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Practices, Legal, and Practical Barriers to Birth Registration in Nepal

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Abstract

Introduction

Nepal, as a party to the United Nations Economic and Social Commission for Asia and Pacific (UN ESCAP) Ministerial Declaration, is dedicated to accomplishing its three objectives (achieving universal civil registration, accepting civil registration as a legal document to assert identity, ensuring that everyone has access to civil status, and producing and publishing timely and complete vital statistics). Several international human rights instruments mentioned in the above section obligate Nepal to ensure birth registration for every child. The Constitution of Nepal has recognized the right to birth registration as a fundamental right. Several federal legislations have encompassed various provisions to ensure birth registration.

Against this backdrop, by 2030, the Sustainable Development Goal (SDG) 16.9 and the 15th periodic plan aspire to guarantee legal identification. As a result, under the Status and Roadmap of SDG, the National Planning Commission has acknowledged the "Proportion of children below five years whose births have been recorded with registrars, by age" as one of the signifiers under Target 16.9 of the SDGs. Moreover, Nepal has made progress on the registration of birth. For instance, the birth registration rate in Nepal has significantly increased from 35 percent in 2006 to 77 percent in 2019 for children below five years of age. Nevertheless, the SGD roadmap and the 15th Periodic Plan's goal of 100 percent birth registration confront several impediments.

In this context, we conducted a study to identify the bottlenecks and feasible measures to address the same to achieve the 100% birth registration target envisaged by SDG by 2030.

Objectives

The overall aim of the study was to strengthen interventions on increasing childbirth registration in Nepal to reach 100 percent, as targeted by the 15th periodic plan and SDG. The following are the specific objectives:

- To identify cultural, political, geographical, and perceptual barriers that prevent one from accessing and receiving birth registration.
- To provide a list of practical solutions and recommendations for legal reforms, capacity enhancement, incentive and motivational schemes, and other programs at the local level.

Methodology

The study adopted a mixed-method strategy, including qualitative and quantitative research methodology for data collection and analysis. Data were collected from primary and secondary sources using a multidimensional approach. Desk review, Focused Group Discussion (FGD),



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Consultations, and In-person Surveys were conducted for primary data. Likewise, the secondary data were collected through a desk review.

Research methods and tools were devised to reach out to women, marginalized and disadvantaged clusters, i.e., geographically backward, Dalits, and ethnic minority groups, to obtain practical information about their experiences.

Findings

The existing legal provisions cannot facilitate birth registration as it does not address the practical difficulties of children born to single women. Local registrars impose additional standards under their discretion, which are not outlined by legislation, leading to inconsistent implementation.

Due to their preconceived notion regarding vulnerable groups, that amounts to cultural and perception barriers to birth registration.

Conclusion

Several bottlenecks exist in achieving 100% birth registration, among which social and legal barriers are significant.

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Introduction

The United Nations (UN) has been developing global guidelines to establish, maintain and manage civil registration systems. The UN defines civil registration as “the continuous, permanent, compulsory, and universal recording of the occurrence and characteristics of the vital event pertaining to the population as provided through decree or regulation in accordance with the legal requirement of a country since the beginning of 1950s.

Nepal has registered vital events since 1950 through the Vital Event Registration System (VERS) under Municipal Panchayat Act 1950 and the Village Panchayat Act 1961. Initially, VERS’s primary focus was on personal record-keeping. However, it was soon discontinued. In the 1970s, the Marriage Registration Act of 1971 and the Birth, Death, and Other Personal Events (Registration) Act of 1976 were established, mandating the registration of five key events. The registration provisions became effective in phases and were finally enforced nationwide in 1989.

The Constitution of Nepal recognizes birth registration as a fundamental right under Article 39 (1). National Id and Civil Registration Act, 2019, and National ID and Civil Registration Regulation, 2020, are the prime legislation that deals with birth registration. However, birth registration provisions are included in other federal legislation aligning with the Constitution. Birth registration rates in Nepal have drastically improved from 35 percent in 2006 to 77 percent in 2019 for children under five years. The Sustainable Development Goal (SDG) 16.9 aspires to ensure legal identification for all by 2030. The National Planning Commission has also recognized birth registration as an imperative indicator under this goal. However, achieving 100% birth registration still faces several challenges.

The Objective of this Study

The overall aim of the study was to strengthen interventions on increasing childbirth registration in Nepal to reach 100 percent, as targeted by the 15th periodic plan and SDG. The following the specific objectives:

- To identify cultural, political, geographical, and perceptual barriers that prevent one from accessing and receiving birth registration.
- To provide a list of practical solutions and recommendations for legal reforms, capacity enhancement, incentive and motivational schemes, and other programs at the local level.

Limitations of the Study

As the nature of the data collection, they may not be generalized in terms of prevalence and volume.

Ethical Consideration

The study team ensured that all the sampled and participating respondents were prior informed about the purpose of the study. During the study, the study team adhered to the principles of inclusion, human rights, women’s rights, and the principle of ‘do no harm’. The study team sought informed verbal consent from all the respondents ensuring their anonymity, privacy, and confidentiality during the survey, focus group

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discussions, and consultations. Consent was sought from the respondents to take their pictures, interviews, and discussions for reporting purposes. The ethical issues were upheld, and the cultural aspects of respondents and society were strictly maintained. Data storage safety and confidentiality were maintained.

Methods

The study adopted a mixed-method strategy, including qualitative and quantitative research methodology for data collection and analysis. Data were collected from primary and secondary sources using a multidimensional approach. Focused Group Discussion (FGD), Consultations, and In-person Surveys were conducted for primary data. Likewise, the secondary data were collected through a desk review. Research methods and tools were devised to reach out to women, marginalized and disadvantaged clusters, i.e., geographically isolated, Dalits, and ethnic minority groups, to obtain practical information about their experiences.

Desk review

Relevant literature was reviewed to analyze and identify the gaps in Nepal's legal provisions and practices relating to birth registration. The literature review provided a foundation for the study based on other tools developed and administered in the past. Seventeen published reports, six international conventions, three general comments of the treaty bodies, 2 National laws, and the 15th periodic plan were reviewed during the desk review.

Focus Group Discussion (FGD)

Based on the checklist developed, 16 FGDs were conducted, encompassing 130 participants representing various stakeholder groups at the local level. The FGDs were carried out based on the topic checklist. Out of 16 FGDs, 8 FGDs were carried out among the local child rights officials, including child welfare officers, or concerned officials. Similarly, 8 FGDS were conducted with children representing local child clubs and community and child club networks. The FGDs' results were documented in a structured format for analysis.

Consultation

One consultation was conducted with 30 participants. Provincial consultation with key stakeholders, including civil society, media persons, government officials, ward chairs/ registrars, child club members, teachers, and lawyers, was conducted for this study. The consultations were conducted through participatory exercise among participants based on specific topics and issues identified through FGDs and desk review to deliberate upon. The consultation outcomes were documented in a uniform format for in-depth analysis.

Survey

An in-person survey was conducted with the selected parents and adult members of the family. The team reached out to 395 parents/adult members.

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Sampling

The study is based on purposive sampling. As the research intends to identify the bottlenecks of birth registration, it has targeted to reach marginalized and vulnerable communities based on geography, economy, and social strata. The sample is collected from four districts in Madhesh Province.

Results

Legal Policy Review

The Government of Nepal has expressed its commitment towards birth registration through international commitments, Constitution, and various legislation. Nepal has ratified the International Covenant on Civil and Political Rights (ICCPR), The Child Rights Convention (CRC), and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) that underline mandatory birth registration and protects the birth registration right of every child. As a member of the United Nations, Nepal is required to implement the Convention. Besides, all state parties are obligated to perform treaty commitments in good faith under the Vienna Convention on the Law of Treaties (VCLT). However, Nepal has taken a dual approach to implementing international treaties and conventions.

In 2012 the UN Human Rights Council adopted a resolution recognizing the importance of birth registration. It called upon states to ensure birth registration was free, accessible, and without discrimination. States should identify and remove any barriers that impede access to birth registration, especially those related to poverty, disability, multicultural contexts, and vulnerable situations. Finally, states should continuously raise awareness of the importance of birth registration through public campaigns.

In 2005, the CRC issued a Concluding Observation for Nepal, which urged the government to take several actions related to birth registration. These included strengthening efforts to register all children at birth through public awareness campaigns, amending relevant legislation to comply with articles 7 and 8 of the Convention, and prioritizing the review of policies related to birth registration of refugee children and ensuring that all refugee children and asylum seekers born in Nepal are issued birth certificates.¹

Similarly, in 2016 CRC's concluding observation reiterated the previous recommendation and urged the State party to ensure that local government bodies in charge of birth registration actively engage with local communities to ensure births are registered timely and effectively. Taking note of the recommendation, National ID and Civil Registration Act 2019, was enacted, supplanting the previous Act. However, the new Act does not fully incorporate recommendations entirely.

The Constitution of Nepal has endorsed the right to birth registration as a fundamental right under 'Rights of Child' in Article 39. Article 39 (1) precisely addresses the right to birth registration. It reads, "every child's

¹ CRC/C/15/Add.261, para. 80

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right to name and birth registration along with his or her identity.” The provision not only ensures the right to identity and name of Nepali children but ensures the right of every child born in Nepal, irrespective of the child's nationality and his/her parents, giving scope for universal birth registration.

Among several enactments, the Act Relating to Children, 2018 is the principal legislation to protect and promote children's rights and to act in their best interests. Section 4 of the Act affirms a child's right to a name and nationality. It also safeguards the birth registration right of the child born because of rape or an incestuous relationship. Nonetheless, National ID and Civil Registration Act, 2019 is the primary statute concerning birth registration. The Act requires that information on every newborn child be reported to the local registrar's office within 35 days by filling out the required form; omission thereof would result in a fine. In the absence of parents, the family's head, or an adult member can be the informant to register birth. In case of a child born overseas, the information about the birth should be reported to the relevant diplomatic mission in that country or within 35 days of the child's arrival in Nepal. The Act also requires anyone who adopts a child to record the birth at the local registrar's office. Stillbirth and living birth must also be notified to the local registrar. Similarly, National ID and Civil Registration Regulation, 2020 require the applicant to fill out a form specified in Annex 10 when registering the birth.

Legislative Barriers

The legislative framework seems progressive in upholding every child's right to be registered promptly after birth. It detracts from patriarchal norms by allowing birth registration under the mother's name. Despite tremendous progress, there are still obstacles to legal measures and their implementation. The Act confines the responsibility to notify the birth within family members, which affects children living in childcare homes, children without parents, and street children among others. Moreover, the timeframe for correction of age, name, or caste of the child within a year of issuance of birth certificate. However, the one-year timeframe for correction hinders transgender and intersex persons from correcting.

Further, section 20 (2) prevents the registration of birth of children born to parents without citizenship. This provision contradicts the fundamental right of all children to be registered. It also results in numerous unregistered children, which may lead to statelessness.

While the regulation offers much-needed procedural requirements for birth registration, numerous flaws continue to hamper progress toward birth registration goals. The rule requires the concerned parent or guardian to complete the Annex 10 form. When a birth is registered in the mother's name because the father is unknown, the paperwork requires police verification. It is needless to complicate the procedure further by demanding police certification that the father is unknown since the legislation allows the woman to register the child's birth. Annex 10 also requires providing a marriage registration number even when the law allows birth registration of children regardless of the marital status of their parents.

Practical Barriers to Birth Registration

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The survey with the selected parents indicates the pattern of birth registration. Only about 30 percent of the participating parents/guardians registered childbirth within 35 days. A close number of parents usually registered between 35 days to 6 months. Whereas approximately 17 percent registered birth whenever it is needed. The survey also found that birth of a boy child is registered more (12%) than that of girls (4%). As per the survey and FGD, gender discrimination against girls and persons with non-binary gender identities makes families less likely to register their newborns. The literature review also shows that gender discriminatory practices and taboos in communities have inhibited girls and non-binary children from obtaining birth registration.

The survey revealed that around 91 percent of the people faced problems during birth registration because either of the parents was a foreign national. A significant number of people stated that they were demanded proof of mother being unidentified to register birth (85.3%) and evidence of second marriage (80%). Similarly, 75 percent of the respondents claimed that registrars demanded divorce certificates. While an insignificant number (2.2%) stated they faced no problem.

The consultation, FGD, and survey revealed that child marriages were the foremost barrier to birth registration. The participants stated that in many cases, mothers are prevented from registering birth independently, while many times presence of the mother is demanded. The FGD primarily revealed that distant registrar's office and expenses incurred while traveling to and from the office discourage people from registering the birth. During the consultation, family members and relatives refused to identify the child. They stated that there are cases of parents abandoning children with ambiguous genitals at the hospitals after birth. In such cases, birth registration of such a child becomes extremely difficult.

Discussion

The practical and legal barriers to birth registration are intertwined. Annex 10 of the regulation, likewise, seeks both parents' marriage registration and citizenship number. As a result of this rule, parents who do not have citizenship documents cannot record their child's birth. A woman cannot independently record the child's birth if the husband is unsupportive. Legal provisions only allow women to register births in exceptional circumstances; or only allow women to register births if they can prove that the child was born in wedlock. The registrars are influenced by patriarchal norms, have biased attitudes, and lack civic awareness. Therefore, mothers may be asked to present legal proof of father's identity, proof of marriage or police verification of a missing father, or evidence of a child born out of rape. Often, registrars deny birth registration access due to failure to provide this evidence.

Additionally, in the case of a marriage with a foreigner, the local registrar often requests certification of court-registered marriage as prescribed under the regulation. However, in the local context, where cross-border marriages are common, the practice is to marry according to customs and ceremonies rather than a court-registered marriage. As a result, many applicants may lack a registered marriage certificate. Similarly,

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many parents lack citizenship due to cross-border marriages, which adversely affect the birth registration rights of their children.

Child marriages are not registered, and sometimes the parents do not have citizenship as they are below 16 years.² Sometimes women may wrongly assume that births of children may only be recorded if the parent's marriage is valid. Parents are unaware that children's status and right to birth registration are unaffected by whether their marriage is valid.

Conclusion/Recommendations

The study explores various practical and procedural challenges left unaddressed by law. Even with constitutional and legal mandates for birth registration, children are denied access to this right due to procedural impediments in online and offline registration. The study discloses that parent face difficulty in submitting citizenship and marriage certificates under Annex 10 of the National ID and Civil Registration Regulation 2020. Even with constitutional and legal obligations for birth registration, children are denied access to this right due to procedural and technological impediments in online registration. According to the survey, parents have difficulty submitting the needed citizenship and marriage certificates under Annex 10 of the National ID and Civil Registration Regulation 2020. Furthermore, the online birth registration implementation involves a marriage registration certificate, which is unavailable without it, resulting in incomplete registrations. This emphasizes the significance of reforming procedural rules and making software changes to improve access and ease birth registration.

The study concluded that only 30 percent of parents/guardians practice timely birth registration, i.e., within 35 days of childbirth. The study has identified numerous practical hurdles in birth registration. These hurdles include issues of geographic accessibility, such as being blocked by seasonal roads and distant ward office; Such practical barriers include Geographical Accessibility (Distant Ward Office, Seasonal Blockade of Road and Access); Legal Hassles (Demand of multiple documents); Non-Cooperation from Families (Father, Mother, and Family Members do not support recognizing the child's status); Non-Recognized Marriage (Child Marriage, Second Marriage, Rape, Step Child); Legal Complexities as well as gender identity confusion, unknown parents and parental status. As a result, birth registration gets denied, delayed, or withdrawn.

The study identified several legal gaps, both substantive and procedural in this study that has impeded birth registration. In this regard, the federal government, The Department of National ID and Civil Registration, shall take initiatives for required legal amendments and issue elaboration and guidelines to the local registrars. The following specific actions are needed:

² Legal marriage age in Nepal is 20 and citizenship obtaining age is 16.

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1. Section 18 should be amended to allow public and private hospitals, birthing centers, midwives, health posts ECD centers, and schools to notify birth to the local registrar. A clear distinction should also be made between birth notification and birth registration.
2. Section 20 (2) must be amended to allow birth registration of children born to parents without citizenship. The Act should add a provision making the state responsible for the registration of childbirth to fully comply with Article 8 of the CRC
3. Annex 10 of the regulation should be amended to allow birth registration without submitting marriage certificates or requiring police verification in cases of unidentified fathers.
4. Section 25 should be amended to allow correction of age, name, or caste of the child only once, however, with no time bar.
5. The Act should mandate linking birth registration with social protection schemes
6. Special attention should be given to registering all children born to refugee and asylum-seeking families under the Act.
7. The act should be amended to harmonize with several directives and circulars to make the issues addressed in the circular a substantive right.
8. A clause should be added that refers to provisions relating to birth registration in the National ID and Civil Registration Act 2019 so that none of the provisions are missed out by the law implementing agency and complete realization of rights is possible.
9. The Act must be amended to include recommendations provided by CRC concluding observation 2005 and 2016.

Other recommendations:

- Encourage using a mobile information system to notify birth. Online registration, which may also be used offline, will help to digitize the birth registration system.
- Create a guideline for registrars on how to practice CRVS and birth registration in tough situations.

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