



# Gender Audit Constitution of Nepal



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**26 NOVEMBER 2015**

**VENUE: ROYAL NORWEGIAN EMBASSY**  
**LALITPUR**

# Structure of the Presentation



- Background of the gender audit
- Key founding principle
- Development from Preliminary Draft to Constitution of Nepal
- Findings of the review :
  - Preamble
  - Citizenship
  - Fundamental Rights of Women
  - Women Participation in State Mechanism
  - Interpretation of Constitution
  - Gender-inclusive Language



# Background of the Gender Audit



- Based on the Gender Audit Tool, Idea assessed the Preliminary Draft of the Constitution of Nepal. (June 2015)
- Gender Audit Tools provided 55 insightful questions related to various areas and issues related to women rights .
- It covers whole body of constitutions: Preamble to Interpretation of the Constitution. The report was reviewed by Forum of Former Women Constituent Assembly Members
- Shared with Women CA members and Civil Society Women Rights Group

# Continue.....



- As a continuation, conducted a gender audit of the Constitution of Nepal (September 2015)
- The draft audit was shared with civil society, women's rights groups, individuals including women CA members.
- Currently, working on finalization

# Key Principles ...



Reviewed the Constitution of Nepal from the perspective of women's rights, based on following basic principles, norms and concepts:

- Substantive equality, and positive discrimination
- Non- discrimination
- Concept of equal citizenry
- Equal rights for citizenship
- Self determination and right of physical as well as mental integrity of women
- Equal participation
- Elimination of violence against women



# Development from Preliminary Draft to Constitution of Nepal

Content	Preliminary draft	Constitution of Nepal	Remarks
Preamble	No commitment to end gender discrimination	Commitment to end gender discrimination	Positive change in new constitution
Citizenship	'Father <u>and</u> mother' must be Nepali citizen to be decent citizenship	'Father <u>or</u> mother'	Positive development but with conditions, so in practice changes is not reflected
Health Rights	Recognized reproductive right	Recognized reproductive health rights	It should recognize both, but only one is recognized
Sex selective abortion	There was provision of prohibition on sex selective abortion	Removed	Positive change that removes restriction on women's decision

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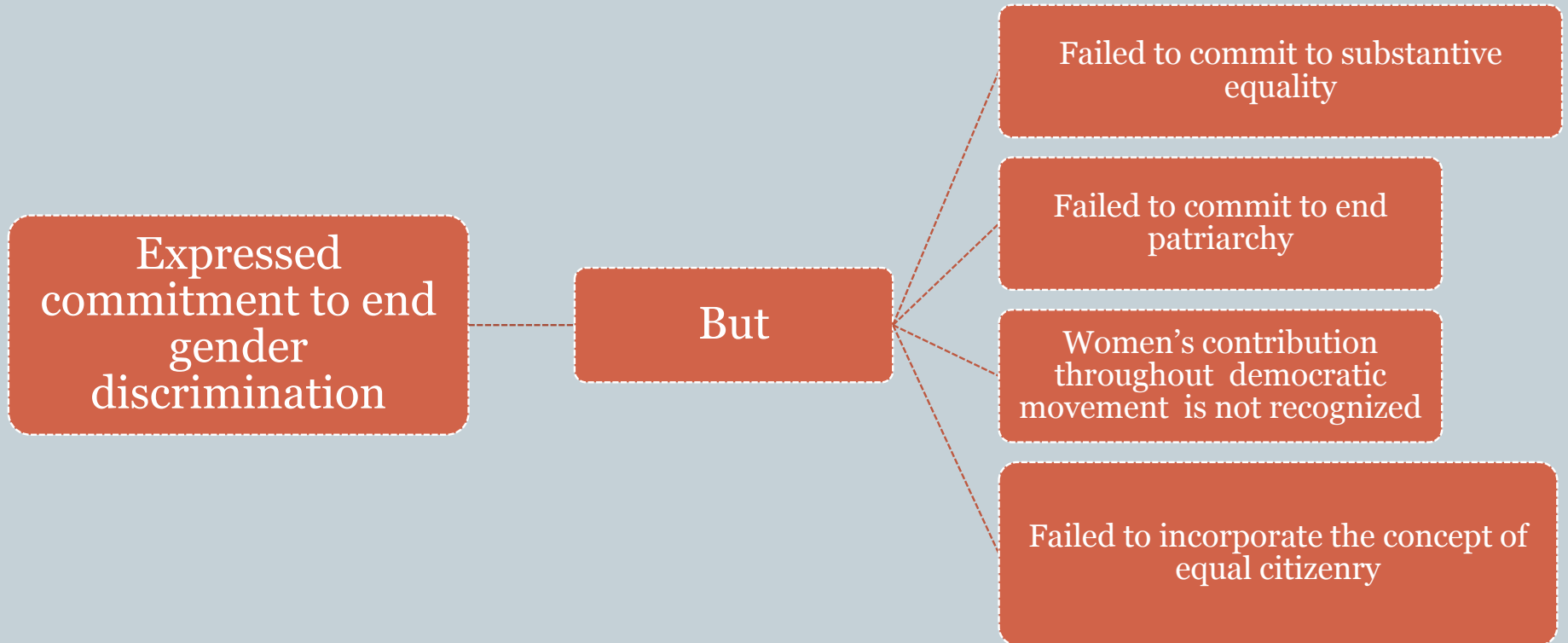
Content	Preliminary draft	Constitution of Nepal	Remarks
National Women Commission	There was no clear structure provisioned at State level	At State level, NWC can establish its office as necessary	Centralized mechanism (power may be decentralized but not devolution based on the spirit of federalism)



# Findings of the review



# Preamble



# Citizenship



Part 2, Art 11  
Citizenship

Father or Mother provision  
on citizenship by descent

Art 11 (5) and (7) compromises the ability of women to independently confer citizenship to her child as the father of the child must be unidentified or to claim citizenship by descent; in cases where a Nepali woman is married to a foreigner she may only confer naturalized (not descent) citizenship

# Naturalized Citizenship on the basis of Marriage



part 2 Art 11 ( 6 )  
Citizenship

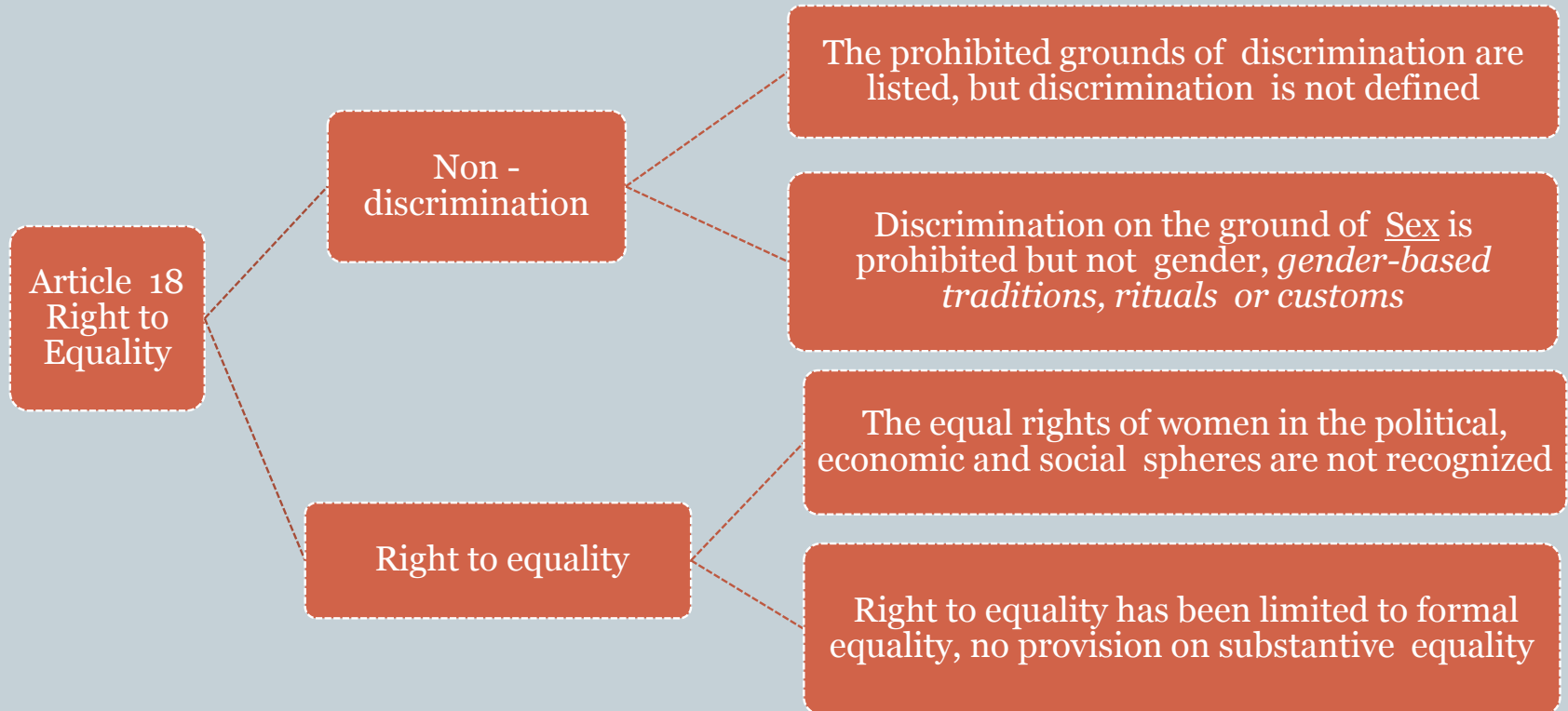
Men can confer naturalized  
citizenship to his foreign  
national wife

Art 11 (6) is silent on conferring  
citizenship to foreign husband,  
that means it is likely that  
foreign men who marry to  
Nepali citizen women, can not  
get the citizenship on the ground  
of marriage



# Key Fundamental Rights

# Rights to Equality



# Rights to Equality



Article 50(1): Directive Principles, Policies and Responsibilities of the State

Provision of gender equality, however according to Article 55 this provision cannot be enforced by courts and no question may be raised in courts even when the State objectives are not met

# Economic sphere

**Article 18(4) of the Right to Equality prohibits gender discrimination regarding remuneration for equal and same work.**

**This is progressive provision**

Under Article 51(j) of the Policies of State, within the Basic Needs of Citizens Policy, it has been provided that the chores and contributions such as care and upbringing of children and family shall be assessed financially. However, the State has been silent in managing the informal labour sector where there is overwhelming presence of women.

**Article 51(j) pertaining to Basic Needs of Citizens Policy, to include:**

The informal labour sector, where there is overwhelming presence of women, shall be managed.



# Fundamental Rights of Women (dedicated article 38 )



- Equal right to lineage without any gender discrimination.
- Safe motherhood and reproductive health.
- Protection from GBV (any physical, mental, sexual or psychological or any other kind of violence against women, or any kind of oppression based on religious, social and cultural tradition, and other practices).
- Right to access participate in all state structures and bodies on the basis of the principle of proportional inclusion.
- Special opportunity in the spheres of education, health, employment and social security on the basis of positive discrimination.
- Equal rights in property and family affairs



# Continue...

## Concerns

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graph LR; A[Concerns] --- B[Reproductive right is not recognized]; A --- C[Some of the rights i.e. rights to proportional representation is limited at all level of legislature]; A --- D[Right to lineage is curtailed by citizenship provisions]; A --- E[Right to family is not recognized];
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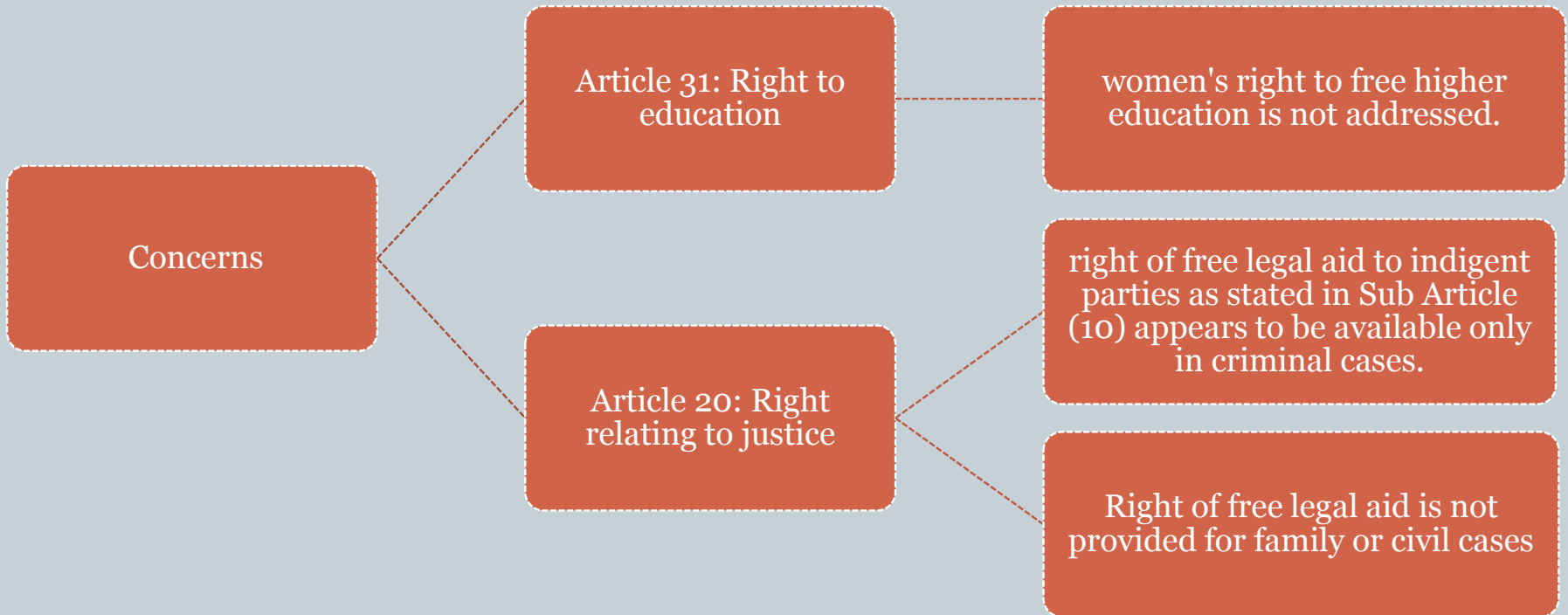
Reproductive right is not recognized

Some of the rights i.e. rights to proportional representation is limited at all level of legislature

Right to lineage is curtailed by citizenship provisions

Right to family is not recognized

# Fundamental Rights of Women



# Fundamental Rights

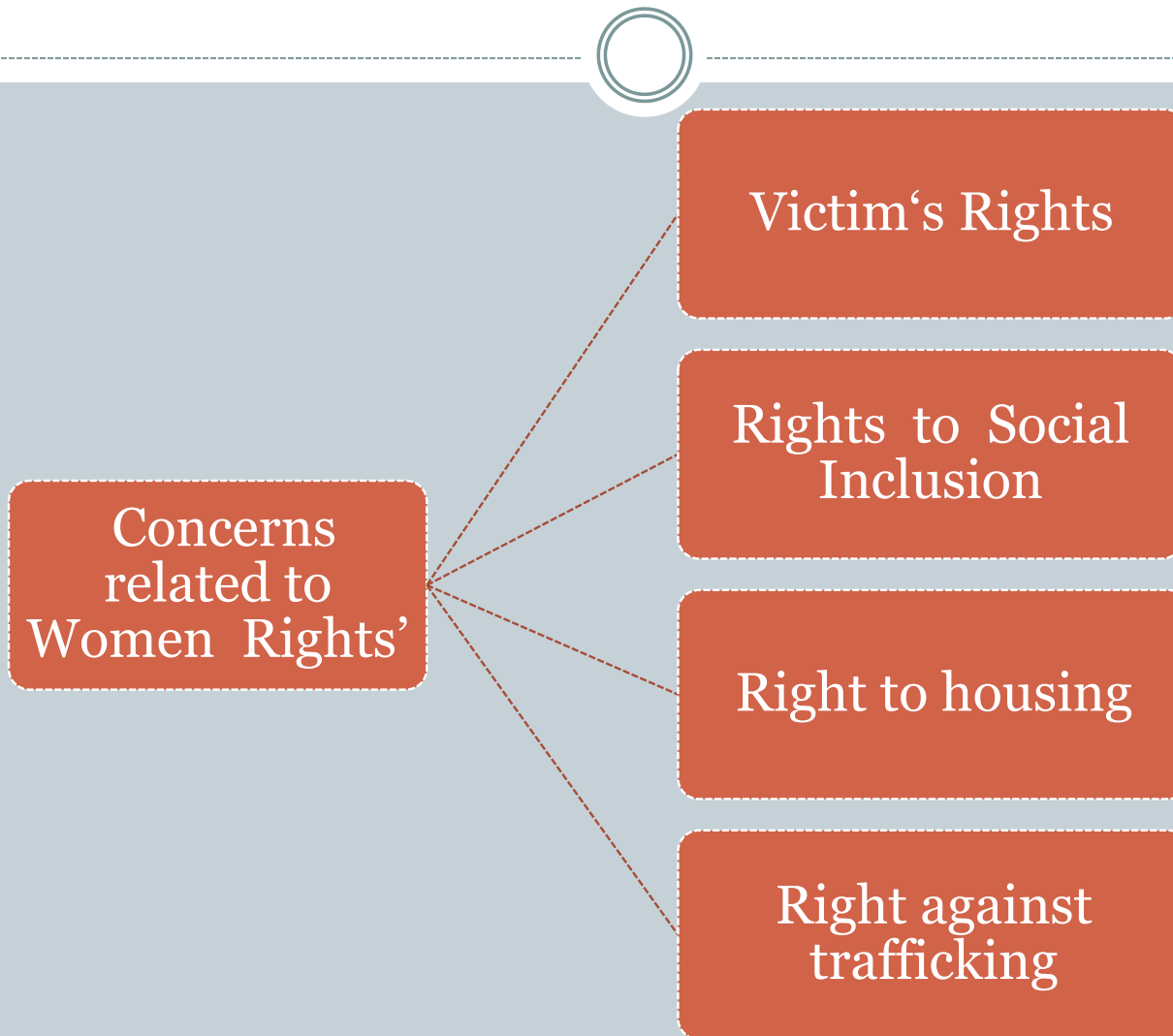


Concern of Women  
Rights'

Article 31: Right to  
health

Primary health care rights recognized as  
fundamental rights women's right,  
emergency health care rights ensured  
for citizen and non citizen

# Rights of Women



# Women Participation in Legislature

Part 8 Federal Legislative, Part 14, Provincial Legislative, Part 18, Local Legislative Electoral System and women's participation

Provision for 33 percent women's participation in Federal and Provincial legislature, Mixed electoral System adopted ( 60 % First past the Post and 40% Proportional)

Secure women's representation in key positions like Speakers and Deputy Speakers .

However, the presence of one-third women does not seem likely under this system if continued the similar practice of CA 1 and CA 2 election process and system

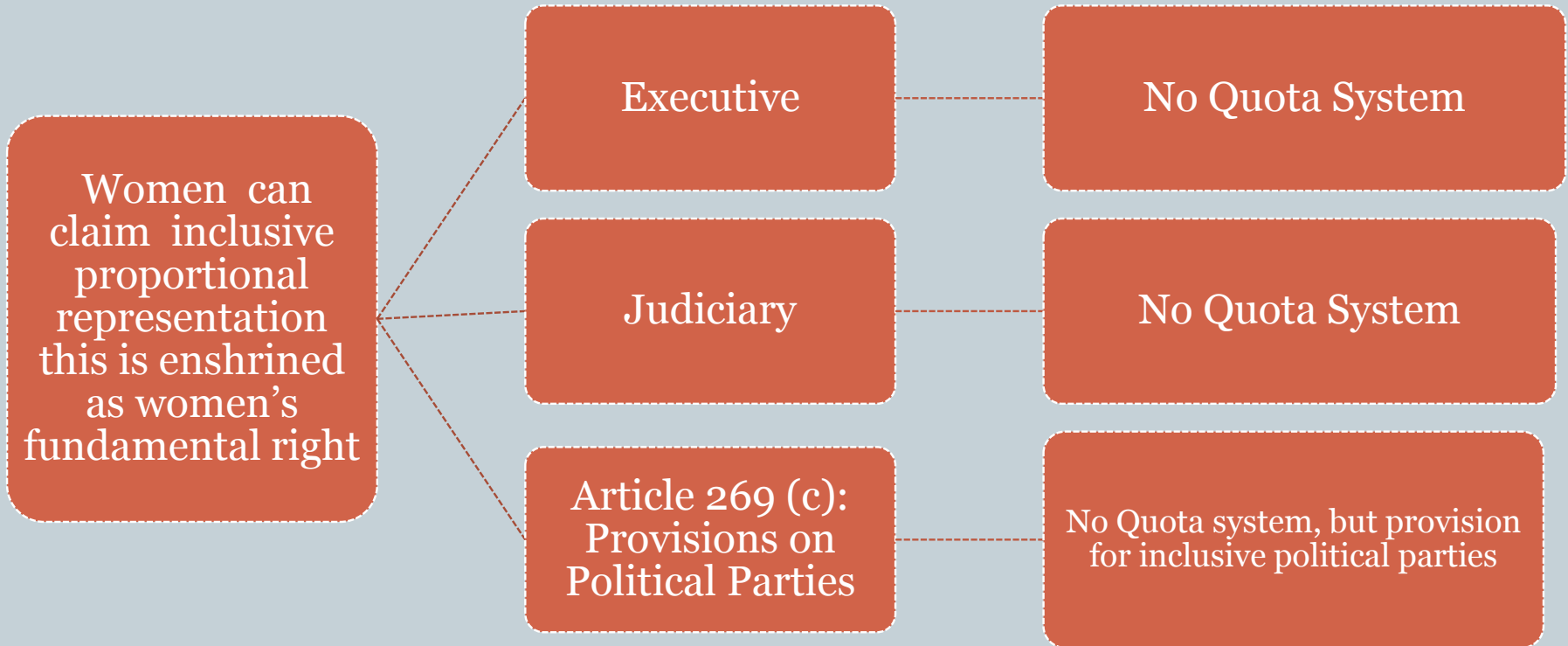
At Local Legislative , it has adopted first past the post election system , 2 elected sheet for women out of ... members from each wards at VDC and Municipality. So ensured the more than 33% women participation



# Example



# Women's Participation in Judiciary, Executive and Political Parties



# Women's Participation on Commissions



## Issues of women

Part 24: Election Commission Part 25:  
National Human Rights Commission  
Part 26: National Natural Resources  
and Financial Commission Part 27:  
Other commissions National Women's  
Commission National Dalit  
Commission National Inclusive  
Commission, Indigenous nationalities  
Commission, Madhesi Commission,  
Tharu Commission, Muslim  
Commission, Part 28: Provision on  
National Security

Quota is not provided,  
but this should not be an  
obstacle as women can  
demand inclusive  
proportional  
representation as per  
Article 38(4)





## Part 28: Security Agencies

New Constitution is silent on making the security agencies accountable to human rights.

No provision of making the security agencies sensitive, conscious and committed towards human rights.



Part 34: Definition and  
Interpretation

Constitution is silent on whether the international treaties and conventions on human rights shall apply directly or not.

# Gender-Inclusive Language



Issues of Women

Gender-Inclusive  
Language

Language in proposed Constitution is not gender inclusive, many article of the constitution stated “Asahey Mahila”, ‘Rastrapati” and so on

Failed to convey a sense of feeling that the conservative attitude against women has changed for better.

# Conclusion



Indeed, the *Constitution of Nepal* is an important milestone for ensuring women's rights.

However, some concerns still exist, which need to be addressed...



<b>Areas of Concerns</b>	<b>Revise, amend and add</b>
Citizenship	Amend
Rights to participation in legislative	Amend
Reproductive rights	Add
Right to free legal aid in civil and family cases	Add
Interpretation of constitution in line with human rights	Add
Gender friendly language	Amend
Maintain consistency between fundamental rights and other subsequent rights and section of the constitution	Review and amend
Need to different between contingent and non-contingent rights	Review and amend

# Future initiatives



In order to translate into practice the provisions regarding women rights in the Constitution of Nepal, 2015, and to address the issues that are unclear or are excluded, the following activities could be undertaken in future:

- A) Dissemination and observance of constitutional provisions
- B) Initiatives for necessary amendment of constitution , Acts, regulations ,policies and plan of action
  - Advocacy with providing constructive feedback and options ensure quality of law



## Continued...



- Continue to engage with State level for ensuring women's rights
- Women rights monitoring, reporting and working with government (executives) and parliament
- Carry out advocacy and lobbying work at the federal parliament and at state legislatures and other related bodies for the implementation of suggestions collected through women rights monitoring.
- Collaboration with parliamentary committees
- If necessary strategically engage with judiciary – Public Interest litigation and so on.



Thank you