

An Internship proposal on

Gender-Based Discrimination in Nepalese Legal System

**Submitted to
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1. Background of the study

1.1 Introduction

Undeniably, men and women always comprise the two halves of the population in every society. However, the rights and opportunities accorded to women have never been on par with the rights and opportunities accorded to men of the said societies. These differences in the opportunities of life found between men and women have forced women in many contexts to bear a subordinate position. This can be seen a number of sectors, namely the economic, political, social and cultural life of each society.

The prevalence of child marriages and polygynous form of marriages, social aversion towards widow remarriage and other events like low literary rates, confinement in domestic work and lack of adequate access to productive resources for females are also some examples of social discrimination against Nepalese women. Regrettably, these types of discrimination are historical phenomena. They are supported by the ideological contents of culture and rules and regulations of society. They appear in different forms and to different extents in different types of social settings. This chapter beings by highlighting the historical and ideological elements that are discriminatory towards Nepalese women. Then it proceeds to discuss the forms of discrimination made by the provisions of its laws. Finally, it highlights the prevailing patterns of discrimination faced by women in areas related to control of resources, educational attainment, occupational affiliation and involvement in decision-making and the implementation of processes based on data available from different categories of sample households.

Ideologies are the fundamental forces perpetuating the socio-cultural milieu of any society. They are manifested in cultural of those societies and influence many aspects of the lives of people living within those societies. As a country inhabited predominantly by Hindus the ideological contents of Nepali society have been shaped by the religious ideologies provided for in the ancient Hindu scriptures. These ideologies are still the basis of many ideological elements adopted by the state and play a primary role in shaping the structure of relationships between different sections of the population including that between men and women.

Classical Hindu laws that discuss women almost exclusively place them in an oppressed position. They have stressed that women need to be controlled as they bear many evil characteristics (Wadley 1977). In this regard Manu, the great Hindu Philosopher, stated in his Manusmriti.

In childhood a female must be subject to her father in youth to her husband when her lord is dead to her sons. A woman must never be independent (Manu V 145, cited in Kumari 1990)

The major motif that revolves around women in this statement and other such sayings of Hindu Holy scriptures is that women need to be controlled by men. This type of ideological belief is put into practice in many spheres of the life of women. On the one hand, it is exercised by imposing the notion of purity and pollution with regard to certain aspects of their life cycle events. Menstruation and childbirth are two important events in which women are required to remain in confinement. They are also not allowed to enter the shrine of family God during the time of worship. A male child is considered a must to perform death-related rituals in the family. The social ideologies prescribing to this patriarchal form of marital relations have also negatively contributed to the defense of the interest of women.

As one who has to leave the parental home after being married at a young age, the daughter is generally perceived as someone that adorns the others house. This type of concept is paramount even in the preference of children. This has manifested itself in the form of popular sayings such as 'Never mind the delay as long as it is a son.' Alternatively, 'Birth of a daughter is a doomed faith.'

This attitude has directly contributed to strengthen the partial norms and values in Nepal today. They have helped to justify the relative differences of opportunities available to men and women. Patriarchy as an institutionalized system of male dominance is expressed in a variety of ways in Nepal. It is legally supported and tied to the ownership of property access to political power and the attainment of social status. Women are for the most part confined to the domestic sphere. Males are considered the breadwinners of the family and their roles are defined in the public spheres. We will now explore these modes of discrimination against women.

Discrimination against women by way of religious principles was historically supported through provisions in the law of the country. The 1854 Civil Code did not provide any protection for women concerning their property rights. Furthermore, it required purity of their body and endorsed a lower ritual status for the upper-caste women, if they remarried. Prior to the Rana regime being overthrown in 1950, no other laws were formulated to amend these provisions. However, after the downfall of the Rana regime, constitutional procedures were introduced into the system of rule of the country. In 1963, the government replaced the 1864 Civil Code with a new one in the application of laws to all categories of citizens. In section 2 of Article 11, the 1990 constitution states, 'No discrimination shall be made against any citizen in the application of general laws

on the grounds of religion, race, sex, caste, tribe, ideological conviction (MOLJ 1999). Nepal also ratified without reservation the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) in 1991. Nonetheless, there are still many provisions to this day that discrimination against women.

Studies carried out on the legal provisions of the country regarding women have shown that the laws of the country discriminate against women in numerous ways. The main areas in which women are discriminated against by these provisions include their rights in relation to nationality and citizenship, property, trafficking and sexual abuse, education, employment, health including reproductive rights, marriage and family and legal and court proceedings. While the specific details of these discriminatory provisions are mentioned in 4.1, they have been summarized here accordingly.

Universal Declaration of Human Rights

After the UN charter came into the force, the most important task before the UN was the implementation of the principles of the universal respect for and observance of Human Rights and fundamental freedoms for all without distinction as to race, sex, language or religion. The General Assembly referred this matter to the ECOSOC for study by the Commission on Human Rights in 29 January 1946. The mandate extended to the commission Human Rights was inspired by the desire to establish a comprehensive system for the promotion and protection of Human Rights. The commission at its Third Session held in June 1948 discussed the report of the drafting committee and finally adopted a draft of the Declaration for submission the ECOSOC. The council adopted a resolution without vote and submitted it before the General Assembly. The General Assembly adopted it on 10 December 1948. The Universal Declaration was adopted by Resolution 217 III of the General Assembly on 10 December 1948. It was not intended to impose legal obligations on states.

1.2 Literature Review

This is the crucial part where the base for research lies. Research is carried out by the assistance of available materials in the related fields.

Sagar Timilsina (2009), Women Rights in Interim Constitution of Nepal 2007, the constitution of the Kingdom of Nepal, 1990, stipulated that all political parties must reserve at least 5% of seats for female candidates in the elections held for the Lower House of Representatives of the parliaments, while three seats must be reserved for them in the Upper House. However, the political parties have not adhered to this stipulation when providing candidates for the election.

Interim constitution of Nepal (2063), Part 3 Fundamental Rights: Rights of women,

1. No discrimination of any kind shall be made against the women by virtue of sex.
2. Every woman shall have the right to reproductive health and reproduction.
3. No woman shall be subjected to physical, mental or any other kind of violence; and such act shall be punishable by law.
4. Sons and daughters shall have the equal right to ancestral property.

1.3 Statement of the Problem

The gender discrimination is the major factor. National laws, social rules and regulations based on traditional practices still support the hierarchical social structure, social injustice and prejudice and prevent women from empowering and mainstreaming. This is how women remain, excluded and discriminated from political and socio-economic and cultural, developmental sectors. In the above-mentioned ideas, the present study will attempt to explore to address the following research questions.

1. What will be the forms and origin of discrimination against women in Nepal?
2. What are the concerns and issues raised by women against discrimination?
3. What are the issues of women to be addressed in the new laws and constitution of Nepal?

1.4 Objectives of the study

The objectives of the study are to analyze the historical and contextual gender based discrimination in Nepalese constitution and laws. The specific objectives of the study are as follows.

1. To analyze gender rights incorporated in Nepalese constitution and laws.
2. To study the situation of women in Nepali society
3. To find out the women rights against discrimination

1.5 Significance of the study

This study will be significantly helpful for the researchers, teachers and LLB students for their further study of such kinds. It will be helpful for the community development workers to find out the real problem of gender discrimination in Nepalese context. This study will also be helpful for finding out the gaps of gender discrimination. Gender advocates and activists will be benefited from this study.

1.6 Limitations of the study

This research will be carried out to meet the academic syllabus of LLB III year for practical fulfillment of internship. The study will have its own limitation of time and expenditure. I will only limit and requires to explore the legal provision given by the constitution and act against gender-based discrimination. So my study will focus only many reports and procedures on gender discrimination and will explain on how to make the gender rights and equality.

2. Research Methodology

2.1 Sources of data

Research is the way of exploring the facts through observation, compensates to existing pertinent literature to develop new explanation, and predicts the assumptions constructed through the observation and review of the existing literatures in the subject matter.

This study consists of secondary data only. The major sources of secondary data are previous internship proposals, law journals, law books, various legal documents, websites to understand the context and result of such discrimination.

Similarly, Fundamental Rights as of Nepalese constitution and other prevailing laws and legislations, Different policies and plans, previous research works as available will be collected from published and unpublished sources as per the need of the study.

2.2 Conceptual Framework of the Study

This study will be organized into five different chapters. The first chapter will provide the introduction, statement of the problems, objectives of the study, significance of the study and limitation of the study. The second chapter will be dealt on research methodology, literature review, and conceptual framework of the study and time schedule. Third chapter will be gender discrimination situation of Nepal, different field of gender discrimination in legal framework, which attempt act, constitutional provisions. Similarly, fourth chapter will deal with the findings and conclusion of the study.

3. Findings and Conclusion

The researcher will be exploring findings and conclusions after the evidences and proofs have been collected. The thorough observation of the Nepalese legal provisions in constitution and other legal documents as well.

Time Schedule

The research will prepare to fulfill the academic syllabus of LLB III year for practical fulfillment for the internship. The research period as prescribed by Campus Administration will play a pivotal role for the study. This study will be completed within three months after submitting the internship proposal in Campus Administration.

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