>7.4%</td>
<td>2001</td>
<td>18%</td>
<td>24%</td>
</tr>
</tbody>
</table>


Given that there are 23 women graduates for every 100 men graduates in the country, the target should be to ensure that annual recruitment of women should be at least

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308 Bhusal, Pushpa (1998), op.cit., No.302, pg. 170
20 percent of civil service positions (UNDP 2004). However, the Government still lacks clear policy guidelines on women's recruitment and promotion.

At national level, government policies (table 2.6) have tried to respond to women's problems in various ways but translating them into action, however, has been difficult. Women's concerns and needs tend to be marginalised and lost during implementation.

Table 2.6: National Policy

<table>
<thead>
<tr>
<th>Five Year Plan</th>
<th>Year</th>
<th>Policy Approach</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sixth Five Year Plan</td>
<td>1980-1985</td>
<td>The Sixth Plan adopts the policy of enhancing the efficiency of women recognizing the role of women in development.</td>
</tr>
<tr>
<td>Seventh Five Year Plan</td>
<td>1985-1990</td>
<td>The Seventh Plan adopts the policy of enhancing efficiency and productivity of women through participatory approach.</td>
</tr>
<tr>
<td>Eighth Five Year Plan</td>
<td>1992-1997</td>
<td>The Eighth Plan adopts the policy of ensuring equitable distribution of development benefits by bringing women into the mainstream of development.</td>
</tr>
<tr>
<td>Ninth Five Year Plan</td>
<td>1997-2002</td>
<td>The Ninth Plan adopts the policy of mainstreaming gender, reducing gender inequality, and empowerment of women</td>
</tr>
<tr>
<td>Tenth Five Year Plan</td>
<td>2003-2008</td>
<td>The Tenth Plan adopts the policy of mainstreaming gender, reducing gender inequality and empowerment of women; and recognizing gender equality as a key indicator of poverty analysis.</td>
</tr>
</tbody>
</table>

According to FWLD (2006) report *An Update of Discriminatory Laws in Nepal and Their Impact on Women*, the major difficulties in implementation derive from:

- i) Lack of efforts in and understanding of the concept and process of mainstreaming at the sectoral levels
- ii) Marginality of the women's programs in sectoral goals
- iii) Inadequate capacity of women's institutions where they exist
- iv) Lack of women's machinery in other important ministries
- v) Dependency of Women in Development institutions on donor support
- vi) Lack of any effort to recruit and promote more women at or to higher decision-making levels and
- vii) Lack of gender sensitivity at district level both in terms of institutional structures and gender awareness.

Development planning in Nepal started in 1956, but the importance of the role of women in development lacked recognition until the early eighties. It was only in 1980 that the Women's Development Section (WDS) was established under the Ministry of Local Development. The Plan of Action for Women in Development (WID) was prepared in 1982 and subsequently Production Credit for Rural Women (PCRW) program was introduced.³⁰⁹ With the restoration of multi-party political system in 1990, HMGN ratified the UN Convention on Elimination of All Forms of Discrimination against Women

³⁰⁹ It should be noted here that the concepts of Women in Development (WID) and Women and Development (WAD) were introduced in the seventies and of Gender and Development (GAD) in the early eighties around the world.
(CEDAW 1991) without reservation. After the Beijing Conference (1995), the Ministry of Women and Social Welfare was established and thus HMGN committed itself to ending discrimination against women.

The intervention to uplift the status of women began with the Sixth Five Year Plan (1980/81-1984/85). This plan attempted to increase employment for women by creating opportunities in both formal and informal education, involving women in agriculture training, cottage and other industries as well as population control activities. In addition, the plan also aimed to reform laws and regulations that inhibit women’s participation in development. The Seventh Five Year Plan (1985/86-1989/90) expanded the activities mention in the Sixth Five Year Plan. It stated that legal reforms would be affected to remove provisions hindering women’s participation in national development. The Eighth Five Year Plan (1992/93-1996-97) made a commitment to create opportunities for equal and meaningful participation of women in the development process and to reform laws and by-laws that hinder the development of women. The Ninth Plan (1997-2002) was progressive to incorporate the policy of “Creation of a developed society on the basis of women’s empowerment and gender equality through mainstreaming women’s participation in every aspect of national development.” The Plan stated three objectives:

i. To involve women actively in different sectors of development for building egalitarian democratic society and

ii. To increase access of women to political, economic and social sectors, and importantly

iii. To reform legal provisions so as to ensure women’s rights and for effective access to the right.

Primary objective of the Tenth Plan (2002-2007) was to create egalitarian society based upon women’s rights by improving Gender Development Index (GDI), and by abolishing all sort of discrimination against women for the realisation of economic growth and poverty eradication. HMGN has taken several other positive steps by establishing the Ministry of Women and Social Welfare (1995), now renamed as the Ministry of

310 Ministry of Women and Social Welfare/HMGN (1996), Program for Encountering Violence Against Women (draft prepared for the Ninth Five-Year Plan), Kathmandu, pg .2
311 To achieve this objective, the government has, inter alia, expressed its commitment to undertake steps to reform the existing legal system related to women and set up legal arrangement and carrying out legal re-enforcement to stop crime (such as bokshi, jhuma, deuki, badi).
Women, Children and Social Welfare (1996). The Women’s Ministry has prepared its Concept Paper stating eight policies:

i. Create a policy for national women’s development and integrate with all other policies of national development,

ii. Support women’s units/section/divisions of various Ministries to increase women’s participation,

iii. Make efforts to increase development budget and government grants for women’s development programs,

iv. Increase women’s participation in decision making from local to national levels,

v. Take necessary actions to eliminate institutional barriers, gender disparity, legal, administrative and policy improvement concerning women development,

vi. Strongly advocate for gender equality and women’s empowerment,

vii. Conduct training and discussion on gender analysis from local to national levels,

viii. Promote affirmative action for women’s upliftment, review, monitor, evaluate and coordinate all women development activities conducted by governmental and non-governmental organisation.

The National Women’s Commission (NCW) was also established on March 8, 2002 to ensure women’s rights by advising the government to effectively implement international human rights instruments and to develop plans and policies specifically aimed at advancing women.

The legal system of Nepal is essentially of indigenous origin. Before the territorial unification of Nepal in the eighteenth century, the country was divided into a number of independent principalities each having its separate administrative set up with ruling monarch. Some principalities and city states such as Kathmandu, Lalitpur and Bhadgaun recognised the Hindu Dharma Shastras, (the holy book of scriptures) including Vedas, Puranas, and Smritis, as the main sources of their law. After the territorial unification of the country, Nepalese legal development and the Dharma Shastra became supplementary.

312 The goal of the Ministry is to bring women in the mainstream of development through their empowerment on the basis of gender equality.
and complementary to each other.\textsuperscript{313} Nepal was the only Hindu nation in the World till 2008 and a strong influence of Hindu religion on its legal system is evident. The Hindu religion is based predominantly on patriarchal norms and values. The great Hindu philosopher Manu in his "\textit{Manusmritis}\textsuperscript{314}" has stated that a wife and a slave can have no property and that the wealth they acquire belongs to whom they belong. Women were considered inferior to men and non-capable of making decision. Only men were entitled by birth as the member of the family. Women acquire membership in their husband's family by marriage only. Their membership to the family was therefore governed by their marital status.\textsuperscript{315}

The \textit{Manab Nyaya Shastra} (the foremost Code of Human Justice) prepared and enforced during the time of Jayasthiti Malla, a King of Malla dynasty, and reformations introduced by Ram Shah, one of the forerunners of the present day Shah Dynasty, were based mainly on Hindu religious philosophy.\textsuperscript{316} In the latter days, in process of modernisation, Nepalese legal development also received number of principles of other legal system. However, the traditional legacy still continues to dominate.

The \textit{Rana} regime introduced the first ever written law, the Country code in 1853, which includes the concept of positive law. It was applicable to the whole country. The Code was discriminatory in the application of law on the ground of religion, race, sex, caste and tribe. There was difference in punishment for men and women and for the person of "lower caste" and "upper caste". It was based on \textit{Manusmriti} and believed on the philosophy that a woman is not entitled to independence as the father is supposed to protect her childhood, husband in her youth and son in old age. Polygamy, child marriage, unmatched marriage was permitted without any precondition. Daughters were excluded in matter of property.\textsuperscript{317}

It was only in 1975, on the occasion of the International Women's Year, that certain rights were provided to women. By the Sixth amendment to the Country Code in

\textsuperscript{313} Forum for Women, Law and Development (FWLD) (2006), op.cit., 160, pg. 25
\textsuperscript{314} \textit{Manusmritis} refers to religious scriptures.
\textsuperscript{316} Chene, M.D. (1997), op.cit., No. 301, pg. 218
\textsuperscript{317} Upadhya, Shiau (1996), op.cit., No. 315, pg. 423
1975, daughters were entitled to partition share of the parental property, provided that she remained unmarried and was above 35 years of age. Other reforms included divorcee right to maintenance, provision for adoption of daughter and restriction on bigamy.

In the process of change and development, the present Constitution promulgated in 1990 brought some drastic change into the existing judicial system of Nepal, some of which are basic human rights guaranteed as fundamental rights, independence of judiciary and rule of law which form the basic structure of the Constitution; extra-ordinary jurisdiction to the Supreme Court to test the validity of the laws on the touchstone of judicial review, judicial council as an administrative mechanism to run the administration of judges; tenure of service of judges of all levels.\textsuperscript{318} Except some of the articles on Citizenship, the Constitution is based on the principle of equality. However, the Country Code, 1963 as well as various laws, which are inconsistent with the Constitution, still exist and are enforceable.

IV

The Constitution of Nepal, 1990 has expressed its commitment to guarantee all citizens the fundamental right to equality. The guarantee of the basic human rights and the establishment of an independent and competent system of justice with a view to transforming the concept of the rule of law into a living reality are some of the basic features of the Nepalese Constitution. Part 3 of the Constitution, under the heading of Fundamental Rights, has codified almost all the rights and freedoms, based on equality, recognised by the international community through various international and regional instruments on human rights. Nepal has so far ratified or acceded to sixteen international human rights instruments including the First and Second Optional Protocols to the International Convention on Civil and Political Rights and CEDAW.\textsuperscript{319} The Parliament has enacted the Treaty Act 2047 (1991) which stated that in case any treaty to which Nepal is a party is inconsistent with the existing laws, the existing laws shall be void to the extent of inconsistency and the provisions of the treaty shall prevail as the law of Nepal.


\textsuperscript{319} Forum for Women, Law and Development (FWLD) and The Ford Foundation (Pub. No. 130), Monitoring Framework for implementation of CEDAW, Kathmandu: FWLD and The Ford Foundation, pg. 6
In January 2004, the Government of Nepal submitted its second and third periodic report before the CEDAW Committee. The Committee in its report urged the government of Nepal to expedite action and to establish a specific time-table for amending discriminatory laws without further delay in order to comply with its obligation under Article 2 of the Convention. Taking into consideration Nepal’s commitment at national and international levels, the government needs to amend/repeal all the discriminatory laws and help in achieving equal right for women in all fields of life.

To improve the status of women, policy makers should give immediate attention to eliminating or reducing the impact that these laws have on women. Legal reform (eliminating or reducing discriminatory laws) is one of the preconditions for gender equality. Without legal reforms, upliftment of women’s social, economic and political status is not possible. Many countries of the world, unlike Nepal, have undertaken legal reforms to eliminate all form of discrimination. Countries have also eliminated discriminatory provisions related to marriage and family relations, some forms of violence, women’s property and ownership rights, women’s political rights, work and employment rights. Steps have been taken to realise women’s de facto enjoyment of their human rights through the creation of an enabling environment including the adoption of policy measures, the improvement of enforcement and monitoring mechanisms and the implementation of legal literacy and awareness campaigns at all level.

Although Nepal ratified the CEDAW in 1991, the government has not yet fully implemented its provisions in its policies, laws and programs. Discriminatory legislations as well as harmful traditional and customary practices and negative stereotyping of women and men still persist in the country. Citizenship laws, family laws, civil, penal, labour and commercial laws or codes, or administrative rules and regulations still have not integrated a gender perspective. Legislative and regulatory gaps, as well as lack of implementation and enforcement of legislation and regulation, perpetuate de jure as well as de facto inequalities and discrimination. Even today new laws which are discriminatory against women are being introduced, for example law on foreign employment. As a result of illiteracy, lack of adequate legal provisions, awareness, information and resources, and an insensitive and gender-biased society, women have insufficient access to justice. The lack of gender perspective among law enforcement officials and the judiciary makes it more
critical to enforce non-discriminatory laws in Nepal. There is insufficient recognition of women's rights, as well as the barriers to full enjoyment of these rights, which include certain human rights as defined in the Beijing Platform for Action.

As a result of the State's commitment to mainstreaming gender in the process of national development on the basis of gender equality, a new dimension to women's development has been opened, making the society aware of the need for equal rights for women. The affirmative changes brought about by the Eleventh Amendment to the Country Code, 1963 with regard to gender issues were an example of this new dimension. In spite of the increasing need and demand for amendments in the existing legal provisions in order to create a just and equitable society, diverse views and opinions are still heard regarding the issue of granting equal rights to women and there is a long road ahead for attaining this objective. Studies of education, political participation, distribution of productive assets and income, and the employment, social, cultural, religious and legal situation have proven that disparities and discrimination exist between men and women in Nepal. Economic and socio-cultural discrimination adversely affects the lives of women, leaving them far behind men to compete or take part in national development.

In Nepal, women suffer from one or the other forms of discriminatory law relating to citizenship, property, trafficking, and sexual abuse, education, employment, health including reproductive health, marriage and family and court proceedings etc. Among the three organs of the State, it is the responsibility of the executive to take initiatives to reduce or eliminate discriminatory laws, of the legislative to intervene and pass the Bills and of the judiciary to interpret laws to protect women's rights. Strong and sincere political commitments of all ruling and opposition political parties are a must for the substantive role of all the three organs of the State in materialising gender equality in the country. Civil society organisations should also play an active role in exerting pressure and facilitating government to reduce or eliminate discriminatory laws to comply with the national and international commitments made by the government and to contribute to gender equality.

Lack of proper coordination among the programs as well as the bureaucratic labyrinth has had a dampening effect on the process implementing international conventions. Although the commitments made in international conventions have been
transformed into national policies and Plans of Action, actual implementation is very slow in Nepal. Major reasons behind this are political instability in the country, the low participation of women in the decision making process and inadequate civil society initiatives, lack of gender sensitisation/awareness, lack of strong movements, pressure and lobbying, an ineffective communication system, conservative attitudes of the people and difficulties in generating common understanding. All these factors are major challenges to eliminating discriminatory laws in Nepal.