

GENDER, LAND, AND JUSTICE: ROLE OF SUPREME COURT IN ADVANCING WOMEN'S PROPERTY RIGHTS

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ABSTRACT:

Women's property right is significant in promoting gender equality which makes women socially and economically secured. However, the existing socio-legal constraints have deprived women from the benefits of property right. The prevalent customary practices in our society have contributed gender disparity which has constrained women to be self-reliant in financial matters. The Supreme Court of Nepal has played a significant role in shaping the rights of Nepali women through its landmark decisions on gender equality, particularly in inheritance and ownership rights. This study examines the role of Supreme Court in advancing women's property rights and assesses how this helps women to achieve social and economic security. This study is based on the qualitative desk study. It has reviewed the Constitution of Nepal, published and unpublished articles related to women's property right in Nepal. The landmark cases were reviewed thoroughly which has created milestone decisions in regard of equal coparcenary and inheritance right to parental and ancestral property by women regardless of their marital status. The Supreme Court has dismantled various discriminatory practices related to land, inheritance and tenancy right which have resulted in significant amendments in constitution 2015 and civil code 2017 of Nepal. This has established binding precedents that recognized women as equal right holders to land and property. Therefore, the Supreme Court has laid strong foundation on gender equality through its landmark decisions which established binding precedents formalizing women's property right. The court has dismantled deeply rooted customary norms of the communities which were barrier to the women in establishing socio-economic security. This study focuses on the role of Supreme Court to strengthen women's land right which is very much crucial in developing their social and economic security of women.

1. Background

Women experience less access to and control over economical resources like land in comparison to male (Kangas et al., 2014). Land ownership has played important role in promoting economic independence ensuring proper access to shelter and develop participatory confidence in decision making within household and communities (Print et al., 2025). But women experience significant barriers on control over property due to social and cultural restrictions prevailed in Nepal (Rijal, 2017). Women's property right is significant in promoting gender equality which makes women economically autonomous. According to legal reforms in the Constitution of Nepal, 2015 and Civil Code of Nepal, 2017, women are ensured equal right to own and inherit property. However, various socio-legal contexts restricted its enforcement. The prevalent customary practices in our society have contributed gender disparity which has constrained women to be self-reliant in financial matters. It further limited their ability to own or control land. Therefore, education, leadership opportunities and societal changes is important ensuring women equality (Print et al., 2025). The women's status and their influence within households and communities is possible only if they have access and control over the fixed assets like house or land as wealth (Rijal, 2017).

Nepal's Supreme Court has played a pivotal role in shaping the rights of Nepali women through its landmark decisions on gender equality, particularly in inheritance and ownership rights (Malagodi, 2018). This strengthens women's access to property, which is very much essential for socio-economic security. The Supreme court is very important as it has power to interpret and adjudicate constitutional matters particularly in federal disputes (The et al., 2015). So it can play a key role in correcting discriminatory practices by reinterpreting laws in strengthening gender justice in favour of equality. The Supreme court plays a significant role in making legal precedents as a future guideline for cases of a similar nature, ensuring certainty and consistency in the legal system making the law uniform and clear to all (Supreme Court Booklet, 2080). According to the Constitution of Nepal, 2015 (Article 128(4)), "The interpretation of law made by

the Supreme Court shall be binding on all courts". According to Rajesh Kafle, Senior Advocate, Supreme Court of Nepal, The Supreme Court stands as a symbol of justice, which is more than a judicial institution. It interprets the constitution, protects fundamental rights, resolves disputes, and promotes judicial independence. It is the backbone of democracy, which needs to adapt the possible new challenges for providing justice and equality.

The interaction between judicial interpretation and women's property rights represent an important dimension of gender justice in Nepal. The analysis of landmark decisions made by Supreme Court provides valuable insights on how the judicial decisions have promoted legal reforms, protected women's property rights and contributed to their social and economic security.

2. Objective

The main objective of this research is to:

- Analyze the role of Supreme Court in shaping women's property right.
- To assess how supreme court's decisions have contributed women in achieving social and economic

3. Methodology

This study is based on qualitative desk study approach which included published and unpublished literatures such as academic journals, books, policy documents, government reports, landmark court decisions and online databases. The collected materials were used to enable critical examination of legal frameworks, landmark decisions made by court which ensures the women's right to equality.

4. Women's Property Right in Nepal

Property right is a legal claim to own and inherit property either by men or women. Although women equally contributes to society, the patriarchal culture of Nepal and the binding customary practices has denied women's right to land and property in the history of Nepal. This issue got attention only after 1975 which was strengthened later by the constitution of Nepal in 1990 that

states no discrimination by sex (Campus, 2021). Nepal started celebrating international Women's day on 8th of March following UN declaration of 1975. In the same year the Civil Code (*Muluki Ain*) was amended with the inclusion of women's right to inherit property who remains unmarried until the age of 35. This clause has its limitation of returning the property back to their brothers after deducting marriage cost. Nepal later started global commitments to Women's Rights including Beijing Platform for Action on International agreement on women's rights and gender equality. The government ratified the UN Convention on the Elimination of all forms of Discrimination against Women (CEDAW-1979) in 1991.

11th Amendment in Civil Code-2020 (1963) has brought significant achievement in equality of women. This reform has broadened the women's right including equal inheritance from birth, equal right to husband's property upon marriage, strengthened right of widow, access to divorce and property after divorce, strict punishment against polygamy, legalized abortion under specific conditions and harsh penalty for rape case.

5. Despite constitutional guarantees to equality, Women's land ownership has increased only to 23.8% (Census, 2021). Still there remains limitation, although land is legally in the name of women, decisions regarding the use, management and control is done by male member of the family. (Nepal & Marasini, 2018). This sort of things still makes women face challenges in having real control to their land. This shows that legal reforms alone may not empower women without shifting household dynamics. Here are some land mark decision made by the Supreme Court that created real milestone in terms of gender equality.

6. Land mark Precedents of Supreme Court in Women's property right

The supreme court plays instrumental role in social transformation enhancing equality of women's property right (Aggarwal, 2021; Campus, 2021). A decision made by Supreme Court of Nepal is considered as precedent, and it is binding unless the Parliament nullifies its effect by enacting new Act or the Supreme Court overrules its previous judgment. (Update et al., n.d.). The land mark decisions made by Supreme Court of Nepal in regard of women's property right has created milestone in gender equality. Some of the landmark decisions are reviewed here in this section.

6.1 Meera Kumari Dhungana v. Government of Nepal in 1995

7. *Government of Nepal in 1995 which challenged muluki Ain 1963 clause number 16 on partition of property which states that unmarried daughter over 35 years can inherit the parental property equal to son and if she got married after receiving share, she had to return back to her brothers deducting marriage expenses. The petitioner further argued that this provision discriminated the women based on the marital status. And violates the article 11, 15 and 17 of constitution 1990 that advocates on equal right to property of all citizens which was against Nepal's commitments under CEDAW.* The government denied to amend this provision as removing this gives women double benefit from both paternal and marital property violating equality principles. Senior advocate Bal Krishna Neupane argued that different treatment is justified as sons and daughters are naturally unequal. Amicus Curiae Ganesh Raj Sharma further argued as equality doesn't mean identical treatment but is justified by social roles and conditions. The Supreme Court acknowledged clause 16 as discriminatory by ensuring that sons and daughter should have equal rights to parental property. Supreme court didn't immediately invalidated the provision as it could be seen arbitrary if radical changes to social practice is made without public acceptance. So it directed government to consult women's organizations, sociologists and lawyers and study international

practices before proposing amendments. Finally this led to the 11th amendments of Muluki Ain 2002 which granted daughters with equal inheritance rights as sons but married daughters still need to return their share. Later, with the amendment made in 2015 under section 1(a) of Muluki Ain, this discriminatory provision was abolished without distinguishing married and unmarried daughters and guarantees equal rights to parental property for all daughters. This has been a significant step towards gender justice in Nepal which has highlighted the importance of inclusive discussion to make significant change in social practices and norms. This decision was made by the supreme court on 2052/04/18 B.S and the decision number was 6013.

6.2 Sapana Pradhan Malla & Prakash Mani Sharma v. HMG

8. Advocates Sapana Pradhan Malla and Prakash Mani Sharma challenged section 26(1) of Land Act, 1964 (2021BS) filing the writ against His Majesty Government regarding the discrimination of women in inheritance and tenancy rights. Section 26(1) after the death of tenant, the tenancy rights transferred either to the wife or to the sons excluding daughters either married or unmarried and widowed daughter in law from succeeding such rights. The petitioner argued that this violated the Article 11 which focuses on right to equality of citizen before the law and addresses that citizens should not be discriminated despite of their religion, race, sex, caste, tribe or ideological conviction or any of these. Similarly it violates Article 17 right to property to all citizens. The government defended this provision was just to ensure the continuation of cultivation and integrity of tenancy land within the tenant family. As daughter moves to her husband's house after marriage, her entitlement was not recognized under the law. The supreme court didn't declare invalid accepting the government's reasoning. However, the court recognized gender inequality inherent in this provision. Therefore, court appealed government to draft a new law to fix the unfair rules in the Land Act. This decision of court has been regarded as one of the milestone in aligning gender equality in land and tenancy laws into constitution. This led to the amendment addressing gender equality in land right which was later incorporated in Muluki Ain. (Update et al., n.d.).

6.3 Advocate Tej Bahadur Katuwal v. the Office of the President, Sheetal Niwas

6. The petitioner challenged the provisions of Muluki Civil code 2074 which has created the confusion regarding coparcenary rights of the daughters if the married women have equal right to inherit parental or ancestral property as the sons. The petitioner further argued that denying equal coparcenary rights violated Article 38 (6) of the Constitution of Nepal, 2015 which ensures equality to women. The discrimination is based on sex and marital status. The court has decided that marriage changes social and family status but not coparcenary rights. Daughters either married or unmarried have equal right in parental property. This has supported equal coparcenary rights for daughters despite of their marital status. This has enhanced the right to equality. This judgment has been considered as the remarkable decision in Nepalese legal history that ensured equal property right and served as a guiding legal precedent to similar disputes. (Advisors, 2020).

6.4 Annapurna Rana v. Gorakh Shamsher J.B.R. (1998)

This is a land mark decision made by Supreme Court of Nepal that significantly advocated on the protection for privacy, dignity, bodily autonomy and gender equality. It is decision no. NLR 1998, Issue 8, Decision No. 6588 and writ no. 2187 of 1996 and **Order Date:** June 8, 1998 (2055 B.S). Annapurna Rana has cased file against Gorakh Samsher J.B.R. The Writ Petition challenged orders from Kathmandu District Court and later Patan Appellate Court. These orders requested her to undergo a gynaecological

“virginity test” and other body examinations to prove whether she had been married or had children. These tests were meant to prove if she had been married or has children as her relatives had claimed she was married, arguing that she should not get certain property or financial support. Compelling the women to undergo a virginity test or similar examination violates the fundamental right to privacy protected under Article 22 of Constitution of Nepal, 1990. Such types of test are degrading, discriminatory and undermine human dignity, affecting women disproportionately. The court has noted that these tests have no scientific basis and cannot prove whether someone is married or had children. Sexual activity or childbirth alone does not legally determine marital status, so the lower courts' assumptions were wrong. This decision is viewed as one of the major supreme court ruling in Nepal on the right to privacy which has set this as an important constitutional precedent. According to legal experts, this case has changed Nepal's approach to privacy and gender justice. It ended old patriarchal practices like using virginity tests as evidence and strengthened protections against gender discrimination in court (National Judicial Academy, Nepal, n.d.). The case is often cited in debates on privacy and evidence law in Nepal. This has protected the privacy, dignity and equality of women.

6.5 Inheritance Rights of Married Daughters in Nepal

According to online khabar, The petitioner, elder daughter of a family who has filed writ against her father and step mother regarding the denial of her inheritance citing her marital status and foreign citizenship. The issues was regarding the entitlement of married daughters if she could inherit paternal property. From the decision made by five full bench, the **majority opinion of 3 judges: Manoj Kumar Sharma, Saranga Subedi and Abdul Ajj Musalman** held that only daughters married after the 2072 BS Constitution and the 11th amendment of the Muluki Ain (Civil Codes) could claim inheritance. Daughters married before that would follow the old law. This meant the eldest daughter in the case, married in 2051 BS, was **not entitled** to her share, overturning lower court decisions. The **minority opinion drawn from 2 Judges Sapana Pradhan Malla and Mahesh Sharma Poudel** has advocated that married daughters **should receive inheritance**, pointing out that the 11th amendment in 2059 BS already gave daughters the right to inherit, which was later expanded after the 2072 BS Constitution. They argued the eldest daughter's right had already been created, so her marital status was irrelevant. They emphasized that denying her share would be discriminatory and contrary to constitutional guarantees. The case highlighted the debates on gender equality, inheritance rights, and constitutional interpretation and legal reform in Nepal.

6.6 Supreme Court, Land tenure, and its Socio-Economic Implications

Supreme Court with its Landmark Decisions has supported women's equal inheritance right to property which strengthen land tenure by ensuring land ownership, control and access to land. Land tenure secures economic independence and enhances bargaining power within households and communities. Land tenure is the relationship between land and people either individual or groups are legally or customarily defined. Land tenure determines who can use what resources for how long and under what condition (Land & Studies, n.d.). It further states that land tenure can be enforced formally through court of law or through customary practice of the community or may be relatively poorly defined with ambiguities open to exploitation. The right of people on any object is considered as property. Different rights to a same parcel of land emerged the concept of bundle of right (Land & Studies, n.d.)

7. Land has been considered as the important asset in operating social, political and economical activities that functions market institution. Human existence depends directly or

indirectly upon land as it is primary source of wealth and power of any nation. Land provides primary source of livelihood and provides investment opportunities. Access to land should be equitable and shouldn't be deprived based on sex, education or social status (Nuhu et al., 2020). The census 2021 Nepal shows that women's land ownership has increased to 23.8% but the ownership of land doesn't mean only having control over it. It is often the men in the family who makes decisions about how the land is used or sold (Nepal & Marasini, 2018).

8. Women's land right and tenure security plays very important role in promoting economic growth and development reducing poverty. Women's tenure security is not only the right that women holds but the extent to which this rights are secure (Doss & Meinzen-Dick, 2020).
9. Secure access to land plays a very important role in advancing the livelihoods, housing, food security and dignity of women which is fundamental for improving social and economic security. Discrimination in land ownership and inheritance can make women more vulnerable to poverty, eviction and displacement.
10. Women's land right strengthen their economic independence promoting their social status (Rights, 2022). Ownership to fixed assets like houses and lands are key indicator of wealth, social security and power in Nepal. These assets play significant role in defining women's status within households and communities. It influences on their economic dependence or independence and their ability to engage in productive economic activities (Rijal, 2017)
11. Therefore, land Tenure and ownership strengthen social status, dignity, and participation in decision-making. Collectively it secures their social and economic position. Supreme Court laid a strong foundation for gender equality in property rights. Land mark decision made by the Supreme court, dismantled discriminatory laws on land, inheritance, and tenancy. These judicial interventions have directly influence legislative reforms leading amendments to Muluki Ain, promulgation of constitution of Nepal 2015 and Civil code 2017. It has established binding precedents supporting gender equality. But the Social norms, customary laws, and weak enforcement have limited practical empowerment. Broader institutional accountability, public awareness, and social changes are essential for full impact. Legal reforms enable women's independent ownership and coparcenary rights.

12. Analysis and Discussion

The Supreme Court has played a crucial role in reshaping discriminatory laws against women by enhancing the land ownership and inheritance right of women in Nepal. In the initial phase, court was reluctant to amend the discriminatory property laws citing the possibility of arbitrary if radical changes are made without public acceptance. However, the directive orders made by court compelled to initiate legislative reforms which has triggered for the nationwide debate on strengthening women's right and movement.

13. A Land mark decision on women's equal right made by Supreme Court has led constitutional and statutory reform in constitution of Nepal 2015 and civil code 2017. It has recognized formal women's equal rights to property. The judicial interpretation and enforcement is seen pivotal as their judgments are final and binding on all courts and authorities.
14. Court has dismantled several historical entrenched discriminatory legal practices related to land ownership, inheritance and tenancy right to women. The landmark cases like *Meera Kumari Dhungana v. Government of Nepal*, *Sapana Pradhan Malla v. HMG*, and *Tej Bahadur Katuwal v. Office of the President* represent critical milestones in Nepal's legal history. This decision has given women either married or unmarried equal coparcenary and inheritance rights to parental

and ancestral property. These judicial interventions have directly influence legislative reforms leading amendments to Muluki Ain , promulgation of constitution of Nepal 2015 and Civil code 2017. These reforms have recognized women as independent right holders to land and property.

15. These land mark decisions helped women in establishing independent right to land which strengthened their secured land tenure which makes women socio-economically secured. Secured ownership and control over land enhances women's economic independence. Land tenure security strengthen the women's bargaining power within households and communities which increases their meaningful participation in decision making processes reinforcing their social status and dignity. Therefore, land functions not only as an economic asset but as a means of social recognition and stability.
16. This study also tried to highlight the gap between legal recognition and the effective enjoyment of land right. The deeply rooted entrenched customary practices in our patriarchal norms, unequal power division within the household continue to limit the women access and control over land even though the legal ownership exists. As a result the potential of land tenure to fully translate social and economic security remain constraint.

7. Conclusion

Therefore the Supreme Court has build strong foundation for gender equality in land and property right through its milestone decisions. This has helped women achieve substantive social and economic security but the deeply rooted social practices, customary laws of our patriarchal society has limited the potential of land tenure in achieving social and economical security. For the effective transformation of land tenure to meaningful empowerment, effective implementation of law, institutional accountability, public awareness and broader social change is very much essential. Strengthening the women's land right is considered as the crucial in advancing gender justice and social protection

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