

Bhutan

1. Discrimination in the family

a) Overarching legal framework for marriage

The law provides women with the same rights as men to enter into marriage and the law is based on consent (Marriage Act, Kha. 1-2 & Kha. 1-4). The legal framework prohibits forced marriage (Marriage Act, Kha. 1-2). The law provides for official registration of all marriages and partnerships including customary and religious marriages (Marriage Act, Kha. 1-3). Informal or de-facto unions are not regulated by law (Marriage Act, Kha. 1-8).

b) Child marriage

The legal age of marriage for women and men is 18 years old (Marriage Act, Kha. 1-11, Kha. 8-20, Kha. 1-14 & Child Care and Protection Act, sect. 16). There are no legal exceptions to the legal age of marriage. Child marriage is void and the law stipulates that the traditional performance of marriage between minors is prohibited (Marriage Act, Kha. 1-11). Those facilitating the marriage of an individual who is under the minimum age of marriage are punishable by a fine and the exchange of lands, houses, properties or livestock occurring in such marriages is prohibited (Marriage Act, Kha. 8-20).

Public measures have been implemented to raise awareness on child marriage, such as the Adolescent Health Programme and Education on Adolescent Sexual and Reproductive Health (Committee on the Rights of the Child, 2017). Additionally, Bhutan is a member of the South Asian Initiative to End Violence Against Children. As part of the Initiative, an Action Plan to End Child Marriage (2015-2018) was adopted and includes seven areas of actions: effectively enacting, enforcing and using national legal and policy instruments to increase the minimum age of marriage to 18 for both boys and girls; ensuring access to quality education; increasing the mobilisation of girls, boys, parents, and religious leaders, to change discriminatory gender norms; increasing child marriage prevention by addressing its root causes and creating alternative social, economic and civic opportunities for girls; collective evidence on the status of married girls and good programmes to address their needs; enhancing advocacy to mobilise action and support for girls who are already married, providing options for sexual and reproductive health information and services and recourse from violence in the home, including annulling marriages; and better monitoring, reporting, and evaluation of programmes to end child marriage in South Asia (Girls Not Brides, 2016).

The CEDAW Committee (2016) stresses that early and forced marriage persist in the eastern region. Girls in rural areas are particularly vulnerable to child marriage (Save The Children, 2013). Reports suggest that girls of 15 years old are being married in secret ceremonies (Save The Children, 2013). Child marriage is induced by factors such as poverty and poor financial situation of the parents as well as traditions that promote child marriage (National Statistics Bureau, 2015).

c) Household responsibilities

No legal provision was located that would restrict women's rights to be recognised as the head of household. Additionally, no restrictions were located in the legal framework with regards to women's rights to be the legal guardians of their children during marriage and in informal unions. Similarly, no restrictions were located in the legal framework regarding women's and men's rights and responsibilities towards their children. The law provides married/unmarried women with the same rights as married/unmarried men to choose where to live (Constitution, art. 7-7).

The CEDAW Committee (2016) stresses that stereotypes and patriarchal attitudes regarding women's and men's roles and responsibilities within the family and society persist in Bhutan. Reports suggest that women dedicate more time than men to unpaid care work (Asian Development Bank, 2014). Women are estimated to spend one hour more per day than men to unpaid work, such as child care, labour contributions to community works, household maintenance, care of the sick, crop farming and kitchen gardening (Asian Development Bank, 2014). Men, especially in urban areas, are becoming more involved in child care, however it appears that they are not involved in household chores (World Bank, 2013).

d) Divorce

The law provides women with the same rights as men to initiate divorce and women have the same requirements as men to finalise a divorce or annulment (Marriage Act, Kha. 5-1 & Kha. 6-1). However, the law does not provide women with the same rights as men to be the legal guardians of their children after divorce and women do not have the same rights and responsibilities as men with regard to their children after divorce, as the law stipulates that in case of divorce children older than nine years old can decide if they wish to live with their mother or their father (Marriage Act, Kha. 7-1). For children under nine years old, the custody is given to the mother unless the court finds compelling reasons to order otherwise (Marriage (Amendment) Act, Kha. 7-2). Reasons for which the court may decide to deprive a mother of custody are neglect, abandonment, unemployment and immorality, habitual drunkenness, drug addition, maltreatment of the child, insanity, affliction with communicable illness and any other ground that the court determines (Marriage (Amendment) Act, Kha. 7-2).

The CEDAW Committee (2016) notes that the provision that automatically grants custody to the mother for children under nine years old reinforces gender stereotypes. Divorce is reportedly traditionally common, easy to obtain and not associated with any stigma (Emery, 2013).

e) Inheritance

The law provides daughters with the same rights as sons to inherit land and non-land assets (Inheritance Act, sect. GA 8-11, GA 8-13 & GA 8-18). The law provides female surviving spouses with the same rights as male surviving spouses to inherit land and non-land assets (Inheritance Act, sect. GA 4-19). The law takes precedence over customary, traditional and religious practices regarding inheritance. Women and men are provided with the same rights to make a will (Inheritance Act, sect. GA 7-2).

Traditional systems of inheritance reportedly continue to be applied (CEDAW, 2016). In Bhutan, within matrilineal communities, women inherit land and property (World Bank, 2013). There are some

geographic variations as matrilineal systems of inheritance tend to be practiced in western and central Bhutan, while patrilineal systems of inheritance are practiced in south Bhutan (World Bank, 2013). Nonetheless, reports assert that while matrilineal systems of inheritance seem to favour women, it can also limit women's social and economic choices by binding them to the land and to family responsibilities (Asian Development Bank, 2014).

2. Restricted Physical integrity

a) Violence against women

There is no law in Bhutan specifically addressing violence against women and providing for a comprehensive approach to address violence against women with specific provisions for investigation, prosecution and punishment of the perpetrator and protection and support services for victims. There is no national plan or policy on violence against women.

The Constitution includes two provisions related to violence against women, notably article 8 (5) which stipulates that "a person shall not tolerate or participate in acts of injury, torture or killing of another person, terrorism, abuse of women, children or any other person and shall take necessary steps to prevent such acts" and article 9 (17) which stipulates that "the State shall endeavour to take appropriate measures to eliminate all forms of discrimination and exploitation against women including trafficking, prostitution, abuse, violence, harassment and intimidation at work in both public and private spheres".

There are Women and Child Protection Division, Units and Desks active within the Royal Bhutan Police (CEDAW, 2015).

The CEDAW Committee (2016) highlights the prevalence of violence against women and the underreporting of such cases. Violence against women in Bhutan appears to occur mostly within marriage, the family and the workplace (National Commission for Women and Children, 2012). Reports suggest that women lack knowledge of their rights and there is a culture of silence surrounding violence against women (National Commission for Women and Children, 2012).

b) Domestic violence

Domestic violence is a criminal offence under the Domestic Violence Prevention Act (sect. 75 & 76). The domestic violence legislation covers physical, sexual, psychological and economic violence (Domestic Violence Prevention Act, sect. 4). Domestic violence as physical and sexual abuse is considered a criminal offence as per the Penal Code of Bhutan (Domestic Violence Prevention Act, sect. 75). Domestic violence as economic and psychological abuse is considered a petty misdemeanour or a misdemeanour in case of aggravated circumstances (Domestic Violence Prevention Act, sect. 76). A misdemeanour is punishable of imprisonment of one to three years and a petty misdemeanour is punishable of imprisonment of one month to one year (Penal Code, sect. 3). The legislation covers abuse from former partners and within the family (Domestic Violence Prevention Act, sect. 3). The Domestic Violence Prevention Act includes budgetary commitments from the Government (sect. 9).

The law does not forbid mediation and conciliation in cases of domestic violence as the Domestic Violence Prevention Act stipulates that if the offence is a misdemeanour the matter can be settled

mutually if the victim wishes it and considering the nature and circumstance of the offence, the frequency and severity of the abuse, the age, maturity and state of mind of the victims, the reparation of the injury and compensation to the victim, the safety of the family and the best interest of the victim (sect. 22).

The law provides for the establishment of Women and Child Protection Unit or desk at every police station and police personnel should investigate the domestic violence and refer for the prosecution (Domestic Violence Prevention Act, sect. 20 & 21).

The Domestic Violence Prevention Act provides for protection and services to victims, notably interim protection order or a protection order (sect. 54). Additionally, the law provides for emergency shelters for victims of domestic violence, as such the Protection Officer shall maintain a list of all service providers that provide legal aid, counselling, shelter home and medical facility and accommodate the victim in shelter home (Domestic Violence Prevention Act, sect. 27). A Social Welfare Officer shall ensure as well that the victim is accommodated in the shelter home (Domestic Violence Prevention Act, sect. 33). It is the responsibility of the Government to provide assistance to the community to establish facilities for adequate shelter for victims (Domestic Violence Prevention Act, sect. 39). However, the CEDAW Committee (2016) notes that shelters for women victims of domestic violence are limited and are exclusively run by civil society organisations.

Furthermore, the Domestic Violence Prevention Act mandates comprehensive and accessible health services for victims of domestic violence, as such police personnel are mandated to aid or assist victims to obtain medical treatment (sect. 21). The Protection Officer and the Social Welfare Officer are required to get the victim medically examined and to forward a copy of the medical report to the police station and the court (Domestic Violence Prevention Act, sect. 27 & 33). The Ministry of Health is mandated to establish appropriate facilities with trained medical and health personnel and to establish One Stop Crises Centres (Domestic Violence Prevention Act, sect. 35). The law does not mandate hotline for victims.

The Domestic Violence Prevention Rules and Regulations include guidelines and protocols for a number of actors, such as the National Commission for Women and Children, the Protection Officer, the Social Welfare Officer, the courts, Government institutions, civil society organisations, the media and communities. Additionally, the Domestic Violence Prevention Rules and Regulations provide for awareness-raising and education campaigns by all actors, including health personnel and educational institutions.

Estimations show that among women aged between 15 and 49 years old, 24% experienced emotional, physical or sexual violence by their husbands or partners (Asian Development Bank, 2014). Emotional and physical violence appear to be the main forms of abuse by a partner (National Commission for Women and Children, 2012). Domestic violence seems to occur mostly in certain circumstances such as alcohol consumption, jealousy, or difficulties at work (National Commission for Women and Children, 2012). Victims seldom report domestic violence to the authorities as domestic violence is considered a private matter which should be dealt within the family (National Commission for Women and Children, 2012). Police officers reportedly encourage women to go through reconciliation/mediation processes in cases of domestic violence before filing a criminal case (US Department of State, 2016).

The CEDAW Committee (2016) notes that domestic violence is highly tolerated within society. Domestic violence appears to be accepted by women for reasons such as going out without notifying the husband/partner, arguing with him, refusing sex or burning food (Asian Development Bank, 2014). Reports suggest additionally that young women show higher levels of tolerance to domestic violence (Asian Development Bank, 2014). Rural women appear to be more vulnerable to domestic violence and are often subjected to gender norms related to the belief of the superiority of men over women, such as that a wife should obey her husband or that a wife should have sexual relations with her husband even if she does not want to (National Commission for Women and Children, 2012).

c) Rape

Sexual violence is not included in the legal framework but rape is considered a criminal offence (Penal Code, sect. 177 & 178). Rape is considered a felony of fourth degree and is punishable of imprisonment of three to five years (Penal Code, sect. 178 & 11). The law is based on lack of consent and does not require proof of physical force, resistance or penetration (Penal Code, sect. 177). Rape is understood as sexual intercourse without the person's consent or with consent when consent is obtained by putting the person or a third person in fear of death or of grievous hurt, when consent is obtained by force, threat or bodily injury, by administering drugs, intoxicants or other substances or when the victim is rendered unconscious (Penal Code, sect. 177). Marital rape is included in the legal framework and is considered a petty misdemeanour (Penal Code, sect. 199). A petty misdemeanour is punishable of imprisonment of one month to one year (Penal Code, sect. 3). The law provides for increased penalties for aggravated forms of rape, such as if the victim is married, when the victim is a minor or an incompetent person, if the victim is a pregnant woman, in case of gang rape or custodial rape (Penal Code, sect. 179-198). The law repeals discriminatory practices such as reduced sentences or escaping punishment if the perpetrator marries the victim (Penal Code, sect. 199).

There is no national action plan or policy to support the implementation of the legislation on sexual violence and the law does not provide for assistance services to victims of rape and sexual violence.

Rape and sexual violence are prevalent in Bhutan (National Commission for Women and Children, 2012). Estimations show that two in five women are likely to experience physical or sexual abuse by an intimate partner or non-partner from the age of 15 (National Commission for Women and Children, 2012). It appears that acquaintances such as neighbours and male friends of the family are the most common perpetrators of non-partner sexual violence (National Commission for Women and Children, 2012). Marital rape is reportedly prevalent (National Commission for Women and Children, 2012). According to respondents to a survey, the most common forms of marital rape are being physically forced by their partner, agreeing to sexual relations with their partner due to fear and degrading or humiliating sexual intercourse (National Commission for Women and Children, 2012). Marital rape is tolerated within society and is reinforced by traditional perceptions that it is a wife's duty to have sexual relations with her husband (National Commission for Women and Children, 2012).

d) Sexual harassment

The legal framework provides legal protection from sexual harassment under section 205 of the Penal Code. Sexual harassment is considered a petty misdemeanour and is punishable of imprisonment of one month to one year (Penal Code, sect. 3). The legislation does not specifically cover educational

establishments, sporting establishments, public places and cyber harassment. The Labour and Employment Act includes provisions prohibiting sexual harassment in the workplace (sect. 16-19). Under the Labour and Employment Act, sexual harassment is considered a petty misdemeanour and the court may impose additionally a fine in accordance with the severity of the offence (sect. 20).

The Sexual Harassment Regulation provides for prevention measures to be taken by employers and information on the procedure for sexual harassment complaints internally and to the Chief Labour Administrator within the Ministry of Labour and Human Resources.

The CEDAW Committee (2016) notes that there is limited data concerning the incidence of sexual harassment in the workplace and there are no statistics regarding complaints of sexual harassment.

e) Female genital mutilation

There is no law addressing female genital mutilation and it appears that female genital mutilation is not a practice of concern in Bhutan (UNICEF, 2013).

f) Abortion

Abortion on request is illegal (Penal Code, sect. 146). Aborting or inducing expulsion of an embryo or foetus or preventing a child from being born alive is considered a misdemeanour under the legal framework and is liable of imprisonment of one to three years (Penal Code, sect. 147 & 3). A legal abortion can be sought when it is for the purpose of saving the life of the mother, when the pregnancy is the result of rape or incest or when the mother has mental health issues (Penal Code, sect. 146).

More

Bhutan is a source and destination country of trafficking for women and girls for forced labour and sexual exploitation (CEDAW, 2016). Girls from rural areas are particularly vulnerable to exploitative domestic work (CEDAW, 2016). Indian women and girls reportedly are vulnerable to forced labour in domestic service or as caregivers (US Department of State, 2016).

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

Regarding land, property and other non-land assets, the law provides married/unmarried women with the same rights as married/unmarried men to own, use, make decisions and use as collateral (Inheritance Act, sect. GA 6-3 & Constitution, art. 7-9 & 7-14). Regarding land, property and other non-land assets, the law provides women and men with the same rights after divorce or separation to own, use, make decisions and use as collateral (Inheritance Act, sect. GA 6-12). Additionally, regarding marital property, a married woman has the same rights as a married man to administer (Inheritance Act, sect. GA 6-12). The law provides for joint land titling for land used or acquired by married couples or informal unions (Inheritance Act, sect. GA 6-12).

Under the Rural Economic Advancement Programme, programmes were led targeting women, such as the establishment of three day-care centres, pooled labour activities in the communities to build houses for female-headed households, and activities to ensure women's participation in cooperatives

and in training and capacity-building programmes (CEDAW, 2015). Rural women tend to be active in farmers' cooperatives (World Bank, 2013). In 2013, there were 1975 women and 2199 men registered as members in Farmer's Groups and there are 657 women and 784 men registered in cooperatives (CEDAW, 2015).

Women represent a large part of the workforce in the agriculture sector compared to other sectors (Asian Development Bank, 2014). Estimations show that the workforce in the agriculture sector is composed of 37% of women, 23% of men and the non-agriculture sector is composed of 26% of men and 14% of women (Asian Development Bank, 2014). While being crucial to family livelihoods, the agriculture sector is also characterised by low earnings and productivity (Asian Development Bank, 2014). Rural women face increased rates of poverty (CEDAW, 2016). Women farmers are reportedly disproportionately affected by high workload in addition to child care and household responsibilities (Asian Development Bank, 2014).

While women tend to be the owners of land and property inherited through matrilineal systems, they may not be entitled to make decisions regarding the land and property (World Bank, 2013). Inheriting land constitutes a source of economic empowerment for women, nonetheless reports suggest that in Bhutan, the inheritance of land is also often accompanied by responsibility to care for the elderly family members, a responsibility which weighs disproportionately on women (World Bank, 2013). Additionally, it appears that agriculture in Bhutan offers limited economic benefits, inheriting land can hinder consequently women's opportunities for migration, skill acquisition and work opportunities (World Bank, 2013).

b) Secure access to formal financial resources

No provisions were located in the law which would restrict women's rights to open a bank account at a formal financial on an equal basis with men and women's rights to obtain credit on an equal basis with men.

Measures implemented to enhance women's access to formal financial services, including credit, include the establishment of micro-finance institutions with a focus on economic development, gender equality and poverty reduction in rural areas and the creation of mobile banking facilities (CEDAW, 2015).

There is no legal discrimination regarding women's right to access to formal financial resources and it appears that there are no practices which may restrict this right.

c) Workplace rights

The law mandates non-discrimination on the basis of sex in employment and specifically covers recruitment, terms and conditions, promotions, training and termination (Labour and Employment Act, sect. 11-15). The law mandates equal remuneration for work of equal value (Labour and Employment Act, sect. 13 & Constitution, art. 7-11). Women are prohibited to enter certain professions that require lifting weights above threshold (Regulation on Occupational Health, Safety and Welfare, sect. 110). Women are allowed to work the same night hours as men.

The law mandates paid maternity leave of eight weeks with full wages to the employer's liability (Regulations on Working Conditions, sect. 46). The law protects women's employment security when they are on maternity leave (Labour and Employment Act, sect. 113). Paid paternity leave is available for five working days with full wages to the employer's liability (Regulations on Working Conditions, sect. 57-62). The law does not mandate parental leave.

The law does not require women to have permission from their husband or legal guardian to choose a profession, occupation or work or to register a business (Labour and Employment Act, sect. 237). However, under the Companies Act, the register of directors held by companies should indicate the name, the father's name or where the individual is a married woman, the husband's name, full residential address and nationality (sect. 97).

The CEDAW Committee (2016) highlights that women are more subject to unemployment than men. Women are additionally concentrated in low-paid positions, mainly in the agriculture and domestic sectors (CEDAW, 2016). The employment segregation is prevalent in Bhutan and can be linked to two factors: traditional gender roles and self-selection (World Bank, 2013). It appears that women are concentrated in lower quality jobs than men (World Bank, 2013). Factors influencing this trend in the labour force include gender differences in physical strength, gender roles and perceptions as well as lack of education and distribution of unpaid care work (child care and housework) within the families (World Bank, 2013). As a result, women may not engage in positions which require traveling or heavy workload (World Bank, 2013). Women's responsibilities in the house may prevent them from investing in their career developments (World Bank, 2013).

4. Restricted Civil liberties

a) Citizenship rights

The law provides married/unmarried women with the same rights as married/unmarried men to acquire, change or retain their nationality (Citizenship Act, sect. 4 & 6). The law provides married women with the same rights as married men to confer nationality to their spouse (Marriage Act, Kha. 1-2). The law provides married/unmarried women with the same rights as married/unmarried men to confer nationality to their children (Citizenship Act, sect. 2). No legal provisions were located which would restrict women's rights to register the birth of their children (US Department of State, 2016).

The Constitution does not recognise and prohibit multiple/intersectional discrimination, nonetheless it includes a provision stipulating that no one shall be discriminated on the grounds of race, sex, language, religion, politics or other status (Art. 7-15).

The law provides married/unmarried women with the same rights as married/unmarried men to apply for identity cards (Ministry of Home and Cultural Affairs, n. d.). Additionally, the law provides married/unmarried women with the same rights as married/unmarried men to apply for passports (Ministry of Foreign Affairs, n. d.). No provisions were located that would restrict women's rights to acquire passports and other travel documents for their minor children. The law provides women and men with the same rights to travel outside the country (Constitution, art. 7-7).

There is no legal discrimination regarding citizenship rights women's rights to apply for identity cards or passports and it appears that there are no practices which may restrict those rights.

b) Voting

The law provides women and men with the same rights to vote (Constitution, art. 7-6). There is no legal discrimination regarding women's right to vote and it appears that there are no practices which may restrict this right.

c) Political voice

The law provides women with the same rights as men to hold public and political office within the legislature, the executive and the judiciary (Constitution, art. 20-2, 21-2 and Electoral Act, sect. 205). There are no legal quotas nor special measures in place at the national or local level to promote women's political participation.

The CEDAW Committee (2016) stresses the low representation of women in public and political life, notably due to gender stereotypes, lower educational levels and unequal access to financial resources. Women are underrepresented in the National Assembly, as well as in decision-making positions, as ministers, judges, diplomats and in the civil service (CEDAW, 2016). Women are furthermore underrepresented in local government elections due notably to lack of access to education, the belief that politics is a male activity, lack of confidence of women to take a public role as well as women's responsibilities in the household (Asian Development Bank, 2014).

According to a study done amongst university students, it appears that male respondents believed that men are better leaders than women, while female respondents believed the capacities of women and men to be equal (Asian Development Bank, 2014). On the reasons why women are underrepresented in decision-making positions and political offices, male respondents highlighted the lack of will, skills and rigour on the part of women while female respondents highlighted societal factors (Asian Development Bank, 2014).

d) Access to justice

The law provides married/unmarried women with the same capacity as married/unmarried men to be sued and to sue (Constitution, art. 7-15 & Civil and Criminal Procedure Code, sect. 3). An unmarried/married woman's testimony carries the same evidentiary weight in court as an unmarried/married man's in all types of court cases such as civil, criminal, family court or tribunal (Constitution, art. 7-15 & Civil and Criminal Procedure Code, sect. 3).

The law includes elements to ensure that women are able to exercise their rights to sue, such as the Jabmi Act which provides for legal aid (CEDAW, 2016). Additionally, the Domestic Violence Prevention Act includes provisions such as limited attendance in the court, giving testimonies through video link or respect of privacy in cases of domestic violence (sect. 42-46). The CEDAW Committee (2016) reports on the establishment of specialized courts for women and children.

The specialized body tasked with monitoring gender equality is the National Commission for Women and Children (CEDAW, 2016). The functions of the National Commission for Women and Children is to review and formulate gender responsive and child sensitive policies, to advocate for gender equality, to raise awareness amongst all stakeholders, to coordinate and partner with stakeholders and to monitor and evaluate all activities related to gender equality (National Commission for Women and Children, n.d.).

The National Commission for Women and Children and non-governmental organisations provide training for police and judicial officials on gender sensitive attitudes and practices (UN Women, 2011).

Women reportedly face barriers to access justice in particular a lack of knowledge of legal proceedings and of their rights (Tarayana Foundation, 2016). Additionally, women living in rural areas may face difficulties accessing the courts due to distance and costs of traveling (CEDAW, 2016).

More

The CEDAW Committee (2016) reports on the establishment of a gross national happiness policy screening tool, which includes gender equality as a parameter. The Gross National Happiness survey shows that 49% of men and 33% of women are considered happy according to the combined parameters (Asian Development Bank, 2014). The indicators that record the highest gap between women and men are literacy, schooling, working hours, political participation and community donations of time and money (Asian Development Bank, 2014).

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