

Status of Legal Empowerment in Nepal: Problems and Good Practices.

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Shortcomings of existing judicial system in Nepal

Gender stereotypes and cultural norms that view women as subordinate to men are still prevalent in the legal profession in Nepal, leading to discrimination and unequal treatment of women lawyers and judges. According to the ICJ report on the "Status of Women Judges in Nepal," Women make up only about 9% of the total number of judges. As of 2021, there were only 34 female judges out of 371 judges in Nepal's judiciary. Women are more likely to be appointed to lower courts or as ad hoc judges, while men are more likely to be appointed to higher courts. Women judges in Nepal also face various forms of discrimination and harassment, and they are often appointed to lower courts or as ad hoc judges rather than higher courts.

Similarly, according to a 2020 report by the United Nations Development Programme (UNDP), women make up only 10.2% of judges in Nepal, with only 28 out of 273 judges being women highlighting the gender disparities in access to justice and legal empowerment in Nepal. A 2016 report by the Nepal Bar Association (NBA) found that only 10% of lawyers in Nepal are women and that women lawyers face discrimination and unequal treatment in the legal profession. The report also highlights the importance of promoting women's participation in the legal profession to increase the representation of women in the judiciary.

These shortcomings highlight the value of a legal empowerment approach, which empowers women and other marginalized groups to navigate the legal system, advocate for their rights and interests, and challenge systemic discrimination and exclusion.

Contributions towards legal empowerment

CAPCRON has made significant contributions towards legal empowerment and people-centered approaches to achieve equal and effective justice for all. The organization has trained over 90 individuals in seven districts through the Training of Trainers (ToT) program for paralegal training. This program aims to empower marginalized communities with the necessary knowledge and skills to access legal aid and assistance.

CAPCRON has also established pro-bono legal clinics in five districts, in partnership with ASF. Furthermore, 200 lawyers from five district bar units have been provided with professional capacity-building training to enhance their skills. The legal English course was also successfully completed to improve the lawyers' English language aptitude. Over 250 district key stakeholders, including lawyers, police, court personnel, public prosecutors, and jail administrators, were trained on juvenile issues.

Overall, CAPCRON's efforts have contributed significantly towards promoting legal empowerment and ensuring equal access to justice for marginalized communities.

Key challenges faced in the legal empowerment initiatives in Nepal

Community advocates play a vital role in promoting and ensuring legal empowerment, especially in developing countries like Nepal. However, these advocates often face numerous challenges and obstacles in their work. Two instances/ stories of hurdles faced by community advocates in Nepal are presented below:

Incident 1:

A few years ago in Itahari, Nepal, where community activists and advocates were harassed and assaulted for their efforts to stop a child marriage, highlights some of the key challenges faced by community advocates in their legal empowerment work in Nepal. The community activists and advocates belonging to the children's club in Itahari had initiated a campaign against child marriage in their area. When they learned about a child marriage happening in their vicinity, they immediately informed the police and went to the marriage ceremony along with the police to stop the ceremony. Upon reaching there, the police stopped the ceremony, but the activists were harassed, threatened, and even assaulted by the locals and the family engaged in the child marriage.

Incident 2:

The challenges faced by community advocates and paralegals in Nepal are not limited to those working to end child marriage. Advocates working for the promotion and protection of LGBTIQ+ rights and feminist organizations in Nepal also face numerous challenges and obstacles in their legal empowerment work.

In Nepal, there are only a few governmental organizations that work for the promotion and protection of gender and sexual minorities. This lack of support from the government often leads to underfunding of organizations working in this area. Many advocates working for LGBTIQ+ rights and feminist organizations in Nepal are underfunded, which makes it challenging for them to carry out their legal empowerment work effectively.

Moreover, at many events, these advocates are shamed by the governmental authorities. Their work is not recognized, and they are not provided with adequate resources to carry out their work. This further highlights the lack of political will to implement legal reforms and promote legal empowerment for marginalized and vulnerable groups.

In addition to the lack of resources, many litigations filed by allies in favor of LGBTIQ+ policies and programs are unheard and ignored. This undermines the legal rights of LGBTIQ+ individuals and makes it challenging for community advocates and paralegals to work towards their legal empowerment.

Many times, advocates belonging to the LGBTIQ+ community are dehumanized, trolled in social media, threatened, and bullied online and offline. This creates an environment of fear and intimidation, making it difficult for advocates to carry out their work without fear of retribution. The challenges faced by community advocates and paralegals working for LGBTIQ+ rights and feminist organizations in Nepal are further exacerbated by the social and cultural barriers prevalent in Nepali society. Nepal is a conservative society, and traditional cultural practices often go against the legal rights of LGBTIQ+ individuals and women. This makes it challenging for community advocates and paralegals to convince people to follow the law and enforce their rights.

These incidents shed light on some of the major challenges faced by community advocates in their legal empowerment work in Nepal. The following are some of the key challenges that community advocates in Nepal face:

1. Cultural and Social Barriers: One of the primary challenges faced by community advocates in Nepal is cultural and social barriers. Nepal is a culturally diverse country with a deeply ingrained patriarchal system, which often leads to discrimination against women and children. In many cases, traditional cultural practices often go against the legal rights of children, women, and other vulnerable groups. These practices make it challenging for community advocates to convince people to follow the law and enforce their rights.

2. Lack of Legal Awareness: The majority of people living in rural areas of Nepal lack legal awareness, which makes it challenging for community advocates to promote legal empowerment. Many people in rural areas are not aware of their legal rights and the laws that protect them. This makes it difficult for community advocates to mobilize people to demand their rights and hold perpetrators accountable.

3. Political Instability: Nepal has been facing political instability for many years, which has resulted in the lack of political will to implement legal reforms. This political instability has also led to a weak justice system, making it challenging for community advocates to seek justice for the marginalized and vulnerable groups.

4. Lack of Resources: Community advocates in Nepal often work with limited resources. They lack adequate funding, staff, and other resources required to carry out their legal empowerment work effectively. This makes it difficult for community advocates to reach out to a larger audience and provide them with the necessary legal support and assistance.

5. Threats and Intimidation: The incident in Itahari, Nepal, where community activists and advocates were harassed and assaulted for their efforts to stop a child marriage, highlights the dangers and risks that community advocates face in their work. Community advocates often face threats, intimidation, and violence from the powerful individuals and groups who do not want their status quo to change.

Good Practices among Lawyers

The Constitution of Nepal, Article 20 ensures every Nepali citizen's right relating to justice. The Article also mentions that every person shall have the right to consult a legal practitioner whenever they need. However, the service of a legal practitioner isn't always available to the people belonging to geographically, economically and socially marginalized group who are disadvantaged by various factors of status-quo. Yet, that does not mean one should be deprived of the access to justice simply because the medium to remedies is costly or not to their avail.

The state has made functional various statutory provisions to provide legal aid to the indigent person. According to the Legal Aid Act, 1997, Section 8, the state has established a legal aid fund to fund the legal proceedings of the person receiving legal aid. Section 6 and 7 established one Central Legal Aid Committee and District Legal Aid Committee in each district of Nepal respectively with the duty to review applications and designate lawyers to the cases after reviewing applications. The Committees also bear the duty to formulate policies to coordinate with respective bar unit of the district in order to prepare a list of panels of lawyers. The Legal Aid Rules, 1998 has highlighted the duties of the committees and procedures to prioritize the applications received on need and emergency basis.

Besides receiving legal aid, every lawyers and practitioners, must provide pro bono services for certain hours every year during their practice. Pro bono and legal aid might be used interchangeably in many legal and judicial aspects but they are slightly different when it comes to the recipient's end. Pro bono is the service given by independent or appointed lawyers by the state while legal aid can be measured in monetary value or the services by legal practitioners on stipend given by the state.

Furthermore, special privilege of legal practitioner conferred by the Nepal Bar Council Act, 1993 ensures that no lawyer shall be arrested in a civil case concerning any claimed amount or penalty, when he/she is on the way to present, plead and argue in a case on behalf of a party to the case. The statute has provision about licensing and recognition of senior advocates which acknowledges and motivates the lawyers in their practice.

Conclusion

Therefore, in Nepal, lawyers, paralegals and community advocates serve a critical role in maintaining justice, yet they frequently encounter considerable challenges in their job. Despite the fact that India, a nearby country, published a draft of the Advocates (Protection) Bill, 2021 on July 2, 2021 to address the issue of advocate protection, implementing a law in Nepal that is similar would be a big improvement for Nepal's legal system.

The difficulties that could develop while promoting the rights of lobbies and legal professionals can be addressed in a number of ways. Politicians must work together to make the bill's passage a top priority. This can be done by assembling a coalition of advocates from the legal community, civil society organizations, and political figures that see the value of defending attorneys and advancing access to justice.

Adequate funds should be set aside to carry out the law's requirements. The establishment of a fund for the welfare of advocates and the provision of the required facilities and instruction for the application of the advocate protection law may include cooperation between the government, the legal profession, and civil society organizations. A balance between the protection of lawyers and maintaining the rule of law should be struck in the bill's drafting. This can be done by making sure that the legal requirements aren't extremely vague and don't occasionally make it difficult to pursue the truth.

In order to address the root causes of attacks on attorneys, such as corruption and political meddling in the legal process, broader changes should be put into place. This can entail changes to the legal and political structures that support accountability, transparency, and the rule of law.