

Ensuring Gender Equality under New Federal Arrangement in Nepal

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Nepal is in the process of writing a new constitution. This job has been entrusted to an elected Constituent Assembly. The Assembly has started working since May 28, 2008. Its constitutional status, including the basic process of making the new constitution, has been laid down by the Interim Constitution promulgated in 2007. The Eleventh Amendment to the Interim Constitution has extended the term of the house up to May 27, 2012. The new constitution must be promulgated by this time. As such, the process of completing the constitution building is at a very critical juncture.

The purpose of this paper is to take a position on federalism and gender equality in the context of the ongoing efforts to restructure the state in Nepal. Before doing so, the paper reviews relevant documents at the Constituent Assembly (hereafter 'CA' or the 'Assembly'), assesses the ambit of progress so far made, links them with efforts in other relevant jurisdictions, which have advanced the cause of gender equality in the federal context, and highlights their relevance to Nepal. The paper is prepared with a view to make it immediately helpful to the constitution builders in the perspective of National Women Commission. In other words, the paper is not intended to theorize the issues *per se*; rather it aims at the quick evaluation of progress made so far, and suggests some important recommendation to the Assembly and constitution builders.

The context of state restructuring

The preamble of the Interim Constitution explains in brief the broader context of state restructuring as follows:

We, the people of Nepal, in exercise of the sovereign powers and State authority inherent in us;

Recognizing the mandate of the Nepali people expressed, from time to time, since before 1951 until now, through historical struggles and people's movements for democracy, peace and progress;

Having determined upon *the progressive restructuring of the state in order to resolve the existing problems of the country relating to class, caste, region and gender*;

Expressing our full commitment to democratic norms and values including a system of competitive multiparty democratic rule, civil liberties, fundamental rights, human rights, adult franchise, periodic elections, full freedom of the press, independence of the judiciary and concepts of the rule of law;

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Guaranteeing *the basic rights of the Nepali people to frame a Constitution for themselves and to participate in the free and impartial election of the Constituent Assembly* in a fear-free environment;

And keeping democracy, peace, prosperity, progressive economic-social changes and sovereignty, integrity, independence and dignity of the country as a central concern;

Declaring Nepal a Federal, Democratic, Republic State by legally ending the monarchy

Now therefore, in order to *institutionalize the achievements of the revolution and movements till this date*, hereby promulgate this Interim Constitution of Nepal, 2063 (2007), prepared through a political consensus and to be in force until a new Constitution is framed by the Constituent Assembly.

The preamble assures three things at minimum in the changed context: a democratic system of government based on modern parameters; the restructuring of the state by such a democratic system *to resolve the existing problems of the country relating to class, caste, region and gender*, and a process that makes people sovereign in the framing of such a constitution.

These preambular pledges for the state restructuring have further been re-emphasized by Article 138 of the Constitution. It holds that the state shall be made inclusive and restructured into a progressive, democratic federal system in order to bring an end to discrimination based on class, caste, language, *gender*, culture, religion and region by eliminating the centralized and unitary form of the state. It further emphasizes, accepting the aspirations of indigenous ethnic groups and the people of the backward and other regions, and the people of Madhes, for autonomous provinces, that Nepal shall be a Federal Democratic Republic.

Gender equality in the restructured state

The expression “gender equality” has been used here in the sense that all human beings are equal; that they all are free to develop their personal abilities and make choices without the limitations set by strict gender roles; and that the different behavior, aspirations and needs of women and men are equally considered, valued and favored.

Gender equality does not imply that women and men are the same, but that they have equal value and should be accorded equal treatment. The United Nations regards gender equality as a human right. Closely linked to the concept of gender equality is that of gender mainstreaming. Gender equality cannot be achieved by dealing with the issues of one gender seen in isolation from those of the other, nor from those of society as a whole. Hence, gender mainstreaming is used in order to ensure that gender issues are dealt with at all levels and at all stages.

Implementing gender equality in the context of restructuring of the existing state requires institutions, mechanisms and procedures which ensure equal representation and participation in the state and its functionaries, equal share in decision-making, and re-distributive arrangements that help bring women up – at par with men in all cases where they faced discrimination in the past.

Women of Nepal are victims of triple discrimination, i.e. caste, class and gender which has the effect of limiting their potential for solidarity, thereby hindering efforts towards developing a common political agenda. At an individual level, women suffer from discrimination and subjugation. A combined effect of these factors adversely impact on women as a political entity and a leader. There are some prerequisites if federalism is to be positively associated with women’s rights. First, women need to be organized and

represented politically. The effective political mobilization of women across the nation could be effective tool. Otherwise federalism remains nothing more than an empty promise, and one that invariably ignores their interests and priorities. Second, women's empowerment is best pursued through well-functioning inter-governmental relations and women's organization has to engage across the full terrain of government. Women's movement and group should engage all the tiers of government, because all the tiers of government have a policy making role under federalism within the scope and ambit of the Constitution. If their voice is to be sustained and reinforced across all levels of government, then women's political participation at the local level requires support and integration into broader political processes.

The responsibility of designing a restructured Nepal calculated to produce gender equality at all level of governance belongs to the Constituent Assembly. This must be done by infusing gender concerns on the new state architecture, federalization and devolution of power, multilevel governance, women's representation, and political opportunities to be offered by the new constitution. Multi level governance structure creates large number of office holders in comparison to unitary state. It is easier for women to influence the level of government near to them. It is also easier to make them more accountable. As a concept, the federal government works on the principle of 'subsidiarity', which means if things could be managed at local level, the upper level of government should encourage it. Women could be in a better bargaining position in provincial and local bodies, because of their local confidence, and their strength at the local level. It is generally assumed that the local and provincial politics is less competitive and it could be an entry point to join the national politics.

It is wrong to assume, however, that federalism is monolithic and operates in the same way in every federal state. It does not automatically produce an inclusive, transparent, participatory and gender friendly governance. Flexibility and dynamism is the basic strength of federalism. It has tremendous capacity to respond and accommodate new aspirations and change.

Key opportunities

- The federalization of the state structure might provide the answer to over centralized state, and might create a conducive condition for growth and development of inclusive and gender friendly participatory democracy.
- Federalism provides more space for policy innovation and experimentation.
- Multi level state structures provide greater opportunity for women to participate in the governance and policy making.
- Federalism brings government closer to women. They can articulate their policy and agenda to the nearest level of government which is easier to influence and hold accountable.
- The local government can provide unique opportunity for political participation. It also provides forum for leadership development.
- Women can negotiate with various level of government. Sometimes, local and provincial government might provide better deal to women, rather than national government.

Threats and Challenges Federalism, as stated above, does not automatically address gender equality and the need and aspirations of women. It would not automatically create a gender justice or equality. Efforts need to be made for this. The key threats and challenges in these efforts are:

- Women might not get a fair deal under federal Constitutional arrangement. They might be left out. Their voices and concern might not be heard.
- Federalism creates a multi level government; it might be too complicated for them, to negotiate their interest with various level of government.
- The provincial and local government might be too conservative and parochial and insensitive to their aspiration.
- The federal government might be failed to enforce national and international human rights laws and standards.
- There might be an 'elite capture' of local and provincial government. May be local culture and custom take precedence over International norms of human rights law.
- Human rights laws and standards might be defeated by local culture of strong patriarchy (institutionalized locally).

The politicization of caste and ethnicity might dilute the agenda of women empowerment and participation. The sharp ethnic and caste division of politics might obstruct women to emerge as a political force.

Gender concerns reflected in the preliminary constitutional drafts the Constituent Assembly

The CA thematic committee has produced the preliminary draft of the Constitution. The issue of gender has strongly figured in the draft. These preliminary drafts are the basis for the final draft of the Constitution. It is relevant here to mention the provision of the draft ascertained in various thematic committees of the CA.

Committee on Fundamental Rights and Directive Principles in its primary draft ensures Right to Equality. The primary draft stipulates that- All citizens shall be equal before the law and no person shall be denied equal protection of the laws. Likewise, the State shall not discriminate against any citizen in application of general law on grounds of religion, color, caste, tribe, gender, sexual orientation, biological condition, disability, health condition, marital condition, pregnancy, economic condition, origin, language or region, ideological conviction or other similar grounds. Provided that, nothing shall be deemed to prevent the making of special provisions by law for the protection, empowerment or advancement of women, *dalits*, indigenous ethnic tribes (*adiwasis janjatis*), Madhesis or farmers, workers, oppressed region, Muslims, backward class, minority, marginalized and endangered communities or destitute people, youths, children, senior citizens, gender or sexual minorities, disabled or those who are physically or mentally incapacitated and helpless people, who are economically, socially or culturally backward.

Furthermore, in the preliminary draft there is a separate article for women's rights which said: Every women shall have equal ancestral right without any gender discrimination. There shall be no gender discrimination against women, in any form. Every woman shall have the right regarding reproduction. No physical, mental, sexual, psychological or other form of violence or exploitation shall be inflicted on any women on the basis of religious, social, cultural tradition, custom or any other grounds, and such an

act shall be punishable by law and the victim women shall have the right to receive proper compensation. Every woman shall have the right to proportionate participation in all agencies of the state mechanism on the basis of inclusiveness. Every woman shall have right to special opportunity in education, health, employment and social security on the basis of positive discrimination.

In similar vein, Committee also proposed right to family in its primary draft. The draft said inter alia: No one shall be allowed to have more than one spouse, every person shall have the freedom to marry and divorce in accordance with law; No marriage shall be held against the wishes of the wedding parties or their full and Independent consent; The Couple shall have the right to property and in family affairs. Similarly, the Committee on the Protection of the Rights of Minorities and Marginalized Communities also made a recommendation regarding citizenship issue. The draft said: All Nepalese citizens shall have right to receive citizenship in the name of their father or Mother or both. Any child who is born within territory of Nepal but whereabouts of whose parents are not known shall have right to obtain citizenship as provided for in laws.

Likewise, the Committee on Restructuring of State and Distribution of State Power has also made some proposal on rights of women. It mentioned: Women shall have equal rights to man in parental properties, citizenship, and descent and family affairs, Rights to share equal protection and benefit in the eyes of laws, Rights to get equal remuneration for same job and Rights to divorce.

Apart from above mentioned right, the Committee elaborately worked out in this issue. The Committee stipulate that women should have right to reproductive health and rights regarding reproduction, Rights of safe motherhood, rights of proportionate representation along with inclusion based on population at all level. Further, proportionate representation of madhesi women, indigenous nationality, Minority and Dalit women will be made in all rights subjected to women.

The Committee proposed three tiers of government- central, provincial and local. The Committee also provided a detail road map for power sharing. It provided a separate list for Central, provincial and local government as well as concurrent lists. The Committee proposed for 14 provinces. The government had set up a 'State Restructuring Commission'. The Commission could not reach on consensus, so it produced two separate reports. The majority report proposed for 11 provinces- ten territorial and one non-territorial province whereas the minority came up with proposal of six provinces. Under the majority report, the local bodies were kept under the provincial government.

The Committee for Determining the Structure of the Legislative Body is one of the critically important bodies which decide inter alia the political representation of women. The Committee proposed that- The House of Representatives shall, as soon as possible, elect a Speaker and a Deputy- Speaker from among its members. Further, it stipulated that the speaker or deputy speaker shall be woman/women. Likewise, for election to the House of Representatives, law shall ensure that women, madhesi, tharu, dalit, indigenous peoples, janajati, Muslims, backward classes, regions, minorities, and other communities are equally represented on basis of population.

Regarding National Assembly, the Committee recommend that: thirteen members to be elected by the House of Representatives pursuant to law, on the basis of the system of proportional representation, by means of single transferable vote, from amongst: minorities, women, castes, languages, religions, backward groups or other communities that have not been able to participate in the House of Representatives of the federal legislature; people of high reputation who have rendered prominent service in various fields of national life; and experts.

The Committee also proposed that, political parties select candidates for election to the Provincial Assembly. Moreover, the law shall ensure that women, madhesi, tharu, dalit, indigenous peoples, janjati, Muslims, backward classes, regions, minorities, and other communities are equally represented on the basis of population.

The similar provision are also recommended by Committee on Provincial Assembly ensure that at least one-third of the Provincial Assembly representatives are women.

The Committee for Determining the Form of Government made an innovative and gender friendly proposal. It stated that: No election of President and Vice-president shall be held in a manner that the person belonging to the same sex shall be elected to the offices of the President and of the Vice President. Similarly, in provincial level any political party which gives candidates for both of the post chair person and vice chair person has to give candidate from separate sex, caste or region and the Chief Minister has to appoint the ministers among the member of provincial Legislature on the proportional inclusive basis.

The Committee for Determining the Structure of Constitutional Bodies inter alia proposed to establish the 'Women Commission'.

By and Large, the preliminary draft produced by various thematic committees has tried to capture the aspiration of women and the notion of gender equality. The positive gains made under the preliminary drafts need to be preserved and the gaps and lacunas need to be avoided. The human rights communities, civil society and women movements need to come forward and maintain pressure till the Constitution is promulgated.

Best International Practices- Sweden, Norway and Finland

The IPU has been tracking the numbers of women in national parliaments since 1970. The situation is improving. Ten years ago, women accounted for 11.3 per cent of legislators. Today, they represent 19.5%. Ten years ago, Sweden had led the pack, but, today Rwanda, a developing country, has the highest proportion of women in its national assembly, some 48.8 per cent.

Looking at the history of different regional trends, the Nordic countries continued to do well, with an average of 40 per cent women's participation. No other sub region came close. The Arab region was at the bottom of the list. Public debate and political will had lead to a significant increase in the region; however, the average in Latin America stood at 20 per cent, as the countries in the southern continent embraced affirmative action. The situation was also good in many parts of Africa. The situation in Asia was more disproportionate.

According to IPU the global average of women parliamentarian is 19.5% and Asian average is 18.3%. The European average is slightly higher than Asia. The European average excluding Nordic country is 20.8%. But among the European country Sweden, Norway and Denmark have better record. They have more gender responsive polity. In Sweden the women parliamentarian are 44.7%, in Norway 39.6% and in Denmark 39.1% women parliamentarians. It is possible because in these countries the political parties are more gender sensitive and adopted the policy of gender balancing in politics.

Sweden, Norway and Finland are the best countries in the world in terms of gender equality. In Sweden, female representation in government bodies is high. The share of women in the Riksdag reaches 45 per cent. Furthermore, 10 out of 22 government ministers are women. Among elected politicians in local authorities and county councils, women constitute 41 per cent. Women's economic participation in Sweden remains high compared to other developed countries. In 2005, 25 per cent of Swedish private limited companies and 31 per cent of publicly quoted companies were headed by women. The share of

women in senior management reached 12.3 per cent. Moreover, women's economic participation has greatly benefited from the *Equal Opportunities Act* in Sweden, which requires that all employers promote equality between men and women and prohibits gender discrimination and sexual harassment. Furthermore, currently employed women or female job applicants cannot be discriminated against on the basis that they are, have been or will be on parental leave.

Norway was ranked first by the World Economic Forum in 2008 in its gender gap index and ranks highly in other measures of economic and political gender equality. Norway has been described as a "haven for "Gender equality" by 'CEDAW'. Women in Norway gained the right to vote in 1913. Now, Norway has a high percentage of women serving as representatives in the Storting (Norwegian national assembly). Some political parties have introduced gender quotas. In the Norwegian parliament and the municipalities women occupy about one third of the seats. Similarly, the parliament for the *Sami people* had a female majority for the first time in the 2005 elections. The *Sami people* are the indigenous people of Sami in Northern Norway. Gro Harlem Brundtland, the former Norwegian Prime Minister, attracted international attention in 1986 when she formed a cabinet in which nearly half of the members were women. The equal status of women in Nordic society has been an important part of public policy in Norway for several years. A major breakthrough in this context was the Parliament's passing of a law in 2003, requiring that 40 percent of all company board members be of female gender.

Finland is a pioneer in gender equality, and is the first country in the world to give women both the right to vote and stand for election (1906). Strong female political participation, reflected in the election of a female president in 2000 and again in 2006. In 2011, several political parties, such as the Social Democrats, the Greens, and the Christian Party, had women leaders. Women's organizations of all political parties co-operate over party lines, and with non-political women's organizations, in the organization NYTKIS, The Coalition of Finnish Women's Associations, since the late 1980s.

The proportion of women members of Parliament has steadily increased in past decades, reaching 40% in the 2007 elections. In Parliament, women have been particularly involved with legislation concerning social issues, culture and education. In the national government they have served as Ministers in traditionally female fields but also as Ministers of Defense, Environment, Traffic and Justice. Since June 2010, Finland has had a female Prime Minister, Mari Kiviniemi (of the Center Party). Finland's first female President, Tarja Halonen, first won office in 2000, and was voted into office for a second term in 2006. In January 1987, the *Act on Equality between Women and Men* was introduced with revisions in 1995 and 2002. The Act places a duty for promoting equality purposefully and systematically on all authorities and employers as well as in education, teaching and research. In 1992, discrimination on grounds of pregnancy and family care responsibilities was prohibited. Since 1995, the Act also stipulated that if the number of the staff in a business exceeds 30 employees on a regular basis, the employer must draw up an equality plan every year and implement measures promoting equality. The Amendment of 1995 includes a quota system; in official committees and councils the proportion of representatives of either sex to not be below 40%.

No constitutional clause or law demands a high representation of women in these countries. For the most part the increase can be attributed to sustained pressure on the part of women's groups within parties as well as the women's movement in general. Women mobilized and organized pressure to ensure that political parties increased their number of women candidates, that is to say, women candidates with a fair chance of winning.

This pressure was applied to all political parties in these three countries. Some parties responded by applying a quota system. In all three countries, quotas were introduced based on decisions made by the political parties themselves. Quotas were introduced in the social democratic parties and in parties to the

left during the 1970s and 1980s. In 1983, the Norwegian Labor Party decided that "at all elections and nominations both sexes must be represented by at least 40 per cent". In 1994, the Swedish Social Democratic Party introduced the principle of "every second on the list a woman". This means that if the first on the list of electoral candidates is a man, the next must be a woman, followed by a man, followed by a woman, or vice versa. The Norwegian Labor Party party leadership and the party's women's secretariat underlined that the objective of the quota was to have more women elected, not just to have more women on the party's list of candidates.

Prior to the 1970 election, Swedish Social Democratic Party believed that women should fill the candidate lists, but it was the men who had the long years of experience which was also much needed. Consequently, the first ten names on the list remained men, with their superior experience, age, representation and knowledge. After the first 10 names, the party alternated with a woman; thus every second position was a woman. At the next election in 1973, the party alternated the names of men and women from number five on the list. Before the 1976 election, the local party decided that the whole list for the local council should include approximately every second a woman and a man. Later the party simply made up two lists, one with men and one with women, and combined the two lists before the election.

The critically important Constitutional issues

Making political system inclusive, participatory and transparent and ensuring socio-economic and political justice for everyone, is the basic rationale behind new Constitution making in Nepal. The new Constitution needs to be acceptable for entire population. It should not create winners and losers. The gender equality is a basis for just and fair society. Nepal is a party of various national and international human rights instruments. Under those International human rights instruments, Nepal is under treaty or International obligation to give effect to those rights. It is power and duty of central government to enforce those rights obligated by International instruments.

1. Strong Bill of Rights

First and Foremost, the Constitution must contain a strong Bill of Rights, and subsequently, the Bill of rights needs to incorporate detailed provisions of women's rights. The federalism cannot deliver to women without provisions ensuring women rights into the Constitution. The rights of women should not be missed out from the Bill considered as a 'heart and soul' of the written Constitution. The basic purpose of written Constitution is to maximize and expand the rights and freedom of population as well as set the limits to power of the state. Further, the power of the state needs to be limited, in light of the threat for individual rights and liberties due to unlimited and undefined power of the state. Moreover, it needs to be ensured under upcoming federal constitution that rights and freedom of any woman citizen is not affected by her place of residence or any other unjustified grounds. Under the new federal arrangements of Nepal, the provincial governments shall not be able to curtail or deny the fundamental rights of any woman citizens. The fundamental rights of the citizens are paramount and all the state institutions are under the constitutional duty to respect those rights. The federal constitution is the fundamental law of the land and provincial government cannot legislate against the letter and spirit of the constitution.

Furthermore, the Bill of rights should capture the basic spirit of CEDAW. The CEDAW is the landmark document of women's rights accepted by International community. Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) is an international convention adopted in 1979 by the United Nations General Assembly. Described as an international bill of rights for women, it came into force on 3 September 1981. Nepal is party of CEDAW, so being the state party of CEDAW; it is duty of Nepalese state to give actual implementation of CEDAW. The basic rights of women need to be made enforceable.

There must be an actual political will to enforce the provision in Bill of rights. It should not be only adopted for cosmetic purpose. There should be a uniform application or enforcement of Bill of rights across the nation. The local customs and culture should not be allowed to take precedence over Bill of Rights. Local culture, religious practices and customs should be under subject of Bill of rights.

2. Independence of Judiciary and rule of law

Without independent and competent judiciary the smooth functioning of federalism is not possible. Having Bill of rights into the Constitution is not enough. The rights without remedy and enforceability are just an empty promise. The rights established in the Constitution need to be enforceable. For this purpose, the proper mechanism must be in place. There must be an "Independent Court" in place to enforce and provide remedies. If Court is not fully independent, then the rights of women would not be protected properly. There must be a credible forum, so women would be able to vindicate their rights. The forum must be independent from the political interference of the government. The access to justice is difficult for women. In addition, the *de jure* right to access to justice is not enough for women. There must be *de facto* access to justice. The institution of Court should be made gender friendly in Nepal. It needs to be cheap, affordable and accessible institution for women. In practice, women's right that is given by law is denied by culture and society.

If judiciary is not functionally independent then federal arrangement would not work. In order to ensure and protect the supremacy of the constitution, independence of judiciary is critically important. The judiciary is the guardian of constitution and enforces and ensures the fundamental rights of people. The independence of the judiciary is the core value of constitutionalism. The federal arrangement requires a very complex division of power among the different level of government. No matter how carefully it is done, experience shows that there is jurisdictional controversy between levels of government. The US federalism is still facing such problem. Similarly, Indian federalism is facing a lot of issues on central and state relation. It is apparent that Federalization is not a onetime event, it is a gradual process. The functioning of federalism is largely determined by judicial branch of the government. The US federalism is largely shaped by judicial pronouncement and interpretation. The judiciary must be able to give a final word on the issue of constitution. If the judgment of the court is not respected by the concerning authorities and challenged in the street, then federalism cannot work.

Only independent and competent court can protect the supremacy of the constitution and maintain the legal regime. The court plays a balancing role. The proper balance need to be struck in federal system. The constitution should not block the growth and progress of the society. The process of formal amendment is extremely difficult under federal regime. The super majority in the federal legislature and province is required in order to amend the constitution. The court can interpret the constitution according to the changing needs of the time, since it is a living document.

3. Non-discrimination and Affirmative action

In order to make federalism work for women, it is imperative to adopt well thought affirmative action plan. The formal equality is not enough. The federal structure of the nation needs to promote substantive equality, or 'equality in result'. *De Jure* equality of Constitution needs to be translated into *de facto* equality. All kind of discrimination should be prohibited against women.

Non-discrimination is the basic principle of International law. It is a hallmark of democracy, rule of law of and justice. The rights against discrimination are the basic rights of women. The upcoming federal regime of Nepal must be able to stop discrimination from all walks of life; discriminations not only done by state actors but social discriminations as well. Removal of legal barriers alone cannot ensure

substantive equality, the equality 'in result' or in actual functioning. Formal and substantial equality or 'equality in result' is the need of the hour as envisaged by CEDAW. In our context, Nepalese women are facing multitudes of discrimination. The discrimination is heavily entrenched in society and culture. The provision of formal equality alone would not be able to cure the societal discrimination. In order to cure the historical wrongs committed against women, positive action or affirmative action is required on the part of the state. The formal equality concept is not an appropriate strategy to combat actual or real inequality. In contrast, the equalization measures or affirmative action is permissible under International law and deemed more appropriate.

4. Gender friendly election system or quota

Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women stated the need to eliminate discrimination between men and women in political and public life. Democracy without women, or with a few women, was not democracy, as highlighted in Beijing. The anti-discrimination Committee was aware of the status of women in decision-making. It had made general recommendations based on the reports submitted by its State parties. Due to the existing gaps within countries, the Committee had adopted four general recommendation regarding women in decision-making. General Recommendation 23 focused on the position of women in public and private life, while General Recommendation 25 dealt with special temporary measures, which was useful for progressing towards gender balance in decision-making bodies. Beijing Declaration and Platform for Action recognized women's unequal share of power and decision-making as one of the 12 critical areas of concern, outlining concrete actions to ensure women's equal access to and full participation in power structures.

The survey of the Inter-Parliamentary Union showed women's vision of how women's involvement in politics made a difference: women noted a shift in political priorities and outcomes, behavior and practices, and a broader and enriched political process (a crosscutting approach). Politics became more responsive to the people's needs in general and to women's needs in particular, and showed a move towards true gender equality. It led to better democracy, increased transparency and improved governance. With a more human and gender-sensitive political approach, citizens appeared more confident in politics. It further ushered a change in political and parliamentary language and more. (IPU, 2000).

There were negligible presences of women in elected bodies in Nepal. The Constituent Assembly of Nepal is the most inclusive body in the history of nation. There are approximately one third women in the Constituent Assembly. It is historic and unprecedented achievement. It is possible because of mandatory provision in the Constitution and election law of Nepal. The electoral quota can play an extremely important role to enhance the presence of women in elected bodies. The participation of women in decision making is critically important to have women friendly laws and policies. The Rwanda's Assembly is a shining example of having highest number of women in Assembly. It has more than 56% women in its national Assembly. It is possible because of introduction of mandatory quota. In countries like Germany, Spain and Norway, quota is voluntary. The political parties are so gender sensitive that they allocate seat for women voluntarily. But voluntary quota for system might not work in countries like Nepal. There must be a mandatory provision in the Constitution for proportional representation for women. The women friendly election system must be adopted. The first past the post or "majoritarian" election system is not gender friendly. It is winners take all election system. The Proportional Representational system is more gender friendly election system.

The Panchayat Raj Act in India reserves 33% of the three-tiered panchayats (village council, council of cluster villages and the district council) for women. Today there are close to one million elected women

leaders at the village level. A recent assessment revealed that corruption has gone down and transparency has greatly increased because of women's participation in the panchayats.

Argentina has a 30% quota for women on electoral lists. As a result, the number of women in the House has remained the same from 2001 to 2003 at 34.1% in the lower house. Argentineans elected Senator and former First Lady Cristina Fernandez de Kirchner to the Presidency in 2007.

Women's participation is fundamental to democracy and essential to the achievement of sustainable development and peace. And there is now data to show that countries with greater gender equality have higher gross national product per capita, that women's leadership in the corporate sector results in improved business performance. And we know that countries with more women in parliament tend to have more equitable laws and social programmes and budgets that benefit women and children and families.

5. Inclusive state institutions and political parties

Federalism does not automatically guarantee inclusive state structure. But inclusive state structure can be built within federal arrangement. Women are the most excluded lot from state structure in Nepal. The Constitution needs to make state structure inclusive. The era of formal and procedural democracy is gone. It is failed to address the aspirations of marginalized lot of the population. The mode of formal democracy suffered from elite capture phenomena. Creating a sense of ownership in the process is critically important factor for success of democracy.

Political parties are the key players in democracy. They are the main 'gatekeepers' in modern democracy. Predominantly, it is political parties that decide who will get power and position in the state structures. Without restructuring the parties it is hard to restructure the state institutions. Under upcoming Constitutional scheme, political parties need to be inclusive and transparent. The Nepalese political parties are highly male dominated. The mainstream parties are predominantly a- 'male stream' in Nepal. There is no gender balance within the political parties. The political parties are key decision makers in political system. The quality and nature of governance is the product of quality and nature of political parties. It is imperative that, there must be gender balance in the internal organization of political parties from grass root to top position. Women should also be included in top leadership position of parties. Women's full and effective inclusion in political parties should made mandatory by law. It should not be left to the voluntary will of political parties.

6. Supremacy of International human rights law non-derogable by Provinces

In order to discipline the provincial government, there must be a national standard for human rights. The federal government must have a power for uniform enforcement of International human rights treaties. In terms of United States, there is a 'supremacy clause' granted under the US Constitution. Under this clause, the treaty duly made by United States is the fundamental law of the land and federal government has the sole authority to enforce treaty in a uniform manner. Nepal is a party of several international human rights instruments including CEDAW. Being the state party of various international instruments, it is the state's obligation to enforce the provisions of those instruments. The provinces should also abide by treaty obligation. The provinces shall not allow derogating the provisions of International human rights instruments.

Key Recommendations

- **Provisions required in the new constitution** in order to increase the political participation of women. In addition, there should be constitutionally mandated gender quota proportionate to the population of women for each and every state mechanism, including central and provincial legislature as well as in local bodies.
- Constitutional provision shall also require for women's proportionate representation in all the elected and unelected state institutions. Local culture, tradition and religious customs should not be allowed to take precedence over rights to dignity, equality, participation and basic human rights of women. Local culture and customs should be subject to basic human rights laws standards. The provincial legislature should not allow legislating against the basic human rights of women in the name of local customs and traditions. The supremacy of women's rights need to be respected by central as well as provincial legislature.
- There should be gender balance in formulation of all central and provincial cabinet, proportionate to the population of women.
- The quota of women should not be considered as ceiling for women. It shall be considered as a minimum threshold.
- Women should be adequately represented in all Constitutional bodies proportionate to their population.
- The new Constitution should require that- head and deputy head of the any governmental institution would not be from the same sex. Such as president or vice president, Prime Minister or Deputy Prime Minister or Speaker or Deputy Speaker should not be from same sex.
- Under the notion of fiscal federalism, the 'National finance Commission' and 'provincial finance Commission' needs to be set up. The 'National and provincial Finance Commission' shall be responsible to allocate adequate financial resources for gender equality and development. There should be a mandatory provision for gender sensitive budgeting.
- The Constitution needs to recognize the diversity of women population. The special Constitutional provisions are required to empower and ensure the adequate representation of - rural, dalit, indigenous and marginalized women.
- Under the new constitution, women should have right to nationality and rights against statelessness. Under the new Constitution, the nationality of women should not automatically change with change of her marital status. She should not force to take nationality of her husband. Her nationality should not tie up with her marital status and above all she must be able to pass her nationality to her children.
- Every woman should have right to reside and engage in profession, economic activities or gainful employment in any part of the country. The equal facilities for credit and banking facilities should be guaranteed. There should be equal privilege and immunities for women in each and every province. No province or local government should be allowed to discriminate women under any unjustified pretext and circumstances. All kind of discrimination against women shall be prohibited. No discrimination shall be made on the ground of pregnancy, marital status of women, sexual orientation and physical and mental disability.

- The Constitution should ensure that-there shall be no discrimination on wages between man and woman.
- The state should take affirmation measures to ensure substantive equality between man and woman.
- The state should effectively implement the Security Council resolution 1325.
- The Constitution should recognize the validity of international laws. The central government would be under legal obligation to enforce the International treaty law. The provinces are also under Constitutional obligation to give effect and abide by International human rights law. The provisions of international law and international human rights instruments shall be honored by province. No provincial government would be allowed to nullify international treaty laws. It would be province and duty of central government to enforce the international treaties duly made by it.
- Under new Constitution a clear and unambiguous provision is required to ensure- reproductive rights and health, full rights over her body, protection from physical and mental violence, freedom from sexual harassments, just and favorable condition of work, freedom from discriminations, right to equal protection of law, right to life and dignity, right to marriage, right to organize, right to vote, right to hold any public office, right to education, health, right to privacy, right to information, right to choose profession, right to have full social and political citizenship.
- In order to secure welfare of women and ensure substantive equality, the entire federal mechanism needs to work in cooperative and collaborative fashion. The Constitution needs to create an appropriate mechanism for inter-governmental coordination and cooperation. Furthermore, conflicts need to be avoided among the various level of government and there should be efficient mechanism for dispute resolution and avoidance. The duplication, overlapping and wastage of resource need to be avoided. The principles of subsidiary should be the guiding principle.
- The new Constitution should set up 'National Woman Commission', constituted by outstanding women personalities. The commission needs to be headed and constituted by women. The Commission shall be constitutionally empowered to promote and protect women's rights, gender equality and gender justice as well as facilitate and monitor the formulation and implementation of gender friendly governmental policies and legislative framework. It would also develop appropriate strategies and methodologies, and promote coordination and cooperation among various level of government in order to ensure mainstreaming of a gender perspective in all policy and legislative processes.
- The Constitution required creating three tiers of governments under federal arrangement. The local government shall be fully empowered, vibrant and effective. There shall be a Constitutional guarantee and protection for local government. The provincial and central government shall not be permitted to interfere in the constitutionally defined affairs of local government. The principle of subsidiary shall be the guiding principle. Moreover, women should be adequately represented in Local government proportionate to their population. The Constitution should make a mandatory provision to allow women to hold a leadership provision in the local government. The head and deputy head of local government should not be from the same sex.

- There should be mandatory Constitutional provision to make political parties gender inclusive. Women need to be adequately represented in various level of political parties- local committee to central committee. The political party which is not gender inclusive should not be allowed to operate and contest the election. Further, women should also be allowed to hold a leadership position in the political parties. The leader and deputy leader of the political parties should not be from same sex.
- There should be a provision for campaign finance for women candidates.
- The Court system needs to be made gender friendly. There should be a provision of family court. The rule of procedure of the court should be made gender friendly- such as a priority hearing for cases related with women and children's, in camera hearing for family matters as well as crimes of rape or sexual abuses, the dignity and respect of women folk need to be maintained in the legal proceeding, exemption of Court fee and effective legal aid for needy and poor women litigants. The criminal justice system shall also be made gender friendly- there should be enough number of women police, crime investigators, prosecutors and prison officers. There should be adequate number of female judges and staff in all the Courts. The justice should be accessible, affordable and responsive to women. .
- The Constitution shall be written in gender friendly language. All the sexist language need to be avoided. Such as word "Rastrapati" shall be replaced by "Rastradhyaksha".
- After the promulgation of the Constitution, all the laws and policies need to be reviewed from the gender perspective. The legislation should be passed within a year to implement gender friendly provisions of the Constitution. The comprehensive legislation shall be passed to ensure gender equality in all sphere of life. The implementing legislation to the CEDA needs to be introduced.
- There should be mandatory provision for private companies as well as NGOs to have an adequate number of female boards of directors.
- The expert body for Constitution implementation- 'Constitution Implementation Commission' needs to be set up. The body would be responsible to provide expert input and guidelines for implementation of Constitution. In order to ensure the timely and effective implementation of the Constitution, it would recommend the series of legislative, policy and institutional measures.
- The state should take series of measures and conduct public awareness and educational campaigns to remove harmful customs and traditions inimical to dignity and equal rights of women. There should be a massive campaign to educate about women's rights, gender justice and equality. The issue of women's rights and gender equality should be included in the school curriculums.
- The crime against women, such as- rape, sexual harassment, violence against women, trafficking etc. should be considered as federal crimes. It needs to be included in the federal statute. There shall be a uniform application of criminal law. The provincial government should provide a full cooperation for implementation of crime against women.
- The priority should be given to the needs of women and local communities while preserving, promoting and sustainably utilizing natural resources and to distribute equitably the benefit gained from the same to women and local communities.

- The Civil and Criminal code of Nepal (Muluki Ain) need to be revised from the gender perspective.

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