Nepal

1. Discriminatory family code

Recent amendments to the Chapter on Marriage in the General Country Code raised the legal age of marriage to 20 for both sexes.\(^1\) Although the rate of early marriage is declining, there is evidence that it is still widely practiced in Nepal. According to UN data from 2011, 28.9% of girls between 15 and 19 years of age were married, divorced or widowed, compared to 7% of men.\(^2\) In addition, the 2011 Demographic Health Survey (DHS) found that, while 5% of 15-19 year olds had been married at 15, this number increased to 23.5 for women 45-49 years; and that, between 1996 and 2011, the median age of a woman at marriage rose from 16.4 to 17.5.\(^3\) Recent data from 2013 reveals that 41% of women between the ages of 20 and 24 were married or in union before they were 18 years old, ranking Nepal 17\(^{th}\) country in the world, within the 20 highest-prevalence countries.\(^4\)

The median age at first birth is 20.1 years for the youngest cohort of women (aged 25-29).\(^5\)

Legally, parental authority rests with both parents. However, according to a 2003 Convention on the Elimination of all forms of Discrimination against Women (CEDAW) report, “the conventional assumptions on women’s role and position have not changed very much in Nepal. Traditionally, women are supposed to hold an inferior position at home and in the society. Their primary role is to take care of the children and perform household work.”\(^6\) However, in child custody cases following divorce, recent changes to the general Country Code Chapter on Marriage means that courts now give preference to the mother.\(^7\) Legally, women and men have the same rights to divorce, following amendments to the legislation that had previously made it more difficult for women to obtain a divorce.\(^8\) Women also have the first right of refusal for custody rights over minor children, unless she has remarried, and maintenance must be paid.\(^9\)

Under the current interim constitution, Nepalese women have gained the right to pass Nepalese citizenship onto their children.\(^10\)

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\(^1\) CEDAW (2010), p. 95; Muluki Ain (General Code), as amended, Chapter on Marriage
\(^2\) UN (2012)
\(^3\) MOHP, New ERA, and Macro International (2011), Table 4.4
\(^4\) UNICEF (2013)
\(^5\) MOHP, New ERA, and Macro International (2011), Table 5.9
\(^6\) CEDAW (2003), p. 14
\(^7\) CEDAW (2010), p. 21, 54
\(^8\) Court issued directive order in the case of Shyam Krishna Maskey et. al. v. MoLJPA and others, decided on 2061-10-28 BS (10 February 2005), in CEDAW (2010), p.21
\(^9\) Muluki Ain (General Code), Chapter 12 Regarding Husband and Wife, No.3
\(^10\) CEDAW (2010), p.35
The 2006 Gender Equality Act has improved inheritance rights for women in Nepal: daughters, widows and divorced women are now recognised as being rightful inheritors of family and ancestral property. In addition, the discriminatory provisions of the Country Code that forced daughters to return property upon marriage has been amended. However it is unclear whether the law is being effectively implemented. Through the Eleventh amendment, for the first time, daughters were included within the definition of family under the act related to land. In addition, daughters have the same right to upbringing as sons (in terms of right to food, clothing, education and health). Finally, the Eleventh amendment now allows widows to use her share of property, even if she remarries.

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Polygyny is illegal in Nepal and is subject to two months’ imprisonment and a fine. However, the law does not invalidate the second marriage itself, and allow exceptions with consent in the case that the wife has a contagious venereal disease, is crippled, blind in both eyes, or infertile; and without consent in the case that the first wife is incurably insane. The 2011 DHS estimated that 4% of married women and 2% of married men are in polygynous unions; slightly fewer women than the figure recorded in the 2006 census (4.4%). However, the survey also noted geographical differences, with polygyny highest in the eastern hill sub-region, where 6% of women and 3% of men are in such marriages. The 2010 CEDAW report notes that, in polygynous marriages, the first wife occupies a very low status in the family, leaving her more vulnerable to domestic violence than second wives.

Dowries remain common in Nepal despite current laws prohibiting the practice, which include penalties of up to 10,000 rupees (USD100) and prison sentences of up to three years. According to traditional practice, a woman’s family must pay the husband’s family a predetermined amount based on the husband’s training and education. The tradition was strong in the Terai districts bordering India, and there were sporadic incidents of bride killing over dowry disputes.

2. Restricted physical integrity

The Government of Nepal has made the issue of gender-based violence a priority in the emergence from a decade of conflict. The Government of Nepal adopted a ‘Zero Tolerance policy’ on violence against women and declared 2010 as a year free of gender violence. An Inter-
Ministerial Committee on Gender-based Violence was tasked with the implementation of the Plan of Action for the "Year against Gender Based Violence" 2010.\textsuperscript{22} Civil society groups have noted that the issue carries a high level of political salience, as evidenced by the establishment of a Prime Ministerial Unit, and the formulation and implementation of a National Action Plan along with a National Steering Committee to address gender-based violence.\textsuperscript{23} For the first time, the Gender Equality Bill of 2006 has redefined the definition of \textit{rape} to include instances of marital rape, and included it as grounds for divorce, although the maximum penalty for marital rape is still only six months’ imprisonment. This law has also increased the criminal penalties for all other forms of rape to between five and twelve years imprisonment, and allows for the victims to claim compensation for emotional and psychological damage.\textsuperscript{24} However, the Code retained a 35 day statute of limitations on rape claims, which seriously hampers women’s ability to access justice.\textsuperscript{25}

In 2009 Nepal passed its first law against \textit{domestic violence}: the Domestic Violence and Punishment Act 2065. The act defines domestic violence to include physical, emotional, financial and sexual abuse.\textsuperscript{26} However, criminal sanctions under the law are weak, as the acts fail to recognize serious forms of domestic violence as a crime.\textsuperscript{27} Similarly, NGOs have reported that the Act fails to provide effective power to the police for detaining perpetrators until the issuance of an interim order. Furthermore, the definition of “domestic relationship” does not include former domestic partner. The maximum penalty is 25,000 rupees (US$330) and six months’ imprisonment, punishments that double for repeat offenders.\textsuperscript{28}

Police have established dedicated women’s cells in each of the country’s 75 districts, but they had minimal resources and untrained personnel to deal with victims of domestic violence and trafficking.\textsuperscript{29} Supported by the Nepal Peace Trust Fund (NPTF), training centres were established in all five development regions. The objective of these training centres is to educate and raise awareness about United Nations Security Council Resolutions 1325 and 1820. The project also aims to increase women’s representation in the Nepal Police Force and to make the police force more gender sensitive. For example in the Armed Police Force, a gender section was established, which made it easier to deal with cases of sexual and gender-based violence: since 2013, out of 47 complaints for such cases against police force personnel, 38 were penalised.\textsuperscript{30}

The Government reports that women’s rights NGOs were active in providing training to police and government officials on domestic violence, and promoting wider awareness of the issue.\textsuperscript{31} However, in practice The US Department of State reports that the government’s efforts to
establish the structures necessary to implement the act successfully were uncoordinated and incomplete, and that most domestic violence cases were settled through mediation rather than legal prosecution. In addition, the police are often unwilling to treat domestic violence as a criminal offence, even though police directives instruct all officers to treat cases of domestic violence as crimes.

Accurate data on the number of women experiencing domestic violence was also unavailable, but anecdotally, prevalence rates are considered to be high. The 2011 Demographic Health Survey (DHS) found that overall, 28% of ever-married women have experienced physical and/or sexual violence from their husband, while 32% have experienced physical, sexual, and/or emotional violence. A 2012 government study found that 48% of the rural women surveyed reported experiencing violence in their lifetime, and over a quarter had experienced violence in the past 12 months. Emotional violence (40.4%) was most commonly reported, followed by physical violence (26.8%), sexual violence (15.3%), and economic abuse/violence (8%). The majority of women surveyed were unaware of any Nepali laws that address gender-based violence. Only 9% of respondents were aware that rape within marriage is illegal, and only 13% were aware of a specific law against domestic violence. Only about one quarter of women (24.8%) were aware of services available to the survivors of gender-based violence.

Studies in Nepal have identified a variety of social factors including economic dependency, and cultural obligation that construct and reinforce male dominance and female subservience so thoroughly that neither the violence nor the failure to complain about it is unusual. According to the 2006 DHS, when presented with a list of five reasons why a husband may be justified in beating his wife, 23.2% of women and 20.7% of men agreed with at least one reason. In-depth interviews with a small sample of women by the United Nations Population Fund (UNFPA) found that 25 of the 55 had been beaten by their husbands, and alcohol misuse on the part of the husband was cited as the main trigger for violence. Elsewhere, the US Department of State reports that conflict over unpaid dowries is also a trigger cited in many cases of domestic violence.

The government has established safe house in 15 districts for immediate services to gender-based violence victims. Official figures on the prevalence of sexual assault are not available. However, according to the US Department of State human rights report, in the financial year 2012-13, there were 677 cases

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32 US Department of State (2013)  
33 US Department of State (2013)  
34 UNFPA (2007), US Department of State (2013)  
35 MOHP, New ERA, and Macro International (2011), Table 14.9  
37 Government of Nepal (2012), Table 3.1  
38 UCL and CREHPA (2013), p.6  
39 MOHP et al (2007), Tables 14.5.1 and 14.5.2  
40 UNFPA (2007), p.6-7  
41 US Department of State (2013)  
42 WOREC (2010)
of rape and 245 cases of attempted rape filed with police; compared with 555 cases of rape and 156 cases of attempted rape in the previous fiscal year. However, this is likely unrepresentative of the extent of the problem in Nepal, as most rape cases go unreported. The 2011 DHS found that 12% of women age 15-49, and 4.6% of girls aged 15-19 years had experienced sexual violence; with women who are employed for cash are more likely to have ever experienced sexual violence (18%) than women who are employed but not for cash, and women who are not employed (11% each). And yet the same survey found that 77% of women who had experienced any type of physical or sexual violence had never sought help, including 64% who had never told anyone about the violence. Women who have experienced only sexual violence are even less likely to seek help (only 7%). 2012 Government data found that women from lower-caste groups or religious minority groups, widowed, divorced, or separated women, and women living in the hill regions, were significantly more likely to report lifetime experiences of violence. According to a study by Women For Human Rights, 67% of widows in Nepal are between 20 and 35 years old and have three to four children. A report by UNFPA notes that women who report sexual violence are often then ostracized for having brought shame onto the family and community, acting as a strong disincentive for women to report sexual assaults. In addition, a culture of perceived impunity for perpetrators of sexual crimes, as well as poor policing in regard to handling rape cases sensitively and professionally are also disincentives.

Sexual harassment was prohibited by an amendment via the Gender Equality Act 2006, and the Supreme Court of Nepal has made a Procedural Guideline on Sexual Harassment against Working Women in Cabin Restaurants and Dance bars in 2008. However, NGOs have noted that the law does not specifically cover sexual harassment that occurs in public vehicles, schools/colleges, roads, offices and other institutions. According to the United States Department of State, the law is also poorly enforced, and confusion regarding what constitutes sexual harassment means that few cases are reported.

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

More

According the US Department of State Nepal is a source, transit, and destination country for women and children who are subjected to forced labour and sex trafficking. Nepali women and

43 US Department of State (2013)
44 MOHP, New ERA, and Macro International (2011), Table 14.3
45 MOHP, New ERA, and Macro International (2011), Table 14.6
46 MOHP, New ERA, and Macro International (2011), Table 14.7
49 UNFPA (2007), p.8
50 UNFPA (2007), p.8
51 Muluki Ain (General Code), as amended Chapter on Intention to Sexual Intercourse, No. 1
52 Verdict and Procedural Guideline from Supreme Court on Sexual Harassment against Working Women in Dance Bars and Dance Restaurants
53 UCL and CREHPA (2013), p.78
54 US Department of State (2013)
girls are particularly vulnerable to trafficking to India, the Middle East, and China.\textsuperscript{55} NGOS estimate that between 5,000 and 7,000 Nepali girls are trafficked every year across the border to India, half of which are under the age of 16.\textsuperscript{56} Two different laws in Nepal control currently human trafficking crime: the Human Trafficking and Transportation (Control) Act, and the Chapter on Human Trafficking of the General Country Code. However, civil society groups have noted that the law’s implementation is hampered by the fact that it fails to include other forms of exploitation such as forced labour or servitude in the definition of trafficking, and does not adequately address issues of compensation, witness protection, repatriation and immigration status of victims.\textsuperscript{57}

Overall rates of \textbf{contraceptive} knowledge and usage are comparable with neighbouring South Asian nations. According to the 2011 DHS, contraceptive knowledge is almost universal.\textsuperscript{58} Among currently married women, 65% report having ever used a modern method of contraception, although only 43% report current use.\textsuperscript{59} Urban women are more likely to use a family planning method than rural women, reflecting wider availability and easier access to methods in urban than in rural areas.\textsuperscript{60} Overall, 27% of married women reported an unmet need for family planning services. In addition, 15%, concentrated among women aged 20-44, had a strong desire to limit the number of children they bore; the remaining 10%, falling primarily in the 15-24 age range, wanted to space the births of their children farther apart.\textsuperscript{61} Women and men have the right to access contraception, and to access information about different family planning methods.\textsuperscript{62} However, implementation of these laws is hampered by poor legal knowledge.

Sexual violence was widely used as a weapon of war by all sides during the 1996-2006 civil \textbf{conflict} in Nepal, while at the same time, the conflict aggravated women’s and girls existing vulnerability to gender-based violence, including rape and other forms of sexual assault and trafficking, according to UNFPA.\textsuperscript{63} It is difficult to know exactly how many people were affected by sexual violence during the conflict, but UNFPA notes, in one year of the conflict – 2004 – 1040-1200 women are thought to have been raped, abducted, assaulted or killed.\textsuperscript{64} A report by a Spanish think-tank claims that while Maoists were also responsible for sexual violence, in the majority of cases it was perpetrated by government security forces while women accused of having links to the Maoists were in custody or were held up at checkpoints.\textsuperscript{65}

\begin{itemize}
\item[55] US Department of State (2013b)
\item[56] UCL and CREHPA (2013), p.7
\item[57] UCL and CREHPA (2013), p.7
\item[58] MOHP, New ERA, and Macro International (2011), Table 7.1; Table 7.2
\item[59] MOHP, New ERA, and Macro International (2011), Table 7.1; Table 7.2
\item[60] MOHP, New ERA, and Macro International (2011), Table 7.3
\item[61] MOHP, New ERA, and Macro International (2011), Table 7.12
\item[62] US Department of State (2013)
\item[63] Villellas Ariño (2008), p.7; UNFPA (2007), p.5-6
\item[64] UNFPA (2007), p.5
\item[65] Villellas Ariño (2008), p.7
\end{itemize}
Abortion is available on request in Nepal. Additionally, the General Country Code also makes it illegal to cause termination of pregnancy by coercing, threatening, alluring the pregnant woman; as well as to conduct sex selective abortions. The 2011 DHS found that only 38% of women age 15-49 believe that abortion in Nepal is legal. Among women who believe that abortion is legal in Nepal, one-third stated that it is legal for pregnancies up to 12 weeks, and one-fifth stated that it is legal for pregnancies of 18 weeks duration if they were a result of rape or incest. Fewer than 10% of women believed that abortion is legal if the mother’s life is in danger, if the mother has a physical or mental condition that would make a pregnancy a health risk, or if there is a fetal abnormality. Nearly two-fifths of women did not know under what circumstances abortion in Nepal is legal.

The government has criminalized acid attacks. The Chapter on Hurt/ Battery of the General Country Code aims to stop the practice of disfiguring women by throwing acid on them, provides for a punishment of up to 8,000 rupees and imprisonment for two years in the case of maximum damage. These penalties that have been criticized as too low by civil society observers.

3. Son bias

The male/female sex ratio for the total population in 2012 is 1.04. Analysis of sex ratio data across age groups does not indicate that missing women is of low concern in Nepal.

According to the 2011 Demographic Health Survey, 89.7% of boys and 85.7% of girls under the age of two had received all their basic vaccinations. However, rates of under-five mortality were roughly the same for girls and boys. According to a 2008 labour force Participation Survey, girls aged 4-14 economic activity rate is 6.35 while boys of the same age group is only 4.7.

According to 2014 UNICEF data Primary attendance rates were slightly higher for boys than for girls (96%, compared with 91%) and even higher for secondary school (74%, compared with 66%), indicating some bias towards sons in regard to access to education.

4. Restricted resources and assets

2006 amendments to the General Country Code of Nepal have improved women’s access to resources including land and property. Unmarried daughters now have the right to inherit ancestral land and property irrespective of age, whereas previous conditions required that they

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66 UN (2012)
67 Muluki Ain (General Code), as amended, Chapter on Homicide, No. 28A
68 Muluki Ain (General Code), as amended, Chapter on Homicide, No. 28C and 28D
69 MOHP, New ERA, and Macro International (2011), Table 9.16
70 MOHP, New ERA, and Macro International (2011), Table 9.16
71 UCL and CREHPA (2013), p.78
72 CIA (2013)
73 MOHP, New ERA, and Macro International (2011), Table 10.3; Table 8.3
75 UNICEF (2014), Table 5
be above the age of 35. Wives now have immediate rights to a share of the husband’s property after marriage, without the previous waiting period. Property must be partitioned between husband and wife at the time of divorce, with alimony set on the basis of the husband’s property and earnings. New maintenance rights for daughters cover food and appropriate education and health. Notwithstanding these protections, it is reported that customary Hindu practices continue to discourage women to hold property in a capacity other than as trustee for sons, although they vary between regions and community.

According to the 2011 Demographic Health Survey (DHS), a significantly higher proportion of men than women own a house or land. 25% of men age 15 to 49 own a house alone and/or jointly, and 27% own land alone and/or jointly; as compared with 8% and 10% of women, respectively. 93% of women in Nepal age 15-49 do not own a house and 90% do not own any land. Only 6% of women own a house alone, and 10% own land alone. Notably, women who own either of these assets appear to own them mostly alone as opposed to jointly with someone else. These rates are also affected by demographic differences: with The United Nations Development Programme (UNDP) reporting that only 16.3% of rural Nepali women own land or a house. However, ownership alone does not guarantee women’s access to property. The Convention on the Elimination of all forms of Discrimination against Women (CEDAW) Committee reports on-going restrictions in relation to women’s independent use of their property, such as requiring women to receive permission from a male relative before disposing of any immovable property. Lack of finances also often prevents them from achieving full autonomy. Women make up more than 65% of the agricultural labour force, but the majority work as unpaid workers on family farms.

In Nepal, economic decisions are usually made by the head of the household, but only 15% of families in Nepal are female-headed. The 2011 DHS found that only one-third of women say that they alone make decisions about major household purchases. In contrast, more than half of currently married women who earn cash said that they themselves mainly decide how their cash earnings are used (an increase from 31% in 2006); and two in five indicated that the decision is made jointly with their husbands, and only 5% said that the decision is made mainly by their husbands.

Women in Nepal have legal access to bank loans and other forms of financial credit, however the 2010 CEDAW report notes that women’s access to institutional credit remains limited, due to lower levels of literacy among women, and bias against women borrowers on the part of
banks. The Ministry of Local Development and the Ministry of Agriculture offer loan programmes that target women, and the Contract Act (enacted in 2000) allows women to enter into financial contracts of any form. The government reports that, as of mid-2005 over 400,000 women had been organized into groups for cooperative projects and the disbursement of credit. The NGO Women for Human Rights has successfully changed some discriminatory policies through advocacy and through filing cases against the Nepalese Government in regard to widowhood. For example, widows now are entitled to receive a monthly allowance from the Government regardless of her age (previously, only widows over 60 years old could get an allowance).

According to 2011 World Bank data, women were less likely than men to have obtained a loan from a financial institution in the last year (9.6%, compared with 11.9% of men), although they were slightly more likely than men to have taken out a loan from a private lender (19.6% of women, versus 18.9% of men).

‘Didi Bahini Sewa Samaj’, a member organisation of the NGO HomeNet Nepal, provides economic empowerment to women through skill development and opportunities to collaborate and reach markets. In recent years, it became dedicated to support urban home-based workers through training, saving and credit services, as well as collective work opportunities that improve income. Home-based workers now make the majority of the organisation’s members, and they can benefit from interest-free loans to start a business that do not require collateral. At the same time, the group creates a safe space for women to find mutual support and reinforce their confidence.

5. Restricted civil liberties

There are no legal restrictions on women’s freedom of movement, but cultural traditions sometimes dictate a woman’s personal experiences. For example, women belonging to the Tibeto-Burman group enjoy a relatively high degree of freedom of movement, whereas their counterparts in the Indo-Aryan group often face restrictions on their movements outside of the household. Overall, 27.7% of married women aged 15-49 questioned for the 2011 Demographic health Survey (DHS) reported that their husbands had the final say as to whether they could travel to visit family and relatives. Additionally, there have been NGO reports that women human rights defenders have faced harassment and persecution for their activism.

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88 CEDAW (2010), p.53
90 CEDAW (2010), p. 82
91 Ashoka United States (n.d.)
92 World Bank (2011)
93 Inclusive Cities (2012)
94 CEDAW (2010), p.53
95 CEDAW (2003), p. 32; FAO (n.d)
96 MOHP, New ERA, and Macro International (2011), Table 13.6
One area where the government has noticeably improved the situation for women is in the realm of their participation in the political process. Regarding quotas, the interim Constitution of 2007 mandated that women must comprise 33\% of the candidates for the Constituent Assembly.\(^98\) As a result of these new procedures, the number of women in political positions has increased significantly, and following the 2013 elections, women now make up 29.9\% of the lower house.\(^99\) One of the expected outcomes for the Interim Plan 2007-2010 was a representation of at least 50\% of women at the local level peace process and 33\% at the national level;\(^100\) however, these expectations have not been fulfilled yet.\(^101\) According to the Quota Project, article 76 of the 1999 Local Self Government Act states that among the nominated candidates in elections to municipal councils, at least 40\% of candidates should be women.\(^102\)

**More**

Nepalese law grants women fifty-two days of paid maternity leave, which is funded by her employer at 100\% of her wages.\(^103\) However there are few provisions that protect women from discrimination, and Nepal has not set up the administrative or regulatory structures to enforce the law.\(^104\)

In Nepal, the Didi Bahini Sewa Samaj, a member organisation of the NGO HomeNet Nepal, supports urban home-based workers. It offers women training, collective work opportunities that create income and interest-free loans that do not require collateral to start a business. Home-based workers make up the majority of the organisation’s members. The group creates a safe space for women to find mutual support and reinforce their confidence.\(^105\)

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\(^98\) Interim Constitution of Nepal 2063 (2007), Article 63; EC/UN Partnership on Gender Equality for Development and Peace (n.d.); CEDAW (2010), p. 44-46
\(^99\) IPU (2014)
\(^100\) Government of Nepal (2007)
\(^101\) The Quota Project (2014)
\(^102\) The Quota Project (2014)
\(^103\) ILO (2014)
\(^104\) US Department of State (2013)
\(^105\) To learn more visit: http://www.homenetnepal.org/
SOURCES:


Ministry of Health and Population (MOHP), New ERA, and Macro International (2007), Nepal Demographic and Health Survey 2006, MOHP, New ERA, and Macro International: Kathmandu, Nepal and Calverton, Maryland, USA.


