

Women's Property Rights Movement in Nepal

by Binda Pandey

Nepal is still running under strong feudalistic social values and norms. There were no clear provisions regarding Nepalese women and property rights until 1975. Following the UN Declaration of 1975, which was International Women's Year, the Nepali government began to celebrate International Women's Day on the 8th of March. That same year, the Civil Code was amended and a clause on women's inheritance and property rights included. The clause states that if a woman remains unmarried up to 35 years of age, she would have a right to inherit property. However, the amendment limits itself as it continues "if she gets marriage after having property that should be returned back to the brothers by deducting the marriage cost."

With the restoration of multiparty democracy in 1990, the new constitution guaranteed that no one should be discriminated against on the basis of sex. Furthermore, in 1991, the government ratified the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW-1979). The nation's Women's Movement demanded that all inequalities in Nepali law be eliminated and focused attention on the equal right of women to inherit property. All political parties have included this demand in their respective election manifestos. The opposition party in parliament, the Communist Party of Nepal-Unified Marxist-Leninist, has raised this issue repeatedly but the government has neither considered it seriously, nor taken any initiation to amend discriminatory laws.

In 1993, a case was finally filed in the Supreme Court with a demand to amend the Civil Code to give women equal rights over property.

After two years, in 1995, the Supreme Court issued a directive to the government to introduce a Bill in parliament that would guarantee a woman's rights to inherit property.

Following the Supreme Court directive, the Ministry of Women and Social Welfare drafted a Bill, popularly known as the "Women's Property Rights Bill" in order to amend the existing Civil Code. It was tabled for discussion in the 11th session of Parliament.

It took almost six years more to be passed through parliament, despite a number of other Bills being adopted in this time parliament. During this period, different political parties and parliamentary committees have made a number of changes to the original Bill.

On July 17, 2001, a parliamentary committee unanimously declared that women should have equal rights to inherit property. However, the ruling Nepali Congress party expressed some disagreement and proposed that inherited property "should be returned back to respective brother/s if she gets marriage". The ruling party passed the Bill with a majority vote in the Lower House of Parliament in October 2001. But, the Upper House - National Assembly, which is dominated by the opposition party, failed the Bill and it was sent back to the Lower House for reconsideration.

In due process, the Bill came back to the Lower House. Here, the ruling party was pressing for the Bill to be adopted while the main opposition party, supported by almost all women organizations, was pressing hard to guarantee inherited property rights for women equivalent to that of their brother/s.

In this situation, there was a risk that the Bill would not be passed again and it might take several more years to go through another round of discussion. At this point, the opposition party made the tricky decision to vote for a Bill with its reservation on the provision, which do not recognize the equal right of sons or daughters to inherited property after marriage.

Major Achievements through 11th Amendment in Civil Code-2020 (1963)

After all these turning points, the bill was finally passed in parliament on March 14, 2002. It was sent to the King for his seal of approval and came into effect from September 27, 2002. The major achievements of this amendment are as follows:

- **Women's Right to Property**

Today, women in Nepal can enjoy their right to inherit property from birth. But when they marry any property will be returned to the parent's family. The new law establishes a wife's equal right to her husband's property immediately after marriage, rather than after she reaches 35 years of age or has been married for 15 years as before. A widow's right to claim her share of property from the joint family after the death of her husband, and to use this property even if she gets re-married, is now also established in law.

- **Women's Right to Divorce**

The Bill gives women the right to seek divorce from her husband if he harasses her physically or psychologically; if he establishes sexual relationships with other women; if he is incapable of producing children; or if he is affected by and STD, including HIV/AIDS. Previously, the law allowed a wife to claim only food stuff from her husband for the five years following their divorce. Today, a woman can also claim property.

- **Increase Penalty for Polygamy**

Polygamy is still rampant in Nepal, though it was declared illegal in 1975. Previously, those who violate the law in this regard face a punishment of 1 to 3 months in prison or a fine of 1000 to 2000 Rupees, or both. The new amendment increases these punishments, a man can now face 1 to 3 years in prison or a fine of 5000 - 25,000 Rupees, or both.

- **Women's Right to Abortion**

Previously, abortion was illegal unless a doctor advised that a mother's life was endangered unless a foetus was aborted. Charged with this crime, more than five dozen women are imprisoned across Nepal. The new law legalizes abortion with some conditions. In normal cases a woman can make her own decision to go through with an abortion, though only within the first 12 weeks of pregnancy. However, if the child's delivery endangers the mother's life, or if a women becomes pregnant through rape or incestuous sexual relations then abortions can take place within 18 weeks of pregnancy. Nepal is the first South Asian country to legalize abortion in this way.

- **Stern Action against persons involved in Rape**

Rape is one of the major issues that has been raised by the women's movement in Nepal. In this regard, the amendments to the civil code make the law stronger and increase the punishment for rapists. According to the new provisions, a rapist can be imprisoned for 10-15 years, if their victim is below 10 years of age; 7-10 years of imprisonment, if their victim is between 10 and 16 years of age; and 5 - 7 years of imprisonment, if the victim's age is above 16 years.

In each category, an additional five years of prison can be given if the victim is a pregnant or disabled woman.

Lacunae still remain

It is a big achievement that women have been granted more legal rights with this amendment. But, there remain issues to be addressed. One major issue is to establish equal rights of property inheritance regardless of a women's marital status. The struggle to achieve rights based on gender is ongoing. If gender equality has not been achieved even when important goals are met then the struggle should continue.

Challenges ahead

There is a bigger challenge ahead of the women's movement. Until and unless women and men in wider society are aware of these new legal instruments, they cannot bring any remarkable change to the real lives of Nepalese women. In this regard, it is the role and responsibility of the women's movement to make women and men aware of their legal rights. At the same time, social and bureaucratic structures including those in civil society and government must institutionalize these changes. Only in this way will feudal and traditional attitudes towards women's rights change.

To ensure the impact of these legal rights, authority should be delegated in a practical way and the implementing apparatus should be correctly managed. The women's movement can lead the campaign to make people aware and to check that the law is implemented properly. We can prove that legal instruments are important tools and play a crucial role in creating gender equality in society.

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