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REPORT ON CITIZENSHIP LAW: NEPAL

AUTHORED BY

SABIN
SHRESTHA

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Report on Citizenship Law

Nepal

Sabin Shrestha

1. Introduction

Almost nine years after a second people's movement, the Constituent Assembly (CA) promulgated a new constitution on 20 September 2015. The intervening period witnessed the dissolution of the first CA on 28 May 2012 and the election of a second CA on 19 November 19 2013 as a result of the top political parties failing to reach consensus on some contentious issues, including citizenship. Consequent to the destructive earthquake that devastated the nation on 25 April 2015, the top four political parties adopted a fast-track process and resolved all the contentious issues, thereby promulgating the first constitution ever drafted by an elected body in Nepal. The new constitution has certain provisions that differ from the earlier Interim Constitution and which are therefore in contradiction to the existing Citizenship Act.

In addition, the Supreme Court of Nepal has made a number of landmark decisions on citizenship, issuing directive orders to the Ministry of Home Affairs and district administration offices to comply with the provisions on citizenship. Parliament has yet to revise Nepal's Citizenship Act to comply with the decisions of the Supreme Court.

Nepal is a party to a number of human rights treaties, namely the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of Children (CRC) and the Convention on the Elimination of All Forms of Racial Discrimination (CERD). It therefore has an obligation to abide by the norms of these treaties and to draft laws on nationality in line with the principles they contain.

2. Historical Background

Nepal is a multi-ethnic, multi-cultural and multi-religious country comprising more than 100 castes and ethnic groups and eight major religious traditions. These castes and ethnic groups are distinguished by their languages, customs and myths of origin, and have different sizes,

powers and influence. As a consequence, there is a poor balance of ethnic relations in Nepal. Further issues that the country is faced with include heterogeneity of culture, religion, and geography. These issues, coupled with Nepal's long history of migration, imply that all inhabitants of the country are settlers. Therefore, enabling the implementation of equal social and political rights without prejudice to cultural diversity is one of the key challenges Nepal is faced with. That is, it is essential for the country to find an adequate compromise between the state and its citizens in terms of equal rights and responsibilities. Equality here implies that all citizens are equal and the state, which guarantees the rights of citizens, is itself seen as neutral and treating all citizens equally.¹ Exclusion and marginalisation from full citizenship are not only issues for outsiders, migrants and new settlers in a country. Groups like women, ethnic minorities and the poor can fall outside full citizenship in their own country. Experiences of citizenship are therefore also dependent on societal position and roles – roles that are determined by social relations of unequal power formed on the basis of race, ethnicity, caste, class and gender.²

The right to citizenship is a basic right of every individual. It is therefore a right of women. It is also ensured by various international human rights conventions to which Nepal is a state party. The UDHR clearly states that everyone has the right to a nationality and no one shall be arbitrarily deprived of his/her nationality nor denied the right to change nationality.³ Article 9 of CEDAW provides women with equal rights to men to acquire, change or retain their nationality and also grants equal nationality rights to their children. Moreover, in the 30th CEDAW session in January 2004, the CEDAW committee provided strong concluding remarks in the 2nd and 3rd periodic reports to Nepal to “repeal or amend article 9 of the constitution, which permits discrimination against women in the area of citizenship”.⁴

The first Nepalese Citizenship Act was enacted in 1952. This act specified that citizenship was acquired by birth if either of the parents is a Nepalese citizen, or by marriage to a Nepalese man who had been permanently living in Nepal with his family, by anyone living in Nepal for more than 5 years and by children born abroad to a Nepalese father and mother. The Nepalese Constitution of 1962 included a citizenship chapter for the first time in the country's constitutional history. It stated that a person was eligible for Nepalese citizenship if he/she had been born in Nepal, or if either of his/her parents was a Nepalese citizen, or, if a woman, if she had a matrimonial relationship with a Nepalese citizen, or if he/she had already acquired Nepalese citizenship. The constitution stated that acquisition and termination of citizenship were determined by law and foreigners should have to fulfil certain conditions to acquire Nepalese citizenship.

The 1964 Nepal Citizenship Act categorised three ways of acquiring Nepalese citizenship: by descent, by naturalisation and through honorary citizenship. Citizenship by descent could be acquired by anyone whose father was a Nepalese citizen at the time of his/her birth, any child in Nepal the whereabouts of whose parents were not known, and any child born within a reasonable time after the death of his/her Nepalese father. Citizenship by naturalisation could be acquired by anybody who had resided in Nepal for more than 15 years, women who had a matrimonial relation with a Nepalese man, and the sons, daughters and descendants of Nepalese citizens.

¹ Constitutional Lawyers' Forum, *Citizenship* (Kathmandu: Classic Printing Service, 2068 B.S) 566.

² Ibid. p. 567. Cited in Meer and Sever, 2004.

³ Universal Declaration of Human Rights (1948), Article 15.

⁴ FWLD and UNIFEM, Op.cit. p. 34.

The 1990 constitution did not include citizenship being acquired by birth and was more rigid than the constitution of 1960. It also provided that citizenship was acquired in the three categories of descent, naturalisation and honorary citizenship. Citizenship by descent could be acquired by anyone whose father was a Nepalese citizen at the time of his/her birth, and any child in Nepal the whereabouts of whose father and mother were not known. Citizenship by naturalisation could be acquired by anybody who had resided in Nepal for more than 15 years, women in matrimonial relationships with Nepalese men, and the sons, daughters and descendants of Nepalese citizens who had resided in Nepal for more than two years. In addition, people domiciled in areas annexed by Nepal also acquired Nepalese citizenship.

The modern concept of citizenship is new to Nepal. Before 1950 there were no legal provisions to distinguish real citizens from non-citizens (foreigners). However, words like ‘Nepali raiti’ and ‘foreigner raiti’ were used in the first Civil Code of 1854 to differentiate between citizens and foreigners. This distinction was made mainly “for the purpose of purchasing land and other fixed properties. Besides, the words ‘muglaniya’ and ‘mlechhe’ were used to denote Indian and European citizens”.⁵ Foreigners were not allowed to acquire property, obtain government employment and *jamindari* (landlordship). However, a foreigner could become a ‘Nepali raiti’ after a minimum of five years of residency. Children born in Nepal to expatriates could acquire the status of ‘Nepali raiti,’ but they could only enjoy their full rights as ‘Nepali raiti’ after turning 16.⁶

The first Citizenship Act (1952) introduced the modern, constitutionally defined, concept of citizenship. It was like many other citizenship laws and declared the following to be Nepalese citizens: those born in Nepal; those permanently settled in Nepal; those whose parent was born in Nepal; and woman married to a Nepali. It was very liberal on the issue of naturalised citizenship and gave citizenship to anyone who had lived in Nepal for at least five years. The 1952 Act was replaced by the Citizenship Act of 1964, which was drafted after the promulgation of the 1962 constitution, which gave special attention to citizenship.⁷ The 1964 Act made it relatively difficult to acquire naturalised citizenship. This act has been amended five times and still provides the basis for granting citizenship in the country.

The prevailing patriarchal social structure of Nepalese society has restricted a large number of citizens from acquiring citizenship. The patriarchal nature of legal and constitutional regulation of citizenship discriminates against women. Article 9(2) of the 1990 constitution only allowed citizenship by descent through the father. Sub-sections 1, 2 and 5 of Article 9 discriminated against women as they failed to provide citizenship to children through their mothers. According to sub-section 1, children could receive citizenship only if the father was a citizen of Nepal. Similarly, sub-section 2 stated that any infant found within the country was a Nepalese citizen until his/her father was identified. These constitutional provisions failed to recognise the existence of the mother. As a result, many children of single parents were becoming non-citizens.⁸ Badi, a Dalit community in western Nepal, probably face the most problems in acquiring citizenship certificates for their children. A significant number of “Badi Women are traditionally involved in prostitution, and their children have been deprived of citizenship certificates. Around 1000 children born to Badi

⁵ Constitutional Lawyers Forum (CLaF), Op. cit. p. 568. Cited in Karki, B.B. (1996) Legal Provisions on Citizenship and Existing Problems (in Nepali), Kanon, No 3, Bhadra 2054 B.S.

⁶ Ibid. p. 569.

⁷ Ibid.

⁸ Ibid. p. 582.

women have been deprived of citizenship certificates, which is a great injustice meted out by the state to its underprivileged citizens”.⁹

A newspaper report published in *The Rising Nepal* on 8 December 2004 makes it clear that patriarchy has hindered the children of single parents from obtaining citizenship:

Awan Kumar Pudasaini of Besithok village in Nuwakot district, adjoining Kathmandu, has just learnt what problems you can land in if you are trying to get citizenship papers for your stepchild. Pudasaini married a woman who had a child from her previous marriage. He brought up the child, Raju, as his own son. Raju grew up and applied for his citizenship certificate as he wanted to go abroad for employment. He received it too. Ironically, Pudasaini was arrested along with Raju by the district administration on charges of forgery and the citizenship certificate was cancelled. Pudasaini had stood as Raju’s father as the whereabouts of the biological father are not known. Pudasaini is now awaiting punitive action and, if found guilty, Pudasaini can be fined up to Rs. 10,000 or imprisoned for five years.¹⁰

The 2007 Interim Constitution of Nepal provided that children could obtain citizenship through either the father or mother, but this was not implemented. Moreover, the provision was made ineffective by another provision in the same constitution that children born to a Nepalese mother and a foreign father could not obtain citizenship by descent. This totally denied an independent identity of women.

The emerging citizenship concept in Nepal was traditionally biased against women. Men were/are treated as full successors of citizenship rights and women were/are treated as second-class citizens of the nation. Nepalese women acquire citizenship on the basis of relationships with men, such as the father and then the husband. Widely varying cultural practices make it necessary to distinguish between groups in which social deprivation is a consequence of general and shared poverty and those in which the situation of women is more directly connected to an unequal gender-based distribution of power and resources in the family and in society. Among conservative high-caste families, for example, particularly those in the Terai, women tend to have fewer opportunities, less decision-making power, and more restrictions on their movements than men.¹¹

Two assumptions on gender roles within the family have contributed to this inequality. First, the unity of the family is central to the patriarchal notion of national unity in Nepal. Second, and related, this unity of the family is presumed to be determined by the head of the household, who is male. Bashyal notes that these two assumptions cut across the dichotomy between the public and the private sphere and cause “two broad forms of discrimination against women in the realm of citizenship rights”.¹² He highlights that nationality of the woman is a ‘dependent nationality’, which she acquires when joining her husband who is a member of the nation. As a consequence, wives “were automatically granted the nationality of their husband, having renounced their own nationalities. Furthermore, they were not granted the same right to transfer citizenship to a foreign spouse”.¹³ Second, in cases of children born to parents with different nationalities, they would receive the nationality of the father. As highlighted by Bishar “[T]his in turn resulted

⁹ Ibid. p. 583.

¹⁰ Ibid cited from *The Rising Nepal*, 2004.

¹¹ United Nations Children’s Fund (UNICEF), *Children and women of Nepal: A situation Analysis*, (Kathmandu: UNICEF, 1987) 163.

¹² Bishnu Bashyal, “Gender Equality Act 2006: An Analytical study with reference to the Convention on the Elimination of All forms of Discrimination against Women, 1979,” diss., Tribhuvan University, 2009, 85.

¹³ Ibid. p. 85.

in discrimination against women in society, and the perpetuation of gender inequality through women's second class citizenship. Women who were divorced, abandoned or widowed were rendered stateless in their marriage and similarly left without any right associated with citizenship. The denial of equal citizenship rights had a devastating effect on many women and children, unnecessarily limiting their mobility, access to services and opportunities".¹⁴

There were some changes with regard to the citizenship rights of women with the 2007 Interim Constitution, promulgated immediately after the peace accord, which was signed with a commitment to restructure the state for inclusive democracy. Parliament passed a resolution guaranteeing citizenship through the mother. In conferring citizenship to children, the new law requires that children born to a foreign husband be born in Nepal and have permanent residence in Nepal. According to the present constitution, women of foreign nationality who marry Nepalese citizens can acquire Nepalese citizenship after starting the process to renounce their former citizenship. However, a man of foreign nationality who marries a Nepalese woman is not entitled to acquire Nepalese citizenship by virtue of marriage.

Thus, Nepalese women have been discriminated against in comparison to their male counterparts. Although the laws and constitution have been changed, there is still much discrimination against women in the acquisition of citizenship. The citizenship law is still discriminatory on the basis of marriage. There are also many restrictions on mothers' rights to confer citizenship on their children. A mother cannot easily confer citizenship on her child and the new legal provision still does not allow women to confer citizenship on an alien husband, which is a denial of full and equal citizenship rights.¹⁵ Women are forced to live in abusive relationships, they become victims of domestic violence, physical and mental abuse, and are forced to endure all of this because they are economically dependent upon their husbands.¹⁶ The reason for being economically dependent upon the husband is the denial of citizenship rights to women. Women do not have an independent identity of their own, which forces them to become dependent either on their father or their husband.

3. Current citizenship regime

3.1. Acquisition of Nepalese citizenship

Article 10(1) of the current 2015 Constitution recognises acquisition of citizenship as a right of all Nepalese citizens. Previous constitutions never recognised citizenship as a right. Additionally, Article 10(2) states that there is a single federal citizenship with provincial identity.

¹⁴ Ibid. p. 85.

¹⁵ Ibid.

¹⁶ FWLD (3), A study on discriminatory laws against women, Dalits, ethnic communities, religious minorities and persons with disabilities (Kathmandu: FWLD, 2009) 25.

3.1.1. *Citizenship by descent*

Citizenship by descent has been further categorised into six types:

1. Citizens by descent who acquired citizenship before the commencement of the constitution

All citizens of Nepal who acquired their citizenship by descent before the commencement of the Constitution of Nepal in 2015 are recognised as citizens by descent.¹⁷

2. Citizenship through father or mother

Any person whose father or mother was a citizen of Nepal at their time of birth is deemed to be a citizen by descent.¹⁸

3. Citizenship for children of citizens by birth

Children whose father or mother acquired citizenship by birth can acquire citizenship by descent only if both the father and mother are citizens of Nepal.¹⁹ This means that a child born to a Nepalese citizen by birth and a foreigner cannot acquire citizenship by descent.

4. Citizenship for children whose father and mother are unidentified

A child found in the territory of Nepal has citizenship by descent until the time the paternity or maternity of the child is traced.²⁰

5. Citizenship for children born in Nepal to Nepalese women

Children born to Nepalese women in Nepal having permanent domicile in Nepal can acquire citizenship by descent, but only if the father of such children cannot be traced.²¹ The constitution does not clarify the meaning of the term 'father not traced.'

6. Children born to Nepali women and foreign men

Children born to Nepalese women and foreign men can acquire citizenship by descent if at the time of application both the parents are Nepalese citizens.²² However, if only the mother is a Nepalese citizen at the time of the application and the father is not, the children from such parents acquire naturalised citizenship. This contradicts the constitutional provisions themselves and the Citizenship Act, 2066, Section 3(1), which states that a person whose father or mother is a citizen of Nepal shall be a citizen by descent. This is further elaborated as below.

Citizenship by descent according to the Nepal Citizenship Act, 2066

Section 3 of the act lays down the criteria for eligibility for citizenship by descent. It states that a person whose father or mother was a citizen of Nepal at the time of the person's birth is a citizen of Nepal by descent.²³ However, the following sub-section restricts this provision by specifying that persons born to Nepalese women married to foreign men can only acquire the

¹⁷ Article 11(2)(a), Constitution of Nepal, 2015.

¹⁸ Article 11(2)(b), Constitution of Nepal, 2015.

¹⁹ Article 11(3), Constitution of Nepal, 2015.

²⁰ Article 11(4), Constitution of Nepal, 2015.

²¹ Article 11(5), Constitution of Nepal, 2015.

²² Provision of Article 11(7), Constitution of Nepal, 2015.

²³ Nepal Citizenship Act, 2066, sec. 3(1).

citizenship of Nepal through naturalisation.²⁴ The language used in this sub-section suggests that it supersedes the previous sub-section, as the phrase "Notwithstanding anything in sub-section (1)..." is used. This section also includes a provision that addresses the citizenship concerns of foundlings. It states that persons found in the territory of Nepal the whereabouts of whose father and mother are unknown are citizens by descent until their father or mother is identified.²⁵

Section 4 covers the eligibility criteria for acquiring citizenship by birth. It states that any person born before 13 April 1990 in the territory of Nepal with permanent domicile in Nepal is a citizen of Nepal by birth. This provision is no longer applicable in the present as the certificate of citizenship by birth could only be acquired before the Constituent Assembly election was held²⁶ or within two years of the commencement of the act.²⁷ With the Constituent Assembly already having been held and more than two years having passed since the act entered into force, the provision is no longer applicable for any person today.

3.1.2. Acquisition by naturalisation (through marriage, ordinary naturalisation etc.)

The constitutional provisions further classify citizenship by naturalisation into three types.

1. Citizenship by naturalisation through marriage

A foreign female spouse of a Nepalese man can acquire citizenship by naturalisation.²⁸ However, the same does not apply to a foreign male spouse of a Nepalese woman. The provision is also not clear regarding any further conditions that need to be met in order to acquire Nepalese citizenship by naturalisation.

2. Citizenship by naturalisation for children born to Nepalese women and foreign men

Children born to Nepalese women and foreign men may acquire the citizenship of Nepal provided that they have permanent domicile in Nepal and have not acquired the citizenship of the foreign country.²⁹ As mentioned above, if at the time of application both the parents of such children are Nepali citizens they can acquire citizenship by descent.

3. Other kinds of citizenship by naturalisation

The constitution states that the Government of Nepal can confer other kinds of citizenship by naturalisation on the basis of federal law.³⁰ These legal provisions need to be determined by the citizenship laws.

Acquisition of citizenship by naturalisation according to the Nepal Citizenship Act, 2006

Section 5 of this act deals with the kinds of naturalised citizenship certificates. Sub-section (1) even specifies the procedure for obtaining naturalised citizenship through marriage as it states that a foreign female spouse needs to produce her document of a marriage relationship

²⁴ Nepal Citizenship Act, 2006, sec. 3(2).

²⁵ Nepal Citizenship Act, 2006, sec. 3(3).

²⁶ Nepal Citizenship Act, 2006, sec. 4(2).

²⁷ Nepal Citizenship Act, 2006, sec. 4(3).

²⁸ Article 11(6), Constitution of Nepal, 2015.

²⁹ Article 11(7), Constitution of Nepal, 2015.

³⁰ Article 11(8), Constitution of Nepal, 2015.

with the Nepali citizen and also submit evidence that the procedure for renunciation of the previous foreign citizenship has been initiated.³¹ Sub-section (2) has provisions regarding naturalised citizenship for persons born to Nepalese women married to foreign men. It states that such persons need to be born in Nepal, have a permanent domicile in Nepal and must not have acquired the citizenship of the foreign country on the basis of the citizenship of the father.³² Sub-section (3) also lays down the step-by-step procedure for acquiring the citizenship certificate. The person must submit a copy of the mother's citizenship document, a recommendation by the municipality or village development committee concerned and evidence to show that citizenship of the foreign country of the father has not been acquired.³³ Sub-section (4) has provisions regarding naturalised citizenship for foreign citizens who have specifically contributed in the fields of science, art, literature, world peace, human welfare or Nepalese industry, finance or social development. They must also:³⁴

- i. be able to read and write Nepali or any other language in use in Nepal;
- ii. be engaged in an occupation and domiciled in Nepal;
- iii. have renounced or declared renunciation of the citizenship of the other country;
- iv. have resided in Nepal for a minimum period of 15 years;
- v. be a citizen of a country where there is provision in the law or the practice of granting naturalised citizenship to Nepalese;
- vi. have good moral character;
- vii. be mentally fit and healthy.

Sub-section (6) specifies that persons applying for citizenship by naturalisation must take an oath.³⁵

3.1.3. Other grounds for acquisition of citizenship

Constitutional Provisions

Honorary Citizenship

The constitution also has a provision for honorary citizenship, which the Government of Nepal can confer on the basis of federal law.³⁶

Citizenship in the case of accession of territory

In the case that any territory is annexed to Nepal, the persons living in the area will be recognised as citizens of Nepal.³⁷

³¹ Nepal Citizenship Act, 2006, sec. 5(1).

³² Nepal Citizenship Act, 2006, sec. 5(2).

³³ Nepal Citizenship Act, 2006, sec. 5(3).

³⁴ Nepal Citizenship Act, 2006, sec. 5(4).

³⁵ Nepal Citizenship Act, 2006, sec. 5(6).

³⁶ Article 11(9), Constitution of Nepal, 2015.

³⁷ Article 11(10), Constitution of Nepal, 2015.

- Gender Identity

The constitution also allows acknowledgement of the gender identity of persons in the certificate of citizenship.³⁸ This implies that persons may mention their desired gender in the citizenship certificate. This is a new provision that was not found in previous constitutions.

- Citizenship through the father or mother

Persons who are eligible to acquire citizenship by descent may acquire it through the father or the mother.³⁹ This provision seems to contradict Article 11(5) and seems to be a continuation of Article 11(2)(b). A proper legal interpretation is therefore necessary in order to understand the actual intent of this provision.

- Non-residential citizenship

This is a new form of citizenship that did not exist in the previous Nepalese constitutions. A foreign citizen residing in a country other than the South Asian Association for Regional Cooperation (SAARC) nations can acquire non-residential citizenship of Nepal if he/she or his/her father, mother, grandfather or grandmother was a citizen of Nepal by birth or descent. Such citizens can only exercise economic, social and cultural rights.⁴⁰

Other grounds for acquisition of citizenship in the Nepal citizenship act, 2006

Section 6 of the act provides for honorary citizenship to be awarded to any internationally renowned person.⁴¹ In addition, section 7 states that if any territory is acceded to Nepal, the persons residing in the integrated territory shall be citizens of Nepal.⁴²

3.1.4 Procedures for obtaining citizenship according to the Citizenship Act

Section 8 specifies the procedures for obtaining a citizenship certificate. It specifies that the certificate can only be acquired after the age of 16 and that the person needs to file an application with copies of the following documents:⁴³

- i. The Nepalese citizenship certificates of descendants of relatives within three generations on the paternal or maternal side;
- ii. A recommendation from the village development committee (VDC) or municipality concerned certifying the place of birth and relationship.

However, female Nepalese citizens married to a foreigner cannot apply for this citizenship.⁴⁴

Sub-section (2) has provisions regarding the procedure for applying for citizenship by birth. The applicant needs to file an application with copies of the following documents:⁴⁵

- i. A recommendation from the village development committee or municipality concerned certifying birth in Nepal and permanent residence in Nepal.

³⁸ Article 12, Constitution of Nepal, 2015.

³⁹ Ibid.

⁴⁰ Article 14, Constitution of Nepal, 2015.

⁴¹ Nepal Citizenship Act, 2006, sec. 6.

⁴² Nepal Citizenship Act, 2006, sec. 7.

⁴³ Nepal Citizenship Act, 2006, sec. 8(1).

⁴⁴ Nepal Citizenship Act, 2006, proviso of sec. 8(1)(a).

⁴⁵ Nepal Citizenship Act, 2006, sec. 8(2).

- ii. Evidence of a land ownership certificate in the name of the person concerned or their family, or a certificate of land tenancy right, or proof of address, or listing of the name of the father or mother in the voter list prepared by the election commission.

Sub-section (4) applies to cases where applicants cannot submit the evidence required by the provisions in sub-sections (1) and (2). The designated authority can organise a spot investigation in which at least three persons with citizenship certificates of Nepal residing in the same ward need to verify the information provided by the applicant.⁴⁶

3.1.5 The procedures for obtaining citizenship in the Citizenship Rules

The Nepal Citizenship Rules, 2006 were passed in line with the Nepal Citizenship Act, 2006 on 15 December 2006. They were amended on 29 January 2007 after the Interim Constitution of 2007 was promulgated on 15 January 2007. The rules contain the procedures for acquiring a citizenship certificate pursuant to the legal provisions in the Constitution of Nepal and the Nepal Citizenship Act, 2006. The content of significant provisions in these rules is described below.

1. Rule No. 3

Rule No. 3 lays down the procedure for acquiring a certificate of Nepalese citizenship by descent. It states that a citizen of Nepal who has reached the age of sixteen has to make an application to the District Administration Office in the format provided in Schedule 1 of the Rules together with the following documents:⁴⁷

- i. The citizenship certificate of the applicant's father or mother or a relative within three generations of the applicant;
- ii. A recommendation from the local authority concerned setting out the applicant's birthplace and relationship or a birth registration certificate;
- iii. In cases where a citizenship certificate of a relative within three generations has been submitted, a relationship certificate establishing the relationship with that relative also needs to be submitted.

Sub-rule 2 deals with the procedure to be adopted in cases where the applicant fails to submit the above evidence. This states that a public inquiry can be conducted by local inhabitants who have obtained a citizenship certificate of Nepal in the presence of a representative of the local body.⁴⁸ This can be conducted to verify whether the applicant was born in Nepal, whether the applicant has had permanent residence in Nepal, or whether the applicant's father or mother is a citizen of Nepal.⁴⁹

Additionally, the deed of enquiry needs to be certified by three citizens in the format provided in schedule 4 of the Rules.⁵⁰ The authority concerned can still make further inquiries or investigations if it feels they are necessary.⁵¹

⁴⁶ Nepal Citizenship Act, 2006, sec. 8(4).

⁴⁷ Nepal Citizenship Rules, 2006, rule. 3(1).

⁴⁸ Nepal Citizenship Rules, 2006, rule. 3(2)(a).

⁴⁹ Ibid.

⁵⁰ Nepal Citizenship Rules, 2006, rule. 3(2)(b).

⁵¹ Nepal Citizenship Rules, 2006, provision of rule. 3(2)(b).

Sub-rule 3 deals with the procedures for persons found within the territory of Nepal. This provision requires that applicants whose father and mother's whereabouts are unknown must submit an application in the format provided in schedule 1 of the rules to the district administration office together with the following documents:⁵²

- i. In cases where the person has been raised by a government-approved childcare centre, orphan children protection organisation or orphanage, a recommendation from that institution.⁵³ Additionally the person must be certified by the head of the institution.⁵⁴
- ii. In cases where the person has obtained legal guardianship, a copy of the citizenship certificate of the legal guardian.⁵⁵

If further inquiry is felt necessary, a recommendation from the local organisation or a police report may be sought from the applicant.⁵⁶ Such citizenship certificates specifically mention in the relevant columns that the father and mother have not been traced.⁵⁷

2. Rule No. 4

This Rule concerns the procedure for obtaining citizenship by birth. This provision is no longer applicable as the application for this type of citizenship must have been made prior to the election of the Constituent Assembly.⁵⁸ It requires that the applicant must submit an application together with the following documents to the district administration officer in the format prescribed in Schedule 1 of the rules:⁵⁹

- i. A recommendation from the Local organisation concerned proving that the applicant was born in Nepal and has been continuously permanently residing in Nepal.
- ii. A land ownership registration certificate or tenancy right certificate or household certificate in the name of the applicant or in the name of the applicant's family,⁶⁰ or evidence indicating that the name of the applicant or the applicant's father or mother appears in the electoral roll prepared by the election commission.

In the case of failure to submit the evidence listed above, a spot public inquiry can be conducted in the same manner as for rule No. 3(2)(a). However, in the case of citizenship by birth, the decision on citizenship must be made within a month of the date of registration of applications.⁶¹

3. Rule No. 5

This rule contains provisions on procedures for obtaining citizenship through naturalisation by marriage. Foreign women married to Nepalese men need to make an application to the

⁵² Nepal Citizenship Rules, 2006, rule. 3(3).

⁵³ Nepal Citizenship Rules, 2006, rule. 3(3)(a).

⁵⁴ Nepal Citizenship Rules, 2006, rule. 3(3)(c).

⁵⁵ Nepal Citizenship Rules, 2006, rule. 3(3)(b).

⁵⁶ Nepal Citizenship Rules, 2006, rule. 3(4).

⁵⁷ Nepal Citizenship Rules, 2006, rule. 3(6).

⁵⁸ Nepal Citizenship Rules, 2006, rule. 4(2).

⁵⁹ Nepal Citizenship Rules, 2006, rule. 4(1).

⁶⁰ The explanation in sub-rule 1(b) states that family includes father, mother, step-mother, son, unmarried daughter and daughter-in-law, whether living in an undivided family or living separately.

⁶¹ Nepal Citizenship Rules, 2006, rule. 4(4).

district administration office in the format prescribed in Schedule 7, including the following documents:⁶²

- i. A recommendation made by the local organisation concerned certifying the marriage to a Nepalese citizen.
- ii. Evidence proving that the applicant has initiated an application to renounce the foreign citizenship.

4. Rule No. 6

This provision states that applicants who have applied for citizenship by descent or by birth must be informed within seven days of the application if they are found to be ineligible to obtain the certificate.⁶³

5. Rule No. 7

This rule applies to persons born to Nepalese women married to foreign citizens. Such applicants need to submit an application in the format prescribed in schedule 7 together with the following documents:⁶⁴

- i. A copy of the mother's citizenship certificate.
- ii. A recommendation from the local organisation concerned certifying that the applicant was born in Nepal and has resided permanently in Nepal.
- iii. Evidence that the applicant has not obtained the citizenship of the foreign country through the foreign father.

In such cases, the chief district officer of the district administration office can conduct further inquiries with the mayor of the municipality or chairperson of the village development committee concerned, and if satisfied the office will forward the application along with its opinion to the Ministry of Home Affairs.⁶⁵ The final decision on citizenship will then be taken by the Ministry of Home Affairs.⁶⁶

Sub-rule 5 provides the procedure for obtaining a citizenship certificate for persons born to naturalised citizens of Nepal prior to the citizen having acquired a naturalisation citizenship. In such cases, the applicant needs to submit an application to the district administration office along with a relationship certificate letter, a copy of the father or mother's citizenship certificate and a recommendation from the local organisation to prove that the applicant has been residing in Nepal.⁶⁷

⁶² Nepal Citizenship Rules, 2006, rule. 5(1).

⁶³ Nepal Citizenship Rules, 2006, rule. 6.

⁶⁴ Nepal Citizenship Rules, 2006, rule. 7(1).

⁶⁵ Nepal Citizenship Rules, 2006, rule. 7(3).

⁶⁶ Nepal Citizenship Rules, 2006, rule. 7(4).

⁶⁷ Nepal Citizenship Rules, 2006, rule. 7(5).

3.2. Loss of Nepalese citizenship

3.2.1 Voluntary renunciation

Section 10 of the Nepal Citizenship Act deals with termination of Nepalese citizenship. It states that any citizen of Nepal who voluntarily acquires the citizenship of any foreign country shall automatically lose the citizenship of Nepal.⁶⁸ Sub-section (3) states that a person eligible to acquire the citizenships of Nepal and a foreign country at the same time has to choose the citizenship of one of the countries within two years of reaching the age of 16, and failure to decide within two years will result in the person losing his eligibility to acquire the citizenship of Nepal.⁶⁹

3.2.2 Resumption of Citizenship

However, section 11 of the act states that a former Nepalese citizen who later acquired the citizenship of a foreign country can re-acquire Nepalese citizenship upon renunciation of the foreign citizenship.⁷⁰

3.2.3. Other grounds for loss

Submission of False Documents

This provision states that a citizenship certificate acquired through submission of false documentation shall be revoked.⁷¹

Dual Citizenship

The act states that a person may not acquire more than one citizenship certificate, apart from cases where the residency of a person has changed and the person seeks to acquire citizenship from the new residence. However, even to acquire this citizenship certificate the previous citizenship certificate must be withdrawn.⁷²

Punishment Provision

The punishment provision deals with punishments for acquiring citizenship through false representation or by providing false information. For foreign nationals who claim to be a Nepalese citizen through false representation, the punishment is imprisonment from one to five years or a fine of from fifty thousand rupees to one hundred thousand rupees or both.⁷³ A person involved in the process of verification or recommendation related to a citizenship application by a foreign national based on false information shall be sentenced to imprisonment from six months to three years or fined from twenty thousand rupees to fifty thousand rupees or both.⁷⁴ A person involved in falsifying or forging a Nepalese “citizenship

⁶⁸ Nepal Citizenship Act, 2006, sec. 10(1).

⁶⁹ Nepal Citizenship Act, 2006, sec. 10(3).

⁷⁰ Nepal Citizenship Act, 2006, sec. 11.

⁷¹ Nepal Citizenship Act, 2006, sec. 12.

⁷² Nepal Citizenship Act, 2006, sec. 13.

⁷³ Nepal Citizenship Act, 2006, sec. 21(1).

⁷⁴ Nepal Citizenship Act, 2006, sec. 21(2).

certificate shall be sentenced to imprisonment from one year to five years or fined from twenty thousand rupees to one hundred thousand rupees or awarded both penalties”.⁷⁵

3.2.4 Procedures in the citizenship rules for renouncing citizenship

The rules lay down the procedure for renouncing the citizenship of Nepal. The person concerned must provide information along with the original citizenship certificate in the format prescribed in schedule 9 of the rules to the district administration office if the applicant is domiciled in Nepal.⁷⁶ In cases where the person is out of the country, the applicant can submit the application to the Nepalese Embassy or the Head of the Nepalese Mission or Consulate.⁷⁷

The rules also deal with the resumption of citizenship of Nepal for persons who have previously renounced their citizenship of Nepal. The applicant needs to make an application in the format prescribed in schedule 11 to the district administration office, providing proof that the foreign citizenship has been renounced.⁷⁸

Revocation of the citizenship certificate where it has been obtained by providing false information is also covered. The citizenship certificate is revoked by the authority that issued it.⁷⁹

4. Correction of information on the citizenship certificate

4.1 Section 17 of the Nepal Citizenship Act

This section of the citizenship act deals with correction of information on the citizenship certificate. It only allows minor changes to the caste or age of the person.

4.2 Rule No. 14 of Nepal Citizenship Rules

This provision lays down the procedure for correcting the details on the citizenship certificate. A person desiring to change the legally allowed particulars on the certificate must file an application to the district administration office.⁸⁰

⁷⁵ Nepal Citizenship Act, 2006, sec. 21(3).

⁷⁶ Nepal Citizenship Rules, 2006, rule. 9(1).

⁷⁷ Ibid.

⁷⁸ Nepal Citizenship Rules, 2006, rule. 11(1).

⁷⁹ Nepal Citizenship Rules, 2006, rule. 12.

⁸⁰ Nepal Citizenship Rules, 2006, rule. 14(1).

5. Current political debates and reform plans

Citizenship was one of the contentious issues extensively deliberated upon during the constitution-making process. The high-level task force constituted under the first CA recommended restricting citizenship by descent by requiring both parents to be Nepalese citizens for their child to be eligible to acquire the citizenship of Nepal.⁸¹ This drew immediate dissent from many CA members, particularly the women members. Consequently, the CA could not agree on the citizenship provision and it was categorised as a disputed issue after the first CA was dissolved.

A second CA was formed on 21 January 2014. Among several committees formed under the CA, the Constitution Records Study and Determination Committee (CRSDC) was tasked with classifying the settled and disputed issues. The settled issues were to be submitted to the Constitution Drafting Committee (CDC) and the disputed issues were to be submitted to the Constitutional and Political Dialogue and Consensus Committee (CPDCC) in order to garner consensus.

Despite being categorised amongst the disputed issues by the first CA, the CPDCC identified the citizenship provisions as a settled issue and forwarded them to the CDC on 13 May 2014, thereby preventing deliberations on them. However, on 6 August 2014, the sub-committee of the CDC requested that the citizenship provisions be sent to the CPDCC for further discussion. A sub-committee of the CPDCC then identified citizenship as an issue that required further discussion and the result was substantive discussion in the CPDCC as well.

Parallel to the formal constitution-making process, civil society organisations, activists and persons without citizenship had been staging a series of protests in the streets of the capital. Protests were also organised at the district level. The civil society organisations repeatedly put forth their demands for equal rights for men and women in conferring citizenship to their children and spouses. More specifically, there was a demand to amend “Father AND Mother” to “Father OR Mother,” which would enable acquisition of citizenship through mothers in the same way as through fathers.

A month after the 2015 earthquake, the four top political parties adopted a 16-point agreement resulting in consensus on all the contentious issues. The citizenship provision remained unchanged and the restrictive “Father AND Mother” provision was included in the preliminary draft of the constitution. The draft was then subjected to public scrutiny, which revealed massive support for the “Father OR Mother” provision. The CA was finally compelled to amend the citizenship provision.

5.1 Lack of Citizenship Certificate

A study conducted by the Forum for Women, Law and Development (FWLD) showed that 4,346,046 people (23.65 per-cent of the population) lacked citizenship certificates in Nepal. An update of the study in 2015 reveals that the number of people without citizenship certificates had increased from 4.3 million to 4.6 million. However, the percentage had decreased from 23.65% to 22.82% largely thanks to special efforts made in 2013 in which the

⁸¹ Review of the High Level Taskforce Proposal on Citizenship, page 1.

Government of Nepal issued citizenship certificates via integrated mobile camps and citizenship certificate distribution camps.⁸²

These figures are based on government sources. However, there was still “a need for information on trends in the acquisition of citizenship certificates and the associated barriers, as well as on the impacts to those who lack a certificate”.⁸³ As a consequence, the Forum for Women, Law and Development (FWLD) conducted another survey among households in Nepal “to understand the demographic trends among citizenship certificate holders”.⁸⁴ Results of this survey corroborate that gender, caste, and household are highly correlated with the person’s possession of a citizenship certificate. They also indicate the persistence of the gender gap, “as nearly 87 percent of eligible men have acquired citizenship certificates, compared to approximately 74 percent of eligible women”.⁸⁵ The study also points to the pervasive gender discrimination, particularly towards widows who face hurdles in obtaining citizenship certificates for their children. Other women without husbands, including victims of violence or sex workers were also unable to obtain citizenship certificates, mostly due to fears of their in-laws that by becoming citizens, they would be able to obtain property rights. Finally, a number of “women reported that their own biological family members did not want them to have a legal claim to family property and inheritance, and therefore refused to support their applications for citizenship certificates”.⁸⁶ More specifically, cultural practices and the lack of family support were among the key reasons why Muslim and Madhesi women were unable to apply for and obtain citizenship certificates.

In addition to gender, other important factors for obtaining a citizenship certificate include religion and caste... Survey results show that “Hill Brahmins, Chhetris and Newars are the most likely to possess citizenship certificates, whereas Chepangs, Rajbars and Musahars are the least likely. Muslims clearly lag in citizenship acquisition rates relative to other religious groups”.⁸⁷ Further to this, the survey clearly shows that the acquisition of citizenship is related to caste differences. In particular, “members of the Dalit community state that discrimination by government officials not only prevents them from acquiring a citizenship certificate, but even from attempting to apply at all. Madhesi participants also report frustration and stress due to persistent bias shown by government officials”.⁸⁸

The combination of these factors has prevented a number of people from applying for citizenship certificates, or even making the first step towards this by applying to their village development committee/municipality. More specifically, the survey indicates that the most common reason for this is that citizenship certificates matter little in everyday lives. A total of 36.8 percent of individuals have highlighted this reason, as opposed to mere 0.7 percent who did not apply citing the lack of cooperation on behalf of authorities, or to 5.1 per cent (of whom 90 percent were women) who lacked family support. A further 2.6 percent (all women) did not apply as their husbands were away from home.⁸⁹ The gender-based discrimination is persistent in the application process, particular as regards the interlinkages between the private and the public sphere through patriarchy.

⁸² Forum for Women, Law and Development (FWLD), *Acquisition of Citizenship Certificate in Nepal: Estimation and Projection*, December 2015, Kathmandu.

⁸³ Forum for Women, Law and Development (FWLD), *Acquisition of Citizenship Certificate in Nepal: Estimating Prevalence*, April 2013, Kathmandu.

⁸⁴ Forum for Women, Law and Development (FWLD), *Acquisition of Citizenship Certificate in Nepal: Understanding Trends, Barriers and Impacts*, February 2014, Kathmandu.

⁸⁵ *Ibid*, pg. 15.

⁸⁶ *Ibid*, pg. 20

⁸⁷ *Ibid*, pg. 20

⁸⁸ *Ibid*, pg. 20

⁸⁹ *Ibid*, pg. 20

Beyond these issues, research shows that there are significant administrative and procedural hurdles in the process of citizenship acquisition. That is, “many of the documents required or used to apply for a citizenship certificate, such as a land title or voter registration, are themselves only acquirable with the possession of a citizenship certificate. For the most marginalised members of Nepalese society, such as indigenous groups whose customary land practices do not use official land titles or trafficking survivors, who are often abandoned or betrayed by their families, possession of these legal documents (and therefore, the acquisition of a citizenship certificate) is nearly impossible”.⁹⁰

The recent study clearly shows that the number of people without citizenship certificates in Nepal will continue to increase unless the Government takes some special measures to bridge the gap. The current number of people without a citizenship certificate stands at 4.6 million – 22.82% of the total population. Projections show that this figure will rise to 6.7 million, or 26.14% of the total population, in 2021.⁹¹

6. Conclusion

Without citizenship certificates, people are unable to enjoy fundamental rights in Nepal. Possession of these certificates is required for civil documentation and financial services. Moreover, they are required to access land and house titles, credit and bank accounts, and to be able to exercise basic civil and political rights. As a significant portion of Nepal’s population lacks citizenship certificates, the government and civil society should make continued efforts to advocate for all eligible Nepalese to have access to them.

Following the restoration of multiparty democracy in 1990, all Nepalese governments have made attempts to address the citizenship issue by forming investigative committees and citizenship teams and by introducing new laws and amending the existing acts and regulations. Between 1975 and 1993, eight citizenship teams and three high-level investigative committees were formed to facilitate the distribution of citizenship certificates. Nevertheless, citizenship provision is still highly debated. Therefore, it is high time that the government, lawmakers and authorities take the issue of citizenship seriously and provide citizenship to eligible Nepalese people so that there remains no risk of these people being stateless.

⁹⁰ Ibid

⁹¹ Forum for Women, Law and Development (FWLD), Acquisition of Citizenship Certificate in Nepal: Estimation and Projection, December 2015, Kathmandu, p. 16.

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