

# Women's concerns within Nepal's patriarchal justice system

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## Background

One prime example of a modern day patriarchal legal system and society is that of Nepal. Both have been developed in accordance with Hindu customs and traditions over centuries. The impact of deeply rooted patriarchy can be seen in some of Nepal's communities, where women can only begin their day—including drinking water—after greeting their husbands and parents-in-law, and can only eat, from their husbands' plates, once their husbands have finished their meal.

Prevailing from the pastoral or nomadic period, the patriarchal system set up controls over women's body, labor, income, mobility, sexuality, ideology and even identity. Women were denied equality, with the social construct of patriarchy providing men the necessary power to restrict women from any social realms outside the household. These restrictions were then perpetuated in the political realm of society as well, excluding women from participating in legislative and other matters.

Today, women in Nepal are underprivileged, underrepresented and exploited in all areas of society, from domestic affairs to discussions within the government. This is due to the socio-cultural views held by the majority of the Nepalese population, political forces upholding these views, economic constraints placed upon women, and their limited educational opportunities. Combined, these factors force women to live in perpetual subjugation to men. In some rural communities women are not even permitted to move freely outside the household. Furthermore, lineage is traced through the father and inheritance moves strictly from father to son within all communities in Nepal.

## Patriarchal structure begins at home

Patriarchy is enforced in the home since ancient times, leading to the transmission of its values and norms, knowingly and unknowingly, from grandparents and parents to children and grandchildren. This process of socialization further reinforces the patriarchal structure.

From childhood, the family prepares girls and boys for different roles. The boy is to be sent to school, while the girl will stay home and learn how to cook and take care of her family. The boy has access to education and empowerment, which are denied to the girl. Through this education, the family is preparing the boys to become decision-makers while the girls are raised to be the "implementer" of the decisions taken by their future husband.

Due to society's preference for boy children—rooted in religious customs and traditional beliefs—it is important for the wife's first born child to be a boy. If not, she may have to give birth to many children waiting for a boy to come. Traditionally, the adult man will live with his parents and support them, while the woman should come to her husband's home with a considerable dowry. Nowadays, the dowry brought by the bride should be proportional to the educational level of the groom; a high value is thus placed on the education of men, while the education level of women is not taken into account, thus diminishing the value of educating girls. The birth of a boy is therefore seen as compulsory to secure women's place in society, and for the secure future of the family, while the birth of a girl is seen as a

burden. In fact, nowadays parents with daughters worry about her marriage and dowry upon her birth itself, as insufficient dowry can lead to abuse and even death.[1]

The home is supposed to be the first school for children, and in Nepali homes, boys learn their lessons based on structural patriarchy. These are then implemented as they grow up, reinforcing gender hierarchy as well as the use of violence against women. As for girls, they are taught from a young age to fulfill the desires of the family and serve all family members. Apart from household work, girls are not even given a chance to learn any income generating skills. Their names and identity are inextricably linked with the concepts of tolerance and devotion. Women themselves don't realize when this tolerance and devotion converts into violence.

As noted, girls are rarely sent to schools, and if they are, it is likely to be a cheaper school. Moreover, girls are also often forced to drop out early to assist their families and focus on housework. As a result, there is a huge gap between the literacy rates of the two genders: according to the Global Gender Gap report 2011, the literacy rate of women is 47 percent, whereas it is 72 percent for men.

Women have practically no control over their lives, as exemplified by their lack of choice regarding their own spouse; they must accept their father's choice. While freely choosing one's life partner is a constitutional right in Nepal, it is one that women are deprived of. At no stage of their lives are women independent: when they are born, they are controlled by their father, after marriage by their husbands, and after widowhood by their sons. This process goes on in a cyclical way, with their daughters experiencing the same.

## **Economic and social status**

Nepal's patriarchy has resulted in injustice and discrimination against women, which delays their success and development. Their lack of access to decision making in the home or society and their limited control over economic access is a key obstacle to their empowerment. For instance, even the minimum property owned by women, known as 'pewa'[2], is not under her sole control; she must first ask her father or husband if she wants to sell any of it. While the country's civil code has provisions that 'pewa' and 'dowry' are the property of women and they have control over that property, in effect this control is limited due to social customs. Although the government has made provisions to encourage women's access to property—land registered in a woman's name has a 25 percent cheaper registration fee—and a lot of land has subsequently been registered in women's names, men continue to exert effective control over management of the land. Similarly, women can now claim their parental property whether married or not, whereas earlier the law stated that only unmarried women after the age of 35 could make the claim. While the law is changing and becoming more protective of women's property rights, progress in the law unfortunately does not mean equal progress in reality.

This lack of economic power and financial independence leaves women vulnerable to abuse. They neither have effective rights to property, nor any access to capacity and assertion building courses. Strict customs as well as domestic violence ensure that women are mostly restricted to the home, which is an obstacle for government and NGO run programs focusing on women and their empowerment.

Many women, due to their poor economic conditions or lower caste status, are discriminated against, abused, and even accused of witchcraft. Anyone so accused is treated worse than an animal, tortured and compelled to feed upon human excreta as in the case of 61-year-old Gauri Devi Saha of Bara. Gauri was

severely beaten and forced to eat human waste by her neighbors for allegedly practicing witchcraft in May 2011. Similarly, Kalli Kumari B.K, of Pyutar VDC, Lalitpur was compelled to leave her house due to witchcraft accusations, severe beatings and forced to eat her own excreta on 18 May 2009.

## **Legal system**

Nepal's legal system does a poor job of protecting women's rights, and this is largely because the Nepali society continues to be based on traditions, maintaining the belief that women are inferior to men and must live in accordance with the wishes of their fathers, husbands and sons. Although many laws have been adopted in recent years to protect women's rights, the individuals responsible for implementing the laws are mostly men. Administrative and police offices are overwhelmingly male-dominated, and the voices of women are rarely listened to in such places. Similarly, in local communities public officers are reluctant to side with the woman against her husband or other male members of the community. To illustrate: in October 2011, a 50-year-old woman in Nawalparasi was accused of being a witch, and was beaten by five of her male neighbors. Although the case was brought to the police station, it was 'solved' simply with the promise that the perpetrators would not repeat such action in the future, instead of going through the legal process. Despite people being more educated and legally aware today, such superstitions targeting women are so deeply-rooted that they continue unabated while the perpetrators are rarely held accountable. Furthermore, women's access to justice from violence is minimized by their own families on the pretext of 'reputation'. This is particularly troubling in cases of domestic violence.

Meanwhile, the political system only integrates women for the sake of filling quotas. They are not given any decision-making posts, and even if by chance they are, women will still not be included in the core decision process.

The intersections of class, caste and ethnicity, as well as the rural and regional divide means that women may face multiple hazards. Women can be deprived of their rights on the basis of their class, caste and gender. Women from the higher classes are already facing tremendous challenges, so one can imagine the conditions and difficulties faced by women who belong to marginalized communities.

## **State attempts at gender equality**

The Nepalese government has formally announced that men and women have equal rights, but this announcement has not been translated into reality. Many provisions have been enacted concerning gender equality, including the 33 percent inclusion methodology ensuring women's participation in each sector[3], as well as the abolishment of insensitive words in working areas to ensure gender sensitivity[4]. The implementation of these provisions by men, in a patriarchal system however, is an overwhelming obstacle for women.

One illustration of this is the Citizenship Act (2006), which allows children to claim citizenship in their mother's name. Children may now also claim citizenship if the father is a foreigner. Despite this legislation, only a few persons have been able to receive a Citizenship certificate in the name of the mother in the past few years, while the district administration office has delayed to provide the various criteria of relationship approval.[5] Furthermore, the 2007 Interim Constitution and certain articles and provisions of the Citizenship Act continue to limit the rights of women on the issue of citizenship based on matrimonial status.[6] According to these, women are allowed to receive the citizenship certificate in the name of their husbands if she is a foreigner, but in order to be a citizen of Nepal it must be verified that

she has cancelled her former state's citizenship. If the woman does not get citizenship, when her husband passes away or when she divorces, she cannot claim her property rights.

An Asian Development Bank report[7] adequately lists the legislative progress which has benefited women in recent years in Nepal:

According to the 11th Amendment of the Civil Code the women can claim for their parental properties as equally to man as the amendment has entitled significant rights to women.[8] This amendment also provided equal inheritance rights to unmarried daughters and sons (where previously an unmarried daughter had inheritance rights only if she was over 35 years of age) and removed discriminatory conditions that prevented women from having full access to property. Women were granted the right to their husband's property upon divorce and the provision of receiving monthly or yearly support in lieu of property. Widows were given full rights to their property allowing them to use it even if they remarry (where previously they were required to return property to the deceased husband's household upon remarriage).[9]

The Gender Equality Act (2006) has also ensured the property rights of women and removed and amended discriminatory language and provisions. It entitled women to use property freely without the permission of male family members which was required previously and included daughters within the definition of family under the act related to land.[10] Reforms through the Gender Equality Act include rising the age of consent for marriage for both women and men to 20 years without parental consent and 18 years with parental consent. Women are now allowed to divorce their husbands on the grounds of rape. A man can no longer divorce his wife on the grounds of her inability to bear a child. However, there are still many other discriminatory provisions on whose ground the husband can divorce, e.g., if the husband can prove that the wife has a sexually transmitted disease or that she is having an affair with another person. [11]The government has also legalize abortion in that country up to 12 weeks of pregnancy and as late as 18 weeks in cases of rape or incest.[12] The Government of Nepal has adopted a gender mainstreaming strategy in support of gender equality and women's empowerment. Nepal's Interim Constitution (2007), which provides an interim legal framework for the government, promotes gender equality and social inclusion through inclusive state restructuring and ensuring fundamental rights to women and positive targeting socially excluded groups.[13]

Nepal is also party to various international conventions and platforms such as the Convention on the Elimination of All Forms of Discrimination against Women, the Beijing Platform for Action (1995), the Millennium Development Goals (2000), and the United Nations Security Council Resolution 1325, all of which underline the government's responsibility to promote and realize the rights of women. Over the past several years, significant changes have been made through legal and policy reform concerning women's rights. The 11th Amendment of the Civil Code (2002), the Gender Equality Act (2006), and the Nepal Citizenship Act (2006) repealed several discriminatory provisions that limited the rights of women. Amendments to the Civil Service Act (2005) have aimed to increase the representation and capacity of women and socially excluded groups in government service.[14] In addition to government action, there have been many other efforts and positive contributions to protect and liberate women from risk and difficult situations, and ensure physical, mental, educational, social and psychological development of children. In order to change the depressing picture of women, NGOs are working through education, empowerment and social mobilization initiatives. The Ministry of Women, Children and Social Welfare has also been extending its support to programs being carried out by NGOs. NGOs also extend direct

support in the forms of residential care, emergency support, educational support and support for capacity building to girls at risk. These initiatives cater to the needs of survivors of torture and physical abuse, sex abuse and exploitation, trafficking, labor exploitation, girls affected by armed conflict and street girls. Special programs to address education of girls and programs for adolescent girls have also been initiated with the support of UN agencies and others.[15]

## Conclusion

In order to combat patriarchy, it is important to work on a social and legal level combined. Beginning at home for instance and instilling the idea that not only sons, but even daughters can look after their aging parents if given similar opportunities. To allay the effects of discrimination, we should provide opportunities for females in every sector of life and change our expectations.

Similarly it is also the state's responsibility to investigate and monitor its policies on behalf of women's rights and implement them in the best way to support women. In addition to this, it is essential to create awareness in society that the differences between men and women exist only in our minds, but not empirically in regard to work competence, intelligence and skill. It is not that women are inferior to men, but that traditional religious practice formed over time by and for men, discounts women's rights. The most important factor in overcoming the prevalent patriarchy is bringing out women from their homes and letting them establish their independent identity. Their families must support them, with the thought that a daughter is a child like a son, and can take part in the country's development along with being symbols of devotion and tolerance. Therein, we can think about the creation of a new world of freedom and justice.

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[2]. 'Pewa' is the female property/wealth in the form of ornaments or domesticated animals given by their husband family as part of tradition or women's earning, aside from dowry.

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