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## **Rise of Feminism in Nepali Politics: An Analysis of Exclusion of Women's Rights in the Constitution**

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### **Abstract**

Why are the women fighting for their rights in Nepal? Is Nepal politics only a space for the patriarchic system? While feminism has played an important role to influence the international politics in the 21<sup>st</sup> century resulting in the protest for exclusion of women's rights in the South Asian nation, i.e. the new Nepal Constitution. Violence against women based on any cultural, religious, or traditional practices is criminalized; property rights are now equal for men and women; and there is a requirement that at least 33 per cent of parliamentary members be women. Yet, amid what appear to be major victories, the constitution does not allow single women to confer citizenship rights to their children. The problem is particularly pronounced for Nepali women who have a child with a foreigner: while a Nepali man may confer citizenship to his child if his wife is foreign, the same rule does not apply to Nepali women. Hypothetically feminism argues that girls are not born as girls but are created by the society. Therefore it seeks for the equal status deconstructing the notion of patriarchy. The article highlights Nepal's emphasis on feminism politics. Firstly, the new constitution seeks to maintain Rule of Law. Secondly, the Rule of Law which is challenged by the feminist supporters in the decision-making.

## Introduction

Why are the women fighting for their rights in Nepal? Is Nepal politics only a space for the patriarchic system? While feminism has played an important role to influence the international politics in the 21<sup>st</sup> century resulting in protest for exclusion of women's rights in the South Asian nation, i.e. the new Nepal Constitution. Violence against women based on any cultural, religious, or traditional practices is criminalized; property rights are now equal for men and women; and there is a requirement that at least 33 per cent of parliamentary members be women. Yet, amid what appear to be major victories, the constitution does not allow single women to confer citizenship rights to their children. The problem is particularly pronounced for Nepali women who have a child with a foreigner: while a Nepali man may confer citizenship to his child if his wife is foreign, the same rule does not apply to Nepali women. Hypothetically feminism argues that girls are not born as girls but are created by the society. Therefore it seeks for the equal status deconstructing the notion of patriarchy. The article highlights the feminism politics of Nepal. Firstly, the new constitution seeks to maintain Rule of Law. Secondly, the Rule of Law is challenged by the feminist supporters in the decision making.

## Historical Overview of Feminist Tradition

Feminists understand that male and female relations were political and not based on nature (Jackson and Scott 1996: 6-12). An early framework seeks to understand the position of women in society often made 'kinship and domestic relations' as a theoretical priority. Thus liberal feminism, radical feminism, and socialist feminism offered different answers to the questions about why women have less social status and few advantages compared to men. Despite their differences each understood that family in one way or another gives rise to disputes about how to bring about liberating social changes. "Smash monogamy" or "abolish the nuclear family" were early rallying calls of feminism that generated fierce controversies. From the late 1960s and 1970s, feminist scholars reveal utopian ideas of the family relations that supported women's oppression. Feminist critiques developed in the context of the social and political upheavals of the times. Radicals, people of colour, and feminists questioned functionalism's basic

premises. They came up with a strong opposition to the model created by the early family experts. They also challenged the unified family relations because it disguised women's experiences. When the mainstream family model saw the family as a cohesive system resting on integrated female sex roles, feminists argued that the family was the primary site of women's oppression. What functionalism saw as role differentiation feminists identified as the core of family politics. As feminists posed new questions and offered new ways to see family life, they also took careful stock of their own impact on the family field (Osmond and Thorne 1993). These works provide excellent reviews of the feminist knowledge explosion in family studies. Osmond and Thorne (1993) outline the distinctive features of feminist family scholarship including—the women experiences as centrality of women's thought; the social construction of 'gender' as a core concept in history; attention to the 'socio-historical' context; the empirical reality of multiple family forms; and the commitment to social change and 'value-oriented approaches' to studying family life. Thus by deconstructing these family worlds, feminists began to fashion alternative definitions of what families really are. For example, feminists demonstrated that the concept of family is an ideological concept, which conceals diverse meanings and configures. To move beyond 'symbolism and idealization,' the family should be distinguished from the household. As a family is a construction of meanings and relationships and a household is a residential and economic unit (Osmond and Thorne 1993). To put it another way, "family" means the way things should be, while 'house-hold' means to the manner in which women, men, and children actually come together in domestic life (Fernandez-Kelly and Garcia 1990: 141). Feminists also deconstructed the daily activities that take place within domestic life. For example, 'housework was redefined as work,' and concepts such as 'caring work' were introduced to describe as unpaid work and often unrecognized work that women perform for the benefit of others. The feminist themes that revolutionized family studies in the 1980s are summarized as follows. Gender is omnipresent in family life. Gender organizes every aspect of family life, including-roles, daily practices, images formation and power domination. From this vantage point, the family takes on a different meaning, especially the conception of the family as a unified

whole, treated as a harmony of interests between family members. This conventional view, however, ignores the power nexus making up families, the entanglement of love and domination that often makes the family “an arena of struggle” for women and men (Hartmann 1981). Ever since Jessie Bernard’s classic work on marriage revealed that there are two marriages in every marital unification, i.e. ‘his and hers’ - and that his is always better than hers (Bernard 1972). Thus family scholars have shown that women and men experience the family in different ways.

Moreover families are linked with larger institutions and structures. The image of the family as a haven or domestic retreat sets family relations apart from the world at large. “The myth of separate worlds” (Kanter 1984) was an early focal point for feminist scholars who argued that the public-private dualism romanticized the family, obscured family dilemmas, and denied social inequities that often preclude the family ideal. Feminism reveals many ways in which broader social systems enter into family dynamics-reproducing ‘macro-structural divisions’ inside ‘micro-structural family worlds’. Families are socially constructed and historically changing—feminist viewpoints have challenged the tendency to treat family relations as if they were natural or predictable human arrangements. Instead, feminism strongly argued that families are socially constructed. They differ dramatically across time, space, and social strata. Even “stages we take for granted like childhood, adolescence, and adult-hood are not timeless entities built into human nature but a product of the human condition that have been reshaped with historical changes” (Skolnick 1993: 45). Individual families are the product of human agency. Families are not moulded from the outside in. While feminist frameworks emphasize the situations and contexts that construct families, they do not ascribe to a rigid social determinism. Family members are neither robots nor lumps of clay. Human activity is critical in understanding how man / women cooperate, adapt, and often change families to create meaningful lives for themselves. Facing different contingencies, women, men, and children shape their families through their own actions and behaviours. Thus the concept of these family ‘adaptive-strategies’ can be useful in illustrating ongoing interaction between family members and their social environments.

Nepali family relations are based on a patriarchal based society, where the man is the head of the family. This notion was lately realized when education flourished and women started questioning domination and subjugation. The women's movement in Nepal during post-1990 is embedded in history and it informs the consciousness and movement of women in the feminist pathways. The most common refrain among Nepali feminists and activists today continues to express a lack of 'a feminist movement', emphasize what Des Chene wrote on the 'Nepali women's movement' (1997): Firstly, the need is so evident that a women's movement cannot emerge in a society which is driven by the other hierarchical distinctions but only with the elimination of other social basis of subordination. Secondly, there is a need of efforts to improve the majority of women through various organizations and multiple movements which inevitably permeate by the other divisions existent in society, which work with the creation of a united women's movement (Des Chene 1997: 294).

Historically the campaign of 'women's education' in Nepal was conducted by the 'Women's Committee' (*Nari Samiti*) against the Rana regime at Siraha in 1971. This was the first attempt for women's advancement in Nepal. This Committee was formed in the initiation of women leaders such as Yog Maya Devi and Divya Devi Koirala (Majupuria 2007). This was followed by the active participation of women's participation during the labour movement in Biratnagar during 1947. The result is that many Nepali women were arrested by the then Rana regime at that time. However the 'Nepal Women's Association' was formed in 1947 to work for 'women's rights and freedom' by women leaders close to different political parties. Afterwards, women leaders started affiliating to various political parties already formed and conducted their own women's organizations (ibid., 2007). Some of the active leaders namely—Moti Devi Shrestha was one of the five founding members of the 'Nepal Communist Party' established in 1949. Others like Sadhana Adhikari were elected the member of Kathmandu Municipality in 1952 representing the 'Nepal Women's Association'. In the national level election of 1958, Dwarika Devi Thakurani was elected to the House of Representatives and then Assistant Minister. Similarly, Kamal Rana was nominated in the Upper House and became Vice-Chairperson of the same (ibid., 2007). But the

pace of campaign of women's political participation was interrupted, due to again the establishment of unitary 'Panchayati System' by the then King Mahendra during 1960.

During the twelve-year period of success of the popular movement of 1990, advocacy on women's issues continued at the national level. In addition, the voice was raised for 'gender equality' and public consent was developed in favour of social, economic and political reformation. The history has shown a significant participation of women in the street agitation against the King's action of October 4, 2002 in Nepal. As a result the endorsement of inclusive democracy is seen in the 'Comprehensive Peace Accord between Seven Parties Alliance' and 'Communist Party of Nepal' (Maoist) and the 'Interim Constitution of Nepal', (2007). This is recognized in Nepal's history of women's contribution to the democratic movements.

The system thus enabled sufficient representation of women by initiating to develop an equitable society through the democracy of 'inclusive and participatory' nature has been approved by all spheres. Women leaders collectively addressed the need, that all the responsible political parties should be serious for democratization in political change. However, in 2015 Nepal's parliament also elected Bidhya Devi Bhandari as the first female president of Nepal, who has also served as defence minister of the country from 2009-2011. Associate Press adds, "Nepal has been trying to shift from a traditionally male-dominated society towards objectivity, where women are mostly limited to working at homes or on farms, where women have equal access to opportunities and legal rights" (Nevada Public Radio 2015). This has also given rise to the view of feminism as women playing an important role not only in private housing but also in political decision-making. However, there is still a huge gap in women's scholarship and its status of equality in Nepal.

### **Theoretical Assumption**

Feminist scholars show that the feminist ideology was determined through the use of the *finite element method* (FEM) scale, developed by Smith, Ferree, and Miller (1975), which measures 'acceptance or rejection' of central beliefs of feminism. However, the following feminist

assumptions are identified in relation to the role of women in Nepal. Women are oppressed, the personal is political, and feminists have double consciousness. From these assumptions, principles of feminist practice are derived (Alexis J. Walker et al., 1988).

### *Women Are Oppressed*

As Stanley and Wise (1983) say, “there is partially wrong with the treatment of women in a society” (Stanley and Wise 1983: 51). Women’s natural lives are not taken as seriously, as compared to those of men. In other words, women are excluded in all social, economic and political affairs which are enjoyed by men (Acker, Barry and Esseveld 1983). Feminists believe that these treatments towards women are essential to be changed and addressed (Jayaratne 1983). Feminists strive to connect their struggle with the struggle of those oppressed by age, class, race, ethnicity, disability, or sexual preference. Moreover, the concern is not limited to the condition of women, but broadened to include those who are vulnerable for reasons.

### *The Personal is Political*

Feminist fundamental belief is that the social structure plays itself out in everyday personal lives and experiences (Bart 1971). To encounter individual problems, practitioners must recognize the socio-historical context or roots of personal experience (Lopata and Thorne 1978). The social system imposes a reality on everyday life and is not separate from it. A second belief associated with the assumption that the ‘personal is political’ is the everyday personal life and experience of every individual is worthy and should be understood in all its complexity and richness (Lott 1985). The best way to understand life, therefore, including the oppression of women and members of other vulnerable groups, is to examine and explore interactions, relationships, and experiences.

### *Feminists Have Double Vision of Reality*

As women recognize being oppressed, they begin to perceive that they are devalued, kept down and outside, and rendered silent and invisible. Feminists realize that the existing view of women offered them by their

profession, academic discipline, or society does not match the way they really are or want to be (Smith 1979). Rather than accept the existing view, feminists search for a new way of seeing different society. Seeing different society in a new way involves constantly questioning of tradition and common sense, sensitizing it to the insidious ways of sexism, and grounding their vision on the experiences of their own lives (Acker et al., 1983). Therefore feminists have double vision (Stanley and Wise 1983). They are both inside and outside “the system.” Feminists, as women, recognize their own subordination, but, as scholars or service providers, recognize that they also share the privileges of a professional elite. Unlike some critics of the existing view of society, feminists cannot just withdraw because they have to get on with their work of helping women and others in need (Parlee 1979).

However the rising feminist view in Nepal has experience of women being oppressed in their lives and profession. They also realize that this is because of the social structure which is embedded in the men biased laws which are the course towards writing histories, forming norms in a society, etc. Thus the feminist question is through dual perspective of being inside and outside of the system. This can be elaborated by seeing a system, i.e. the Nepal Constitution or Rule of Law and its relation towards women in Nepal.

### **Constitution as “Rule of Law”**

The Oxford definition says “rule of law as the restriction of the arbitrary exercise of power by subordinating it to well defined and established laws” (Oxford Dictionaries). Regarding equality to Nepali women Comprehensive Peace Agreement 2006 or peace agreement showed a status of rights of women and children. The Interim Constitution has since been amended and signed on 21 November 2006—committed to carry out an inclusive, democratic and progressive formation of the state by eliminating the current centralized and unitary form of the state in order to address problems related to minority communities such as—women, Dalits, indigenous ethnic or Adivasi Janajati people, Madhesi, oppressed, neglected and backward regions by ending discrimination based on class, caste, language, gender, culture, religion and region (Tamang 2011). However Pratichya Dulal (Sep 15, 2015) writes in *Kathmandu Post*, that the New Constitution (2015)



denied Nepali women rights to pass on citizenship to their children. Article 11.2 of the draft constitution dictates that a citizen whose father ‘or’ mother is a Nepali at the time of his or her birth can become a Nepali citizen by descent; subsequent clauses 3 and 4 override the previous clause, which says that both parents have to be Nepali citizens for their children to acquire citizenship by descent. There has been exclusion of women’s rights and particularly Madhesi Dalit women in many grounds. Those views can be seen on the moral and legal grounds.

### *Moral Views*

Women experience multiple discrimination in Nepal within the ethnic-caste-religious and linguistic stratum, partly on account of a long history of official systemic and institutionalized discrimination. In terms of education, which is a significant explanatory variable of inequality generally in Nepal, the differences are dramatic—where 92.8 per cent of Brahmin men and 68.6 per cent of Brahmin women are classified as literate, only 48.5 per cent of Madhesi Dalit men and only 17.2 per cent of Madhesi Dalit women can read and write. Across the “ethnic” divide, there is also social stratification, which has been accelerating since 1990. While landless households and small farmers experience the highest levels of Poverty (Langford and Bhattarai 2011: 388). Similarly, the ‘Nepal Federation of Indigenous Nationalities’ (NEFIN) (2000) shows that the Constitution has more than ‘25 discriminating articles’ towards the ‘indigenous nationalities’. The Madhesi, women, Dalit and minority religious groups have also deplored articles that discriminate against their groups and their culture, religion and languages. Article 9.1 has rejected citizenship to more than 3 million adult Nepali, but mostly from the Madhesi community along with indigenous nationalities and Dalits. The source of racism and sexism in the Constitution is the declaration of the ‘State as Hindu’, i.e. in essence the ‘*Parbate*’ or hill Hindu version.

### *Legal Views*

Legal views show a significant jurisprudence has been developed in Nepal since the 1990 Constitution. Article 13 of this Constitution shows a classical right to equality and a savings clause for special measures for

women, children, and persons with disabilities, the aged and disadvantaged groups, such as—women, Dalits, indigenous groups, Madeshis, peasants, labourers and other backward classes. This is followed by a lengthy Article 14 forbidding discrimination on the basis of race and caste (Article 14). Articles 20 and 22 recognize the right of women to be free from discrimination, particularly from ‘reproductive rights, physical violence and inheritance rights’ and the right of children to ‘identity and protection’. In addition, under a certain right titled “right to social justice”, women and disadvantaged groups have the right to “participate in the state mechanism on the basis of proportional inclusive principles” (Article 21). Economic and Social Council (ESC) rights were only introduced in the 2007 Interim Constitution in Nepal. A number of freestanding rights were enshrined: Article 17 (1) shows the right to education in one’s mother tongue, Article 16 (1) shows the right to live in a clean environment, Article 29 shows protection from exploitation and forced labour and Article 30 (1) decent working conditions. A second and larger group of ESC rights were recognized but their content was limited to what was prescribed in law. Thus Article 16 (2) shows rights to free basic health services, Article 17 (2) shows the right to free education up to secondary level, rights to employment, Article 18 shows social security and Article 30 (2) shows food sovereignty and the right to form trade unions exist as “provided for in the law” (Langford and Bhattarai 2011).

### **Deconstructing Rule of Law**

The ‘role of politics’ is the emerging topic of debate within the feminist studies (Berg and Lie 1995). South Asia check (2015) shows the citizenship provision relating to women in the new constitution is seen as discriminatory as also seen in the above mentioned moral views. Moreover, a child born abroad to a Nepali woman and a foreign man does not get Nepali citizenship if the foreigner father disowns the child or if the father is not identified (Mainali and Rai 2015).

Feminists argue that a child born abroad to a Nepali woman as seen as a result of rape or a child is born abroad to a Nepali woman and a foreigner man, and the Nepali mother is forced to return or reside in Nepal along with the child. Additionally Clause 5 of Article 11 of the new constitution

has also stated that a child born to a Nepali woman (mother) inside Nepal and permanently living in Nepal will get citizenship by descent even if the father is unknown. But this clause is silent about the fate of the Nepali mother's foreign born child, whose father is unknown. Also if the federal law fails to address categorically the concern of the aforementioned child then he or she will not get Nepali citizenship. Thus the provisions for providing citizenship to the foreigner wife of a Nepali man or foreigner husband of a Nepali woman are not equal. Moreover Clause 6 of Article 11 of this constitution has stated that a foreigner woman married to a Nepali man can acquire naturalized citizenship in accordance to the federal law. But at the same time this clause is silent in the case of a foreigner man married to a Nepali woman.

Jha in an online article (*The Diplomat*) writes, the socially marginalized groups, such as the Madhesis, living mostly in the Terai region, Janajatis or indigenous people, and women have strongly objected to the provisions made by the new Constitution (2015). They have a sense of alienation and left out in the same country, which also reflects that the so-called constitution is not collectively owned by a majority of the citizens and it represents a setback (Kumar 2015). However the new constitution was a provision in the 2006 peace accord which ended the civil war of Nepal and was projected to transition from monarchy to a republic. Importantly among the objections of women activists to the proposed charter are 'abridgement of reproductive rights', 'denial of property and inheritance rights to women', and 'the reversal of the 2006 law', that says children are eligible for citizenship as long as one parent is Nepalese. The new charter controls single parents from passing on their citizenship to their children and requires both parents to be Nepalese. The consequences would leave a million people stateless, disproportionately affecting women who are of the vast majority of single parents in Nepal. Also Dalit women have been organizing to incorporate their particular demands to end caste oppression and to guarantee their inclusion in Nepalese social and political life (Mary Scully Report 2015). Thus the Constitution seems 'sexist' according to feminism because it does not treat men and women equally in fundamental issues such as citizenship of Nepal. The constitutional provisions such as Articles 9 (1) and Article 9 (2) that allow the acquisition of citizenship

through the father's lineage only discriminate against women's section. Due to such provisions, the children of Nepali women married to foreign citizens cannot obtain Nepali citizenship. This debatably shows that the new constitution is more regressive as compared to the earlier panchayat constitution which was not discriminating the right to citizenship based on gender issues (Lawot 2005: 39-40). Feminists namely Manjushree Thapa (2015) writes: 'The new constitution, voted on by the Constituent Assembly on September 16, rejected the feminist movement altogether, and allowed the logic of the Hindu patriarchy'. She says, 'not only can women not confer citizenship to their children independently of men, the children of Nepali women and foreign men will be barred from high office, whereas no such restriction applies to the children of Nepali men married to foreign women'. Thus the question still left unsolved—such as—will the Nepal women be active as men in Nepal in decision-making? Does the Nepal elite realize the equity of gender unbiased right in future? And most importantly, how will the girl's children react when she becomes a woman in future? These questions have to be addressed and have to be solved sooner or later, because it is the medium of conflict and peace.

## Conclusion

The conclusion can be drawn from the *feminism* theoretical base that a girl is not born as a girl but is created by the society. Therefore it seeks for the equal status deconstructing the notion of patriarchy. Nepal rule of law has been known for marginalization of Janajatis, Dalits and Madhesi women based on their ethnic and caste identities. The whole root of dissatisfaction for Nepali women is due to the discrimination based on gender. There is strong need of feminist sentiment to be heard which are subjugated under the patriarchal domination. Moreover, the feminists criticize the whole bible (Nepal Constitution 2015) of Nepal which preaches the gospel of equality based on gender inequality. Thus current reactions are a result of the absence of the women category in a mainstream masculinity political space, where the whole trends of feminists in Nepal wish for Nepali women to be treated as equal in all spheres.

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