
Violence Against Women/Girls

Assessing the Situation of Nepal in 2012



For Human Rights & Social Justice

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Preface

The world is celebrating 103rd International Women Day on March 8, 2013 with the slogan “A promise is a promise: Time for Action to end violence against women”. Nepal as being the member state of United Nation has ratified various International human rights treaties and convention related with of women’s rights which have explicitly shown Nepal commitment towards protecting and promoting the rights of women. However, the situation of women doesn’t seem satisfactory. In Nepal where more than 50% (Census: 2011) of population is occupied by women but the overall eminence women are lagging behind in various aspects. They have lower status than men in each aspects of Human Development Index (HDI); illiteracy, employment status. Patriarchal society and economic dependency over men are the ground of men domination over women in the society. The so-called witchcraft practices, attempt to rape, rape, sexual violence, polygamy, domestic violence and trafficking of women and girls are some of the form of violence against women occurring frequently.

The data recorded in INSEC since very time has proved the existence of violence against women happening in Nepal, for instance 910 incidents of violence against women and 464 incidents has occurred to the girls this year. Similarly different records collected from print and electronic media about the incidents of polygamy, trafficking, and domestic violence and deprived from pre and post-partum services also confirms the trends of violence against women and critical situations of women from family to village as well as metropolitan city of the country. The 33% participation of women in dissolved Constituent Assembly and legal and administrative mechanisms to enhance the women participation on different constitutional, administrative and public services bodies however brought the light of hope in the faces of women; the long rooted cultural

and traditional practices and myths created against women have always created obstruction in the path of equality thus existence of discriminatory practices against women can be felt. Lack of effective laws, poor implementation situation and unaccountable governmental authorities are also the cause leading to increase in the incidents related with violence against women. Thus, requiring many improvements and efforts to fight the Violence against women/girls.

Furthermore, the incidents of killing, rape, sexual violence, victims of so-called witch craft practices, polygamy, domestic violence and women/girls trafficking can be reduced by the combined effort of multiple stakeholders comprising government, CBOs, NGOs and international and regional partners. The roles of human rights organizations are always crucial in this regard. INSEC has brought the overall description and details of killing, rape incidents, sexual violence, victims of so-called witch craft practices, polygamy, domestic violence, lack of pre and post-partum services along with trafficking of women and girls in this report, which I felt could be important to judge the situation of women in Nepal and the respective authority to address these problems of the society.

In addition, I would like to thank Nirmal Kumar Upreti, Akriti Giri and Samjha Shrestha, of INSEC for writing this report and bringing in this shape. Gita Mali who has design the overall layout of this report is also admired for her efforts.

March 2013

Subodh Raj Pyakurel
Chairperson

Abbreviations

APO	:	Area Police Office
CAT	:	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or
CEDAW	:	Convention on the Elimination of All Forms of Discrimination against Women
CRC	:	Convention on the Rights of the Child
DPO	:	District Police Office
FIR	:	First Information Report
GBV	:	Gender Based Violence
ICCPR	:	International Covenant on Civil and Political Rights
ICESCR	:	International Covenant on Economic, Social and Cultural Rights
INSEC	:	Informal Sector Service Centre Punishment
UDHR	:	Universal Declaration of Human Rights
UN	:	United Nations
VAW	:	Violence against Women
VAW/G	:	Violence against Women/Girls
VDC	:	Village Development Committee

Contents

Chapter 1

1.1 Introduction	7
1.2 Definition and Concept related with Violence against Women/Girls	9
1.3 Country's Profile	10
1.4 Organization of the Report	12

Chapter 2

Violence against Women/Girls	14
2.1 Forms and incidence of Gender-based Violence	14
2.1.1 Statistical representation of Women Victimization as per Region	14
2.1.2 Statistical representation of Girls Victimization as per Region	18
2.1.3 Descriptive analysis of Perpetrators involved in violence against women	21
2.1.4 Descriptive analysis of Perpetrators involved in violence against girls	25
2.1.5 Incidences as per Age-Group (Women)	27
2.1.6 Incidences as per Age-Group (Child)	28
2.1.7 Total number of killings occurred in the year 2012 against women and girls	28

Chapter 3

3. Existing legal mechanism in respect to Violence against Women/Girls	30
3.1 Domestic Violence (National Legal Mechanism)	30
3.2 Domestic Violence (International Legal Mechanism)	32
3.3 Practicing Witchcraft (National Legal Mechanism)	38

3.4	Practicing Witchcraft (International Legal Mechanism)	40
3.5	Polygamy (National Legal Mechanism)	45
3.6	Polygamy (International Legal Mechanism)	47
3.7	Lack of Pre and Post-Partum service (National Legal Mechanism)	52
3.8	Lack of Pre and Post-Partum service (International Legal Mechanism)	53
3.9	Rape, Rape attempt, sexual abuse (National Legal Mechanism)	55
3.10	Rape, Rape attempt, sexual abuse (International Legal Mechanism)	58
3.11	Women trafficking (National Legal Mechanism)	62
3.12	Women trafficking (International Legal Mechanism)	64
 Chapter 4		
4.1	Analysis	67
4.2	Conclusion	71
4.3	Recommendation	72

“Violence is not the power but absence of power”

- Ralph Waldo Emerson

Chapter 1

1.1 Introduction

The life of women/girl should not be a curse instead should be a matter of pride, no men has been endowed with power to call themselves superior and prohibit women from enjoying her life. All women deserve a life with the opportunity to be educated, to work, to be healthy and to participate in all aspects of public life. Yet in every country in the world, women and girls live within the confines of rigid gender norms, which frequently result in disproportionate access to essential services and major violations of their human rights.¹ Twenty years ago, violence against women was not considered an issue worthy of international attention or concern. Victims of violence suffered in silence, with little public recognition of their plight. This began to change in the 1980s as women’s groups organized locally and internationally demanded attention to the physical, psychological, and economic abuse of women. Gradually, violence against women has come to be recognized as a legitimate human rights issue and as a significant threat to women’s health and well-being.² Violence against women is also known as gender based violence (hereinafter GDV),³ a

- 1 <http://www.amnestyusa.org/our-work/issues/women-s-rights/gender-based-discrimination> accessed on 4th Feb 2013
- 2 Navneet Kumar Misra and Neha Bakshi, *Unite To End Violence Against Women available at* <http://www.slideshare.net/helloindia05/violence-against-women-research-paper> accessed on 4th Feb 2013
- 3 Violence against Women refers to “any act of gender-based violence that results in, or is likely to result in, physical, sexual and psychological harm to women and girls, whether occurring in private or in public. The Declaration on the Elimination of Violence against Women (1993)

violence as such was restrained within the four walls, in the past however with the time the suffering are being seen heard, and addressed.

Violence against women and girls (hereinafter VAW/G) causes pain, disability and death to an untold number of individuals every day, in every country in the world. VAW/G was declared to be a violation of human rights by the United Nations (UN) General Assembly in 1993, in its Declaration on the Elimination of Violence against Women).⁴VAW/G takes place in a multitude of contexts, including homes, schools, and the workplace. In unstable situations such as armed conflict and its aftermath, or human trafficking, the incidence rates of VAW/G escalate sharply. Other types of VAW/G are localized in particular areas of the world. Female infanticide and sex selective abortion in parts of Asia are so prevalent that sex ratios have been notably altered.⁵

In Nepal violence against women has started being openly discussed and addressed only in the last decade. The General taboo of not accepting this form of violence was related to strict patriarchal society and limited freedom of expression of such social evils. It has therefore been openly discussed as the most common form of gender based violence as domestic violence, or gender based violence in families.⁶Violence against women/girls is one of the most widespread human right abuse and problem pertaining in Nepalese society. Due to this increasing threat posed to the women and country as a whole, this report is an attempt to

4 Shelah S Bloom, Violence Against Women and Girls: A Compendium of Monitoring and Evaluation Indicators(in collbration USAID East Africa Regional Mission in collaborationwith the IGWG, MEASURE), p 12

5 Ibid

6 Sunita Sapkota, Violence Against Women-Focus on Domestic Violence, Health Prospect (Vol 10), p 8

assess and disseminate the situation of violence against women/ girls in Nepal.

1.2 Definition and Concept related with Violence against Women/Girls

The UN Declaration on the Elimination of Violence against Women (1993) states that “violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.”⁷The United Nations General Assembly defines “violence against women” as “*any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.*” The 1993 Declaration on the Elimination of Violence against Women noted that this violence could be perpetrated by assailants of gender, family members and even the “State” itself.⁸

Furthermore Gender Based violence is “any act of commission or omission by individuals or the state, in private or public life, which brings harm, suffering or threat to girls and women, and reflects systematic discrimination- including harmful traditional practices and denial of human rights because of gender.”⁹Violence against Women refers to “any act of gender-based violence that results in, or is likely to result in, physical,

7 A/RES/48/104. Declaration on the Elimination of Violence against Women.

8 United Nations General Assembly *Declaration on the Elimination of Violence against Women*(1993)

9 Ruth Finnelly Hayward, *Breaking the Earthware Jar* quired from Refrence Kit on Violence Against Women and Grils in South Asia, UNICEF, Kathmandu, Nepal, 2001, p 10

sexual and psychological harm to women and girls, whether occurring in private or in public.¹⁰ Within this definition other harmful acts are included such as early marriage, honor crimes and deprivation of inheritance rights.

“Domestic Violence” means any form of physical, mental, sexual and economic harm perpetrated by person to a person with whom he/she has a family relationship and his word also includes any acts of reprimand or emotional harm.¹¹

1.3 Country’s Profile

Nepal is republic landlocked country, covering total area of 147,181 square km in 1951; the Nepali monarch ended the century-old system of rule by hereditary premiers and instituted a cabinet system of government. Reforms in 1990 established a multiparty democracy within the framework of a constitutional monarchy. An insurgency led by Maoist extremists broke out in 1996. The ensuing 10-year civil war between insurgents and government forces witnessed the dissolution of the cabinet and parliament and assumption of absolute power by the king. Several weeks of mass protests in April 2006 were followed by several months of peace negotiations between the Maoists and government officials, and culminated in a November 2006 peace accord and the promulgation of an interim constitution. Following a nationwide election in April 2008, the newly formed Constituent Assembly declared Nepal a federal democratic republic and abolished the monarchy at its first meeting the following month. The Constituent Assembly elected the country’s first president in July. Between 2008 and 2011 there have been four different coalition governments, led twice by the United Communist Party of Nepal-Maoist which received a plurality of votes in the Constituent Assembly election, and twice by the Communist

10 The Declaration on the Elimination of Violence against Women (1993)

11 Clause 2 (A) of Domestic Violence (Offence and Punishment) Act, 2066

Party of Nepal-United Marxist-Leninist. In November 2011, Maoist Prime Minister Baburam BHATTARAI, who was elected in August 2011, and the leaders of the main political parties signed an agreement seeking to conclude the peace process and recommit the Constituent Assembly to finish drafting the constitution by a May 2012 deadline.¹²With its ancient culture and the Himalayas as a backdrop, landlocked Nepal has a priceless beauty. It is nonetheless one of the world's poorest countries, and is struggling due to ongoing instability.

Total population of Nepal is 26,494,504 increment of population during the last decade is recorded as 3,343,081 with an annual average growth rate of 1.35 percent, in abstract number, there are 796,422 more females than males in the country.¹³ Male literacy rate is 75.1% compared to female literacy rate of 57.4%. As measured by GDP, the economic growth of the country was 3.4 percent in 2009-2010 against the target of 4.5 percent, due to the slow growth in the nonagricultural sector. Media exposure in Nepal is higher among men than women. Nearly one-fourth of the population lives below the poverty line according to the 2010-2011 Nepal Living Standard Survey (Central Bureau of Statistics, 2011b).

The proportion of women currently employed increases with age. Current employment is lowest among women age 15-19 (48 percent) and highest among those age 35-49 (70 percent or higher). Women who are divorced, separated, or widowed are more likely to be currently employed than other women (84 percent versus 61 percent or lower). Women who have five or more children are more likely to be employed (72 percent) than

12 <http://www.indexmundi.com/nepal/background.html> accessed on 5th February 2013

13 National Population and Housing Census 2011 (National Report), Government of Nepal, National Planning Commission Secretariat, Central Bureau of Statistics, Kathmandu, Nepal, 2012

those with no children (52 percent).¹⁴The proportion currently employed is higher among men than women (Table 3.8.2). The percentage of currently employed men rises with age, from 46 percent among men age 15-19 to 92 percent among men age 45-49. Ever-married men, those living in the mountain zone, those residing in the Eastern mountain and Eastern hill sub regions, those with little or no education, and those living in the poorest households are more likely to be employed than their counterparts. Twenty-five percent of women and 13 percent of men were not employed during the 12 months preceding the survey.¹⁵

The 2011 Human Development Index (HDI) score for the country is 0.458 placing it in 157th place out of 187 countries. The Gender Inequality Index scores is 0.558. Nepal Global Gender Gap Index Rating for 2011 is 126th place (out of 135 countries).¹⁶

In spite of Nepal's continuous commitment to human rights and gender equity through ratifying conventions, providing equal opportunities and developing programs pertaining to women's advancement, gender gaps still exist which is clearly evident from the aforementioned data. Women irrespective of being higher in population are lagging behind in every aspect from literacy rate, to the employed status to media exposure. This has all been a major factor in increment of violence against women and girls.

1.4 Organization of the Report

In the first chapter a brief overview in the violence against women/girls is given followed by various concepts and definition

14 Nepal Demographic and Health Survey 2011, Population Division Ministry of Health and Population Government of Nepal Kathmandu, Nepal

15 ibid

16 http://genderindex.org/country/nepal#_ftnref59 accessed on 10th February 2013

related. Then short country profile is given in order to show the current status of Nepal, and the position of the women where do they fall.

In the chapter 2 statistical representations of the various forms of violation is presented in regards to both the women and girls. Along with that the vulnerable group data will be presented. Accordingly the perpetrators involved in violating the rights of women and girls data are presented. The total killings of women and girls in this year's data will be presented this year. This is followed by the existing International and domestic laws are presented in chapter 3. In the chapter four analyses is done, followed by conclusion and recommendation.

Chapter 2

Violence against Women/Girls

2.1 Forms and incidence of Gender-based Violence

2.1.1 Statistical representation of Women Victimization as per Region

Type of Events	Eastern Region	Mid Region	Western Region	Mid Western Region	Far Western	Total
Women Rights						
Domestic Violence	60	66	38	246	37	447
For Accusation of Practicing Witchcraft	10	20	10	8	4	52
Polygamy	20	48	39	30	10	147
Lack of Pre and Post Partum Service				5	6	11
Rape	49	48	20	15	8	140
Rape Attempt	10	12	4	10	3	39
Sexual Abuse	5	10	2	11	15	43
Women Trafficking	8	18		3	2	31
Total	162	222	113	328	85	910

Total 910 incidents have been recorded by INSEC documentation in regards to violence against women. The forms of violation they faced are domestic violence, violence faced in the name of witchcraft, polygamy, lack of pre and post partum service, rape, rape attempt, sexual abuse and women trafficking.

Minutely viewing the incidents that have occurred in all five regions, from the available data it is that the maximum number of incidents has been recorded from mid-western region, total

amounting to 328. The maximum number of violation occurred in this region is domestic violence total 246 incidents recorded, polygamy 30 and total 15 incidents recorded of rape.

Mid region comes in second place, total 222 incidents have been recorded from this region, in which maximum incidents recorded is of domestic violence 60, polygamy and rape 48 each. Eastern region comes after mid, with total incidents of 162. 60 incidents of domestic violence, 49 incidents of rape, and 20 incidents of polygamy have been recorded from this region.

In western region total 133 incidents has occurred, in which 38 incidents is of domestic violence, 39 is of polygamy, and 20 is of rape. INSEC documentation has recorded total 85 incidents from far western region in which 37 is of domestic violence, 15 is of sexual abuse and 10 is of rape.

This year INSEC documentation has recorded maximum incidents of Domestic violence i.e. 447. There have been 142 incidents of Polygamy, 140 incidents of rape 52 incidents of practicing witchcraft, 43 incidents of sexual abuse, 31 incidents of women trafficking and 11 instances of Lack of Pre and Post Partum Service.

Domestic violence is very rampant in the entire development region region. Nepal, like in almost all the South Asian countries domestic violence is one of the many forms of gender based violence.¹⁷ “Traditional attitudes by which women are regarded as subordinate to men or as having stereotypes roles perpetuate widespread practices, involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths acid attack and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them

17 Prof. (Dr.) Rajit Bhakta Pradhananga, Advocate Purna Shrestha, Domestic Violence against Women in Nepal: Concept, History and Existing Laws.

of equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.”¹⁸ Another form of violation rampant in the entire region is rape and sexual abuse. In a Nepali context, patriarchal society, traditional values, caste system, illiteracy, male domination, religious belief and the economic dependency of women on men are to name the main roots causes if VAW, rape in particular.¹⁹ The world has reached 21st century but in Nepal the age-old practice of persecuting women in the name of witch still persists. Abuses resulting from the charges of witchery are one of the worst forms of violence possible against women.²⁰ All this has immensely worked as a additional factors to constantly increase the Violence against Women/girls.

Presenting the aforementioned data with detail incidents

Incidents of domestic violence, Narendra Oli, 30 of Bafkhola VDC-6, Slayan district was in police custody on charge of murdering his wife Geeta Oli, 28 on November 20, who also was running a radio shop in Jultena Bazaar in Khara VDC- 2. The family of the Victim lodged an FIR against the accused at District Police Office on November 22 after finding bruised all over the body of the deceased. The accused was remanded in custody by a court order in December 15.

Babita Devi Mahato, 20 of Inarwa VDC-5 was killed being attacked with a sharp weapon by family members including her husband alleging less amount of dowry. She was buried in a field nearby house. She had been inflicted torture with various allegations for 18 months before being killed. She had filed complaints at the police time and again but police sent her back by making them reach agreement with the family members each

18 General Recommendation No. 19, the CEDAW Committee notes.

19 A Study on Violence due to witchcraft Allegation and Sexual Violence, INSEC, p 23

20 A study on Violence due to Witchcraft Allegation and Sexual Violence, INSEC, p 5

time. Of the accused, father in law got clean chit from the district court while husband was absconding by the end of the year.

Furthermore incidents of Rape, and gang rape, and sexual abuse a 45-year old women with disability was raped at her own house allegedly by Ram Bahadur Sunar, 38, of Goganpani VDC, Dhading district on June 30. The accused fled the scene after the family members and neighbors screamed for help. The accused was arrested by the police on July 30 and was remanded in custody by a court order on August 3.

Police arrested Surendra Basnet, 30 of Phidim VDC-1, Panchthar district, Dipesh Magar, 18 of same place, Subash Khabas, 15, Shiva Magar, 17, Dipesh Shrestha of Phidim VDC-1 on June 6 alleging that they gang raped a 30-Year-old woman on June 5. The victim was treated at District Hospital, Panchthar. All of them were remanded to custody on July 1. Sexual abuse a 67-year-old woman was sexually assaulted by Ajay Lama, 35, of Shyampaty Simalchaur VDC-3, Kaski District on April 22 near Aruotbari while victim was cutting grass. Police arrested the accused on the same day. The district Court sentenced him for two years by the decision of May 14.

Example of polygamy Sangita Sherma Limbu, 26, of Chilingden VDC-8, Pachthar District saying that her husband married a woman, filed a complaint against husband Aaiendra Sherma, 26 at police station on October 7. Police arrested the accused on the same day. The accused had second marriage with a girl on September 1. He was released after submitting Rs 52,000 on bail following an order from the District Court on October 15.

Example of Women Trafficking Police arrested Naresh Sampati Shrestha , of Biratnagar Sub-Metropolis-13, Morang district who is also a cadre of CPN-UML on May 10 alleging that he attempt to traffics a 22 year old woman on April 22 with a promise of foreign employment. Police rescued the victim from Kakarvitta in Jhapa. The accused was remanded in custody as per

the District Court order on May 24.

Instances of violation faced in the name of practicing witchcraft, Dhegani Mahato, 40, of Bagauda VDC-2, Chitwan District was accused of being witch and severely beaten by neighbor Bikram Mahato and his family on February 17, and later killed her by setting fire.

Example of women violation due to lack of Pre and Post-Partum Service, a 23-year-old pregnant lady, Bharatiya Pariyar of Budakot, 23, VDC-4, Achham district died on February 16 at her house in absence of proper treatment. She was bleeding heavily after giving birth to a child. The family members of the deceased said that that the victim died due to absence of health workers and due to their low economic status as they were not able to take her to the better hospital.

2.1.2 Statistical representation of Girls Victimization as per Region

Types of Events	Eastern Region	Mid Region	Western Region	Mid Western Region	Far Western	Total
Child Rights						
Attempt to Kill		1				1
Child Marriage	7	4	3	6	1	21
Child Trafficking	8	31	6	1	3	49
Deprived From Education					1	1
Kamalari					1	1
Rape	61	138	50	34	17	300
Sexual Abuse	17	25	12	17	20	91
Total	93	199	71	58	43	464

Mid region is the most violation prone region with maximum incidents recorded amounting to total 199. Women in this region are mostly vulnerable to rape total 138 incidents has been recorded followed by child trafficking 31, sexual abuse 25.

Eastern region stands in second most exposed area. This year INSEC documentation has recorded total 95 incidents. The incidents of rape being maximum 61, sexual abuse 17, child trafficking 8. Total 71 incidents in which 50 incidents are of rape, 12 of sexual abuse and 6 of child trafficking has been recorded from Western Region thus making it third most vulnerable region. There are total 58 incidents occurred in Mid-Western Region with total 34 incidents of rape, 17 of sexual abuse and 6 of child marriage.

43 incidents of various forms of violation occurred in Far Western Region, with 20 incidents of sexual abuse, 17 of rape and three incidents of child trafficking.

With the above data what can be concluded is that in all five region rape is occurred in ample number. Same is the situation of sexual abuse. This is indeed a matter of compunction.

Total 21 incidents of child marriage are recorded this year. Till now using various channels child are being trafficked as total 49 incidents is recorded. There is one incidents of attempt to kill. One child has been victim of kamalari and one has been deprived from education.

Presenting the aforementioned data with detail incidents:

Case of rape, a 12-year-old girl of Tanahu and currently living in Pokhara was raped by his father when her mother was out of home; the victim's mother lodged an FIR against him at DPO on February 10. The accused was arrested when he came to Western Regional Hospital after being called for a meeting by his wife on February 25. He was remanded in jail on March 12 on the order of District Court.

Case of child marriage, a 14-year old girl Kosheli Badwal of Ruga VDC-3 Mugu district was lured into marriage by Chandra Budha, 22, of Mani VDC-3 on February 26. The Masta Children Club of Tharpa lodged a complaint at District Police Office on February 28 to stop the child marriage; however the police administration did not show any interest. An agreement between the both parties reached on April 22 with the initiation of Child Protection Committee Rungra, when the girl agreed to stay with her parents until she reaches the marital age of 20.

Incident of attempt to rape, family members of a 15-year-old girl lodged a complaint against Sivvadh Miya 45, of same VDC-2, Kapilbastu District at DPO on March 14 on charge of attempting to rape her. The accused had sexually abused the victim after gagging her mouth. The victim's neighbors arrived at the place when she shouted for help. However, the police pressured the victims' family to reconcile when the accused provided Rs 5000. The girls after lodged a complaint on the same day against the accused demanding re-arrest of the accused following the initiation of different human rights organizations. The accused was remanded in custody as per the District Court's order on April 6.

Case of Kamlari, Parwati Khuna, 15, of Krishnapur-3 was rescued by many Human right organizations while she was being taken to Ganesh Prasad Subedi house to make Kamalari on January 17. The girl was held as Kamalari for the past 5 years. Incident of deprived from the education, Kamala Rawal, 16, of Gwani VDC 6, was expelled from the school and deprived from her education right, accusing her of giving information regarding the teacher to the media on August 31.

Case of attempt to kill Kanchi Rai, known as Sarita, 16 of Kalika Halde VDC-4 Nuwakot district, attempted to kill a newly born child by throwing her near her house on May 8. Neighbor after hearing the baby cry took the child to the district hospital.

The perpetrator Kanchi Rai and aider Prakash Rai was sent to jail on remand.

2.1.3 Descriptive analysis of Perpetrators involved in violence against women

The violations faced by women are domestic violence, polygamy, tortured and beaten in the name of practicing witchcraft, rape, sexual abuse, women trafficking, facing health problem due to lack of pre and post-partum services.

Domestic violence

The ones involved in the domestic violence has been the person very close to the victim. as per the INSEC documentation in the maximum cases the person so involved in beating, causing injury to the women, killing has been the husband of the victim. The women are abused with hands, axe, staple, stick, *khukuri*, by the husband and the recorded instances shows that the women have been killed brutally. Furthermore, through the incidents available, the involved are also the nephew, son, father and mother in law of the victim.

Example of the involvement of husband

Pampha Upadyaya, 32, of Birta, Agnichowk VDC-5 Dhading district was strangled to death by her husband Hom Prasad Upadyaya following a family disputed on December 9. The accused was arrested by the police on December 10. He was charged with murder and the case was still pending until the end of the year.

Example of the involvement of Nephew

Devi Kumal, 28, of Shitalnagar in Gaidakot VDC-7 of Nawalparasi district was killed after rape by her nephew Suresh Kamam, 23 on October 24 at around 3 pm. Absconding Kumal

was arrested by police on October 28, and presented in the District Court's order on November 20. He was remanded in custody as per the District Court's order on November 21.

Polygamy

In the case of polygamy the perpetrator is always husband. Purnima Kumal, 20, of Nikalkantha VDC-5 Dhading district was expelled from house by her husband Som Lal Kumal, 21, after marrying a second woman. The victim was beaten and expelled from the house. The victim lodged a complaint on December 1 on the charge of polygamy. The accused was arrested by the police and he was in police custody until the end of this year.

Rape

In the case of rape as from the available data in the ISEC archive it has come to account that the involved are closed ones, teacher, army, police, bus driver, and sometimes unknown person. ***Involvement of Nepal army:*** Family of a 34-year-old woman, alleging that two soldiers of Nepal Army Tek Bahadur Bishwakarma and Karna Tamang has raped her on January 24, filed a complaint at District Police Office on January 24, filed a complaint at District Police Office on January 26. Nepal army handed the victim to the Illam DPO on January 31. The accused were remanded in custody following and order from the district court on March 21. This incident took place in Illam district.

Indian involved in Rape: Family member of a 20-year-old woman, alleging that Rabi Singh, 25, hailing from Haridwar of India and staying at Buttabari, VDC-1 raped the victim at her house on April 23. Complaint was filed at APO on April 24. The accused was remanded to custody on May 18. This case is not decided till the end of the year.

School faculty member involved: Buddhi Raj Sambahamphe, 35, chairperson of Bhanu Lower Secondary School in Chulachuli VDC-7, Illam district was arrested by police on November 24 alleging that he had raped a 25-year old women on November 20. Locals had filed a complaint at Chulachuli Police Station on November 13. The accused was remanded in custody following an order from the District Court on December 11.

Immigration officer involved in rape: A 23-year-old woman who was returning home from Saudi Arabia lodged a complaint against the immigration officers and police on November 19. She was robbed by the immigration officers and reaped by the Policeman Parshuram Basnet if Rawadol VDC-2, Okhaldhunga of Bhojpur district on the same date. The non-gazetted staff, Somnath Khanal at Department of immigration has robbed her 9,300 riyal along with her other goods. The Government formed an investigation team led by Secretary at Ministry of Home Affairs Nabin Ghimire and Joint Secretary Bhola Prasad Siwakoti to investigate the incident central jail, Sundhara as per the Kathmandu District Court's order on December 24. Police said of the other accused involved in the incidents was underway. The Government decided t provide her Rs 150,000 as a relief.

Accusation of practicing witchcraft

It is very difficult to extract the actual number of perpetrators in the cases of abuses meted out on people accused of being witch as in other forms of violence against women. The perpetrators in the witchcraft violence consist of family members, local villagers/neighbors, witch doctors and sometimes undisclosed people.

Asha Devi Yadav, 35, of Beldari VDC-6 of Bara district was beaten and mistreated by her neighbors on Novemer 9 on the charge of being witch. She was fed human excreta by Laxmi Yadav, Ramesh Yadav, and Mangni Yadav among others. The victim who

was injured in the beating was treated at Kalaiya Hospital. A mother of two sons and two daughters and with a weak financial background she was widows 13 years ago. She was beaten up on the charge of casting spells o Mangni's 3-year-old granddaughter Nanki and Laxmi's 4-year-old son. The incident was reported to the police but the police said they could not arrest anyone.

Women Trafficking

From the available INSEC documentation in regards to the women trafficking what can be traced is that the women become prey of trafficking in order to get job outside Nepal. In the maximum cases women are lured to job and then they are sold.

In the trafficking case this year CPN-UML cadre has also been found involved. Police arrested Naresh Sampati Shrestha , of Biratnagar Sub-Metropolis-13 who is also a cadre of CPN-UML on May 10 alleging that he attempt to traffics a 22 year old woman on April 22 with a promise of foreign employment. Police rescued the victim from Kakarvitta in Jhapa. The accused was remanded in custody as per the District Court order on May 24.

Involvement of brother: The complaint was lodged by the victim's brother against Manoj Pariyar of Urleni VDC-9, Rabi Nepali of Shikhar VDC-3 of Nuwakot district and Basanta Pariyar of the same VDC at the district Police Office on March 25 on the charge of trafficking 27-year old women and her two minor children in Kolkata, India. Two of the accused were arrested on the same day by the police and were remanded in custody by a court order of October 27.

Involvement of Uncle: A 19-year-old woman of Belawa VDC-4 said that she was trafficked to India by her uncle Bale Sunar, 21, on August 5, of Bankatuwa VDC-9 by alluring to go for

planting paddy in a village. The victim lodged a complaint against the accused at District Police Office on April 11. However, the accused remained absconding at the end of the year.

Lack of pre post-partum services

State since are not able to provide better health facilities many pregnant women are dying. For instance Durga Nepali, 22, of Bahrabise, VDC-6 of Bajura district who was suffering from heavily bleeding was unable to get proper treatment form the local heath post thus she lost her life while she was being taken to the district hospital.

2.1.4 Descriptive analysis of Perpetrators involved in violence against girls

Child rape case and abuse case

Talking about the perpetrators involved in the rape case, it is found that the perpetrators of the age group from 12-70+ have been involved in raping minors.

Involvement of teacher in rape

The family of a 14-year old girl lodged a complaint against her teacher Raju Sedain of Kharelthok VDC-2 of Kavre at District Police accusing him of raping her on January 5. The accused repeatedly raped the girl in the same day in the Mahadev Temple near the school. The girl said that the accused raped her many times in the past. The accused is at large.

Involvement of Bus Driver

Bishal Rai, 25 of Sub Metropolis-7, Morang district who was also a bus driver was arrested on charge of raping a 14-year-old girl on September 11. The victim's family members filed a complaint at DPO on September 11. The accused is remanded in custody following an order from the District Court on May 18.

Police involved in raping a child

The victim's family lodged a complaint at police post of Ranimatta against Birkha Bahadur BK accusing him of raping a 13-year old girl on July 20. The District Court gave its decision on November 25 and sentenced him to 13 years in prison. the incident took place in Dailekh district.

Involvement of teacher in sexual abuse

A 15-year-old girl was molested by her math teacher, Chandreswar Raura, 33. of Rastriya School of Harpur VDC-9 Parsa district in a tuition class on May 20.

It is found that in the cases of child trafficking girls are lured by the perpetrators and then trafficked. The Family members of a 14-year-old girl lodged a complaint against Makbul Bhat, 20 of Sukroli VDC-3, Nawalparasi district. On May 24 claiming to traffick her in the pretext of he was married on April 12. The accused and the co-accused both were remanded in custody on June 5.

In the cases of Child marriage the perpetrators are the one who force the child to marry, parents and helpers. Raju Lama, 28 of Kathari VDC-3 of Udaypur district married a 13-year-old girl on June 11. The girl said Lama who is a bus helper forcefully took her to Dharan on June-7. The girl's mother filed a complaint at Chainpur Area Police Office on June 12. The accused was remanded in custody on July 5. A 15-year-old child of Sukaura VDC-5 (District) was forcefully taken by Kamal Thing, 28 and got married with her on February 7. The accused was caught and remanded in custody on March 6.

Involvement of Family in Child Marriage

Babita Kumari Mandal, 16 of Nargho VDC-, Saptari district 10th grade student was pressurized by her family, neighbor, to get married with Shrawan Mandal of Nargho VDC-3 on August 18.

The marriage was conducted against the will of the child. The girl was depriving from education after marriage. She said she was beaten up whenever she showed her interest to marry.

2.1.5 Incidences as per Age-Group (Women)

From the table it is evident that the age group between 24-29 is most vulnerable as there has been total 283 incidents recorded belonging to this age group. in the same way 18-23 age group have been victim in 234 incidents and 30-35 age group has been victimized in total 191 incidents. Furthermore there has been total 89 incidents between the age group of 36-41, 58 incidents between the age group pf 42-47, 21 incidents between 48-53 age group, 13 incidents of 54-59 age group. in the same way 8 incidents has been recorded of the age group of 60-64, 4 incidents of 66-71 agegroup, and 9 incidents of the age group in the 72+ group.

Age Group	Number of Victims
18-23	234
24-29	283
30-35	191
36-41	89
42-47	58
48-53	21
54-59	13
60-65	8
66-71	4
72+	9
Total	910

Few instances are, parental relatives of Mina Acharya, 28 of Jamuwa in Gaidakot VDC-1 Nawalparasi district claimed that she was beaten to death by her husband Hrish Acharya, 29 fathers-in-law Durga Prashad Acharya, 29, mother-in-law Saraswati Acharya, and Sister-in-law on June 7. The case was filed at APO police however did not take the claim seriously.

The family members of an 85-year-old woman lodged a complaint against Bhim Singh Thakuri, 35, of Nepalgunj Municipality-12, Banke district. According to the victim's family members, she was ganged and raped by the accused when she was alone at home. the

accused was arrested by police on the same day. He was remanded in custody as per the district Court's order on April 12.

2.1.6 Incidences as per Age-Group (Child)

Age Group	Number of victims
0-5	34
6 -11	129
12-17	301
Total	464

Talking about the child being victimized, the most vulnerable age is between 12-17, total 301 incidents of this age group is recorded this year followed by the age group 6-11 total 129 incidents has been recorded this time and 34 incidents has been recorded of the age group of 0-5 total amounting to 464 incidents recorded this year.

Presenting incident Mandira Katwal, 11, of Marekathare VDC-4 and staying at her sister's house in Parewadin VDC-7, Dhankuta district, was killed after rape on November 28. Locals informed the police after they found the body in the jungle. Pahalman Ghimire, 65, Yogendra Parwedini, 20, and Laxmi Ghimire 40 suspects were arrested.

2.1.7 Total number of killings occurred in the year 2012 against women and girls

Domestic Violence	112
Killed after Rape	12
On Charge of being Witch	1
Dowry	5
New born baby	14
Total	144

This year total 144 women/girls died. The direct attack in the life of the women/girls is very serious issue. Highlighting few issues, the dead body of Bindhu Thakur, 18 of Prastoka VDC-5 was found in a burnt condition in a bamboo bush on December 25. The police recovered her clothes from the incidents site. Most of her body parts were burnt beyond recognition. The

body was sent to Kaliya Hospital for postmortem and then handed over to family for her final rites. The police arrested victim's father Rama Takir 50 in suspicion of his involvement in the murder. The case was under investigation according to police investigation officer Ramnath Ghimire.

Shiwa Hasmi, 19 of Masjid Tol, Gulariya VDC-8 seriously injured when she was burnt after pouring petrol on her body by an unidentified person on December 7. The seriously injured Hasmi died while undergoing treatment at Bir Hospital, Kathmandu on December 12. the convicted was still unidentified at the end of the year. She was taken to District's Guliriyā Hospital for the primary treatment and then to Bheri Regional Hospital in Nepalgunj. She was referred to Bir Hospital in Kathmandu on December 10 and passed away on December 12. Rahis Khan alias Babu Khan of Gulariya VDC was taken into custody by the police on December 7 for further investigation on suspicion of his involvement in the incident. The victim's family lodged an FIR against babu immediately after the incident occurred. A final rite of Hasmi was performed on December 13. Arif Ahemad Rain of Gulariya VDC-8 lodged an FIR against the victim's family on December 18 at District Police Office. Victim's mother Hasina Hasmi and Brother Sadhi Hasmi were arrested by the police for investigation on the same day. The perpetrator was still unidentified until the end of this year, according to the police.

Chapter 3

3. Existing legal mechanism in respect to Violence against Women/Girls

3.1 Domestic Violence (National Legal Mechanism)

- ❑ Nepal Interim Constitution 2007
- ❑ Domestic Violence (Offence and Punishment) Act, 2066 (2009)
- ❑ Domestic Violence (Offence and Punishment) Rules, 2067 (2010)
- ❑ Muluki Ain 2020

Nepal's Interim Constitution, 2007 has guaranteed the right to freedom²¹, right to equality²² and right of women²³ as fundamental rights which has genuinely mentioned about the rights of women and constitutional remedy in case of the violation of such rights. The provisions of fundamental rights guaranteed by the constitution has also pave the way for the establishment of acts, rules and regulations for the implementation of such rights through legal means.

Despite the constitutional guarantees of the rights of women; the especial laws has been promulgated to stop any kinds of violence against women which can be happened within the home and from the family members and to punish the

21 Article 12 (1), Right to freedom: (1) every person shall have the right to live with dignity, and no law shall be made which provides for the death penalty.

22 Article 13, Right to equality: (1) All citizens shall be equal before the law. No person shall be denied the equal protection of the laws. (3) The State shall not discriminate against citizens among citizens on grounds of religion, race, caste, tribe, sex, origin, language or ideological conviction or any of these.

23 Article 20, Rights of women: (1) No discrimination of any kind shall be made against the women by virtue of sex. (3) No woman shall be subjected to physical, mental or any other kind of violence; and such act shall be punishable by law.

perpetrators.²⁴ The act has clearly defined domestic violence²⁵, physical harm²⁶, mental harm²⁷, sexual harm²⁸, economic harm²⁹, the victim³⁰ and the perpetrator³¹. Section 2 (i) and 2 (j) of the same act has defined the police station and the court connecting it with section 4, that has directed the Filing of complaint in case of domestic violence against women³² and has explained about the procedure of complaining, filling, the checkup of victims, security measures for the victims. The Interim protection order sec. (6), Proceedings to be held in camera sec. (7), Summary procedure to be Adopted sec. (8), compensation to the victim, service provided at the service center, penalty provisions to the perpetrators and the time limitation³³ for filing the case are some provisions that has been incorporated within the act has explicitly endorsed the rights of women which can be violated in the domestic circumstances from their relatives as defined in the Act. The penalty provision for the perpetrators of victims seems

- 24 Preamble of Domestic Violence (Offence and Punishment) Act, 2066 (2009) : Whereas, it is expedient to make provision to respect the right of every person to live in a secure and dignified life, to prevent and control violence occurring within the family and for matters connected therewith and incidental thereto making such violence punishable, and for providing protection to the victims of violence; Now, therefore, be it enacted by the Constituent Assembly pursuant to Sub article (1) of Article 81 of the Interim Constitution of Nepal, 2063 (2007).
- 25 Ibid section 2 (a)
- 26 Ibid section 2 (c)
- 27 Ibid section 2 (d)
- 28 Ibid section 2 (e)
- 29 Ibid section 2 (f)
- 30 Ibid section 2 (g)
- 31 Ibid section 2 (h)
- 32 Ibid section 4 (a) Filing of complaint: (1) A person who has knowledge of an act of domestic violence has been committed, or is being committed, or likely to be committed, may lodge a written or oral complaint setting out the details thereof, with the Police Office, National Women Commission or Local body.
- 33 Ibid section 14: Limitation: The complaint, for an offence committed pursuant to this Act, shall be filed within Ninety days of the commission of the crime.

minimum³⁴. In exercise of the powers conferred by Section 17 of the act; The Domestic Violence (Offence and Punishment) Rules, 2067 (2010) has been promulgated that has strengthened the implementation mechanism for the rights of women in the domestic ground.

Similarly the provisions enshrined in Muluki Ain (General Code) of Nepal; on the chapter of Husband and Wife, chapter on partition, chapter on women property, chapter on hurt/battery³⁵, chapter on Intention of Sex³⁶, chapter on rape and chapter on incest also address the violation which can be occurred against women in different forms that shall be correlated with domestic violation cases.

3.2 Domestic Violence (International Legal Mechanism)

- ❑ Universal Declaration of Human Rights (UDHR)
- ❑ International Covenant on Civil and Political Rights (ICCPR)
- ❑ International Covenant on Economic, Social and Cultural Rights (ICESCR)
- ❑ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

34 Ibid section 13. Penalty: (1) A person who commits an act of domestic violence shall be punished with a fine of Three Thousand Rupees upto Twenty Five Thousand Rupees or Six months of imprisonment or both.

35 Number 1 of Hurt/battery chapter; If a person causes bloodshed (Ragatpachhe), wound, injury, grievous hurt (Angabhanga) or causes any pain or harm to the body of another person, the person shall be deemed to have committed the offence of hurt/battery.

36 Number 1 of chapter of Intention to sex; If a person, without the consent of a woman, touches or attempts to touch her sensitive organ, puts off her inner clothes (under garments), takes her to an unusually lonely place, makes her touch or catch (hold) his sexual organ or uses vulgar or other similar words or indications or shows her such drawing or picture or teases or harasses her for the purpose of sexual intercourse, or treats her with any unusual behavior or holds her with intention of having sexual intercourse, he shall be deemed to have done sexual harassment, and the who commits such an offence shall be liable to the punishment of imprisonment for a term not exceeding One year and a fine of up to Ten Thousand Rupees. The victim of such an offence shall be entitled to a reasonable compensation from the offender.



Universal Declaration of Human Rights (UDHR) 1948 in its preamble has clearly pronounced about the equality between men and women and assurance of fundamental rights as well as human rights for their social progress³⁷. Similarly the Article 1³⁸, 2³⁹, 3⁴⁰, 5⁴¹, 8⁴² and 17⁴³ of UDHR has ensured the human rights, human dignity, freedom and equality, right to life, liberty and security, right against torture or to cruel, inhuman or degrading treatment or punishment. It means that any kind of inequality between men and women causing any kind of violations of rights of women are prohibited accepting the UDHR principles and the principles are morally obligatory for the member states of United Nations. The various international human rights treaties have been adopted after the promulgation of UDHR in 1948.

International Covenant on Civil and Political Rights (ICCPR), 1966 Article 2 (1) states that no distinction would

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- 37 UDHR preamble; “Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth Of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,”
- 38 Ibid Article 1, all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.
- 39 Ibid Article 2; Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.
- 40 Ibid Article 3; everyone has the right to life, liberty and security of person.
- 41 Ibid Article 5; No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
- 42 Ibid Article 8; Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law
- 43 Ibid Article 17; 1. Everyone has the right to own property alone as well as in association with others. 2. No one shall be arbitrarily deprived of his property.

be made to enjoy the rights enshrined in the present covenant⁴⁴. Similarly Article 3⁴⁵ of ICCPR ensures the equal rights between men and women, Article 6 (1)⁴⁶ confirms the inherent right to life and Article 26⁴⁷ states about the equality before law without any discrimination. The present covenant strongly confirms the equality between men and women enjoying the rights without any distinction as well as protects the right of life of the person.

The International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 Article 1 (1)⁴⁸ ensures the person's right to freely pursue their economic, social and cultural development. Similarly, article 3⁴⁹ of the covenant states about the equal rights of men and women while enjoying economic, social and cultural rights and article 6⁵⁰ states about the right of

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- 44 ICCPR, Article 2(1). Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
 - 45 Ibid, Article 3; The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.
 - 46 Ibid, Article 6 (1); every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
 - 47 Ibid, Article 26, all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
 - 48 ICESCR, Article 1(1), All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
 - 49 Ibid, Article 3, The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.
 - 50 Ibid, Article 6 (1), The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

every individual to work and opportunity to work for gaining his life by work.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979 is the especial convention enacted to address the rights of the women. The preamble of this convention has set large background of necessity of present convention which has aimed to established the equality between rights of men and women as well as overall physical, mental, sociological, economical, psychological and political development of women who have been kept backward in the society due to many social, cultural, economic and religious reasons of the past.⁵¹ Article 1⁵², article 2⁵³,

51 See preamble of CEDAW

52 Ibid, Article I, For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

53 Ibid, Article 2, States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle; (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise; (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; (g) To repeal all national penal provisions which constitute discrimination against women.

article 4⁵⁴, article 6⁵⁵, article 13⁵⁶, article 15⁵⁷ and article 16⁵⁸ of the present convention has explicitly addressed the repeal of discriminatory provisions between men and women enshrined

- 54 Ibid, Article 4 (1) Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved. (2) Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.
- 55 Ibid, Article 6, States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.
- 56 Ibid, Article 13 States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to family benefits; (b) The right to bank loans, mortgages and other forms of financial credit; (c) The right to participate in recreational activities, sports and all aspects of cultural life.
- 57 Ibid, Article 15 (1) States Parties shall accord to women equality with men before the law. 2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals. 3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void. 4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.
- 58 Ibid, Article 16 (1) States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent; (c) The same rights and responsibilities during marriage and at its dissolution; (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount; (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights; (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount; (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation; (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

in different legislations, constitution and national mechanisms and promoting and binding state parties for the promulgation of legislation, constitution and mechanism to provide opportunity, participation and equal rights to the women. Furthermore the present convention has directed towards the safeguard of women rights of property, family life, marital health and any kind of exploitation can be happened legally, socially and economically.

The international legal instruments or the treaties and morally binding principles of UDHR discussed above has created the obligation to the state party of the treaties to incorporate the enshrined provisions of the ratified international human rights treaties to the national legislations, constitution and national mechanisms to be abided and to make the national mechanism with international treaties. Nepal Treaty Act, 2047 (1990) article 9 (1) states In case of the provisions of a treaty, to which Nepal or Government of Nepal is a party upon its ratification accession, acceptance or approval by the Parliament, inconsistent with the provisions of prevailing laws, the inconsistent provision of the law shall be void for the purpose of that treaty, and the provisions of the treaty shall be enforceable as good as Nepalese laws. Section 9 (2) of present act states any treaty which has not been ratified, accede to, accepted or approved by the Parliament, though to which Nepal or Government of Nepal is a party, imposes any additional obligation or burden upon Nepal, or Government of Nepal, and in case legal arrangements need to be made for its enforcement, Government of Nepal shall initiate action as soon as possible to enact laws for its enforcement. The provision of Nepal's Treaty Act has provided the mandate of acceptance the international treaties in national laws after the ratification. This means that the laws or national mechanisms must be inconsistency with international laws.

The laws related with domestic violence prevailing in Nepal however mostly consistent with the international human rights treaties, but the practical implementation and understanding about it among concerned people are still lacking.

The constitutional provisions, especial act and rules on domestic violence and scattered provisions of Muluki Ain can be taken in consideration while addressing the domestic violence cases that happens against women.

3.3 Practicing Witchcraft (National Legal Mechanism)

- ❑ Nepal Interim Constitution 2007
- ❑ Some Public (Offence and Penalties) Act 1970
- ❑ Compensation relating to torture Act 1996
- ❑ Muluki Ain 2020

Interim Constitution of Nepal, 2007 has confirmed the right to have dignified life as fundamental right⁵⁹. Similarly the Interim Constitution also ensures the right to equality and prohibits any kind of discrimination⁶⁰. It also guarantees right of women as fundamental rights⁶¹. Right against Torture is guaranteed as fundamental rights and provisions of punishment for offenders are also provided in Article 26⁶². This signifies that any act of accusing anyone specially women for witchcraft is against the above mentioned fundamental rights and is punishable.

Some Nepali laws scattered in different acts also address the crime that can be occurred against women in the name of practicing

59 Interim Constitution 2007, Article 12 Right to Freedom: (1) Every person shall have the right to live with dignity, and no law shall be made which provides for capital punishment.

60 Ibid Article 13 Right to Equality: (1) All citizens shall be equal before the law. No person shall be denied the equal protection of the laws. (3) The State shall not discriminate among citizens on grounds of religion, race, caste, tribe, sex, origin, language or ideological conviction or any of these.

61 Ibid Article 20 Right of Woman: (1) No one shall be discriminated in any form merely for being a woman.

62 Ibid, Article 26 Right against Torture: (1) No person who is detained during investigation, or for trial or for any other reason shall be subjected to physical or mental torture, nor shall be given any cruel, inhuman or degrading treatment.

(2) Any such an action pursuant to clause (1) shall be punishable by law, and any person so treated shall be compensated in a manner as determined by law.

witchcraft. Section 2⁶³, 4⁶⁴, 5⁶⁵ 6⁶⁶ of Some Public (Crime and Punishment) Act 2027 prohibits to perform inappropriate act in the public. Draft code on Criminal Proceeding 2058 prohibits discrimination on the basis of sex, religion, caste.

Muluki Ain chapter of “Kutpit” else prohibits causing hurt or committing grievous hurt by using weapon or by any other means⁶⁷, which is followed by compensation⁶⁸ of Muluki Ain 2020. Draft code on Criminal Justice system too prohibits

63 Some Public (Crime and Punishment) Act 2027, Section 2 **Prohibition to commit some public crime:**

(1) No person shall commit any of the following acts:

- (a) To hinder or obstruct any public servant from discharging his/her official duty by committing battery or riot or by any other way;
- (b) To break public peace by committing battery or riot in any public place;
- (c) To break public peace or to make obscene show by using obscene speech, word or gesture in public place.
- (g) To insult women in public place by committing molestation (Hatapata);

64 Ibid section 4; Limitation to file a case: (1) Any case under this Act shall be filed within a period of Seven days from the date of the commission on an offence. Provided that, the adjudicating authority may, if he/she is satisfied with reasonable ground that the case cannot be filed within a period of Seven days from the commission of the offence, extend the limitation in order to file the case upto Thirty Five days from the date of commission of the offence.

65 Ibid section 5; Adjudicating authority and procedure: (1) The Chief District Officer shall have the power of original jurisdiction to initiate the proceeding and adjudicate case under this Act. (2) The Chief District Officer shall, while initiating the proceeding and adjudicate a case, follow the procedure pursuant to Special Court Act,- 2059. (3) An appeal against the decision made by the Chief District Officer pursuant to Sub-section (1) shall lie before the Court of Appeal.

66 Ibid section 6; Penalty: (1) In a case tried under this Act, the Chief District Officer may, upon depending on the gravity of the offence, impose a fine of upto Ten Thousand Rupees to the offender and order the offender to provide compensation to the victim as per the actual damage, loss, injury etc.; and issue an order of detention to keep the offender in a custody for a period not exceeding Thirty Five days if finds reasonable ground or cause in the course of investigation upon mentioning the cause thereof in the order. Such case shall be decided within a period of Three months.

67 Muluki Ain, chapter of hurt/battery, number 1

68 Ibid, number 2

any discrimination on the basis of sex, caste, religion, color⁶⁹ , it has punishment provision of 3 years if torture is inflicted or inhuman, degrading act is committed⁷⁰. Furthermore it has prohibited committing any act in the name of witch⁷¹ and has stated punishment of one year imprisonment or ten thousand fine or both.

According to the Miscellaneous section 10(B) of the General code of Nepal, anyone involved in mistreating a women in the allegation of practicing witchcraft will be sentenced to anytime between three months to two years imprisonment or will be fines a sum ranging from 5,000 to RS 25, 000.

3.4 Practicing Witchcraft (International Legal Mechanism)

- ❑ Universal Declaration of Human Rights (UDHR)
- ❑ International Covenant on Civil and Political Rights (ICCPR)
- ❑ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- ❑ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

UDHR recognizes the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world⁷². UDHR has assured the human rights in these provisions:

1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.⁷³
2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion,

69 Draft code on criminal Justice System, “sanhita” 216

70 Ibid 220

71 Ibid 221

72 See Preamble of UDHR

73 UDHR Article 1

national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, trust, non-self-governing or under any other limitation of sovereignty.⁷⁴

3. Everyone has the right to life, liberty and security of person.⁷⁵
4. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.⁷⁶
5. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.⁷⁷
6. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.⁷⁸
7. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.⁷⁹

ICCPR in its preamble recognizes that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.⁸⁰ ICCPR protects and promotes human rights through these provisions:

74 Ibid article 2

75 Ibid article 3

76 Ibid article 5

77 Ibid article 7

78 Ibid article 8

79 Ibid article 12

80 See preamble of ICCPR

1. Each State Party to the present Covenant undertakes to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.⁸¹
2. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.⁸²
3. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.⁸³
4. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to

81 ICCPR Article 2.3 (a)

82 Ibid article 7

83 Ibid article 7

unlawful attacks on his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.⁸⁴

5. All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁸⁵

CEDAW in its preamble⁸⁶ recalls that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity. Thus, it guarantees the security of women through these provisions:

1. The term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.⁸⁷
2. States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: to embody the principle of the equality of men and women in their national constitutions or

84 Ibid article 17

85 Ibid article 26

86 See preamble of CEDAW

87 Ibid article 1

other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle; to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise; to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; to repeal all national penal provisions which constitute discrimination against women.⁸⁸

3. States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.⁸⁹
4. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.⁹⁰

88 Ibid article 2

89 Ibid article 3

90 Ibid article 14.1

3.5 Polygamy (National Legal Mechanism)

- ❑ Nepal Interim Constitution 2007
- ❑ Muluki Ain 2020

However polygamy under existing Nepali laws is restricted and made punishable, practices of polygamy in hidden and seen from prevalent in different parts of Nepal. Nepal Interim Constitution 2007, Article 13 (1), (2) and (3) has guaranteed the right to equality⁹¹, similarly rights of women⁹² under article 20 as a fundamental rights also explicitly ensure the rights of women where discriminatory provision due to gender differences is restricted.

Muluki Ain 2020, chapter on Marriage; number 2 (9)⁹³, number 5⁹⁴,

- 91 Nepal Interim Constitution Article 13; Right to equality: (1) All citizens shall be equal before the law. No person shall be denied the equal protection of the laws. (2) No discrimination shall be made against any citizen in the application of general laws on grounds of religion, color, sex, caste, tribe, origin, language or ideological conviction or any of these. (3) The State shall not discriminate against citizens among citizens on grounds of religion, race, caste, tribe, sex, origin, language or ideological conviction or any of these. Provided that nothing shall be deemed to prevent the making of special provisions by law for the protection, empowerment or advancement of women, Dalits, indigenous peoples (Adibasi, Janajati), Madhesi or farmers, workers, economically, socially or culturally backward classes or children, the aged and the disabled or those who are physically or mentally incapacitated.
- 92 Ibid Article 20. Rights of women: (1) No discrimination of any kind shall be made against the women by virtue of sex. (2) Every woman shall have the right to reproductive health and reproduction. (3) No woman shall be subjected to physical, mental or any other kind of violence; and such act shall be punishable by law. (4) Sons and daughters shall have the equal right to ancestral property.
- 93 Number 9 (2) of Marriage Chapter; In case either a male or a female below the age of Eighteen years is married and no offspring has been born from the marriage, the male or female who is below the age of Eighteen years may get such a marriage declared void if he or she does not agree with such a marriage upon having attained the age of Eighteen years.....9
- 94 Ibid Number 5; If a marriage is concluded with a female who is dumb, leprous, crippled, lame, blind of both eyes, devoid of the female genital organ, handicapped with her hand or leg broken, insane or epileptic, under the false representation that she is normal, such a marriage shall be void if the male spouse does not accept the marriage. One who has so concluded or arranged the marriage on such false representation shall be liable to punishment of a fine of up to Five Hundred Rupees.

number⁷⁹⁵, number⁸⁹⁶, number⁹⁹⁷, and number 9(A)⁹⁸ has provisions of void marriage as well as the conditions in which the husband can arranged second marriage. In the same chapter number 10⁹⁹ and

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- 95 Ibid number 7; No marriage shall be solemnized or arranged without the consent of both the male and the female parties thereto. If a marriage is solemnized or arranged by force without consent, such a marriage shall be void. One who concludes or arranges such a marriage shall be punished liable to punishment of imprisonment for a term not exceeding Two years.
- 96 Ibid number 8; If one arranges the marriage of a female, who is already married or a widow or divorcee with another person by representing a false fact that she is an unmarried girl or of a male who is already married or a widower or divorced, the marriage shall be void if the party who gets married under that false representation does not consent to the marriage. The persons having attained majority, out of the principal persons who have so arranged the marriage, shall be liable to punishment of a fine of up to Ten Thousand Rupees and that amount of fine shall be provided to the party being subject to such a false representation.
- 97 Ibid number 9; No male shall, except in the following circumstances, marry another female or keep a woman as an additional wife during the life-time of his wife or where the conjugal relation with his first wife is not dissolved under the law.....
- If his wife has any contagious venereal disease which has become incurable.....1
- If his wife has become incurably insane.....1
- If it is certified by the medical board recognized by the Government of Nepal that no offspring has been born because of his wife-----1
- If his wife becomes crippled, with being unable to make movement-----1
- If his wife becomes blind of both eyes-----1
- If his wife takes partition share from him pursuant to No. 10 of the Chapter on Partition and lives apart-----1
- 98 Ibid 9 (A); While concluding a marriage pursuant to Number 9 of this Chapter, one shall take the consent of the wife except she has become incurably insane or she is living apart after taking her partition share.
- 99 Ibid number 10; if any person concludes another marriage or keeps wife in contravention of the matters contained in Number 9 and Number 9A of this Chapter, such person shall be liable to imprisonment for a term from One year to Three years and to a fine of Five Thousand Rupees to Twenty Five thousand rupees. If a woman knowingly concludes such marriage or becomes wife, that woman shall also be accordingly subject to the punishment.

11¹⁰⁰ has kept the provision of punishment for committing polygamy and time limitation for filing the case against such actions. Muluki Ain chapter on Husband and Wife¹⁰¹ has also kept the provisions under which husband can give divorce to the wife and can go for the next marriage. Likewise chapter on Partition of property of Muluki Ain, number 4¹⁰² and 8¹⁰³ provisions have directly emphasized the practice of polygamy existing in the society. The laws relating to polygamy especially prevalent in Muluki Ain of Nepal, importantly on “Marriage chapter” and chapter on “Husband and Wife”. Nepal’s Interim Constitution however accepted the right to equality between men and women and special rights to women as fundamental rights which must be followed by any legislation, plans and policies of the country, but the same practices cannot be found in the society. The Muluki Ain provisions also on some instances contract with constitutional provisions and accept the polygamy practices in Nepal. The customary practices of polygamy existing in some parts of Nepal don’t come under the legal provisions of the country.

3.6 Polygamy (International Legal Mechanism)

- ❑ Universal Declaration of Human Rights (UDHR)
- ❑ International Covenant on Civil and Political Rights (ICCPR)
- ❑ International Covenant on Economic, Social and Cultural Rights (ICESCR)
- ❑ Convention on the Elimination of All Forms of Discrimination

100 Ibid number 11; If a suit is not filed within Three months after the commission of any act mentioned in Number 7 of this Chapter and after the date of knowledge of the matter in the case of the other matters, the suit shall not be entertained.

101 Muluki Ain, Chapter on husband and wife number 1, 2 and 4

102 Chapter on Partition of property; No. 4: If there are co-wives, all of them are entitled to have their share from their husband’s share in accord with law.

103 Ibid number 8: A wife kept outside without making it public or a son born of her cannot claim their share in his property after the husband or the father is dead.

against Women (CEDAW)

UDHR article 16¹⁰⁴ explicitly states about the equal rights of men and women to involve in conjugal relation without any discrimination along with their rights to freely choose their spouses. Article 1, 7 and 12 of the UDHR ensures the equality, dignity, equal treatment of law and protection from arbitrary interferences on privacy, family and home of every human being which also signifies to combat any unequal treatment and discriminatory practices happening against women.

ICCPR article 1 (1)¹⁰⁵, 2¹⁰⁶, 3¹⁰⁷, 17¹⁰⁸

104 UDHR, Article 16. (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

105 ICCPR article 1(1); All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

106 Ibid Article 2 (1) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (2) Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant. (3) Each State Party to the present Covenant undertakes:(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.

107 Ibid Article 3; The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

108 Ibid Article 17 (1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation. (2) Everyone has the right to the protection of the law against such interference or attacks.

and 26¹⁰⁹ states about the equality between the rights of men and women, non-discrimination, right to privacy, family, home and correspondence and equal protection against discrimination on any grounds. Moreover ICCPR article 23¹¹⁰ recognize the family as the fundamental group unit of the society and provides the free will of intending spouses for the wedding. It means that free will of the husband and wife is basic criteria for the marriage purpose. Similarly equality of rights of and responsibilities of spouses as to marriage, during marriage and its dissolution is ensured by present covenant.

ICESCR article 1 (1)¹¹¹, 3¹¹², 5 (2)¹¹³ and 15 (1) (a)¹¹⁴ provides the right to self-determination, equal right of men and women to the enjoyment of all economic, social and cultural and ensures the cultural rights of every individual. The provisions enshrined in the present article also ensure the equal

109 Ibid Article 26; all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

110 Ibid Article 23; (1) the family is the natural and fundamental group unit of society and is entitled to protection by society and the State. (2.) The right of men and women of marriageable age to marry and to found a family shall be recognized. (3.) No marriage shall be entered into without the free and full consent of the intending spouses. (4.) States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

111 ICESCR Article 1(1.): All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

112 Ibid Article 3: The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

113 Ibid article 5(2.): No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

114 Ibid article 15 (1.) (a): The States Parties to the present Covenant recognize the right of everyone: To take part in cultural life

rights of men and women and do allow free choice on enjoying economic, social and cultural rights.

The preamble¹¹⁵ CEDAW has explicitly marked all discriminatory provisions existing in the world against women and take necessary measures to ensure the equal rights of women keeping the dignity and human rights of women in the world. Article 1¹¹⁶, 2¹¹⁷, 3¹¹⁸,

115 See preamble of CEDAW

116 Ibid Article (I): For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

117 Ibid Article 2: States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; (g) To repeal all national penal provisions which constitute discrimination against women.

118 Ibid Article 3: States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women , for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

4¹¹⁹, and 13 (a)¹²⁰ of the present convention try to ensure equal rights of women by abolishing discriminatory provisions prevailing in laws, practices, cultures and structures which can provide free space for overall development of women equally with their co-partner men. Article 16¹²¹ of the convention has strongly speaks about the equal rights of men and women regarding marriage, enjoying marriage life, dissolution of marriage and choice of women equally with men to determine the birth of their children.

All international human rights mechanism that has

119 Ibid Article 4 (1.) Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved. (2.) Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

120 Ibid Article 13: States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to family benefits;

121 Ibid Article 16 (1.) States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) The same right to enter into marriage;(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;(c) The same rights and responsibilities during marriage and at its dissolution;(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration. (2.) The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

ensured the right of women and has provided the guidelines to the party states of the present treaties how to address the issues of polygamy which has directly violated the rights of women spreading unequal and discriminatory treatment to the women.

3.7 Lack of Pre and Post-Partum service (National Legal Mechanism)

- ❑ Nepal Interim Constitution 2007
- ❑ National health policy 1991
- ❑ Second Long term health plan 1997-2017

Nepal's Interim Constitution 2007 has guaranteed the Right relating to environment and health¹²² as a fundamental rights. Likewise according to obligations, directive principles and policies stated on Article 33 (h)¹²³ and policies of the state stated on article 35(8)¹²⁴ ensures the right to health of women by preparing and implementing plans, policies and directives in progressive order.

National Health Policy, 1991¹²⁵ has intended to bring about improvement in the health conditions of the people of Nepal. The primary objective of the National Health Policy is to extend the primary health care system to the rural population so that they benefit from modern medical facilities and trained health care providers.

Second Long Term Health Plan, 1997-2017¹²⁶ promulgated

122 Nepal's Interim Constitution Article 16 : (1) Every person shall have the right to live in a healthy environment.

(2) Every citizen shall have the right to basic health services free of cost from the State, as provided in law.

123 bid article 33(h): To pursue a policy of establishing the right of all citizens to education, health, housing, employment and food sovereignty;

124 Ibid article 35 (8): The State shall pursue a policy of making the women participate, to the maximum extent, in the task of national development, by making special provisions for their education, health and employment.

125 See National Health Policy for details, also available at http://www.mohp.gov.np/english/publication/national_health_policy_1991.php

126 http://www.mohp.gov.np/english/publication/second_long_term_health_plan_1997_2017.php

by Ministry of Health and Population of Nepal has also taken the objectives of improving the health status of the population of the most vulnerable groups, particularly those whose health needs often are not met—women and children, the rural population, the poor, the underprivileged, and the marginalized population. Moreover the plan has focused on pre and post-partum services to the women.

3.8 Lack of Pre and Post-Partum service (International Legal Mechanism)

- ❑ Universal Declaration of Human Rights (UDHR)
- ❑ International Covenant on Economic, Social and Cultural Rights (ICESCR)
- ❑ Convention on Elimination of All Forms of Discrimination against Women (CEDAW)

UDHR article 3¹²⁷ states that everyone has the right to life, liberty and security of person. Similarly article 25¹²⁸ of the declaration ensures the right to adequate health services special attention should be given to motherhood and childhood conditions.

ICESCR article 10(2)¹²⁹ recalls the state responsibility to provide special protection along with paid leave during and

127 UDHR Article 3: Everyone has the right to life, liberty and security of person.

128 Ibid article 25, (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

129 ICESCR Article 10(2.): Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

after the child birth. In the same covenant article 12¹³⁰ further ensures the every person rights to sustain highest level of physical and mental health, particularly emphasizes the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child.

CEDAW, the international human rights instrument specially brought to protect the rights of the women, in its preamble¹³¹ confirms the special rights to get relief from poor conditions of food, health, education and employment. And it also recognizes the women capacity of being mother and responsibility of both father and mother for upbringing and development of children. Article 5(b)¹³², 10(h)¹³³, article 11(2)¹³⁴,

130 Ibid article 12: 1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;(b) The improvement of all aspects of environmental and industrial hygiene;(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

131 See CEDAW preamble

132 Ibid article 5 (b): Article 5 States Parties shall take all appropriate measures: To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

133 Ibid article 10(h): Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

134 Ibid article 11(2): 2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures: (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

article 12¹³⁵, article 14(2) (b)¹³⁶ and article 16(1)(e)¹³⁷ of the present convention has explicitly confirms the rights of women to secure all kinds of health services, education relating to family planning and maternity without any discriminations. Assurance of healthy environment without any kinds of physical and mental torture and equal opportunity on employment even after and before the pregnancy period has been guaranteed by the convention.

3.9 Rape, Rape attempt, sexual abuse (National Legal Mechanism)

- ❑ Nepal's Interim constitution 2007
- ❑ Muluki Ain on Intention to sex, Rape chapter, attempt to rape, incest

Nepal Interim Constitution 2007 article 12¹³⁸ has guaranteed the right to dignified life whereas article 20¹³⁹

- 135 Ibid article 12: (1.) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.(2.) Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.
- 136 Ibid article 14(2)(b): To have access to adequate health care facilities, including information, counselling and services in family planning;
- 137 Ibid article 16(1)(e): The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- 138 Nepal's Interim Constitution, article 13(1) Right to freedom: Every person shall have the right to live with a dignity, and no law shall be made which provides for the death penalty.
- 139 Ibid article 20: Rights of women: (1) No discrimination of any kind shall be made against the women by virtue of sex. (3) No woman shall be subjected to physical, mental or any other kind of violence; and such act shall be punishable by law.

explicitly states about the right of women, under which any form of discrimination and physical and mental violence against women are kept punishable by law. Similarly article 22(3)¹⁴⁰ has ensured the right of the child, which also avoids any forms of violence against child. Nepal Interim constitution has guaranteed the right of the women and children in special way.

Muluki Ain (General Code) has clearly defined the Rape¹⁴¹ and categorized the rape cases in accordance with the age group of the victims and punishment provisions enshrined within it¹⁴². It means that the punishment is high if the victims have minimum age. Similarly 12th amendment of the Muluki Ain has also included the marital rape as a crime and has kept 3 to 6 month punishment to the perpetrator¹⁴³. The present General Code has also provisions of additional 5 year imprisonment in the cases of gang rape, rape against pregnant women, handicapped or

140 Ibid article 22(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.

141 Muluki Ain, Rape chapter Number 1: If a person enters into sexual intercourse with a woman without her consent or enters into sexual intercourse with a girl below the age of Sixteen years with or without her consent shall be deemed to be an offence of rape.

142 A person who commits rape shall be liable to the imprisonment as mentioned hereunder: Imprisonment for a term ranging from Ten years to Fifteen years if the minor girl is below the age of Ten years.....1

Imprisonment for a term ranging from Eight years to Twelve years if the minor girl is above Ten or more years of age but below Fourteen years of age.....2

Imprisonment for a term ranging from Six years to Ten years if the minor girl is of Fourteen years of age or above below Sixteen years of age.....3

Imprisonment for a term ranging from Five years to Eight years if the woman is of Sixteen years of age or above but below Twenty years of age.....4

Imprisonment for a term ranging from Five years to Seven years if the woman is of Twenty years of age or above5

Notwithstanding anything contained in this Number, the husband who commits a rape with his wife shall be liable to imprisonment for a term ranging from Three months to Six months.

143 Ibid

physically disabled women¹⁴⁴. Likewise, If HIV/AIDS infected person rape someone with intention to transfer infection, then he will charged with additional 1 year imprisonment.¹⁴⁵ The proposed Criminal Draft Code has also kept the similar provision on rape offenses. However, the Draft Code and even existing General Code has not speak about the case if any woman or girl welcomed the male partner for the sexual intercourse with the intention to transfer the infection. Moreover, additional 1 year imprisonment provision is included in oral sex incidents.¹⁴⁶ There are different compensation provisions in our proposed Draft Code and our existing General Code. However, no provisions have been made for the compensation to the victim if the perpetrators are unable to pay that need to be addressed by the state by keeping additional provisions in law or by making effective mechanism. Similarly, the General Code, Incest chapter¹⁴⁷ has also categorized different punishment provision for the perpetrators according to the relation with the victims. Similarly in the cases of attempt to rape¹⁴⁸, the punishment is half for the perpetrators as mentioned

144 Ibid number 3 (A): One who commits a gang rape or commits rape with a pregnant woman or a disabled woman shall be liable to imprisonment for a term of Five years, in addition to the imprisonment mentioned in this Chapter.

145 Ibid number 3 (B): Notwithstanding anything contained in Number 3 and Number 3A, if someone commits a rape upon knowing the fact that he is living with HIV positive, such an offender shall be liable to imprisonment for a term of One year, in addition to the imprisonment referred to in Number 3 and Number 3A. of this Chapter.

146 Ibid number 9 (A): A person who commits or causes to be committed sodomy (any kinds of unnatural sexual intercourse) with a minor, it shall be considered to be an offence of rape and the offender shall be liable to an additional punishment of imprisonment for a term not exceeding One year as referred to in Number 3 of this Chapter, and the court shall make an order to provide appropriate compensation to such a minor from the offender, upon considering the age and grievance suffered by the minor.

147 Ibid Incest chapter

148 Muluki Ain, Rape chapter number 5 : One who has made attempt to commit rape but has not succeeded in committing it shall be liable to the punishment which is half the punishment that is imposed on the offender who commits rape.

in the case of rape. Muluki Ain chapter on Intention to Sex¹⁴⁹ has defined the activities related with intention to sex and kept the provisions of punishment¹⁵⁰ to the perpetrator ranging from the punishment of imprisonment for a term ranging from Six months to Two years or a fine of Five Hundred Rupees to Six Thousand Rupees or with both. The case related with offense of rape and sexual abuse can be trial in camera court. The time limitation for filing the case against the accused of rape, attempt to rape and intention to rape is very low i.e. of 35 days, which need to be changed.

The Domestic Violence (Offenses and Punishment) Act, 2009 has defined Sexual harm as sexual misbehavior, humiliation, discouragement or harm in self-respect of any person; or any other act that hampers safe sexual health which is only limited to domestic relation.

3.10 Rape, Rape attempt, sexual abuse (International Legal Mechanism)

- ❑ Universal Declaration of Human Rights (UDHR)
- ❑ International Covenant on Civil and Political Rights (ICCPR)
- ❑ Convention on Elimination of All Forms of Discrimination against Women (CEDAW)

149 Muluki Ain Intention to Sex chapter number 1: If a person, without the consent of a woman, touches or attempts to touch her sensitive organ, puts off her inner clothes (under garments), takes her to an unusually lonely place, makes her touch or catch (hold) his sexual organ or uses vulgar or other similar words or indications or shows her such drawing or picture or teases or harasses her for the purpose of sexual intercourse, or treats her with any unusual behavior or holds her with intention of having sexual intercourse, he shall be deemed to have done sexual harassment, and the who commits such an offence shall be liable to the punishment of imprisonment for a term not exceeding One year and a fine of up to Ten Thousand Rupees. The victim of such an offence shall be entitled to a reasonable compensation from the offender.

150 Ibid number 5: If a person lures a woman to have illegal sexual intercourse with himself or with any other person or contacts and manages for prostitution, the person shall be liable to the punishment of imprisonment for a term ranging from Six months to Two years or a fine of Five Hundred Rupees to Six Thousand Rupees or with both.

❑ Convention on the Rights of the Child (CRC)

UDHR article 1¹⁵¹, article 3¹⁵², article 5¹⁵³, article 7¹⁵⁴ and article 12¹⁵⁵ ensures the right to dignified life, liberty and equal treatment by the law. It also confirms the rights against discrimination, personal and family privacy and security and rights against any cruel, inhumane and torturous treatment.

ICCPR article 3¹⁵⁶, 17¹⁵⁷ and 26¹⁵⁸ signifies the equality of rights between men and women while enjoying their civil and political rights, similarly it also confirms right against any discrimination, right to equal protection by law, right against arbitrary interference on privacy and family life as well as ensures the dignified life of a person.

151 UDHR article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

152 Ibid article 3: Everyone has the right to life, liberty and security of person.

153 Ibid article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

154 Ibid article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

155 Ibid article 12: no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

156 ICCPR article 3: The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

157 Ibid Article 17: (1.) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. (2.) Everyone has the right to the protection of the law against such interference or attacks.

158 Ibid article 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

CEDAW preamble¹⁵⁹ ensures equal rights of women in comparison to men and protect against any discriminatory provisions, system, practices and culture existing in the world which directly and indirectly obstruct to enjoy the rights by women in broad sense. Article 1¹⁶⁰ of the present convention identify the discrimination that can be happened against women, article 2¹⁶¹ affirms states parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women, article 5(a)¹⁶² confirms to eradicate all discriminatory

159 See preamble of CEDAW

160 Ibid article 1: For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

161 Ibid article 2: States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; (g) To repeal all national penal provisions which constitute discrimination against women.

162 Ibid article 5(a): States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

and stereotyped concepts existing in society and culture which dominates women, article 16(1)(b)(c)(d)¹⁶³ recalls about the free will of men and women to choose their spouses whereas 16(2)¹⁶⁴ discards the child marriage and declares it illegal.

CRC article 1¹⁶⁵ defines the child, article 6¹⁶⁶ confirms the right to survival and life of the child, article 9(1)¹⁶⁷ affirms the best interest of child and provides them to be associated with their parents until and unless it is against child interest, article 16¹⁶⁸ protects the dignity and honor of the child and provides protection from law if violation occurs.

163 Ibid article 16: States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent; (c) The same rights and responsibilities during marriage and at its dissolution; (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

164 Ibid article 16(2): The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

165 CRC article 1: For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

166 Ibid article 6: (1.) States Parties recognize that every child has the inherent right to life. (2.) States Parties shall ensure to the maximum extent possible the survival and development of the child.

167 Ibid article 9 (1.): States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

168 Ibid article 16: (1.) No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation. (2.) The child has the right to the protection of the law against such interference or attacks.

Similarly article 19¹⁶⁹ assures the implementation of any legislative, administrative, social and educational measures to protect them from any kinds of mistreatment including sexual abuse and knock the government and judiciary to establish necessary mechanism and steps to deal with it. Furthermore article 34¹⁷⁰ of present convention explicitly advocates for the protection of children from any kinds of involvement in sexual activities. Supporting the present convention, the Optional Protocol on the sale of children, child prostitution and child pornography also strongly advocates for keeping the rights of child that could be violated from such activities and compulsions to be involved in the actions set forth in the optional protocol of CRC.

3.11 Women trafficking (National Legal Mechanism)

- ❑ Nepal Interim Constitution 2007
- ❑ Human Trafficking and Transportation (Control) Act, 2007
- ❑ Human Trafficking and Transportation (Control) Rules, 2065 (2008)
- ❑ Muluki Ain 2020, chapter on human trafficking

169 Ibid article 19: (1.) States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.(2.) Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

170 Ibid article 34: States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent :(a) The inducement or coercion of a child to engage in any unlawful sexual activity;(b) The exploitative use of children in prostitution or other unlawful sexual practices;(c) The exploitative use of children in pornographic performances and materials.

Nepal's Interim Constitution article 12(1)¹⁷¹ confirms the right to dignified life as fundamental rights. Whereas article 20(3)¹⁷² rejects any kind of physical, mental and other kind of violence against women made punishable by law. Article 22(3)¹⁷³ protects from any kind exploitation against child and article 29¹⁷⁴ (3) and (4) protect the rights of citizen against exploitation and stop the action of trafficking, slavery on in servitude.

Human Trafficking and Transportation (Control) Act, 2007 section 3¹⁷⁵ has stated about the commission or cause to commit the human trafficking and transportation as crime and punishable by law. Section 4¹⁷⁶ has listed the different actions that come under human transportation and trafficking respectively. Section 5 has provided the mandate of reporting to any person to be known about the incident, section 9 has kept the provision of burden of proof in which the accused is liable to gather the proof. Similarly section 12, 13 and 14 has provisions of rescue, rehabilitation and reconciliation in which the government of Nepal is responsible on overall actions and implementation of said provisions under this law. As human trafficking and transportation is grave offense and crime against humanity, the present act under section 15 has also strong provisions of punishment viz. maximum 20 years of imprisonment two lakh rupees fine and the abettor and inciter of the offense also liable for the half the punishment of offender.

171 Nepal Interim Constitution 2007, article 12(1): Every person shall have the right to live with a dignity, and no law shall be made which provides for the death penalty.

172 Ibid article 20(3): (3) No woman shall be subjected to physical, mental or any other kind of violence; and such act shall be punishable by law.

173 Ibid article 22(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.

174 Ibid article 29(2) and (3): (2) No one shall be exploited in the name of any custom, tradition and usage or in any manner whatsoever. (3) No one shall be trafficked in nor shall one be held in slavery or in servitude.

175 Human Trafficking and Transportation (Control) Act 2007 section 3

176 Ibid section 4

Section 17 of the act has provision of compensation to the victim; section 26 confirms the security of victims and witnesses and section 27 of the same act provides mandate of hearing the case in camera court. To support the effective implementation of present act; Human Trafficking and Transportation (Control) Rules, 2065 (2008) has been promulgated.

Muluki Ain chapter on Human Trafficking¹⁷⁷ has defined the commission of human trafficking and punishable maximum 20 years of imprisonment. The same chapter number 3¹⁷⁸ also affirms the keeping person as bonded labor or slave and Kamara, Kamari (sub-servant) as commission of crime that is punishable by law.

3.12 Women trafficking (International Legal Mechanism)

- ❑ Universal Declaration of Human Rights (UDHR)
 - ❑ International Covenant on Civil and Political Rights (ICCPR)
 - ❑ SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution
- UDHR article 1¹⁷⁹, 2¹⁸⁰ and 3¹⁸¹ ensures the life, liberty,

177 Muluki Ain chapter on human trafficking number 1: No person shall lure and take another person outside the territory of Nepal with intention to sell him or her nor shall sell another person outside the territory of Nepal. If a person, who is taking another person to sell him or her in a foreign country, is caught (arrested) before the sale, the offender shall be liable to the punishment of imprisonment for a term of Ten years⁴⁷⁰ and if the person is arrested after the sale, the offender shall be liable to the punishment of imprisonment for a term of Twenty years⁴⁷¹. In cases where the buyer is found within the territory of Nepal, the buyer shall be liable to the same punishment as is imposable on the seller.

178 Ibid number 3: No person shall make any other person a Kamara, Kamari (sub-servant), slave or bonded labor. A person who makes another person a sub-servant, slave or bonded labor shall be liable to the punishment of imprisonment for a term ranging from Three years to Ten years, and the court may issue an order for the provision of a reasonable compensation by the offender to the victim.

179 UDHR article 1

180 Ibid article 2

181 Ibid article 3

security and dignity of every individual and discard the any discriminatory provisions prevalent in any names. Article 4¹⁸² of the declaration restricts any forms of slavery or servitude; slavery and the slave trade. Article 5¹⁸³ of UDHR protects the human being from any kinds of inhumane, cruel and degrading treatment, and article 12¹⁸⁴ and 13¹⁸⁵ of the declaration protects the right of privacy and right to freedom of movements.

ICCPR article 1(1)¹⁸⁶ states about the right to self-determination, article 2¹⁸⁷ confirms the state responsibilities to prepare all administrative, legislative and constitutional measures to provide all the civil and political rights enshrined in the present article and article 3¹⁸⁸ explicitly ensures the equal rights between men and women without any discrimination. Article 7¹⁸⁹ protects the rights of people against any kind of cruel, inhumane and degrading treatment whereas article 8 (1)¹⁹⁰ and 8(2)¹⁹¹ restrict from any kind of slavery; slavery and the slave-trade. Article 16¹⁹² of the present covenant recognizes the person everywhere before the law as a person and article 17¹⁹³ affirms the right to privacy of the person.

SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution has emphasized that the evil of trafficking in women and children for the purpose of prostitution is incompatible with the dignity

182 Ibid article 4

183 Ibid article 5

184 Ibid article 12

185 Ibid article 13

186 ICCPR article 1(1)

187 Ibid article 2

188 Ibid article 3

189 Ibid article 7

190 Ibid article 8(1)

191 Ibid article 8(2)

192 Ibid article 16

193 Ibid article 17

and honor of human beings and is a violation of basic human rights and recalling the relevant international legal instruments relating to prevention of trafficking in women and children, including the Convention for the Suppression of Trafficking in Persons and of the Exploitation of Prostitution of Others, 1949; Convention on the Elimination of all Forms of Discrimination against Women, 1979; International Covenant on Civil and Political Rights, 1966; and the Convention on the Rights of the Child, 1989¹⁹⁴ the present convention was came in force 2002. The present convention article 1¹⁹⁵, 3¹⁹⁶ and 8¹⁹⁷ has defined the victims, offense and measures taken to combat with the offense of trafficking in regional level. The present convention has also provided the care, treatment, rehabilitation and reintegration of the victims from the regional mechanism along with judicial and administrative mechanism to fight with this problem.

194 Preamble of SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution

195 Ibid article 1

196 Ibid article 3

197 Ibid article 8

Chapter 4

4.1 Analysis

Gender Based Violence is an obstacle to the achievement of the objectives of equality, development and peace. It violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedom. Failure to protect and to promote women's rights and freedom are a matter of great or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture. Violence against women has been an effective tool in the hands of men through which they can exploit women and establish their supremacy.

In recognition of the gender-specific nature of violence, international law has incorporated norms prohibiting violence against women in different contexts, within the family, and at the community and the State levels. The Convention on the Elimination of All Forms of Discrimination against Women provides for specific protection from discrimination for women and girls. In its general recommendation No. 19 on violence against women, the Committee on the Elimination of Discrimination against Women noted that, by ratifying the Convention, States had undertaken legal obligations to prevent and eliminate violence against women, and clarified that gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention.¹⁹⁸ Nepal has been party to total 24 human right instruments.¹⁹⁹ in the same way Nepal has been able to promulgate various gender friendly laws,

198 General recommendation No. 19, para. 7.

199 Human Right Year Book, INSEC, p 3

and in special cases has made gender specific laws for instance Domestic Violence (offence and Punishment) act/rules in order to promote justice, harmony, equality and ensure dignified life for the women/girls. In the same way along with international mechanism in regards to human trafficking, there are specific laws related with Human Trafficking in order to combat these problems. Laws have prohibited violence committed in the name of so-called witchcraft. Rape, killing has been regarded as strict liability.

Irrespective of Nepal accession to the International instruments, and incorporating such principles in the domestic laws, accepting the obligation by the virtue of Treaty Act 1990 section 9. This year total 910 incidents has occurred in respect to women and total 464 incidents has occurred in regards to girls. When one violation cannot be excused, such a large amount of incidents recorded in the INSEC archive pose a grave question in the States capability to accord protection to the people and ensure a life which it has promised by the virtue of binding itself through various treaties, and customary international laws.

In this report, overall assessment of the violation faced by the women and girls in the entire development region has been

done, and the writers have come with following findings:

Table 1

SN	Forms of violation	Number of Victims	Effect
1	Domestic Violence	447	Injured/ killed
2	Polygamy	147	Needed to leave the house/ beaten up
3	Rape	140	Killed/ injured
4	For Practicing witchcraft	52	Killed/injured
5	Sexual Abuse	43	Physical/mental trauma
6	Rape Attempt	39	Injured
7	Women Trafficking	31	Few survived/ few still missing
8	Lack of Pre and Post Partum Services	11	Killed/physical distress
Total		910	

Thus this year the maximum recorded violation was of domestic violation, followed by polygamy, rape, witchcraft, sexual abuse, rape attempt, women trafficking, lack of pre and post-partum services. Irrespective of the specific laws related with domestic violation result in such high amount of incidents is really matter of concern. Though polygamy is criminalized in Nepal but the second wife is not regarded as illegal due to this loopholes in laws this practices is rampant in Nepal. Women still are tortured and killed in the name of witch. the main reason of constant increase in such incidents are the perpetrator are in large amount mostly maximum people of the locality are found involved thus making it difficult to press the charge due to which the perpetrators are encouraged to victimized women in the name of so called witch.

Irrespective of the laws of Rape, occurrence of such incidents poses a real question to the security of the women as through the

available data it is seen that women are raped while they are in the jungle to collect firewood, graze cattle, or are alone in the house. This year in the incidents of rape state actors such as army police, immigration officer have been involved this is a matter of shame.

In the same way the lack of employment opportunities for the women, they have constantly been victim of women trafficking as they are lured to provide job due to which there are incidents occurring constantly. Furthermore the open border and lack of laws is indeed the reason for the occurrence of these types of incidents.

Nepal is not able to provide proper health facilities irrespective of it being fundamental rights due to which women have to lose their lives.

Table 2

SN	Forms of Violation	Number of Victim	Effect
1	Rape	300	Killed/injured
2	Sexual Abuse	91	Physical/mental trauma
3	Child Trafficking	49	Survived/ few whereabouts not known
4	Child Marriage	21	Ended up with husband/ in few cases were rescued and brought back to paternal home
5	Attempt to Kill	1	Dead
6	Deprived of Education	1	Expelled from school
7	Kamalari	1	Rescued
Total		464	

The girls this year were mostly became rape victim followed by the victim of sexual abuse. total incidents 300 incidents of rape was recorded in Insec documentation and 91 cases of sexual abuse were recorded. This is really a matter of concern. This shows that girls are very vulnerable and are not safe within their periphery

of their home. Home which is regarded as heaven on earth has turned to be a place where crime is constantly occurring. it is found that the child are victimized by teacher and bus driver too, this is a matter of shame and action should be taken to ensure girls safety.

In the same way when Nepalese laws has set the legal age to get married child marriage has constantly taken place total 21 cases were recorded this year. In the same way one child was attempted kill, deprived from education respectively. There has been one incidents of Kamalari however the girl was rescued and this is a positive outcome.

It is very difficult for the state to ensure the women's rights and protect human rights thus various non-governmental organization too has played vital role in order to protect women's/ girls right. for instances the police arrested Suraj, Raj, 28 living in a rented room of Kumar Tamang of Hile, in Dhankuta district, on July 14 on the charge of raping 21-year-old woman on July 12. The victim filed complaint against the accused with the help of women's rights activists' organization of the district on July 15. The victim was treated at District Hospital. Thus organization too have been playing important role in order to protect the rights. However even after much effort from various sector the incidents that have been recorded are very high which is a matter or great concern.

4.2 Conclusion

The existence of Gender Based Offence in Nepalese Society is due to deeply rooted patriarchal system, followed by the unequal power relation between male and female, discriminatory practices towards women. Nepal has ratified various International human rights instruments, making is obligatory to the norms and principles enshrined for the protection of the women. In the same way various domestic laws too are promulgated in order to uplift/

protect the women. However Nepal inefficiency to implement the laws and to make stronger mechanism in order to combat such Gender Based Violence, every year numerous women and girls become the victim. Often the perpetrators are left without being charged, posing great threat to the constitutional remedy guaranteed in the Interim Constitution. Laws should not be limited in black letters. if women/girls become constantly victimized and are denied from justice then they will slowly lose their faith towards justice system, and towards the state. Thus state and the ones who have been given role to interpret the laws, who are there to defend the laws, the organization who are there to raise voice for the voiceless should be more active and effective so that all people irrespective of their gender enjoy the rights guaranteed to them and feel safe in their own house, society, country.

4.3 Recommendation

- launch awareness program about the superstitions of witchcraft practices
- strong enforcement mechanism in regards to combat violence against women should be made
- conduct women empowerment and skill development training
- alert civil societies and encourage them to disseminate the issue of Gender Based Violence
- strong laws and policies to combat violence against women should be made
- institute fast-court to provide speedy remedy to victims of violence against women