

**Issues relating to the Rights of Women to be included in the New Constitution-Handbook,
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Our Saying

Gender equality is the necessity of democratic and equitable society and the foundation of human civilization. Modern gender jurisprudence has accepted the principle that the provisions relating to special rights and protection should be included in the constitution along with guaranteeing the right of equality by the state for the protection, promotion and enforcement of the women's rights. The constitutions of most of the democratic countries of the world have incorporated this principle.

In the context of Nepal, although there has been the provision in the previous constitution that the state can initiate special arrangement for women's development, the state has not been sensitive towards this provision. As the result, women's literacy rate is limited to 42 percent, their ownership limited to 5 and 10 percent respectively in house and land, maternal mortality rate due to reproductive health related complications is 281 per 100,000 pregnant women, 90 percent of women are victims of domestic and other forms of violence, and women's representation and participation in the decision making level of the state is negligible. All these explicitly show the situation of gender discrimination in Nepal.

On the occasion of constitution making by the Constituent Assembly for the first time in Nepal, the new constitution will be the crucial to establish an equitable state by ensuring the rights of women, who have been kept backward for centuries. Therefore, Pro-public with support of the Ministry of Women, Children and Social Welfare and UNIFEM Nepal *have* prepared these recommendations on women rights with a view to support the Constituent Assembly. These recommendations have been prepared through reviewing the constitutions of other countries as well as previous constitutions of Nepal and collecting public opinions through a series of consultation *programmed* at the regional and national levels. This handbook includes the recommendations related to the states responsibilities in guaranteeing the rights relating to special privileges for women empowerment along with equal right of men and women to citizenship, assurance of women's human rights, respect to diversities in-between women and the right of proportional participation of women in decision making level.

These recommendations are the outcomes of the study of Pro-public, experts' opinions; suggestions received from the consultations in Kathmandu and all the five development regions of the country and are presented in this handbook in a way to include in the different chapters in the constitution. It is expected that the recommendations presented in this handbook will be widely disseminated among the individuals and organizations working for protection and promotion of women rights and general people, and that they are presented to all related Constitutional Committees and Constituent Assembly (CA) Members as a common demand in the forthcoming constitution. In addition, it is also expected that this handbook will be supportive as an advocacy material for ensuring women human rights.

It is cordially acknowledged the support of the participants of the consultation workshops, CA Members, CA Secretariat, Offices of the legislative parties, and related experts in this opinions/suggestions collection work under the coordination of Pro-public.

Finally, sincere thanks also go to all individuals, who contributed in preparing these recommendations.
Thanks.

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1. Preamble

- 1.1. Institutionalisation of a democratic republic federal state system based on the principle of non-discrimination should be explicitly mentioned.
- 1.2. The resolution to end the prevailing political, economic, social, cultural, religious, legal and administrative discrimination against women including the prevailing class based, ethnic, regional and gender related problems should be mentioned in the preamble.

2. Citizenship

- 2.1. There should be a provision of equal right to citizenship for women and men.
- 2.2. Provision should be made that a man of foreign nationality who has matrimonial relationship with a Nepalese citizen may acquire naturalized citizenship, if he desires to do so, pursuant to the laws in force.
- 2.3. Provision should be made that a person born to the women citizen of Nepal married to a foreigner can acquire the citizenship of Nepal by descent in accordance with the existing law.

3. Fundamental Rights

3.1. Rights to Freedom

- 3.1.1. Except as provided for by law no person should be deprived of his/her personal liberty.
- 3.1.2. The State should make a necessary arrangement for full enjoyment of the rights to personal freedom provided to individuals. The State should pursue a special policy for single, persons with disabilities, Dalit, third gender, indigenous, janjati, Madhesi, Muslim, including women belong to minorities and backward communities to fully enjoy their personal liberty as provided by the constitution.

3.2. Rights to Equality

- 3.2.1. No discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, sex, caste, ethnicity/tribe, origin, language, physical or mental disability, sexual orientation or ideological conviction or any of these.
- 3.2.2. The State shall not discriminate among citizens on grounds of religion, race, caste, ethnicity/tribe, gender or sexual orientation, marital status, pregnancy status, physical or mental disability, origin, language or ideological conviction or any of these.
- 3.2.3. Provision of equal wages for equal works should be made.
- 3.2.4. Provision should be made for the rights related to equal access, responsibility and participation of women in the resources of the State.
- 3.2.5. The State should make the special provisions by law for the protection, empowerment or advancement of the interests of women, Dalit, indigenous and ethnic peoples, Madhesi, or those who belong to a class which is economically, socially or culturally backward, and

children, the aged (senior citizen), peoples with disabilities or those who are physically or mentally incapacitated.

3.3 Rights Regarding Publication, Broadcasting and Press

Provision should be made to protect the rights of women by imposing the following restrictions on the rights regarding publication, broadcasting and press:

- 3.3.1 There should make the provision to impose reasonable restrictions on an act which may be contrary to decent public behaviour or morality to women or gender sensitivity or undermine the rights and respect of women or negatively affect the public health.
- 3.3.2 There should make the provision to impose restrictions on publication, broadcasting or display or any expression that may advertise women as a product or sexual matter.
- 3.3.3 There should be the provision to prohibit publication and broadcasting of any expression, article or matter that may violate the fundamental rights of women.
- 3.3.4 There should be the legal provision that prohibits or publication and broadcasting of the act of changing or abusing the women's body obscenely through any means like movie, advertisement.

3.4 Right of Woman

- 3.4.1 It should be ensured that no woman should be discriminated in any form merely for being a woman.
- 3.4.2 Every woman should be ensured with the rights to reproductive health and other reproductive matters including the rights related to protection, promotion and safeguard of maternity.
- 3.4.3 Provision should be made that any act against women physical, mental and other form of violent act
- 3.4.4 Provision of equal right for sons and daughters to ancestral property should be made.
- 3.4.5 Every woman should be provided the right to social security.
- 3.4.6 Every woman should be provided the right to free education up to graduation level.
- 3.4.7 Every woman should be provided with the right against discrimination on the basis of marital status.
- 3.4.8 Provision should be made for the right to proportional participation of women in all structures of the state including constitutional, legal, political and administrative bodies.

- 3.4.9 Women should be provided the right to employment. Unemployment allowances should be provided until employed.
- 3.4.10 Women should be provided the right to special privileges from the state for promotion of trade and industries, employment and profession.
- 3.4.11 Women should have the right against use or presentation in sexual, consumer products and in any discriminatory gender role.
- 3.4.12 Women should have the right to acquire special opportunities or facilities in order to ensure the substantial equality.
- 3.4.13 Women should be provided the right against any form of discriminatory practice, tradition, custom and laws against her.
- 3.4.14 Provision should be made for equal right of women to access and ownership over natural resources.
- 3.4.15 Every woman should be provided the right to free legal aid from the state for practice of constitutional and legal rights.
- 3.4.16 The state should make the provision of special reservation for women in education and employment for certain time period on social, economic, ethnic and regional bases. In such reservation, the state should provide special rights to economically, socially or educationally backward women from Dalit, indigenous and janjati, single (widow), Madhesi communities, on the basis of proportional inclusive principle for their representation in the various structures of the state.
- 3.4.17 The responsibility of the state in making the special arrangement to provide access of single, disabled, third gender, indigenous and ethnic peoples, Madhesi and Muslim women including women from other minorities and backward areas to education, health, employment and other facilities as per requirement should be mentioned in the constitution in order to ensure the full implementation of the rights related to women.
- 3.4.18 Each woman should be guaranteed with the equal right to decision making in (her) marriage, divorce and reproduction.
- 3.4.19 Women, single women and third gender people should be provided the right against any form of violence, discrimination and dishonor against them in the name of any religion and culture.
- 3.4.20 The provision should be made that violence, sexual harassment and sexual exploitation against women at work place, public place and inside home should be made punishable and the victim should get compensation.
- 3.4.21 Each woman should be entitled with the right against the exploitation.

3.5 Right to Privacy

- 3.5.1 There should make the provision that except in the circumstances provided by the laws, women should be entitled with the right to privacy in relation to person and their residence, property, documents, correspondence and reputation are inviolable.

3.6 Right Regarding Labour

- 3.6.1 Each woman worker and staff should be ensured with proper working condition in safe and clean environment and gender friendly work place inside and outside country.
- 3.6.2 Every woman worker and staff should have the right to form trade unions, to organize themselves and to engage in collective bargaining for the protection of their interests in accordance with the law.
- 3.6.3 No woman should be subjected to forced labour and work without appropriate remuneration, and such act should be made punishable.

4 Duties, Directive Principles and Policies of the State

4.1 Education: The state should pursue a special policy on free and privileged effective education on the basis of regional, ethnic and community as well as economic, social and physical situation in order to increase the women's access to the education.

4.2 Health: The state should pursue a special policy to increase access of women in health on the basis of regional, ethnic, community and economic and social condition as well as to increase access to reproductive health related services and facilities women in detention and prisons.

4.3 Employment: The state should pursue a special policy along with the privileges to increase access of women to the employment opportunities inside and outside the country.

4.4 National Development: The state should pursue a special policy to ensure the equal participation and representation of women in the national development process, programme and output.

4.5 Economic Development: The state should pursue a special policy as per need to ensure participation, investment and representation of women in the fields such as industry, trade and commerce, small and cottage industry, agricultural promotion, banking etc. in order to empower women economically.

4.6 Personal Development: The state should pursue an effective policy to increase equal participation of male members of the family in the domestic works as well for the personality development of women.

4.7 Participation in the Decision Making Level: The state should pursue a special policy related to empowerment and leadership development of women to enhance their equal and meaningful participation and representation in every layers of the state.

4.8 Shelter, Land and Food Sovereignty: The state should pursue a special policy to establish the rights of women on shelter, land and food sovereignty, and while

implementing such policy; the state should pursue a policy of paying attention for the upliftment of women from victims of conflict, Dalit, Madhesi, backward areas and poor women.

- The state should make special provision for access of single, disabled, Dalit, third gender, indigenous and ethnic, Madhesi and Muslim women including women from other minorities and backward areas to education and employment and other facilities.
- The state should repeal all discriminatory laws.
- The state should have responsibility to ensure participation based on proportional inclusion on the basis of the diversity of women (indigenous and ethnic, Dalit Madhesi, backward areas, oppressed, disabled, Muslim and minorities).
- It should be an important responsibility of the state to pursue an effective policy to punish the individuals engaged in serious violation of women's human rights offenders and crime against humanity during the armed conflict, and to provide justice, rehabilitation, relief, respect, social reintegration and compensation to the women victims.
- It should be made as the responsibility of the state to pursue a special policy of making equal access of women to the economic achievements on the basis of social and gender justice with the objective of independent, self-dependent and progressive economy that supports promotion, development and aid to women entrepreneurship in order to remove the economic inequalities between men and women, while formulating the fundamental economic objective.

5 Women Participation

In order to ensure women participation in all structures of the state, the following provisions should be mentioned in the constitution:

5.1 President and Vice President:

The political parties giving the candidacy for the President and Vice President, one of the candidacies should be mandatorily provided to the woman candidate.

5.2 Executive

There will be Deputy Prime Minister and other ministers in the Council of Ministers as required in addition to the Prime Minister. In which fifty percent ministers should be women.

5.3 Legislature-Parliament

- While forming the Legislature-Parliament, at least 50 per cent of the total members of the Legislative-Parliament should be women. A special legal provision should be made for the participation of women from single, Dalits, indigenous, ethnicity, Madhesi and other backward groups.
- In the process of the election of the Speaker and Deputy Speaker of the Legislative-Parliament, there should be a mandatory provision to nominate a woman candidate

either for the post of the Speaker or the Deputy Speaker by candidate nominating parties.

- While forming committees and sub-committees under the Legislative-Parliament, there should be a provision to reserve at least 50 per cent for women among the total appointments of the Coordinator and members

5.4 Judiciary

- There should be a provision to reserve at least 50 per cent seats for women while recommending and appointing the Judges in the Supreme Court, Appellate Courts and District Courts.

5.5 Commission for the Investigation of Abuse of Authority

- There should be a provision to reserve at least 50 per cent seats for women among the total appointments of the Chief Commissioner and other Commissioners the Commission for the Investigation of Abuse of Authority.

5.6 Public Service Commission

- There should be a provision to reserve at least 50 per cent seats for women among the total numbers of appointments of the Chairperson and other members in the Public Service Commission.

5.7 Election Commission

- There should be a constitutional provision to reserve at least 50 per cent seats for women among the total numbers of appointments of the Chief Election Commissioner and other Commissioners in the Election Commission.

5.8 National Human Rights Commission

- There should be a provision to reserve at least 50 per cent seats for women among the total numbers of appointments of the Chairperson and other members in the National Human Rights Commission.

5.9 Political Parties

- There should be 50 per cent representation of women in the political parties, from the grassroots level to the central level organization. Such representation should be made considering diversity and inclusion of Dalit, indigenous and ethnic peoples, Muslim, Madhesi, disabled and backward women.

- There should be a provision to bar the political parties from registering into the Election Commission without the representation of 50 percent women from the respective parties.

5.10 Provision regarding the Army

- There should be a provision to appoint women in at least 50 per cent seats for women as members while forming the National Security Council.

5.11 Miscellaneous

Nepali Ambassadors and Special Representatives:

- There should be a provision to reserve at least 50 per cent for women among the appointments of Nepali Ambassadors and Special Representatives.

Formation of Commissions

- There should be a provision to appoint at least 50 per cent women in every commission formed by the government.

National Women and Gender Justice Promotion Commission:

- There should be a constitutional provision to form a six member National Women and Gender Justice Promotion Commission, which should be chaired by a prominent woman who is active in the protection and promotion of women's rights and gender rights or social service sector. Three women members should be nominated from prominent personalities in research and teaching in various sectors, such as law, public administration or other sectors of the national life and one member from third gender community.
- The duty of the National Women and Gender Justice Promotion Commission should be to ensure the effective implementation of the recognition, protection and promotion of women's rights. In order to execute the duty, the National Women and Gender Justice Promotion Commission should be provided with following power:
 - a) To recommend for taking an action along with compensation against an accused person after an investigation executed on the basis of a report presented to the commission by a victim herself or sent to the commission by someone else on behalf of a victim or received by the commission through a source or on the commission's own discretion regarding a violation of a woman's or a third gender's human rights, violence, sexual abuse, domestic violence, intentional violence against a woman with any cause or such harassment,
 - b) To recommend for taking an official action against a public post holder, who is responsible or bearing a duty to control the violation of women's human rights, but does not fulfill his/her responsibility or execute his/her duty or shows indifference in execution of his/her duty,

- c) To recommend for filing a case at a court according to the existing law if it is needed to file a case against a person, who have violated women's human rights,
- d) To coordinate and collaborate with the civic society to promote the awareness on women's human rights,
- e) To recommend for taking an official action against a person, who have violated women's human rights stating reasons and bases to do the same,
- f) To execute periodical reviews of customs and laws being practiced against women's human rights and recommend the Nepal Government for revision and amendment needed,
- g) To recommend the Nepal Government to become a party of women's human rights related international treaties and agreements stating rationales if it is necessary, and to monitor the implementation of the treaties and agreements to which Nepal is a party and to recommend the Nepal Government to implement the treaties and agreements if it is found that they are not being implemented,
- h) To publicize the name of public post holders, persons or authorities, which do not execute the commission's recommendations or directives regarding the violation of women's human rights according to the law and record them as women rights violators.
- i) To establish a special helpline desk at the commission to collect complaints regarding women's human rights violation and provide consultation services to complaints, and to precede the complaint to the court as a case,
- j) To exercise the same power as the court relating to produce the accused person before the commission for receiving information or recording of his/her statement, collecting of evidence,
- k) To enter into any person's residence or office without prior notice, to conduct a search and seize any document, evidence or proof relating to women's human rights violations in the process of the search, conducted on the basis of an information received by the commission from a source regarding women's human rights already violated or about to be violated,
- l) To execute or exercise any power or duty according to legislative provisions, including the provision to compensate the victim according to law.