

## Nepal

### 1. Discrimination in the family

#### a) Overarching legal framework for marriage

Marriage is regulated under the Nepalese Marriage Registration Act of 1971, the Social Practices Reform Act of 1976 and the Muluki Ain (General Code). The Muluki Ain specifies that marriage must be entered into under the free will and consent of both parties, and under the Marriage Registration Act, marriage may only be concluded should both the man and women not already have a husband or wife, that they are not 'mad' and that they are twenty years or older. The Marriage Registration Act also recognises that customary, traditional, or religious marriage will be recognised and registered under the act, so long as it does not contradict any provisions listed under the act. Informal unions are not recognised under Nepalese law.

The Muluki Ain states that should marriage be arranged or solemnized without the full consent of both the man and wife, or by force, then the marriage is void, with a punishment of up to two years of imprisonment for the one who concluded or arranged it (Muluki Ain, 1963). If marriage is occurring under false pretence, and one party is already married, or does not disclose they are widowed or divorced, the marriage will be void, and the arranger subject to a fine, to be paid to the party under the false representation.

Forced marriages have been recorded in Nepal, predominately to protect family honour, to prevent 'unsuitable' relationships, to promote traditional values, and to control female behaviour (UNESCAPE, n.d.). There are reports of kidnappings and forced marriage when proposals have been rejected, and rape victims have been forced to marry their aggressor to save honour. There are also reports of women and girls being sold into marriage (UNESCAPE, n.d.).

Although Polygamy is punishable under the Country Code (1963), if the offender is penalised with a punishment of one to three years of imprisonment and a fine, then the marriage becomes legal, and the rights of subsequent wives are similar to that of the first wife (Saathi, 2011).

Dowry is illegal, with penalties of up to three years' imprisonment and a fine of up to NRs 10,000 (\$100), and in 2015, the Act to Amend Some Nepal Acts to Maintain Gender Equality and End Gender-Based Violence was passed, outlawing acts of psychological abuse to women, including asking for dowry and the shunning of women for not providing a dowry (US Department of State, 2016). According to reports, dowry, where the bride's family pays the husband's family an amount of money based upon his training and education, is a traditional practice in Nepal, particularly in the Terai region (US Department of State, 2016). According to local NGOs, victims often face pressure from their communities to not file criminal complaints and there have been incidents of killings or attempted killings of brides over dowry disputes (Department of State, 2016).

#### b) Child marriage

The legal age of marriage in Nepal is 20 years, for both women and men, according to the Country

Code, 1963 and the Marriage Registration Act, 1971. Marriage at the age of 18 is allowed with the consent of their guardian (Muluki Ain, 1963). Child marriage is prohibited by law, and the law punishes any persons involved in the act of marrying children (Muluki Ain, 1963). The penalties are in accordance to the age of the girl married, but include both prison time and fines which are paid to the girl involved (Muluki Ain, 1963). Legally, if the marriage concerns those under the age of 18, and no child is born, then the marriage can be ended if either party complain (Muluki Ain, 1963).

Despite the legal framework, there are reports that child marriage is a common practice in Nepal, particularly in the Dalit and Madhesi communities, and can be driven by social, economic and cultural norms (U.S. Department of State, 2016; Girls not Brides, 2017). Long standing traditions and customs, and high levels of illiteracy compound the difficulties of reducing child marriage prevalence (Plan Nepal, Save the Children, World Vision International Nepal, 2012).

The government has committed to ending child marriage: Nepal is a member of the South Asian Initiative to End Violence Against Children, and the government committed to end child marriage in Nepal by 2020 at the Girl Summit, 2014 (Girls not Brides, 2017). The Ministry of Women, Children and Social Welfare, supported by NGOs including UNICEF Nepal and Girls Not Brides Nepal, started to develop a national strategy against child marriage, however, the 2015 earthquake and the fuel crises have delayed this and, as of August 2017, it had not yet been finalised (Girls Not Brides, 2017).

### **c) Household responsibilities**

No provisions could be located regarding a woman being required to obey her husband (Women, Business and Law, 2016). Similarly, no provisions were found discriminating against a women's right to be recognised as head of the household, and regarding a woman's right to choose where to live (Women, Business and Law, 2016). Although men and women share equal rights relating to all stages of marriage and family in Nepal, including guardianship and property, tradition gender roles still apply, with women in the role of housekeeper and caretaker of the children (CEDAW, 2010). Traditionally, the women leave their family home when they are married, and live under the authority of their in-laws (Saathi, 2011). De facto unions are not recognised under Nepalese Law (Saathi, 2011).

### **d) Divorce**

Although CEDAW (2010) reports that men and women have equal rights regarding divorce, the Country Code notes differing situations in which men and women can seek divorce. The Country Code does specify that divorce can be initiated if there is consent from both parties, it also outlines that men can seek divorce under the following circumstances: if his wife has left the husband and lived separately from him, without his consent, for a continuous period of three years or more, has undertaken actions which are designed to end his life, or cause mental or physical suffering to him, if she has incurable venereal disease, or has had sexual intercourse with another man. Women are able to seek divorce if, in addition to the circumstances outlined above, her husband has another wife, banished her from the house, not provided for her in clothes and food, or raped her (Muluki Ain, 1963). If a widow or divorced women marries another under the pretence that she is unmarried and the man who was under false representation does not consent to the marriage then the marriage will be void (UNESCAS, n.d.).

In Nepal a traditional practice of *Talaq* is practiced by the Muslim community in Nepal, where the Muslim marriage can be broken by the husband orally stating the word ‘*talaq*’ three times. *Talaq* is not recognised by the law, however, still continues (Saathi, 2011).

Practically, women face difficulties in gaining a divorce in Nepal, including the expense of lengthy court cases, and the extreme social stigma associated with being a divorced woman in Nepali culture – including ostracization from their communities (The Women’s Foundation Nepal, 2017).

Recent amendments to marriage laws mean that women now have equal rights regarding their children’s custody following divorce (CEDAW, 2010).

### e) Inheritance

The 2006 Gender Equality Act brought some inheritance rights for daughters in line with that of sons by removing the provision that daughters must return property they inherited from their family upon marriage (An Act to Amend Some Nepal Acts for Maintaining Gender Equality, 2063, 2006). This was then included in the twelfth amendment of the Country Code; however, it does not provide for married women to be equal coparceners (IOM, 2016). The eleventh amendment of the Country Code granted widows the full rights to use her property, even if she remarries, and for daughters to have the same rights related to food, clothing, education, health, in their upbringing as sons (Women living under Muslim Laws, 2017). No provisions could be located regarding disinheritance of a surviving spouse, and property grabbing or dispossession. Legally women have the same rights as men to make a will (IOM, 2016).

Although recent changes in the law now increase women’s inheritance rights and rights to keep their property after they marry, in reality many women are either reluctant to challenge traditional and pervading practice which favours male beneficiaries, or are not aware of their rights, and face significant societal barriers, such as discouragement from family or neighbours, patriarchal views that men are the land holders and decision makers, a lack of trust that women are able to handle the financial responsibility, and belief that it is not a women’s place in society (IOM, 2016; U.S. Department of State, 2016). Similarly, although widows have full authority over their spouse’s estate, communities often ignore the law, and continue to stigmatise and shun widows (U.S. Department of State, 2016).

### More

Nepal has a history of *sati*, the compulsory suicide of widows by burning upon the funeral pyre of their spouse, however, this was outlawed by the reigning King in the 19<sup>th</sup> Century for widows with children (UNESCAS, n.d.). In more recent times traditional practices regarding widows vary and may include not allowing them to remarry as brides have to be virgins at the time of their marriage, that they can only be concubines, or if they do remarry their children must remain with the deceased husband’s family (UNESCAS, n.d.).

## 2. Restricted Physical integrity

### a) Violence against women

There is no specific law related to violence against women, although the Constitution of Nepal grants women and men equal rights, and outlaws both physical and mental violence against women (Constitution of Nepal, 2015). Additionally, in 2010, a National Plan of Action Against Gender Based Violence was implemented, where the plan worked towards ending gender-based violence in Nepal (UNWOMEN, 2010).

### b) Domestic violence

The Domestic Violence and (Offence and Punishment) Act 2066, passed in 2009, defines domestic violence as any form of violence, including physical, mental, sexual or economic from a person he or she has a family relationship with. However, this definition excludes former partners. When a complaint is filed, courts can award protection orders, and if the victim is in need of medical assistance then the aggressor bears the cost (Domestic Violence and Punishment Act 2065, 2009). The maximum fine for the aggressor is 25 000 rupees and six months' imprisonment. Repeat offenders received double the punishment, and those who attempt to commit domestic violence or incite or abet the crime receive half (Domestic Violence and Punishment Act 2065, 2009). There is no national action plan related to domestic violence.

The Domestic Violence (Offence and Punishment) Act, 2066 (2009) states that the Government of Nepal may establish Service Centres which offer immediate protection for the victim of domestic violence, and for longer term accommodation if the victim needs treatment. They will also provide legal aid, psycho-consultation services, and economic aid to the victim.

### c) Rape

Rape is criminalised under the Country Code and the more recent Gender Equality Bill of 2006, which also includes marital rape and bans rapes as grounds of divorce. The penalty for marital rape is only six months' imprisonment (Gender Equality Bill, 2006). A draft Penal Code has been proposed by the government to the Legislature-Parliament which will increase the punishment for marital rape to five years in the face of widespread criticism that the current provisions are too lenient (Saathi, 2011).

The Gender Equality Bill (2006) also provides increased penalties for rape, depending on the age of the victim (10 to 15 years if the victim is below the age of ten, to five to seven years if the victim is over the age of sixteen), if the aggressor has committed the crime knowing that they carry HIV, or in the case of gang rape, the rape of a pregnant or disabled woman. Furthermore, there are provisions compensation for emotional and psychological harm (Gender Equality Bill, 2006). The Bill additionally requires women's statements to only be taken by female police officers.

### d) Sexual harassment

The Gender Quality Act of 2006 outlawed sexual harassment, including physical and verbal harassment, with a punishment of up to one years and a fine up to 10 000 rupees, as well as the aggressor paying compensation to the victim (Gender Quality Act, 2006). Recent cases of harassment

in the workplaces have been brought before the Supreme Court, such as *Sarmila Parajuli et. al v. Council of Ministers decided in 2004* where the Supreme Court upheld that sexual harassment in the workplace is exploitation of women, and harassment can take the form of threat of dismissal, or the promise of promotion, salary increase or reward. Therefore, the Supreme Court ordered legislations to be investigated, and the provision of adequate penal provisions and relief for victims. In response the bill was drafted by the MoWCCW, and the law 'The Sexual Harassment at Workplace Prevention Act, 2015 enacted in 2015 (Pioneer Law Associates, 2016a). The act defines 'workspace' to include spaces used or owned by the Government, or any licensed corporate bodies, institutions, firms licenced to carry out any business, trade or provision of services. It defines sexual harassment as physical contact or advances, showing or displacing pornographic material, expressing sexual motives (written, verbal, non-verbal), demand or proposal for sexual favours and flirting or harassing with sexual motive, and puts the responsibility on the employer to ensure that sexual harassment is prevented, that awareness is raised, and that potential victims received sufficient care. Section 12 of the act responds to the punishment of the perpetrator, with up to six months' imprisonment and/or a fine of up to 50,000 Nepalese Rupees. For those employees who fail to comply with the rules under the Act, a fine of up to 25,000 Rupees may be applied. For repeat offenders, the punishment may be doubled (Pioneer Law Associates, 2016b).

#### **e) Female genital mutilation**

There is no evidence to suggest that female genital mutilation is practised in Nepal.

#### **f) Abortion**

Nepal legalised abortion in 2002 under the 11<sup>th</sup> amendment of the Civil Code, and the law was approved in 2003. Women are able to request abortion up until 12 weeks, for any reason, without the permission of her husband or guardian for women over the age of 16 (Muluki Ain, 1963). Women are additionally able to obtain abortions up to 18 weeks in the case of rape or incest, and at any time if the pregnancy poses risk to the life or physical or mental health of the women, or if the foetus is deformed (Muluki Ain, 1963; Women on Waves, 2017).

#### **More**

There is a traditional belief regarding witchcraft which particularly affects Dalit women, rural women, widows, the elderly, and those of low economic status, where shamans or family members publicly abuse or beat 'witches' to exorcise them (U.S. Department of State, 2016). An Anti-Witchcraft (Crime and Punishment) Act (2015) was passed to directly address such assault, which imposes punishments of fines and prison sentences from five to ten years for those involved in abusing accused witches.

Women face the practice of *chhaupadi*, where they are expelled from their homes during menstruation and after childbirth, and forced to inhabit cattle sheds. The practice occurs nationwide, but is particularly prevalent in the mid- and far-west of Nepal (U.S. Department of State, 2016). *Chhaupadi* was outlawed by the Supreme Court in 2005, yet the practice continues to be practiced as women are considered impure during this time (CEDAW, 2010)

### 3. Restricted Access to productive and financial resources

#### a) Secure access to land and assets

The Constitution of Nepal states that every citizen has the same right to own, acquire, sell or otherwise use or dispose of their own property, both spouses have equal rights to property, and that there is no gender discrimination in division of ancestral property (Constitution of Nepal, 2015). The Act to Amend Some Nepal Acts for Maintaining Gender Equality 2063 (2006) declares that all women, including unmarried, married or widows may “enjoy the movable and immovable property on her own”.

In attempts to increase women’s access to land ownership, in 2010 the government declared there was a discount of the registration fee by 25%. Previously they also announced a 10% rebate in income tax for the fiscal year 2008/9 to attempt to promote women entrepreneurs (CEDAW, 2010). Although Nepali law provisions for gender equality regarding land and assets, family property is held through the patriarchal line under the (non-legally recognised) Hindi belief system, where the male family member holds the title of the land, even when it belongs to the whole family (FAO, 2017). According to the FAO, women are disadvantaged under this system, belonging to the father’s patrilineage until marriage, when they then belong to their husband’s patrilineage, yet hold no rights (FAO, 2017). The only land that women have exclusive control over is the *daijo* (small plots sometimes given upon marriage), and *pewa* (gifts of personal property). Although in some minorities women own land and control the assets, predominately women who hold a tenancy or own land are expected to hold in trust for their sons (FAO, 2017).

#### b) Secure access to formal financial resources

Women are legally able to access bank loans and financial credit in the same way as men can, and do not need their guardian or husband’s signature to open a bank account (Women, Business and Law 2017). The government has put into place credit-related programmes for women, including the Women Development Program of Small Farmers Development Project, which dispersed credit totalling Rs 21 million, to over 430,000 women (CEDAW, 2010). The 2010 CEDAW report notes that due to lower literacy rates of women, and a bias against women by the banks, there is a low level of access by women to formal credit institutions, however (CEDAW, 2010).

#### c) Workplace rights

The Government of Nepal has ratified the ILO conventions 100, Equal Remuneration Convention (1951), and 111, Discrimination (Employment and Occupation) Convention (1958).

The Nepalese Constitution guarantees the fundamental right to employment, including no gender discrimination in regards remuneration for the same work and social security (Constitution of Nepal, 2015). Under the Labour Law (1992) women are restricted in the hours they can work, from six am to six pm. Women are granted 52 days of paid maternity leave, fully funded by her employer, however, a woman can only obtain such leave twice during her service, unless her first two children do not survive (Labour Rules, 1992). The women’s employment security is also not protected in Nepalese Law, nor are employers prohibited from asking about a women’s pregnancy or intention to bear child during the recruitment phase. The law provides no provision for paternity or parental leave. Women



are not required to ask for permission from their husband or guardian to choose a profession, nor register a business (Women, Business and Law, 2017).

The government has made efforts to promote equality in employment, including forming women's groups under the Women Development Program, which concentrate on social mobilisation and economic empowerment through women's cooperatives (CEDAW, 2010).

NGOs report that women in Nepal face discriminatory practices in society which hinder their rights to and in employment, and often face wage discrimination, as there are no mechanisms to monitor or punish wage discrimination (Saathi, 2011).

## 4. Restricted Civil liberties

### a) Citizenship rights

The Constitution of Nepal prohibits multiple/intersectional discrimination (Constitution of Nepal, 2015). Men and women have equal rights regarding obtaining and retaining their nationality, as well as conferring their nationality on to their children (Constitution of Nepal, 2015, Citizenship Act, 2006). Foreign women married to a Nepali citizen may acquire naturalised Nepali citizenship, as provided for under federal law (Constitution of Nepal, 2015). For women, they are only able to pass their citizenship onto their spouses, once their foreign husbands have resided in Nepal for 15 years (Saathi, 2011). Similarly, foreign husbands hold no privileges afforded to Nepalese wives with visas, employment or business (Saathi, 2011).

Regarding official documentation, men and women share equal rights to apply for identity cards, and passports (MOHA, 2017, Government of Nepal, 2017). To be eligible to apply for an identity card you must be a Nepalese citizen and have reached the age of 16 (Government of Nepal, 2017). Women are not required to ask for permission to travel outside the country from their husband or guardian (Women, Business and Law, 2015).

The Birth, Death and Other Personal Event Act, 1975 lists that births and deaths must be registered by the head of the household, which traditionally has always been men. A recent case 'In Tek Tamrakar for Pro-Public v. Government of Nepal' this restriction was challenged, and the court declared the provision invalid, due to its discriminatory nature to women (Saathi, 2011). Nepal suffers from low levels of birth registration, largely due to the low level of perceived utility in the daily lives of Nepalese people, however, due to commitments of the Government to make birth registration obligatory, such as provision of an online registration system, registration is slowly increasing – although it is still much lower in the mountainous regions (Gautam, 2016).

### b) Voting

Women have the right to vote under the Constitution of Nepal (2015), although there are reports that many women choose not to vote, in part due to the fact that there is often violence and intimidation during the elections and the election commission and the political parties do not provide security for the women, except a separate queue on election day (Saathi, 2011). Similarly, there are no arrangements for the vulnerable, including elderly, pregnant or those in ill health (Saathi, 2011).

### **c) Political voice**

The Constitution of Nepal (2015) decrees that women (as well as men) have the right to participate in all state structures and bodies, and that any citizen who has reached the age of 18 is entitled to vote in any constituency. Any citizen, man or women, is entitled the freedom to form a political party, union or association (Constitution of Nepal, 2015).

Article 63 of the Constitution of Nepal establishes that candidates for the Constituent Assembly must be comprised of at least 33% female, and in the case of non-compliance the list will be rejected (Quota Project, 2017). At the sub-national level, at least 40% of the candidates for elections to the municipal councils must be women, according to the 1999 Local Self Government Act.

Women face socio-economic and cultural obstacles to reach political participation, in that many women have not had access to formal education, or the training required. Women still fulfil traditional roles in society, such as housewife and mother, and, even should they be socially mobile, often lack the resources or family support to enter politics (Saathi, 2011). Additionally, threats of violence or sexual harassment to those participating in politics in Nepal may act as a deterrent (Saathi, 2011).

### **d) Access to justice**

All citizens of Nepal are equal before the law, under The Constitution of Nepal, and women are full legal entities, meaning that they can both sue and be sued. Similarly, a women's testimony carries the same weight as men's in court (Women, Business and Law, 2017).

A report by the National Judicial Academy and UN Women highlights that women face significant challenges in accessing justice, including financial restraints, distance from service providers, lack of knowledge of the law, length court proceedings, the threat of damaging family prestige and fear of re-victimisation from the perpetrators (NJA, UNWOMEN, 2016).



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