
Violence against Women/Girls Assessing the Situation of Nepal in 2013



For Human Rights & Social Justice

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Preface

The world is celebrating 104th International Women Day on March 8, 2014 with the slogan “Equality for Women is Progress for All”. Nepal as a member state of the United Nations has ratified various International human rights treaties and conventions related to women’s rights which have explicitly pledged the 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 women but in overall eminence, they are lagging behind in various aspects. They have lower status than men in each aspect of Human Development Index (HDI), illiteracy and employment status. Patriarchal society and economic dependency on men are the grounds of male domination in the society. The so-called witchcraft practices, rape, sexual violence including rape and attempt to rape, polygamy, domestic violence and trafficking of women and girls are some of the forms of violence against women occurring frequently.

The data recorded in Informal Sector Service Centre (INSEC) has proved the existence of violence against women and girls in Nepal, for instance, 2,348 victims of violence against women and 700 girl victims are recorded this year. Similarly, records collected by other organizations on the basis of print and electronic media about the victims of polygamy, trafficking, domestic violence and deprivation of pre and post-partum services also confirm the trends of violence against women and critical situations of women whether in family or in village or even in the capital of the country. Legal and administrative mechanisms to enhance the women participation on different constitutional, administrative and public service bodies, however, brought some rays of hope; the deep-rooted cultural and traditional practices and taboos created against women have always obstructed the path of equality. Lack of effective laws, poor implementation and

unaccountable governmental authorities are also contributing towards increase of the incidents related to violence against women. Many improvements and efforts are required to reduce the violence against women/girls in the country.

Furthermore, the incidents of killing, sexual violence including rape, victims of so-called witchcraft practices, polygamy, domestic violence and women/girls trafficking can be reduced by the combined effort of multiple stakeholders comprising of Government, Community Based Organizations (CBOs), Non-Governmental Organizations (NGOs) and International and Regional Partners. The role of human rights organizations is always crucial in this regard. In this report, INSEC has detailed killing, rape, sexual violence, victims of so-called witchcraft practices, polygamy, domestic violence, lack of pre and post-partum services along with trafficking of women and girls which I felt would be a helpful tool to overview the situation of women in Nepal and for the respective authorities to address these problems of the society.

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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	8
1.3 Organization of the Report	10

Chapter 2

Violence against Women/Girls	11
2.1 Forms and incidence of Gender-based Violence	11
2.1.1 Statistical Representation of Women/Girls Victimization	11
2.1.2 Statistical Representation of Women Victimization as per Region	11
2.1.3 Victims as per Age Group (Women)	12
2.1.4 Statistical Representation of Girls Victimization as per Region	14
2.1.5 Victims as per Age Group (Girls)	15
2.1.6 Total Number of Killing of Women/Girls	15
2.1.7 Domestic Killing	16
2.1.8 Killing after Rape	17
2.1.9 Killing in Dowry Cases	17
2.1.10 Descriptive Analysis of Violence against Women	17
• Domestic Violence	17
• Killing	18
• Rape	18
• Killing after Rape	19
• Dowry Death	19
• Polygamy	20
• Practicing witchcraft	20

• <i>Women/Girls Trafficking</i>	20
• <i>Caste Discrimination against Women</i>	21
• <i>Corporal Punishment</i>	21

Chapter 3

Domestic and International Legal Mechanism in Respect to Violence against Women/Girls	22
3.1 Existing Domestic legal Mechanism in Respect to Violence against Women/Girls	22
3.1.1 Nepal Interim Constitution 2007 of Nepal	22
3.1.2 Domestic Violence (Offence and Punishment) Act, 2066 (2009) and Domestic Violence (Offence and Punishment) Rules, 2067 (2010)	24
3.1.3 Muluki Ain (General Code), 2010	25
3.1.4 Some other Domestic Laws	30
3.2 Existing International Legal Mechanism in Respect to Violence against Women/Girls	32
3.2.1 Universal Declaration of Human Rights (UDHR), 1948	32
3.2.2 International Covenant on Civil and Political Rights (ICCPR), 1966	35
3.2.3 International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966	40
3.2.4 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979	41
3.2.5 Convention on the Rights of the Child (CRC), 1989	49
3.2.6 Other International Laws	50

Chapter 4

Analysis	52
4.1 Conclusion	54
4.2 Recommendations	55

"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 cursed one rather it should be a matter of pride. No man has been endowed with power to call him 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 got organized locally and internationally demanding attention to the physical, psychological, and economic abuses of women. Gradually, violence against women came 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 GBV),³ a violence as such was restrained within the four walls in the past, however with the passage of time, the sufferings are being seen, felt, heard, and addressed.

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 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).⁴ VAW/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 was openly discussed and addressed only since the last decade. The general taboo of not accepting this form of violence as significant was related to strict patriarchal society and limited freedom of expression against such social evils. It has, therefore, been openly discussed as the most common form of GBV as domestic violence, or GBV families.⁶ VAW/G is one of the most widespread human right abuses and problems existing in Nepali society. This report is an attempt to assess and disseminate the situation of violence against women/girls in Nepal in the context of increasing threat posed to the women as a whole.

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

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

5 ibid

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

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 to men.”⁷ The 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 GBV 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.”⁹ 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.”¹⁰ Within this definition, other harmful acts are included such as early marriage, honor crimes and deprivation of inheritance rights.¹¹

“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 this word also includes any act of reprimand or emotional harm.¹²

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 Finney Hayward, *Breaking the Earthenware Jar* quired from Reference Kit on Violence Against Women and Grils in South Asia, UNICEF, Kathmandu, Nepal, 2001, p 10

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

11 Shelah S Bloom, *Violence Against Women and Girls: A Compendium of Monitoring and Evaluation Indicators* (in collbration USAID East Africa Regional Mission in collaboration with the IGWG, MEASURE), p 12 13

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

1.3 Organization of the Report

This report is broadly divided into four chapters. The first chapter overviews the VAW/G in accordance with various concepts and definitions related. In the second chapter, statistical representation of the various forms of violation is presented in regards to VAW/G. Descriptive analysis of violence against women is also presented in this chapter. This is followed by the existing international and domestic laws presented in chapter 3. In chapter four, analysis is presented, 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 Woman/Girl Victimization

Types of Cases	Number of Victims
Violence Against Women	2348
Violence Against Girls	700
Total	3048

2.1.2 Statistical Representation of Women Victimization as per Region

Types of Events	Eastern Region	Mid Region	Western Region	Mid Western Region	Far Western Region	Grand Total
Women Rights						
Abortion		1				1
Attempt to Trafficking		4	7		2	13
Domestic Violence	303	651	206	253	156	1569
For Practicing Witchcraft	15	28	13	8	5	69
Jari (Compensation to elope with other's wife)					1	1
Polygamy	88	102	57	23	13	283
Lack of Pre and Post Partum Service	1		1	1	1	4
Rape	68	69	41	31	6	215
Rape Attempt	41	19	6	13	10	89
Sexual Abuse	8	7	3	19	15	52
Women Trafficking	10	19	10	7	6	52
Total	534	900	344	355	215	2348

2.1.3 Victims as per Age Group (Women)	
Victim Age	Total
18-23	597
24-29	750
30-35	494
36-41	227
42-47	135
48-53	66
54-59	28
60-65	31
66-71	11
72+	9
Total	2348

A total of 2,348 victims have been documented by INSEC in regards to VAW. 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, abortion and women trafficking.

From the available data, it is found that the maximum number of victims have been documented in Mid region, amounting to 900. The maximum number of violation out of 900 in this region is domestic violence totaling 651 victims, polygamy victims 102 and 69 rape victims.

Eastern region comes in the second place, with a total of 534 victims recorded and in which, maximum victims are of domestic violence that is 303, polygamy 88 and rape victims 68. Mid Western region comes after Eastern region, with total 355 victims. 253 victims of domestic violence, 31 rape victims, and 23 victims of polygamy have been documented in this region.

In Western region, a total of 344 victims are documented, in which 206 are domestic violence victims, 57 are of polygamy, and 41 are rape victims. INSEC documentation has recorded a total of 215 victims in Far Western region in which 156 are victims of domestic violence, 15 are of sexual abuse and 44 are rape victims.

This year, INSEC documentation has maximum incidents of domestic violence at 1,569. There have been 283 victims of Polygamy, 215 women victims of rape, 69 victims abused on charge of practicing witchcraft, 52 sexually abused victims, 52 victims of women trafficking or attempted trafficking and four victims who lost their lives after not getting Pre and Post Partum Services.

As per the age group, it is found that the women between 24 and 29 are most vulnerable as 750 victims are from this age group. After this, 597 victims are of 18-23 age group and 494 victims are of 30-35 age group. There are 227 victims of 36-41 age group, 135 victims of 42-47 age group, 66 victims of 48-53 age group, and 28 victims of 54-59 age group. Similarly, 31 victims are of 60-65 age group, 11 victims are of 66-71 age group, and nine victims are of the age group 72+.

In Nepal, like in almost all the South Asian countries, domestic violence is one of the many forms of GBV.¹³ "Traditional attitudes by which women are regarded as subordinate to men or as having stereotypical 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 GBV 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 of equal enjoyment, exercise and knowledge of human rights and fundamental freedoms."¹⁴ Another form of violation rampant in the entire region is rape and sexual abuse. In the 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 of VAW, rape in particular.¹⁵ 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.¹⁶ All of this has immensely worked as an additional factor to constantly increase the VAW/G.

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

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

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

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

2.1.4 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						
Child Labor	1	2			1	4
Child Marriage	2	10	2	3	1	18
Child Trafficking	8	19	12	2	10	51
Corporal Punishment	5	2	18	1		26
Kamalari					7	7
Killing of Newborn Baby	3	9	1	3		16
Rape	135	120	61	55	35	406
Sexual Abuse	58	42	37	16	19	172
Total	212	204	131	80	73	700

Eastern region is the most violation prone region, as per INSEC documentation, with the maximum number of minor victims recorded i.e. 212. A total of 135 girls are the rape victims followed by 58 children becoming victims of sexual abuse and eight of child trafficking.

Mid region stands in second most exposed area. This year INSEC documentation has recorded a total of 204 girl victims. The number of rape victims is maximum with 120, sexual abuse victims are 42 and 19 are victims of child trafficking. A total of 131 victims of which 61 are rape victims, 37 sexual abuse victims and 12 child trafficking victims have been recorded in Western Region thus making it the third most affected region. There are a total of 80 victims recorded in Mid Western Region with total 55 rape victims, 16 sexual abuse victims and three child marriage victims.

In Far Western Region, 73 girls faced various forms of violation this year, as per INSEC documentation. There were 35 rape

victims, 19 victims of sexual abuse and 10 victims of child trafficking.

With the above data it can be concluded that, in all of the five regions rape incidences are quite high followed by sexual abuse. This is indeed a matter of compunction.

A total of 18 incidents of child marriage are recorded this year. Until now, children are being trafficked through different channels which totaled 51 victims. There is one incident of attempted murder of a girl. Seven girls have been victims of kamalari system and one girl who was deprived of attending school has been documented.

Talking about the children being victimized, the most vulnerable age group is 12-17, in which there are 451 victims followed by 166 children of the age group 6-11 and 83 victims of 1-5 have been recorded.

2.1.5 Victims as per Age Group (Girls)

Victim Age	Total
1 - 5	83
6 - 11	166
12 - 17	451
Total	700

2.1.6 Total Number of Killing of Women/Girls

Types of Events	By Non-State	
	Female	Total
Killing		
Beaten to Death	58	58
By Poison	11	11
By Hanging	14	14
By Using Sharp Weapons	48	48
Crushing with Stone	5	5
Killed After Rape	6	6
Killed by Firing	1	1
Nature of Killing Unexposed	5	5
Pushing Down from the Landscape/Hill	1	1
Setting Fire	3	3
Throat Slit	1	1
Strangled to Death	11	11

Hammered	2	2
Hacked with Khukuri	7	7
By Lathi	5	5
Total	178	178

2.1.7 Domestic Killing

Event District	No. of Killing	Event District	No. of Killing
Siraha	7	Makwanpur	2
Kailali	5	Okhaldhunga	2
Morang	5	Panchthar	2
Banke	4	Pyuthan	2
Dhanusha	4	Ramechhap	2
Jhapa	4	Rautahat	2
Saptari	4	Solukhumbu	2
Sunsari	4	Taplejung	2
Bardiya	3	TerhaThum	2
Chitwan	3	Baglung	1
Dailekh	3	Bajhang	1
Jumla	3	Bara	1
Kaski	3	Darchaula	1
KavrePalanchowk	3	Dolakha	1
Nawalparasi	3	Gorkha	1
Nuwakot	3	Gulmi	1
Rukum	3	Illam	1
Sankhuwasabha	3	Kanchanpur	1
Arghakhanchi	2	Kathmandu	1
Dang	2	Lamjung	1
Khotang	2	Parvat	1
Rupandehi	1	Syangja	1
Salyan	1	Udayapur	1
Sarlahi	1	Total	108

2.1.8 Killing after Rape	
Event District	No. of Killing
Dhanusha	2
Dhading	1
Jhapa	1
Rupandehi	1
Sankhuwasabha	1
Total	6

This year total 178 women were killed in different districts of the country. In total, 108 cases of domestic killing occurred throughout the country following by six killing after rape and five killing of dowry cases.

2.1.10 Descriptive Analysis of Violence against Women

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

2.1.9 Killing in Dowry cases	
Event Districts	No. of Killing
Banke	1
Dhanusha	2
Rautahat	1
Sunsari	1
Total	5

Domestic Violence

Tek Bahadur Dhama, a soldier at Bhagatpur barrack in Kanchanpur left his newly married wife, Laxmi Bista, 24, of Ballek VDC, Doti without food and clothes. The victim lodged a complaint at District Police Office, Doti on April 5, 2013. Bista said that Dhama had forced her to abort their child at Seti Zonal Hospital in Dhangadi and then ran away from there. Later, she also filed a case at District Court, Doti to establish relation with him as his wife. The court established relation between Tek Bahadur and Laxmi as husband and wife on December 24, 2013. Currently, she is living with her parents.

Nuresha Nesha, 20, of Devgaun VDC-7 Nawalparasi lodged a complaint against her husband Ainul Haq Ansari, 25, mother-in-law Sarifum Nesha, 45, and father-in-law Ibrahim Ansari, 51, on March 22, 2013 accusing them of torturing, beating and expelling her from the house. The police charged the accused under Domestic Violence Act. The case remained pending at the end of the year.

Parbati BK, 23, of Jyamrung VDC 6 in Dhading was beaten by her husband, Raju BK, 35, and was expelled from the house in the mid-night of August 12. The victim spent the whole night outside the house. The victim lodged a complaint at District Police Office on August 14; however, no action was taken until the end of the year.

Killing

Namsara Kami, 25, of Tolijaisi VDC in Dailekh was murdered by her husband Shire Kami, 28, on January 19 by slitting her throat. The victim's side filed FIR against Shire at District Police Office on January 21. The postmortem of the body was performed in the District Hospital on January 21. Police arrested the accused on the day of murder, the accused is remanded in custody by the District Court on February 14.

Tulsi Maya Moktan, 46, of Bharta VDC-4 in Makawanpur was murdered by her stepson Rajendra Moktan, 18, on April 18, who attacked her with wood stick on to her head. The victim's family lodged a complaint at Area Police Office on the same day. Police arrested the accused on April 19. He was remanded in custody by a court order on March 23. Postmortem of the body was held at Hetauda Hospital on April 20. The accused murdered her over a dispute on financial matters.

Rape

A 15-year-old Down syndrome girl was gang raped by Lal Bahadur BK, 25, Bir Bahadur BK, 26, and Phauj Raj BK, 27, on March 8, in the bank of Biring river in Jhapa. Locals caught

the perpetrator Bir Bahadur BK and handed him over to police. The family of victim lodged a complaint at District Police Office. Perpetrator Lal BahadurBK was also arrested by police on the same day. The accused were remanded in custody by a court order of February 28. Phauj Raj remained absconding at the end of the year.

A 9-year-old girl was raped by her father in Baitadi on August 16 at her home. The accused was immediately arrested by Police. The accused was remanded in custody for further investigation.

Killing after Rape

Kumari Tamang, 34, of Darkha VDC-8 in Dhading was strangled to death after rape by Bal Bahadur Tamang, 26, on June 13. The accused admitted that he raped the victim near the jungle and strangled her to death. The incident was due to the personal dispute between the victim and the accused. The accused was arrested by the police and sent to the prison. The case remained pending until the end of the year.

Dowry Death

The family of Riva Devi Yadav, 20, of Gopalpur VDC-1, Dhanusa complained that her husband Sanjay Yadav, 24, had poisoned her to death on July 2 for not bringing enough dowries. The victim died while undergoing treatment on July 3 in Siligudhi of India. The deceased's natal family accused Sanjay and his family members of torturing her mentally and physically. Postmortem of the body was performed on July 5 at Janakpur Zonal Hospital. The victim's side lodged a complaint at District Police Office on July 7. The accused Sanjaya was arrested on the same day by the police. He was remanded in custody by the court order on July 10. The case remained pending until the end of this year.

Polygamy

Sunai Pun, 48, of Thabang VDC-2 Rolpa filed a case of Polygamy against her husband Hit Bahadur Pun, 52, in the District Court on March 27. Her husband married Cheesa Pun, 48, of same place on April 25, 2012 and she came to know about it only on February 15. Police arrested Hit Bahadur and Cheesa on March 1 following the complaint. The District Court released both after making them pay a bail of Rs 14,000 each on March 28.

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.

Til Maya BK, 52, of Nagdaha VDC, 5, Ramechhap, was accused of being a witch by Ram Narayan Shrestha, 50, of the same VDC on May 24. The victim lodged a complaint at Area Police Office on May 25 against the accused. Police directed the locals to sort out the case at local level after which the accused agreed to pay a compensation of Rs 1,000 to the victim.

Women/Girls Trafficking

Women Trafficker Bajir Singh Tamang, 37, of Sikharpur VDC, Sindhupalchok, is sentenced with 170 years prison by the verdict of judge Ananta Raj Dumre of District Court. The accused had trafficked six girls to India on different times. He was fined Rs 1.3 million by District Court and was ordered to pay Rs 150,000 to each of the victims.

Dal Bahadur Ranabhat, 35, and Meena Ranabhat, 45, of Bagauda VDC 1 in Chitwan District were arrested by police on May 27 on charge of trafficking of a 15-year-old girl to India. The victim's father Hom Bahadur Devkota lodged complaint at Dis-

trict Police Office. The accused were sent to prison by court order of June 11 but they were acquitted on January 9, 2014.

Caste Discrimination against Women

Shrimati Devi Chamar, 50, and Anita Devi Chamar, 35, of Pipariya Dostiya VDC-8 in Rautahat lodged a complaint at Area Police Office, Garuda on May 14 accusing Bijay Sah Baniya, 35, Gorakh Rai Yadav, 45, Dharmendra Thakur Hajam, 30, Sikender Pandit, 26, Panilal Pandit, 26, Laxmi Rai, Yadav, 28, Ram Bilas Shah, 30, and Ram Chandra Rai Yadav, 45, of beating them when they were entering into a temple on May 13. Racist abuse was hurled against them and the women prohibited from entering the temple. The accused were not arrested at the end of the year.

Corporal Punishment

Ashika Ghising, 7, of Netragunj VDC-6 in Sarlahi District and UKG student of Lord Buddha Boarding School was severely beaten by her teacher Babita Gole, 20, on August 14. The injured child received medical treatment at Namuna Hospital on the same day. The victim's family lodged a complaint at Area Police Office, Nawalpur against the accused on August 31. Joint discussion between the victim's parents, school management and student unions concluded following agreement of with free education for victim up to secondary level.

Domestic and International Legal Mechanisms in Respect to Violence against Women/Girls

3.1 Existing Domestic Legal Mechanism in Respect to Violence against Women/Girls

3.1.1 Interim Constitution 2007 of Nepal

Interim Constitution of Nepal, 2007 has ensured some fundamental Rights to People. This provision of constitution guaranteed the right to freedom¹⁷, right to equality¹⁸, Right against Untouchability and Racial Discrimination¹⁹, Right Regarding Publication, Broadcasting and Press²⁰, Right Regarding Environment and Health²¹, Education and Cultural Right²², Right regarding Employment and Social Security²³, Right to Property²⁴, right of women²⁵, Right to Social

17 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.

18 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.

19 Right against Untouchability and Racial Discrimination: (1) No person shall, on the ground of caste, descent, community or occupation, be subject to racial discrimination and untouchability of any form. Such a discriminating act shall be liable to punishment and the victim shall be entitled to the compensation as provided by the law.

20 Right Regarding Publication, Broadcasting and Press: (1) No publication and broadcasting or printing of any news items, editorial, article, writings or other readings, audio-visual materials, by any means including electronic publication, broadcasting and press, shall be censored.

21 Right Regarding Environment and Health: (1) Every person shall have the right to live in clean environment.

22 Education and Cultural Right: (1) Each community shall have the right to get basic education in their mother tongue as provided for in the law.

23 Right regarding Employment and Social Security: (1) Every citizen shall have the right to employment as provided for in the law.

24 Right to Property: (1) Every citizen shall, subject to the laws in force, have the right to acquire, own, sell and otherwise dispose of the property.

25 Right of Woman: (1) No one shall be discriminated in any form merely for being a woman. (3) No woman shall be subjected to physical, mental or any other kind of violence; and such act shall be punishable by law.

Justice²⁶, Right of Child²⁷, Right to Religion²⁸, Rights Regarding to Justice²⁹, Right against Preventive Detention³⁰, Right against Torture³¹, Right to Information³², Right to Privacy³³, Right against Exploitation³⁴, Right Regarding Labour³⁵, Right against Exile³⁶ and Right to Constitutional Remedy³⁷ as fundamental rights. Rights to Freedom, Rights to Equality and Rights of Woman 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.

According to obligations, directive principles and policies stated on Article 33 (h)³⁸ and policies of the state stated on article

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- 26 Right to Social Justice: (1) Women, Dalit, indigenous tribes, Madheshi community, oppressed group, the poor peasant and labourers, who are economically, socially or educationally backward, shall have the right to participate in the state mechanism on the basis of proportional inclusive principles.
- 27 Right of Child: (1) Every child shall have the right to his/her own identity and name.
- 28 Right to Religion: (1) Every person shall have the right to profess, practise and preserve his/her own religion as handed down to him/her from ancient times having due regards to the social and cultural traditional practices.
- 29 Rights Regarding to Justice: (1) No person who is arrested shall be detained in custody without being informed of the ground for such arrest.
- 30 Right against Preventive Detention: (1) No person shall be held under preventive detention unless there is a sufficient ground of existence of an immediate threat to the sovereignty and integrity or law and order situation of Nepal.
- 31 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.
- 32 Right to Information: (1) Every citizen shall have the right to demand or obtain information on any matters of his/her own or of public importance.
- 33 Right to Privacy: (1) Except on the circumstance as provided by law, the privacy of the person, residence, property, document, statistics, correspondence and character of anyone is inviolable.
- 34 Right against Exploitation: (1) Every person shall have the right against exploitation.
- 35 Right Regarding Labour: (1) Every employee and worker shall have the right to proper work practice.
- 36 Right against Exile: (1) No citizen shall be exiled.
- 37 Right to Constitutional Remedy: The right to proceed in the manner set forth in Article 107 for the enforcement of the rights conferred in this part is guaranteed.
- 38 Ibid article 33(h): To pursue a policy of establishing the right of all citizens to education, health, housing, employment and food sovereignty;

35(8)³⁹ ensures the right to health of women by preparing and implementing plans, policies and directives in progressive order.

3.1.2 Domestic Violence (Offence and Punishment) Act, 2066 (2009) and Domestic Violence (Offence and Punishment) Rules, 2067 (2010)

Domestic Violence (Offence and Punishment) Act, 2066 (2009) and Domestic Violence (Offence and Punishment) Rules, 2067 (2010) have 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 perpetrators.⁴⁰The act has clearly defined the terms domestic violence⁴¹, physical harm⁴², mental harm⁴³, sexual harm⁴⁴, economic harm⁴⁵, the victim⁴⁶ and the perpetrator⁴⁷.

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 women⁴⁸ 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), com-

39 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.

40 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).

41 Ibid section 2 (a)

42 Ibid section 2 (c)

43 Ibid section 2 (d)

44 Ibid section 2 (e)

45 Ibid section 2 (f)

46 Ibid section 2 (g)

47 Ibid section 2 (h)

48 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.

pensation to the victim, service provided at the service center, penalty provisions to the perpetrators and the time limitation⁴⁹ 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 minimum⁵⁰. 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 strengthen the implementation mechanism for the rights of women in the domestic ground.

3.1.3 Muluki Ain (General Code), 2020

The provisions enshrined in Muluki Ain (General Code) of Nepal; under the chapters Husband and Wife, partition, women property, hurt/battery⁵¹, Intention of Sex⁵², rape and incest address the violation which can be occurred against women in different forms that shall be correlated with domestic violation cases. Chapter of “Kutpiti (Battery)” prohibits causing hurt or committing grievous hurt by using weapon or by any other means⁵³, which is followed by compensation⁵⁴.

49 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.

50 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.

51 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.

52 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.

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

54 Ibid, number 2

Polygamy under existing Nepali laws is restricted and made punishable. Muluki Ain 2020, chapter on Marriage; number 2 (9)⁵⁵, number 5⁵⁶, number 7⁵⁷, number 8⁵⁸, number 9⁵⁹, and number 9 (A)⁶⁰ has provisions of void marriage as well as the conditions in which the husband can arranged second marriage. In the same chapter number 10⁶¹ and

- 55 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
- 56 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.
- 57 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.
- 58 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.
- 59 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..... 1
 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
- 60 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.
- 61 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.

11⁶² has kept the provision of punishment for committing polygamy and time limitation for filing the case against such actions. Chapter on Husband and Wife⁶³ 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, number 4⁶⁴ and 8⁶⁵ provisions have directly emphasized the practice of polygamy existing in the society. The laws relating to polygamy is prevalent in Muluki Ain especially on the chapter "Marriage" and "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.

Muluki Ain (General Code) has clearly defined the Rape⁶⁶ and categorized the rape cases in accordance with the age group of the victims and punishment provisions enshrined within it⁶⁷.

- 62 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.
- 63 Muluki Ain, Chapter on husband and wife number 1, 2 and 4
- 64 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.
- 65 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.
- 66 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.
- 67 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 but 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.

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 perpetrator⁶⁸. The present Muluki Ain has also provisions of additional 5 year imprisonment in the cases of gang rape, rape against pregnant women, handicapped or physically disabled women⁶⁹. Likewise, If HIV/AIDS infected person rape someone with intention to transfer infection, then he will charged with additional 1 year imprisonment.⁷⁰ The proposed Criminal Draft Code has also kept the similar provision on rape offenses. However, the Draft Code and even existing Muluki Ain 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.⁷¹ There are different compensation provisions in our proposed Draft Code and our existing Muluki Ain. 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 Muluki Ain, Incest chapter⁷² has also categorized different punishment provision for the perpetrators according to the relation with the victims. Similarly in the cases of attempt to rape⁷³, the

68 Ibid

69 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.

70 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.

71 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.

72 Ibid Incest chapter

73 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.

punishment is half for the perpetrators as mentioned in the case of rape. Muluki Ain chapter on Intention to Sex⁷⁴ has defined the activities related with intention to sex and kept the provisions of punishment⁷⁵ 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. Muluki Ain chapter on Human Trafficking⁷⁶ has defined the commission of human trafficking and punishable maximum 20 years of imprisonment. The same chapter number 3⁷⁷ also affirms the keeping person as bonded labor or slave and Kamara, Kamari (sub-servant) as commission of crime that is punishable by law.

According to the Miscellaneous section 10(B) of the Mu-

- 74 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.
- 75 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.
- 76 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.
- 77 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.

luki Ain of Nepal, anyone involved in mistreating a woman 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.

3.1.4 Some other Domestic Laws

Some Nepali laws scattered in different acts address the crime that can be occurred against women in the name of practicing witchcraft. Section 2⁷⁸, 4⁷⁹, 5⁸⁰ 6⁸¹ 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. Draft code on Criminal Justice system too prohibits any discrimination on the basis of sex, caste, religion, color⁸², it has punishment provision of 3 years if torture is inflicted or inhuman, degrading act is com-

78 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);

79 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.

80 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.

81 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.

82 Draft code on criminal Justice System, "sanhita" 216

mited⁸³. Furthermore it has prohibited committing any act in the name of witch⁸⁴ and has stated punishment of one year imprisonment or ten thousand fine or both

National Health Policy, 1991⁸⁵ 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 – 2017⁸⁶ promulgated 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.

Human Trafficking and Transportation (Control) Act, 2007 section 3⁸⁷ has stated about the commission or cause to commit the human trafficking and transportation as crime and punishable by law. Section 4⁸⁸ 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

83 Ibid 220

84 Ibid 221

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

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

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

88 Ibid section 4

imprisonment, two lakh rupees fine and the abettor and inciter of the offense also liable for the half the punishment of offender. 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.

3.2 Existing International Legal mechanism in respect to Violence against Women/Girls

3.2.1 Universal Declaration of Human Rights (UDHR), 1948

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 progress⁸⁹. Similarly the Article 1⁹⁰, 2⁹¹, 3⁹², 5⁹³, 8⁹⁴ and 17⁹⁵ have 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

89 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,”

90 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.

91 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.

92 Ibid Article 3; everyone has the right to life, liberty and security of person.

93 Ibid Article 5; No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

94 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

95 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.

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. It 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 world⁹⁶. 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.⁹⁷
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 is independent, trust, non-self-governing or under any other limitation of sovereignty.⁹⁸
3. Everyone has the right to life, liberty and security of person.⁹⁹
4. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.¹⁰⁰
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.¹⁰¹

96 See Preamble of UDHR

97 UDHR Article 1

98 Ibid article 2

99 Ibid article 3

100 Ibid article 5

101 Ibid article 7

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.¹⁰²
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.¹⁰³

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 ensure 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. Article 3¹⁰⁵ states that everyone has the right to life, liberty and security of person. Similarly article 25¹⁰⁶ of the declaration ensures the right to adequate health services special attention should be given to motherhood and childhood conditions. Article 1¹⁰⁷, article 3¹⁰⁸, article 5¹⁰⁹,

102 Ibid article 8

103 Ibid article 12

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

106 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.

107 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.

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

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

article 7¹¹⁰ and article 12¹¹¹ ensure 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. Article 1¹¹², 2¹¹³ and 3¹¹⁴ has ensured the life, liberty, security and dignity of every individual and discard the any discriminatory provisions prevalent in any names. Article 4¹¹⁵ of the declaration restricts any forms of slavery or servitude; slavery and the slave trade. Article 5¹¹⁶ protects the human being from any kinds of inhumane, cruel and degrading treatment, and article 12¹¹⁷ and 13¹¹⁸ of the declaration protects the right of privacy and right to freedom of movements.

3.2.2 International Covenant on Civil and Political Rights (ICCPR), 1966

International Covenant on Civil and Political Rights (ICCPR), 1966 Article 2 (1) states that no distinction would be made to enjoy the rights enshrined in the present covenant¹¹⁹. Similarly Article 3¹²⁰ ensures the equal rights between men and

110 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.

111 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.

112 UDHR article 1

113 Ibid article 2

114 Ibid article 3

115 Ibid article 4

116 Ibid article 5

117 Ibid article 12

118 Ibid article 13

119 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.

120 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.

women, Article 6 (1)¹²¹ confirms the inherent right to life and Article 26¹²² 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. 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.¹²³ It protects and promotes human rights through these provisions:

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.¹²⁴
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.¹²⁵
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

121 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.

122 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.

123 See preamble of ICCPR

124 ICCPR Article 2.3 (a)

125 Ibid article 7

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.¹²⁶

4. 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. Everyone has the right to the protection of the law against such interference or attacks.¹²⁷
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,

126 Ibid article 7

127 Ibid article 17

property, birth or other status.¹²⁸ Article 1 (1)¹²⁹, 2¹³⁰, 3¹³¹, 17¹³² and 26¹³³ of ICCPR 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 article 23¹³⁴ recognizes the family as the fundamental group unit of the society and provides the free will of intending spouses for

128 Ibid article 26

129 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.

130 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.

131 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.

132 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.

133 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.

134 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.

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. Article 3¹³⁵, 17¹³⁶ and 26¹³⁷ 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. Article 1(1)¹³⁸ states about the right to self-determination, article 2¹³⁹ 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 3¹⁴⁰ explicitly ensures the equal rights between men and women without any discrimination. Article 7¹⁴¹ protects the rights of people against any kind of cruel, inhumane and degrading treatment whereas article 8 (1)¹⁴² and 8(2)¹⁴³ restrict from any kind of slavery; slavery and the slave-trade. Article 16¹⁴⁴ of the present covenant recognizes the person everywhere before the law as a person and article 17¹⁴⁵ affirms the right to privacy of the person.

135 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.

136 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.

137 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.

138 ICCPR article 1(1)

139 Ibid article 2

140 Ibid article 3

141 Ibid article 7

142 Ibid article 8(1)

143 Ibid article 8(2)

144 Ibid article 16

145 Ibid article 17

3.2.3 International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

The International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 Article 1 (1)¹⁴⁶ ensures the person's right to freely pursue their economic, social and cultural development. Article 3¹⁴⁷ states about the equal rights of men and women while enjoying economic, social and cultural rights and article 6¹⁴⁸ states about the right of every individual to work and opportunity to work for gaining his life by work. Its article 1 (1)¹⁴⁹, 3¹⁵⁰, 5 (2)¹⁵¹ and 15 (1) (a)¹⁵² 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 rights of men and women and do allow free choice on enjoying economic, social and cultural rights. Article 10(2)¹⁵³ recalls the state responsibility to provide special protection along with

146 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.

147 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.

148 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.

149 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.

150 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.

151 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.

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

153 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.

paid leave during and after the child birth. Article 12¹⁵⁴ 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.

3.2.4 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979

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.¹⁵⁵ Article 1¹⁵⁶,

154 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.

155 See preamble of CEDAW

156 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.

article 2¹⁵⁷, article 4¹⁵⁸, article 6¹⁵⁹, article 13¹⁶⁰, article 15¹⁶¹ and

- 157 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.
- 158 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.
- 159 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.
- 160 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.
- 161 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.

article 16¹⁶² of the present convention has explicitly addressed the repeal of discriminatory provisions between men and women enshrined 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. CEDAW in its preamble¹⁶³ 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,

162 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.

163 See preamble of CEDAW

- of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.¹⁶⁴
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 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.¹⁶⁵
 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.¹⁶⁶
 4. States Parties shall take into account the particular prob-

164 Ibid article 1

165 Ibid article 2

166 Ibid article 3

lems 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.¹⁶⁷

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the international human rights instrument specially brought to protect the rights of the women, in its preamble¹⁶⁸ 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)¹⁶⁹, 10(h)¹⁷⁰, article 11(2)¹⁷¹, article 12¹⁷², article 14(2) (b)¹⁷³ and article 16(1)

167 Ibid article 14.1

168 See CEDAW preamble

169 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.

170 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.

171 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.

172 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 1 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.

173 Ibid article 14(2)(b): To have access to adequate health care facilities, including information, counselling and services in family planning;

(e)¹⁷⁴ of the 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. Its preamble¹⁷⁵ 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 1¹⁷⁶ of the present convention identify the discrimination that can be happened against women, article 2¹⁷⁷ 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 discrimi-

174 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;

175 See preamble of CEDAW

176 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.

177 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.

nation against women, article 5(a)¹⁷⁸ confirms to eradicate all discriminatory and stereotyped concepts existing in society and culture which dominates women, article 16(1)(b)(c)(d)¹⁷⁹ recalls about the free will of men and women to choose their spouses whereas 16(2)¹⁸⁰ discard the child marriage and declares it illegal. The preamble¹⁸¹ it 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 1¹⁸², 2¹⁸³,

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- 178 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;
- 179 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;
- 180 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.
- 181 See preamble of CEDAW
- 182 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.
- 183 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.

3¹⁸⁴, 4¹⁸⁵, and 13 (a)¹⁸⁶ of the 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 16¹⁸⁷ 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.

184 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.

185 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.

186 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;

187 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.

3.2.5 Convention on the Rights of the Child (CRC), 1989

Convention on the Rights of the Child (CRC) article 1¹⁸⁸ defines the child. Article 6¹⁸⁹ confirms the right to survival and life of the child. Similarly, article 9(1)¹⁹⁰ affirms the best interest of child and provides them to be associated with their parents until and unless it is against child interest. Article 16¹⁹¹ protects the dignity and honor of the child and provides protection from law if violation occurs. Article 19¹⁹² 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 34¹⁹³ explicitly advocates for the protection of children from any

188 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.

189 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.

190 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.

191 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.

192 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.

193 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.

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.

3.2.6 Other International Laws

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 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.

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

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

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.

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. Due to failure in protecting and promoting women's rights and freedom, to a greater 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 in the community and at 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 a total of 24 human right instruments.¹⁹⁹ In the same way, Nepal has been able to promulgate various gender friendly laws, and in special cases, has made gender specific laws for instance Domestic Violence (Offence and Punishment) Act and Rules in order to

198 General recommendation No. 19, para. 7.

199 Human Right Year Book, INSEC, p 3

promote justice, harmony, equality and to ensure dignified life for the women/girls. Along with international mechanism in regards to human trafficking, there are specific laws related to Human Trafficking in order to combat these problems. Laws have prohibited violence committed in the name of witchcraft. Rape and killing have been regarded as strict liabilities.

Irrespective of government policies to access to the International instruments, and incorporating such principles in the domestic laws, it accepts the obligation by the virtue of Treaty Act 1990's section 9. When one violation cannot be excused, such a large amount of incidents recorded in the INSEC documentation raises a grave question on 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.

This year, the most of the violation was of domestic violation, followed by polygamy, rape, rape attempt, witchcraft allegation, sexual abuse, women trafficking, attempt to trafficking, lack of pre and post-partum services, forced abortion, and jari. Irrespective of the specific laws related to domestic violence, such high number amount of victims is really a matter of concern. Though polygamy is criminalized in Nepal but the second wife is not regarded as illegal and due to this loophole in law, this practice is rampant in Nepal. Women still are tortured and killed in the name of being witch. The main reason of constant increase in such incidents are that the perpetrators are, in most cases of witchcraft allegation, the people of the locality thus making it difficult to press the charges against them due to which the perpetrators are emboldened to victimize women..

Irrespective of the laws against rape, occurrence of such incidents poses an alarm to the security of the women as through the available data it is seen that women are raped while they are doing their daily chores like when 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 and immigra-

tion officers have been involved which is a matter of shame.

Lack of employment opportunities for the women increases the risk of women being victims of trafficking as they are lured to well-paid job. Furthermore, the open border and weak implementation of laws are also the contributing factors for the occurrence of these types of incidents.

Nepal is has been unable to provide proper health facilities irrespective of it is designated as a fundamental right leading many women to lose their lives in want of basic treatment.

Most of the girl victims this year were rape victims followed by the victims of sexual abuse. A total of 215 minor victims of rape were documented by INSEC and 52 cases of sexual abuse were recorded. This shows that the girls are very vulnerable and are unsafe within the periphery of their homes. Home which is regarded as the safest place for a person has turned to be a place where crime is constantly occurring.

It is very difficult for the state to completely ensure the women's rights and protect human rights thus the role played by various non-governmental organizations have been vital in order to protect women's/ girls rights. These organizations have been playing important role in order to protect the rights. However, even after great efforts from various sectors, higher number of victims is a matter of great concern.

4.1 Conclusion

The existence of GBV in Nepali society is due to the patriarchal system and deep-rooted malpractices, followed by the unequal power relation between male and female, discriminatory practices towards women. Nepal has ratified various international human rights instruments, making it obligatory to the norms and principles enshrined for the protection of the women. Various domestic laws too have been promulgated in order to protect the women. However, Nepal's inefficiency to implement the laws and to make stronger mechanism in order to combat such GBV, every year numerous women and girls become the victims. 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 justice, then they will slowly lose their faith towards justice system, and towards the state. Thus, the state and the ones who have been given role to interpret the laws, who are there to defend the laws, the organizations 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 and country.

4.2 Recommendations

- Family Court should be established
- Fast track court should be established to hear the cases of violence against women
- Punishment proportional to the nature of domestic violence should be included in laws
- Statute limitation in the cases of rape, attempt to rape and sexual abuse should be extended. Stern legal action should be taken against the Government staff or any other person promoting compromise at the village or community level for the crimes of sexual violence
- There can be no compensation for the mental and social trauma and family pain for the torture and abuse meted out to the victims on charge of being a witch. Therefore, the money paid by the perpetrators as fine should be provided to the victims as reparation
- The Shelter Homes, established for the women victims of violence should be set up in all 75 districts.
- Tax exemption for the women's salary in government and non-government organizations, better tax rebate for the factories and businesses owned by the women

- At least 33 per cent reservation for women, ensuring priority to dalit, madheshi and janjati women, in admissions and scholarships at educational institutes
- State should devise policies to ensure financial independence including employment for women
- Educational loan should be provided to the women without any mortgage if they are interested to pursue further studies
- The Office on Violence against Women under the Office of the Prime Minister should be operated as a research center on violence against women. Special mobile offices should be established in the areas where there is a high level of violence against women
- National laws should be amended to comply with the international treaty obligations
- Awareness raising matters on violence against women should be included in the secondary and higher secondary level curricula
- Public awareness against superstitions and so-called witch practices should be launched
- Civil society should be more active to expose the gender-based violence
- Post-rape counseling and psychosocial counseling should be provided to the victims, and rehab and family integration program to be launched for them.
- Massive media campaign against VAW should be launched.
- The health workers based in local health facilities should be provided the special training for scientific medical check-up of the rape victims