

*Essays on*  
**Status of Child Rights  
in Nepal**



Essays on Status of Child Rights in Nepal

**2017**



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**2017**



**Children and Women in Social Service and  
Human Rights (CWISH)**

## **Essays on Status of Child Rights in Nepal, 2017**



Children and Women in Social Service and  
Human Rights (CWISH)

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### **Published by:**

Children and Women in Social Service and Human Rights (CWISH)  
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Phone: +977-1-4784545, 4780446  
Email: [info@cwish.org.np](mailto:info@cwish.org.np)  
Website: [www.cwish.org.np](http://www.cwish.org.np)

### **Financial support for the publication:**

**Interpedia, Finland**  
**Ministry for Foreign Affairs of Finland**

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## FOREWORD

**C**hildren and Women in Social Service and Human Rights (CWISH) is a non-profit organization, established in 1993 with an aim to ensure social justice, protection and promotion of human rights especially for the rights of children. In the journey of 25 years, CWISH has been able to publish various research reports and books in various themes concerning children and women which are solely supporting in enhancing knowledge base and skills as well as building awareness on the issues. With its intervention so far, CWISH has reached to 170,123 children, 158,156 women, 313,962 parents and 798 institutions by the end of 2017. Besides them, around 1,107,981 people from 35 districts of Nepal have been benefitted by various projects implemented by CWISH.

CWISH in collaboration with Interpedia, Finland has been working together with the concerned agencies of the Government of Nepal for supporting the Government agencies in functionalizing child protection system in the country. This intervention is particularly aimed to enhance capacity and competences of community-based child protection mechanisms in preventing, responding and reporting of the Child Rights violation cases to the concerned authority for ensuring safety and protection of children in Nepal. This project is being taken forward in collaboration with Civil Society Organizations (CSOs) where they take up the major role in monitoring child rights violations, and reporting as well as work with the concerned agencies of the Government with increased accountability towards the children. In this context, CWISH with the support

from Interpedia, Finland and Ministry for Foreign Affairs of Finland has made an effort of publishing a journal on status of children in Nepal. The journal consists of various research paper on child marriage, school bullying, climate change education and perception of school children, legal and policy environments, juvenile justice, an overview of policy, plans and programmes of the Government of Nepal in relation to rights of the child. The articles in this journal would remain as a reference to reflect on various issues and concerns regarding the realization of the rights of the child and ensuring child protection in Nepal. I do believe that this publication would be of interest to all concerned child right activists, readers, academia and researchers, donors, partners and well-wishers as well as would contribute to some extend to take forward the rights of the child movement in the country.

It is my immense pleasure to present you the essays on status of Child Rights in Nepal, 2017. On behalf of CWISH, I would express my sincere thanks to Interpedia, Finland and Ministry for Foreign Affairs of Finland for technical and financial support to publish this journal. Similarly, I thank Mr. Chandrika Khatiwada, Child Rights Researcher and Mr. Uddhav Raj Poudyal, Child Rights Researcher and Activist for their effort in publication of this journal. This publication would not have been possible without research paper and articles of Dr. Kiran Rupakhetee, Dr. Dinesh Raj Bhuju, Mr. Bal Krishna Ranjit, Mr. Saroj Adhikari, Mr. Tapa Raj Pant, Dr. Aruna Upreti, Mr. Rabindra Bhattacharai, Mr. Shiva Prasad Paudel, Ms. Nina Maharjan, Mr. Uddhav Raj Paudyal and Mr. Chandrika Khatiwada. The writers of the research paper and articles have been working in the field of rights of the child since a long time. Thank you all for your contribution. My appreciation goes to CWISH team for their time and effort made for this publication.

Thank you!

Ms. Bimala Jnawali  
Chairperson

## EDITORIAL

**O**n the occasion of 25th year of ratification of UN Convention on the Rights of the Child, 1989, Children and Women in Social Service and Human Rights (CWISH) published a *Smarika* entitled *Nepalma Baladhikar* (Rights of the Child in Nepal) in 2015. The publication is the collections of efforts and achievements made for realization of the rights of the child in Nepal in forms of views and perspectives as well as research articles. The publication encouraged CWISH team as well as the editors to continue similar types of book with research-based thematic articles so that systematic dialogue and discussions could be made for promotion of rights of Nepali children. Now, the journal entitled **Essays on Status of Child Rights in Nepal** 2017 is in our hands!

In the year 2017, CWISH initiated a process of systematic monitoring of incidences of violation of rights of the child introducing a reporting mechanism using mobile phone software (application). In this process, CWISH provided an extensive training and hands on experiences to designated staff of 72 organizations working on promotion and protection of rights of the child in 48 districts of the country. The objective is to report and record the incidents of violation of rights of the child and respond them in timely and systematic manner. It was promised that analysing the trend of violation of the rights of the child, as well as collecting thematic research papers, the CWISH would continue publication of journal annually.

This **Essays on Status of Child Rights in Nepal**, 2017 is a compilation of articles on various facets of child rights and

the situation in Nepal. This is a continuation of the 2015 journal entitled *Nepalma Bal Adhikar* or Child Rights in Nepal which was published on the occasion of 25 years of ratification of UN Convention on the Rights of the Child, 1989 by the country. This journal consists of eight articles written by child rights practitioners in various areas.

We are well aware of the fact that the rights of the child is a national agenda, for which cooperation and coordination between and among concerned agencies of the Government as well as civil society actors is vital. In this regards, we do hope that this publication would contribute in enhancing knowledge base and empowering the individuals and agencies engaged in promotion of rights of the child and ensuring child protection

#### *About the Articles*

The first article is a great contribution to assess the present situation of child rights in Nepal. The article by Mr. Uddhav Raj Poudyal is based upon the analysis of the cases of child rights violations reported in the mobile app from 20 districts across country from January to November 2017.

The second article by Dr. Kiran Rupakhetee reviews policy, plan and programmes of Government of Nepal in relation to rights of the child. In continuation to the policy review, Mr. Shiv Prasad Paudel has done a comparative analysis of seven constitutions (including Interim Constitution of Nepal, 2007) in Nepal in Child Rights perspectives.

The fourth article jointly by Dinesh Raj Bhuju, Bal Krishna Ranjit, Saroj Adhikari and Tapa Raj Pant entitled 'Climate Change Education and Perception of School Children in Nepal' provides a detailed information on perception of school children in climate change education.

The fifth, sixth and seventh articles of the documents talk about three major issues of children, i.e. Child Marriage, Child

Sexual Abuse and School Bullying. Ms. Nina Maharjan has explained the changing trend of child marriage, whereas Dr. Aruna Upetry revealed various case stories of children who have been victimised of child sexual abuse. Similarly, Mr. Chandrika Khatiwada has argued school bullying as a severe form of violence in schools.

The last article on Juvenile Justice in Nepal by Mr. Ravindra Bhattarai elaborates policy framework and justice delivery system in Nepal.

#### *Acknowledgements*

Thank you to all our writers for providing your research work for this publication. It is in fact an immense contribution.

We, editorial team and the publisher, would offer sincere thanks to Ms. Nicole Umemoto for language editing of the article on child marriage; Prof. Anand Sharma for language editing of -i) Status of Rights of the Child in Nepal, ii) Breaking the Silence and Listening to Children Suffering from Incest and Sexual Abuse and iii) School Bullying:Severe Forms of Violence in Schools; and Mr. David Perrodin and his team for language editing of the remaining articles in this publication.

Thank you CWISH Team for your support, trust and your passion. The editorial team felt proud working with you.

Uddhav Raj Poudyal,  
Chandrika Khatiwada



# STATUS OF RIGHTS OF THE CHILD IN NEPAL - AN ANALYSIS OF MONITORING DATA (JAN-NOV. 2017) FROM 20 DISTRICTS

By Uddhav Raj Poudyal\*

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## Summary

*T*he extensive objective of the Human Rights cannot be achieved without respecting, promoting and fulfilling the rights of the child as children are integral part of the society. UN adopted the Convention on the Rights of the Child, 1989 (CRC) unanimously. Nepal ratified CRC on 14 September 1990 and took necessary measures to realize the principles and provisions of the Convention by enforcing the earlier Children's Act, 1992 and its Regulations, 1995 (this Act has been replaced by Children's Act, 2018 from 18th September 2018) and Child Labour (Prohibition and Regulation) Act, 2000 and its Regulations, 2006. These are some crucial achievements for protection of children and promotion of rights of the child. Despite ratification of international instruments and enforcement of various legislations related to children, due to absence of systematic compliance mechanism, cases of violations of rights of the child are observed to be an increasing trend in Nepal. The status of children in Nepal is not encouraging and incidences of violations of rights of the child are becoming regular phenomena.

*Due to the lack of systematic compliance mechanism or child rights monitoring mechanism, the child rights activists and organizations involved in child protection and promoting rights of the*

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\* Mr. Poudyal is a Pharmacist by training and has over 25 years of experiences with INGOs and UN agencies. He can be reached at: uddhav481@gmail.com

*child are advocating for a systematic child rights monitoring mechanism to assess the status of violations of rights of the child in the country.*

*Children and Women in Social Service and Human Rights (CWISH), an organization dedicated for ensuring dignified life of children, has been putting its efforts towards protection of children and promotion of rights of the child. With the concept of publishing annual report on status of child rights, CWISH initiated a training to interested child rights organizations from all the ecological regions-- Mountain, Hill and Terai. The training curriculum was developed by two experienced child rights activists on child rights reporting and monitoring.*

*In Nepal, the incidences of violation of rights of the child are higher among children belonging to Janjati (114) and the categories of cases involve child labour, child marriage, neglect, corporal punishment, death, etc. The top 10 districts of violations of rights of the child are within the capital and nearby districts pointing out the need for more education and systematic protection mechanism.*

*This paper analyses the data received from 20 districts after the training on reporting particularly on incidences of violation of rights of the child and discusses some policy and programme interventions.*

## **1. Introduction**

Following the unanimous adoption of the UN Convention on the Rights of Child (CRC) on 20th November 1989 by UN General Assembly, human rights of children has been integral part of discussion among academia and right activists across the world. The extensive objective of the Human Rights cannot be fulfilled without respecting, promoting and fulfilling the rights of the child. CRC has been considered as core international legal instrument dedicated to ensuring the rights of the child across the world. The Convention has incorporated a wider range of human rights; i.e. civil and political rights; and economic, cultural and social rights of children. Moreover, the Convention has successfully placed all sorts of issues and concerns regarding children at the core of mainstream human rights agenda. The UN has adopted three Optional Protocols to the Convention

on the Rights of the Child, i) on the Sale of Children, Child Prostitution and Child Pornography, 2000 (OPSC), ii) on the Involvement of Children in Armed Conflict, 2000, (OPAC) and iii) on a Communications Procedure, 2011.

Nepal is one among 196 State parties to the CRC (as of 03 Oct. 2018). Nepal ratified the Convention on 14 September 1990. Nepal is also State party to OPSC and OPAC and it ratified the Optional Protocols on 20 January 2006, and on 7 January 2007 respectively. However, Nepal is yet to initiate process to ratify the third Optional Protocol. As an obligation of a State party to CRC, Nepal is obliged to respect, promote and realize the principles and provisions of the CRC and the Optional Protocols to fullest sense. Following the ratification of the CRC (and its two Optional Protocols), the Government of Nepal (GoN) has put its efforts both at policy level as well as programmatic interventions to usher positive changes in the situation of children and to fulfil rights of all children in the country. Enforcement of Children's Act, 2018 and Child Labour (Prohibition and Regulation) Act, 2000 and its Regulations, 2006 are some crucial achievement for protection of children and promotion of rights of the child. Furthermore, the GoN has implemented National Children's Policy, 2012 and significantly the Constitution of Nepal (2015) has incorporated some rights of the child as fundamental rights in a separate Article (i.e. Art. 39). Despite ratification of international instruments and enforcement of various Acts related to rights of the child, due to absence of systematic compliance mechanism, cases of violations of child rights are observed to be in an increasing trend in Nepal. The child population below 18 years constitutes about 44 percent (National Population and Housing Census, 2011). The status of children in Nepal is not encouraging and incidences of violations of rights of the child are reported regularly.

The following table depicts the status of children in the country in respect to key indicators:

**Table-1: Major Indicators Related to Children in Nepal**

S.N	Indicators	Descriptions	Value
1	Infant Mortality Rate	Probability of dying between birth and the first birthday	33
2	Under Five Mortality Rate	Probability of dying between birth and the fifth birthday	38
3	Attendance to ECD	Percentage of children aged 36-59 months who are attending an early childhood education (ECD) programme	50.7
4	Birth Registration	Percentage of children under age 5 whose births are reported registered	58.1
5	Child Labour	Percentage of children aged 5-17 years who are involved in child labour	37.4
6	Violent Discipline	Percentage of children aged 1-14 years who experienced psychological aggression or physical punishment during the last one month	81.7
7	Marriage before age 15	Percentage of women aged 15-49 years who were first married or in union before age 15	15.5

Source: *Multiple Indicator Cluster Survey, 2014, CBS*

In this context, children of Nepal are living and coping for their survival, development, protection and participation that are integral parts of CRC. Due to the lack of systematic compliance mechanism or child rights monitoring mechanism, the real status of child rights is not documented in a systematic manner. However, the then Central Child Welfare Board (CCWB) published State of Children of Nepal compiling information from some districts and secondary sources of agencies of the GoN as well as child focused/ human rights organizations<sup>1</sup>. The child rights activists and organizations involved in promoting rights of the child were advocating for a systematic child rights monitoring mechanism to assess the status of violations of rights of the child in the country. Hence, there was a need to have some efforts to monitor violations of rights of the child systematically covering all clusters as enshrined in the CRC.

<sup>1</sup> INSEC – a human rights organization includes a chapter on violation of rights of the child (covering some protection indicators only) in its Human Rights Year Book which is published annually.

Children and Women in Social Service and Human Rights (CWISH), an organization dedicated for ensuring dignified life of children, has been putting its efforts towards protection of children and promotion of rights of the child. As part of civil society interventions, CWISH has been instrumental for contributing to create an enabling the respectful environment towards human rights (with special focus on rights of the child) through direct interventions, advocacy and campaigns since its establishment in 1995. It is one of the pioneer organizations engaged to protect children who are working as domestic workers and continuously contributing to complement the efforts of the GoN in delivering basic service for the vulnerable children and their family. Moreover, the organization advocates for ensuring conducive policy provisions and their proper implementation for ensuring child protection, child friendly education and necessary support for the marginalized families where children are facing the risk of survival, protection, development and participation.

Realizing the need of systematic monitoring of incidences of violation of rights of the child, CWISH initiated a reporting mechanism using mobile phone software (application) to report back the incidents of violation of rights of the child. In this process, CWISH provided an extensive training and hands on experiences to designated staff of 72 organizations working on promotion and protection of rights of the child in 48 districts of the country. CWISH has a plan to cover all 77 districts in near future.

This report is the outcome of the systematic analysis of the data reported by the organizations working in 20 districts and covers the period from January to November 2017.

## **2. Brief Overview of the Process followed in Monitoring**

With the concept of publishing annual report on status of child rights, CWISH initiated a-training to interested child rights organizations from all the Mountain, Hill and Terai ecological regions. The training curriculum was developed by two experienced child rights activists on child rights reporting

and monitoring. The training also developed reporting format in line with the case management procedures of the then Central Child Welfare Board. Series of training were conducted for the participants of 72 organizations in different places. Four trainings in Kathmandu, Dharan, Palpa and Nepalganj were conducted where participants from different ecological regions participated. The monitoring and reporting on rights of the child was concentrated on indicators of seven clusters namely 1) Definition of Child, 2) Principle of Rights of the Child, 3) Civil rights and Freedom, 4) Family Environment and Alternative Care, 5) Basic Health and Welfare, 6) Education, Leisure, Entertainment and Cultural Activity, and 7) Special Protection measures.

In line with the broader frame of CRC and national legislation, Child Rights Monitoring Forms was developed and field tested. In addition, a mobile software based application was developed comprising of indicators from seven clusters to report back the incidences of violation of rights of the child. A dedicated Server was set up in CWISH office in Kathmandu to receive the reports as well as a staff member was assigned to review the reports on a daily basis (also to support the responsible person in the district to respond to the case as per its urgency).

An operational definition of each cluster was developed for common understanding among all those that were in line with CRC. After extensive training and mock exercises, participants were suggested to send incidences of violations of rights of the child from their respective districts. The training was completed in late December 2016 and the participants were requested to report the incidences from January 2017.

Some of the key events of child rights monitoring initiated by CWISH are as follows:

- Development and dissemination of Child Rights Monitoring Form: January 2016
- Dissemination of Mobile phones with software (apps) installed: September 2016

- MoU with district partner organizations in 28 districts<sup>2</sup> were made: September 2016
- Training conducted in four places: January to September 2016 (Nepalgunj, Palpa, Kathmandu and Dharan)

CWISH received 214 reports on violation of rights of the child in their server in Kathmandu from 20 districts<sup>3</sup> during the period between January and November 2017. These data from these reports were used for this report. The report had a few variables such as Month, District, Location of incidence of violation of rights of the child, Caste/Ethnicity of victims, Occupation of victims, Sex of the victims, Age of the victims and Case of the report. Attempt has been made to analyse the trend of violation of rights of the child from these variables and present them in the reports.

### 3. Results and Discussion

#### *Top ten districts with high incidence of violation of rights of the child*

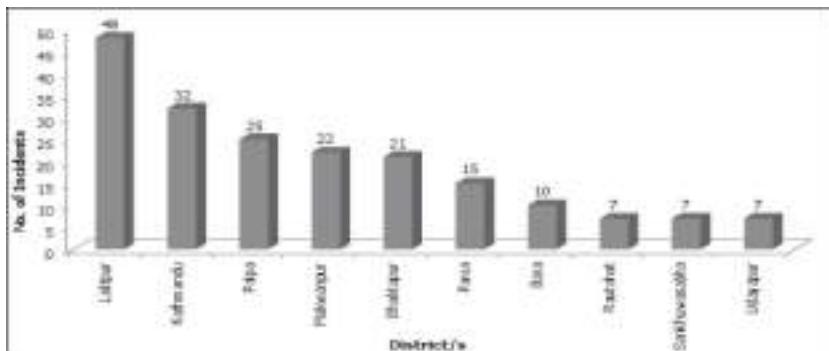
Figure -1 presents the top ten districts (out of 20 districts and 214 cases reported) that have high number of incidences of violation of rights of the child. Out of 214 cases, the highest incidence of violation of rights is reported in Lalitpur followed by Kathmandu, Palpa, Makwanpur, Bhaktapur, Parsa, Bara, Rautahat, Sankhuwasabha and Udaypur. The analysis indicates high incidences of violations from Kathmandu valley and nearby districts.

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2 The districts are Jhapa, Palpa, Ramechhap, Banke, Kapilvastu, Rukum, Dang, Sindhupalchowk, Dhading, Salyan, Arghakhachi, Dhankuta, Sankhuwasabha, Udaypur, Rautahat, Nuwakot, Parsa, Bara, Makwanpur, Rasuwa, Dhanusha, Sarlahi, Nawalparasi, Kathmandu, Bhaktapur, Lalitpur, Kavrepalanchok

3 Banke, Bara, Bhaktapur, Dang, Dhading, Dhankuta, Dhanusha, Kapilvastu, Kavrepalanchok, Lalitpur, Makwanpur, Nawa;parasi, Nuwakot, Palpa, Parsa, Rautahat, Salyan, Sankhuwasabha and Udaypur

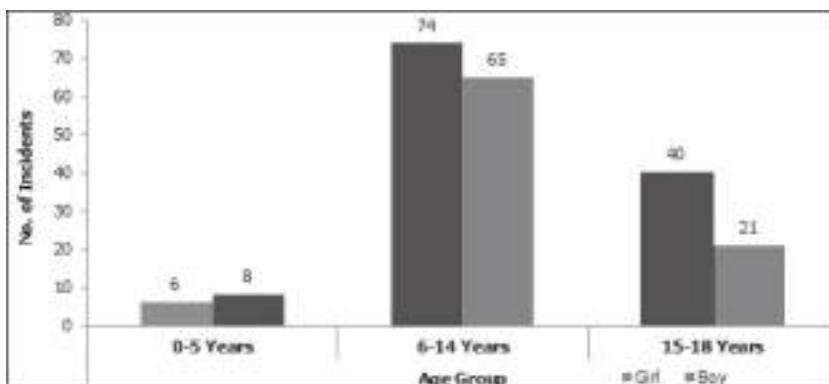
**Figure 1: Top 10 districts with high incidences of violation of rights of the child**



*Age group and gender of victims of violation of rights of the child*

Out of the 214 cases reported, girls suffered in 120 cases whereas 94 boys were reported to be victims of various cases. Similarly, irrespective of gender, 6-14 Years girls/boys were victims of violation of rights of the child. The data clearly indicates vulnerability of 6-14 years girls/boys to violation of rights of the child particularly to violence, exploitation, neglect and abuse. The figure also indicates the highest number of girls as victims of violation of rights of the child.

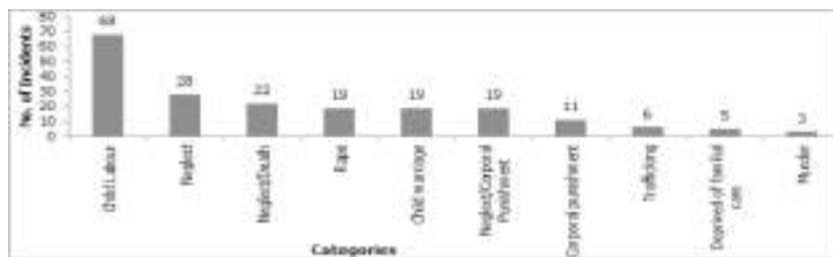
**Figure 2: Number of girls/boys and age group whose rights were violated**



### Top 10 categories of cases reported from 20 districts

There were 35 different categories of cases reported from 20 districts. Out of those 35 categories, top 10 categories were analysed. Child labour was the highest (68) followed by neglect (28), neglect and death (22), rape (19) neglect/corporal punishment at house (19), corporal punishment at school (11), trafficking (6) deprived of familial care (5) and murder (3). The analysis clearly indicates labour exploitation cases as the most reported by CCWB in their successive reports of state of children in Nepal.

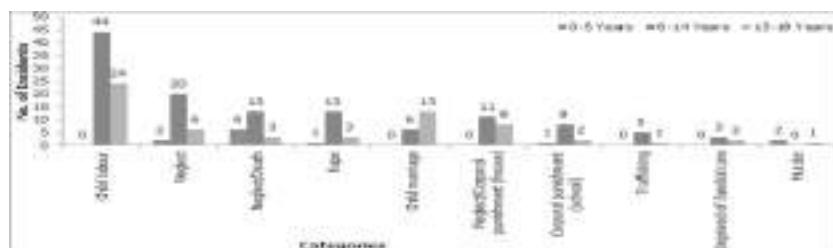
Figure 3: Top 10 categories of cases reported from 20 districts



### Categories of cases versus age group

Top 10 categories of cases were further analysed in terms of age group of the child victims. Under each category of case, age group 6-14 years seems to be highly vulnerable except under murder category. In each category of case, number of 6-14 Years age group is high.

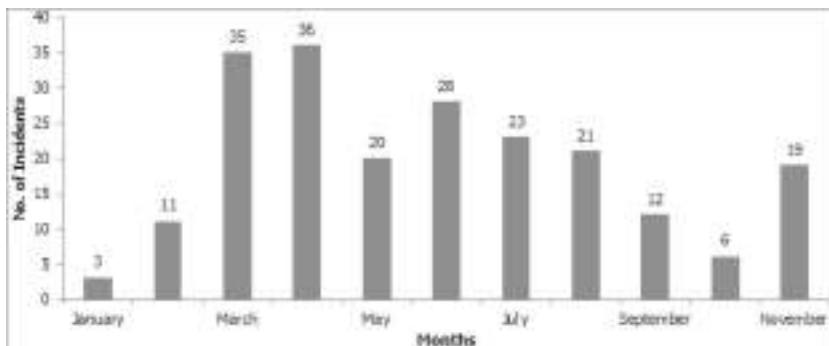
Figure 4: Categories of cases versus age group



### **Number of incidences and the months in 2017**

The incident reports were received from January to November 2017 and an attempt was made to check the relation between the number of incidents and the occurring month. Out of the 11 months data, months from March to August, manifest an increasing trend in the number of incidents of violation of rights of the child. The locations of incidents are higher in community and houses in the corresponding months. The analysis suggests enhancing protection measures during the period from March to August.

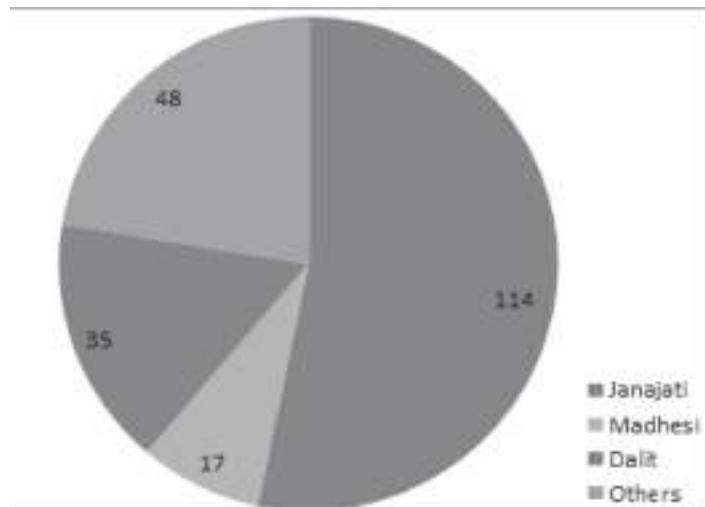
**Figure 5: Number of incidences and the months in 2017**



### **Ethnicity and number of incidences**

Out of the 214 reported cases, an analysis was made to check the victims of violation of rights of the child in terms of ethnicity. The incidences of violation of rights of the child are higher among Janjati (114) and the categories of cases are child labour, child marriage, neglect, corporal punishment, death, etc. The result complies with the findings of the national child labour report (ILO, 2010). The incidences among Dalit, Madheshi and others are lower in comparison to Janjati. It is to be noted that Brahmin, Kshetri and other caste group under Hindu Vernashram system (excluding Dalit castes) have been included in the other category which accounts second highest among the categories.

**Figure 6: Caste and Ethnicity and number of cases**



#### **4. Conclusion**

The status of rights of the child in the country, represented by the incidences of reporting of 20 districts, indicates alarming situation and points out for a strong policy and programmatic interventions targeting children below 18 years and concentrating on children between the age group of 6-14 years. The results of the analysis of the data reported from 20 districts clearly indicate Kathmandu valley and nearby districts as the top 10 districts having high incidences of violation of rights of the child. The most vulnerable age-group is 6-14 years and that the child protection mechanism needs to be strengthened at all levels to protect the children. The categories of cases suggest alarming situation as exploitation, neglect, abuse and violence high among categories. The incidences among Janjati are high indicating inadequate awareness on child rights as well as other discriminatory practices. Girls are most vulnerable from every angle indicating more interventions on empowerment of the girls.

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# AN OVERVIEW OF POLICY, PLANS AND PROGRAMMES OF THE GOVERNMENT OF NEPAL IN RELATION TO RIGHTS OF THE CHILD

*By Dr. Kiran Rupakhetee\**

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## 1. Introduction

**A** child is a wonderful creation of nature. The process of Human Civilization is perpetuated simply because of those great personalities who were once children. The overall prosperity of any nation is reflected upon which status does the each nation give to its children and to what their current state is. In other words, the status of children in any country is judged through the extent by which their fundamental rights are protected, promoted and also ensured. The Government of Nepal (GoN) has made extensive efforts with legal, policy and programmatic interventions regarding the rights of the child for building a better nation for children in the past three decades. However, there is a consensus that such interventions have not been able to bring about the desired result in conceiving, honouring, protecting, fulfilling and ensuring the rights of children. Nevertheless, *Nepal has made considerable progress in recognizing the rights of children, developing legal*

\* Dr. Rupakhetee is a Programme Director at National Planning Commission Secretariat. He also served as the Section Chief, Child Protection and Development Section of the Ministry of Women, Children and Social Welfare and SAIEVAC National Coordinator during the period of 2013-2016. He can be reached at [kiran.rupakhetee@hotmail.com](mailto:kiran.rupakhetee@hotmail.com)

*frameworks, establishing institutional mechanisms, and formulating appropriate national plans and policies on children's rights* (Pradhan et.al., 2015).

In the above context, this paper tries to analyse efforts made by GoN in relation to children's rights through its various plans, policies and programmes endorsed after ratification of the UN Convention on the Right of the Child, 1989 (CRC) on 14 September 1990. This paper will analyse the past, present and future perspective of the country in terms of the Child Rights/Child Development Section of Periodic Plans, especially the Eighth Five Year Plan onwards have been reviewed and appraised. The paper also analyses the achievements of those plans and concludes with presenting challenges in this area.

## **2. Evolution of International Child Rights Movement**

The Geneva Declaration on the Rights of the Child, 1924 by the League of Nations is considered the first ever international commitment in the context of child rights. The prime agenda of child rights further evolved and matured after establishment of the United Nations in 1945. The Universal Declaration of Human Rights in 1948 is a historical document which established freedom, equality and individual rights of any human being. It has provided impetus to child rights by recognizing the fact that childhood deserves special care and assistance. Furthermore, the UN General Assembly Declaration of the Rights of the Child (1959) contributed as a positive development towards advocating the rights of the child across the globe. Right to freedom from discrimination; Right to a name and a nationality; and Right to education, health care and special protection are some of the rights of children that are given utmost importance by this declaration. However, must be noted that the Geneva Declaration and UN General Assembly Declaration of the Rights of the Child, 1959 are proclaimed as 'declarations' creating only moral but not legal obligation upon states (Pradhan, et.al., 2015). Henceforth, the UN Convention on the Rights of the Child adopted by the UN General Assembly in 1989 is considered as the first ever comprehensive and legally binding treaty on the rights

of the child: "*The Convention reflects the principles of indivisibility, interdependence and interrelatedness of rights by embracing all civil, political, economic, social, and cultural rights*" (ibid.).

The World Summit for Children, held in 1990, adopted: a "Plan of Action for Implementation of the World Declaration on Survival and Protection and Goals for Children and Development"; the Optional Protocol of the CRC on the Involvement of Children in Armed Conflict, 2000 (OPAC) and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, 2000 (OPSC). The UN General Assembly Special Session on Children (UNGASS) held in May 2002, added further drive to move forward in ensuring the rights of children. In addition, the SAARC<sup>1</sup> Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia (2002) and the establishment of secretariat for South Asia Initiatives to End Violence against Children (SAIEVAC) have both further heightened child rights concerns in South Asia including Nepal. In essence, the global evolutionary trend on child rights has positively impacted in the child rights movement of Nepal.

### **3. Initiatives of GoN after Ratification of CRC**

Despite the few initiatives of the Civil Society Organisations (CSOs) before the 1990s, the concrete measures in terms of plans, policies and programmes to realise the principles and provisions of convention has started only after the ratification of the convention. Nepal has not only actively participated in the World Summit for Children (1990) but also formulated the Children and Development National Plan for the 1990s as a follow up action to the summit. Enactment of the Children's Act, 1992 (2048 BS) and its Regulations, 1995 (2051 BS) as separate legislation realizing the rights of the child in Nepal has been the biggest achievement.

The Child Labour (Prohibition and Regularization) Act, 2000 (2056 BS), the National Plan of Action on Children (2004/05-2014/15), and other plans of action related to child

1 South Asian Association for Regional Cooperation.

labour and trafficking in children were formulated and brought into implementation during this period. Furthermore, the endorsement of Juvenile Justice (Procedural) Rules, 2007 (2063 BS), adoption of Child Friendly Local Governance National Strategy and Operational Guidelines, 2011 (2068 BS), the National Children's Policy, 2012 (2069 BS) etc. also proved to be instrumental. The School as Zones of Peace (SZOP) National Framework and Implementation Guidelines, 2011 (2068 BS) can also be considered as one of the biggest achievements in this regard. Some other milestones included: the ratification of international instruments such as: the Optional Protocol to the CRC on Involvement of Children in Armed Conflict, 2000; on Sale of Children, Child Prostitution and Child Pornography, 2000; ILO Convention on the Worst Forms of Child Labour, 1999 (No. 182); and UN Convention against Transnational Organized Crime, 2000. Another landmark achievement in this regard is the establishment of a dedicated ministry for children named the Ministry of Women, Children and Social Welfare and the formation of Central Child Welfare Board (CCWB) and District Child Welfare Boards (DCWBs) as statutory bodies under Children's Act, 1992. Likewise, establishment of the National Human Rights Commission (NHRC), the National Women's Commission, the National Information Commission and the National Dalit Commission have all been considered as important achievements in the promotion and protection of human rights in general and rights of children in particular. Lately, one of the biggest achievements is the Constitution of Nepal (2015), which took the historical step of establishing the Rights of the Child as fundamental rights.

As such, the agenda of the promotion of rights of the child and child protection has started mainstreaming by means of incorporating them into national policies and planning process. There is a consensus that the decade of 1990s remained outstanding from the perspective of protection and promotion of rights of the child in Nepal. *"The concept of children as dignified citizens, as legitimate rights holders and as agents of change is evolving and getting mainstreamed in the planning and programming process in the country"* (Pradhan, et.al., 2015). In a nutshell, the notion of

ensuring rights of the child in Nepal is maturing. The GoN as well as CSOs have shown their commitments and devotion in words as well as in action.

## **4. Policy, Plans and Programmes of the Government**

In this section of the paper, effort has been made to analyse different periodic plans of the GoN from the child rights perspective, especially the Eighth five year plan onwards. The Child Development Section of the Eighth to Fourteenth Plans have been considered for this purpose. While presenting efforts have been made to present identifiable problems, vision, policies and programmes of aforesaid of each plan wherever possible. In the end, attempts have been made to critically analyse whether or not different periodic plans have done justice to the realisation of the rights of the child.

### **4.1. Eighth Plan (1992-1997)<sup>2</sup>**

This represents the first periodic plan of GoN after Nepal became State party to the CRC. The issues identified by the plan were: malnutrition, prevalence of preventable child diseases, lack of access to education, child labour, inadequate efforts made to address the problems of children in difficult situations. Furthermore, inadequate and less qualitative services being provided to children with special needs and protection as well as ineffective programme interventions due to the lack of inter-sectoral coordination, reliable institutions, and information were the other identified problems faced by the plan. Considering such issues, the plan highly emphasized the perspective of child development while also realizing the responsibility of GoN to create a conducive environment for making them active and capable citizens considering children as future citizens of the nation. However, the plan did not mention a long term vision in this regard. Major policies of the plan are as follows:

- Extend maternity programme up to village level for the care of children from the womb onwards;

- Reduce Infant and Child Mortality Rate;
- Improve general and minimum standard of nutrition by maintaining coordination among the food, health and education sectors;
- Expand curative (health) services to children;
- Promote small-size families via enhanced family planning services;
- Free primary education to children by ensuring the quantitative and qualitative improvements in education sector;
- Increase enrolment of girl students by providing educational opportunities to those who have been deprived of primary education;
- Reduce number of students who quit (school) before completion of studies and who fail in the class;
- Carry out intervention programmes to cater needs of 'Children in Difficult situations'<sup>13</sup>;
- Develop and expand child welfare homes, orphanage, SOS Children's Village etc.;
- Strengthen agencies established under Children's Act, 1992; and
- Establish high level Child Development Council in order to coordinate various interventions of different agencies designated to the National Planning Commission (NPC) as its Secretariat.

On the basis of the policies mentioned above, various programmes related to expansion of quality education to children as well as delivery of health facilities to children and mother were developed. However, the plan was still uninformed about the provisions of the CRC. Thus, issues concerning child protection and child participation were not distinctly presented in a visualized form. In a way, the plan was still any programmes reinforcing implementation of CRC. However, the provisions of the high-level

3 For the purpose of this paper, 'Children in Difficult Situations' are categorized as children involved in labour, street-based children, children addicted to drug and substance abuse, children without parents, children with various types of disabilities, children in begging and so on.

Child Development Council can be considered as an encouraging and positive development in this area. The plan emphasized programmes to expand the residential Child Care Homes.

Overall, the Eighth Plan remained instrumental in protecting and promoting the rights of the child through various preventive and protective programmes. The plan emphasized the physical and mental development of children. In reference to this, policies were undertaken to provide opportunities for nutrition and health facilities. In addition, the plan emphasized the promotion of the rights of the child and programmes to augment income of parents by making them capable of rearing their children in proper family environment.

During this period, CCWB and DCWBs as statutory bodies were created: campaigns such as 'Elimination of polio by 2000', 'Vitamin A', 'School Nutrition Programme' were carried out for children. A number of residential child care homes were established for children without parents. Since the plan period was immediately after the restoration of democracy in the country, a large number of NGOs were active in carrying out different interventions for the benefit of the children. Also, the Nepal Multiple Indicator Surveillance was conducted for the development of children. The survey was carried out covering health, nutrition, primary education, diarrhoea, and drinking and cleaning water. Moreover, the situation of child labour and street children were also studied. (NPC, 1997)

#### **4.2. Ninth Plan (1997-2002)<sup>4</sup>**

This plan identified issues of children such as: diarrhoea and Acute Respiratory Infections as major causes of death; deprivation of primary education (31%); drug and substance abuse; prostitution including commercial sexual exploitation of children; and children without parents etc. The unique feature of this plan was that it stressed the need to have a long term concept<sup>5</sup> covering the different issues of children in order to ensure their

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4 NPC, 1997

5 The plan has used the term "Long -term Concept" instead of a vision. In the Eighth Plan, the long term concept was missing.

rights to overall development. The plan also accepted the fact that GoN alone could not address all these problems and sought the role of NGOs in this regard.

The policy of the plan was to emphasize the different pillars of the rights of the child for the purpose of necessary interventions, such as:

### *Survival*

- Promotional, preventive and curative services influencing child health from pregnancy until adolescence.

### *Protection*

- Strict enforcement of legal provisions related to child labour and bonded child labour;
- Programmes for the protection of the rights of children in difficult situations;
- Special focus on self-dependent programmes including education, health, housing, etc. for the benefit of children and their families;
- Community based approach in the protection of children;
- Child development programme in order to provide children below five years living in remote villages with necessary services; and
- Early childhood development programmes for younger-aged children.

### *Development*

- Emphasis on compulsory primary education;
- Enhancement of the quality of education at the pre-primary and primary level;
- Encouragement for girls to go to school in order to avoid drop-outs;
- Early childhood development programmes.

### *Participation*

- Children's involvement in activities contributing to uplift children's mental and intellectual capacities;

- Use of media to sensitize people including children on child rights issues.

### ***Co-ordination, Monitoring and Evaluation***

- Institutional arrangement for coordination, monitoring and evaluation of the activities carried out by national and international NGOs for protection and promotion of the rights of the child along with their overall development.

Based on the policies, the major activities planned were as follows:

- Child health services incorporating safe motherhood, extended vaccination, diarrheal and respiratory diseases;
- Child treatment services based on referral system;
- Establish of Child Health Research Centre;
- Public participation in order to ensure easy access to education by children;
- Improve quality of education through teacher training, especially in subjects like English, Maths and Science and also through improvement in school administration;
- Programmes on technical education;
- Protection and promotion of the rights of children working as labourers by providing them formal or informal education along with health facilities and training;
- Protection of children in difficult situations by providing them education and health facilities and also rehabilitation facilities;
- Community rehabilitation programmes for children with disabilities, especially the blind, those with physical disabilities, orphans, beggars, children with intellectual disabilities, street-based children etc.;
- Child Reform homes in all five development regions combined with the help of NGOs and social organizations;
- Child nutrition programme through the improvement in food habits to ensure adequate intake of micronutrient, vitamin-A and iodine;

- Establish Juvenile Courts/Benches in all the five development regions;
- Awareness programmes to protect and promote the rights of children;
- Revise curricula for addressing gender discrimination to ensure gender equality;
- Legal reform in a bid to ensure protection and promotion of the rights of the child;
- Establish Children's Park, publication of child magazines and libraries; and
- Scholarship for children from backward communities and Women's Education Programmes.

During the Ninth Plan, different interventions were made for the benefit of children in difficult situations. The SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia, 2002 was signed and Juvenile Benches were set-up in all 75 districts. Vitamin 'A' and Polio Vaccine Programmes were executed on a national scale; the area coverage for nutritional programmes launched for primary schools was extended; increasing trends in birth registration was recorded; as well as the child marriage and child mortality rate were recorded.

In totality, noted achievements have been made during the plan period in order to protect and promote the rights of the child. However, inadequate coordination among different interrelated sectors, unavailability of adequate resources and insufficient alignment of annual budgets and programmes created obstructions in the implementation of targeted policies and programmes as envisioned during the plan period. Nevertheless, more streamlined interventions were made possible during this period in line with the CRC as opposed to previous periodic plans. The absence of any activity related to High Level Child Development Council in Ninth Plan which was stressed in the Eighth Plan was discontinued by the GoN.

#### **4.3. Tenth Plan (2002-2007)<sup>6</sup>**

The Tenth Plan identified issues such as deprivation of primary level education (one-third), lack of access to basic health service, children with disabilities and child labour being victimized by hatred and discrimination, the inability to frame effective laws and regulation prohibiting sexual abuse and exploitation of children. One problem noted was an ineffective coordination among different stakeholders including weak coordination among different related government offices. The monitoring and evaluation, which can be considered as the heart of the project cycle, remained weak and could not function well.

The vision of this plan was to create an enabling environment to ensure that the rights of the child is guaranteed by ending all types of exploitation and discrimination against children in line with Nepal's international and regional commitments. In order to materialize this vision, the plan set objectives to protect and promote the rights of the child by putting an end to exploitation and discrimination, and, thereby, to ensure their rights to physical, mental, social and psychological development.

The policies set by the plan are as follows:

- Make necessary legal arrangement along with institutional strengthening to ensure children's rights;
- Motivation of government, local institutions, NGOs, civil societies and the private sector to launch programmes oriented towards children's rights;
- Abolition of worst form of child labour;
- Ensure the birth registration of approximately 80% of children;
- Mobilization of children through their participation to protect and promote their rights;
- Ensure education and health facilities vis-à-vis improvement of nutritional status;
- Mainstream the children rights issue in the national development process;

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<sup>6</sup> NPC, 2002

- Strengthen children's rights by eliminating child labour and rehabilitating children affected by hardship and criminal activities and also children with disabilities; and
- Increase awareness on the rights of the child.

The major activities envisioned by the plan are as follows:

- Amendment of disability related acts and regulation;
- Coordination with related ministries in mainstreaming of children's rights in national development;
- Establishment of legal systems in consonance with children's rights.
- Formulation of the required laws and regulations;
- Safeguard children from sexual exploitations, trafficking of girl children, the abuse of drugs, and to protect them from the ill effects of war;
- Preparation of national level action plan to implement the commitments made in international level;
- Necessary measures to encourage birth registration and controlling child marriage;
- Formulation and enactment of the retaliatory, promotional and rehabilitating acts against child sex exploitation, drug addiction, trade and trafficking of children;
- Awareness regarding the importance of the rights of the child;
- Provide basic education, health facility through a community-based rehabilitation programme to children living in hardship and affected by armed conflict;
- Government collaboration with the donor communities, NGOs, private sector, and civil society to protect and promote the rights of the child;
- Continuation of children's rights awareness programme along with children's participation;
- Make free special education programmes effective;
- Establish rehabilitation shelters, one-in each five regional development centres;
- Gradually equip the centres and district level Child Welfare

Committees with adequate resources; and

- Provide grant-in-aid to the Nepal Children Organization as well as NGOs to carry out child development programmes.

Overall, the tenth plan remained successful in augmenting the efforts to protect and promote the rights of the child. The Optional Protocol to the CRC on the sale of Children, Child Prostitution and Child Pornography, 2000 was ratified. It is worth mentioning that efforts were made during the plan period to implement the Master Plan on Child Labour, 2004-2015, the Child Labour (Prohibition and Regulation) Act, 2000

Moreover, various programmes in the area of survival, development, protection and participation were carried out in accordance with the 10-year National Plan of Action on Children, 2004/05-2014/15. There had been improvements in the facilities provided in education, health, sports, and entertainment sectors. Programmes were also conducted targeting children at risk. Scholarships were provided to the incapable, poor and *Dalit* children. Programmes related to education, health, training, skill development, awareness and community-based rehabilitation programmes were carried out for children with disabilities. Psychosocial counselling services were also arranged as per need. Efforts were made to strengthen CCWB and DCWBs. Para Legal Committees to provide legal services to districts and the Women and Children Cell in Nepal Police were also formed. Working groups were formed at the district level to start work against sexual exploitation and trafficking. Participation of children increased to a greater extent. (NPC, 2007)

#### **4.4. Eleventh Plan (2007-2010)**

The Eleventh Plan identified weak compliance of the existing laws related to: protection of children; social security; sexual exploitation and abuse; ineffective juvenile justice and administration; less access by the children of *Dalits*, *Adibasi Janjatis*, *Madhesis*; Muslims; people with disabilities; and poverty stricken families' access to services; inadequate social security and rehabilitation facilities to Child Labour; conflict affected children

and children at risk; and the lack of institutional provision for the rehabilitation of children suffering from conflict; and HIV/AIDS and trafficking as problems of children.

The plan envisioned to create an environment where children across the country and all communities were able to experience an overall personality development through realizing their rights. The specific objective in this regard was to end all types of exploitation, abuse, violence, risk and discrimination of children by protecting their rights. It also aimed to create child-friendly environments for the physical, emotional, mental and intellectual development of the children. The major policies in this regard are as follows:

- Integrated and targeted programmes for the conflict-affected children and children at risk (girl child, children with disability and the children of marginalized communities, street-based children) for rehabilitation and reintegration including psychosocial counselling, education and skills;
- Establishment and operation of Children's Fund for the protection of the rights of the child as well as for providing emergency support and relief to children at risk;
- Extension of child rights related programmes through the participation of children themselves and guardians and community leaders;
- Creation of peaceful environments in such areas where children were active in different activities related to the protection and promotion of the rights of children;
- Ensure that Courts, schools, hospitals, children homes and the transport sector providing services to children in child-friendly manner;
- Creation of necessary legal, policy and institutional provisions to make children free from all types of abuse, violence, exploitation, abduction and discrimination;
- Designation of the Department of Women Development to look after the protection and development issues of the children;
- Operation and management of *Bal Mandir* and other

residential child care homes through Minimum standard for operation and management of Child Care Homes; and

- Encourage Child Clubs, children's institutions and their network in various activities that promote the rights of the child by enhancing their capacities;

In this context, the major activities were as follows:

- Implementation of Child Welfare programmes;
- Development of an information system related to children (with inclusion of conflict affected children, children with disability, children at risk, children of indigenous communities, and *Dalit* children);
- Awareness programmes through media for the protection and promotion of children's rights;
- Skill and employment-oriented training for street-based children, school dropout youth above 14 years from *Dalits*, *Adibasi Janjatis*, *Madheshi* communities, and children from remote and backward areas;
- Grant programmes for children in need of special care and protection and those with intellectual disabilities;
- Protection and equal opportunity programme for children with disabilities;
- Permanent Children's Fund for emergency support and relief for children at risk; and
- To strengthen *Bal Mandir* as the resort for children at risk.

In regards to implementation of this plan, the Master Plan to End Child Labour for 2004-2014 was endorsed, and ILO Convention No. 182 on the worst form child of Labour and Optional protocol to the CRC on the Involvement of Children in Armed Conflict were both ratified. Different interventions were carried out in line with the 10 year National Action Plan on Children for 2004/05-2014/15.

In regards to programmes, scholarships were provided to children from poor and *Dalit* communities. The programmes related to providing health, education, awareness, skill development along with community rehabilitation programmes were implemented for children with disabilities. Psychosocial

counselling services for children were started, and efforts were made to strengthen CCWB and DCWBs. Women and Children Cells of the Nepal Police were expanded. Notable improvement was made in child participation in different activities through the formation of Child Clubs. An Emergency Child Rescue Fund was created that remained instrumental in rescuing and rehabilitating high risk children. Nepal actively participated in the South Asia Initiative to End Violence against Children (SAIEVAC) movement and contributed through this regional forum in addressing issues related to protection and promotion of children in Nepal and also in South Asia. The SAIEVAC Secretariat was established in Kathmandu. In order to give further emphasis on the issue of the rights of the child, the existing Women Development Department was converted into the Department of Women and Children and existing District Women Development Office into the District Women and Children Office. (NPC, 2010)

#### **4.5. Twelfth Plan (2010-2013)<sup>8</sup>**

The Twelfth Plan identified as problems faced by children: abuse and exploitation of children; difficulties faced by children with disabilities; conflict affected children; children from poor and/or backwards families; indigenous communities; rehabilitation of HIV affected children; children addicted to drug and substance abuse; and trafficked children. The plan envisioned to protect the rights of all children nationally in order to ensure their overall development and set objectives to enable child friendly environments for the overall development of children.

The policies set by the plan are as follows:

- To expand and strengthen the quality of services to be rendered to children;
- To rescue and rehabilitate children affected by armed conflict, disability; HIV AIDS and other children who are at risk;

- To increase the access of children to the facilities meant for them by ensuring legal reform and institutional strengthening; and
- To enhance coordination among different agencies working for the rights of the child.

Accordingly, the major activities planned were as follows:

- Legal reforms in line with the requirement of the CRC;
- Establishment of a rehabilitation centre for those children who are affected by: trafficking; sexual abuse and exploitation; labour exploitation etc.;
- Psychosocial counselling, health facilities, education facilities in the rehabilitation centres;
- Rehabilitation of children who were in conflict with law;
- Child friendly local governance programmes;
- Strengthen the capacity of Child Clubs;
- Protection and development programme of those children who are displaced from family, abandoned children and children on the street;
- Creation of Emergency Child Fund;
- Strengthening of Nepal *Bal Sangathan*; and
- Expansion of the child protection programme across the country.

In regards to implementation, efforts were made to continue implementing government commitments through the execution of activities delineated in: the National Plan of Action on Children, Children's Act, 1992, Standards for the Operation and Management of Residential Child Care Homes, 2012 (2069 BS); and other sectoral plans, policies and programmes, especially in education and health sectors. One of the important achievements in the plan period was the formulation and commencement of the implementation of National Plan of Action for the Holistic Development of Adolescents (2013-2018).

The Plan continued its efforts in the implementation of Child Welfare Programmes as before. The CCWB and DCWBs did put efforts in the monitoring of residential child care homes

enabling them to comply with Standard for Operation and Management of Residential Child Care Homes, 2012. During the plan period, scholarships were provided to children from poor and *Dalit* families. Moreover, programmes related to education, health facilities delivery, skill development trainings, awareness and community-based rehabilitation for children with disabilities were implemented. Establishment and operation of Women and Children Service Directorate in the Nepal Police Headquarter and Women and Children Service Centres in each district can be considered as achievements during this plan period. (NPC, 2013)

#### **4.6. Thirteenth Plan (2013-2016)<sup>9</sup>**

The Thirteenth Plan identified inadequate coordination among various agencies, non-compliance of existing laws and regulations meant for the protection of children. Ineffective juvenile justice system and the failure to expand and strengthen child friendly local governance units were also mentioned as major issues related to children. Other prominent problems were: low access of children of *Dalit* and indigenous communities; children with disabilities, poor and marginalised children living in remote service areas; and inadequate rehabilitation of children affected by armed conflict; drug addicted by children; children victimized by trafficking along with ensuring access to social protection facilities. The long term vision of the plan was to create a child friendly environment which can ensure overall development of children through the promotion and protection of the rights of the child and set objectives to eliminate all forms of violence and sexual exploitation against children including child labour.

The major policies were as follows:

- Control all forms of violence and exploitation against children and ensure their rights;
- Ensure cure and nutrition to children in both prenatal and post-natal period; and
- Carry out necessary programmes, which ensure physical, mental and cognitive development of children.

Accordingly, major activities planned are as follows:

- Legal and policy reform;
- Tracing out of missing children;
- Emergency services to those children who are at risk;
- Operation and extension of toll free help line 1098;
- Orientation on the Standard for the Operation and Management of Residential Child Care Homes, 2012;
- Sensitization of stakeholders and dissemination of information related to on the rights of the child;
- Effective mobilization of the Emergency Child Rescue Fund;
- Establishment of Rehabilitation Centre for those children who have intellectual disabilities ;
- Establishment and expansion of the Juvenile Bench in all the districts;
- Informal and non-formal education to drop-out and out of school children focusing on training and skill impartment;
- Legal arrangement to protect children from online abuse and also sensitization programme in this regard;
- Family support programme in order to ensure the rights of children to have their growth and development living with their families;
- Drafting and enactment of policies and procedural guidelines to systematise domestic adoption;
- Capacity enhancement of those organizations which have been working for the rights of children; and
- Coordination; cooperation; sharing of child rights information management among concerned stakeholders.

Despite the positive contributions of the plan in terms of the protection and promotion of the rights of children, the plan had not been able to create a conductive enough environment as it had promised as violence against children still continued. Instances of corporal punishment, child marriage, commercial sexual exploitation of children, child labour, street-based children still exist in the society. Moreover, the proper coordination among different agencies responsible for child rights promotion and

protection and compliance of child friendly local governance in letter and spirit remained a challenge.

#### **4.7. Fourteenth Plan (2016-2019)<sup>10</sup>**

The Fourteenth Plan is currently underway. The plan can be considered as the latest effort of the government and civil society to protect and promote the rights of the child. The plan has identified different problems such as: inadequate coordination among concerned agencies within the government system and outside; challenges in bringing child friendly local governance fully into practice; and existence of traditional harmful practices in the society that compromise the rights of the child. The plan envisions the creation of an environment in which children are fully protected in order to make them able and qualified citizens. In line with this long term vision, the plan has an the objective of protecting children from all types of violence, abuse torture as well as degrading behaviour directed at children. The plan will thereby ensure their rights.

The policies designed for the plan are as follows:

- Ensure health and nutrition services to children in both pre and post-natal condition;
- Emphasize the physical, mental and academic development of children and adolescents;
- Adopt preventive, curative and protective measures in order to end all types of violence against children and adolescents;
- Minimize or stop child labour; and
- Rescue, rehabilitate street-based children and initiate preventive measures.

Accordingly, the major programmes planned are as follows:

- Implementation of National Strategy to End Child Marriage, 2016;
- Plan formulation, facilitation and coordination from the

perspective of protection and promotion of children's rights at the local level;

- Establishment and management of the National Child Resource Centre;
- Running the Nepal Children's Association more efficiently and effectively;
- Establishment of Child Protection Centre in each province for the orphan children;
- Expansion of toll free help line 104 in all districts of the country;
- Continuation and expansion of the service of the child help line 1098;
- Carry out child-friendly disaster management programmes;
- Sensitization programmes among stakeholders to make them more sensitive to child rights issue; and
- Awareness programme against violence against children and also prevention of other traditional harmful practices.

## 5. Efficacy of Policies, Plans and Programmes

In the past twenty-five years since the ratification of CRC, Nepal has strongly shown her political and bureaucratic commitment to abide by true letter and spirit of the convention. Moreover, *the evolving global child right's movement in the late eighties and the early nineties has inspired the GoN to engage in such implementation through formulation of various instruments and mechanisms to enhance child rights in the country* (Pradhan, et.al., 2015).

The general principles of the Convention, namely- i) non-discrimination, ii) adherence to the best interests of the child, iii) the right to life, survival and development, and iv) the right of children to be heard have been incorporated into various policies and programmatic interventions. However, *such initiatives have been jeopardised because of conventional attitudes and ad-hoc behaviours in the process of institutionalizing the rights of the child in the state system* (ibid). Moreover, other factors that have caused

serious obstacles in this process are a fragile political situation, insurgency, inadequate awareness among rights-holders and service providers on existing laws and policies and ineffective implementation of laws, policies and plans. Childhood malnutrition and child poverty are other areas that need to be seriously addressed in Nepal. Nepal ranks among the worse countries in terms of malnutrition. Forty-one per cent of children under five are stunted, 29 per cent are underweight and 11 per cent are wasted.<sup>11</sup>

Despite the persistent efforts of various plans in this area, the quality of most Early Childhood Development centres is lower than the expected result. This quality is compromised on the ground in that there is no consistency in their management and there are also discrepancies in resource distribution. Access to safe water and hygiene is largely absent in rural Nepal.<sup>12</sup> In Nepal, boys and girls enrolment in primary education is lagging behind. Despite the fact that there have been persistent efforts after the ratification of CRC, *mainstreaming and institutionalization process of child rights into the state system is still very weak although some significant changes have taken place.* (Pradhan, et.al., 2015).

As such, Nepal has made a significant progress in child development, especially in the areas of education and health sectors. The trend of decreasing Infant Mortality Rate (IMR), Under 5 Mortality Rate (U5MR) and Maternal Mortality Rate (MMR) continues. Also the increasing trend of students' enrolments and gender parity in schools and the gradual reduction of school drop-outs are both testimonies to the critical impact of systematic planning for children in Nepal during that period. The progress in education sector has been outstanding; yet education in Nepal is not completely free: parents do pay examination fees and other annual charges in addition to paying for stationery and uniforms.<sup>13</sup>

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11 <http://www.usaid.gov/nepal/food-assistance>.

12 [http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/NP/SCN\\_Savethe-ChildrenNepal\\_eng.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/NP/SCN_Savethe-ChildrenNepal_eng.pdf).

13 [http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/NP/SCN\\_Savethe-ChildrenNepal\\_eng.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/NP/SCN_Savethe-ChildrenNepal_eng.pdf).

'Child participation' is one of the four general principles of CRC where Nepal has demonstrated distinctly visible progress and has widely been acclaimed globally. This progress has contributed positively in significantly ensuring the rights of the child as guaranteed by the Constitution of Nepal. However, *there are concerns regarding the quality in the participation of children. Moreover, many marginalized children, especially children with disabilities, are not fully included in child clubs and hence this can also be considered as an issue of social inclusion (ibid).*

Literature has shown that *children, especially from marginalized and socially excluded communities, have not been able to fully enjoy their basic childhood rights including rights to education, health care and nutrition. This has resulted in because of economic exploitation and socio-cultural discrimination in the society (ibid).*

The per cent of child labour is the highest among *Dalit* children, at 60.4%, closely followed by children from Muslim community (58.4%). Muslim children show the highest proportion (30%) of children in hazardous occupations; the second are Dalit children (27.6%) (ILO, 2012). *The number of street-based children is also highest among Dalits and Hill ethnic minorities as compared to other social groups (ibid).*

The rights of children of socially excluded communities have further been compromised because of other burning problems, namely the lack of citizenship and statelessness, unfair social and labour relations against girls. These problems are compounded by unequal power structures and patriarchal thinking and regressive social attitudes towards girls.<sup>14</sup>

Analysing the contents of various plans mentioned above, one can find a similarity in that each plan has highly emphasized the creation of an enabling environment that contributes to ensuring the rights of the child. Each plan also has acknowledged the fact that various forms of traditional harmful practices have been prevalent in the society; these have further compromised the rights of children. Moreover, among the common problems cited have been an inadequate coordination among different agencies focused on child rights. Other problems cited in this

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14 <http://www.cwin.org.np/media-centre/fact-sheets/40-the-girl-child-in-nepal>.

regard are child labour, street-based children, sexual exploitation of children and also the problems regarding children with disabilities.

To summarize, for the last 25 years (from Eighth to Fourteenth Plan) the same types of problems continue to hover over all efforts. What this entails is that interventions made have not been able to generate expected results. What is needed is a clear appraisal whether or not those interventions were implemented with full commitments and devotion as well as whether whatever lapses diagnosed should be addressed seriously in the future. This also necessitates that institutional arrangements need to be robust and combined with the capacity and enhancement of those responsible in order to implement various policies and programmes. These arrangements should also be done systematically. Moreover, systems of rewards and punishment should be linked with the performance of those who are responsible to implement the CRC.

## **6. Existing Problems Related to Rights of the Children**

Despite the fact that various efforts were made through long term periodic interventions, the achievements delivered to date are not up to expectations. Different traditional practices continue to exist within Nepalese society. Those practices negatively affect the protection and promotion of rights of children. A large number of children in Nepal are living and working under the most difficult circumstances.

According to the Nepal Labour Force Survey (NLFS) in 2008, around 1.60 million children, or almost 51 per cent of all working children, fall into the category of child labour. Within the child labour category, 0.62 million children have been identified as being engaged in what is called hazardous work. *Children as labour are engaged in both the formal and informal sectors. Every year, hundreds of children come into contact with the law due to various vulnerable situations they live in. Many times these children are misused by criminal gangs and petty criminals to pick pockets,*

*peddle drugs, extort money and even take up armed violence* (Pradhan, et.al., 2015).

Human trafficking is one of the worst forms of violence against children. Nepal is a main source country for men, women and children who are subjected to forced labour and sex trafficking. However, lately Nepal has been used as both a route and destination as well. The dimension of human trafficking problem in Nepal is evolved over a period of time. It manifests in the forms of: cross border trafficking beyond India; cross border trafficking to India; and internal trafficking mainly in the entertainment sector, brick kilns, and *jari* (embroidery) industries. Moreover, many incidents of human trafficking have been observed in the form of labour migration. Recently trafficking has taken place for the purpose of organ extraction in India and for the purpose of marriage to Korea, China and Hong Kong. It should be noted that boys also are being exploited in domestic servitude. The rising number of trafficking of Nepalese minor girls to Gulf Countries and to Lhasa, Tibet have become recent phenomena.

Child marriage is one of the worst forms of traditional harmful practices and can also be considered as violence directed towards children. Subsequent Nepal Demographic and Health surveys (NDHS) (2001, 2006 and 2011) have indicated a steady decline in child marriage; yet it remains very significant and largely prevalent in Terai districts. According to NDHS (2001), 40% of women aged 15-19 years were married whereas this figure was lowered to 32.2 per cent in 2006 and further reduced down to 28.8 per cent in 2011. However, *Nepal is one of the top twenty countries in the world where child marriage rampantly occurs. In South Asia, Nepal is in third position after Bangladesh and India in terms of the severity of child marriage* (MoWCSW, 2016).

The most recurrent, but mostly hidden and underreported form of violence against children and adolescents is sexual abuse. Such abuse and exploitation is happening within the family, in schools and in communities. The most severe form of sexual abuse and exploitation in Nepal is commercial sexual exploitation.

*There are different forms of commercial sexual exploitation, namely sex tourism, child pornography, internet pornography, child prostitution and trafficking, but the most common form is child prostitution and child trafficking. Though not as rampant, sexual exploitation of boys was found to occur on a much larger extent than previously recognized (MoWCSW, 2015).*

A form of traditional harmful practices occurs when young women and girls are attacked and tortured for practicing so called 'witchcraft'. Another harmful traditional practice is corporal punishment which is widely prevalent in schools and in families and performed in the name of disciplining the child. This abuse also commonly exists even in alternative care arrangements. *Although very little studies have been done in this context, testimonies from students, parents, teachers as well as reported incidences in the media, suggest that corporal punishment is a common problem in many schools in the country. Online abuse, exploitation and cyber bullying are other forms of harmful practices but assuming modern form (ibid).*

It is estimated that, there are about 5000 children living and working on the streets of different cities of Nepal. A study on street-based boys in Kathmandu found that *most of the children (67%) are between 13 and 16 years of age. The majority (82%) are illiterate, having dropped out of primary school because of lack of interest, financial problems or lack of knowledge on the part of parents* (CWIN and Save the Children, 2010).

The problems created by structural gender inequality in Nepal makes women and girls exceptionally vulnerable to social and judicial discrimination. *The rights of girls are still not well secured and existing laws are lacking in basic implementation* (CIA, 2014). Gender based inequality, discrimination and violence continue to persist in many parts of the country. *Many current laws and practices are so insensitive towards girls; hence gender discrimination must be tackled at all levels of decision-making and structures* (Pradhan, et.al., 2015). Despite the fact that the country does have the National Child Policy, 2012, there is no real comprehensive national child protection policy in the country. *In its absence, the GoN has not been able to set the minimum standard of child protection in family, community, school, health posts and*

*hospitals, child care centres, sports centres, etc.* (ibid). Therefore, the vulnerable situation of children has posed a compelling challenge to the policy makers that demands a continued and systematic effort.

## 7. Future Perspective

Nepal is heading towards federalism. All three levels of elections have been held in 2017 as per the spirit of the Constitution of Nepal. The elected representatives on a local level can greatly mobilized towards the protection and promotion of the rights of children. In this changed Governance system, the future of the structures that have already been created for promotion of rights of the child and child protection remains so far unclear. However, there is a commitment from the Government that whatever the structures will be the agenda of protection and promotion of the rights of the child will be given utmost importance (NPC, 2016).

Since many provisions and obligations of the CRC are as yet to be achieved, the thrust of the previous plans is likely to be continued in the foreseeable future. Therefore, future periodic and annual plans also need to place stronger emphasis on the survival, protection, development of and participation in the rights of children. Moreover, whatever lapses observed in a bid to ensure the rights of children in the past, will be attempted to be addressed through various interventions. Most importantly, the future plan will stress the establishment and strengthening of different institutions that will be created for the protection and promotion of the rights of children. More so, the future policies and programmes must focus on the capacity development of stakeholders with greater coordination and increased investment in children.

## 8. Conclusion

After the ratification of CRC, Nepal has witnessed phenomenal positive outcomes, especially addressing those issues deemed detrimental to ensuring the protection of the rights of children. Policies and periodic plans have played a remarkable

role in this regard. However, there are many hurdles that have yet to be overcome. Various plans mentioned above, starting from eighth plan, have tried to mend those shortcomings and these efforts will be continued into future. Such efforts will be made through legal and policy reforms along with programmatic interventions. Extra efforts will also be made to ensure the rights of children within the federal structure. Child rights advocates and civil societies need to be vigilant as to whether any new structures, policies and programmatic interventions are child friendly.

Issues of child protection are not only the issues of advancing the rights of children through legal and policy intervention; but changes also must occur in the behavioural and attitudinal positions of each individual. Child rights can be ensured only if every citizen in the country considers children as dignified citizen and that innocent children not be allowed to fall victim to discrimination on the basis of sex, age, caste or religion.

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# CHILD RIGHTS IN NEPAL: A COMPARATIVE ANALYSIS OF SEVEN CONSTITUTIONS

*By Shiva Prasad Paudel\**

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Child Rights are generally known as human rights of children recognized by the Convention on the Rights of Child, 1989 (UNCRC). However, it does not mean that child rights in a national or international arena had not existed before the adoption of UNCRC. Many international declarations and resolutions had promoted rights of children even before the establishment of the United Nations Organization (UNO). After the UNO was established, the Universal Declaration of Human Rights 1948 (UDHR) explicitly recognized some rights of children.<sup>1</sup> Later in 1959, the United Nations General Assembly adopted the Declaration of the Rights of the Child.<sup>2</sup> The UN declaration of 1959 had been influenced by the structure and contents of the Geneva Declaration of the Rights of the Child, 1924.<sup>3</sup> The core human rights conventions and some other conventions, prior to 1989, in the area of women and children had also recognized some more rights of children. On the other hand, some of the children's rights were recognized

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1. See article 25. The term 'everyone' in the Declaration mostly refers to children as well.
2. See <http://www.un-documents.net/a14r1386.htm> for the full copy (as of Feb 19, 2018).
3. See <http://www.un-documents.net/gdrc1924.htm> for the full copy (as of Feb 19, 2018).

in national jurisdictions prior to the establishment of UNO. There were specific legislations in the European and North American continents recognizing rights of children.<sup>4</sup> Nonetheless UNCRC is the first international treaty which provides a comprehensive list of rights.

A comprehensive study in Nepalese legal history is yet to be written to reveal the historical perspectives on recognition of the rights of children.<sup>5</sup> This paper is limited in analyzing the recognition of rights of children under the constitutional schemes and with some references to other legislations. This paper has emphasized the constitutional recognition of children as right holders and full-fledged citizens considering their physical, mental, social, spiritual development, evolving capacities and social vulnerabilities.

## 1. The Government of Nepal Act, 1948 (2004 B.S.)

This Act is considered to be the first Constitution of Nepal. In the backdrop of the beginning of people's revolution in aftermath of India's independent from British Colony, Shree Teen Padma Shamsher initiated the drafting of the Constitution. We do not know for sure whether it was his wish or some historical compulsion to draft this Constitution, but he laid the first foundation of constitutional history in Nepal. On April 28<sup>th</sup>, 1947 (i.e., *Baisakh* 15, 2004), Padma Shamsher formed a reform committee, which prepared this Constitution.<sup>6</sup> The drafting was initiated by Padma Shamsher but he could not immediately

4 JOHN E.B. MYERS, A short history of child protection in America, *Family Law Quarterly*, Volume 42, Number 3, Fall 2008, Hein Online (available in [https://www.americanbar.org/content/dam/aba/publishing/insights\\_law\\_society/ChildProtectionHistory.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publishing/insights_law_society/ChildProtectionHistory.authcheckdam.pdf)) (as of Feb 19, 2018),

5 Even if rights are not addressed as 'child rights', rights of children to get maintenance was recognized by the *Muluki Ain*, 1910 B.S. (the National Code 1853 A.D.) Further, some of the freedom and rights of citizen recognized in the Fundamental Rights Act 2005 B.S. and Individual Freedom Act 2006 B.S. were applicable for children as well. The Code when enacted was not called '*Muluki Ain*', it was only called 'ain', later in 2009, the Code was named as '*Muluki Ain*'. See, Rebati Raman Khanal, *Nepalko Kanoonee Itihasko Ruprekha* (An outline of Nepalese Legal History), Kathmandu, 2059, p. 295.

6 Rebati Raman Khanal, *Nepalko Kanoonee Itihasko Ruprekha* (An outline of Nepalese Legal History), Kathmandu, 2059, pp. 522-523. Mr. Khanal has noted that the drafting process got the help of two Indian experts Dr. Ram Ugra Singh from Lucknow University and Shree Prakash, a member of Indian Central Legislative Committee.

enact the Act. He announced the commencement day of the Constitution effective on April 16<sup>th</sup>, 1948 (*Baisakh 1, 2050*). However, he left for India for rest of his life on February 21<sup>st</sup>, 1948 before the day of the commencement.

His successor, Shree Teen Mohan Shamsher, did not commence implementation of the Constitution but shelved it until September 22<sup>nd</sup>, 1950. He was, for sure, compelled to announce the commencement of the Constitution in view of the growing agitation of people in different parts of Nepal. Shree Teen Mohan Shamsher formed the parliament invoking some provisions of this Constitution. The parliament consisted of the representatives of twenty one wards of Kathmandu Municipality and several nominees of the Rana Government. It was not intended for a transformation of power; hence, it could not eventually function.<sup>7</sup> However, this formulation of the parliament can be considered as the partial implementation of the Act.

This Constitution had a small section of fundamental rights and duties.<sup>8</sup> It had only one section which dealt with the rights of people. Subject to public policy, public morality, the prevailing laws and the laws that will be made in future, following rights to the citizens of Nepal were guaranteed:<sup>9</sup>

- personal freedom,
- freedom of speech,
- freedom to publish,
- freedom of assembly and freedom to form organization,
- freedom to religion,
- full equality before the law,
- cheap and speedy justice all over Nepal,

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7 Pramod Shamser Rana, A description of Rana-Rule (Rana Shashanko Britanta), Pairavi Book House, pp. 296-307.

8 The Government of Nepal Act, 2004, Chapter 2, section 4 and 5. The English copy of the Constitution doesn't well correspond with Nepalese copy of the Constitution. The author has taken Nepalese copy in account. Some argue that the Constitution was written in English and was later translation into Nepalese language.

9 *Id.* Article 4.

- free and compulsory elementary (*prarambhik*) education,
- universal adult suffrage, and
- protection of private property.

Many of the fundamental rights listed above are applicable for children as well. Apart from universal adult suffrage, the other rights were relevant for children. Free and compulsory elementary education right was specially meant for children. The term elementary or basic education was not defined in the Constitution, but it was generally meant to cover up to grade five. Part six of the Constitution which dealt with miscellaneous matters reemphasized the importance of education. Section 60 read '(t)he earliest possible after the commencement of this Act and as far as possible, the government shall provide elementary education for free and compulsorily and shall manage skill and higher education that is essential for motherland. Besides, the State will eliminate illiteracy to the greatest extent possible. The aim of education shall be promoting good moral teachings (*naiteek upadesh*), personal qualification and efficiency, and the development of patriotism and international friendliness.' This provision essentially meant to guarantee primary education to all children.

## 2. The Interim Government of Nepal Act, 1951 (2007 B.S.)

The second Constitution was enacted on April 11<sup>th</sup>, 1951 (Chaitra 29, 2007) after the conclusion of the armed conflict waged by Nepalese people against the Rana Regime.<sup>10</sup> The preparation of the Constitution was between February to April, 1951.<sup>11</sup> The Constitution was democratic in nature and upheld rule of law, personal freedoms and individual liberty.<sup>12</sup> The Constitution was written to bestow responsibility to the Government stating that

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10 The armed conflict ended with the Delhi Accord which was reached between King Tribhuvan, representatives of Shree Teen Mohan Shamser and Indian Government in Delhi. Unfortunately, people's representative who waged the war was not part of the accord.

11 The drafting started after the return of King Tribhuvan from India on February 2050 (*Falgun*, 2007). Wikipedia reports return of King Tribhuvan was on Feb. 15 whereas Pramod Shamsher reports the date as 16 February (p. 314).

12 The Interim Government of Nepal Act 2007, articles 16, 17 and 18.

it 'shall strive to promote the welfare of the people by securing and protecting effectively as it may, social order in which justice, social, economic and political, shall inform all the institutions of the National life.'<sup>13</sup> The recognition of principles such as equality and non-discrimination was also stated in the Constitution.<sup>14</sup> The principles put an emphasis on equality between men and women,<sup>15</sup> which obviously had an impact on equality between girls and boys. A notice was published in the gazette of October 1<sup>st</sup>, 1951 (i.e. *Ashwin* 15, 2008) to provide equal opportunities to *Dalit* students in public education. Head teachers of schools were instructed to admit children without discrimination and to respect the capability of the students. The Constitution also promised to provide appropriate maternity services.<sup>16</sup>

The exploitation of the citizens was also prohibited in the Constitution. It was enter avocations unsuited to their age or strength...'<sup>17</sup> When this part of the Constitution is applied to children, it would naturally prevent them from being employed in harmful and hard labor. Social security would also be provided for them as well.<sup>18</sup> In addition, the Constitution also promised to provide special care; including educational and economic assistance for weaker sections of society.<sup>19</sup> A prohibition of human trafficking and punishment for trafficking in human beings, begging and other forced labor were also mentioned in this Act.<sup>20</sup>

In Nepalese history, the 1951 Constitution was the first one that dedicated a separate article acknowledging children's rights. The article reads '(n)o children below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.'<sup>21</sup> It is very important and quite a progressive provision which was not even explicitly provided

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13 Article 4.

14 Article 15.

15 Article 5(a).

16 Article 8.

17 *Id.*

18 *Id.*

19 Article 11.

20 Article 20 (1).

21 Article 21.

by the Universal Declaration of Human Rights (UDHR), 1948. There were four other references for children in the Constitution. In the article about social condition of citizens, it was stated that '...the tender age of children are not abused...'.<sup>22</sup> It further promised that '...childhood and youth are protected against exploitation and against moral and material abandonment...'<sup>23</sup> The promising Constitution is also known for the part that states '...within the limits of its economic capacity and development, make effective provision...to educate and to public assistance in case of... disablement, and in other cases of undeserved want.'<sup>24</sup> The scheme of positive discrimination for women and children were also introduced by the Constitution.<sup>25</sup> These provisions can be interpreted as to prohibit child labour.

During the time of this Constitution, the Civil Rights Act, 1955 (*Nagarik Adhikar Ain*, 2012) and The Nepal Citizenship Act, 1952 (2009 B.S.), *inter alia*, were adopted. They are briefly mentioned hereunder.

The Civil Rights Act, 1955 is still prevailing. This Act reiterates equality before the law, equal protection of the law, right to non-discrimination, and prohibition of forced labor.<sup>26</sup> Certain freedoms such as freedom of speech and publication, peaceful assembly, movement in Nepal, and choosing domicile and marriage are guaranteed within the Act. Furthermore, freedom to incorporate association and organization, earn, use and dispose property, and choose occupation and ways to carry out business are also guaranteed in the Act.<sup>27</sup> In addition, a guarantee for the right to religion of a community/sect,<sup>28</sup> right to property,<sup>29</sup> and no trespassing in residence are mentioned.<sup>30</sup> The principles - no retrospective application of criminal and penal law; protection against double jeopardy, protection against self-

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22 Article 5(e).

23 Article 5 (f).

24 Article 7.

25 Article 15 (2).

26 The Civil Liberties Act 2012, sections 3, 4, 5, 6 and 13.

27 Section 5.

28 Section 7.

29 Section 9.

30 Section 10.

incrimination, no tax without representation, non-deprivation of life and personal liberty and due process rights are also under this Act.<sup>31</sup> Initially, the Act provided the rights in absolute terms but the amendment of 1960 inserted clauses before several sections of the Act making exercise of these rights subject to prevailing laws.

Undoubtedly, all the above guarantees by the Civil Rights Act are equally applicable to children's cases as well. One specific right for children is in this Act that reiterates the constitutional provision of prohibition of employment of children below the age of 14 in any factories, mines and hazardous work.<sup>32</sup>

The Nepal Citizenship Act, 1952 (2009 B.S.) adopted both principles of conferring citizenship- *jus soli* (by the right of soil) and *jus sanguinis* (by the right of blood). It provided citizenship to those people who were born in Nepal and those whose either parents was born in Nepal.<sup>33</sup> It also provided Nepalese citizenship to a foreign woman if she was married to a Nepalese male.<sup>34</sup> In this Act, the concept of dual citizenship was not accepted. There was also a provision of canceling the Nepali citizenship when such citizen took a foreign nationality or citizenship.<sup>35</sup> This Constitution had a gender prejudiced provision on conferring citizenship to children who were living in Tibet as per the treaty and terms and conditions between the governments of Nepal and Tibet. If a boy was born to a Nepalese husband and a Tibetan wife, the boy would get Nepalese citizenship. On the other hand, if a girl was born to such couple, the girl would be a Tibetan citizen. Interestingly, Nepalese citizenship law did not have any jurisdiction over Tibet, but it referred to a treaty and provided such unequal provisions.<sup>36</sup> However, it is clear that the Act wanted to deprive citizenship to girls born out of Nepali father in Tibet. In view of the equality clause guaranteed by the 1955 Act, it should

31 Section 8, 11, 12 and 15.

32 Section 14.

33 Section 2.

34 Section 3.

35 Section 8.

36 Nepali text of the law is (in Nepali) – 'दफा १० : भोट सरकारसँग भएको सन्धि शर्त बमोजिम नेपाली लोमे मानिस भोटमा रहेको बखत भोटिनो स्वास्तीबाट पाएको छोराहरु नेपाली नागरिक र छोरीहरु भोटको नागरिक ठहर्नेछ ।' The author could not avail the copy of the treaty for a detailed analysis.

not have been incorporated. However, such provision existed as a reflection of patriarchal society.

### 3. The Constitution of Nepal, 1959 (2015 B.S.)

The Constitution of Nepal, 1959 was enacted in the reign of King Mahendra. This Constitution acknowledged royal prerogative and bestowed sovereign powers in the crown. The Constitution had dedicated one chapter for fundamental rights.<sup>37</sup> It guaranteed personal liberty, right to life and right to property.<sup>38</sup> The Constitution also had due process guarantees.<sup>39</sup> An equal protection of law was guaranteed and the discrimination on the basis of religion, caste (*barna* or *jaat*), ethnicity (*jaati*), sex and religion in the application of general laws were prohibited.<sup>40</sup> Right to profess and practice one's own religion as handed down from ancient times having due regard to the current traditions was guaranteed.<sup>41</sup> Any limitation to the privileges of parliament to make restrictive laws in the enjoyment of fundamental rights were not prescribed in the Constitution.<sup>42</sup>

The new right inserted by the Constitution was the right to constitutional remedy. Under the provision, the Supreme Court was empowered to issue prerogatives writs.<sup>43</sup> However, the Civil Liberties Act, 1955 has provided a legal remedy to aggrieved people with compensation for the violated rights, and if required, with a remedy of injunction. District Courts and Appeal Courts were entrusted with jurisdiction to hear the cases of violation of civil liberties guaranteed by the Act.<sup>44</sup>

The Constitution prohibited trafficking in human beings, slavery and forced labor.<sup>45</sup> These generic prohibitions can be interpreted as a good safeguard against exploitation of children.

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37 Chapter 3, article 3 to 9

38 Article 3 and 6.

39 Article 3 (3) to (10).

40 Article 4 (2) to (3).

41 Article 5.

42 Article 3 (1).

43 Article 9 (2).

44 Section 17.

45 Article 3(2).

The guarantees under the Civil Liberties Act, 1955 were still valid during this period.

#### 4. The Constitution of Nepal, 1962 (2019 B.S.)

The Constitution of Nepal, 1962 was enacted after King Mahendra ousted the democratically elected first government of Nepal and the first house of elected parliamentarians.

Right to equality, right to personal freedoms, right against exploitation, right to religion, right to property, right to constitutional remedy and prohibition in trafficking in human beings, slavery and forced labor continued from earlier constitution.<sup>46</sup> The new right in the Constitution was the right against exile.<sup>47</sup> The Constitution granted very wide power to the parliament (National *Panchayat*) to restrict the exercise of fundamental rights. The restriction could not only be prescribed by a statute but by any delegated legislation thereunder. Interestingly, the Constitution did not require that the overall objective and the scheme of the Act should pursue the grounds of restriction but a simple mention of any grounds of the prescribed restriction in the preamble of the legal instruments would ensure constitutionality of such legal instrument.<sup>48</sup>

A chapter of 'directive principles of *panchayat* system' was introduced in the Constitution. Although there was not any reference to children, but there were promises to promote welfare of the people by promising a society that is just, dynamic and free from exploitation.<sup>49</sup> The term 'free from exploitation' in the chapter of directive principles and 'right against exploitation' in the chapter of fundamental rights were strongly relevant for children as there was a widespread practice of employing children in all kinds of labor and the number of schools for children were very less.

Another new chapter of 'citizenship' was also introduced. The Constitution promised citizenship to every person who

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46 Article 10, 11, 13, 14, 15 and 16.

47 Article 10, 11, 13, 14, 15 and 16.

48 Article 17.

49 Part 4, article 18 and 19.

had domiciled in Nepal and had fulfilled one of the following conditions:<sup>50</sup>

- who was born in Nepal; or
- either of whose parents was born in Nepal; or
- who, as a woman, had married to a citizen of Nepal in accordance with the laws and customs of Nepal; or
- who had already obtained a certificate of citizenship in accordance with the laws of Nepal.

The Constitution of 1962 adopted both principles *-jus soli* and *jus sanguinis*- on conferring citizenship. On the one hand, a child was qualified to get citizenship if she or he was born in Nepal. On the other hand, if either of her or his child was born in Nepal, the child would also get citizenship by the blood relationship, even if the child was born outside of Nepal. The Constitution also provided for other grounds in which the citizenship could be provided to foreign nationals after renouncing his or her citizenship and fulfilling a few conditions.<sup>51</sup>

In the time of this Constitution, the parliament enacted the Citizenship Act, 1964 (2020) by replacing the Citizenship Act, 1952. It introduced the concept of 'citizenship by descent' and 'citizenship by naturalization' in the Nepalese history.<sup>52</sup> Though it was enacted to implement the new constitutional provision, it can be interpreted as more conservative than the Constitutional provisions and the previous Citizenship Act, 1952. The explanation is given in the following section.

Firstly, the concept of descent is similar to the Roman concept of *jus sanguinis* but is limited to the blood relation to father.<sup>53</sup> The acquisition of citizenship by descent was granted to a child if the father was a citizen when the child was born and if the whereabouts of the father of the child under the age of 16 was not known.<sup>54</sup>

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50 Article 7.

51 Article 8.

52 Section 3 and 6.

53 Article 7 (b).

54 Section 3 (1) and (4).

Secondly, the Act provided citizenship to the children of Nepali citizens born outside of Nepal after ensuring that they had not received any citizenship of foreign countries.<sup>55</sup> Thirdly, the Constitution was very explicit and gender neutral in providing citizenship right to children whereas the Citizenship Act was gender biased and did not provide equal opportunities to mother to pass their citizenship to their children. In other word, children were only able to get citizenship by descent if their fathers were Nepali citizens despite the fact that the Constitution clearly stated 'either of whose parents', which would include their mothers as well. Lastly, the Act prohibited children or insane people from applying for naturalized citizenship certificate.<sup>56</sup> The Constitution did not allow the possibility of dual citizenship/nationality. It was declared that if any Nepalese citizen obtained a citizenship of another country, the Nepalese citizenship of such person would, *ipso facto*, be lapsed.<sup>57</sup>

## 5. The Constitution of Kingdom of Nepal, 2047 (1990 A.D.)

The Constitution of Kingdom of Nepal was promulgated after the people's movement of 1990. The Constitution clearly mentioned that 'the source of sovereign authority of the independent and sovereign Nepal is inherent in the people'.<sup>58</sup> It was a great departure from all four previous Constitutions and set a new landmark in the Constitutional history. The Constitution incorporated several democratic values such as adult franchise, parliamentary system, constitutional monarchy, multi-party democracy, independent judiciary and rule of law. The 'basic human rights to every citizen of Nepal' including principles of equality and liberty were also guaranteed.<sup>59</sup> The term 'every citizen' includes children without any doubt.

Under the Constitution of 1990, the principles on conferring citizenship were mostly adopted from the Citizenship Act, 1964.

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55 Section 9 (2).

56 Section 6 (1).

57 Section 9 (1).

58 Preamble to the Constitution of the Kingdom of Nepal, 1990.

59 *Id.*

In applying the principle of *jus sanguinis*, the Constitution adopted a gender biased provision that was introduced by the Citizenship Act, 1964. Only a father, irrespective of the fact whether he married a foreigner or a national, could pass citizenship rights to his offspring.<sup>60</sup> Women could not independently pass citizenship rights to their children whether she was married to a foreign citizen or a national. Relinquished or missing children, whose father was not known, could be provided with the citizenship by descent.<sup>61</sup>

The Constitution has guaranteed several human rights for its citizens. The list is significantly expanded from the earlier constitutions. The right to equality, right to freedom, right against exile, right against exploitation, right to religion, right to property, right to constitutional remedies continued from the Constitution of 1962. However, the scope of rights was expanded. The new rights introduced by the Constitution were right to press and publication, right regarding criminal justice, right against preventive detention, right to information, right to preserve and promote culture, language and script, right to privacy and positive discrimination to women and children.

For children, the right against exploitation, viz., trafficking in human beings, slavery, serfdom or forced labor were continued from the earlier Constitution.<sup>62</sup> The additional protection offered for minor (not necessarily to all children) within the same article was prohibition of employment in any factory or mine, or be engaged in any other hazardous work.<sup>63</sup> The Constitution guaranteed communities to operate schools up to the primary level in their own mother tongue for imparting education to its children.<sup>64</sup> As a part of community, children were expected to comply with the community arrangements of their education and were supposed to be educated in their own community's language.

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60 Article 9 (1).

61 Article 9 (2).

62 Article 28 (1).

63 Article 20 (2)

64 Article 18.

A reference to children in the chapter of Directive Principles and Policies of the State were specifically made in the Constitution of 1990. In the Constitution, promises to make necessary arrangements to safeguard the rights and interests of children; protect them from exploitation; and the State should make gradual arrangements for free education were made.<sup>65</sup> Education, health and social security for orphans, children with disabilities and economically and socially backward groups and communities were also part of the directive principles.<sup>66</sup> The promises made by the directive principles expanded the scope of rights recognized in the fundamental rights guaranteed in chapter three.

## 6. The Interim Constitution of Nepal, 2007 (2063 B.S.)

The Interim Constitution was enacted on January 15, 2007 (*Magh 01, 2063*) after the Comprehensive Peace Accord concluded between the Government of Nepal and the Communist Party of Nepal (Maoist) on November 21<sup>st</sup>, 2006 (*Poush 05, 2063*). The Communist Party of Nepal waged armed conflicts for ten years and was partly responsible for killings and disappearance of thousands of people. The making of Constitution was possible only after reaching a multi-party agreement related to monitoring of arms and army management was concluded on December 8, 2006 (i.e., *Mangsir 22, 2063*). This Interim Constitution was amended eleven times in five years to include people's aspirations expressed through lobbying as well as popular movements in *Madhesh* and elsewhere.

In the Constitution of 1990, the liberal democratic values had been adopted. It was an expression of its full commitments towards democratic norms and values including competitive multiparty democratic rule, system, civil liberty, fundamental rights, human rights, adult franchise, periodic election, full freedom of press, independent of judiciary and rule of law.<sup>67</sup> The right to freedom and equality, the right to publication,

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65 Article 26 (8).

66 Article 26 (9) and (10).

67 The preamble to the Interim Constitution of Nepal, 2007.

broadcasting and press, the right to property, the right to religion, the community's right to education and culture, the right against preventive detention, the right to information, the right to privacy, the right against exile and the right to constitutional remedy were continued from the Constitution of 1990.<sup>68</sup>

The new fundamental rights incorporated in this Constitution were: right regarding social justice, right regarding employment and social security,<sup>69</sup> right to environment and health,<sup>70</sup> right to education,<sup>71</sup> right of children<sup>72</sup>, and right of women.<sup>73</sup> The right against exploitation was guaranteed by the most of the previous Constitutions but the new provision prohibited not only economic exploitation but also harmful traditional practices.<sup>74</sup> The right against torture was guaranteed in a separate article in the Constitution of 2007 but the same right was part of the right to criminal justice in the Constitution of 1990.<sup>75</sup>

In equality clause, this Constitution included new group of people qualifying for positive discrimination. They included *Dalit*, indigenous ethnic tribes, *Madhesi*, or peasants, and laborers.<sup>76</sup> The Constitution of 1990 had already included women, children, the aged or those who are physically or mentally incapacitated or those who belong to a group which is economically, socially or educationally backward.<sup>77</sup> Unsatisfying with the generic clause of equal protection of law and positive discrimination, the constitutional framers have also categorically put separate articles to eliminate all forms, overt and covert and direct and indirect, of discrimination on the basis of untouchability, race, sex and gender.<sup>78</sup> For example, discriminatory institutions such

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68 Article 12, 13, 15, 17, 19, 20, 23, 25, 27, 28, 31 and 32.

69 Article 18 and 21.

70 Article 16.

71 Article 17 (2).

72 Article 22.

73 Article 20.

74 Article 30.

75 Article 26 of the Constitution of 2007 and article 14 (4) of the Constitution of 1990.

76 Article 13 (3).

77 Article 11 (3).

78 Article 14 and 20.

as inequality in inheritance<sup>79</sup> and all forms of violence against women were prohibited.<sup>80</sup> Similarly, right to reproductive health as substantive measures to ensure equality was also recognized by the Constitution.<sup>81</sup> Such elaboration of non-discrimination and equality would unequivocally benefit children.

This Constitution also recognized following specific rights of children:<sup>82</sup>

- (1) the right to his/her own identity and name;
- (2) the right to get nurtured, basic health and social security;
- (3) the right against physical, mental or any other form of exploitation and also right to get compensation if exploited.
- (4) the right to get special privileges for helpless, orphan, mentally retarded, conflict victims, displaced, vulnerable and street children.
- (5) Right against exploitation in the form of employment in factories, mines or in any other such hazardous work or in army, police or in conflicts including any use thereof.

The right to get his or her own identity and name, and the right to get nurture were upgraded in the Constitution for the first time. These rights were however recognized by the Children's Act, 1992.<sup>83</sup> Children's right to basic health and social security were not specifically recognized by legal instruments prior to this Constitution.<sup>84</sup> Special privileges for the helpless, orphan, mentally retarded, conflict victims, displaced, vulnerable and street children were guaranteed as fundamental rights for the

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79 Article 20 (4).

80 Article 20 (3).

81 Article 20 (2).

82 Article 22.

83 Sections 3, 4 and 5.

84 The Constitution of the Kingdom of Nepal, 1990, Article 26 has promised health, education and social security for orphans and development of health as basic development infrastructure in the section of state policies and directive principles. (repealed by the Constitution of 2007).

first time in Nepalese history. The terms 'orphan, helpless, persons with disabilities', however had appeared in the previous constitutional texts.<sup>85</sup> Nonetheless, other categories of children, i.e. conflict victims, mentally retarded, displaced, vulnerable and street children were recognized by the Constitution for the first time.

Among the above guarantees, a scope of the right against exploitation got expanded. Firstly, the right against exploitation in earlier Constitutions was limited to employment of children in hazardous work including factories, mines and in slavery and forced labor situation. The Constitution of 2007 explicitly prevented employment or use of children in police, army or in armed conflicts. Secondly, the protection from exploitation as guaranteed by the Constitution of 2007 was broader as it was available for all children, which can potentially include children under 18. Thirdly, this Constitution introduced new understanding of exploitation by not only recognizing practices of exploitation but also by recognizing its impacts on a child's body. This Constitution explicitly prohibited children's mental, physical and other forms of exploitation. The Constitution did not spell out the word 'sexual' but it is obvious from the text of the Constitution that sexual violence was included within the expression of 'physical'. Lastly, this Constitution offered protection for children as well as other human beings from harmful traditional practices.<sup>86</sup>

The right to education was put in a separate article making it available for all citizens. In this Constitution, it was the first time that every citizen was guaranteed to the right of having free education up to secondary level.<sup>87</sup> The right to pursue basic or primary education in the mother tongue was also included in the Constitution as a collective right of a community in the same spirit of the Constitution of 1990.

In regard to the citizenship, this Constitution adopted the concept of citizenship by descent, citizenship by birth and

<sup>85</sup> *Id.* article 26 (9).

<sup>86</sup> *Id.* article 29 (2).

<sup>87</sup> *Id.* article 17 (2).

citizenship by naturalization. A child was allowed to obtain citizenship by descent if either of his or her parents were a citizen of Nepal at his/her birth.<sup>88</sup> Secondly, the gender neutrality was maintained in the case of missing or relinquished children as well. It was stated that every child who was found within the territory of Nepal and the whereabouts of whose parents were not known would be deemed to be a citizen of Nepal by descent until the father or mother of the child was traced.<sup>89</sup> Thirdly, the Constitution also reintroduced *jus soli* principle. It was stated that any person born till the end of mid-April 1990, (Chaitra, 2046) and was residing permanently in Nepal would acquire the citizenship of Nepal by birth as per the laws in force.<sup>90</sup> This provision removed requirement imposed by the Citizenship Act, 1964 of proving relationship with father to acquire citizenship for those who were born before mid-April 1990.

Before seven weeks of the enactment of the Constitution of 2007, the Citizenship Act, 2007 was enacted and the previous Act, 1964 was repealed. The preamble of the Act highlights that the purpose of the Act was to ease the process of providing citizenship certificates to Nepalese people by stating that people could not obtain citizenship in the past. The Citizenship Act, 2007 was drafted in line with the Constitution that was already in the process of final approval. It adopted all three principles that was adopted by the Constitution of 2007- citizenship by descent, citizenship by birth and citizenship by naturalization. Children who were born in Nepal and have either of his or her parents a Nepali citizen can obtain citizenship by descent. However, if his or her mother has been married to a foreigner, such a child has to produce additional evidence that s/he he or she has not obtained a citizenship from foreign country on the basis of a relationship to father.<sup>91</sup> As stated earlier, article 8 (5) of the Constitution of 2007 and section 4 of the Citizenship Act 2007 provides opportunities to people who were born in Nepal before mid-April 1990 and having permanent domicile

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88 *Id.* article 8 (2) (b).

89 *Id.* article 8 (3).

90 *Id.* article 5.

91 Section 5 (2) and (3).

in Nepal to obtain citizenship by birth. The Act makes it even easier by stating that if any evidences cannot be produced by the applicant of his birth and permanent domicile, any three Nepali citizenship certificate holders can certify his birth and permanent domicile.<sup>92</sup> Children of such persons who get citizenship on the basis of article 8 (5) or section 4 would get citizenship by descent irrespective of the fact that his parents have obtained citizenship after the enactment of the Constitution of 2007.<sup>93</sup>

There has always been a provision for a naturalized citizenship to a woman who is married to a Nepali citizen and citizenship by descent to her children.<sup>94</sup> However, the Nepalese law has never allowed any kind of citizenship to a husband of a Nepali woman only on the ground of matrimonial relation. The law has been drafted recognizing patriarchal practices of the society, where the majority of women leave their parental home and move out to their husbands' houses or to new places with him. The legal system assumed that Nepali woman and her children would get citizenship from her husband or father side. Therefore, Nepali women's opportunity to pass citizenship to their children in their own name was excluded.

For the first time in Nepalese legal history, the Constitution of 2007 provided naturalized citizenship to children of Nepalese woman who is married to a foreigner.<sup>95</sup> The three conditions provided by the Citizenship Act 2007 to acquire the citizenship by naturalization are: a child should have been born in Nepal, has permanent domicile in Nepal, and has not taken any citizenship from father's side.<sup>96</sup> Nonetheless the insertion of article 5 in the Constitution of 2007 provided opportunities to get citizenship to

92 The Nepali text of section 8 (4) reads (in Nepali): “कुनै व्यक्तिले उपदफा (१) वा (२) बमोजिमका प्रमाणाहु निवेदनसाथ पेश गर्न नसकेको अवस्थामा तोकिएको अधिकारीले स्थलगत सरजिमिन र निवेदकलाई चिन्ने सोही बडामा बसोबास गर्ने कम्तीमा तीनजना नेपाली नागरिकताको प्रमाणपत्र लिइसकेका व्यक्तिले सरजिमिनस्थलमै गरेको सनाखतको आधारमा नेपाली नागरिकताको प्रमाणपत्र दिन सक्नेछ ।”

93 Section 4(4).

94 The Citizenship Act, 1964, section 6 (1) (e); The Citizenship Act 2007, section 3(1) and 5 (1); The Constitution of 1962, article 7 (a), (b) and (c); The Constitution of 1990, article 9 (1) and (5); The Constitution of 2007, article 8 (2) (b) and 8 (6), and the Constitution of 2015, article 11(6) and 11 (2) (b).

95 Article 8 (7).

96 Section 5 (2).

children of all Nepali women married to foreigners.

## 7. The Constitution of Nepal, 2015 (2072 B.S.)

The Constitution of Nepal, 2015 has committed itself to democratic norms and values, which includes competitive multi-party democracy system, civil liberties, fundamental rights, human rights, adult franchise, periodic elections, full freedom of the press and independent, impartial and competent judiciary and rule of law.<sup>97</sup> The changes adopted by this constitution are its commitment in pursuing and maintaining diversity by recognizing the multi ethnic, multi lingual, multi religious, multi culture and distinct regional characters. The Constitution has adopted the principle of proportional representation in its spirit and this has been repeated in several articles to ensure the public or constitutional posts are fulfilled to reflect national diversity.<sup>98</sup>

The chapter of citizenship has most of the provisions from the Constitution of 2007. The provisional recognition of principle of *just soli* by the Constitution of 2007 has been removed by the Constitution of 2015. The Constitution primarily gets back to accept principle of *jus sanguine*.

Firstly, this Constitution ensures citizenship to all children by descent whose parents took citizenship by invoking article 8 (5), which offers the blanket citizenship conferment provision, of the Constitution of 2007.<sup>99</sup> First, this provision allows children whose parents obtained naturalized citizenship after the abovementioned constitutional provision to be citizens by descent. Secondly, the Constitution guarantees citizenship by descent to children who were born and residing in Nepal and whose mother is Nepali citizen even if the father is not traced.<sup>100</sup> This provision, at least, benefits three categories of children- who were born out of commercial sex workers; whose mothers don't want to disclose identity of his/her father; and whose father's whereabouts is not known. Thirdly, the Constitution continues with the provisions of naturalized citizenship to children who are

97 The preamble to the Constitution of Nepal, 2015.

98 *Id.* part 3, 4 and chapters dealing with constitutional commissions have major provisions on ensuring inclusion and diversity.

99 Article 11 (3).

100 Article 11 (5).

born out of a Nepali mother married to a foreigner. Nonetheless, it is stated that a child would get a citizenship certificate by descent if his or her father will be able to obtain naturalized citizenship when the child makes an application to acquire citizenship certificate after obtaining majority.<sup>101</sup> Fourthly, it provides an opportunity to citizens to explicitly mention gender identity (i.e., male, female or other) and name of his father or mother.<sup>102</sup> This provision facilitates to take citizenship certificate through a mother's name, and put name or surname of her family sides in the citizenship certificate. Due to this change, the citizenship certificate that used to be printed with only the father's and his father's name are required to be changed to accommodate mother's and her mother's name. Similarly, the citizenship certificate, which used to be printed only with two sex -male and female- identity should be rectified to have a provision to accommodate another category.

In the chapter of fundamental rights, all the civil, political, economic, social and cultural rights recognized under the Interim Constitution are continued. However, there are some modification in the wordings and content of the rights.<sup>103</sup> Additional human rights recognized under the Constitution are: right to victim of a crime, right to food, right of *Dalit*, right of senior citizen, right of consumer and provisions on implementation scheme of fundamental rights and duties of citizens.<sup>104</sup>

In relation to children, the following rights for children are guaranteed in article 39. The following sections will present comparative perspectives.

### **7.1 Article 39 (1): '(e)very child shall have the right to name and birth registration along with his or her identity.'**

The Constitution of 2007 had guaranteed right to identity and name but not the birth registration. The right to birth

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101 Article 11 (7).

102 Article 12.

103 Article 12 of the Constitution of 2007 has been split into article 16 and 17 in the Constitution of 2015 with mostly similar provisions. The changes introduced are in the context of newly introduced federal structure. For example, the prohibitory clause of article 17 has an additional ground of prohibition that is 'cordial relationship between provinces'. Likewise, article 16 of the Constitution of 2007 has been split into two and has been significantly expanded.

104 Article 21, 36, 40, 41, 44, 47 and 48.

registration has been recognized by the Constitution of 2015 for the first time.<sup>105</sup> Nevertheless, the requirement to register a child's birth was already prescribed by the statutes. The Birth, Death and Other Personal Incident Act, 1976 requires the head or any adult member of the family in his/her absence to register a child born in the household within the prescribed time.<sup>106</sup> The Children's Act, 1992 requires parents or care providers to give a name to child according to his/her religion, culture and custom.<sup>107</sup>

The components of 'identity' of a child have not yet been elaborated by Nepalese law. Article 8 of the UNCRC has been interpreted at least to preserve the identity of name, nationality, family relation and at most to preserve his/her genetic records of parentage.<sup>108</sup> In Nepalese context, a birth registration form is required to be filled out with the information regarding parents. For those children-whose parents are not known, this constitutional provision requires legislative and administrative measures to search for children's parental identification. Article 12 of the Constitution is related with this right of a child. The provision guarantees the child's right to put his or her sexual identity in the citizenship certificate and to put either side of the parental lineage as per his/her own wish. Section 10 of the Children's Act, 1992, however, provides a discriminatory provision. It is allowed to put mother's or mother's father's name if father is not found. The provision also allows to put name of the organization of care provider if such organization declarers that whereabouts of the parents is not known.<sup>109</sup>

## **7.2 Article 39 (2): '(e)every child shall have the right to education, health, maintenance, proper care, sports, entertainment and overall personality development from the families and the State.'**

The Constitution of 2007 had specifically guaranteed the right to nurture or upbringing, free basic health service and

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105 Article 39 (1).

106 Sections 3 and 4.

107 Section 3.

108 A Study on the Compatibility between National Laws and the UN Convention on the Rights of the Child and Other Human Rights Treaties, the Ministry of Women, Children and Social Welfare, Government of Nepal (2016), p. 34.

109 Section 10 is problematic to the extent the authority accepts the declaration made by the child care home that child has no parents. There has to be an independent authority to verify such assertion.

free education up to secondary level.<sup>110</sup> The right to proper care, maintenance, education, health treatment, sports and entertainment was also in the prevailing law.<sup>111</sup>

However, the coverage of such rights has been significantly expanded by this Constitution. Firstly, the right to health guaranteed by this Constitution is not limited to primary or basic health services and other health related rights guaranteed for children, but they have the right to all kinds of health facilities that are required for them. Secondly, the right to education of children guaranteed by article 39 (2) is in line with article 31 which guarantees right to free and compulsory education up to primary level and the right to secondary education free but not compulsory.<sup>112</sup> The prevailing law defines primary education from grade 1 to 8 and secondary education as grade 9 to 12 and equivalent.<sup>113</sup> Hence, children have the right to free and compulsory education up to grade 8 and free education up to grade 12. There is no explicit expression that clarifies Technical Education and Vocational Training (TEVT) but the term 'education' also includes TEVT as a part of the constitutional guarantee of secondary education. Having been aware of the educational statistic that reveals that more than 30 percent of children do not complete formal primary education,<sup>114</sup> the constitution makers must have kept TEVT into account while declaring the primary education compulsory. This intention is explicit by the elaboration of rights in the Local Government Operation Act, 2017.<sup>115</sup> Additionally, the guarantees under sub article (2) should be understood to enable children with disabilities to enjoy the right to educational materials guaranteed under article 31(4).

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<sup>110</sup> Article 22 (2), 27 (2) and 16 (2).

<sup>111</sup> The Children's Act, 1992, section 4.

<sup>112</sup> Article 31 (1) guarantees right to access to primary education to all citizens. In the context of the right to compulsory and free primary education guaranteed by Article 31 (2), the guarantee of access can be considered as redundant.

<sup>113</sup> The Education Act, 1972, section 3 (1) (b1) and 2 (d) (amendment of 2016).

<sup>114</sup> The Flash Report 2072, p. 11 (available at <http://www.doe.gov.np/assets/uploads/files/57a06544288bc5545251eaadc2d431a9.pdf>) (as of February 20, 2017)

<sup>115</sup> See section 11 (Ja) (3).

Thirdly, the constitutional guarantee has entrusted the responsibility to fulfill these rights of children jointly to family and the state. The current statutory provisions state that 'parents and family have to arrange education, health treatment, sports, and entertainment according to economic status' needs an amendment after this constitutional provision.<sup>116</sup> Even if parents do not have adequate economic means, the children's right to education, etc. should be fulfilled by the state's assistance. The 2016 amendment to section 16b of the Education Act, 1972 has accommodated the constitutional scheme by asserting that the government of Nepal will arrange necessary resources for providing primary and secondary education.

Fourthly, the right to overall personality development is a completely new right recognized by the Constitution of 2015. The overall personality development is a buzz word which needs to be interpreted in line with article 6 of UNCRC which includes physical, mental, spiritual, moral, social and psychological development that prepares a child for the independent life in a free society.<sup>117</sup>

### **7.3 Article 39 (3): 'Every child shall have the right to early childhood development and child participation.'**

For the first time, the Constitution has given recognition to early childhood development and child participation. The right to early childhood development has been addressed by the amendment made in 2016 into Education Act, 1972.<sup>118</sup> Earlier to this amendment, the education system is accommodated by establishing 'infant development center' which has now been replaced by 'early childhood education center'.<sup>119</sup> The Constitution has used the term 'childhood development' which may not only mean 'educational development', but the overall development of children between his or her birth and until the child becomes 5 years old and enters to grade one. The definition of primary education has been changed by the 2016 amendment to

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116 The Children's Act, 1992, section 4 (1).

117 *Supra* note 108 at 25.

118 Section 11 (p).

119 *Id.* and sec 11 (p1).

the Education Act, 1972 to include early childhood development within the primary education.<sup>120</sup>

The right to child participation mentioned in article 39 has to be read together with right to freedom in article 17, right to information in article 27 and right to communication in article 19. The relevance of article 17 for child participation is about freedom of opinion and expression, freedom of peaceful assembly, and right to establish children's organizations. The relevance of article 27 for children is to seek and get information that concerns children's rights and development. The relevance of article 19 for children is to exercise a right to transmit information that is important for children through electronic and print media. Even if children are barred to form political parties and unions at schools, to take full time jobs and occupations, they should not be barred to enjoy liberties that may contribute in benefiting in their overall personality development.

It is very hard to strike a balance between children's rights to participation and their right to protection from prospective adverse effects due to exposure to unclassified information, overburden of organizational or institutional management. One should also keep in mind that children are protected from forced, hazardous and excessive labor and their right to childhood is not to carry adult like institutions in adult like way. What has been seen in Nepal that Children's Organizations or Clubs have quickly adopted the priorities of the organization who have supported them for their participation right. It is also a challenge for adult organizations to prove that they have only supported children's organization, but has not mobilized them for their own program objectives to which they have to be liable or accountable to donor or the government. The responsibility of 'social change drive' has put children in further risks and has deviated from their academic achievements. The academic achievements are not less difficult to achieve and it opens up more opportunities for children.

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120 Section 2 (b1).

The upcoming legislations should not prohibit children's opportunities to exercise their participation rights but to additionally install safeguards to protect them from harmful effects of exercising these rights. The Supreme Court's decision to issue an order of mandamus in the name of Ministry of Home and others to register *Jagriti Bal Club* ( a child club), a writ petitioner, appropriately with suitable and reasonable terms and conditions or without any conditions is an example of supporting children's rights to the participation recognized by the Constitution of Nepal, 1990 and UNCRC.<sup>121</sup> The government of Nepal has not drafted any by-laws to regulate children's organizations so far but there has been efforts by the Central Child Welfare Board to affiliate the organizations into local bodies.<sup>122</sup>

Other aspects of participation are to give due recognition to the voice of children in accordance with the age and maturity of the child and to provide opportunity to be heard in any judicial and administrative proceedings affecting children. The Child Policy, 2012, the Child Friendly Local Governance (CFLG) National Strategy, 2011, the CFLG Procedure, 2011, the National Framework of Child Friendly School for Quality Education, 2010, and the Standards for Operation and Management of Residential Child Care Homes, 2012 are the main federal policies and legal instruments that have recognized children's right to participation and have provided some mechanisms to give due weight to children's views.

In administrative and judicial hearing, the Juvenile Justice Procedure Regulation 2007 has laid out some standards, but adequate standards have yet to be made for administrative and judicial administration, educational institutions, alternative care, and family settings to implement the constitutional spirit.<sup>123</sup>

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121 See *Tillotam Paudel v. the Ministry of Home and others*, writ no. 174/ 2057, decision of 2058/04/25.

122 The Child Participation Guideline 2008, Central Child Welfare Board, Hariharbhawan, Lalitpur.

123 *Supra* note 108, pp. 51-57.

#### **7.4 Article 39 (4): 'No child shall be employed to work in any factory, mine or engaged in similar other hazardous work.'**

This constitutional guarantee prohibiting child labour was in several previous Constitutions including the Constitution of 2007. The Constitution of 2007 had prohibited the use of children in army, police or in conflicts together with prohibition of children in any factory, mine or engaged in similar other hazardous works.<sup>124</sup> The Constitution of 2015 has clubbed the provision related to use of children in security forces together with the prohibition of traditional harmful practices in clause 6 of article 39.

It is quite clear from the provision above that children are not allowed to work in any kind of hazardous work including factory and mines. The guarantees of appropriate care and overall development of child in article 39 (2), right against exploitation in article 29 also impliedly require children not to be employed in hazardous work or occupation as employing children in hazardous work or occupation cannot be justified as appropriate care in any basis.

However, it is also clear that article 39 (4) did not prohibit children from entering workforce, it only prohibited the employment of children in hazardous forms of work. The Constitution has some guidance to decide on what age a child can enter workforce. The Constitution has compulsory education provision which requires children to be part of education until they are fourteen years old.<sup>125</sup> The Constitution further guarantees access to free secondary education to 15 to 18 years children, but they are not compelled to be part of it. Hence, it seems that constitutional scheme does not prohibit children between 15 to 18 to be employed in workforce. The prevailing law, i.e. the Child Labor (Prohibition and Regulation) Act, 1999 permits children from 15 and above to enter work

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124 See article 22 (5).

125 See the Compulsory Primary Education Implementation Guideline, 2014 that requires six years old child to be admitted into grade 1.

force.<sup>126</sup> The Act prohibits employment of children below 16 years in hazardous occupation and work and has listed eleven categories of prohibition, but allows children between 17 to 18 to be employed in hazardous work. This seems to be contradictory to the Constitutional scheme of child rights.

### **7.5 Article 39 (5): 'No child shall be subjected to child marriage, illegal transfer, abduction or taken in hostage.'**

These prohibitions are not new in Nepalese legal system though they were upgraded to the constitutional guarantees for the first time. Child marriage has been prohibited by the National Code 1963.<sup>127</sup> The marriageable age of male or female children were amended several times. The latest amendment was made by the Some Nepal Act Amendment and Repeal Act 2015 (2072). The marriageable age prescribed for both boys and girls is completion of 20 years irrespective of the consent of their parents.<sup>128</sup> This means that marriage can take place only when one is running in 21 years. Therefore, the law does not only prohibit child marriage, but a marriage between young adults of 19 and 20 years.

The illegal or illicit transfer has not been defined by Nepalese legal text. Article 11 of UNCRC deals with illicit transfer, which means taking children wrongfully from one country to the other by one of the parents or by any other caretakers.<sup>129</sup> Illegal transfer (*gair kannonee osarpasar*) of children has also been prohibited by the National Code, 1963. The chapter of human trafficking prohibits an act of persuading a child under the age of 16 to take away from parents or guardian.<sup>130</sup> It also criminalizes an act to separation or an attempt to separate a minor below the age of sixteen years from his or her guardianship without the consent of his or her legal guardian.<sup>131</sup>

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126 Section 3 (1) and the Child Labor (Prohibition and Regulation) Regulation 2006 prescribes terms and conditions to be followed while employing children between 15 to 16.

127 Chapter 17, section 2.

128 The amendment in Section 2.

129 *Supra* note 108, pp. 48-49.

130 Chapter on Human Trafficking, section 1.

131 Chapter on Human Trafficking, section 2 and chapter on abduction, section 1.

Abduction and Hostage Taking has been prohibited by the twelfth amendment to the National Code, 1963 by inserting chapter 8A on. This chapter defines an act of abduction as compelling another person to go to any place by using force or threat or by overpowering (*jorjulum*), or by showing weapons, or by using deceitful means, or by using intoxicating, or stimulant or psychotropic substance, or by seizing or controlling any means of transportation. It also prohibits taking a minor (under the age of 16) to any place without the consent of his or her parents or guardian even if for his or her benefit.<sup>132</sup>

**7.6 Article 39 (6): 'No child shall be recruited or used in army, police or any armed group, or be subjected to abuse, exclusion or physical, mental, sexual or other form of exploitation or improper (or indecent) use by any means or in any manner in the name of cultural or religious practices.'**

This clause has primarily two parts. One is about the use and the recruitment of children in armed forces and groups and the other one is a generic prohibition of abuse, neglect (*uprekchha*), exploitation and improper use of children. They are dealt separately here below:

- No child shall be recruited or used in army, police or any armed group

The Constitution of 2007 had prohibited the recruitment and the use of children in army, police and in conflict.<sup>133</sup> The latest prohibition has been stated in slightly a different way without using the term 'in conflict'. The latest prohibition does not allow recruiting or using children in army, police or armed groups. The meaning of 'armed groups' is the force which is not created by the state but by non-state or rebellion group(s).<sup>134</sup> The Constitution intends to prohibit recruitment and use of children by them. The prohibition of 'use of children in conflict' by the Constitution of 2007 offered broader protection compared to the

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<sup>132</sup> Chapter 8A, section 1.

<sup>133</sup> Article 22 (5).

<sup>134</sup> See the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict, 2000.

Constitution of 2015 because it does not only deal with armed conflicts but all kinds of conflict including armed.

- No child be subjected to abuse, neglect or physical, mental, sexual or other form of exploitation or improper use by any means or in any manner in the name of cultural or religious practices

This prohibition in the Constitution is much broader than the earlier Constitutions. The Constitution of 2007 prohibited physical, mental or any other forms of exploitation. It did not specifically mention sexual forms of exploitation though it could have been covered by 'any other forms'. The other three forms - abuse, neglect and improper use of prohibition are new to the Constitution.

In addition to this clause, article 38 (3) which deals with the right of women (including a girl child) also prohibits physical, mental, sexual, psychological or other form of violence or exploitation of women in the name of religious, social, cultural practices, customs or any other grounds.

The most important expression adopted by articles 39 (6) and 38 (3) is prohibition of discriminatory or exploitative practices which are being carried out in the name of culture or religion. Many abusive, improper and exploitative practices exist in a society in the name of religion and culture. They are harmful to a group of children or all of them. Seemingly justifiable treatment to children with disability, gender-based prejudices to girl children including menstruation-based discrimination is some of the prevalent cultural and religious practices in Nepalese society. This Constitution is determined to end it all together.

The term used by this clause- abuse, exploitation, improper use and neglect are qualitative terms and are not mutually exclusive to each other. These broader connotations of prohibition can shield children from any kind of potential harms. The National Code, 1963, the Children's Act, 1992, the Child Labor (Prohibition and Regularization) Act, 1999, The

Human Trafficking Act, 2007, the Domestic Violence Act, 2009, the Narcotic Drugs Control Act, 1976, the Education Act, 1972, the Caste Based Discrimination and Untouchability (Prohibition) Act, 2011 and other Acts related to elimination of discrimination are some of the examples which have specifically prohibited and criminalized some of these abuse, exploitation, improper use, and negligence.

#### **7.7 Article 39 (7): 'No child shall be subjected to physical, mental or any other form of torture in home, school or other place and situation whatsoever.'**

This is entirely a new provision adopted by the Constitution of 2015. At first sight, the above provision seems to deal with torture. However, if article 39 (7) is read together with three other articles of the Constitution, it provides a better understanding of the intent of constitution makers. The first one is article 16 which guarantees every person a life with dignity. The other article is 22, which guarantees right against torture. Article 22 (1) explicitly states that '(n)o person who is arrested or detained shall be subjected to physical or mental torture or to cruel, inhuman or degrading treatment.' The other one is clause (6) of article 39 which prohibits any form of abuse and improper treatment to children in the name of culture or religion. Hence, by these two provisions children in Nepal are protected from undignified treatment, torture in administration of justice and any kind of abuse in the name of cultural or religious practices.

Article 39 (7) was inserted considering educational and child rearing practices, where physical, mental or any other form of punishment is widespread. It has categorically ruled out '*yaatana*' or 'torture' in 'home, schools and any other places'. In regular Nepalese language, the term '*yaatana*' means sufferings out of assault or illness or punishment.<sup>135</sup> The constitutional drafters use the word '*yaatana*' to mean 'cruel or inhumane or degrading treatment or punishment'. They did not use the word for connoting torture as defined by the Convention against Torture, 1981 and the Torture Compensation Act, 1996 (CAT).<sup>136</sup>

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<sup>135</sup> *Nepal Brihat Sabdakosh*, Nepal Academy, 2050, p. 1108.

<sup>136</sup> Shiva Prasad Paudel, *Legal Regime in Nepal to End Corporal, or Other Cruel, or Inhumane*

The prohibition of torture in the sense of CAT is specifically mentioned in article 22. Nonetheless it would have been better if the constitutional drafters have used the word 'cruel or inhumane or degrading treatment or punishment' instead of '*yaatana*'.<sup>137</sup>

The provisions mentioned above have completely prohibited physical, mental or any other form of cruel, inhumane or degrading treatment or punishment to children at school, at home and at any other place such as transportation, child care institutions or in a situation where children might have made some mistakes. The last word 'whatsoever' in clause (7) has provided protection for children from any kind of adverse situation 'whatsoever big or small it is'.

The generic nature of prohibition of cruelty, severe punishment and physical assault has been guaranteed by the National Code, 1963 and by the Children's Act, 1992.<sup>138</sup> The defense of such assault or cruelty to children when carried out by a protector, a guardian and an educator was available in the Children's Act and in the chapter of Assault in the National Code, 1963. However, such defense was removed by the Supreme Court in the *Devendra Ale et. al. v. Government of Nepal, Office of Prime Minister et. al.*<sup>139</sup> The Supreme Court removed a defense clause that allowed teachers, parents and others to carry out 'minor beating' to children. The law makers passed a law to comply with the Supreme Court's decision in *Devendra Ale* case one week after the promulgation of the Constitution.<sup>140</sup> The mental torture or cruelty at home setting is also prohibited by the Domestic Violence Act, 2009. The 2016 amendment to

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*or Degrading Treatment or Punishment*, *Sambahak*, 149, 149-169 (May 2017).

137 The Constitution drafters were bit concerned of misinterpretation of the word 'inhumane or degrading treatment', however they were committed to rule out any kind of cruelty towards children. While choosing the right word to rule of the use of corporal punishment, they end up choosing the word 'torture'. The cruel and torturous treatment was already prohibited by the Children's Act, 1992. (I got opportunity to witness interactions between members of constituent assembly members as well as them with civil society leaders).

138 *Supra* note 16, section 7 and 15. There is a chapter on 'assault' in the National Code, 1963.

139 *Devendra Ale et. al. v. Government of Nepal, Office of Prime Minister et. al.*, writ no 57/2061, decision of January 6, 2005 (*Poush* 22, 2061).

140 The amendment was made on 2072 Aswin 14 B.S.

the Education Act, 1972 prohibits making any school children to physical or mental torture or abuse, and to expel children from school.<sup>141</sup> This amendment is in line with the constitutional provision and now there is not any legal justification or defense for corporal punishment in school.

### **7.8 Article 39 (8): 'Every child shall have the right to child friendly justice.'**

The intention of this clause seems to ensure that child friendliness (*baal anukul or bal maitree*) in judicial process. The word 'child friendly' has been used in the Juvenile Justice Procedure Regulation, 2007. Rule 5 has specifically requires the inquiry to be conducted in child friendly manner. Furthermore, the procedures have been prescribed in a manner that ensure child friendliness. The term 'child friendly' has not been defined but has been applied to create a comfortable environment to children as far as possible (within the scope of mandatory judicial process.)

The Child Policy, 2012 has promised to adopt measures that would indeed bring result into child friendliness. For example, an incarceration of children from adult inmates, a separate observation room for children, informing and making parents or guardians participate in judicial process, diversion and outside of court settlement process, adopting principles of restorative justice, in-camera trial are the policies adopted by the Child Policy, 2012.<sup>142</sup> These concepts and ideas, however, are not introduced by the child policy for the first time. In-camera trial, incarceration from adult inmates, a separate child observation and reform home, suspension of trial and punishment, for children in conflict with law or children victim of violence are already in the Children's Act and in-camera trial is also in the District Court Regulation, 1996 (2052).<sup>143</sup>

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141 Section 16m.

142 The Child Policy 2012, pp. 12-13.

143 Sections 7, 15, 42, 49, 50, 52 of the Children's Act, 1992 and Rule 46b of the District Court Regulation 1995.

Outside of the justice sector, a standard of child friendly services is also available in the CFLG Strategy, 2011, the CFLG Procedure, 2011 and the National Framework for Child Friendly School for Quality Education Framework 2010.

**7.9 Article 39 (9): 'The child who is helpless, orphan, with disabilities, conflict victim, displaced or vulnerable shall have the right to special protection and facilities from the State.'**

The guarantees of services for vulnerable and underprivileged children were available in the Constitution of 2007. However, there have been some changes in the wordings. The Constitution of 2015 offers special protection and facilities to six categories of children- helpless, orphan, conflict victims, displaced, vulnerable and children with disability. Instead of using child with disabilities, the Constitution of 2007 had used the term 'mentally retarded'. The term 'children with disabilities' is better than 'mentally retarded' that only refers to one of disabilities. The Constitution of 2007 had included 'street children' as a separate category to provide special protection and privileges, but the Constitution of 2015 has not specifically mentioned 'street children'. Nevertheless, there has been a general category of helpless and vulnerable children which includes categories like street children. Ideally the term 'vulnerable' also includes helpless but the Nepalese legal system has a tradition of addressing helpless (*Asahaya*) people from the early time of the National Code.<sup>144</sup>

The Constitution of 2007 offered special privileges for a secured future from the state whereas the Constitution of 2015 offers special protection and facilities from the state. It is clear from the provision of the Constitution that the vulnerable or underprivileged children should get facilities or benefits from the state. There is no further guidance in this clause, but if it is read with article 39 (2), such assistance should not deprive children from his or her right to get proper care from their parents, if the parents are alive and able to provide care. The state should be careful that services to children should strengthen their

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144 See, the National Code 1963, the chapter on Pauper.

relationship with parents and family and should in no ways promote separation of children from their families.

The term 'secured future' in the Constitution of 2007 was meant to indicate that services provided by the state should not be incidental and one-off but should be long-term so that children can develop themselves into self-reliant adults. Such guarantee is not available under the Constitution of 2015 but it can be assumed that any services provided by the state would be long term and bring about sustainable impact. The other term 'special privileges' used in the Constitution of 2007 has been replaced by the term 'special protection and facilities' in the Constitution of 2015. The later expression is wider than the previous one. The use of the word 'protection' does not limit itself to facilities and services but also requires to have a safe and enabling environment that safeguards children from potential harm and risks.

**7.10 Article 39 (10): 'Any Act contrary to the clauses (4), (5), (6) and (7) shall be punishable by law, and a child who is the victim of such Act shall have the right to obtain compensation from the perpetrator, in accordance with law.'**

This clause requires the enactment of the legislation to penalize a convict who commits the prohibited acts of the four clauses of article 39 and to provide compensation for child victims or survivors. The constitutional intent is to penalize the following acts:

- **Employment of children in any factory, mine or other hazardous work**

As stated in the analysis of paragraph 7.4 above, child labour has been prohibited and penalized by the prevailing law.<sup>145</sup> However, children between the age of 17 and 18 are not protected from this guarantee. Furthermore, there is no legal provision that requires providing compensation to children when employed in hazardous form of work. An amendment to prohibit employment of all aged children in hazardous work

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<sup>145</sup> The Child Labor (Prohibition and Regulation) Act 2000, section 3 (2) and 19 (2).

and to provide compensation to child victims of employment in hazardous work is required.

- **Commit or cause to commit child marriage**

Child marriage has already been prohibited and penalized by the National Code, 1963. The child marriage can be declared voidable if no children have been born out of such marriage.<sup>146</sup> Either party can move to the district court to declare the marriage voidable within three months upon having attained the age of 20 years.<sup>147</sup> There is no provision of proper compensation for child victim of marriage. Amendment in section 4 of the chapter states if the marriage were carried out forcefully, the perpetrators could be put into jail for two years or required to pay one lakh as fine, which subsequently goes to the victim. The law promised to hand over the fines collected from the perpetrator or people who caused to commit the offence of marriage to the victims. The amount of fine is from five hundred to ten thousand rupees only.

- **Illicit transfer of children or abduction or kidnapping of children and taking children in hostage**

Some form of illicit transfer has been criminalized by the prevailing law, but Nepalese law has not yet legislated an illicit transfer of a child from one of the parents. A new law has to be enacted to regulate the illicit transfer of a child from one parent.<sup>148</sup>

Abduction or kidnapping of children and taking children in hostage have been prohibited and penalized by the prevailing law. The additional imprisonment of two years has been prescribed for the abduction of children and women.<sup>149</sup>

For the victim of the illicit transfer, abduction or kidnapping and hostage taking, the National Code 1963 ensures reasonable compensation on the basis of the physical and mental

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146 Chapter on Marriage, sec. 2.

147 *Id.* section 2 (9) and section 11.

148 Chapter on Abduction and Hostage Taking was inserted into the National Code, 1963 in 2008. For the recommendation in regard to illicit transfer, see *Supra* note 108, p. 50.

149 Chapter on Abduction and Hostage Taking, section 9.

impact the child has suffered. The Act prescribes minimum amount of 500 rupees for each day the child has been abducted, taken in hostages or illicitly transferred. The National Code has clearly mentioned that such damage has to be recovered from the perpetrator of the crime and given to the victims.<sup>150</sup> When illicit transfer amounts to an act of human transportation, this is separately prohibited by the Human Trafficking Act, 2007 and there is a provision of awarding compensation in the Act. Such compensation should not be less than fifty percent of the fine that an offender is required to pay. Such fine should be accrued from the convict.<sup>151</sup>

- **Recruiting or using children in army, police or any armed group**

The Acts related to security forces do not have provision of compulsory recruitment. Neither they have provisions to recruit children below 18. However, there is also not an explicit provision which prohibits and penalizes if such recruitment takes place. Furthermore, this clause also requires prohibition of recruitment or use of children by security forces and armed groups. When amendments to current legal provisions are proposed or new legislation is drafted, a provision of adequate compensation should also be made.<sup>152</sup>

- **Abuse, neglect or physical, mental, sexual or other form of exploitation or improper use of children or in the name of cultural or religious practices**

The prevailing law does not have such a comprehensive prohibition at one place. All the above acts are however prohibited by several legislations. Sexual abuse and exploitation are prohibited and penalized by the chapters of intention of sex, rape, incest, trafficking of The National Code, 1963, by the Human Trafficking Act, 2007 and by the Education Act, 1972.

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150 Section 12.

151 Section 17.

152 *Supra* note 108, pp. 195-197.

Physical and mental abuse and exploitations have been prohibited and penalized by the chapters of assault of the National Code, 1963, by the Domestic Violence Act 2009 and by the Children's Act, 1992. An Act of neglect has been prohibited and penalized by the Children's Act, 1992,<sup>153</sup> the Child Labor (Prohibition and Regulation) Act 2000,<sup>154</sup> and the chapter on partition of The National Code, 1963.<sup>155</sup>

An improper use of children such as for begging, drug peddling, child pornography has been prohibited by the Children's Act, 1992, the Human Trafficking Act, 2007 and by the chapter of Decency of The National Code, 1963.<sup>156</sup> However, there is a lack of comprehensive definition and prohibition of improper or indecent use of a child.

- **Torturing children physically, mentally by or any other form of torture in home, school or other place and situation whatsoever**

The torture by the state officials during administration of justice has been prohibited by the Torture Compensation Act, 1996 and the victims are compensated. However, the perpetrator has not been made accountable to the wrongdoings.<sup>157</sup> The physical and mental torture or abuse of students has been prohibited by the 2016 amendment in the Education Act, 1972. However, there is no provision for making perpetrator accountable for his/her wrongdoings by this amendment.<sup>158</sup>

The prohibition of cruel or torturous treatment to children has been specifically introduced by the Children's Act, 1992. The generic prohibition of assault or physical violence to persons is

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153 Sections 13 and 14 are most important however non fulfillment of Sections 4, 5, 6 also amounts to neglect. The other argument is that if a child is deprived of exercising/ enjoying the services standards prescribed by the legislation, s/he can be considered as neglected.

154 Sections 10 and 11.

155 Section 10 requires that '...the parents have to provide food and clothing (to their children) according to their social status and financial capacity and shall also provide appropriate education as well as medical treatment as per necessity. If it is not so provided, they shall be given their share in the property...'.

156 Section 6.

157 *Supra* note 108, p. 189.

158 The Education Act, 1972, Section 16m.

done by the chapter of Assault of the National Code, 1963. The mental violence has been prohibited by the Domestic Violence Act, 1996. A comprehensive protection for children from cruel, torturous, inhumane, degrading treatment or punishment is required by the law. When children have such protection, they always be protected whether they are at home, in school or in any other places and situations.

- **Compensation from perpetrator**

The majority of current legal provisions which award compensation to victims has adopted a policy to provide compensation after obtaining it from the offender.<sup>159</sup> When the offender fails to provide compensation, the victim is left without any pecuniary help. The Constitution of 2015 has not changed this policy through 21 (2). Though the Constitution provides enough guidance in this regard, it is better to have a specific legislation for an interim relief or compensation while the case is pending and also to have a legal provision which provides compensation to child victims if such award could not be recovered from the perpetrators.

Besides article 39, which guarantees many specific rights to children, there are other provisions in the Constitution which are applicable for children's cases and very important as well. They are briefly mentioned here:

- **Equal rights to inheritance**

The Constitution of 2015 has introduced two provisions that provides right to equality to daughters in inheriting their parental property. Article 18 guarantees the equal rights to all offspring in their ancestral property without discrimination on the ground of gender.<sup>160</sup> This provision, however, was not new to the constitutional history. It had already been introduced in the Constitution of 2007.<sup>161</sup> The slight difference is that in

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<sup>159</sup> The Human Trafficking Act 2007, chapters of Rape, Abduction, Court Management, Assault, Punishment, Human Trafficking, and Rape of the National Code 1963.

<sup>160</sup> Article 18 (5).

<sup>161</sup> Article 20 (4).

the Constitution of 2007, it was recognized under the rights of women whereas in the Constitution of 2015, it has been recognized under the right to equality. The other provision of equality is introduced under women's rights by acknowledging that women should also have equal rights in family lineage.<sup>162</sup> One of the grounds on which women are deprived of equality in accessing their parental property as well as other family and cultural events is because they cannot continue family lineage as female. The Constitution has challenged this religious or cultural ground and has ensured women's equality in the religious and cultural realm as well. This provision also ensures equality to girls from the very beginning of their socialization is very crucial to keep their self-esteem rising.

Though the Constitution has brought this change, section 1 of the chapter of partition of the National Code has not yet been amended. The eleventh amendment to the National Code in 2007 ensured an equal share to daughters in ancestral property but made it subject to their marriage. On their marriage, girls have to forego their rights in parental property whereas boys never have to forego their rights in parental property.

- **Positive discrimination for children**

Article 18 of the Constitution of 2015 prohibits discrimination on grounds of origin, religion, race, caste, ethnicity, sex, physical condition, condition of health, marital status, pregnancy, economic condition, language, region, ideology or on similar other grounds in the application of general laws. However, the restrictive clause to this article permits positive discrimination for the socially, culturally, geographically and economically deprived communities including children.<sup>163</sup> The positive discrimination should not mean to deprive citizens, including children, from enjoying general services available for all citizens but rather providing additional opportunities for protection,

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<sup>162</sup> Article 38 (1).

<sup>163</sup> Article 18 (3).

empowerment and development of the communities. A clause to allow positive discrimination to children is not new to this Constitution, it existed since the Constitution of 1990.

- **Right to health**

The generic guarantee of rights to health to citizens are in article 35, which include: the right to get free basic health services from the State; the right to get information about one's own medical treatment; the right to get equal access to health services and the right of access to clean drinking water. For non-citizens, the Constitution ensures non-deprivation from emergency services.

For children there are additional guarantees of health-related rights. Article 39 (2) guarantees right to health to children jointly from family and state. This guarantee is in addition to the guarantees provided by article 35. Children's rights are not limited to primary health care but may extend to other services and which should be arranged jointly by parents and the state. For girl children, an additional set of reproductive rights are also guaranteed by article 38 (2) of the Constitution. A woman above the age of 20 can fully enjoy the right related to safer motherhood and reproductive health, but children and young people below 20 can only enjoy these rights for their healthy well-being.

The Right to get free primary health care services and right to reproductive health and other reproductive matter was guaranteed by the Constitution of 2007. In the article of children's rights in the Constituion of 2015, a reiteration was made for children to get basic health services.

- **right to be benefitted from social security**

The Constitution of 2007 had provided a specific right to social security for children.<sup>164</sup> The Constitution of 2015 did not specifically guarantee the right to social security to children but provides it generally for two categories of people. The first category is the working population who could participate in contribution based social security scheme.<sup>165</sup> The second

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<sup>164</sup> Article 22 (1).

<sup>165</sup> Article 34 (2).

category is for the people who cannot contribute to get benefit from social security schemes. The children falls in the second category of social security schemes together with impoverished, incapacitated, helpless citizens, helpless single women, citizens with disabilities, citizens who cannot take care of themselves and citizens belonging to the endangered ethnicity as would be prescribed by the statute.

The Constitution seems to provide social security to all children, but the upcoming law should prescribe it for children whose family cannot provide basic services to them due to their parents' economic, mental, or physical conditions. The purpose of the right to social security to children is to provide them with basic services which could guarantee their overall personality development as guaranteed by article 39 (2).

Besides the above provisions in the section of fundamental rights, some of the promises to children have also been made in the article related to state policies. In the section of policies relating to labor and employment, the Constitution has promised to abolish child labor considering it as exploitation.<sup>166</sup> The section of fundamental rights also guarantees right against exploitation<sup>167</sup> but has not specially spelled out that child labor is a form of exploitation. It seems that the Constitution, at the moment, only prohibits worst and hazardous forms of labor but it intends to eliminate all kinds of child labor. The promise of this Constitution is important in the backdrop that the prevailing law prohibits child labor below the age of 15 and allows children between 17 and 18 to work in hazardous sector as well.<sup>168</sup> The Constitution also makes a promise to take best interests of child as primary consideration in deciding the state policies.<sup>169</sup> This is a very powerful expression accommodated in the section of state policies. This is one of the four fundamental principles of UNCRC. It requires the state to examine state policies from the perspective of impact on children. If children's best interest has been adversely impacted by state policies and programs, this

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166 The Constitution of Nepal, 2015, article 51 (i) (3).

167 *Id.*, article 29 (2).

168 The Child Labour Prohibition and Regulation Act, 1999, sec. 3 (1) and (2).

169 *Supra* note 166, article 51 (j) (3).

principle requires a review of such policy and programs and reformulation to ensure children's best interest.

## Conclusion

The review of the seven constitutions suggests that the constitution makers, from the very beginning, were aware of the rights of children. There were a few, but rights were even recognized by the Constitution in 1948. It is obvious that transition was too long in the political history of Nepal. In the first fourteen years of the constitutional history (between 1948 to 1962), there were four Constitutions. It seems that the struggle for power was too frequent and the whole energy of the leadership went to establish only the political values. In this process of transition, the political leaders concentrated on a political share of power and did not put importance in the rights of people including children which was very crucial for the overall development of society. Even if some rights were put in the constitutions, they were not enforced with sincerity. The rights that were recognized in the beginning of 1950 are still equally important and does not seem that the government has made serious efforts to realize them.

The Constitution of 1948, being the first Constitution of Nepal, put importance on educating children by making primary education free and compulsory and making secondary or higher education available for those who are willing. The Constitution also provided values of education as international peace, friendliness, morality and patriotism. The recognition of free and compulsory education up to grade five was a huge step in 1948. Unfortunately, the spirit of 'compulsoriness' of primary education intended by the Constitution was not carried out by the successive constitutions and parliamentary Acts. The insertion of children's rights in the section of fundamental right was made after 56 years (after the Constitution of 1951). The right to education was put in a separate article making it available for all citizens. For the first time, the Constitution of 2015 guaranteed every citizen the right to have free education up to secondary level. It was only in 2007 that the basic education was made

compulsory by the Constitution of 2007 and the Constitution of 2015 has also continued this provision. The scope of primary education, however, has changed over time. In 1948, it meant to be up to grade 5 but now the primary education is up to grade 8. As of 2018, Nepal is still struggling to ensure free education (primary and secondary) to children. The federal parliament has not yet been able to enact an Act that would ensure free and compulsory education. With the new constitutional schemes of division of power, local government is the provider or manager of basic and secondary education. So far, the central or federal government is managing the education. We need to see how this transfer or hand over of power takes place and to what extent the local government would carry out their constitutional duties in relation to catering education.

As early as in 1951, the second Constitution prohibited trafficking in human beings, begging, forced labor and employment of children below the age of fourteen. Except in the Constitution of 1959, these rights against exploitation of children are still continuing in the Constitutions. It is very hard to state without any scientific research whether such prohibited forms of exploitation increased or decreased since 1951, but the prestige of Nepalese society has been continually ostracized by national and international media due to prevalence of above mentioned exploitation. Fifteen years of age is still a benchmark for legally sending children to non-harmful work. The Constitution of 2007 recognized the use of children in armed groups and forces as a new form of hazardous work and prohibited such use. The Constitution of 2015 widened the protection of children from exploitation by including harmful traditional practices, which doesn't only provide protection against begging and child marriage but potentially against any forms of exploitation even if they are religiously or culturally acceptable. The other new dimension of protection offered to children by the Constitution of 2015 is the removal of the possibility of corporal punishment at home, schools or any other settings. A doubt is still prevalent due to the use of the word 'torture' instead of 'cruel, inhumane and degrading treatment or punishment' in article 39 (7), but

we can hope that the upcoming legislation soon would clarify on such doubts. Even if enactment of the legislation is delayed, there is a possibility of removing doubts by the courts in line with its previous decision in *Devendra Ale* case.

Another interesting feature of the Constitution of 1951 is its commitment to preservation of childhood. No constitution since then has made explicit reference to childhood in the Constitution. The Constitution of 2015 has promised several rights to children which would eventually keep childhood of all children intact. The fundamentals of childhood are to be identified with: grow up and cared by the biological family to the extent possible and by other families in exceptional circumstances. Another essential aspect of childhood is to be outside of poverty, get access to basic amenities including, nutrition, health, education and sports and happily, without discrimination, participate in socialization. Article 39 of the Constitution of 2015 and the state policy of pursuing 'best interest of children' have adequately put foundation to promote childhood of each and every child of Nepal.

Citizenship has been a sensitive political issue in Nepal. The first Constitution to deal with the matter of citizenship is the Constitution of 1962, but the discrimination to providing citizenship to girl children born out of Nepali father and Tibetan mother (living in Tibet) was part of the legal system since the time of the Constitution of 1951. Considering Nepali society being patriarchal and Tibetan being matriarchal, perhaps the denial of citizenship to a girl child did not invite social un-acceptance but it is still a discrimination. The Constitution of 1962 included a chapter of citizenship in the Constitution for the first time. This tradition has been continuing till date.

The Constitution of 1962 adopted both principles *-jus soli* and *jus sanguinis*- on conferring citizenship. On the one hand, a child was qualified to get citizenship if he or she was born in Nepal, irrespective of the parents being persons of foreign origin, as in the United States as of 2018. On the other hand, the child is also eligible to get citizenship by the blood relationship,

even if s/he was born outside of Nepal. The Constitution of 1962 provides equal rights to children to obtain citizenship on either of their parent's name. However, the Citizenship Act, 1964, which was adopted under the same constitution, provided exclusive rights to father to confer citizenship to their children. The Constitution of 1990 only accepted principle of *jus sanguinis* but the Constitution of 2007 accepted the principles of *jus soli* for one time. The Constitution of 2015 went back to the principle of *jus sanguinis* and ruled out *jus soli* as an exclusive ground for obtaining citizenship. The principle of *jus soli* is applicable since 1962 for a small section of children whose parents' whereabouts are not known. The Constitution does not prevent children of a Nepali parent from getting citizenship on either of their parent's name but the type of citizenship may differ according to the citizenship of their parents.<sup>170</sup> The Constitution of 1990 removed the drafting error made by the Citizenship Act, 1964 from barring a person with mental disability (insane person) and children from getting citizenship certificate. Children may not get 'citizenship certificate' but get an identity card or passport as a minor from the District Administration Office.

The Constitution of 1990 restored the democratic form of government with multi-party system. It significantly expanded the scope of fundamental rights for its citizens. For the first time, this Constitution provided parents and communities to set up and operate schools to provide primary level education (up to grade 5) in their own mother tongue. This provision has been continuing since then though may not have been practiced by the communities to the fullest extent. The Constitution of 1990, though did not dedicate any rights for children, kept several state policies and directive principles to provide free education, health for everyone and social security for orphans, children with disabilities and economically and socially backward groups and communities. These directive principles were upgraded into fundamental rights in the Constitution of 2007 and 2015.

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<sup>170</sup> See Sabin Pradhan, Report on Citizenship Law, Global Citizenship Observatory, GLOBALCIT, (2017). Mr. Pradhan has elaborated the provisions of the Constitution of Nepal, 2015, which treat women and men differently in obtaining citizenship.

The Constitution of 2007 has significantly expanded the section of generic fundamental rights. The rights regarding social justice, right to social security, right to environment and health, and right to education shall enable children to obtain more opportunities. Among the rights continued from before, this Constitution gives new meaning to the protection from exploitation by expanding the coverage to include protection from all forms of violence. The Constitution also recognized *Dalit*, indigenous ethnic tribes, *Madhesi*, peasants, and laborers as underprivileged and prescribe for positive measures to bring them on equal footing. The Constitution also guaranteed additional human rights to women, children, *Dalit* as a group.

The Constitution of 2015 is the most notable Constitution for providing extensive fundamental rights to children. Ten specific sub articles were dedicated for children guaranteeing more than twenty distinct rights. The Constitution has incorporated all four principles of UNCRC. The principles of non-discrimination, survival and development, participation are in the chapter of fundamental rights whereas the principle of best interest of children is in the chapter of Directive Principles, Policies and Obligation of the State. The time frame for the implementation of the fundamental rights in the Constitution has been given three years.<sup>171</sup> It seems that three years should be taken as the time period to initiate the implementation of the rights rather than taking it as full realization. From the perspective of child rights, at least following legislative or administrative actions should be taken to fully implement child rights:

- define what constitute identity of a child and accordingly adopt the record keeping of children's identity in the time of birth in health facilities or elsewhere.
- elaborate rights under article 39 (2) including basic and secondary education and health services. The primary responsibilities of elaborating and implementing the rights of children is within the competence of the Local Level Assemblies. However, the Constitution also

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<sup>171</sup> Article 47.

desires the province and federal government to provide adequate assistance to local levels in realizing their responsibility.<sup>172</sup>

- adopt a specific statute or delegated legislation in the area of child participation. The guideline issued by the Central Child Welfare Board has to be elaborated to provide children as well as adults to guide them on Do's, Don'ts and steps and process for ensuring child participation. The issue of registration, affiliation, accountability and compliance on management of funds of children's organization should be dealt by the upcoming legislation. Likewise, the federal parliament is required to amend the existing Social Organization Act, 1977 and Social Welfare Council Act, 1992 to accommodate the changes as per the Constitution. The management of social organization has not been explicitly mentioned in any of the lists of competencies, though the different tiers of governments and parliaments are competent to deal with the programmatic standards of children's organizations.
- amend the Child Labor (Prohibition and Regulation) Act, 1999 to prohibit children between 17 to 18 to be employed in hazardous work. The constitutional prescription of non-employment of children in hazardous work requires this amendment.
- adopt a law to govern transfer of children by their either parent without the consent of the other and also to prescribe procedure before children cross the border with a person other than their own parents or legal guardian.
- prescribe the penalty for all the criminalized activities under article 39. Specific legal provisions are required to criminalize and penalize recruitment or used of children in army, police or any armed group; all forms of violence against children including abuse, neglect, physical, mental, sexual or other form of exploitation or improper use by any means; harmful traditional,

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<sup>172</sup> See annex 9, item 2 and 10; annex 6, item 9; and annex 5, item 16, 32 and 35.

cultural or religious practices. It is not that some forms of such violence have not been prohibited but specific criminalization and increased penalty shall provide greater protection to children.

- prohibit corporal punishment in school, home, child care institutions, public places and any other settings. The legislation should use the phrase 'inhumane or degrading treatment or punishment' in addition to the term 'torture' and 'cruelty'.
- review current legislative and judicial standards and procedure from the point of view of child friendliness. Those standards and procedure which prove to be harmful to children's psychology or unfriendly to them should be amended.
- enact a Social Security Act incorporating current social security programs and other prescribed measures. With the enactment of the Constitution of 2015, the matter of social security is a common issue of competence of all three governments.<sup>173</sup> Now all three level of governments need to coordinate together to provide special protection and facilities to vulnerable children.

Before the end of this paper, it is worth to note that none of the Constitutions so far has defined 'child'. The provisions related to right to education, right to vote and nature of rights guaranteed to children in article 39 of the Constitution of 2015 have indicated that the constitution drafters had an understanding that children are people who have not completed 18 years. However, it is pertinent that definition of 'child' consisting of a person who has not completed 18 years is a must.

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173 See annex 9, item 10; annex 8, item 16; and annex 5, item 32

# CLIMATE CHANGE EDUCATION AND PERCEPTION OF SCHOOL CHILDREN IN NEPAL

*\*By Dinesh Raj Bhuju, Bal Krishna Ranjit, Saroj Adhikari and  
Tapa Raj Pant*

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## SUMMARY

Nepal is far from the exception yet is even more vulnerable to the impact of climate change. School education teaches the causes and effects of these phenomenon and also prepares the aware citizen. A study was conducted to review and analyse the contents of school curricula in Nepal to evaluate the amount of topics presented relating to climate change and related subject concerning environment and sustainable development. The environmental topics covered start from basic or primary education. In Grade I, II and III, the environmental topics are included in two subjects, SHPE (Science, Health & Physical Education), and SSCA (Social Studies & Creative Arts). The relative weight of climate related topics in SH & PE at these Grades represent at least 25.0 per cent of total class periods. Grade IV and V offer subjects entitled Science & Environment, and describes topics relating to climate and disaster covering 31.3 per cent of the total teaching hours. In Grade VI and VII, climate change topics are included in the subject of Science and Education; these make up 21.0 per cent of the total teaching hours; in Grade VIII, the hours are 29.0 per

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cent. The relative weight of climate change related topics is 17.3 per cent of the total 150 teaching periods of compulsory Science in Grade IX while it represents 11.3 per cent in Grade X. The topics on environment are also found in other subjects such as social studies. In focus group discussions, it was noted that the students on all levels found the subject interesting. However, local examples were lacking to correlate to their daily lives. School education as a centre of change can play a more important role both in promoting adaptation as well as mitigation measures to raise awareness of this crucial issue.

## INTRODUCTION

School education is the one experience most commonly shared by people around the world. It lays some fundamental foundations of knowledge which help shape the students' worldview and help them become successful in life. Most people accept the premise that education also contributes to breaking the cycle of poverty and builds resilience among vulnerable populations (UNICEF 2012). Enhancing the knowledge base of school children is the central goal of education; however, the quality and scope of education is shared among various stakeholders in the society, viz. teachers, curriculum experts, parents, opinion makers, and decision makers in management, policy formulation and planning. The UN High Level Threat Panel has identified environmental degradation as the third greatest threat the world is facing currently (UN 2004). Environmental change, in particular global warming or human induced climate change, is progressing at an unprecedented rate and has an increasing impact on the lives and perspectives of all people including school children. The adverse impacts of climate change have been manifested in an increase in disasters in various forms. As the severity of such impacts are seen in the coming decades, it is today's school children who will have to face these complex challenges. It is therefore high time that the issues of climate change (CC), disaster risk reduction (DRR) and sustainable development (SD) be integrated into the school education and training of our children.

It is evident that no country will remain unaffected from the impending impacts of climate change making it clear that mitigation and adaptation are necessary to address one of the greatest challenges faced by the world today. UNESCO (2010) highlights education as an essential element to the global response to climate change. This response through education operates within the framework of the UN Decade of Education for Sustainable Development (DESD). An element of DESD is Climate Change Education for Sustainable Development (CCESD) programme, whose aim is to make climate change education a more central and visible part of the international response to climate change. CCESD helps people to understand the impact of global warming today and also increases "climate literacy" among young people. It accomplishes this aim by strengthening the capacity of its Member States to provide quality climate change education and encouraging innovative teaching approaches to integrate climate change education in schools. CCESD also raising awareness about climate change by enhancing non-formal education programmes through media, networking and partnerships.

Providing an adequate amount of climate literacy to the next generation is now one most important tasks facing our education system. Universities, Government or non-Government organizations around the world have been monitoring public attitudes towards climate change. Several international studies have investigated the state of pupil and student understanding of global climate change related issues. However, studies of this kind rarely focus on the teachers who actually deliver the knowledge to the next generations within the framework of formal education (Milér et al 2012), let alone the target group of students. Currently, many countries including Nepal aim to implement the topic of climate change into their national curricula and to improve educational efficiency towards the goal of a climate literate society.

Prior research has indicated that students in the USA (Kerr & Walz 2007) and Australia (Boon 2010) hold misconceptions and misunderstandings about climate change as do teachers

in Australia (Groves & Pugh 1999). These misconceptions and misunderstandings were probably due to, among the others, the complexity of the science involved and the controversy that until recently surrounded these issues. Moreover, teachers also need to be aware of the level of knowledge about climate change within each particular community in order to better address misconceptions and uncertainties about climate change within their classrooms. Families can both influence and impact the level of student engagement (Boon 2014).

This paper presents a brief review of school curriculum and an analysis of the contents of materials on climate change education including disaster risk reduction and sustainable development. A survey involving school children was conducted with the objective of assessing their understanding of climate change and related topics incorporated into the school curriculum and class activities.

## METHODOLOGY

The study is based on a desktop review of background documents and field surveys. The background documents include Nepal's school curricula, published and unpublished relevant reports produced by national agencies such as Ministry of Education (Nepal), Ministry of Population and Environment (Nepal) and international agencies such as UNESCO, UNICEF as sources of secondary information. Some journal articles based on original research and/or review were also collected. The field survey was based on Focused Group Discussions (FGDs) among school students from grade VII and above in selected three districts representing the three major physiography of Nepal. The districts were: i) Dhanusha lowland *Tarai-Madhesh*, ii) Kathmandu (mid-hills *Pahad*), and iii) Sindhupalchowk (mountain district *Himali Jilla*) (Fig. 1). Gender balance was maintained in the survey to the maximum wherever possible.



Fig. 1. Map of Nepal showing survey sites

The lead questions were developed to facilitate the FGDs, which were then conducted at education premises by the author(s). The discussion also contained a table of seasonal calendars to know the perception of the participants of any change or no change covering 5-10 years ago and now (the current year) throughout the exercise. The 12 month calendar contained two elements of climate change: i) temperature (hot summer days, cold winter days, monsoon rainfall, winter rainfall) and ii) proxy elements (plantation of major cereals, water scarcity, phenology, insect population, hazards). The survey schedule and composition of the groups is presented in Table 1.

Table 1. Survey schedule and centres of survey

Date (2014)	District and survey site	Number of students
23-24 Sep	Dhanusha: Education Training Centre, Janakpurdham	11
13-14 Oct	Sindhupalchowk: Shree Krishna Ratna Ganga Higher Secondary School, Chautara	13
16 Oct	Kathmandu: Nepal Adarsha Secondary School, Ganabahal	12
	<b>Total</b>	<b>36</b>

## RESULTS AND DISCUSSION

### School Education Goals and Structure

The national goals of education in Nepal have envisioned the production of suitable human resources for national development. According to National Curriculum Framework for School Education in Nepal 2007, the national objectives of education are to help foster inherent talents and the possibility of personality development of each individual, preparing citizens who possess good conduct and morals. These objectives have been reiterated to help conserve and utilize the natural environment and the national resources and heritage (NPC 2010). The aim of basic education (Grade I-VIII, age group 6-13 years) is to develop the innate ability of each child through child centred education. The long-term aim is to produce citizens who are loyal to the nation and also aware of their responsibility towards the social and natural environment. Development of basic knowledge of science, mathematics, the environment, health, information technology and life skill are also mentioned as specific objectives of basic education. The aim of secondary level education (Grade IX-XII, age group 14-18 years) is to produce competent and healthy citizens who can contribute to economic development and are familiar with national traditions, cultural and social heritage, and democratic values.

Education in Nepal has been structured as school education and higher education (Table 2). Pre-primary includes ECD/PPCs. School education comprises Primary (Grades I-V), Lower Secondary (Grades VI-VIII), Secondary (Grades IX-X) and Higher Secondary (Grades XI-XII) Education. Recently, the proposed School Sector Reform Programme (SSRP) has proposed that the school structure of Basic Education as Grade I to VIII and Secondary Education as Grade IX to XII. Currently, the ECD/PPCs last from one to two years in duration serving three to four year old children. Primary schools provide five years of education (Grades I to V) and the prescribed age for entry into Grade-I is five years completers. Lower Secondary education consists of three years comprising Grade-VI to VIII; Secondary and Higher Secondary comprises two years for each with Grades IX to X and XI to XII respectively.

**Table 2.** Structure of School Education in Nepal

Level	Grade	Duration	Student's Age	Certifying exams	Core Subjects
Primary	I to V	5 Yrs	5(+) - 10(+)	District level primary school examination at the end of Grade V	Nepali, English, Math, Social Studies, Science
Middle/ Lower Secondary	VI to VIII	3 Yrs.	10(+) - 13(+)	District level lower secondary exam at the end of Grade VII	Nepali, English, Math, Social Studies, Science, Health and Environment
High School/ Secondary	IX & X	2Yrs.	13(+) - 15(+)	School Leaving Certificate (SLC) exam at the end of Grade X	Nepali, English, Math, Social Studies, Science, Health and Environment
Higher Secondary 10+2	XI & XII	2Yrs.	15(+) - 17(+)	HSEB exams at the end of both XI and XII	English, Nepali and three core subjects of the chosen stream

*Source: Ministry of Education 2010*

A recent report published by Ministry of Education (2014) shows that there are 35,223 total schools out of which 34,743 are primary schools, 14,867 lower-secondary schools, 8,726 secondary schools, and 3,596 higher secondary schools. According to the newly introduced system, 34,923 falls under basic schools, and 9021 under secondary schools. The newly introduced Grade XI to XII secondary education structure is yet to be integrated fully. The National Census 2010 (BS 2067) has recorded the literacy rate of 6+ year age group population of Nepal as 65.9 percent (female 57.4 and male 75.1). Of the total, 39.0 per cent have passed primary level (Grade V), 20.3 per cent have passed lower secondary level, and 10.2 percent are SLC (School Leaving Certificate) graduates. Those above SLC are 10.2 per cent while those who have received informal education are 4.2 per cent. The enrolment in primary schools has

reached 4.40 million. New enrolment at primary level is 95.6 per cent. However, it has decreased by 5.88 per cent as compared to the enrolment in 2011. This decrease could be the result of a decline in the children's population numbers in recent years. The enrolment in lower secondary level has reached 1.83 million. The total enrolment in basic education stands at 6.23 million, which is less by some 3.19 per cent compared to 2011. The growth rates among girls are higher than that of boys in primary as well lower secondary schools.

## **Climate Change Education and Sustainable Development**

Education facilitates the formation and transformation of people's attitude and behaviour. In order to bring about the necessary changes in understanding the relationship of social systems, economic systems and natural systems, the education sector should be involved. The interaction between climate change and education is highlighted in Chapter 36 of Agenda 21, the action plan of United Nations with regard to sustainable development that evolved during Earth Summit 1992. The fundamental principles of the Chapter are provided by the declaration and recommendations of the Tbilisi Intergovernmental Conference on Environmental Education held in 1977 organized by UNESCO and UNEP. The Chapter specifically highlights reorienting education towards sustainable development, increasing public awareness and promoting training towards integrating environmental and developmental concepts.

The global community has made several commitments after the United Nations Conference on Environment and Development (UNCED) held in 1992, one such being the United Nations Framework Convention on Climate Change (UNFCCC). Article 4 of UNFCCC has reiterated that all Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall promote and cooperate in education, training and public awareness related to climate change. These involved Parties should also encourage the widest participation in this process, including that of non-Government organizations

(UNICEF 2012). Similarly, Article 6 of the Framework mentions that the Parties shall promote and facilitate the development and implementation of educational and public awareness programmes on climate change and its effects.

The 16th Conference of the Parties the UNFCCC (COP-16), held in Cancun (Mexico) in 2010, underlined the importance of Article 6, which highlights activities concerning education, training, public awareness, public participation and public access to information on climate change. The Conference called on participants to enhance the involvement of groups with key roles in climate change communication and education including teachers, youth, children, community leaders and journalists. The Conference also fostered participation of women, indigenous peoples, civil society groups and other relevant stakeholders. Furthermore, the conference encouraged support for formal climate change education in schools and institutions, on all levels and in both non-formal and informal educational settings ([http://unfccc.int/meetings/cancun\\_nov\\_2010/meetings/6266.php](http://unfccc.int/meetings/cancun_nov_2010/meetings/6266.php)).

Many of these global commitments have also been translated into the Millennium Development Goals (MDGs) officially established by the UN Millennium Summit in 2000. In subsequent years, these developmental agendas were centred on the MDGs encapsulating eight goals including education and environmental sustainability. In 2015, the United Nations General Assembly adopted 17 Sustainable Development Goals (SDGs). Goal 4 is to ensure inclusive and equitable quality education and promote life-long learning opportunities. Similarly, Goal 13 asks members to take urgent action to combat climate change and its effects. In fact, all the goals are actually directed towards promoting sustainable development and environmental protection.

## **Environment Education in School Curricula**

The status of environmental education in Nepal was first reviewed by the National Conservation Strategy Implementation Project in 1990. The review indicated the need for the incorporation of environmental education in the school educational system. On the basis of this study, the Environmental Education for Primary School Programme was initiated with a view to integrating

environmental concerns within the main subject areas of the primary school curriculum. The Government of Nepal owned this initiative by constituting a National Environmental Education Steering Committee under the chairmanship of the member responsible for the environment sector of the National Planning Commission, which provided guidance for designing the programme as well as to develop an implementation strategy (Pande and Karki 1998). The environmental component was introduced into Nepali language, social studies and health education by means of an infusion approach. Resource materials were also supported by other materials such as supplementary readers, games, charts and posters.

In 1992, the National Commission on Education recommended the inclusion of population and environmental education as a compulsory subject at the lower secondary level (Grades VI-VIII) in order to build upon the foundation of environmental and population studies already included in the primary curriculum. On the basis of the Commission's recommendation the Ministry of Education decided to include population and environmental education as a compulsory subject at the lower secondary level. The Curriculum Development Centre of Ministry of Education and IUCN- the World Conservation Union- collaborated in developing the curriculum, text books, and other relevant educational materials on population and environmental education for lower secondary level students (Pande et al. 2001). Since 2009, courses on environmental issues have been offered and integrated into at the secondary level (Grades IX and X) Health, Population and Environment classes. In addition, Environmental Science is offered as an optional paper.

At present, there are six subjects prescribed for basic level of Grade I-III. The subjects are: 1) Nepali, 2) English, 3) Mathematics, 4) Social Study and Creative Arts, 5) Science, Health and Physical Education, and 6) Local Subject/Mother Tongue (Table 7). The primary schools are required to have 816 annual course hours in teaching and learning. Within the basic levels of Grade IV and V, there are eight subjects prescribed: 1) Nepali, 2) English 3) Mathematics, 4) Social Study, 5) Creative Arts, 6) Science & Environment, 7) Health & Physical Education, and 8) Local Subject/Mother Tongue (Table 7). Grade IV and IV are required

to have 936 annual teaching and learning hours. Contained within the basic grade VI, VII and VIII levels there are nine subjects offered: 1) Nepali, 2) English, 3) Mathematics, 4) Social Study & Population Education, 5) Science & Environment, 6) Health & Physical Education, 7) Moral Education, 8) Occupation, Trade, Vocation, and 9) Local Content/Mother Tongue/Sanskrit (Table 8). Annually these grades have a total 1050 hours of teaching and learning classes. Within the secondary levels of Grade IX and X, eight subjects are prescribed including two optional papers: 1) Nepali, 2) Mathematics, 3) English 4) Science, 5) Social Study, 6) Health, Population & Environment Education 7) Optional-I, and 8) Optional-II (Table 8). The secondary classes are required to fulfil 1057 annual hours of teaching and learning. The schools are opened for 220 days per year with classes held for a minimum 192 days.

The main objective of basic education (Grades I-VIII) is to fully develop the innate ability of each child through a child centered education. Nepalese basic education aims at producing citizens who are loyal to the nation and democracy and aware of their responsibility towards both the social and natural environments. The first phase gives children the opportunity to be familiar with their own surroundings. In the second phase (Grades IV-V), Environment is prescribed separately along with Science, and also some of environmental components are integrated in Social Studies. Environment is included in the third phase (Grades VI-VIII) too.

**Table 3.** Weekly weightage of curricula and full marks (as mentioned in parenthesis) in school education (Grade I-V) in Nepal

Grade	Annual Teaching Hrs	Nepali	English	Math	LS/ MT	SSCA	Social Study	Creative Arts	SH&PE	S&E	H&PE
I	816	8 (100)	5 (100)	6 (100)	4 (100)	6 (100)					5 (100)
II	816	5 (100)	5 (100)	6 (100)	4 (100)	6 (100)					5 (100)
III	816	6 (100)	5 (100)	6 (100)	4 (100)	6 (100)					5 (100)
IV	936	8 (100)	5 (100)	6 (100)	4 (100)	5 (75)	3 (25)		4 (50)	4 (50)	
V	936	8 (100)	5 (100)	6 (100)	4 (100)	5 (75)	3 (25)		4 (50)	4 (50)	

\* Total teaching hours per year with a minimum 192 class days; Abb. LSMT: Local Subject/ Mother Tongue; SSCA: Social Study and Creative Arts; SHPE: Science, Health and Physical Education; S&E: Science and Environment; H&PE: Health and Physical Education.

**Table 4.** Weekly weightage of curricula and full marks (as mentioned in parenthesis) in school education (Grade VI-X) in Nepal

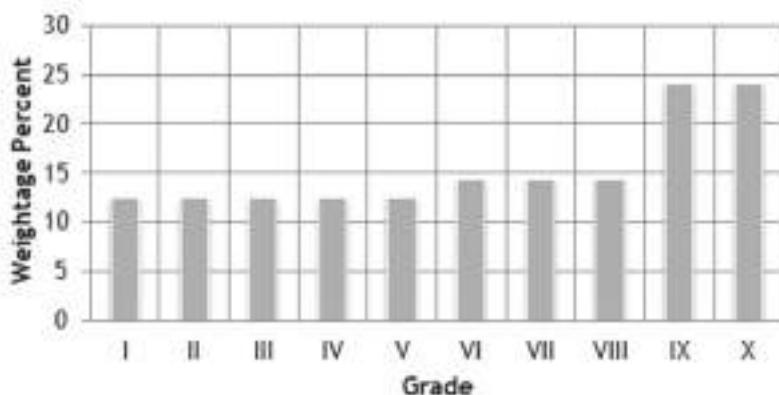
Grade	Annual Teaching Hrs	Ne- pali	Eng	Math	LS/ MT	Social Study EE	H&PE	SS& PE	OTV	Science	Moral Edu.	HP& EE	Opt I	Opt II
VI	1050	5 (100)	5 (100)	5 (100)	5 (100)	5 (100)	3 (50)	5 (100)	5 (100)	5 (100)	2			
VII	1050	5 (100)	5 (100)	5 (100)	5 (100)	5 (100)	3 (50)	5 (100)	5 (100)	5 (100)	2	(50)		
VIII	1050	5 (100)	5 (100)	5 (100)	5 (100)	5 (100)	3 (50)	5 (100)	5 (100)	5 (100)	2	(50)		
IX	1057	5 (100)	5 (100)	5 (100)	5 (100)	5 (100)			5 (100)	5 (100)	(50)		4 (100)	5 (100)
X	1057	5 (100)	5 (100)	5 (100)	5 (100)	5 (100)			5 (100)	5 (100)	(100)	4 (100)	5 (100)	5 (100)

Abb. LSMT: Local Subject/ Mother Tongue; S&EE: Science and Environment Education; H&PE: Health and Physical Education; SS&PE: Social Study and Population Education; OTV: Occupation and Trade Vocation; S&E: Science and Environment; HP&PE: Health, Population and Physical Education

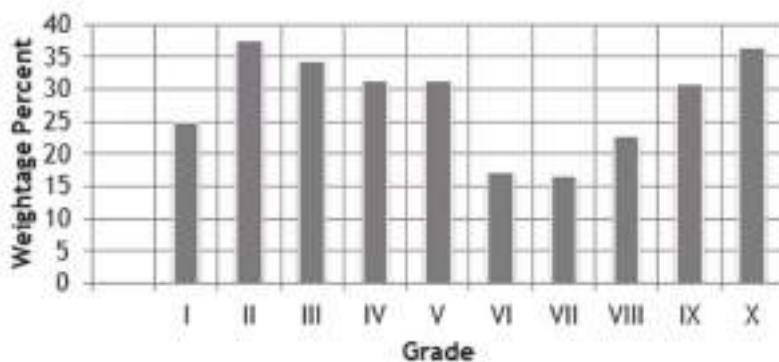
**Table 5.** Teaching periods (*Ghanti*) covering topics on climate/climate change, disaster and sustainable development (SD) in school curricula of Social Study (Grades I-X), SHPE (Science, Health and Physical Education in Grades I-III), S&E (Science and Environment in Grades IV-V), SEE (Science & Environment Education in Grades VI-VIII) and SC (Science Compulsory in Grades IX-X) in Nepal.

Grade	Social Study			SHPE/SE/SEE/HPEE			Science					
	Total Period	Our Earth	Environment	Our Community	Total Period (Ghanti)	Environment	Earth & Space	Earth Care & SD	Total Period (Ghanti)	Physics	Chemistry	Biology
I	96	12 (12.5)			64		9 (14.1)		7 (10.9)			
II	96	12 (12.5)			64		9 (14.1)		15 (23.4)			
III	96	12 (12.5)			64		7 (10.9)		15 (23.4)			
IV	160	20 (12.5)			128		18 (14.1)		22 (17.2)			
V	160	20 (12.5)			128		18 (14.1)		22 (17.2)			
VI	175	5 (2.9) 20 (11.4)			175		24 (13.7)		6 (3.4)			
VII	175	5 (2.9) 20 (11.4)			175		24 (13.7)		5 (2.9)			
VIII	175	5 (2.9) 20 (11.4)			175		24 (13.7)		16 (9.1)			
IX	150	24 (16.0)	12 (8.0)		120		16 (13.3)	13 (10.8)	8 (6.7)	150	8 (5.3)	10 (6.7)
X	150	24 (16.0)	12 (8.0)		120		15 (12.5)	16 (13.3)	12 (10.5)	150	6 (4.0)	5 (3.3)

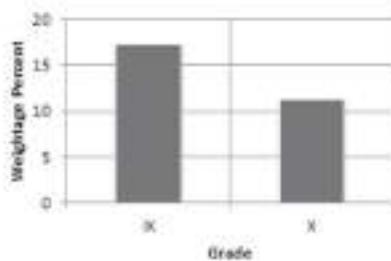
Note: One period (*Ghanti*)=45 minutes



**Fig. 2.** Weightage (in per cent of class period) of topics related to climate change, disaster and sustainable development in Social Study curricula of Grade I to X in Nepal.



**Fig. 3.** Weightage (in percentage of class periods) of topics related to climate change, disaster and sustainable development in Health, Population and Environmental related curricula of Grade I to X in Nepal.



**Fig. 4.** Weightage (in per cent of class period) of topics related to climate change, disaster and sustainable development in Science curricula of Grade I to X in Nepal.

The same learning areas as mentioned above are provided, whereas Environment is continued with Science, and some of its concepts are integrated in Social Study. At the first phase of secondary level (Grades IX-X), Environment is placed together with Health & Population in the general stream. This level also offers Environment Science as one of the elective subjects.

At basic levels of Grade I-III, the environmental topics are well covered within two subjects: 1) Science, Health & Physical Education (SH&PE), and 2) Social Studies & Creative Arts (SS&CA). In the subject areas of Science, Health & Physical Education, there are six units, two of which are related to environment: Unit-2 (Environment), and Unit-4 (Earth & Space). Unit on Environment provides descriptions of the environment, both negative and positive aspects. In Unit on Earth & Space, topics related to environment, specifically climate are weather, wind and storms. The relative weightage of climate related topics in SH&PE at Grades I, II and III stand at 25.0 per cent, 37.5 per cent and 34.3 per cent of total class periods. These periods are called *Ghanti*, which is the equivalent of 45 minutes respectively. In SS&CA, a chapter entitled Our Earth is prescribed. The chapter aims to impart knowledge of landscape (Grade I), the geographic feature of one's community (Grade II) and the natural environment of one's village or town (Grade III). The topic of climate (cold, hot, warm) is introduced at Grade III. In all Grades (I-III), the chapter "Earth" carries 12.5 per cent of the total 96 teaching periods (Table 9, Fig. 2).

Basic levels of Grade IV and V offer subject entitled Science & Environment, in which topics related to climate and disaster cover 31.3 per cent of the total 128 teaching hours. At Grade IV, there are two units (out of six) related to environment: Unit-2 (Environment) and Unit-4 (Earth & Space). Unit Environment introduces natural disasters and their impact, while Unit Earth &

Space discusses weather and climate. At Grade IV, Social Study, there are seven Units including Our Earth yet this level includes more details. Unit on Our Earth elaborates upon geographic features and social customs, one's district level environmental condition including local climate, rivers and soil. At Grade V, the same Unit elaborates upon the natural characteristics of Nepal with the introduction of the three ecological zones, viz. Himal, Mountain and Tarai. The Unit carries 12.5 per cent of the total 160 teaching hours (Fig. 3).

At the basic levels of Grade VI, VII and VIII, there are two subjects consisting of environmental topics including climate change and disaster: i) Social Study & Population Education, and ii) Science & Environmental Education. In Social Study, there are ten Units: Unit 3 Our Earth introduces climate change in Grade VI; its impact appears in Grade VII; and causes are explained in Grade VIII. The unit covers 14.3 per cent of the total teaching hours 175. In Science and Education, environmental topics contain 21 per cent of the total teaching hours in Grade VI and VII and 29 per cent in Grade VIII. There are five units in the subject. Unit of Environmental Education has 35 teaching hours including 7 hours for practical, which covers major portion of environmental degradation and sustainable development. Unit of Earth & Space Science has 8 teaching periods describing weather and climate at Grade VI, and six teaching periods at Grade VII and VIII. The coverage of climate change and disaster related topics makes up 17.1 per cent, 16.6 per cent and 22.8 per cent of the total teaching/ learning periods (175 periods).

At the secondary level of Grade IX and X, the general school offers science as a compulsory subject containing four Units: physics, chemistry, biology and space-earth science. The relative weightage of climate change related topics is 17.3 per cent of the total 150 teaching periods of compulsory Science in Grade IX, while it is 11.3 per cent in Grade X. In the subject of Health, Population & Environmental Education, the component of climate change is not included. However, topics of earth care and sustainable development are included making up 6.67 per cent and 26.67 per cent of the total teaching hours in Grade IX

and X respectively. In the same Grades, Environmental Science is offered as an optional subject. Topics related to climate change and disaster include over 35 per cent of the total 120 teaching and learning periods in Grade IX and X (Fig. 4).

## **SURVEY RESULTS AND INTERPRETATION**

Three Focus Group Discussions were conducted in the districts of Dhanusha, Kathmandu and Sindhupalchowk representing the three ecological regions. In the survey, a total of 36 students (age between 12 and 16 years) participated. The explorations of opinions have been divided into three sub-headings each of which has been tabulated under three sub-headings: i) Perception and Learning Practices, ii) Policy and Curriculum: Gaps in Policy, Skill development, Teachers' Training and Methodologies, iii) Opportunities and Constraints. Tables 6- a, b and c present the results of these tabulations.

### **Perception and Learning Practices**

The survey results revealed the fact that the students from all three sites, Kathmandu, Janakpur (Dhanusha) and Sindhuplachowk, have acquired a basic knowledge on disaster risk reduction (DRR) and sustainable development (SD) based on their respective grades (Table 6-a). The students found the subjects interesting; however, the students also reported that the basics of climate change have not clearly been addressed in the syllabus. Hence the students lack conceptual understanding on the issues and their impact as related to climate change.

In a study of student and teachers' knowledge and understanding of the greenhouse effect, ozone layer depletion and acid rain in UK, Dove (1996) found that they were familiar with the term 'greenhouse effect' but had little understanding of the concepts involved. One common misconception was that the greenhouse effect was the result of ozone layer depletion. A survey conducted in Australia by Boon (2014) found that while most undergraduate students of education answered the question about climate change correctly, the majority failed to understand the function of greenhouse gases. Shepardson et al (2009) mentioned in their study among seventh graders that

the students lacked a rich enough conceptualization of climate change, especially as it pertains to the greenhouse effect and its connection to global warming.

**Table 6 (a):** Perception and learning practices expressed school students (Grade VII and above) in three ecological locations of Nepal

Dhanusha	Kathmandu Valley	Sindhupal-chowk
<ul style="list-style-type: none"> <li>DRR have been explained in brief in basic levels in science and social studies.</li> <li>DRR and SD have been conceptualized in secondary grades in science, social studies and HPE education.</li> <li>Climate Change has not yet been addressed clearly in any of the basic and secondary levels.</li> <li>The topics related to DRR and SD are interesting.</li> </ul>	<ul style="list-style-type: none"> <li>DRR have been explained in brief in basic levels in science and social studies.</li> <li>DRR and SD have been conceptualized in secondary grades in science, social studies and HPE education.</li> <li>Climate Change has not yet been addressed clearly in any of the basic and secondary levels.</li> <li>The topics related to DRR and SD are interesting.</li> </ul>	<ul style="list-style-type: none"> <li>DRR have been explained in brief in basic levels in science and social studies.</li> <li>DRR and SD have been conceptualized in secondary grades in science, social studies and HPE education.</li> <li>Climate Change has not yet been addressed clearly in any of the basic and secondary levels.</li> <li>The topics related to DRR and SD are interesting.</li> </ul>

Since the teachers are the most appropriate group in concept building, climate change science must be incorporated into pre-service teacher training if this science is to be accurately and appropriately communicated to school children and adolescents (Boon 2014). The results reveal the fact that the students do have a basic knowledge on DRR and SD based on their respective grades. Although they do find it interesting to study the topics related to these issues, the basics of CC have not been clearly addressed in the syllabus and, hence, students have inadequate understanding of the issues and their impact related to CC.

## Policy and Curriculum

Concerning the policy and curriculum of education, the students opined that it a high time to update the curriculum to

incorporate the topics related to CC, DRR and SD (Table 6-b). Curriculum should focus on providing the knowledge about the issues related to CC, DRR and SD through contextual examples. Conventional methods of teaching learning should be modified to include more active participation of students in classroom activities. The students also demanded that when covering new and complex topics like climate change, subject experts also be invited to conduct lecture seminars. Formation of eco-clubs may also be useful in addressing tissues related to CC, DRR and SD. There is also an urgent need to establish the proper linkages among the basic and secondary levels of education. However, it should be noted that in most cases the students read and learn mainly for examinations purpose: in terms of practical life they do not seem to be much concerned. This apathy is specifically observed in a subject like environmental science.

**Table 6 (b):** Opinion on policy and curriculum school students (Grade VII and above) in three ecological locations of Nepal

Dhanusha	Kathmandu Valley	Sindhupalchowk
<ul style="list-style-type: none"> <li>There is urgent need to update the curriculum and establish the proper linkages among the basic and secondary level education.</li> <li>Curriculum should be concentrated in providing the knowledge about the issues related to CC, DRR and SD through contextual examples.</li> <li>Several eco-clubs can be formed at the school level to address the issues related to CC, DRR and SD.</li> </ul>	<ul style="list-style-type: none"> <li>CC should be introduced in curriculum in details.</li> <li>Skill oriented and practical knowledge is lacking in the curriculum.</li> <li>Besides the lecture method of teaching, curriculum should address some inclusion of guest lectures and role play classes.</li> </ul>	<ul style="list-style-type: none"> <li>Curriculum should be concentrated in providing the knowledge about the issues related to CC, DRR and SD through contextual examples.</li> <li>Conventional methods of teaching learning should be modified to encourage active student participation in classroom activities.</li> </ul>

Climate change education is naturally cross-disciplinary. CC education can present a subject challenge for many teachers and students for the following reasons: i) knowledge claims are based on modelling from uncertain and partial data; ii) the breadth encompassing subject content knowledge; attitudes towards the environment and commitment to action; and iii) strong links to personal and communal action, often political in

nature (Oversby 2015). Educational proposals on climate change are being developed in different research fields including science education and the social and behavioural sciences. Science education researchers and instructors aim primarily to enable students to fully understand scientific concepts. Meanwhile, behavioural scientists aim is to further understand how to foster energy-saving and generally pro-environmental behaviours. The scientific pedagogic literature provides examples of activities related only to the pure sciences, while pro-environmental literature promotes behavioural changes.

Based on a study describing coping strategies to climate change and related disasters carried out among 12 year old Swedish school children, Ojala (2012) identified three coping strategies: problem-focused coping de-emphasizing the seriousness of climate change; and meaning-focused coping. The problem-focused and meaning-focused coping had positive associations with measures of environmental engagement. Yet de-emphasizing the threat produced negative associations with engagement. Fostering both deep understanding of the basic concepts involved in climate change as well as critical thinking for addressing some cognitive and emotional barriers are offered as suggestions (Tasquier et al (2014).

## **Opportunities and Constraints**

In all three regions, the students found learning the topics related to CC, DRR and SD in their curriculum engaging. However, they conceded that some of the topics were difficult to understand on their level. Therefore curriculum should be designed to address the contextual issues on CC, DRR and SD. They opined that there was a huge gap in the contents of curriculum in basic and secondary levels creating difficulties in thoroughly understanding the matters at hand. Sufficient illustrations and figures contained in the chapter together with the advancement in the conventional methods of teaching learning could contribute to students developing more vivid concepts regarding these issues. The formation of eco and science clubs at different school levels can become crucial in making students actively involved in the more pragmatic aspects of environmental issues.

**Table 6 (c):** Opportunities and constraints as seen by school students (Grade VII and above) in three ecological locations of Nepal

Dhanusha	Kathmandu Valley	Sindhupalchowk
<ul style="list-style-type: none"> <li>It is interesting to learn about the current issues including CC and DRR.</li> <li>If these issues would be delivered in a contextual and pragmatic fashion it would be more useful among the students.</li> <li>Besides lecture method of teaching the students, curriculum should include guest lectures and role play classes so that issues on CC, DRR and SD can be addressed effectively.</li> </ul>	<ul style="list-style-type: none"> <li>It is interesting to learn about the current issues including CC and DRR.</li> <li>There is an urgent need to update the curriculum and establish the proper linkage among basic and secondary level education.</li> <li>Illustrations and figures are lacking in the chapters and hence these need to be prioritized in the curriculum.</li> </ul>	<ul style="list-style-type: none"> <li>It is interesting to learn about the current issues including CC and DRR.</li> <li>Some eco-clubs could be formed among students to directly involve themselves in the practical aspects of CC, DRR and SD.</li> </ul>

In the Czech Republic, climate change topics have been included as framework curricular documents since 2007 but who should be actually be teaching climate change at the schools remains unclear. In 2011, Milér and his team comprising education faculty and subject experts, conducted research to assess the teachers' understanding of climate change with questions focused on how the climate system works. The upper-primary teachers performed significantly better than the lower-primary teachers and physics teachers showed significantly better knowledge as compared to the rest of the faculty. The team developed an on-line educational application modeling global CO<sub>2</sub> emissions (Milér et al 2012).

In a recent study carried out on the systemic knowledge and actionable knowledge regarding climate change among the middle and high school children in the USA, Bofferding and Kloser (2015) reported that the students demonstrated limited understanding of adaptive responses to climate change. After engaging the students in an instructional unit on climate change,

they expressed stronger systemic and actionable knowledge, yet significant misconceptions remained conflating mitigation of and adaptation to climate change.

## CONCLUSIONS

**Education in Centre:** Effective climate change adaptation and disaster risk reduction require action across all sectors. Key among these exists within the educational sector. Education inspires immediate behaviour change solving short-term needs while cultivating new ways of thinking that will inspire creative responses and avert similar future crises (UNICEF 2012). Please note however that Nepal's policy frameworks on climate change adaptation lack the mention of the role played by education.

**Ensuring Capacities:** The players in mainstreaming climate change education in school curricula include not only the curriculum experts and teachers, but also the students themselves. In fact, the students become the most significant users of the school and school curricula. They can drive change by communicating with fellow students, monitoring progress, celebrating successes and organizing events. Therefore, their capacity to grasp the knowledge and how this knowledge relates to practical life becomes an important task worthy of consideration.

**Curriculum Updating:** The components of climate change adaptation and disaster risk reduction should be integrated into interrelated thematic areas that address both behaviour change and risk reduction. Integration can either be done through a limited number of carries subject areas, such as science, social studies and health and population, or infused throughout the whole curriculum. Sometimes a mix of approaches is used. The infusion approach might be efficient if the education system is already of higher quality and well structured (UNICEF 2012). At the curricular level, it is important to understand the needs of targeted children.

**Knowledge Evaluation:** Environmental education is directly linked to livelihood and human existence. Environmental

education or climate change education seeks the internalisation of the knowledge and is expected to result in action on the part of the learners. Adaptation to challenging climate change or building resilience to climate change is equivalent to life-saving skills. The curricula of climate change and disaster risk reduction have to be more practical, based on students' experiences or in which they can find within their own environs. The evaluation of students' knowledge on climate change and disaster risk reduction should lead to the adoption of project-work oriented assignments.

## **ACKNOWLEDGEMENTS**

The authors are indebted to the Curriculum Development Centre (Ministry of Education, Nepal) and UNESCO for their support in conducting the study. In order to understand both opportunities and constraints, focus group discussions were carried out in Dhanusha, Sindhupalchowk and Kathmandu involving teachers, students and education specialists. We are thankful to all participants.

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# CHILD MARRIAGE IN NEPAL: THE CHANGING TREND

*By Nina Maharjan\**

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## 1. Marriage as a Social Institution

**M**arriage is one of the most vital social institutions of human society, which aims at establishing a family and regulating sexual relationships of the spouses who are brought together through the institution of marriage.

As B. Malinowski states, "*Marriage is a contract for the production and maintenance of children*" and according to H.M. Johnson, "*Marriage is a stable relationship in which a man and a woman are socially permitted without loss of standing in community, to have children*".

Furthermore, as Edward Westermarck defines it, "*Marriage is a relation of one or more men to one or more women which is recognised by custom or law and involves certain rights and duties both in the case of the parties entering the union and in the case of the children born of it*", and according to Lundberg, "*Marriage consists of the rules and regulations that define the rights, duties and privileges of husband and wife with respect to each other.*"

The first two definitions suggest legitimisation of sexual relationships and reproduction of offspring as the major goal of marriage. The latter two definitions widen the arena of the social institution of marriage by emphasising recognition of the relationship as per prevailing social customs or laws, as well as

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rights, duties and privileges of the spouses towards each other and to their offspring.

The functions of marriage are also defined by social customs and laws, which vary from society to society. In transitional societies such as in Nepal, where conventional understanding is embedded and modern values are being implanted, but assimilation of both the approaches is limited, marriage is viewed in the context of the extended family system, and hence procreation, passing on the family name, continuation of generations and transfer of property are considered the basic functions of marriage. Aside from the rearing and caring of offspring, the fulfilment of filial duty towards in-laws and other family members and taking financial responsibility of basic family needs are also some common functions of spouses.

## 2. Rationale for Defining the Legal Age of Marriage

As the institution of marriage brings many duties and responsibilities to both the spouses fulfilling the functions of the marriage, they need to be ready particularly with respect to maturity on physical, emotional, psychological and cognitive aspects, which evolves with advancement of age. The function of reproduction itself requires maturity in being physically and mentally ready to conceive children; taking care during pregnancy; being able to deliver a child; nursing and nurturing the child; and fulfilling basic needs of the child as per age and necessity. In addition to the physical roles distinctly taken on by women after marriage, in patriarchal societies such as Nepal there are also societal and gender roles that married women are expected to fulfil. Such gender roles include being fully responsible for household chores, taking care of the needs of one's spouse, in-laws and offspring, demands all types of maturity, particularly psychological and emotional.

In context of male spouses, whereas there may not be as distinct physical roles to undertake as for female spouses, they always have roles to fulfil which will ultimately help women in undertaking their roles. The society driven breadwinner's role itself is one that only a mature man can take on fully. Supporting his counterpart in nurturing and upbringing their offspring is another set of roles a father has to take on. As the number of family member increases, the role also expands symmetrically

and the male spouse needs to be prepared to take on the added responsibility.

As such, marital roles demand all types of maturity from both spouses. This state of such maturity is generally classified as 'Adulthood'. An adult is expected to possess holistic maturity in order to undertake his/her roles and is at the appropriate stage to get married. The determination of legal age of marriage for men and women regulates the appropriate age of marriage considering the state of physical, psychological, emotional and cognitive maturity, and criminalizes marriage under the legal age, thereby discouraging such practice.

Legal Age of Marriage in Nepal	
Nepal has revised the legal age of marriage multiple times as per need and demand. Here are some records	
<b>5 years for girls</b>	- <i>Muluki Ain (National Code), 1854</i>
<b>14 years for girls and 18 years for boys</b>	- <i>Muluki Ain (National Code), 1963 (at the time of enforcement)</i>
<b>16 years for girls and 18 years for boys with consent of parents and 18 years for women and 21 years for men without consent of parents.</b>	- 8 <sup>th</sup> Amendment of <i>Muluki Ain (National Code), 1963</i> in 2054 BS 1998/1999
<b>18 years with consent of parents and 20 years without consent of parents for both men and women.</b>	- 11 <sup>th</sup> Amendment of <i>Muluki Ain (National Code), 1963</i> in 2002
<b>20 years for both women and men with or without parental consent.</b>	- <i>Some Nepali Law Amendment and Repeal Act, 2015</i>

According to the social and traditional, all the countries across the world have defined legal ages of marriage for men and women, considering maturity for fulfilling basic functions of marriage. In some countries the age is same for both the sexes, whereas in others, the legal age of marriage is lower for girls than boys by up to three years.

### ***Different Legal Age of Marriage for Male and Female***

*'As of 2014, the statutory legal age of marriage is equal for women and men in 132 countries, while in another 63 countries, the legal age of marriage is lower for women than for men.'*<sup>1</sup>

<sup>1</sup> <https://sustainabledevelopment.un.org/sdg5>

Globally, the defined legal age of marriage runs as low as 10 years for girls in The Republic of the Sudan. The Personal Status Law of Muslims, 1991 of Sudan permits the marriage of a girl once she has hit puberty. It also provides that a 10-year-old can be married by their guardian with the permission of a judge. Similarly, the legal age of marriage is 12 years for girls with parental consent in Colombia and Trinidad and Tobago (The Muslim Marriage and Divorce Act). The legal age of marriage for boys is also lowest in Columbia, at 14 years of age with parental consent. With regard to the highest legal age of marriage across the world, Lesotho has set 21 years of age for both boys and girls, whereas China has set 22 years of age of boys and 20 for girls.<sup>2</sup>

In the same context, the table below provides details of the legal age of marriage for boys and girls in member countries of the South Asian Association for Regional Cooperation (SAARC)<sup>3</sup>:

Table No. 1: Legal Age of Marriage in SAARC countries

S.N	Country	Legal Age of Marriage		Quoted Law/Act
		Female	Male	
1.	Afghanistan	16 years <sup>1</sup>	18 years	Afghan Civil Code, 1977
2.	Bangladesh	18 years	21 years	Child Marriage Restraint Act, 2017
3.	Bhutan	18 years	18 years	Marriage Act of Bhutan, 1980
4.	India	18 years	21 years	Prohibition of Child Marriage Act, 2006
5.	Maldives	18 years	18 years	The Family Act No. 4/2000
6.	Nepal	20 years	20 years	National Code, 1964
7.	Pakistan	16 years	18 years	Child Marriage Restraint Act, 1929
8.	Sri Lanka	18 years	18 years	General Marriages Ordinance, 1907

Source: 1. <http://www.girlsnotbrides.org/child-marriage>, 2. Child, early and forced marriage legislation in 37 Asia-Pacific countries, Inter-Parliamentary Union (IPU) and World Health Organization (WHO), 2016.

2 <http://www.independent.co.uk/news/world/the-lowest-age-you-can-legally-get-married-around-the-world-10415517.html>. and <http://www.girlsnotbrides.org/> accessed on 23 April 2017.

3 SAARC is the regional intergovernmental organization and geo-political union of eight nations in South Asia (i.e. Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka).

Among the SAARC countries, four (Bangladesh, Bhutan, Nepal and Sri Lanka) have set equal legal ages of marriage for both the sexes. The highest legal age for marriage for girls is 20 years in Nepal and among boys, it is 21 years (in Bangladesh and India). Similarly, the lowest age is 18 years among boys (five countries) and 16 years (in Afghanistan and Pakistan), which is under the age of global definition of children<sup>4</sup>, i.e. under the age of 18 years and considered as Child Marriage.

### **3. The Phenomenon of Child Marriage and Early Marriage**

Child Marriage and Early Marriage in Nepal is not a recent phenomenon. The practice of child marriage is embedded in structures and cultures of Nepali society and with only a few exceptions, almost all castes, ethnic groups, religious groups and communities have been known to exhibit such practices as per their traditions either at some point in the past, and/or continuing in the present. However, it has been established that the tradition of child marriage is a harmful practice that is in violation of human rights.

Article 1 of the Convention on the Rights of the Child, 1989 defines persons who have not attained 18 years of age as children, and thus any marriage taking place below 18 years of age is considered child marriage.

In other words, "*[C]hild marriage is any formal marriage or informal union where one or both of the parties are under 18 years of age. While determining the prevalence of child marriage in any society or in country, the per cent of women of 20-24 years old who were married or in union before they were 18 years old is considered.*"<sup>5</sup>

Considering the legal age of marriage defined by any country which may be different from the age of maturity, it would not be complex to understand Child Marriage as 'any marriage taking place where either or both the spouses are below 18 years

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<sup>4</sup> Reference is made to Article 1 of the Convention on the Rights of the Child, 1989

<sup>5</sup> <http://www.girlsnotbrides.org/about-child-marriage/>

of age' and Early marriage as 'any marriage taking place where either or both the spouses have not attained legal age of marriage'.

In Nepal, the practices of child and early marriage differ between communities. According to the National Population and Housing Census, 2011 "[T]he observed mean age at marriage is relatively lower among Madhesi other caste groups, Madhesi Dalit, and Musalman. There are four groups namely Newar, M/H (Mountain/ Hill) Janajatis-A<sup>6</sup>, M/H Janajatis-B<sup>7</sup>, and MPB (Marwadi, Panjabi/Sikh and Bangali) who have both males and females getting married after the legal age of marriage. For all other groups, females get married before reaching the legal age.<sup>18</sup> "The tradition of child marriage is stronger in Indo-Aryan orthodox Hindu communities such as Brahmins, Kshetris, etc.. It is less prominent among the Tibeto-Burman groups, such as the Kirati, Magar, Tamang, Sherpa and other hill/mountain groups. The practice is strongest among the Maithilis living in the Terai (southern plains)."<sup>19</sup>

### ***Reasons for Traditional Practices of Child and Early Marriage***

Child and early marriages taking place in many communities are part of the traditions and beliefs such communities uphold. Consideration of marrying off a daughter, i.e. 'Kanyadaan', as the biggest philanthropy and marrying off a daughter before she hits puberty to avoid any kind of sin that prevents them to attain heaven in their afterlife, are some of the strong beliefs in Hindu philosophy behind child and early marriage.

*"The Majhi and Danuwar communities insist on the early marriage*

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- 6 Mountain/Hill (M/H) Janajati-A include-- Sherpa, Yakkha, Jirel, Kulung, Yamphu, Mewahang Bala, Gharti/Bhujel, Khaling, Darai, Magar, Chhantyal/Chhantel, Aathpариya, Bahing, Rai, Thulung, Gurung, Limbu, Lepcha, Samgpang, Dura, Chamling, Bantaba, Loharung, Thakali (total 24 ethnic groups).
- 7 Mountain/Hill (M/H) Janajati-B include-- Bhote, Bote, Brahma/Baram, Byasi/Sauka, Chepang, Danuwar, Dolpo, Ghale, Hayu, Hyolmo, Kumal, Kusunda, Lhomu, Lhopa, Majhi, Nachhiring, Pahari, Raji, Raute, Sunuwar, Tamang, Thami, Topkegola, Walung (total 24 ethnic groups).
- 8 Gurung, Yogendra B., 'Social Demography of Nepal: Evidences from National Population and Housing Census 2011', Population Monograph of Nepal, 2014, pg. 127
- 9 Dhital, Rupa., 'Child Marriage in Nepal., 2010, accessed in April 2017.

of their daughters because the death rituals demand the presence of married daughters who need to present the holy spirit with a pot of home-made whiskey and a chicken for the peace of the departed souls. Among the indigenous Ghasiyaran (grass cutters) and Chidimar (bird hunters) of Nepalgunj, child marriage for both sons and daughters is a social norm; there can be no other way as per their traditions. Among the Brahmin/Chetri in the Karnali zone of the Mid west, the girls need to get married before they attain puberty to be socially accepted."<sup>10</sup>

Additionally, there are many other push factors, such as decreasing the number of mouths to feed and other living expenses in poor families; avoiding dowries which increase proportionately with a daughter's age, in areas such as the Madheshi communities of the Terai; insecurity among parents that their children may elope, thereby affecting their social prestige, particularly if different caste groups are involved; and the threat of potential sexual abuse of daughters in unprotected societies. "[U]nmarried girls are often viewed as particularly vulnerable to sexual attacks or transgressions, leading parents to regard child marriage as a way to minimize the risk that their daughter will become unmarriageable due to premarital sex or pregnancy and as a way to "secure" her future."<sup>11</sup>

With regard to pull factors of child marriage and early marriage, the entry of a daughter-in-law into the home is considered to bring additional household labour, especially in agrarian societies. [C]hild marriage is of great economic importance in the agrarian economy. In the Tamang community for example, parents arrange for their young sons to marry older girls for the sake of the labour they will contribute. A similar custom exists among some ethnic groups in the Terai, which sees cases of parents getting their very young sons married to much older girls. Whereas hiring a "charua" (cattle herder) and "harua" (plougher), which costs money and runs the risk of their being dishonest or insincere in their work, a daughter-in-law, on

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10 Dhital, Rupa., 'Child Marriage in Nepal., 2010, accessed in April 2017.

11 Centre for Reproductive Rights., ' Child Marriage in South Asia: International and Constitutional Legal Standards and Jurisprudence for promoting Accountability and Change', 2013, pg. 20

the other hand, is free from such vices and is an unpaid worker.<sup>12</sup>

#### 4. An Overview of the Situation of Child Marriage

Globally, the proportion of women aged between 20 and 24 who reported that they were married before their eighteenth birthday dropped from 32 per cent around 1990 to 26 per cent around 2015. Child marriage is most common in Southern Asia and sub-Saharan Africa, with 44 per cent of women married before their eighteenth birthday in Southern Asia and 37 per cent of women married before their eighteenth birthday in sub-Saharan Africa. The marriage of girls under the age of 15 is also highest in those two regions, at 16 per cent and 11 per cent, respectively. Social norms can and do change, however, with the rate of marriage of girls under the age of 15 declining globally from 12 per cent around 1990 to 7 per cent around 2015, although disparities are found across regions and countries. The most rapid reduction in child marriage overall was recorded in Northern Africa, where the percentage of women married before the age of 18 dropped by more than half, from 29 per cent to 13 per cent, over the past 25 years.<sup>13</sup>

Table No. 2: Child Marriage Prevalence in SAARC Countries

S.N	Country	Rate of Prevalence
1.	Afghanistan	33%
2.	Bangladesh	52%
3.	Bhutan	26%
4.	India	47%
5.	Maldives	4%
6.	Nepal	37%
7	Pakistan	21%
8.	Sri Lanka	12%

Source: SoWC, 2016, UNICEF<sup>2</sup>

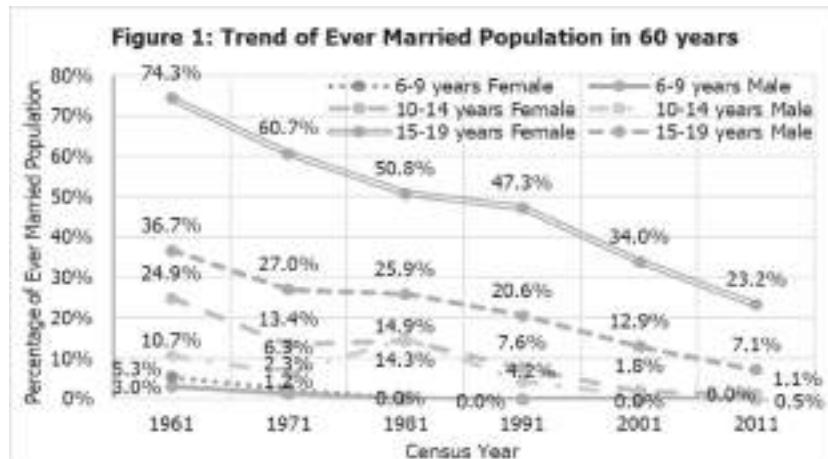
According to Table No. 2, among the SAARC countries the rate of child marriage prevalence is highest in Bangladesh (52%) followed by India (47%) and Nepal (37%). The lowest prevalence

12 Dhital, Rupa., 'Child Marriage in Nepal., 2010, accessed in April 2017.

13 <https://sustainabledevelopment.un.org/sdg5>

is reported in Maldives (4%) followed by Sri Lanka (12%). It is to be noted that Bangladesh has been ranked fifth and India tenth among the 20 countries having the highest rates of child marriage prevalence. Furthermore, in terms of absolute numbers of child marriage, India stood first (26,610,000) and Bangladesh in second position (3,931,000).<sup>14</sup>

### *The Changing Trend of Child and Early Marriage in Nepal*



Advancements have been observed over time in Nepali society in reducing child marriage. Thanks to the contributions of numerous child marriage awareness activities focusing on reproductive health and the rights of the child, the age of marriage has been gradually coming up, as clearly indicated in the national census reports. The incidence of marriage taking place before the legal age has also decreased due to social awakening led by advancement of society, legal prohibition as well as quality of life. The table below presents the marital status of persons below 20 years of age in Nepal over six consecutive national censuses:

<sup>14</sup> <http://www.girlsnotbrides.org/where-does-it-happen/> accessed on 23 April 2017.

Table No. 3: The Trend of Early Marriage in Nepal (below 20 years of age)

Census year	F	Marital Status		1961		1971		1981		1991		2001		2011	
		M	F	M	F	M	F	M	F	M	F	M	F	M	
Never Married	6-9 years	94.67	97.01	97.65	98.78	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
	10-14 years	75.14	89.30	86.56	93.71	85.73	85.11	92.36	95.76	98.19	99.18	98.88	99.55		
	15-19 years	25.68	63.33	39.33	73.02	49.17	74.13	52.72	79.44	66.05	87.08	76.80	92.91		
Currently Married	6-9 years	5.29	2.97	2.33	1.2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	10-14 years	24.64	10.59	13.36	6.23	13.36	14.03	7.21	4.06	1.73	0.76	1.12	0.45		
	15-19 years	71.42	35.86	60.19	26.62	50.05	25.09	45.5	19.13	33.26	11.7	23.09	7.05		
Divorced/ Separated	6-9 years	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	10-14 years	0.03	0.02	0.02	0.02	0.21	0.17	0.08	0.06	0.05	0.05	0.06	0.00	0.00	0.00
	15-19 years	0.29	0.23	0.18	0.13	0.29	0.23	0.34	0.2	0.11	0.10	0.07	0.03		
Widowed/ Widower	6-9 years	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	10-14 years	0.18	0.09	0.06	0.04	0.7	0.68	0.06	0.05	0.02	0.01	0.00	0.00	0.00	
	15-19 years	0.8	0.58	0.3	0.24	0.49	0.55	0.16	0.13	0.22	0.09	0.04	0.01		

Source: CBS, 2014<sup>a</sup>

The existence of few ever-married persons in the 6-9 years age group had been diminished by the seventh National Census of 1981. Among the 10-14 years age group, the proportion of ever-married persons decreased from 24.64 per cent in 1961 to 1.12 per cent in 2011 among females, and from 10.59 per cent to 0.45 per cent among males. The marriage incidence during the crucial adolescence period, i.e. 15-19 years of age is still alarming though there has been a decrease by 48.33 per cent (74.32% in 1961 to 23.2% in 2011) among females and 28.81 per cent (36.67% in 1961 to 7.09% in 2011) among males. As such, the National Population and Housing Census, 2011 recorded the rate of child and early marriage at 1.12 per cent among 10-14 years and 23.2 per cent for females 15-19 and 0.45 per cent and 7.09 per cent respectively among males.

**'We do not do Child Marriage, but they themselves do'**

"In our village, there is hardly any case where parents arrange marriages of their daughters in their adolescence. The radio, television and even NGOs working here keep on telling us not to get our daughters married before 20 years of age. Parents are quite aware about disadvantages of child marriage, so there is no more such practice.

However, what is to be done about those adolescents who get married by themselves? They find their own match and often elope from the village. They do not even inform their parents; asking for their permission is far away. This mobile, internet and Facebook has even worsened the situation. Most of the time, we get to know about their relationship only after they get married or elope. Sometimes, even after they elope; parents are unsure about the boy with whom their daughter eloped, because everything happens through mobile and Facebook."

*(Perspective of a group of parents in Sukaura, Makawanpur, documented in February 2017 during field study for a study on Child trafficking)*

In a nutshell, the portion of the population that has ever been married below the age of 20 has decreased, leaving more children and young adults with the choice to get married after the legal age. A large number of parents have changed their attitudes towards child and early marriage, tending towards being more

mindful about the age and maturity levels of their children before getting them married. There is now an increased awareness about the disadvantages posed by child and early marriage, particularly for young girls who are prone to reproductive health issues and increased risks of maternal mortality. As such, the modern values considering marriage as a huge responsibility that can be only fulfilled by mature persons are being implanted among parents, and the situation is gradually changing.

However, anecdotal evidence also suggests that there is a growing trend in the incidence of child marriage instigated by love relationships between children themselves without the involvement of their parents. Prevalence of such love-instigated marriage is highest among 14-16 years age-groups, which is also considered to be the crude age of adolescence. Generally, children between 10-19 years of age are considered adolescents, with puberty as the starting point. Puberty is not only the causative factor of all physical, psychological and emotional changes that occur during adolescence, but also the beginning of reproductive life. The rapid physical growth and change, along with subsequent psychological and emotional change are the reasons for the common complexities of this stage. This is also the stage during which development of sexual orientation and seeking of sexual intimacy and relationships commonly occur. This is thus the stage during which many child and early marriages taking place in which both parties take the decision on their own and is often termed 'Love Marriage or Elope Marriage'.

### **The Perspectives of Psychological Theories**

The stage of adolescence is considered the most complex stage of the human life-span. Henceforth, there is a strong need to understand the period of adolescence considering different arenas as well as psychological perspectives. It is not only helpful to understand the causative factors underlying incidents of child marriage instigated by love relationships, but also to suggests the ways to lead productive adult lives by tackling the

issue surrounding child marriage. The following sections present various psychological theories aimed at gaining an understanding of the adolescence period:

### *Sigmund Freud: Psychosexual Stages of Development*

The famous Austrian Neurologist and founder of psychoanalysis, Sigmund Freud, has defined the psychosexual stages of development among human beings. He defines the period from adolescence onward as the "Genital Stage." Due to rapid physical growth and changes including reproductive development, sexual feelings reappear with new intensity and in more mature form during this stage. As a result self love is transformed to attraction towards the opposite sex, and the seeking of genuine heterosexual relationships. The inquisitiveness towards such physical changes and attraction towards the opposite sex tends to lead adolescents to take decisions related to their sex lives as well as marriage, if not guided properly.

### *Erik Erikson: Psychosocial Stages of Development*

Erik Erikson has termed the stage of Adolescence as 'Identity Vs. Role Confusion'. It is a time of identity crisis, 'a turning point of increased vulnerability and heightened potential'. Adolescents of this stage often work at developing a sense of self by testing different roles they have been surrounded by and try to integrate to form a single and unique identity of their own. The basic task of this period is to separate oneself from one's parents – especially the same-sex parent – and to assume an identity of one's own. In this stage, they are often certain about their role identity; have active interest in the opposite sex; plan for the future; often challenge adult authority and tend to be self-accepting. At the same time, they also express inversely by doubting themselves and developing low self-esteem. In these situations, having intimate or love relationships is

considered by adolescents to be a middle ground in which to mingle in such relationships, both for intimacy as well the sharing of feelings.

### *Stanley Hall: The period of Adolescence*

American Psychologist Stanley Hall has described this period as a 'period of storm and stress' when all young people go through some degree of emotional and behavioural upheaval before establishing a more stable equilibrium in adulthood. This period is also considered to be the transitional period from childhood to adulthood. Hence there is the tendency for role-confusion among adolescents as to whether to take on the role of a mature person with the know-how of life or a child with limited reality orientation on how the world functions. As a result of such confusion, adolescents often tend to get stuck in the middle. As such, adolescents are either attracted or impressed to persons of the same age-group who are going through similar issues, or towards those they can look up to as having the know-how to navigate through life.

According to psychological perspectives, child marriage and early marriage taking place during adolescence is not only a legal or social issue, but also a deep psychological issue. Considering the psychological state of a person making the decision to get married on his or her own before legally permitted to do so, it is important to address the issue of child-instigated marriage via a multi-disciplinary approach that offers psycho-social support rather than just criminalization of the act.

## **5. Consequences of Child and Early Marriage**

Global campaigns aimed at deterring child and early marriage often refer to health aspects, ie early marriage leading to early pregnancy and early motherhood, linked to potential hazards of maternal mortality, unsafe motherhood, reproductive health issues among women, malnutrition and poor health conditions of both mother and child. These indicators

subsequently affect the Human Development Index (HDI) and Gross Development Product (GDP) of a nation.

The feminist school of thought considers child marriage as a grave violation of human rights of women, preventing them from self-empowerment and development. It leads to sexual abuse and exploitation of girls, increased chances of gender-based violence and social abandonment. Child marriage -

*"...[O]nly further reinforces the gendered notions of poverty and powerlessness stultifying the physical, mental, intellectual and social development of the girl child and heightening the social isolation of the girl child. Evidence shows that child marriage is a tool of oppression which subordinates not just the woman but her family. Not only does child marriage perpetuate an inter-generational cycle of poverty and lack of opportunity; it reinforces the subordinated nature of communities that traditionally serve the powerful classes by giving a girl child in marriage to an older male."*<sup>15</sup>

Girls are often denied access to further education and personal development after marriage, often preventing them from even dreaming about having a professional life. They become caught up by the household chores and once they become mothers, they are not able to afford to think about anything outside the home and family.

Child and early marriage often leads to instability in conjugal life due to a lack of maturity, reproductive health problems caused by early pregnancy and parenthood, gender-based violence, child labour, human trafficking and other factors. Therefore child and early marriage is defined as a human rights (violation) issue, regardless of whether they are arranged by the parents or self-intigated love marriages.

As such, "[C]hild marriage is often accompanied by early and frequent pregnancy and childbirth, resulting in higher than average maternal morbidity and mortality rates. Pregnancy-related deaths are the leading cause of mortality for girls between 15 and 19 years of age,

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<sup>15</sup> UNICEF., 'Child Marriage and the Law: Legislative Reform Initiative Paper Series', pg. 34.

whether married or unmarried, around the world. Infant mortality among the children of very young mothers is higher (sometimes as much as two times higher) than among those of older mothers. In cases of child and/or forced marriage, in particular where the husband is significantly older than the wife, and where girls have limited education, the girls generally have limited say in decision-making in relation to their own lives. Child marriage also contributes to higher rates of school dropout, especially among girls, forced exclusion from school and an increased risk of domestic violence, in addition to limiting the enjoyment of the right to freedom of movement."

### School drop-out and Child Marriage

In the changed scenario, even in Terai and Madheshi communities, parents are sending their daughters to school. If a girl is attending school regularly, parents keep on sending her to school without worry and do not ask them to either drop out from school or get married. However, the moment the girl drops out from school due to any reason including incidents of bullying and eve teasing inside and outside school, lack of menstruation hygiene amenities in school and so on, the parents' worry begins.

Parents quickly search for a match for their daughter and get them married. The psychology behind this is that, the parents feel insecure keeping their adolescent daughters at home idle. Social prestige of the family, pressure from the surrounding environment, threat of sexual abuse or pre-marital sexual relationship of their daughter are some of the reasons why parents hurry to marry off their daughters soon if they are school drop-outs.

So, schools must try their best to provide an appropriate atmosphere to girl students, especially in their adolescence. The more they are encouraged to attend school, and getting success in their education, the less chance there is of their getting married at an early age. If the school can redress their grievances, they will not stop coming to school, and hence they won't get married early.

*(An observation shared by teachers of Shree Dibya Kanya Secondary School in Parsa documented in October 2017 during discussion on Complaint Hearing Procedure, 2073)*

## 6. Nepal's Commitment to End Child Marriage

The Government of Nepal (GoN) considers the issue of child and early marriage as a serious social problem of Nepal. The Constitution of Nepal (2015) considers child marriage to be

a violation of child rights. Article 39(5) states that, 'no child should be subjected to child marriage, transported illegally, abducted/kidnapped or taken in hostage'. The section 73 of Muluki Criminal (Code) Act, 2017 criminalizes Child Marriage. It nullifies all the marriages taking place outside legal age of marriage i.e. 20 years. Such acts of child marriage are criminal offences and anyone committing such offences is liable of up to 3 years of imprisonment and fine of up to thirty thousand rupees.

The Sustainable Development Goal (SDG) 5 has prioritized child and early marriage as a major global issue with a target of eliminating all harmful practices, such as child, early and forced marriage and female genital mutilation. The goal is indicated by the proportion of women aged 20-24 years who were married or in a union before age 15 and before age 18. The 2014 data for Nepal states that, 24.5 per cent of women between 15-19 years of age are currently in a marriage/union and 4.9 per cent had married before the age of 15 years, whereas among women aged 20-24 years, 10.4 per cent were married or in union before the age of 15 years and 36.6 per cent before 18 years of age'. Thus Nepal has to make a rigorous effort to work towards meeting the SDG targets.

As part of an extensive campaign to end child marriage that aligns with the constitutional provisions as well as Sustainable Development Goals, the National Strategy on Ending Child Marriage, 2016 has been endorsed by the Government of Nepal. The strategy envisions ensuring the rights of children against child marriage with a target to eliminate child marriage in Nepal by 2030. The strategy specifically includes: empowerment of the girl child and adolescent, ensuring quality education for them; encourages participation of boys, male adolescents and adults; mobilization of family and community; service referral for child and adolescent girls who are at risk of child marriage, human trafficking, and gender-based violence; as well as legal and policy reform guaranteeing effective implementation. The strategy has also incorporated the concept of 'Child Marriage Free Local Body' in order to engage local level government bodies for the cause.

The National Child Policy, 2012 additionally proposes that the GoN and development partners collaborate on the mobilizing of community-based organizations to stop child marriage (Refer to Number 8.9). The policy calls for giving more responsibility to local level government bodies to stop child marriage by following up on complaints received related to child marriage and taking subsequent appropriate disciplinary action. Therefore, local level government bodies need to be empowered and strengthened to deal with the issue of child marriage proactively.

Binding with the 'Kathmandu Call for Action to End Child Marriage in South Asia', Nepal expressed its commitments to end child marriage, considering it as a human rights violation, making legal and policy reform; ensuring equal rights of marriage irrespective of sex and religious background; providing access to legal remedies and institutional support for girls whose rights are violated; providing access to full range of reproductive health information for children; ensuring compliance with international norms and concluding observation by UN treaty monitoring bodies; and supporting and implementing the SDGs and Regional Plan to End Child Marriage in South Asia (2015-2018).

## **7. Way Forward**

Over the past couple decades sustained awareness raising utilizing multiple approaches that have coupled health aspects and legal aspects have contributed to the declining incidence and trend of child marriage. Parents and adult family members are found to be aware of the disadvantages of getting their children married before the legal age and thus, the number of child marriages prompted by traditional practice is gradually decreasing. However, there is a need to address the issues of child marriage and marriage instigated by children themselves. The following paragraphs discuss the way forward to address the issue of child and early marriage:

### ***Functionalizing Child Protection Mechanisms***

Considering the threat of child protection issues, particularly the increase in incidents of sexual violence and abuse, community-based child protection mechanisms should be strengthened and capacitated to work on prevention of any forms of harm against children and create a safe environment for girl children, so that parents do not worry about their risk of safety and protection and take efforts to get them married in young ages. Furthermore, this would provide every girl child a chance to grow and develop to their fullest without the added burden of parental impose to their marriage leaving their education and future plans behind.

### ***Parental Dialogues***

Parents play a crucial role in nurturing, offering guidance and facilitating socialization of their children. It is therefore important to support parents to enhance their capacity with appropriate information and skills on positive parenting, child and adolescent psychology, child rights, creating child sensitive environment in the family, offering guidance to their children and so on. Focusing on the parents of adolescent children, the formation of various formal and informal groups of parents would be supportive for encouraging them to discuss adolescent issues of their children and in helping each other to deal with the situations which might contribute to minimizing the risk of children instigated child marriages.

### ***Ensuring Quality Education***

The Constitution of Nepal has made provisions for free and compulsory education for up to basic level (i.e. up to Grade 8) and free education for up to secondary level (i.e. up to Grade 12). Effective implementation of such provisions and ensuring that all children of school going age are in school would contribute significantly to addressing the issue of child marriage. This could be facilitated via measures such as creating a child-appropriate environment in school by providing quality education, applying child friendly classroom teaching,

establishing partnerships between teachers and students for classroom learning, and attracting children to school education using modern technologies in teaching. Similarly, children could be encouraged to continue to attend school by addressing their day-to-day grievances. These include fulfilling basic amenities such as sanitized toilets, and clean drinking water, provision of sanitary napkins for girls inside schools and ensuring safe school environment for girls, free from bullying and eve-teasing.

### ***Education on Sex and Reproductive Health to Adolescents***

The primary reason for adolescents choosing to get married on their own is because they are unable to manage their curiosity and desire for heterosexual intimate relationships. Sex and Reproductive Health (SRH) Education may provide an answer to such curiosities, which is certainly helpful for adolescents in managing their psychological state. While school textbooks in Nepal do provide limited SRH education in the curriculum, is not adequate. Teachers imparting such sensitive education need to be well-trained, to avoid embarrassment and awkwardness. The use of audio-visual as well as other IEC materials would also be effective. Moreover, sex and reproductive health education should emphasize the students to differentiate between fantasy, and real life after marriage.

### ***Offering Life Skills to Adolescents***

Life skills are the best skills for managing the issues faced by adolescents. The skill of self awareness allows adolescents to better understand themselves, their strengths as well as weaknesses and to help them establish positive goals for the future, rather than rushing into marriage. Life skills also capacitate adolescents to build up their self-esteem and develop their identity in a better way. Learning the life skill of 'empathy' allows them to try to put themselves in other's shoes and understand other's points of views. In so doing, they can come to understand the problems faced by those who got married early and try to prevent the same future life for themselves. With the help of effective communication skills, adolescents can better express their feelings and also try to understand other's feelings. As a result, they experience relatively less conflict of opinion

with people in their surrounding, particularly while convincing their parents to delay their own marriage prospects. This use of life skills will also help them to build interpersonal skills with others, while also providing them with a package of tools to assist them in all matters throughout their lives.

Imparting life skills to children via school curricula, capacity building trainings, information booklets, mass media as well as providing a platform for discussion on life skills are some of the innovative ways to enable every child to deal with matters affecting their lives.

### ***Providing Psychosocial Support to Adolescents***

As adolescents are in a transitional stage of human life, they need more psychosocial support than others to maintain their emotional well-being. The provision of psychosocial support either in schools or public health centres would be an asset to children in overcoming their psychological troubles. The more adolescents are free from psychological trouble, the less they are prone to unsafe heterosexual relationships and the less chance of their making decisions to get married at early age.

### ***Promoting Correctional Interventions***

Along with prevention, there need to be correctional interventions for those who violate their own human rights by marrying at an early age. As such children and adolescents are breaking the law, their marriage are made null and void, simultaneously. However, they should receive correctional interventions such as psychosocial counselling, SRH Counselling as per need, community service, and support to attend school regularly.

### ***Conducting Comprehensive Studies***

The majority of studies conducted thus far on the issue of child marriage have covered traditional forms of child marriage and are based upon either case studies or considering particular geographical area as the sample. The National Population and Housing Census is the sole source when it comes to national level demographic data on child marriage. Henceforth, there is a

need to conduct i) a study on the situation of children-instigated child and early marriages, ii) a longitudinal study on the cases of child marriage to capture information on their daily lives, experiences and consequences to compliment the anecdotal evidence, and iii) a comprehensive study to capture data on the causes, consequences, the gravity and the changing patterns in child and early marriages.

## 8. Conclusion

The issue of child and early marriage has not been considered by the general public to be a legal issue despite it's having been criminalized via existing legislation some time now. Rather it is accounted as a social phenomenon. Thus, child and early marriage still persists in many societies in Nepal. Designing strategies to deal with the issue of child marriage calls for combining legal enforcement with social aspects such as reducing social stigma; providing psychosocial support to children, adolescents, and their families; empowering adolescents by providing life skills; family strengthening programmes to improve the economic and social situation of families; and providing parental dialogue sessions to enable parents to provide appropriate guidance to their children. In other words, there needs to be a multi-disciplinary, holistic approach of implementing the legal provisions effectively, as well as ushering in positive change towards ending child marriage, with the aim of ensuring the rights of children and adolescents.

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# **BREAKING THE SILENCE AND LISTENING TO CHILDREN SUFFERING FROM INCEST AND SEXUAL ABUSE**

*By Dr. Aruna Uperty\**

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**T**his article is based on my personal experiences from the field, interviews with doctors, NGO employees, and materials from various sources.

Child sexual abuse or child molestation is a form of abuse in which an adult or an older adolescent uses a child for sexual stimulation and/or gratification. Forms of child sexual abuse include engaging in sexual activities with a child (whether by asking or pressuring, or through other means), indecent exposure (of the genitals, female nipples, etc.), child grooming, or using a child to produce child pornography. Humans are the only species capable of engaging in sexual intercourse with young children. In terms of sexual behaviour, other living beings – animals, birds and insects--are not as sexually exploitative as humans. Biologists have found that homosexuality is also prevalent in the animal kingdom. But even animals who engage in homosexuality do not engage in sexual conduct with children. This activity is pursued only by humans.<sup>1</sup>

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\* Dr. Uperty has been actively involved in issues of public health, women's rights and nutrition. She has worked as public health specialist in Nepal and several other developing countries.

1 American Academy of Child & Adolescent Psychiatry., 'Responding To Child Sexual Abuse.' American Academy of Child & Adolescent Psychiatry.

Child sexual abuse can occur in a variety of settings, including at home, school, or work (especially in places where child labour is common).

## 1. Child Sexual Abuse: The Phenomenon

History shows that child sexual abuse existed even in ancient times. In a Hindu mythology, *Father-daughter incest occurs in the story of Brahma and his daughter. Brahma married his own daughter Satarupa.*

"Wise, teaching, following the thought of Order, the sonless gained a grandson from his daughter". Fain, as a sire, to see his child prolific, he sped to meet her with an eager spirit". [RigVeda III .31.1-2].

Sexual abuse and sexual exploitation of children is not a new phenomenon. In fact, in many societies in the past, it was not only accepted, but even encouraged. Children were given as gifts to be used and sexually abused. Children were sacrificed to please gods or to cure conditions such as infertility and other diseases. Sexual intercourse with young children was not criminalized and those who carried out such heinous acts against their young victims were not punished. Even today, in many parts of the world, sex with children is tolerated. In Greek and Roman mythologies, stories about sexual relations among family members- among brothers and sisters, fathers and daughters- is common. In other words, such social and cultural traditions of using young children as sexual objects show the prevalence of sexual abuse of children all over the world.

In Afghanistan, *bacha bazi* exists, where small boys are used to for dancing and who boys are not good for dancing are used for sodomy and other sexual activities.<sup>2</sup>

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<sup>2</sup> <http://blogs.tribune.com.pk/story/29547/the-filthy-culture-of-bacha-bazi-in-afghanistan/> accessed on 14 July 2017

## **2. Child Sexual Abuse: Global Context**

Sexual exploitation is present everywhere. There are so-called spiritual and religious leaders who sexually abuse children.<sup>3</sup> Countless young women have unwittingly become sexual victims when such leaders hug, kiss or stroke their hands. Unfortunately, society has not adequately raised voices against them.

Whenever we travel to different parts of the country, we hear familiar stories of abuse. We spend sleepless nights after hearing these stories and wonder how many more sleepless nights and days do these children have to endure? We are talking about empowering girls and working towards a violence-free society and writing a constitution that gives equal rights to all in the Nepalese society. But cases of abuse make us wonder whose equality and rights are we talking about? How can we ensure that our girls are safe and how those who have been subjected to violence get justice? While families are supposed to ensure safety of children, several research studies have shown that homes are also unsafe for children. Incest by fathers and grandfathers are surfacing almost every month. The concern now is--how do we make communities vigilant and what can be done so that no guardian dares to commit such crimes. Instead of victimizing the children, it is important to create a fear of shame among the adults so that they tremble to commit such crimes in the future.

The global prevalence of child sexual abuse has been estimated at 19.7% for females and 7.9% for males. Most sexual abuse offenders are acquainted with their victims; approximately 30% are relatives of the child, most often uncles, cousins, brothers, fathers; around 60% are other acquaintances, such as "friends" of the family, babysitters, or neighbours. Strangers are the offenders in approximately 10% of child sexual abuse cases. Most child sexual abuse is committed by men. Studies on female child molesters show that women commit 14% to 40% of offenses reported against boys and 6% of offenses reported against girls.<sup>4</sup>

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3 <http://www.thehindu.com/news/international/Indian-priest-pleads-guilty-to-sexual-abuse/article10856218.ece>

4 [https://en.wikipedia.org/wiki/Child\\_sexual\\_abuse](https://en.wikipedia.org/wiki/Child_sexual_abuse) accessed on 07 July 2017.

Child sexual abuse occurs frequently even in Western society, although the rate of prevalence can be difficult to determine. Research in North America has concluded that approximately 15% to 25% of women and 5% to 15% of men were sexually abused when they were children. In the UK, a 2010 study estimated prevalence at about 5% for boys and 18% for girls. More than 23,000 incidents were recorded by the UK police between 2009 and 2010. Girls were six times more likely to be assaulted than boys with 86% of attacks taking place against them.<sup>5</sup>

The rates of self-disclosed abuse for specific continents are provided in the following table.

Table No. 1: Status of self-Disclosed Abuse by Continent

Region	Girls	Boys
Africa	20.2%	19.3%
Asia	11.3%	4.1%
Australia	21.5%	7.5%
Europe	13.5%	5.6%
South America	13.4%	13.8%
US/Canada	20.1%	8.0%

Source: [https://en.wikipedia.org/wiki/Child\\_sexual\\_abuse](https://en.wikipedia.org/wiki/Child_sexual_abuse) accessed on 07 July 2017

Based on self-disclosure data, a 2011 meta-analysis of 217 studies estimated a global prevalence of 12.7% – 18% for girls and 7.6% for boys.

A book published in 1997 and edited by Grace Poore, *The Children of Sacrifice* cited a survey conducted in Delhi. An organization in Delhi surveyed 350 school girls in 1997. According to that survey, 63 percent of the school girls had been sexually abused by someone in their family. Among them, 25 percent had been raped. 33 percent of them said their family members have sexually exploited them. Similarly, a study by the Tata Institute of 150 girls in Mumbai showed that 98 percent had been sexually abused before they had even turned 10 years

<sup>5</sup> [https://en.wikipedia.org/wiki/Child\\_sexual\\_abuse](https://en.wikipedia.org/wiki/Child_sexual_abuse) accessed on 07 July 2017.

old. There are many other surveys and studies that show similar statistics all over the world.

### **3. Child Sexual Abuse: Nepali Context**

In Nepalese society, though it is prevalent and widespread, discussion on sexual abuse and exploitation of children hardly takes place. A survey report on child sexual abuse in Kathmandu Valley has quantified what society has tried to sweep under the carpet for so long. Based on a random sample of nearly 5,500 school children and over 200 out-of-school children, the survey looks at physical sexual abuse of children as well as the prevalence of exposure of children to obscene materials and verbal abuse. Because of inadequate social awareness and open discussions about it, many mistakenly believe that sexual abuse of children is prevalent only in Western countries. But the truth is that sexual abuse of children, even if it is not openly acknowledged, exists in our communities and it is equally frightening. The cases and data from the field and newspapers evidences of the magnitude of situation.

Children in the 11-14 age group were found to be most vulnerable with nearly 15 percent of the girls and 13 percent of the boys admitting that they had been sexually abused. Girls reported more abuse at home, school or market, while boys were mostly abused at the home by the perpetrator. The rate of abuse among street children was the highest with most having sexual relations with multiple partners of different ages and both genders.<sup>6</sup>

According to a recent study done by some organization sexual assaults on minors are growing at an alarming rate, with nearly half of rape survivors being girls under the age of 16. A research conducted by the Women Rehabilitation Centre (WOREC) in all 75 districts recently showed 46 percent of the survivors of sexual abuse are girls under 16. About 55 percent of the survivors are in the 17-30 years age bracket. The data is based on cases registered with police stations and WOREC safe houses<sup>7</sup>

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<sup>6</sup> <http://nepalitimes.com/news.php?id=2876#.WWgr6FHBXIU> accessed on 07 July 2017.

<sup>7</sup> <http://kathmandupost.ekantipur.com/news/2016-09-27/child-rape-rate-alarming->

In the period of February-July, 2017, eight cases of child rape had been reported. Eight cases of attempt to rape of girl child also had been reported at the same time. Most of the girls were below ten years of age.

### **3.1 Boy victims of Sexual Abuse**

In most cases of sexual abuse of child, the victims are girls (though boys are also sexually abused) and the perpetrators are male members whom the victims know or in worst cases, are members of their family. I discussed this phenomenon with a psychiatrist. He said that in his practice, he has come across many cases of sexual abuse of children. He has found that even very young children who are sexually abused suffer from mental health issues like anxiety and depression. Adolescent girls who have been sexually abused are afraid to share their stories because they fear that no one will believe them. As a result, among those who have been sexually abused as a child, they suffer from various mental health problems like self-destructive behaviour that includes suicidal tendencies,

Binita Adhikari, the director of Antardristi Nepal, an organization that works with and empowers victims of sexual abuse told “Since we had established our organization 16 years ago, we have received 197 cases of child domestic sexual abuse 26 of them are now residing at the safe house. Total, we have reintegrated 171 cases out of which 12 were boys”. Her statement shows that though small in number boys are also abused sexually.

### **3.2 Sexual Abuse by Relatives**

It is common that children are abused physically but most of us remain unaware that sexual abuse of children happens within the house of a child and by their own close relatives (most of such instances fall under incest category). News of incest is hardly ever made public, as it is often an issue of family honour and reputation. When we examine the prevalence of sexual exploitation and abuse of children- in all societies in both the

present and the past - the statistics are extremely frightening. Most of these incidents occur within the home and are perpetrated by family members and extended relatives. A research shows that seven out of 10 sexual assaults are committed by someone whom the victim.<sup>8</sup>

"The child of five or older who knows and cares for the abuser becomes trapped between affection or loyalty for the person, and the sense that the sexual activities are terribly wrong. If the child tries to break away from the sexual abuse, the abuser may threaten the child with violence or loss of love. When sexual abuse occurs within the family, the child may fear the anger, jealousy or shame of other family members, or be afraid the family will break up if the secret is told. Victims of sexual abuse continue to suffer and later may develop mental health problems. A child who is the victim of prolonged sexual abuse usually develops low self-esteem, a feeling of worthlessness and an abnormal or distorted view of sex. The child may become withdrawn and mistrustful of adults, and can become suicidal. It takes a lot of effort and rapport building to bring the issue out" said a psychiatrist.

### **My way of Protecting**

"My 7-year-old daughter was loved very much by her 20-year old paternal uncle and he often took her outside to play. One night, I noticed red marks on her neck and chest. When I asked her what happened or if she fell down and injured herself, my daughter told me that her uncle made those marks and warned her not to tell anyone else about it.

I was shocked. After that day, I never let my daughter stay close to the uncle, who had been a sexual abuser all this time. I cried a lot for many days. I was so helpless as I was not able to tell anybody about this incident. People would not believe me and would accuse me of disrespecting my in-laws. I had to be very careful all the time.

I stopped sending my daughter alone anywhere and restricted her even playing outside. It was difficult for me to explain her why I was doing it. But, gradually I gathered courage and articulated myself properly to tell her about why I was stopping her from going outside and I also told her to come and tell me if someone touches her inappropriately."

- Mother of the Girl

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<sup>8</sup> <https://www.rainn.org/articles/child-sexual-abuse> accessed on 07 July 2017.

### I protected myself from being abused

"I visited my maternal grandparents in lowlands of Nepal after appearing for my School Leaving Certificate exams as I loved visiting them. My maternal uncle, who was 32 years old, my aunt, and their 3-year-old son, also lived with them and I was 16 years old.

One day while relaxing on the balcony, my uncle came to me. While stroking my cheeks, he asked me what I was doing. I told him that I was enjoying the warm winter sun. He came even closer and started stroking my hair. I didn't say anything. Then he started stroking my fingers and breasts. I immediately got up. "Why are you afraid?" he asked, but I went straight to downstairs and sat next to my grandmother. My uncle followed me downstairs and said, "Come with me, I will take you to the market. I will also buy you clothes." While he was speaking, he was again stroking my hair. I didn't like his behaviour at all. But I couldn't say anything in front of my grandmother. I ran out of the room saying, "Let me go and invite aunt as well." When I was in the market, I stayed close to my aunt.

After that day, I became scared of being alone at home. I either stayed with my grandmother or made excuses to go talk to neighbours. I consider myself lucky as I was able to understand the situation and protect myself, but many times young children cannot protect themselves and have to suffer a lot. After many decades, I can openly talk about the attempted sexual abuse from my uncle. But still, many young women who have suffered sexual abuse from their family members cannot speak out and suffer in silence."

- A Social Activist in Nepal

The two incidents mentioned in the boxes above are just representative cases that show how sexual abuse of children can happen anywhere and at anytime. On July 14, 1974, a 23-year-old man was arrested for raping his eight-year-old daughter in Bharatpur. He was arrested after the daughter complained to one of the neighbours.

### 3.3 The Power Play in Sexual Abuse

Many people think that those who rape children or abuse them sexually are mad or devil. This common reading is wrong. I have learnt that such abusers try to look and behave normal in every sense. But they get pleasure raping or abusing child and ingeniously look for opportunities whenever possible. In fact they are sick, but that is not apparent to people around them. Any child who is forced to engage in sexual activity with an

adult does not have the physical or mental capacity to understand what is occurring. As a result, the child becomes traumatized. Unfortunately, even after being aware of and sometimes witnessing sexual abuse of young children, many people in society do not protest and do not utter a word on behalf of the young victims due to unequal power relationship within a society and family members. This phenomenon is common, but is shameful.

A 16-years old had been abused by her step-father and she was able to complain to the police, but not many cases of attempted rape are reported. Mr. Deepak Thapa, Senior Superintendent of Police, Bharatpur has pointed out that most of the time the victim cannot speak against the abuser as the abuser threatened the victim that if she tells somebody she will be killed.<sup>9</sup> A research conducted by Antardristi Nepal in 2010/11 has brought many hidden issues of society as regard to sexual abuse. The research documented the cases of young girls under the age of 14 who were staying with their relatives in Kathmandu or in other big cities and were raped by family members but did not know whom to turn for help.

### Sad Story

"An adolescent girl, about 14 years of age, entered my clinic. I asked her what her problem is, but she kept silent. Then, I asked my nurse to find out what the problem is. In front of my nurse, she pointed to her private parts and said "it hurts here".

With the help of the nurse, I examined the girl and was shocked to find out that she had severe cervical injury. After a long counselling, the patient revealed that she had been raped by her father since she was nine and her mother did not know. She had finally come to the doctor because she had been experiencing pain for the last three months.

I was horrified to learn that the culprit was the girl's own father and a young, innocent child had been victim of sexual abuse inside her own house. The girl was treated successfully and after knowing the incident, mother had divorced the father who then fled to the US.

The girl is now pursuing her higher studies and is doing well." But not all such cases have happy ending as many girls get mentally and physically affected due to incest and family members try to avoid bringing such issues even to health care professionals. In extreme cases, girls try to commit suicide when the family tries to hide."

- Dr. Deepak Baral

<sup>9</sup> <http://mahilakhabar.com/news/2017/07/14/29296.html> accessed on 14 July 2017

The research presented by media and NGOs showed that case studies they came across were only the tip of the iceberg and that there are many cases that are never brought to light at all. What is unfortunate is that adults often don't recognize such abusive behaviours as a problem. Often they take it as a part of adolescent development. In such case, victims are scolded and rebuked. It makes the victims even more introverted, resulting in a cycle of mental health problems. Innocent victims have to live with the result of sexual abuse but it is even more unfortunate that we don't want to raise this issue in society but would rather hide such a phenomenon.

*Grace Poore has pointed out:*

*Incestuous sexual abuse is not "sexual indiscretion" or "affection that went too far." It is often "planned, calculated and systematic" and aimed at manipulating and taking advantage of a victim's trust. This kind of abuse is facilitated by and couched within a trusted relationship between victim and perpetrator -a relationship, not limited to immediate or biological family members but extending to anyone who is known to the victim, and has contact with the child in a familial and/or household setting. Consequently, perpetrators use and abuse their position to gain access to those they target for violation.<sup>10</sup>*

Sometimes the abuser may not rape the child but can do the followings: ask to touch the genital of the abuser and kiss it or to masturbate; kiss and hug and grab buttocks or breasts of the child; remove the victim's clothes for sexual stimulation; touch the genitals of the victim with fingers, mouth, penis; show the child pornography.

### **3.4 Stories from the field**

#### *a. Personal Interactions/ Observation*

During a research on child marriage and sexual abuse, I went to *Makawanpur* between 2014 December to 2015 January to discuss with local CBOs about the incidence of abuse. I was

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<sup>10</sup> <https://chaicounselors.files.wordpress.com/2013/01/incestuous-child-abuse.pdf> accessed on 14 July 2017

heart-broken hearing a story of young girl who was raped by her father.

A 15-year old girl approached some women activists with a complaint about her father. He had been sexually assaulting her for some time. The girl had informed her mother but the mother tried to silence her as she did not know how to deal with the situation. And also the husband was breadwinner of the family. The mother could not gather the courage to go against him. However, the 15-year old was determined to pursue her case further and she sought for help from outside. Her case was taken to the police, a complaint registered and the accused got arrested. One would think that after a father is arrested for a heinous crime such as the sexual abuse of his daughter, he would be ashamed and would seek for mental help. Unfortunately, in this case his response was indeed shocking. "I had raped my first two daughters and no one had arrested me. I will be a free person soon," he proclaimed in front of everyone even while he was in police custody.

I met two police officers in *Makawanpur* and they said that the case would be filed soon and the father would be behind the bars. One of the police officer stated:

"Incest and rape of child is hidden by the victims for fear of being shunned and also not knowing where to go for help as the whole family seems like their enemies. Usually the whole family tries to hide such cases as it brings them shame. The sad fact is that the victims, usually children, suffer from immense mental and physical pains if they are uncared for and if the violence faced by them goes unrecognized and a culture is developed to hide such incidents by the family, community and the society."

These days more and more cases of rape and incest are coming out in the open, but the estimate is that "only 20 percent of the total incidents are reported" pointed out Bishnu Ojha, a rights activist, from Makawanpur. "Every week we have to deal with cases of sexual violence against girls. There are several boys

too who fall prey to paedophiles in schools, neighbourhoods and homes, but never report."

Bishnu Ojha, further stated, "Many incidences related to sexual exploitation of young girls in Nepal go unreported in the media and only some perpetrators are punished because most of the culprits are under the support of powerful political parties." She added, "There have been several cases where school teachers have abused their students. One such case, in Makawanpur, was when a teacher lured a girl to come to tuition class to secure better marks in the English language. When the student arrived, he raped her repeatedly. The victim was not able to tell this to anyone. However, her behaviour started changing. Originally a very bright student, she started losing interest in her studies, which surprised her parents. They started insisting that she start going back to the perpetrator, without knowing his crime, so that her academic results would improve. One day, the child was unable to bear this torture and she confided to her friend. This friend, in turn, informed her aunt. Finally the case was taken to the police with the help of an organization. When the teacher was arrested, many political leaders called the organization implying that the teacher was innocent and the organization should not be involved in this case. They were advised to withdraw the complaint from the police. The school teachers also approached them, trying to convince that the teacher was innocent. However, with the organization's relentless efforts, the teacher was arrested by the police and was put in custody. The issue here is how many children can muster the courage to disclose sexual violence that they are facing, and even more importantly how many of them can get connections to organizations that can take a stand against the school and if needed be the society in order to punish the perpetrators and bring justice to the victims."

Her statement has raised an important question-for how long will our political and community leaders protect the culprit?

In Makwanpur, we were reported of an incident where army personnel had kept sexual relation with a girl of 14 and said that it was mutual, but law categorically takes such a sexual

relationship as a statutory rape. The girl was then eight months pregnant. Her family, after learning about her pregnancy, brought her to a police station. The army man had been arrested but the question here was what will now happen to the girl? As the child was 14 years old, this was a case of rape as per the Nepali law. Who would now take care of her and her baby after birth? The victim herself was a child. One person with whom we were discussing this issue mentioned that the perpetrator should be released from the prison and the girl should be married to him. When we informed him that that would be child marriage and would be illegal apart from the fact that getting a victim married to her perpetrator was in itself against the dignity of a person; and, therefore, a violation of fundamental rights. He then looked straight at our eyes and said that if the man was not freed now he would be freed after a few years anyway and lead a normal life. But the girl would have a child who would land on the streets like a dog, without a father and a citizenship! With this kind of social perception and realities when and how will rape and sexual and gender- based violence be eradicated from Nepal? We get goose pimples whenever we think of such situations.

In Rautahat, we came across eight cases of rape of girls. The victims of two of these cases were seriously injured; however, we were informed that none of the local or national level political leaders took the initiative to raise their issues. For political leaders, sexual abuse and violence against the girl child is still not an issue to be taken up. They are interested only in taking up their political agenda and thus the political leaders are accused of directly or indirectly supporting this crime, which has been increasing day by day. There have been cases where political leaders have covered up cases related to members of their parties in order to avoid bad campaign. The rapists who are protected by leaders of political parties usually go scot free. They threaten the police and the family of the victim and make sure that the incident is not reported. Even after reporting, there have been cases where the police are bribed and the families are given some money in order to withdraw the case. The sexually-

abused children do not have the resources nor are assisted proactively for getting justice. Unfortunately, victims end up getting further victimized and shunned by the society, leading to greater complications in their lives. As a result, very few cases of violence against children are reported. In cases where there are reports, the families of the victims are coerced into accepting some money and dismissing the cases. This is a socially accepted process in which the police have also surrendered to.

In Kailali, we were informed that there was a gang rape of a minor. Later the villagers made each perpetrator of the gang rape give NRs 25,000 to the family of the child and then made her leave the village!! What can be crueler than this? Why should the child have to leave her home and community instead of being protected there? If anyone is to leave the community it should be the perpetrators. They should be put in jail and given the highest punishment possible.

In Banke, we were informed that a seven-year old child was raped by a sixty-year old man in Kohalpur. The case was registered but the man ran away and is hiding somewhere in his contacts while the child is subjected to daily verbal abuse in the neighbourhood. "How do we help my niece to heal her mental scars, *didi* (sister)?" asked by the child's aunt.

The above mentioned interactions show that the prevalence of child sexual abuse in Nepalese communities is shockingly high. Some pertinent questions are: Till when should the young girls be victims of sexual exploitation? Till when are the perpetrators not punished? Till when are the young girls forced to suffer behind the wall?

#### *b. Cases documented by Antardristi Nepal*

In Syangja, a 13-year-old girl was living with her grandparents. Her mother had died and her father had migrated to India in search of a job. The child's 65-year-old grandfather repeatedly raped the girl and asked her not to tell anyone. Her teachers noticed the changes in her – she was falling behind

in school activities, becoming quiet, had stopped playing with her friends and was walking with difficulty. One day the girl looked relieved to be in school. When teachers asked her why she was so relieved, she revealed that her grandfather will not be home and she will not be hurt. Antardristi had trained the school teachers on signs of sexual abuse. To find out what has happened, the teachers gently and gradually started inquiring and the girl eventually revealed that her grandfather was raping her every day. The teacher filed a police complaint and the next day the grandfather was arrested. He is now sentenced to jail for 10 years. The girl is now living in a safe house of Antardristi in Pokhara.

A 9-year-old girl was raped by her father. The mother knew about the sexual abuse but did not intervene as the father was the breadwinner of the family. The girl's schoolteachers were worried about the girl's behaviour as she was very quiet and did not play with her friends. After some inquiry by her teachers, the girl revealed that her father was raping her. The teachers reported the incident to the police, and the father was arrested. The girl's mother was upset at the daughter for reporting the abuse to the police. The daughter is now staying in Antardristi safe house in Kathmandu.

Not only girls but also boys are abused in Nepal. Paedophilic tourists abuse and rape street boys luring them with good presents and food. Child centred social organisations, including CWIN, have been working on the issue of paedophile and are raising awareness about it. With their constant advocacy, some tourists had been arrested.

A Canadian tourist Ernest Fenwick MacIntosh, 71, with several previous child sex convictions has been sentenced to seven years in prison in Nepal for sexually abusing a minor boy. The child sex offender was also ordered to pay \$10,000 to the victim in March 1 2015.<sup>11</sup> A German national, Albert Fred

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11 <http://globalnews.ca/news/1857399/canadian-gets-seven-years-in-nepal-jail-for-child-molestation-report/> accessed on 14 July 2017

Klinicke, was arrested for molesting a child and the child rescued a minor from his clutches.<sup>12</sup>

"These arrest are only tip of the icebergs and many paedophilic are freely moving in the cities of Nepal as we do not get any complaint against them." admitted a police officer while I was discussing with him the issue of child abuse.

Many a times the society accuses rape victims for "having done something to arouse the man!" How sick can the society be? How can a girl of seven or even three for that matter do something to "arouse" any man, especially those over sixty?

Another aspect of cases related to sexual abuse is that only some cases of abuse (mostly rape) are filed, but many cases related to sexual abuse like unwanted intentional touching, pinching, sexual teasing, sexual looks, and inappropriate sexual comments are considered acceptable behaviour by adult men and are not reported to families and authorities. Girls hesitate to share about the sexual harassment and remain silent because society always blames girls for these incidences. A girl is often told by her family or society that she is sexually harassed because of her way of dressing or her behaviour.

Many organizations are working to fight against sexual abuse, but there is still a need to provide awareness in the society about these issues and efforts made to put an end to sexual abuse of girls.

#### **4. Mental Health Impacts of Sexual Abuse**

A senior psychiatrist, Dr. Biswa Bandhu Sharma, whom I consulted for the research, told me: "Some of my patients are young women. When I indirectly ask them whether they had been sexually exploited, abused or raped as young children, they usually reveal that either a family member or a relative either molested them or tried to rape them or actually raped them. Because of such incidents, young girls and young women

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12 The Himalayan Times, 2 July 2017.

suffer mentally. They cannot communicate about such incidents or problems with their parents. First, the parents are usually in denial that such sexual abuse can happen in their own family. So the parents themselves need consultation. Gradually, it is possible to heal and recover the young lady who suffered such abuse. Most young women who suffered sexual abuse when they were younger don't even realize that they are experiencing mental or psychological problems."

He continued, "Of course not every child that suffers from anxiety or shows destructive behaviour can be diagnosed as a sexually abused child or rape victim. However, before prescribing a treatment and guidance every doctor should cautiously examine the background of sexual abuse."

He also added, if the child shows the following symptoms: unusual interest in or avoidance of all things of a sexual nature; sleep problems or nightmares; depression or withdrawal from friends or family; statements that their bodies are dirty or damaged; refusal to go to school; delinquency/conduct problems; aspects of sexual molestation in drawings, games, fantasies; unusual aggressiveness; exceptional fear of a person or certain places; unreasonable fear of a physical exam; unexplained pain, itching, redness, or bleeding in the genital area; loss of appetite or difficulty swallowing or suicidal behaviour, she could have been a victims of violence and needs psycho-social support.

## **5. Future Direction: What should be done**

Some of the recommendations in this regard are as follows:

- Both boys and girls in schools should be taught about unacceptable sexual behaviour of adults and fellow children and whom to report in case of abuse. Such texts should be included in the school curricula.
- Media should sensitively report the cases of child sexual abuse and provide adequate spaces in its newspapers for reporting of sexual abuse. The child's identity shouldn't be disclosed.

- Children who have been sexually abused have difficulty in trusting others. So, it is very important to provide them counselling and treatment.
- School teachers also should be given training on how to recognize child (sexual) abuse, the ways to communicate with children and whose support should be sought and whom to report and refer if they find cases of abuse.
- Police also should be given training and information about child sexual abuse. It is appropriate to strengthen Women and Children Service Centres (also known as women cell) that has been established in each district.
- People in the community, including mothers and their organizations, should know that they could go direct to the centre if abuse against child occurs.
- Everyone, including child rights activists, child club workers as well as others should be taught that child sexual abusers can make the child extremely fearful of telling, and only when a child feels safe, s/he can talk freely. If a child says that he or she has been eve teased, molested or abused, everyone including parents should try to remain calm and reassure the child that what happened was not their fault and need good support from the family. For prevention it is important to acknowledge that incidents of sexual abuses have been taking place everywhere and parents, teachers, and the police should be alert to such abuses.

# SCHOOL BULLYING: AN IGNORED BUT SEVERE FORM OF VIOLENCE

*By Chandrika Khatiwada\**

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## 1. Two Cases

### Case-1:

*When I was in the seventh grade, a classmate who was my best friend until grade six humiliated me. I used to feel that our friendship ever exists. In grade seven she was admitted to a hostel where she made new friends who, I think, were really mean. Those girls used to get fun in picking upon weak students. My former best friend started throwing food at me during lunch, laughing on my uniforms and picking names on me. Soon after, all the other girls started picking on me as well. I became an object of ridicule and laughter to the entire school. No one wanted to be my friend because I was "a loser" in both academics and extra-curricular activities. I started skipping school which earned me numerous punishments, by both my teachers and parents.*

### Case-2:

*In my hostel, seniors used to bully juniors. It was an established norm. As a junior, I had washed many of my senior's clothes,*

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*polished their shoes, massaged them and completed their home works and other assignments. When I became a senior myself, I practiced the ragging tradition for a while. There was an incident that embarrassed me and made me realize how wrong ragging was. A prank on a junior went wrong and the guy ended up with a fractured arm. I received few weeks' suspension. While I am a good friend of the guy now, I can never stop feeling ashamed and guilt for what I did.<sup>1</sup>*

These two cases were randomly selected. They highlight how students are being bullied in their schools and are forced to accumulate negative experiences from their relationships with their peers or seniors in schools. These negative experiences may impact their lives as they grow into adults.

## 2. The School Life and Exposure to Violence

School may be the most influential institution in children's lives, ranking just below family and home as the foundation on which they build their futures.<sup>2</sup> They get a breakthrough to check what's outside the family wall and get a chance to broaden their horizon of social world through entering into schools. Experience at school fosters overall personality of the students including their emotional, psychosocial and social development. Supportive and respectful environments as well as effective teaching-learning in school may provide students with knowledge base and skills to shape up and follow their personal road map throughout their lives. Positive and happy moments of school life always encourage students to pursue their career or life goals and to fight with the challenges that may appear on the journey of their personal and professional life. School life provides avenue of educational pursuance for students and offers as a gateway to project their career path. Moreover, the school life experiences are remarkable for every student which may impact their life as a whole.

However, a whole lot of positive school life for any student

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1 These cases were published in Republica, Daily Newspaper on 16th July 2017.

2 An Everyday Lesson #ENDviolence in Schools, UNICEF, NY, Sept. 2018, pg. 5.

is hard to imagine. Not all the students get to complete their school lives without any physical and/or emotional hurdles. If remembered, everyone would have stories to tell about the difficulties they faced as regard to relationship with classmates, senior students and sometimes even with their teachers. Indeed, all kinds of violence- physical, emotional or others- in schools puts bodies, minds and lives at risk. Some only limit to causing physical injury but others may extend to psychological impact, such as depression, anxiety and suicide. Some violence have short-term effects on students' educational achievement and some leave a long-term impression on their futures.<sup>3</sup>

School bullying is one type of violence that incurs negative experiences to the students in their school life. It is obvious that problematic relationship with the peers and seniors in school life causes negative repercussions in one's life and that may continue to haunt in their adulthood as well.

### **3. What is School Bullying?**

The word 'bully' appears to have Dutch roots, evolving from words for 'lover' and 'friend'. Indeed, its earliest meaning was positive. It was "a term of endearment and familiarity, originally applied to either sex. Later applied to men only, implying friendly admiration: good friend, fine fellow, 'gallant'. In the 1600s, the word began branching off into creepier meanings that are closer to today's bullies. 'Bully' started to mean 'A blustering 'gallant'; a bravo, hector, or 'swash-buckler.'<sup>4</sup> At present, the same word has been used with different sense of meaning. The Oxford dictionary defines 'bully' to refer a person who habitually seeks to harm or intimidate those whom they perceive as vulnerable. Some other definitions are:

- "[A] tyrannical coward who makes himself a terror to the weak..."<sup>5</sup>

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3 An Everyday Lesson #ENDviolence in Schools, UNICEF, NY, Sept. 2018, pg. 1.

4 <https://www.good.is/articles/the-history-of-the-word-bully>. Retrieved on 14 January 2018

5 *ibid.*

- "Bullying is a repetitive, aggressive act of abusing others because of power imbalance. It is a behavioural problem and can take various forms like verbal, physical, emotional and cyber bullying."<sup>6</sup>
- "The repeated attack – physical, psychological, social or verbal – according to those in a position of power, which is formally defined, on those who are powerless to resist, with the intention of causing distress for their own gain or gratification"<sup>7</sup>
- "[B]ehaviour repeated over time that intentionally inflicts injury or discomfort through physical contact, verbal attacks, or psychological manipulation. Bullying involves an imbalance of power."<sup>8</sup>

All the above definitions have cited 'power imbalance' as a major reason for bullying and mention various forms like verbal, psychological/emotional and cyber bulling. The definitions also indicate that irrespective of age, sex or profession, bullying is prominent. However, for the purpose of this writing, the grave situation of bullying in schools has been considered. The definition adopted by the Act to Prevent and Deal with Bullying and Violence in Schools (2012) of Québec, Canada has been most relevant. Section 2 of the Act states:

"The word '**bullying**' means any direct or indirect behaviour, comment, act or gesture, including through the use of social media, intended to injure, hurt, oppress, intimidate or ostracize, and includes cyber-bullying."

School bullying is often atrocious name-calling, ostracism, and even physical assaults, mostly from other students, sometimes even from teachers. Bullying verbally involves persistent name calling, 'slagging' or using a person as a specimen for jokes. These

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6 Aryal Shradhha., Bullying among school children: Kathmandu. My Republica. 9 July 2016. Retrieved from <http://www.myrepublica.com/news/1732/> on 14 January 2018.

7 Sah, Birendra K., Bullying in Community Schools: A Bully's Practice (Thesis for Mphil degree in Education), 2011, p.

8 UNESCO., From Insult to Inclusion: Asia-Pacific report on school bullying, violence and discrimination on the basis of sexual orientation and gender identity: Bangkok. UNESCO, 2015.

jokes can be impersonal, sexual and can be directed at one's family, culture, race or religion. It can also take physical forms like pushing, kicking, tripping up, punching or shoving that sometimes can escalate to serious weapon assaults. In gestural forms, bullying can have various non-verbal intimidating or frightening messages.<sup>9</sup>

As such, school bullying can be categorized into four types: Physical Bullying, Verbal Bullying, Social Bullying and Cyber Bullying. Physical Bullying includes involvement of physical force to inflict pain on the victim such as slapping, beating, pinching, kicking, shaking or throwing, pushing, scratching, pinching, pulling hair, putting paper or other artificial tails, pouring liquid on body etc. Verbal Bullying includes name calling, saying hurtful things, making pairs with anyone, using foul language, blaming and scolding, threatening, using degrading language, ridiculing, gibing etc. Social bullying includes making someone feel lonely, spreading rumours, forcing or pressurizing to do things against their wish etc. The fourth category, i.e. Cyber Bullying includes sending SMS with objectionable content, making negative comments on social networking sites, bluff calls and all other forms of bullying through internet and telecommunication.

The Cyber bullying Research Centre defines cyber bullying as "wilful and repeated harm inflicted through the use of computers, cell phones and other electronic devices." However, there is a strong link between online bullying and in-person bullying.

Source: An Everyday Lesson #ENDviolence in School, UNICEF

Globally, half of students aged 13–15, about 150 million, report experiencing peer-to-peer violence in and around school... slightly more than one in three students aged 13–15 experience

<sup>9</sup> Aryal Shradhha., Bullying among school children: Kathmandu. My Republica. 9 July 2016. Retrieved from <http://www.myrepublica.com/news/1732/> on 14 January 2018.

bullying, and about the same proportion are involved in physical fights.<sup>10</sup>

#### 4. Realities about School Bullying

Bullying in school life may inflict physical as well as emotional pain to students who have been victims of it. Bullying among students can mainly be categorized in two segments--the consequences faced by students in form of punishment due to any misconduct or for not following the defined rules, and another in form of dominance without any rational reason. However, the wrongdoers in both the categories are hard to distinguish, i.e. both teachers as well as students can be the wrongdoers. Corporal punishment by teachers can be categorized in the first category for an instance. However, sometimes even the forms of corporal punishment can prevail in the second category. The second category of painful experiences for students are often instigated by a peer who holds power to the weaker ones without any genuine excuses, hence is regarded as 'bullying'. According to research, bullying is considered the most predominant form of aggression and impacts the largest number of students when compared to other forms of violence.

Researches have revealed that "...bullying is a common and persistent problem in society, particularly in schools. Overall, a large number of children and youth experience some type of bullying during their educational experience."<sup>11</sup> Some evidence indicates that younger children are more at risk of physical punishment from teachers than adolescents. In the Andhra Pradesh and Telangana states of India, 78 per cent of 8-year-olds and 34 per cent of 15-year-olds reported that they had been physically punished by teachers at school at least once in the past week.<sup>12</sup>

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10 An Everyday Lesson #ENDviolence in Schools, UNICEF, NY, Sept. 2018, pg. 3.

11 Rana, Niti., School Bullying: Introducing the Issue, Journal of Education and Research Vol. 1 No. 1, 2008. Retrieved from <https://www.nepjol.info/index.php/JER/article/view/7952/6487> on 14 January 2018.

12 An Everyday Lesson #ENDviolence in Schools, UNICEF, NY, Sept. 2018, pg. 11.

Moreover, school bullying is still imbedded inside the school; sometimes, just inside the victims of bullying being unable to share such injustice due to possible threats aftermath. Sometimes, even the victims feel hesitant to share about such incidents, thinking that the wrongdoers would not be punished and so are reluctant in reporting such incidents to school authority or to their parents. Talking about the myths about school bullying, Fuller and King (1995) mentions altogether six such myths about bullying that are prevalent. They are, (a) bullying is part of human nature, it's always been there; (b) it's growth enhancing, kids need toughening up; (c) if one could only get rid of the bad kids; (d) teachers are already asked to do too much; (e) victims will usually tell me, "I'm very approachable; and (f) it's society's problem, schools cannot be expected to solve everything.<sup>13</sup>

According to United Nations Committee on the Rights of the Child, a total 38 countries have had completely banned corporal punishment in their countries with 100 countries to recognize it as a harm against children by 2006. Nepal has also taken step to criminalize corporal punishment against children in family, school, workplace and residential child care homes by amending the prevailing laws.

Girls and boys are equally at risk for bullying. However, studies indicate that boys are more likely to experience physical violence and threats. Girls are more likely to become victims of psychological or relational forms of bullying, which can involve spreading rumours or exclusion. Sometimes, even the most recognized students in the classroom are victims of bully.

Mediocre or students with low academic performance are bullied by teachers, whereas students who perform well in academics and have been able to grab the attention of teachers as their favourite ones are most likely to be verbally bullied by rest of the class by calling them '*Padhandas*', i.e. Bookslave, '*Bookworm*', '*Teacher's Pet*'. There are also evidences where

13 Rana, Niti, 'School Bullying: Introducing the Issue. Journal of Education and Research, Vol. 1, 2008, p. 63. Retrieved from <https://www.nepjol.info/index.php/JER/article/view/7952/6487> on 14 January 2018.

their homework and assignments as well as notes and books disappear, just to torment them for excelling in academics. Even teachers expect more from these students, keep on pressurizing them in the name of pride of school or a particular teacher would always keep them active in one or the other activities without giving them a chance to rest or allow leisure time. Henceforth, it is the myth that only weaker students belonging to poor families, so called lower caste communities, physically poor as well as with poor academics are victims to be bullied; anyone in the classroom can be a victim of bullying.

In parts of Cambodia, Indonesia, Nepal and Vietnam where students characterized their schools as unsafe, the most common factors contributing to that assessment were humiliating language, physical fights and harassment from other students... bullying can be linked to a complex interaction of different factors including other violence among peers, violence or neglect in families and violence in communities. Studies have also linked exposure to violence or harsh parenting in the home with greater instances of bullying.<sup>14</sup>

## 5. Prevalence of School Bullying in Nepal

Bullying at school is a harsh reality of school life not only in present context, but from the time immemorial. In the pre-historic era of epic Mahabharata, Eklavya was denied to be accepted as a disciple of Rishi Dronacharya, a master of advanced military arts as he was meant to educate only children from royal family while Eklavya was a son of a poor hunter. Over the following years, with sincerity and practice, Eklavya learnt archery just by practicing in front of his teacher's statute, 'the statue of Dronacharya' that he made himself considering and believing the figure as his own teacher. When found about existence of Eklavya, princes from royal family did not like someone belonging to lower strata having archery skill better than them, hence instigated their teacher. As a result, Guru Dronacharya asks Eklavya for thumb of his right hand as 'Guru Dakshina', the token of gift or fee for

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14 An Everyday Lesson #END Violence in Schools, UNICEF, NY, Sept. 2018, pg. 5-6.

the skill Eklavya has obtained by considering Dronacharya as a teacher. The obliged student gives his thumb away without a second thought.

This story from the epic Mahabharata not only shows the moral education of devotion of a student towards his teacher, but also the form of ancient bully by upper class of the lower class, by royal family of the ordinary public and by a teacher of an innocent student in the form of discrimination in education, physical violence as well as emotional betrayal.

The phenomenon school bullying, as recognized in other parts of the world, is not so much familiar to parents and teachers so has gone unnoticed at schools in Nepal; but it is found rampant in some forms negatively affecting their learning potentials for those children who experience.<sup>15</sup>

The following two studies present some data about school bullying in Nepal:

*a. NASA Study*

In National Assessment of Student Achievement (NASA) 2013 study, students responded to five statements that indicated the varieties of bullying in schools. All the incidences were stemmed by the phrase/question "*which of the following activities happened in your school last month?*" The students' responses that have been part of the study for subjects of Mathematics, Nepali and Science are presented as follows<sup>16</sup>:

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15 Education Review Office, Report on National Assessment of Student Achievement 2013: Kathmandu, Ministry of Education, 2015, p. 176.

16 *ibid.*, p.79, 120 and 160

Table No. 1: Status of School Bullying among respondents of NASA, 2013

Form of Bullying	Respondents of Mathematics Test		Respondents of Nepali Test		Respondents of Science Test	
	No (%)	Yes (%)	No (%)	Yes (%)	No (%)	Yes (%)
Something of mine was stolen	75.3	24.7	79.8	20.2	68	24
I was made fun of or called names	84.3	15.7	85.8	14.2	78	14
I was hit or hurt by other student(s)	85.7	14.3	85.7	14.3	81	10
I was made to do things I didn't want to do by other students	88.9	11.1	89.9	11.1	75	15
Fellow students kept outside without involving me in activities	90.6	9.4	90.5	9.5	82	9

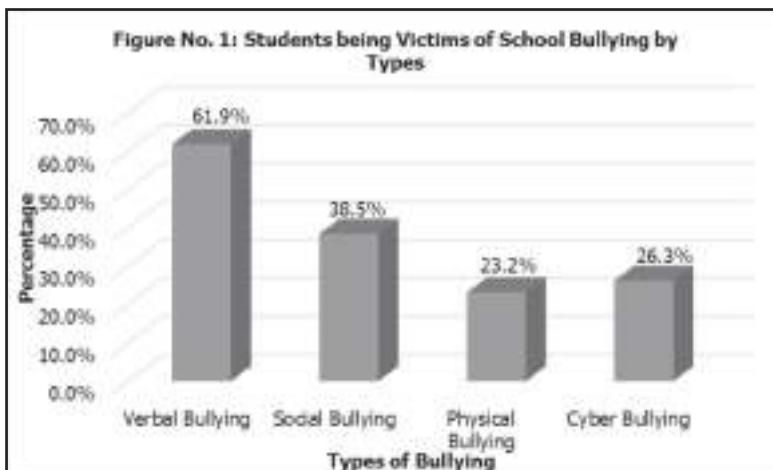
Source: NASA, 2013

Among the respondents from NASA for the subjects of Mathematics, Nepali and Science, the trend of bullying among respondents of all three subjects is quite similar. Almost one-fourth students across all the subjects have mentioned that their belonging/s have been stolen. Similarly, an average of 15 per cent respondents in all subjects have been made fun of or have been victims of name calling, whereas 13 per cent have been beaten or hurt. In an average, more than 12 per cent were made to do things they did not want to do, and 9 per cent were excluded from group activities. Among various form of bullying, the mostly cited bullying was stealing others belongings and the least prevalent was exclusion from activities. As such, school bulling is an established fact in schools of Nepal resulting to a lot of negative repercussions in students' lives.

### *b. The Study on School Bullying in Kathmandu Valley*

A study on School Bullying was conducted among the school students in Kathmandu valley in 2016. A total of 1,195 students ranging between 10-19 years studying in 92 public and private schools (also called as Samudayik Vidyalaya and Sansthatik Vidyalaya respectively) of Kathmandu valley had been interviewed for the study in a period of a month. Among the respondents, 47.6 per cent (569) were girls, 43.2 per cent (516) were boys and 9.2 per cent (110) did not state their sex. As regard to educational attainment, 87.8 per cent (1049) were studying in Secondary level and 12.2 per cent (146) in Basic (Std. 6-8) level.

#### *Experience of Bullying by Student Respondents*



As regard to experience of bullying, students were asked about their experience of being called by different names than theirs, i.e. verbal bullying; being humiliated due to spread of false rumour about them (Social bullying); being threatened or beaten up, i.e. Physical bullying; and bullying through electronic media (Cyber bullying). According to the findings of the study, 61.9 per cent (740) experienced Verbal Bullying, 38.5 per cent (460) experienced Social Bullying, 23.2 per cent (277) experienced Physical Bullying and 26.3 per cent (314) experienced Cyber Bullying out of a total of 1195 student respondents. The study estimates that almost one fourth of the school students are likely to experience some sort of school bullying in their school life

Verbal bullying has the highest rate of prevalence followed by Social Bullying, Cyber Bullying and Physical Bullying.

The study indicates that types of bullying which leave any physical evidence to prove may have been less prevalent than the ones that do not need any plan and are less likely to have visible after effect. For instance, beating or use of physical force to bully someone or using electronic mediums to bully someone can be proved through bruises, wounds, physical scars as well as IP address of the computer or the network server; hence such type of bullying are less prevalent. However, it is to be noted that the psychological scar left upon the victim of school bullying is inevitable irrespective of the type of bullying.

#### *Frequency of Getting Bullied*

Student respondents also shared about the frequency of getting bullied at school. The frequency of bullying had been categorized into three segments-- bullied three times a week, once a week and sometimes accounting to once a month. In this regard, the frequency of getting bullied by types of bullying is provided in the table below:

Table No. 2: Frequency of Bullying by Type

S.N	Frequency of Bully-ing	Status by Type of Bullying							
		Verbal Bullying		Social Bul-lying		Physical Bullying		Cyber Bullying	
		No.	% of N=740	No.	% of N=460	No.	% of N=277	No.	% of N=314
1.	Three times a week	206	27.8%	100	21.7%	44	15.9%	63	20.1%
2.	Once a week	123	16.6%	82	17.8%	54	19.5%	66	21.0%
3.	Once a month (Some-times)	375	50.7%	241	52.4%	144	52.0%	169	53.8%
4.	Not men-tioned	36	4.9%	37	8.0%	35	12.6%	16	5.1%
	Total	740	100.0%	460	100.0%	277	100.0%	314	100.0%

Source: CWISH Field Study, 2016

According to the table above, more than half of the respondents who have experienced some kind of bullying before stated that they have been bullied sometimes, i.e. accounted as not less than once a month; around 5-12 per cent among the victims of each type of bullying did not mention the frequency of them getting bullied. Rest of other victims of bullying have been either bullied once a week or three times a week. This estimates that at least one-tenth of the school students are being regularly bullied for one or the other excuses.

### *Nature of Bullies*

While responding about the bullies, more than 60 per cent (450) have been bullied by their classmates, followed by almost 20 per cent (135) been bullied by their seniors and the rest of others have experienced bullying from others (including their peers and teachers). As regard to sex of the bullies, more than two-third (68.6%) have been bullied by both girls and boys, around one-fifth (17.3%) by boys and the rest of others have been bullied by girls.

### *Pain Inflicted by Experience of Bullying*

Children who are bullied are often marginalized by their peers and exhibit risk factors such as loneliness. While the respondents who have ever experienced bulling were asked about their physical and psychological pain they have felt after being victims of such bullies, only one-fifth (19.6%) mentioned that they did not care about such incidents and that they did not experience any kind of pain. In other words, there are very few students who are able to cope the situation of bullying easily but the life of majority of the victims of school bullying has been impacted hugely due to such experiences.

## **6. Causes of School Bullying**

Bullying happens both with and without intentions. Often children who are bullying do not realize how cruel they are. In their viewpoint, they are just joking, but the person who is getting bullied may feel awful and develop psychological trauma

due to that. International Researchers have argued that bullying follows no demographic boundaries like age, sex and socio-economic background. It can take many forms and it can be both short term and long term.<sup>17</sup>

Hence, it is more important for children to understand the reality of their self-perceived cruel joke or mockery. Often children are being bullied for being a little different, weaker than others. Here are some of the causes of school bullying and its existence in schools of Nepal:

### Peer Influence

Peer pressure is one of the major factors during adolescence period. Bullying can also be considered as part of peer pressure. Among the friends, too, they often force each other to do something that they may or may not like. The name calling, misusing or destroying other's belongings without any reason, making others to spend their money and so on. Sometimes, they even form a group to bully on others. "The formation of a group of negative peers can pressurize to indulge in negative activities like taking drugs and smoking. Such types of activities promote a network of bullying."<sup>18</sup>

*"I always get tormented in my rented room. My father, who is a police, abuses all the family members. He comes at night after drinking alcohol and beats my mother. When I became grown up and wise, I tried to reason with my father. But he silenced me by labelling me 'parai dhan'(other's fortune), 'Pothi basne' (female speak). To get rid of my father, I blindly accepted Raju's proposal of love. But he is also a brute and behaves like a beast. After some time, I wanted to get rid of him, but he abused labelling me a 'bokshi' (witch), idiot, brazen, cruel, rude, vermin, brute, freak, monster and so on. In this way, sometimes I thought of committing suicide, but I could not because I remembered my brother's and mother's love."*  
*By an adult female*

*Source: Sah, Birendra K., Bullying in Community Schools: A Bully's Practice (Thesis for M.Phil. degree in Education to Tribhuvan University), 2011, p. 87*

<sup>17</sup> Aryal Shradhha., Bullying among school children: Kathmandu. My Republica. 9 July 2016. Accessed from <http://www.myrepublica.com/news/1732/> on 14 January 2018.

<sup>18</sup> Sah, Birendra K., Bullying in Community Schools: A Bully's Practice (Thesis for MPhil degree in Education to Tribhuvan University): Kathmandu, 2011. p.111

## Reluctance of school authority

Reluctance of the school authority to check bullying may not be the direct reason of school bullying, but it surely creates a favourable environment for an indirect promotion of school bullying. On one hand, schools do not have clear idea about what's going on behind their back. Schools are more focused on academic achievements and worried about how to complete the school curriculum and improve the academic performance of the school especially in central level examinations (i.e. School Education Examination, Grade 12 examination etc.). At the same time, even if such bullying cases are reported to school authority, schools often keep silence on such cases even when they are aware of it, just for the sake of preventing image of their school getting ruined.

In spite of factual evidences of school bullying as an emerging issue, school bullying has still not been recognized as a severe issue. Due to the imbedded myths regarding school bullying being a natural process of maturing up, such school bullying cases are never taken up seriously. As a result, students who have been victims of school bulling usually do not bother to report such cases to school authority.

*In addition to physical and direct verbal aggression (i.e., name-calling, "put down," etc.), indirect aggression (e.g. rumours or exclusion) is also considered a form of peer harassment. The lay perception of peer harassment is that physical forms of aggression are more harmful to students' well being than other forms of victimization (e.g. verbal, indirect, gestures). As a result, schools may be more likely to intervene when the peer harassment is physical in nature.<sup>19</sup>*

## Societal Reflection

The fact, in many societies, is that discrimination, bullying and violence are often taken as ordinary life events by all the persons concerned including parents, teachers, perpetrators and

<sup>19</sup> Sah, Birendra K., Bullying in Community Schools: A Bully's Practice (Thesis for MPhil degree in Education to Tribhuwan University): Kathmandu, 2011. p.101

even the victims. This happens not only because most parents and teachers have undergone such experiences, hence take it as a stage of life, but also because wrongdoers often are not aware that what they have done is something wrong. Therefore, even though victimized individuals may experience psychological distress, depression, emotional instability, and other psychological problems, such conditions are not often assessed as a result of negative repercussions of the painful experiences they have faced during their school life. Henceforth, the negative and/or painful experiences in school life are often ignored.

### **Psychological causes**

Many psychologists believe that bullying is a form of a defence mechanism for children who are unhappy at home or school. They inflict pain on others as a way to vent their anger to make themselves feel better. They also tend to bully others who can be their easy prey, i.e. the weaker ones to displace their anger. In other words, bullying is a way of revolting against the society, which either had failed to protect them or had not recognized their pain and discomfort.

### ***Inferiority Complex and Bullying***

Psychologically, human beings have a tendency to compare themselves with others and tend to become unhappy as they see themselves inferior to others. It is also a form of jealousy towards those who seem to be superior to them. This unrealistic feeling of general inadequacy caused by actual or supposed inferiority is sometimes marked by aggressive behaviour in compensation. These aggressive behaviours are most likely to end up as bullying those whom they find perfect or superior than themselves.

### ***Power Conflict and Bullying***

Bullying by definition is a repetitive act by the person/s against the weaker ones. Here, the power does not only include the physical strength, but also other sources of power such as social class they belong to. The bullying in form of caste-based

discrimination is an example to it. Also, children from well to do families tend to bully children from comparatively lower class families. "Social hierarchy was found as a great cultural construct to empower some individual at the cost of others. I (the author) found such social hierarchy was a promoter in increasing bullying. Its influence was also seen in the school."<sup>20</sup>

"...the different forms like power, ... hegemony, labelling, love, politics and male domination had same motive: 'power'. So, power was the main crux of the bullying phenomenon... bullying is the exercising of negative power by powerful persons on powerless persons."<sup>21</sup>

### *Stage of Adolescence and Bullying*

Anecdotal evidences claim that the incidents of school bullying heighten with the growing age of adolescence. Henceforth, both the 'wrong-doers' and victims of school bullying mostly belong to the age between 12 and 16. The physical and psychological changes during adolescence period result in lack of confidence, peer pressure, inability to think critically about what's right or what's wrong. They tend to take decisions emotionally and abruptly without giving much attention to their own conscience and societal values. The feelings of inferiority complex, sense of revolt against common norms, as well as role confusions are also stimuli for bullying acts. Prior to this stage, they are young enough to dare harming others and post adolescence, they are already in an adult stage and are mature enough to take wise decisions and are less likely to dare to go against societal values and norms.

## **7. Consequences of Bullying**

Victims of bullying often start doubting their own worth in the society and seem to intensely dislike their existence for who they are. Prolonged bullying could also lead to anxiety, low self-esteem, loss of appetite and extreme melancholy. The following

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20 Ibid., p.111

21 Shah, Birendra K., Bullying in Community School: A Bully's Practice (Thesis for Master's Degree in Education to Tribhuvan University): Kathmandu, Nepal, 2011, p.110

section discusses some of the consequences of school bullying.

### ***Impact on overall personality development***

Victims of school bullying face humiliation, frustration, fear, loss of self esteem, depression and social isolation that eventually lead to increase in school absenteeism, poor or worsened school work, personality alterations, illnesses and suicide. "Such incidents can scar victims for life. Bullying may start in a seemingly innocuous manner, with benign-sounding nicknames like Kali, Moti, or Dalli used with no intent of real harm, but things can escalate quickly and victims may not want to go to school to escape the bullying,"<sup>22</sup>

People, especially children, victimized by bulling may have short-term and long-term effect and negative impact on their personality development. Often, it is heard that victim has committed suicide. However, concerned stakeholders have not paid much attention to it.<sup>23</sup>

### ***Impact on educational achievement***

Education is a fundamental human right and it is an 'enabling' right for exercise and realization of all other human rights of an individual. As such, it is essential to have a conducive environment for students in their school life not just for academic achievements but also for shaping direction of their adult life. However, "[s]ome learners face not only discrimination, bullying and violence from their peers or from adults, but also institutional discrimination through non-inclusive school cultures, facilities, rules and regulations, and invisibility or marginalisation in the curriculum."<sup>24</sup>

School bullying has been impeding learning potential for a significant number of students. Bullying at school goes unnoticed

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22 Lohani, Monica., School Bullying Traumatising for children: Kathmandu. The Himalayan Times, 20 September 2016. Retrieved from <https://thehimalayantimes.com/kathmandu/school-bullying-traumatising-children/> on 14 January 2018

23 CCWB., The State of Children in Nepal, 2017: Kathmandu. Central Child Welfare Board. 2017. p. 78.

24 UNESCO., From Insult to Inclusion: Asia-Pacific report on school bullying, violence and discrimination on the basis of sexual orientation and gender identity: Bangkok. UNESCO, 2015.

to many of the parents and schoolteachers and hence they remain indifferent to such incidences that the students experience in school. But such instances worsen the learning environment and finally impact the learning potential of the students. The obtained datasets reveal that bullying is found rampant in Nepalese school, which has negatively been affecting students learning potentials for minimum 9% in Mathematics to the maximum 19% students in Science. Those students experiencing no bullying are found to have scored 35% in Mathematics, 50% in Nepali and 42% in science, whereas students encountering extreme types of bullying are found to have scored only 26% in Mathematics, 29% in Nepali and Science. Excluding the number of students experiencing minor and moderate types of bullying, an alarming number of students (2.2% In Mathematics and Nepali and 3.4% in Science) are found experiencing severe bullying.<sup>25</sup>

### *Behavioural Impact*

On the basis of physical, intellectual, economic, or any other reasons children are found bullied by their peers, and seniors at home, play-ground, neighbourhood, community and school. The incidents of bullying may start with a humiliating act or behaviours such as teasing, looked-down upon, inflicting physical and mental torture which may cause negative consequences on the victimised. Such violence also can have long-term behavioural impacts resulting in aggressive and anti-social behaviours, substance abuse, risky sexual behaviour and criminal activity... Moreover, violence can be intergenerational. Studies show that children who grow up around violence are more likely to re-enact violence as young adults.<sup>26</sup>

## **8. Ways to Addressing Bullying in School**

Most of the countries in the world have recognized school bullying as one of the hurdles for children to enjoy their childhood to the fullest and grow in a healthy manner. Hence, some of the policy provisions for prevention of school bullying

<sup>25</sup> Education Review Office, Report on National Assessment of Student Achievement 2013: Kathmandu. Ministry of Education, 2015. p.172.

<sup>26</sup> An Everyday Lesson #ENDviolence in Schools, UNICEF, NY, Sept. 2018, pg. 17.

have already been incorporated in international human rights instruments as well as in national legislations. As regard to right provisions on bullying, Article 7 of UN Convention on the Rights of the Child, 1989 calls on states to protect children from all forms of abuse, neglect, negligent treatment, exploitation and sexual abuse while they are in the care of any person. Similarly, Goal 4A of Sustainable Development Goals provides safe, non-violent, inclusive and effective learning environments for all.

In context of Nepal, the Constitution of Nepal (2072 B.S.) has incorporated a provision for protection of children from sorts of harms in the family, school and other settings as fundamental rights. Article 39 (7) of the Constitution of Nepal states that,

"No child shall be subjected to physical, mental or any other forms of torture in home, school or other place and situation whatsoever."

The Education Act, 2028 BS and its Regulations have explicitly mentioned the term 'bullying' but decline to elaborate measures to address it.

In this lieu, some of the interventions for addressing the issue of school bullying are elaborated in succeeding paragraphs:

### ***Policy for anti-bullying***

There are positive indications that the issue of school bullying has reached the highest administrative levels in terms of formulation of national level policies and intervention programs to combat the problem in several countries. In comparison to this surge of research activity in other countries, Nepal has yet to make a serious move to investigate this phenomenon.<sup>27</sup> The Ministry of Women, Children and Senior Citizen (MoWCSS) and the then Central Child Welfare Board (CCWB) have initiated discussion to develop anti-bullying policy with objective of raising awareness and preventing bullying in school. Along with that, there is a need in ...establishing effective and accessible response and referral systems; and providing resources to

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<sup>27</sup> Rana, Niti, 'School Bullying: Introducing the Issue. Journal of Education and Research, Vol. 1, 2008. Retrieved from <https://www.nepjol.info/index.php/JER/article/view/7952/6487> on 14 January 2018.

increase the knowledge, capacity and skills of school staff.<sup>28</sup>

### *Awareness raising among students, teachers, school authority and parents*

Generally, teachers are aware of bullying in the school and they also know the bullying students. If they take help from social members, management committee members and family members, they can easily control the bullying situations which will also help to maintain discipline and enhance the quality of education. As a result, the performance and result of schools could be improved.<sup>29</sup>

Students, teachers and parents should be made aware about the possible characteristics, signs and behaviour of a victim of bullying. The clear message should focus on sensitizing everyone for 'not to bully and let other bully'.

### *Interventions in schools against bullying*

The school system should recognize "bullying" as a severe problem which can affect personal and educational achievement of its students. Teachers as well as school administration should accept this, try to solve it, and support mechanisms should be explored for both children who are victims of bullying as well for behavioural reform of children who bully others. Schools may also mount Closed Circuit Television cameras, form Student Support Groups and conduct inter-house competitions to ensure surveillance and cooperation among students of various age groups. Schools should take effort in developing and implementing anti-bullying and/or child protection policy in respective schools.

Along with those provisions, all schools should appoint School Social Workers or School Counsellors with whom students can open up about their psychological problems. Such appointments can ensure early identification of both a bully and a victim before it's too late. Depending upon the case or incident,

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28 An Everyday Lesson #ENDviolence in Schools, UNICEF, NY, Sept. 2018, pg. 22.

29 Sah, Birendra K., Bullying in Community Schools: A Bully's Practice (Thesis for Mphil degree in Education to Tribhuwan University): Kathmandu, 2011. p.33.

the social worker or counsellor should try to convince the bully of the wrongdoing or lodge a complaint to authority if such act is criminal in nature. If the victimized child is in need assistance, social worker or counsellor should also liaison with Child Welfare Officer to provide necessary assistance and support.

### **Grievance Redressal Mechanism in Schools**

Department of Education, Government of Nepal has endorsed '*Gunaso Sunuwai Karyavidhi, 2074*', i.e. Complaint Hearing Guidelines for prevention, early intervention and case management for cases of child protection and gender-based violence. The said guidelines provide a well-established Grievance Redressal Mechanisms based in schools along with the frequent coordination and involvement of local level Government. Such guidelines are to be implemented by all the schools across the nation. Henceforth, promulgated measures should be taken for the dissemination of the information provided in the guidelines to all the schools and students studying there, and other appropriate mechanisms should be established and operated in all the schools.

### ***Parents' engagement for check and balance***

Parents should be equally aware about school bullying and should keep interest in current state of their children as well as their vulnerability to become a bully or the victim of a bully. Regular parent-teacher meeting to discuss any peculiarity in the student's behaviour should be encouraged. This will not only help children in early identification and intervention in bullying incidents, but also help to check and balance the efforts schools have taken to prevent school bullying.

### **Encourage students and communities to challenge the culture of bullying**

Students themselves are to be sensitized with the phenomenon and its effects on their colleagues through mobilizing child clubs that are functioning at schools. Child

right activists also would be supportive to lead the process. Similarly, child friendly school framework being implemented under the initiative of the DOE would also need to incorporate possible indicators regarding the measures that discourage school bullying. Curricula and packages on teacher training also need to consider these issues seriously in their future revision or repackaging.<sup>30</sup> Also, there is a need of...community and school leaders to foster an environment that promotes child rights and gender sensitivity and allows for freedom of expression without fear of reprisal.<sup>31</sup>

## 9. Conclusion

Bullying is a serious problem that cannot be ignored. Due to the myth that bullying is normal in school life, many young children suffer and bullying still remains unreported among school students, teachers, school authority and parents. Corporal punishment, another form of painful experience of a student during his or her school life, has been widely established as a crime and is even restricted in many countries of the world but bullying is yet to be considered as a prohibited action in majority of countries in the world. If parents, teacher and students accept school bullying as an unaccepted act recognizing the possible harms in lives of children associated to it and create an understanding within themselves, the issue of school bullying can be addressed and eventually be eliminated.

Education itself can play a powerful role. Education can transform beliefs and behaviours that lead to violence. It can engage children and adolescents in critical self-reflection and help teachers, parents and communities work together to promote social cohesion, gender equality and peace.<sup>32</sup>

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30 Education Review Office., Report on National Assessment of Student Achievement 2013: Kathmandu. Ministry of Education, 2015. p. 177

31 An Everyday Lesson #ENDviolence in Schools, UNICEF, NY, Sept. 2018, pg. 22.

32 An Everyday Lesson #ENDviolence in Schools, UNICEF, NY, Sept. 2018, pg. 2.

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# JUVENILE JUSTICE IN NEPAL: A REFLECTION ON POLICY FRAMEWORK AND JUSTICE DELIVERY SYSTEM

*By Rabindra Bhattarai\**

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## Abstract

*I*t has been a quarter of a century since Nepal ratified the UN Convention on the Rights of the Child (CRC), 1989. Ratification of the CRC has contributed to a transformation of the Juvenile Justice System in Nepal with the incorporation of vital components of international standards. The Nepali judicial system has incorporated international child rights laws relevant to justice for children. Thus, the notion of the UNCRC, has been embedded into Nepal's domestic justice system including juvenile justice. This writing aims to highlight the Nepalese perspective of juvenile justice. The article covers a Nepali context of juvenile justice as a background, discusses the policy framework, and legal provisions concerning juvenile justice. It also discusses the judicial approaches that are currently taking place to further juvenile justice and major areas of reform deemed necessary.

*There have been several attempts to improve the system by recognizing juvenile justice as a special field in justice delivery mechanisms. However, the legal provisions still lack synchronisation with international juvenile justice principles and standards. Particular areas for further improvement include:*

- *Section 50 of Children's Act, 1992 (2048 B.S.) allowed the Juvenile Bench to adopt non-custodial measures including restitution order;*

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*probation order; judicial supervision order; community service order; referral to attendance centre or authority; house arrest and limitation to the location of movement; replacing institutional sentence to half-way houses; educational release; and release in parole, very few of such options are being exercised.*

- *The system requires a Social Inquiry Report, but it should be emphasized and effectively functionalized in case disposals.*
- *As juveniles are not entitled to property, restitution to the victim may not be caused from their property, therefore there should be state-sponsored funding to compensate victimised children.*
- *A system of reviewing the sentencing of children in conflict with law, including the suspension, modification or remittance of their sentence needs to be in place.*

## 1. The Context

It has been a quarter of a century since Nepal ratified the UN Convention on the Rights of the Child, 1989. It is well believed that ratification of the CRC has shifted to new patterns of dealing with children in all spheres, particularly in the public sphere including justice delivery. Juvenile justice has incorporated vital components of international child rights laws. It is relevant to overview the effect of the implementation of international child rights law in the justice system operative in the plights of children. In this context, this writing aims to highlight the Nepalese perspective of juvenile justice. The article covers a Nepali context of juvenile justice as background, discusses the policy framework, and legal provisions concerning juvenile justice. It also discusses the judicial approaches that are currently taking place to further juvenile justice and major areas of reform deemed necessary.

## 2 . Juvenile Justice

The term 'juvenile' means 'pertaining to or suited to youth' as a noun form and as an adjective. It has been in use since the 1600's in this sense, and since 1816 juvenile delinquency has been

recorded on a register (OED, 2016). The Universal Declaration of Human Rights, 1948 (UDHR) has drawn stratification of human beings as childhood and adulthood, where children are entitled to special care and assistance, and social protection based on equality, which can be observed in Article 25 of the Declaration (AJAR, 2009:07). The UN International Covenant on Civil and Political Rights, 1964 (ICCPR) de-penalized the death penalty for children stating "sentence of death shall not be imposed for crimes committed by persons below eighteen years of age" (AJAR, 2009: 12). Further, ICCPR named the children whom are subjected to deprivation of liberty as well as them being brought under criminal proceedings as "juvenile persons" (Article 10.2). ICCPR not only segregated children from adults but also guaranteed speedy adjudication of such cases where children are involved and accords them treatment appropriate to their age and legal status.

UN Minimum Standards for the Administration of Juvenile Justice ("The Beijing Rules") defined Juvenile as "a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult" (UN 1994: 357). Later, the UNCRC laid down a standard in defining a child as "every human being below the age of eighteen years" (UN 1994: 175). Thus, juvenile justice is referred, in general, to mean justice in relation to children.

"In a broader sense, juvenile justice is a part of the justice mechanism for children as a whole, children in the need of care and protection...in limited sense juvenile justice is understood as a branch of justice dispensation to deal with children in conflict with law" (Bhattarai, 2012: 241-242). Juvenile justice is a system that is comprised of institutions established by laws, including juvenile police, courts, correctional institutions and community-based agencies and programmes (Martin, 2005: 04, in Silwal, 2012). "The juvenile justice system, in first place, includes methods of prevention of juveniles from committing delinquencies and, in second place, diversion away from normal justice process, juveniles who are at the early stages of offending and protection and rehabilitation of those already in the system" (Silwal, 2012:

115). Actually, juvenile justice is expected to serve in identifying the root causes of delinquencies and inform the preventative and curative measures to respond to them. Therefore, every human being who has not reached the age of eighteen is subject to juvenile justice, the mechanism of adjudication and dispensation of social and correctional justice to young members of society.

### **3. Legal Framework of Juvenile Justice in Nepal**

#### **Historical perspective**

The Nepali justice system was heavily influenced by the Aryan justice system. In ancient times 'VARNASHAM', was one of the main mechanism to shape people's social behaviours. SAMA (Alerting and Warning), DANA (Donating), DANDA (Punishing) and BHEDA (Banishment) were considered a means of control, and BRAMHACHARYA, GRIHASTHRASHRAM, BANAPRASTHA and VAIRAGYA were considered the four pillars of protection of interest by which human conduct was regulated (Swin, 2065 BS: 8-9).

Under this system, 'as long as child would not attain to the age of eight, s/he would be known as a new born baby' (Joshi, 2006: 49). At the age of eight years, the child would enter into BRAHMACARYA (Studentship), the life of education, leaving the family and do good unto it by deeds, mind and words (Joshi, 2006: 9). Life, until reaching the age of 25 years was referred to as BRAMACHARYA. Manu recommended that for 36 years people acquire knowledge and enter the domestic mode of life (Luintel, 2061 B.S.: 43). Only then could persons be considered a mature adult.

BRAMACHARYA was considered a phase of learning, epitomized by a high level of disciplinary control in order to prepare young people for public life. The role of education and control was left in the hands of the preceptor. The State (the King) was responsible for the care of orphaned or abandoned children when found, only then did they have the responsibility act. 'The King had to administer the property of children who are not of

age for legal actions and such minor would be treated as adult when comes of age' (Joshi, 2006: 375). 'A Preceptor should have admonished disciple without beating or inflicting any kind of corporeal punishment' (Joshi, 2006: 255).

Jayasthiti Mall established a regulatory system by blending some Aryan traditions into aboriginal systems of then ethnicities in Nepal in 1380. Subscribing to the notion of care and protection of children as prescribed by NARADSMRITI, NYAYABIKASINI (MANAVNYAYASHASTRA/Human Justice Ethos that served as the then legal codes) had prescribed "until attending age of eight years, man is a child like an embryo; and until attending age of 16 years a child is called ANADI (ignorant, raw and inexpert)" KANUN (2008: 13). This law provided that property of the ANTEBASI (Disciples of teachers) was required to be protected by the king and GURU (Teacher) as they were entrusted to discipline disciples, as the king rules his subjects.

These notions of Aryan traditions are reflected in different chapters of *Muluki Ain* of 1853 (1910 BS), primarily in 'Delinquency of Children', 'Poor and Bankrupts' and 'Accidental Homicide'. The chapter on 'Delinquency of Children' describes different modes of purification processes in faults or delinquencies committed by children of different castes. Clauses 8 and 9 deal with criminal liability for juveniles, and Clause 8 exempts children below the age of 12 years in all faults and crimes, including culpable homicide. It also indicates to question such delinquent children in a conciliatory manner, with scolding during inquiry prohibited. The same clause stipulates that if any child commits the crime of culpable homicide as a result of persuasion by an adult, and if the adult admits this, then the adult would receive capital punishment and the child would be imprisoned for one month (HMGN 1965: 417).

Clause 10 of the same chapter dealt with sexual faults. A Boy below the age of 11 years and a girl below the age of 10 who engage in sexual intercourse are exempt from criminal liability and their chastity undisputed. If it was within the same caste, no remorse was even prescribed for. Such children would be scolded in such cases (HMGN 1965: 417).

Clause 1 of the chapter on 'Accidental Homicide' exempted adult offenders for accidental homicide committed against another adult but not in case of such homicide against children. Of a child below the age of 12 died as a result of bodily harm inflicted by an adult, the adult would have to bear full criminal liability (HMGN 1965).

The legal provision of care and protection of children was also prescribed. The clause of chapter 'Virtues Sacrifice of Wife' prohibited a woman below the age of 16 to sacrifice herself with her dead husband. Similarly, Clause 2 prohibited women from such sacrifice if they had children (son below 16 years or daughter below the age of five years) to take care of (HMGN 1965).

Abandoned, or children in need of care and protection, were given protection under the State's cost. According to Clause 6 of the 'Poor and Destitute', if children below the age of 12 were found unattained or orphaned, had no guardians to look after them, and had no property for livelihood, the officer at administrative headquarters would be responsible for their care and provision of livelihood, at the State's cost. (HMGN 1965: 419).

The Civil Liberty (Right) Act, 1955 incorporated humanistic thoughts and emphasised a sense of the child rights perspective. Section 3 of the Act guaranteed equal protection of law to citizens, subject to provisions of prevailing laws, and Section 5 granted powers to the government "to make special provisions for including... children.... "(LBMB, 2068: 2). It can be observed as a provision, the preventing of recruitment of a child below 14 years of age to work in a factory or mine in Section 14 of the Act.

Prior to the promulgation of new *Muluki Ain*, 1963 and Prison Act, 1963, in the old *Muluki Ain*, Number 6 of the Chapter on 'Punishment' detailed that, except when otherwise mentioned in an Act, a child below the age of 8 years would be completely freed from subjection to punishment; if a child below the age of 12 years committed a finable offence, they would be freed after admonishment, and if they had committed an offence resulting

in imprisonment, would be held in prison without any measures of restrain for a period of up to one month; finally, if a child between the ages of 12 and 16 years committed an offence, they would be sentenced to half the punishment that would have been imposed on an adult (Gorkhapatra Press, 2009 BS: 190).

Furthermore, Number 20 of the Lockups and Prisons (*Khor-Jhelkhana*) of the same *Muluki Ain* provided that if a child up to the age of 12 is held in prison as a result of committing an offence, parents or relatives of such child would be allowed to live in prison to take care of the child (Gorkhapatra Press, 2009 BS: 256).

Promulgation of *Muluki Ain* (National Code), 1963 (2020 BS) is an important event in the history of law in Nepal. It founded a set of standards for punishing children in case of a criminal procedure. It prescribed the differential punishment for an offence committed according to the age of the offender. By its first amendment, it exempted children below the age of eight years from any kind of criminal liability. It also prescribed a punishment of scolding in case of an offence which would originally have resulted in a fine for children up to the age of 12 years. It also prescribed up to two months imprisonment for this age group in the case of an offence where the offender would be sentenced to imprisonment. Whereas those between 12 and 16 years of age would be liable for half of the punishment accorded to an adult (HMGN 1987). These provisions of *Muluki Ain* (National Code), 1963 remained effective in Nepal until the promulgation of the Children's Act, 1992.

## **Existing Legal Framework**

Nepal ratified the CRC on the 14th September 1990. Accession of ICCPR and UN International Covenant on Social, Economic and Cultural Rights, 1964 (ICSECR) by Nepal, has bound Nepal to the furtherment of its developmental initiatives in a right-based approach. Ratification and accession of international human rights treaties required harmonizing the national legal system by making them compatible with international standards of juvenile justice in Nepalese jurisdictions.

## ***Constitutional Provisions***

**The Constitution of the Kingdom of Nepal, 1990** was the first supreme law of Nepal that recognized, in its preamble, that it was enacted to guarantee the basic human rights of every citizen of Nepal. Article 11 of the Constitution guaranteed the right to equality among the citizens, and equal protection of laws. This Article also guaranteed non-discrimination and provided that "special provisions may be made by law for the protection and advancement of the interests of ... children..." (LBMB, 2001: 7). Article 20, provided a guarantee against exploitation and ensured that no minor would be employed to work in factories or mines, or be engaged in other hazardous work (LBMB, 2001: 13). This Constitution had also laid down state policy to safeguard children. Article 26 (8) stated that the state makes "necessary arrangement to safeguard the rights and interests of children" and ensures that they would not be exploited and gradually makes arrangements for free education (LBMB, 2001: 16).

## ***Interim Constitution of Nepal, 2006***

As a successor of political change, the Interim Constitution of Nepal, 2006 made more progressive provisions on child rights, crafting them into a form of fundamental entitlements for children. Article 22 provided that:

### ***Rights of the child:***

- (1) *Every child shall have the right to his or her identity and name.*
- (2) *Every child shall have the right to nurture, basic health and social security.*
- (3) *Every child shall have the right against physical, mental or any other form of exploitation. Such exploitative act shall be punishable by law; and any child so treated shall be given such compensation as may be determined by law.*

- (4) *The helpless, orphan, mentally retarded, conflict victim, displaced, vulnerable and street children shall have the right to get special facilities from the State for their well-ascertained future.*
- (5) *No minor shall be employed to work in any factory, mine or engaged in any similar other hazardous work or used in army, police or conflict.* (LBMB, 2013: 7-8)

Furthermore, this Constitution brought children within the ambit of social security. Article 35(9) commanded the state to adopt policy in their favour and stated: "*(t)he State shall pursue a policy of making special provision of social security for the protection and progress of the ... orphans, children...*" (LBMB 2013: 14).

**The Constitution of Nepal**, promulgated on 20 September 2015 by the Constituent Assembly, is a fresh mandated supreme legislation of the country. **The Constitution of Nepal** (2072 B.S.) is brought to fulfil the aspirations for sustainable peace, good governance, development and prosperity throughout the federal, democratic, and republican systems of governance. This latest form of the supreme legislation has sustained the previously existing provisions in favour of the interests of the children.

Article 18 of the Constitution expresses a right to equality and provides a way forward to make special provisions for protection, empowerment or development of the citizens, including children. Article 39 provided separate fundamental entitlements to children including the right to child friendly justice with the following guarantees:

- (1) *Each child shall have the right to a name and birth registration along with his or her identity.*
- (2) *Every child shall have the right to education, health, maintenance, proper care, sports, entertainment and overall personality development from the families and the State.*
- (3) *Every child shall have the right to elementary child development and child participation.*

- (4) *No child shall be employed in any factory, mine, or be engaged in similar other hazardous works.*
- (5) *No child shall be subjected to child marriage, transported illegally, abducted/kidnapped, or taken as hostage.*
- (6) *No child shall be recruited and used in army, police or armed group, or be subjected, in the name of cultural or religious traditions, to abuse, exclusion or physical, mental, sexual or other forms of exploitation or improper use by any means or in any manner.*
- (7) *No child shall be subjected to physical, mental, or any other form of torture in the home, school, or other place or situation whatsoever.*
- (8) *Every child shall have the right to child friendly justice.*
- (9) *The child who is helpless, orphan, with disability, conflict victims displaced or vulnerable shall have the right to special protection and facilities from the State.*
- (10) *Any act contrary to Clause (4), (5), (6) and (7) shall be punishable by law, and the child who is the victim of such an act shall have the right to obtain compensation from the perpetrator in accordance with the law.* (LBMB, 2015: 22-23)

Article 43 granted the right to social security for children and said social security is to be managed by law. Article 51(i) of the Constitution laid down policy regarding labour and employment and clearly expressed: State abolishes "all forms of labour exploitations including child labour" (LBMB, 2015: 39).

In the policies related to social justice and inclusion, the Constitution specified policies in relation to the fate of children: ... (4) to evaluate, economically, the work and contribution such as the maintenance of children and care of families, and (5) to take into consideration primarily the best interests of the child (LBMB, 2015:40).

The Constitution has not made any particular constitutional body to oversee, monitor and encourage enforcement of child rights, including a juvenile justice system. However, Article 248(6)(b) has recognized that persons involved in the field of the protection and promotion of rights and interests of the child (LBMB, 2015: 172) could be members of the National Human Rights Commission. It indicates that child rights and even the issue of the right to juvenile justice is a matter of oversight and monitoring as human rights in general.

Past and present constitutions have never specifically defined the term 'child' or 'children'; however, as Articles 84(5), 176(5) and 222(5) have provisioned that if a citizen achieves the age of eighteen years, s/he shall have the right to vote for federal, provincial and local elections. It is evident that the Constitution considers persons who have not attained the age of eighteen years as children.

Beyond the above mentioned provisions in the Constitution, from a juvenile justice perspective, the Fundamental Rights and Duties of the Constitution are relevant and are to be upheld by the administration of justice. Right to live with dignity (Article 16), right to freedom of opinion and expression (Article 17.2.a), right to equality and equal protection of law (Article 18), right to communication (Article 19), right to fair trial and justice (Article 20), right against torture and ill treatments (Article 22), right to freedom of religion (Article 26), right against any form of exploitation (Article 29), right to education (Article 31), right to health (Article 35), right to food (Article 36) are enjoyable rights of the children in conflict with law. If the juveniles are victims of an offence, along with above rights they deserve the same victim of crime rights as well (Article 21).

### *Statutory Provisions*

The Children's Act, 1992 (2048 B.S.) is the principal legislation that specifies the notion of juvenile justice in Nepal. This law effectuated the separation of juvenile justice from the traditional criminal justice approach. Evidently, this law

incorporated some of the concepts of the juvenile justice system as stipulated in the international standards.

The Act in Section 55 states that the Government of Nepal constitutes Juvenile Courts as necessary and specifies their territorial jurisdiction and seat of office. Subsection 2 of the same Section has provided courts subject matter jurisdiction as to "first initiate and decide cases in which a Child is either a plaintiff or defendant" (CCWB, 2016a: 29). This gives the Court jurisdiction over proceedings as civil or criminal. Yet, no Juvenile Court has been constituted, and District Courts are handling the cases through Juvenile Benches in accordance with the Subsections 3 and 4 of the same Section. However, the rules framed to provide procedures of the juvenile bench deals with children in conflict with law only.

#### **Juvenile Reform Homes in Nepal**

The first Juvenile Reform Home was established in Sanothimi, Bhaktapur in 2001. Two other Juvenile Reform Homes were extended in 2012 and 2013 in Sarangkot, Kaski and Biratnagar, Morang respectively. Buildings for two other Juvenile Reform Homes in Nepalganj, Banke as well as Dhangadhi, Kailali are under construction and would be in operation in near future.

Total 1492 children in conflict with law have entered Juvenile Reform Homes in all three locations till FY 2016/17 for approximately 29 types of convictions. Among the homes, the Juvenile Reform Home in Bhaktapur has served total of 1186 children in conflict with law from FY 2001/02 to FY 2016/17, whereas the home in Kaski has served 160 such children from FY 2011/12 onwards and Morang has served total of 146 children from FY 2013/14 till date.

(CCWB, 2014; CCWB 2015-17)

Determining the age of the criminal liability is a central concern of juvenile justice. As per the Act, there shall be no criminal liability at all for children below the age of 10 years. If a child between the ages of 10 and 14 years is found guilty of a crime punishable with imprisonment, the Act allows for a maximum incarceration of six months. *"If a Child committing an offence is between 14 and 16 years, s/he shall be punished with half of the penalty to be imposed under law on a person who has attained the*

*age of majority.*" (CCWB, 2016a: 5-6)

The reformatory approach in holding juveniles responsible for their delinquencies is another grey area that the Children's Act, 1992 aims to address through juvenile justice. Section 15 prohibits imposing rigorous punishment to any child. The Section says: "*Notwithstanding anything contained in the existing laws, no Child shall be subjected to handcuffs and fetters, solitary confinement or be committed to live together in prison with prisoners having attained the age of majority in case a Child is convicted for any offence*" (CCWB, 2016a: 7).

Furthermore, the Act envisaged and stipulated the establishment and operation of separate juvenile reform homes. Section 42 states that the Government of Nepal establish and operate juvenile reform homes, as required for "*children accused of any offence and to be imprisoned pursuant to existing law for investigation or adjudication, and children to be imprisoned having been punished with imprisonment punished to existing law*" (Section 42.2. a. and b.); CCWB, 2016a: 22).

The adjudicatory approach protects the best interests of juveniles subjected to investigation, prosecution or adjudication, with enforcement of accountability another feature the Children's Act, 1992 prompted. Several provisions have attempted to address safeguarding the best interests of juveniles in deliberation of law enforcement. As mentioned above, Section 15 provides protection for juveniles against being handcuffed or kept in solitary confinement, even during investigations.

Furthermore, the judicial deliberation of juvenile cases is not solely an adjudicatory role of the Court, to decide whether the alleged juvenile infringed penal law, but the Court is also obliged to take into account his/her psychosocial condition. This is reflected in Section 55 (5) which delineates the Juvenile Bench as composing a Social Worker, Child Specialist or Child Psychologist, in addition to a judge. Section 19 of the Act makes it clear that legal representation on behalf of the juvenile defendant is mandatory. It states: "*(t)he Court shall not entertain or*

*decide a criminal charge brought against a Child unless there is a legal practitioner to defend the Child" (CCWB, 2016a: 8).*

Additionally, the Act provides further protection for the juvenile subjected to the administration of justice. Section 49 of the Act asserts a closed court where the proceedings of juvenile cases are kept from the public realm. Section 49(1) permits only legal practitioners, parents/guardian of a child and a person permitted by the judge to be present in the proceedings of cases related to a child under the Act or other prevailing laws. The Act directs for maintaining confidentiality of the information regarding the children as well as the case deliberation. Section 52 of the Act instructs the police office to "*keep the statistics of the child apprehended on the charge of any offence in confidential manner*" (CCWB, 2016a: 26-27). Such statistics might be used for study or research purposes, using age and sex as variables but without disclosing the personal details of the child that may expose his/her identity.

The Act recognizes that juveniles may not be considered as criminals even if they infringed penal law under the status of juvenile. Section 12 of the Act denies the offence committed in childhood to be counted as criminal, and the law may not disqualify in enjoining facility under law in adulthood by the reason of the committal of a delinquency in juvenile status. Furthermore, there is redemption from additional punishment for repeating a crime.

Preferring alternative measures in holding accountable the juveniles in conflict with the law is another crucial feature of juvenile justice norms that the Children's Act, 1992 has adopted. The options managed by Section 50 are very important from this perspective. The Section reads:

- (1) *In case the officer hearing the case deems it not appropriate to keep a child in prison (Juvenile Reform Home) having considered to the physical condition, the age of the accused child who is to be investigated having detained in prison pursuant to existing law, circumstances during the time of*

*commission of the offence and the place of imprisonment, he may issue an order to handover the child to the custody of his father, mother, relatives or guardian or any social organization engaged in protection of rights and interests of the child or the Juvenile Reform Home on the condition to present him as and when required and to continue investigation or proceedings of the case.*

(2) *In case the officer hearing a case deems it not appropriate to imprison a child convicted of an offence and imposed a sentence of imprisonment in a prison having regard to his physical condition, age, circumstances in which the offence has been committed and times of commission of the offence, he may suspend the sentence to the effect of not undergoing the sentence for the time being or he may prescribe to undergo the sentence residing in a Children Rehabilitation Home or in guardianship of any person or organization. In case the same child having had his sentence suspended in such a way is convicted of the same offence or any other offence and is imposed a sentence of imprisonment within a period of one year, the officer hearing the case may order to execute the sentences of punishment having added the earlier sentence imprisonment (CCWB, 2016a: 26).*

The provisions applicable during the course of investigation, prosecution or administration of justice are provided in the Police Act, Government Cases Act, 2049 B.S., *Muluki Ain*, 1963 and other statutes that are in force. However, the above mentioned provisions and standards of the Children's Act, 1992 supersedes and governs the other provisions mentioned are required to be applied in compatibility with these. Section 50 of the Children's Act incorporates provision from the perspective of settling the allegation and liability to be borne by the accused child. Section 50(1) desires to protect the child from the potential detrimental effect of secured institutional placement of an accused child, and allows the court to prevent contamination of such person with other persons to be passed judgement on. Section 50(2) allows the Court to use alternative sentencing options, avoiding imprisonment and its detrimental effects on children.

The provisions have given great judicial discretionary powers in seeking alternative measures that may mend the child from bad behaviour and nurture good behaviour.

While considering the case in the pre-trial phase, the court may choose any of the options amongst the following that fits with the specific conditions of the accused child:

- Allow the child to live with parents or guardians and to cooperate with the investigation and prosecution process;
- Allow the child to live with parents or guardians under a care and guidance order;
- Allow the child to continue education in his or her normal school and give an order to the school administration to report the conducts of the child;
- Allow the child to live with parents or guardians and order any organization to liaise with the investigation or prosecution authority for the proceeding; and
- Any other options deemed appropriate.

Similarly, while considering the case in the trial phase, the court may choose any of the options the following that fits with the specific conditions of the accused child and dispose the case:

- Verbal and/or written admonition or reprimand;
- Conditional discharge with parental care or care and guidance of guardians;
- Orders for group participation or counselling
- Restitution order;
- Suspension of liability;
- Probation order;
- Judicial supervision order;
- Community service order;
- Referral to an attendance centre or authority;
- House arrest and limitation movement; and

- Some combination of options listed above or any other non-institutional placement options.

During consideration of the case in the post-trial phase, the court may choose any of the following that corresponds with the conditions of the accused child:

- Replacing an institutional sentence to half-way houses;
- Educational release;
- Release on parole;
- Remission.

The Court may use the above options discretionally as they are internationally recognized as disposition measures in juvenile cases. Rule 18 of the UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), 1985, desires adoption of a "large variety of disposition measures", and flexibility to "avoid institutionalization to the greatest extent possible" (AJAR, 2009: 190).

### ***Regulatory Provisions***

Following the promulgation of the Children's Act, 1992, the Children's Rules, 1995 (2051 B.S.) were formulated aimed at implementing the Act conveniently. The rules provided regulatory frameworks including "*provisions relating to functions, duties and powers of the Central Child Welfare Board (CCWB); appointment and functions, duties and powers of Executive Director, ... District Child Welfare Board, Children's Welfare Officer*" (Mainali, 2016: 134) as well as formation of various homes including Juvenile Reform Homes. However, these rules made no specific provisions in relation to implementing provisions that existed in the Act - those that were designated to enforce juvenile justice.

The GoN framed "Juvenile Justice (Procedural) Rules, 2006 (2063 BS)" under Section 58 of the Children's Act, 1992, and enforced it on September 5th of 2006. The Rules provide guidelines for the administration of justice in cases of juveniles. Rule 3 requires the investigation authority, particularly, the Police Office, to designate separate units with qualified police

officials in every police office for inquiring and investigating juvenile delinquency cases under their jurisdiction. The Juvenile Police Unit shall follow standardised procedures throughout the investigation of juvenile cases. The procedures include the following mentioned below.

Officers involved in the investigation of juveniles should be plain clothed, offer a formal introduction and inform the child of his/her legal and constitutional rights. They are also required to inform both parents of the child, as far as possible, about the delinquencies allegedly committed, and ensure participation of the parents of the suspected child as far as practicable. In addition they must ensure the physical and mental health of the child is examined by medical professionals.

One significant departure of the investigation procedure from an ordinary investigation is a provision of a social inquiry report. Rule 4(g) requires the police official to "*request the service provider individual or institution to prepare a social study report about the delinquent in the manner in format prescribed in the Schedule*" (Law Commission, 2016: 2). Rule 5 sets the standards for interviewing and treating children to ensuring a child friendly environment (The Rule stresses "*to enable child to answer the matters asked to him/her*" (Law Commission, 2016: 3). The rules require interviewing or asking a child about the allegation against him or her in presence of their parents, guardian or a lawyer. The rule requires the authority to ask the family and social background of the child while conducting such interviews in addition to information about the allegation. The Rule is sincere regarding the time factor of engaging with children for interrogation and sets a timeframe under Rule 5(4) as: "*(a) child shall not be inquired for a period longer than an hour at once and shall not be inquired at night too*" (Law Commission, 2016: 3).

Rule 6 elaborates on the juvenile bench and constitutes a juvenile bench comprised of a District Judge (Chief Judge, if there are judges), a Social Worker, Child Specialist or Child Psychologist. Rule 7 provides a special provision to represent a juvenile justice standard, that the court or bench has to give a copy of the charge sheet and documents relevant to the parents or guardian of the juvenile where a charge-sheet against a juvenile is lodged or registered at the court. If parents or guardians are unavailable or unwilling to receive the documents, the court/

bench has to provide those to the lawyer who is assigned or representing the alleged juvenile.

The Rules also provides required qualifications, service terms and removal of the social worker, child specialist or child psychologist of the juvenile bench. A trained person in the relevant discipline and having minimum qualification of certificate level may be considered a candidate for serving the Bench. The hearing must take place in a child friendly environment using language appropriate to the child's age, and his/her physical and mental development for the deliberation.

Rule 12 requires arranging a separate room with an affixed camera within the juvenile court or the district court for dealing with the juvenile to keep the child from public exposure, while the deliberation and the inquiry shall be displayed on the screen of the bench. Only the parents/guardian and lawyer of the alleged juvenile offender may stay with him/her. The, Judge, Social Worker, and Child Specialist or Child Psychologist collectively hear the juvenile cases. However, in the absence of all or some among the social workers, a child specialist or child psychologist may not prevent to continuation of proceedings, and proceedings executed by the judge shall be valid. On the submission of a written opinion by a Social Worker, Child Specialist or Child Psychologist, the Judge judicially considers the case and pronounces the judgment of the bench.

Rule 13 requires the Bench to issue an order producing a social inquiry report through a service providing person or institution if such a report is not presented along with the charge sheet. The Rule allows anyone who has evidence that negates the charge brought against the juvenile to adduce such evidence. If the alleged juvenile desires "*to present his/her witness by himself/herself in the juvenile court*" (Law Commission, 2016: 7), Rule 14 allows such submissions of the witness and the Bench may be permitted to summon such witness. Such witness enjoys the facilities provided in accordance with the State Cases Rules, 1999 (2055 BS). The Bench is obligated to resolve disputes on age with valid evidence including birth certificate issued by the hospital or birth registration certificate (Rule 15, Law Commission, 2016: 7).

A clear departure from the ordinary procedure for juvenile cases is made by the Rules in relation to the timeframe

surrounding case disposal. A juvenile case shall be settled within 120 days from when the case was booked at the Court. Similarly, from the sentencing perspective the rules have taken a significant departure. Rules provide space for applying measures of correction rather than the traditional approach of imposing a sentence to juveniles. Rule 17 points that the sentence is not to be passed rather to be mentioned through the "*methods to be applied to correct the child and description of compensation or fine, in case if it is to be paid or submitted*" (Rule 17(h) and (i); Law Commission, 2016: 8). The rules have made a provision for availing a copy of the settled judgment without any cost to the juvenile.

The Rules have provided a Juvenile Justice Coordination Committee (JJCC) at national level to coordinate different agencies relating to juvenile justice administration. A Judge of the Supreme Court, designated by the Chief Justice, chairs the Committee and Deputy Attorney General, Secretaries - Ministry of Law, Justice and Parliamentary Affairs; Home Affairs; Women, Children and Social Welfare or Gazetted First Class Officers designated by secretaries, Additional Inspector General of Police - Police Headquarters, Executive Director-CCWB, and a representative from among the institutions working in the field of children nominated by the CCWB are members of the Committee. The Registrar of the Supreme Court serves as Member Secretary of the Committee (Rule 22).

#### **4. The Notion of Child Friendly Justice**

The provisions under Article 39 of the Constitution of Nepal are representative of Articles 37, 39 and 40 of the CRC. From the perspective of juvenile justice, Clause 8 places more significance as it relates to many of the other provisions of the Convention. The concept of child-friendly justice may be perceived as an abstract and theoretical idea, however, that is not true. The notion of child-friendly justice refers not only to children in conflict with the law but also to children who come into contact with the justice system. The simplest way of understanding the notion of child-friendly justice is that it is a child friendly environment, i.e. an environment offered to child physical safety, emotional security and psychological enablement in the course of rendering justice by the tools, approaches and means of justice delivery, at all levels. A Child friendly environment is "an environment

where a child does not experience or feel isolated/ alienated or discriminated upon. In a child friendly environment, there exists no situation in which the child feels or experiences fear, neglect, dishonour or risk" (Bhattarai, 2014: 25).

Children come into contact with the justice system in many different ways, from family matters such as divorce or adoption, and criminal justice matters as victims, witnesses or children in conflict with the law. When faced with the justice system, there is high potentiality that "children are thrown into an intimidating adult world which they cannot understand. Adapting justice to their needs is therefore necessary" (CRIN, 2017). Children facing the justice system calls for a remarkable shift in how to interact with children, and that the court may be a powerful tool to shape children's lives in a positive and constructive way. It also demands recognition of the trauma often experienced by children that are in contact with the legal system as opposed to the remedy it should be.

Child-friendly justice introduces principles that empower children to enforce their rights and encourages Government, court, and law enforcement officials to develop and implement policies that address children's precarious situation in the justice system (CRIN, 2017). It asks to minimize the challenges that children face at each step, in each aspect of legal proceedings, and requires a thorough assessment to build confidence that justice resolves children's issues rather than enlisting them as problems. Adopting child-friendly justice may reduce the traumatic experiences children face and demonstrates respect for their rights.

Child-friendly justice refers to "justice systems which guarantee the respect and effective implementation of all children's rights at the highest attainable level, bearing in the mind ... giving due consideration to the child's level of maturity and understanding and circumstances of the case. It is in particular, justice that is accessible, age appropriate, speedy, diligent, adopted to and focused on the needs and rights of the child including the right to due process, to participate in and understand the proceedings, to have respect for private and family life and to integrity and dignity" (CoE, 2017: 17).

Child-friendly justice is applicable to children who come into the contact with the law, either as a victim, witness, subject or party of disputed issues in course of civil, administrative or judicial proceedings. Whether children come into contact with the law as victims, witnesses, offenders or plaintiffs, it is equally important that they are met with a system that understands and respects both their rights and their unique vulnerability (CRIN, 2017). It provides children full access to the justice they need and brings to an end to the violations of these rights.

The notion of child-friendly justice requires effective enforcement of non-discrimination, the best interests of the child as a primary consideration, non-separation from parents subject to exception, encouraging the child to express opinion and respect thereto, protection against abuse, neglect, torture and detrimental treatment of any kind, rehabilitative care and fair trial during judicial and administrative proceedings of the justice system.

## 5. Delivery of Juvenile Justice

Juvenile Justice (Procedural) Rules 2063 expects a coordinated service to benefit children subjected to juvenile justice. The JJCC under the chairpersonship of a Justice of Supreme Court, as designated by Chief Justice, is mandated to - i) advise the Government of Nepal on legal and policy matters for strengthening and developing the juvenile justice system; ii) coordinate with or cause to coordinate with the different programmes being conducted by national and international organization in the field of child rights and the juvenile justice system in Nepal; iii) conduct capacity enhancing programmes for personnel from Governmental and non-Governmental sectors and entities participating in juvenile justice dispensation on the new dimensions and programmes being developed in the field of juvenile justice for the speedy and effective dispensation of justice; iv) requesting the Government of Nepal to include contents related to child rights and juvenile justice in the syllabus of schools and universities, as well as various

educational institutions; and v) carrying out or cause functions related to supervision and management of standards of services and functions executed by entities participating in the juvenile justice dispensation (Rule 22(5), Law Commission, 2016: 11).

A total of 1115 cases related to Juvenile Justice were registered in the courts across Nepal between FY 2006/07-2016/17, in which 32 different types of convictions were made. Among such convictions, forced rape (38.6%) accounted for the highest proportion, followed by theft (12.3%), *Nakabajani Chori* (9.1%), drugs and substance abuse (7.0%), attempted rape (6.9%), murder (6.5%), attempted murder (4.8%), some public offenses (4.4%), forced rape (unnatural) (2.0%) and crime related to forests (1.8%) and so on.<sup>1</sup>

The Supreme Court prepared and adopted its third five-year strategic plan in July 2014. The Plan places "*reforming case management system to make dispensing justice effective*" (SC, 2016: 31) as one of the principal strategic measures and issues of juvenile justice under *5.2.2.1 Implementing Plan at Policy Level* (SC, 2016: 81) and projected to develop juvenile justice as *5.2.2.1 D Specialized Bench and Panel* (SC, 2016: 82-83). Strategic Plan in this regard is:

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1 Compiled from 'The State of Juvenile Justice in Nepal, 2014' published by Juvenile Justice coordination Committee and 'The State of Children in Nepal for years 2015,2016 and 2017', published by Central Child Welfare Board.

Activity	Indicator	Timeframe	Responsibility
<b>Promotion of Juvenile Justice System</b>			
Expand juvenile Benches in all districts	Infrastructure of Juvenile Bench	2014-2016	Juvenile Justice Coordination Committee
Take initiative for establishment of One-Stop Child Justice Centre	Dialogue with relevant Ministry	2014-2016	Chief Justice in coordination with Juvenile Justice Coordination Committee
Take initiative for establishment of Juvenile Reform Homes in all five regions	Dialogue with relevant Ministry	2014-2016	Chief Justice in coordination with Juvenile Justice Coordination Committee
Make necessary arrangement for establishing monitoring of the delinquents for the period of suspension of sentence of those whose sentenced is suspended	Monitoring Report	2014 onward periodically	Relevant Court
Establish a judicial monitoring of conditions and conducted programmes of reform of children held in Juvenile Reform Homes	Monitoring Report	2014 onward periodically	Relevant Court
Take initiative for necessary arrangements for adopting concepts of restorative justice, social reintegration and diversion in Juvenile Justice System	Promotion of Juvenile Justice System	August 2015	Chief Justice in coordination with Juvenile Justice Coordination Committee

(SC, 2016: 82-83)

Similarly, the Strategic Plan included *basic and refresher training for judges and employees on Juvenile Justice* as a component of the strategic plan of *promotion of the capacity of human resources; sharing of experience in participation of Child Psychologists and Social Workers; provide three months training on Juvenile Justice to new Child Psychologists and Social Workers; and protect victim and witness children* (SC, 2016: 87).

## Initiatives of JJCC

Based upon the policy provisions, JJCC employed several measures including training, and production and supply of tools for handling juvenile cases in line with recognized

principles of juvenile justice. In April 2016, JJCC produced comprehensive guidelines of juvenile justice outlining and incorporating the principles and laws of juvenile justice and offering guidance for investigation, prosecution, hearing, role of defending lawyer, roles of child specialist or psychologist and social workers and protection of victim and witness children, where the defendant is a child. Chapter 3 of the guidelines exclusively provided guidance for adjudicatory considerations to be adopted in juvenile cases. Examination of a charge-sheet, registration, judicial administrative consideration, consideration on detaining for trial, examination of evidence and management of the juvenile benches, and technical considerations are covered in the guidelines (JJCC, 2006a: 63-100). However, the guidelines have not mentioned alternative measures that can be adopted in sentencing by the court, to avoid detention as a general application and to maintain that as a last resort.

Similarly, JJCC also produced and circulated a Juvenile Bench Booklet to facilitate District Courts in 2006. The booklet gives a brief account of the juvenile bench and its jurisdiction, fundamental principles of juvenile justice, adjudication of juvenile cases, management of bench, and sentencing and its enforcement. The Booklet explains the legal provisions and procedural aspects of passing judgment in juvenile cases (JJCC 2006b: 58-70); however, it did not provide sentencing options and guidance while exercising jurisdiction under Section 50 of Children's Act, 1992 as specifically discussed earlier in this writing.

JJCC published a second volume of Compilation of District Courts' Judgments on Juvenile Cases as its seventh Series (JJCC, date unattributed). The volume covers 69 cases disposed by different District Courts as initial jurisdiction and includes; drugs, rape (including unnatural sexual offence), attempted rape, theft, murder (including vehicle accidents) and attempted murder, and some public offence cases. Among the 69 cases, 40 are related to sexual offences which indicates that sexual offence is a serious problem in relation to violence against children, by

children, in Nepal. Another area of engagement of children in delinquencies seems to be theft with 12 cases of theft out of 69.

## 6. An Observation of previous Judgements from Juvenile Justice Perspectives

Several judicial interventions in specific cases from a juvenile justice perspective can be observed from the published judgments. Following are such observations:

- In most cases where the defendants are convicted, the Courts have sentenced them with half of the punishment of imprisonment and have not sentenced them with pecuniary punishment. However, in a theft case the defendant was fined half of the claimed amount;
- Among 69 cases, only 21 mentioned the names of the Social Workers and/or Psychologists/ Child Specialists. This alludes to a lack of regularity in provision of these services or that judges are still reluctant to maintain juvenile benches different to adult benches dealing with criminal cases;
- The mention and interpretation of information provided by social inquiry reports were rarely observable in published cases;
- In the case of GoN Vs. Mr. I. Jhapa, the District Court allowed the defendant to remain under parental custody for trial. Later when the case was decided, the defendant was sentenced with imprisonment. As he was not attending the hearing, the Court issued an order of arrest and held him in the Juvenile Reform Home Biratnagar to serve his sentence. It indicated that even if non-custodial options are used for the trial phase, there lacks a coherent monitoring mechanism that ensures regular reporting on the whereabouts and thinking for non-custodial sentencing in lieu of imprisonment;

- In a rape case, GoN Vs. H and I, District Court Jhapa ordered restitution to the juvenile victim from the juvenile offender and asked the court to issue a separate identity card to the victim for seeking compensation to maintain confidentiality. In another rape case, Government of Nepal vs Kaski -6, District Court Kaski decided a restitution amount of 50,000.00 Rupees to be compensated to the victim to be covered by the property of the defendant child. According to law a child does not have any ownership over such property. Therefore there is a doubtful situation whether the victim would obtain such restitution.

## **7. Conclusion**

Having observed the constitutional and legal provisions, as well as the plans and policies of juvenile justice above, a conclusion may be drawn that there have been several attempts to improve the system by recognizing juvenile justice as a special field of justice delivery. However, the legal provisions still lack synchronization with international juvenile justice principles and standards. Particular areas requiring improvements are:

Section 50 of Children's Act, 1992 allows the juvenile bench to adopt non-custodial measures for the trial and post-trial phase of a case, including verbal and/or written admonition or reprimand; conditional discharge with parental care or care and guidance of guardians; orders for group participation or counselling, restitution order; suspending the liability; probation order; judicial supervision order; community service order; referral to attendance centre or authority; house arrest and limitation to the location of movement; replacing institutional sentence to half-way houses; educational release; release on parole; and remission. However, very few of such options are being exercised. Expanding application of alternatives is necessary to respect the norms of deprivation of liberty as a last resort and for the shortest period. Furthermore,

- The social inquiry report system requires more emphasis and needs to be effectively functionalized in case disposal.
- Engagement of a social worker and child psychologist/specialist is to be promoted in pre-trial, trial and post-trial phases of cases.
- As juveniles are not entitled to property and restitution to victim, they may not be caused from their property, there should be a state-sponsored fund to compensate juvenile victims.
- A system of review regarding the sentencing of children in conflict with law, including the suspension, modification or remittance of their sentence, is to be in place.

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