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About The Journal

The Informal: South Asian Journal of Human Rights & Social Justice is a peer-reviewed research journal dedicated to human rights and social justice, offering a South Asian perspective. As we launch our second issue, we are pleased to share our vision, mission, submission process, review system, and referencing guidelines with our readers.

Vision

The vision of the journal is to establish *The Informal* as a leading international platform for research on human rights and social justice, known for its high standards, innovative approach, and impact on policymakers, civil society, and academic communities.

Mission

The journal seeks to create a platform where scholars, experts, thinkers, and activists exchange informed, critical, and respectful discourses on civil, political, economic, social, and cultural rights across South Asia.

Article Submission Guidelines

Submission Format: Manuscripts must be submitted in MS Word format.

Length: Articles should range from 3,000 to 8,000 words (approximately 5 to 20 pages).

Style Guide: Authors must follow the *Publication Manual of the American Psychological Association*, *Seventh Edition*.

Article Structure

An article submitted for publication in *The Informal* should include the following components:

Title: A concise, accurate title focused on the core topic of the manuscript, not exceeding 15 words.

Author Affiliation: Full author details: name(s), position(s), institution(s), address(es), and email (s).

Abstract: A 250–300-word summary covering the major argument, thesis, objectives, methodology, and key findings.

Keywords: Four to five words, phrases, or acronyms.

Body of an Article: The main sections of the article should include:

Introduction: Incorporating the major argument or thesis statement.

Methodology: Explanation of the theoretical perspective, conceptual framework, research design, tools, and materials.

Results and Discussion: Presenting the findings and their implications.

Conclusion: Summarizing the study and its significance.

Review Process

The Informal follows a rigorous peer review process involving both Nepali and international experts:

Initial Screening: The Editorial Board evaluates whether the article meets journal standards. Authors are informed whether their submission proceeds to review or is declined.

Peer Review: Accepted articles are sent to two reviewers along with a review template. Reviewers provide feedback within two weeks.

Author Revision: Authors revise their articles based on reviewer and Editorial Board comments and submit the updated manuscript promptly.

Final Decision: The Editorial Board makes the final decision. If needed, the revised article may undergo a second verification review.

Editorial and Publication Information

- Each issue of the journal will feature 8 to 10 articles contributed by scholars from South Asia.
- The editorial process will be led by the Editor, supported by a designated INSEC staff member as the focal point, with clear Terms of Reference and a formal working procedure to ensure an efficient workflow.
- INSEC will mobilize resources to provide appropriate honorarium for selected research contributions.
- Core operational and publishing expenses will be sustained through an endowment fund established specifically for *The Informal* by INSEC.

Volume 2 | INFORMAL: South Asian Journal of Human Rights and Social Justice

We are pleased to introduce the second volume of *INFORMAL*, a journal committed to advancing critical, context-driven scholarship on human rights and social justice across South Asia. This edition comprises eight insightful articles that examine the region's evolving socio-political dynamics through interdisciplinary lens – including gender, law, environment, governance, and digital freedoms.

At a time when democratic values and civic spaces are increasingly under threat, these contributions offer timely interventions addressing both historical injustices and emerging challenges. The authors critically engage with themes of transitional justice, structural inequality, and state accountability, centring perspectives often marginalized in mainstream discourse.

Structured around three interrelated thematic strands –immediate threats to democratic integrity and human rights, institutional and normative shifts in governance, and long-term social and cultural transformation – this volume encourages readers to reflect on scholarship that combines analytical rigor with a forward-looking vision.

Among the featured contributions:

- A feminist critique of Nepal's transitional justice process highlights the ways in which patriarchal legal norms suppress survivors narratives and undermine reparative mechanisms.
- Digital repression in Nepal, India, and Bangladesh is analyzed through the lens of authoritarian legislation threatening freedom of expression and dissent.
- Emerging child-focused jurisprudence reflects a doctrinal shift from formalist legal interpretation to an approach centered on the rights and experiences of survivors.
- Climate justice is articulated as a human rights imperative, calling for integrated policy responses and inclusive environmental advocacy.
- Religious nationalism and Hindutva politics are examined for their disruptive effects on pluralist democracy across the region.
- Bangladesh's democratic stagnation is scrutinized, revealing how superficial reforms serve to preserve entrenched systems of control.
- Stigma surrounding feminism in Nepal is explored as a cultural barrier that continues to influence the trajectory of women's rights movements.
- Legal gaps affecting orphaned children underscore their heightened vulnerability to domestic and transnational exploitation.

Collectively, these articles extend beyond critique to offer conceptual and practical frameworks for reclaiming agency, deepening inclusion, and confronting impunity. Grounded in local realities and lived experiences, yet responsive to global movements, they argue that justice must be transformative, nor merely transactional.

We thank the contributing authors and peer reviewers for their insight and scholarship, and warmly invite readers to engage with the ideas and perspectives presented in this volume.

— The Editorial Team

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Rethinking Nepal's Transitional Justice Process through a Feminist and Intersectional Lens

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Abstract

Nepal's transitional justice process, initiated after the 2006 Comprehensive Peace Accord, has been repeatedly hindered by political interference, legal ambiguity, and institutional inertia. Despite multiple cycles of the Truth and Reconciliation Commission (TRC) and the Commission of Investigation on Enforced Disappeared Persons (CIEDP), the experiences of women—particularly victims of conflict-related sexual violence (CRSV), widows, and female ex-combatants—remain systematically excluded. This paper examines the gendered and intersectional failures of Nepal's transitional justice framework through a feminist lens. It critiques the state's reliance on patriarchal evidentiary norms, token participation, and structural silence, especially in how sexual violence, enforced disappearance, and reintegration are addressed. Drawing on victim testimonies, legal rulings, UN recommendations, and provincial consultations held in 2025, this paper argues that Nepal's transitional justice must be fundamentally reimagined as a victim-centered, gender-responsive process. It concludes by offering concrete legal and institutional reforms to advance an inclusive and transformative model of justice.

Keywords: conflict-related sexual violence (CRSV), feminist legal critique, intersectionality, transitional justice

Introduction

Transitional justice refers to legal and institutional mechanisms to address serious human rights violations committed during the armed conflict (De Greiff, 2021). In the context of Nepal, these mechanisms are particularly relevant to addressing violations committed during the 1996 to 2006 armed conflict which was fought between the Communist Party of Nepal (Maoist) and the state (OHCHR, 2012). While it aims to ensure accountability, reparations, and reconciliation, in Nepal it has unfolded through a deeply politicized and patriarchal lens (Barma & Thapa, 2025, pp. 24–25). Dominant narratives about justice often reflect male-centered understandings of conflict, obscuring the gendered and intersectional experiences of harm that women and other marginalized groups endured. Rather than centering victims' needs, transitional justice institutions in Nepal have prioritized elite interests and legal formalism—relegating women's voices, especially those of conflict-related sexual violence (CRSV) victims, widows, and disqualified combatants, to the margins of justice frameworks (OHCHR, 2012).

Nineteen years since the Comprehensive Peace Accord (2006) between the Government of Nepal (GON) and the Communist Party of Nepal

(CPN)-Maoist, Nepal's transitional justice process, despite institutional commitments, remains structurally ill-equipped to address gendered and intersectional harms embedded in post-conflict society. Despite the legal recognition of victims as individuals who have experienced serious harm, many women, particularly relatives of the forcibly disappeared, victims of sexual violence, and disqualified combatants, remain excluded from formal recognition and reparation processes (OHCHR, 2012). In this context, *"harm"* refers not only to direct violence and rights violations, but also to structural and symbolic forms of harm, including legal exclusion, entrenched inequality, impunity, stigma, and the long-term psychosocial and economic consequences of the state's prolonged failure to respond meaningfully to victims' needs. The Truth and Reconciliation Commission (TRC) and the Commission of Investigation on Enforced Disappeared Persons (CIEDP), both established in 2015 under the Truth and Reconciliation Commission Act (TRC Act, 2014), have operated within frameworks shaped by political interference, legal ambiguity, and patriarchal exclusion (Barma & Thapa, 2025, pp. 20–21; Cottle & Thapa, 2017).

> "Sometimes I feel like crying. Sometimes I feel revenge. But panic alone cannot resolve this issue. We were raped, tortured, and then told to stay silent. They used our bodies for their war and their politics. Now they tell us to forget."
>
> *– Prachi, 2024, p. 66.*

These words, drawn from the testimony of a conflict victim, reflect the enduring pain and political abandonment experienced by hundreds of women in Nepal who endured CRSV. Devi Khadka's testimony, as both, a victim of CRSV and an activist, is not an isolated account; it reflects the broader systemic silencing of women's experiences within Nepal's post-conflict landscape. As Jacqueline Mutere, founder of Grace Agenda in Kenya, poignantly asked, "*Why should a fight be played out on my body?*" (ICTJ, 2022). Both voices underscore the urgent need to center women's experiences in transitional justice.

This article argues that justice processes must remain cognizant of the feminist lens. During the armed conflict, serious human rights abuses were committed by both, state security forces and Maoist combatants. In the post-conflict period, institutions like the TRC and CIEDP were tasked with addressing these violations. Yet nearly two decades later, fundamental issues remain unresolved—including the lack of prosecution for serious violations, the continued denial of legal recognition for victims of enforced disappearance (ICPED, 2006) and sexual violence, and inadequate reparations mechanisms (OHCHR, 2012, pp. 7–11; Bhandari, 2024). The process has often been criticized for lacking transparency and meaningful victim participation, particularly from women and marginalized groups. As a result, gendered power dynamics remain embedded within transitional justice mechanisms, sidelining the specific and intersectional harms experienced during the conflict. Within the broader landscape of conflict-related violations, marginalized castes, ethnic groups, and political minorities were disproportionately affected (OHCHR, 2012).

The judiciary's ambiguity to explicitly recognize and address gender-specific harms in armed conflict has further reinforced the marginalization of gender-based harms, resulting in epistemic exclusion and inadequate reparations. Examining through the feminist lens, this article exposes structural gaps and envisions a more inclusive transitional justice process in Nepal. Concepts like intersectionality, patriarchy, gendered violence, and epistemic injustice are not abstract theories—they explain the real barriers women face in accessing post-conflict justice. During and after the conflict, women's experiences were shaped by overlapping identities—ethnicity, caste, class, and political affiliation—all intersecting with gender to create complex forms of marginalization (Nepal et al., 2011). Dalit and Janajati women were disproportionately affected (Adhikari & Samford, 2013), due to intersectionality of caste, ethnicity, and gender. However, these layered and intersecting forms of harms were largely overlooked by the TRC and other mechanisms designed to address them (Robins, 2012).

Patriarchal leadership in transitional justice institutions, often tied to political elites, has reinforced evidentiary standards rooted in male-centric notions of victimhood and credibility that dismiss the lived experiences of women (Aguirre & Pietropaoli, 2008; Selim, 2014). Enforced disappearance had gendered impacts: women whose husbands were forcibly disappeared are not legally recognized as widows, rendering them invisible in law and policy. As a result, they are denied rights to inheritance, remarriage, and struggle to acquire citizenship for their children (Robins, 2014). These gendered dimensions are often excluded from formal processes, reflecting how patriarchal norms of justice determine whose suffering is acknowledged.

Moreover, epistemic injustice has silenced many women's voices. They are disbelieved, stigmatized, or excluded from decision-making. Women who suffered social ostracism due to their perceived affiliation with Maoist groups remain unrecognized by formal justice institutions (Risal, 2020). Mainstream transitional justice in Nepal lacks gender-sensitivity and has yet to meaningfully engage with the gendered and intersectional dimensions of harm. Chinkin and Charlesworth (2006) argue that post-conflict systems often exclude women from institutional design and fail to account for their agency during peacebuilding—a critique clearly applicable in Nepal. A transformative justice process should go beyond legal proceedings to address structural inequalities, centering women's experiences, recognizing diverse harms, and ensuring inclusive participation.

The gendered aspects of Nepal's conflict have often been overlooked. Sexual violence was strategically deployed during the war, yet these abuses have rarely been acknowledged or addressed (OHCHR, 2012, p. 14). Women—including civilians, armed police, and Maoist combatants—were subjected to CRSV, but their experiences remain insufficiently addressed in the transitional justice process (OHCHR, 2012, p. 168).

This article examines how legal categorizations, evidentiary burdens, and institutional neglect have both historically contributed to and continue to sustain structural violence within Nepal's transitional justice landscape. Drawing on testimonies, court rulings, and civil society reports, it focuses on women combatants, widows, and other marginalized groups. A feminist and inclusive perspective is used to interrogate the narrow framing of truth, justice, and accountability, often excluding those whose suffering falls outside dominant narratives. It focuses on three key issues: the legal and institutional neglect of sexual violence, the gendered impact of enforced disappearance, and the *"invisibilized"* processes of reintegration, urging a rethinking of transitional justice that centers victims' voices and challenges symbolic reforms.

International jurisprudence provides precedent for such an approach. In *Prosecutor v. Akayesu* (ICTR, 1998), the tribunal established that rape and sexual violence can constitute genocide and crimes against humanity—shifting the paradigm from viewing sexual violence as incidental, to recognizing it as a deliberate weapon of war. Similarly, the International Criminal Tribunal for the Former Yugoslavia (ICTY) convicted individuals for CRSV as war crimes and crimes against humanity (ICTY Statute, 1993). These rulings built a foundation for feminist engagement in transitional justice (DCAF, 2005). Building on these global precedents, Nepal's legal reforms echo this recognition but continue to fall short in practice, especially in ensuring gender-responsive and victim-centered justice.

Globally, transitional justice mechanisms also reflect institutional exclusions that disenfranchise women's experiences (Lockett, 2008). In Sierra Leone, while the Truth and Reconciliation Commission acknowledged widespread CRSV, female victims who were combatants or associated with armed groups were largely denied or excluded from Disarmament, Demobilization, and Reintegration (DDR) and reparations because the system focused on male fighters with weapons and ignored women's gendered non-combatant roles, with further stigma and fear of further abuse keeping many from participating (Sesay & Suma, 2009, pp. 5–6).

Women forced into marriage or exploited as "*camp followers*" were similarly denied access to DDR programs. In Colombia, over 35,000 people were reported as victims of CRSV, yet stigma and weak institutional response persisted (Reuters, 2023).

This article uses a feminist and qualitative approach to understand how Nepal's transitional justice process has responded to conflict-related sexual violence and the gendered impact of enforced disappearance. The research is based on an analysis of legal documents, court decisions, government policies, and reports by human rights organizations. consultations were held with victims of sexual violence (INSEC & UPR Info, 2025), along with a personal communication with the current Chairperson of the Truth and Reconciliation Commission in 25 June 2025 to understand both lived experiences and institutional perspectives. This material was reviewed through a feminist lens to examine how existing structures exclude or ignore the voices and needs of conflict-affected women. This approach helps show how laws, institutions, and power dynamics shape justice outcomes in unequal ways.

Conflict-Related Sexual Violence

CRSV includes acts such as rape, sexual slavery, forced prostitution, forced pregnancy, and other comparable harms recognized under international law as crimes against humanity and war crimes (Rome Statute, 1998, Art. 7(1)(g)). These acts are not isolated or incidental but are often used systematically to assert control, degrade individuals and communities, and reinforce patriarchal dominance (UNIS, 2017; Risal, 2020; OHCHR, 2012). In Nepal, both state and non-state actors used CRSV as a deliberate strategy during the conflict, disproportionately targeting women and girls and leaving victims to face long-term trauma, stigma, and institutional neglect.

While the TRC and the CIEDP were tasked with addressing serious human rights violations, CRSV victims remain largely invisible within these processes (TRC, 2023). The state has repeatedly failed to acknowledge the systemic nature of CRSV, instead framing such violence as isolated incidents perpetrated by rogue individuals. Reliable data remains scarce, due to fear of retaliation, social stigma, and the absence of disaggregated, gender-sensitive documentation (HRJC, 2023). Legal and institutional frameworks have provided no safe avenues for redress, leaving most victims unsupported and unrecognized.

Testimonies gathered by human rights organizations highlight how sexual violence served multiple purposes: as punishment for suspected Maoist sympathies, a tactic to intimidate families, a means to extract information, and a mechanism to reinforce patriarchal discipline by branding women as dishonorable (INSEC, 2024b). Beyond physical harm, these acts inflicted lasting social trauma, breaking community cohesion, and shamed victims into silence. As a result, the experiences of CRSV victims have been structurally disqualified from transitional justice mechanisms, rendered legally invisible by systems that privilege publicly verifiable harm over embodied, gendered suffering.

The case of Devi Khadka, a former Maoist commander abducted by state forces at seventeen, exemplifies the weaponization of CRSV and the state's persistent failure to deliver justice. She was abducted at the age of seventeen by state actors. Devi endured repeated rape and torture while in military custody. Upon her release, her own political party pressured her to speak publicly about her trauma, instrumentalizing her trauma for political reconciliation. She later recalled being forced to forgive her perpetrators on a public platform under threats to her daughter's safety. In the documentary *Devi: The Undefeated* (Al Jazeera English, 2024), she states: *"I fought against patriarchy during war and for equality during peace. But now I am lost on the path I chose myself."* Other testimonies in the film recount being raped in detention, giving birth from such violence, or being assaulted in front of family members. "*I have no wealth, no honor, not even a name left*," shared a victim illustrating how gender, caste, and class intersect to deepen harm. These narratives capture the intersectional harm CRSV victims experience, as caste, gender, class, and political affiliation intersect to magnify harm.

Despite judicial recognition that CRSV constitutes a grave human rights violation, legal provisions remain insufficient. Until 2008, rape

complaints had to be filed within 35 days (National Code, 1963), a limit declared unconstitutional (*Sapana Pradhan Malla v. Nepal Government,* 2008). Though later extended to two years, these timelines remain inadequate for victims coping with trauma, stigma, and fear of retaliation. Moreover, the law excludes several forms of CRSV recognized under international law, such as sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, genital mutilation, and enforced nudity. Critical forms of sexual violence recognized under international law—such as sexual slavery, forced sterilization, and enforced nudity—remain uncodified in domestic law.

The TRC Act, 2014, as amended in 2024, nominally classified rape and other serious sexual violence as "serious violations of human rights" (§ 2(j1)) and prohibited amnesty for these crimes. However, they failed to clearly define this standard. As a result, less visible forms of harm may still fall under "*reconcilable*" categories (§ 29(6)). The re-filling window of only three months introduced for CRSV complaints in 2024 was widely criticized as trauma-insensitive and exclusionary (Amnesty International, 2025).

Despite landmark rulings that rape cannot be amnestied—such as in *Suman Adhikari et al. v. Office of the Prime Minister and Council of Ministers* (2015)—courts continue to defer CRSV cases to the TRC or uphold rigid time limits, as seen in *AC v. District Police Office* (2019) and *Meera Dhungana v. Nepal Government* (2015). This selective application of transitional versus criminal justice mechanisms protects perpetrators while re-traumatizing victims. The *Suman Adhikari* decision clarified that serious crimes like enforced disappearance, torture, and rape cannot be covered by amnesty and must be prosecuted through the regular criminal justice system. Similarly, in *Govinda Prasad Sharma "Bandi" v. Attorney General* (2014), the Court reaffirmed this principle for grave violations but did not explicitly name sexual violence nor acknowledge its use as a tool to uphold systemic gender inequality. By framing these crimes solely as individual offenses, the Court overlooked the broader patriarchal structures that enable CRSV.

In practice, the system shifts between transitional and criminal justice to suit the state's convenience, often avoiding genuine accountability. For example, in *AC v. District Police Office* (2019), despite allegations of rape by security forces, the Supreme Court focused on the statute of limitations and deferred the case to the TRC rather than allowing for direct prosecution. Similarly, in *Meera Dhungana v. Nepal Government* (2015), the Court upheld the strict 35-day reporting limit, disregarding the social stigma and fear that hinder timely complaints. Meanwhile, in *Bhagiram Chaudhary v. Government of Nepal* (2014), the police refused to register an FIR for enforced disappearance, citing exclusive TRC jurisdiction, even though the Court had mandated criminal proceedings. Taken together, these examples show how the state and the courts use either transitional justice or the regular criminal justice system selectively to protect perpetrators. Although the Supreme Court has declared that rape cannot be amnestied, it undermines this promise by applying rigid time limits and deferring cases to the TRC instead of demanding proper investigations and prosecutions. From a feminist perspective, this shifting approach reproduces the same patriarchal barriers that silenced victims and denies meaningful justice for CRSV.

Nepal's obligations under international human rights and humanitarian law require it to treat CRSV as a grave violation. Under Article 7(1)(g) of the Rome Statute, acts such as rape, sexual slavery, enforced prostitution, and other forms of sexual violence constitute crimes against humanity and war crimes. In line with the Rome Statute, the ICCPR, and CEDAW General Recommendation No. 30, Nepal is legally bound to criminalize, investigate, and provide effective remedies for CRSV. In *Purna Maya v. Nepal* (HRC, 2017), the UN Human Rights Committee found that the 35-day statute of limitations for reporting rape in detention violated the right to an effective remedy under the ICCPR. The Committee recommended that Nepal abolish the 35-day limitation period, remove procedural and institutional barriers to filing complaints, and ensure victims' access to justice. Similarly, in *Fulmati Nyaya v. Nepal* (HRC, 2019), the Committee held that even a one-year

limit was incompatible given the gravity of CRSV, urging Nepal to provide full reparations, including psychosocial support, compensation, and public acknowledgment of harm.

In *Raju Chapagai v. Nepal Government* (2015), the Court reaffirmed the obligation to align national laws with international human rights standards. The UN Human Rights Committee (HRC) similarly found that Nepal's 35-day limit for reporting sexual violence violated ICCPR Articles 2(3) and 7 by denying effective remedies (HRC, 2017). Although the 2017 Penal Code extended this limit to one year and later to two years, these durations remain insufficient for victims of conflict-related sexual violence (CRSV), who often face prolonged trauma, social stigma, and threats that delay reporting. In *Fulmati Nyaya v. Nepal* (HRC, 2019), the HRC held that even a one-year statute of limitations failed to reflect the severity of CRSV (HRC, 2019). These decisions called on Nepal to amend legal provisions, prosecute perpetrators, and provide comprehensive reparations, including psychological support, compensation, and public acknowledgment.

From a feminist perspective, Nepal's transitional justice mechanisms reproduce epistemic injustice by favoring male-centric evidentiary norms that dismiss embodied and narrative forms of truth (Aguirre & Pietropaoli, 2008; Selim, 2014). Legal recognition of CRSV as a form of torture remains absent, and the Torture Compensation Act (1996) has not been revised to meet international definitions under the UN Convention Against Torture and CEDAW General Recommendation No. 30 (OHCHR, 2008; CEDAW, 2013). Despite repeated calls from the National Human Rights Commission (NHRC) of Nepal and civil society groups, there has been no substantive reform.

Ultimately, CRSV remains structurally under-addressed in Nepal due to a confluence of legal ambiguity, evidentiary rigidity, and patriarchal institutional culture. The impunity afforded to perpetrators is not accidental—it reflects a deeper political unwillingness to engage with the gendered and collective nature of sexual violence. Without comprehensive reform that includes codification, victim-centered procedures, and intersectional reparative justice, Nepal's transitional justice process will continue to reinforce the same exclusions it claims to redress (Human Right Justice Center, 2023; Amnesty International Nepal & Advocacy Forum–Nepal, 2023).

Disaggregation, Intersectionality, and the Politics of Visibility

Disaggregation is never a neutral or purely technical process. In the context of transitional justice, it functions as a gatekeeping tool, deciding whose suffering is eligible and whose is not. The absence of data disaggregated by gender, caste, ethnicity, geography, disability, and political affiliation, and their intersections is not an absence of oversight. Rather, it reflects deeper institutional biases about which forms of harm are worthy of recognition and whose experiences are allowed to shape justice processes.

Despite widespread and systematic CRSV during Nepal's armed conflict, the TRC received only 314 complaints, an implausibly low figure that speaks to deep stigma, social silencing, and lack of trust in institutions (HRJC, 2023; Barma & Thapa, 2025; Chapagai & Aryal, 2023). The Commission has yet to publish disaggregated data by caste, geography, age, or disability, further marginalizing those already structurally excluded.

The same erasures are evident in records of enforced disappearance. The CIEDP listed 2,557 cases but recorded only 204 women (CIEDP, 2025b); INSEC reported 101 women among 931 disappearances (INSEC, 2024a). Other official records are equally inconsistent: The Ministry of Peace and Reconstruction noted 1,493 cases (MoPR, 2025), the ICRC recorded 1,324 (ICRC, 2024), and the NHRC recorded 969 (NHRC, 2024). These disparities reveal how access to power and proximity to the state shape the visibility of harm. Most national datasets use binary gender categories and fail to account for intersecting identities such as caste or disability.

These patterns of omission are not isolated. Districts like Rolpa (725 affected women), Bardiya (511), Rukum (486), and Dang (435) report high numbers of women affected by conflict-

related violence, yet these experiences are rarely disaggregated by type of harm (INSEC, 2024a; INSEC, 2024b). The omission of sexual violence from most databases signals a systemic discomfort with naming and addressing certain violations. INSEC's Victim Profile Database, for instance, lists 15,027 victims of disappearance, killing, and disability—89 percent of them women—but does not reflect acts of rape, sexual abuse, or social stigma as separate categories (INSEC, 2024a).

Even when women are included in datasets, their suffering is often flattened into statistical codes. The categories used rarely capture indirect harm, protracted insecurity, or socio-legal exclusion. As D'Ignazio and Klein (2020) argue, data practices reflect existing power structures; what is recorded and what is ignored are never neutral decisions. The absence of disaggregated, intersectional data is not a bureaucratic flaw but a manifestation of epistemic injustice. What is documented and what is omitted reflects power hierarchies embedded in transitional justice mechanisms, reinforcing whose suffering is acknowledged and whose is erased (D'Ignazio & Klein, 2020).

This invisibility has visible material consequences. Many women have been denied interim relief or reparations because their experiences, including CRSV, forced displacement, or disappearances of their male relatives, do not fit dominant categories of *"legitimate"* harm. Legal and policy frameworks demand documentary evidence that many cannot access due to poverty, illiteracy, or trauma. Social norms further silence women, particularly around sexual violence and widowhood, making public testimony unsafe or impossible.

Practical barriers further deepen these exclusions. Women in conflict-affected districts face bureaucratic delays, poverty, lack of transport, and long physical distances from justice institutions (The Voice, 2019). Social norms also discourage women from speaking out, particularly when stigma around sexual violence and widowhood remains strong.

In 2015, the Supreme Court in *Suman Adhikari et al. v. Office of the Prime Minister and Council of Ministers* recognized that justice must extend to indirect and structurally marginalized victims. However, this has not translated into policy. Without disaggregated data that reflects the full range of victim experiences, transitional justice mechanisms risk reproducing the very exclusions they were meant to redress.

To ensure that transitional justice mechanisms do not reproduce existing exclusions, Nepal must institutionalize intersectional, disaggregated data collection and reporting standards across all commissions, databases, and reparation schemes. Without this shift, women, particularly from historically excluded communities, will continue to be left out of both recognition and redress.

Enforced Disappearance and Gendered Harm

While men make up the majority of reported victims of enforced disappearance in Nepal, this visibility masks both the underreporting of women's disappearances and the widespread erasure of gendered harm. Building on the previous discussion of how disaggregated data practices obscure gendered harm, this section argues that enforced disappearance is not a gender-neutral crime. Rather, it produces distinct and long-term consequences for women, whether as direct victims or as relatives of the forcibly disappeared, when experiences are often rendered invisible within truth-seeking and reparation mechanisms. It traces four interlinked dimensions of harm: legal invisibility, dispossession from land, economic vulnerability, and social stigma. Although men comprise the majority of those officially recorded as victims of enforced disappearances (CIEDP, 2025b; INSEC, 2024a), the harm it causes to women, both as direct victims and as those left behind, is neither incidental nor secondary. These harms include civic and legal exclusion, but also exposure to targeted sexual violence, enabled by the context of the disappearance.

Enforced disappearance at times creates conditions for gendered violence. In several cases, the disappearance or detention of male relatives created conditions in which women, especially those from marginalized communities,

were subjected to sexual violence by state actors, reflecting how disappearance operates within deeply entrenched gendered and caste-based power structures. Testimonies from conflict-affected areas show how women, although not always officially recorded among the disappeared, suffer direct and indirect violence linked to enforced disappearance. In Bardiya district, the OHCHR documented the cases of enforced disappearance of 18 Tharu women. Among them were two cousins, aged 16 and 18, who were detained at the Chisapani Barracks, and were raped repeatedly over three days. When released, they were told, "*All these things happened to you because of your father*" (OHCHR, 2008). In another case, a woman detained with her daughter recounted how her daughter was raped by an army captain; her bloodied clothes were later found at the site.

Similarly, in *Katwal v. Government of Nepal* (2006), whose disappearance and death in military custody formed one of Nepal's most significant legal rulings on enforced disappearance, further illustrates this continuum. After Mr. Katwal, a school headmaster, disappeared in December 2001, his wife persistently sought information regarding his whereabouts. In 2005, both his wife and daughter were arrested by the Royal Nepalese Army. His daughter was detained for six weeks, subjected to interrogation, and released upon payment of a bribe. His wife was detained for thirteen days, during which she was repeatedly beaten and interrogated. These abuses were never formally acknowledged in the transitional justice process. Although the Supreme Court confirmed Mr. Katwal's death in custody and ordered prosecution, no criminal accountability has been achieved. The family received only partial financial relief, lacking formal compensation, and Katwal's body was never returned. The Human Rights Committee underscored the gendered nature of the violations, holding the State responsible for both the victim's enforced disappearance and the inhumane treatment of his wife, and urged Nepal to investigate, prosecute, and provide reparations (HRC, 2015).

These accounts show that sexual violence was used to punish political affiliations, but also to reinforce caste and gender hierarchies. While these accounts constitute clear instances of conflict-related sexual violence, they are inseparable from the mechanism of enforced disappearance, which placed women in state-controlled environments where such violations occurred and yet remain undocumented as part of that continuum of harm. Nepal's transitional justice bodies have failed to recognize sexual violence as part of a broader pattern of gendered and politicized harm. Testimonies remain siloed or excluded from official records. The 2024 amendment to the TRC Act acknowledges enforced disappearance as a serious violation (TRC Act, 2014, §2(j1)) but does not address the compounded legal and social harms faced by women.

Most truth-seeking mechanisms have focused narrowly on identifying and recording the disappeared, overlooking how the phenomenon affects those left behind, especially women. Truth commissions in other contexts have recognized family members as victims eligible for reparations, regardless of a formal declaration of death of the forcibly disappeared. Nepal's transitional justice process, however, has yet to ensure that access to reparations is not contingent on death certification and victim identity cards. This conditionality compounds legal and social exclusion, rendering women's suffering invisible under current frameworks of justice and redress of grievance (ICTJ, 2015).

Nepal's legal framework, built on patriarchal assumptions of familial structure, renders women's legal identity contingent upon a living male relative. As a result, without a formal declaration of death, women are denied widowed status and are excluded from critical rights including inheritance, land ownership, social benefits, and their children's citizenship claims (Robins, 2014). The inability to claim property or land not only limits economic survival but also excludes women from symbolic recognition as heads of affected households. Inheritance frameworks in Nepal, shaped by patrilineal norms, effectively sever women's claims in the absence of a legally recognized male relative. For many women, these exclusions translate into long-term

economic insecurity. Deprived of compensation, land, or legal protection, they are left to shoulder the financial burden of maintaining households, often while navigating stigma and bureaucratic dead ends (Luna, 2009). This vulnerability is particularly acute in rural districts where free legal aid and state services remain inaccessible.

A 2024 INSEC study on the families of the disappeared found that among 108 families, thirty had not received victim identity cards, and ten had failed to secure citizenship for their children (INSEC, 2024b). These harms extend beyond individual women, shaping entire households and communities with intergenerational consequences for children born into legal and economic limbo. Such exclusions constitute not mere procedural oversights but an active denial of social and legal belonging.

Socially, families of the disappeared, especially women, face ostracization, stigma, and collective suspicion. In many communities, they are seen as *"problematic"* or politically suspect, particularly if the disappeared person was associated with the Maoists. This stigma reinforces social exclusion, silences claim to justice, and weakens community cohesion (INSEC, 2024b). Despite the promises of the Comprehensive Peace Accord, no one has been held criminally accountable in a civilian court for enforced disappearances in Nepal (OHCHR, 2012, p. 8). The state's failure to criminalize enforced disappearance domestically, combined with the lack of cooperation from security agencies and political inertia, has stalled justice processes. Commissions like the CIEDP have proven ineffective due to lack of independence, transparency, and prosecutorial power (WGEID, 2005; NHRC, 2008). Political interference and appointment of politically affiliated individuals have severely compromised the credibility of both commissions (Barma, 2025, p. 21; INSEC, 2024c).

Women who advocate for the truth and search for their disappeared relatives often face reprisal, stigma, or political labeling, especially if they are perceived to challenge dominant gender roles or political narratives. Women who traveled alone to seek justice were often labeled *"loose"* and stigmatized. Families of disappeared Maoist combatants were cast as politically problematic and cut off from community support (ICTJ, 2013). CEDAW General Recommendation No. 30 affirms that such legal and social exclusions constitute structural discrimination (CEDAW, 2013). Yet transitional justice processes in Nepal remain unequipped to address these complexities. By ignoring the full range of harm, they reduce disappearance to a singular, momentary act rather than an enduring structure of violence.

A gender-sensitive approach requires rethinking truth-seeking not only as a process of identifying the disappeared but as one that addresses the structural gendered consequences for those left behind. As Zahedi and Heath (2023) note, women victims of enforced disappearance are often silenced by stigma, procedural barriers, and conditional access to reparations. Recognizing kin, i.e. familial claimants, familial claimants as victims in their own right, without requiring a declaration of death, is essential to avoid compounding trauma. Reparations, both material and symbolic, must reflect women's diverse realities, from economic dispossession to civic erasure.

Enforced disappearance is not just the removal of a person from the public sphere. It is a tactic that reverberates across generations, affecting women's legal status, social identity, and economic survival. When justice mechanisms ignore these interconnected harms, they fail to provide healing and instead reinforce existing inequalities.

Politicization of Transitional Justice in Nepal

Nepal's transitional justice process has consistently sidelined the specific experiences, needs, and voices of women. While publicly presented as inclusive, its design and implementation have been largely shaped by male-dominated perspectives and driven by political expediency (INSEC & UPR Info, 2025).

Like in many other post-conflict contexts, transitional justice mechanisms in Nepal, often adopt narrow definitions of victimhood that fail to capture the layered harms women face—particularly in relation to sexual violence, stigma, and social exclusion (Pauls, 2023; Kapur, 2015; Robins, 2012). These gender-specific harms are

frequently overshadowed by frameworks that assume a universal victim experience, privileging male combatants or male-coded narratives of suffering.

Despite the global institutionalization of transitional justice rhetoric, this discourse often loses its transformative edge in practice. As Hazan (2004, p. 19) notes, "*Transitional justice has become the new mantra of domestic and international politics since the end of the Cold War.*" Yet in Nepal, this rhetoric has repeatedly been co-opted as a tool for elite political compromise rather than a pathway to meaningful accountability. Transitional justice processes are rarely neutral; they are frequently shaped by political negotiations and unequal power structures that sideline the lived experiences of victims, particularly of women and structurally marginalized communities (Robins, 2012). Since the signing of the Comprehensive Peace Accord in 2006, Nepal's transitional justice institutions—the TRC and CIEDP—have operated under political expediency rather than transformative justice, consistently prioritizing elite political bargains and state stabilization over the rights of victims (Greiff, 2021; Human Rights Watch, 2019; Robins, 2012).

Former Chief Justice and International Commission of Jurists (ICJ) Commissioner Kalyan Shrestha critically remarked in March 2024, "*If we pride ourselves on a homegrown transitional justice process, the billion-dollar question is: what does homegrown mean, if politics is placed above justice?"* (ICJ, 2024). His words resonate even more deeply in a context where women's voices have been consistently sidelined—raising the question of whether this process can claim legitimacy if it fails to reflect the perspectives and needs of half the population. His comment underscores the ongoing tension between state-led political imperatives and victim-centered justice demands in Nepal.

Across its three institutional terms, the TRC has been repeatedly condemned by civil society, victims' groups, and international observers. The first-term commissions, constituted in 2015, operated under a flawed legal framework that ignored Supreme Court directives and international human rights obligations (ICJ, 2021). Despite receiving more than 60,000 complaints, the TRC failed to conduct a single full investigation (ICJ, 2021, p. 5). Rape and sexual violence victims were excluded from interim relief, and female staff were virtually absent in local peace committees (ICJ, 2021, pp. 3 -7).

The second-term commissions, reconstituted in 2020, again failed to establish legitimacy or deliver outcomes. Political parties continued to control appointments, and victims' networks expressed frustration over the opaque processes and unfulfilled mandates (Human Rights Watch, 2018). In response to this continued stagnation, over 40 victims' organizations convened to issue the 2022 Kathmandu Declaration, a collective statement reflecting the deep disillusionment with the transitional justice process. The declaration states: *"These commissions… have not been able to take any concrete action even after a long period of seven years, where not even a single victim could feel satisfied… They are distributing purposeless identity cards… inflicting more pain on the victims under the pretext of collecting complaints, evidence and recording statements"* (Conflict Victims Common Platform, 2022, pp. 1–2).

In June 2025, the commissions were reconstituted for a third time. On 4 June 2025, new commissioners, including Chairperson Mahesh Thapa and commissioner Lila Devi Gadtaula, were appointed (TRC, 2025; CIEDP, 2025a) via a non-consultative, politically dominated process, without meaningful victim engagement (Bhatta, 2024; TRIAL International, 2022; Human Rights Watch, 2025).

Within 24 hours of their appointment, on 5 June 2025, the TRC issued a notice requiring CRSV victims to resubmit complaints with evidentiary documentation within three months—a move that faced public backlash (TRC, 2025; Kathmandu Post, 2025; Sharma, 2025). Amnesty International and multiple victim networks criticized the directive as retraumatizing and exclusionary, particularly for rural victims and those unable to access documentation following multiple decades (Amnesty International, 2025).

This evidentiary burden—especially in cases of sexual violence, where stigma and silence are pervasive—highlights a failure to adopt trauma-informed and gender-sensitive approaches. As Ni Aolain (2012) and OHCHR (2008) emphasize - lived experiences, testimony, and narrative truth are central to transitional justice, and insisting on rigid evidentiary standards decades later not only retraumatizes victims but perpetuates structural impunity.

In response, the Conflict Victims National Alliance issued a joint statement on 2 July 2025: "*Such practices demonstrate that the three term commissions remain unaccountable and unresponsive, continuing a pattern that prioritizes procedural form over meaningful justice*"—a justice that, for many women victims, remains structurally inaccessible due to institutional disregard for gender-specific harms (Kathmandu Post, 2025).

Earlier, on 16 May 2025, the Conflict Victims Society also denounced the appointments of commissioners as politically motivated and unrepresentative of historically excluded communities (Conflict Victims Society, 2025). These criticisms reflect growing frustration that the transitional justice paradigm continues to entrench exclusion rather than redress it.

While the 2024 amendments to the TRC Act attempted to address legal ambiguities by defining *"serious"* and *"non-serious"* human rights violations (e.g., rape, disappearance, torture), the reform process was itself non-participatory. Despite repeated recommendations from the NHRC and UN experts to restructure these commissions through inclusive and participatory procedures—particularly emphasizing the importance of engaging women victims and addressing gendered harms—these calls were largely ignored (NHRC, 2024; HRC, 2019, 2021; UN HRC, 2021). The legislation permits up to 75 percent sentencing reduction *for "serious violations of human rights*" (excluding rape and serious sexual violence), and allows mediation for amnesty based on victim consent for *"violation of human rights"* (TRC Act, 2014, §§ 22(1), 29(6)). These provisions fail to consider coercive social pressures that can compromise the voluntariness of consent, especially for women (Human Rights Watch, 2019).

By 2023, the TRC had received only 314 complaints of sexual violence, a figure seen as grossly underrepresenting the true scale of violations (HRJC, 2023; Barma, 2025, pp. 23–24). A male-dominated institutional culture, limited outreach, stigma, and trauma-insensitive procedures have contributed to systematic underreporting and victim exclusion (INSEC, 2024b). These critiques reflect the systemic erasure of gendered harm, wherein victims of sexual violence remain structurally excluded, even when their suffering is formally acknowledged.

The legal mandate for gender inclusion, one-woman commissioner and one woman on the recommendation committee—amounts to tokenism rather than transformative inclusion (TRC Act, 2014, §§ 5A, 11A). According to ICJ (2021), the TRC has failed to institutionalize gender-sensitive protocols or create space for women to shape the process through sustained participation (p. 13).

Chairperson Mahesh Thapa acknowledged in June 2025, "*Investigations of cases such as enforced disappearances and sexual violence take time due to evidentiary gaps, lack of forensic infrastructure, and difficulty in identifying perpetrators.*" He added, "*The state has an immediate obligation to ensure victims are not abandoned*" (M. Thapa, personal communication, June 25, 2025).

Despite these affirmations, the timing of the TRC's decision to issue the CRSV notice has raised important questions about the balance between administrative urgency and procedural sensitivity. While the directive may have been intended to revitalize delayed processes, it highlights the importance of aligning institutional actions with trauma-informed, victim-centered approaches. The Commission must ensure that procedural decisions actively reflect its public commitment to support and protect victims.

To rebuild trust, the transitional justice process must center the long-term recovery and reintegration of victims. Reintegration should not

be reduced to short-term assistance or symbolic inclusion. Many victims—particularly women ex-combatants, victims of sexual violence, and families of the disappeared—require sustained psychosocial support, legal recognition, and livelihood sustenance programs (K.C., 2019). Reintegration frameworks in Nepal, including those under the DDR and United Nations Interagency Rehabilitation Programme (UNIRP), have historically excluded women who did not meet narrow definitions of combatant status, especially those returning with children, from inter-caste marriages, or with disabilities (UNMIN, 2009; Goswami, 2015). These limitations are not only programmatic oversights but reflect entrenched patriarchal norms that continue to shape post-conflict exclusion from reintegration and recovery process (Bhandari, 2015; Kapur, 2015).

The path forward must involve building participatory, gender-equitable reintegration models that address both direct and indirect harms. Reintegration should be linked to broader social transformation efforts that affirm the dignity and citizenship of all conflict-affected individuals—not only through legal reforms, but through community engagement and inclusive policy design (Pauls, 2023; K.C., 2025).

Ultimately, the persistent ineffectiveness of Nepal's transitional justice institutions lies not merely in delays or administrative inefficiencies, but in their fundamental disconnect from the psychosocial, structural, and intersectional realities of victims (INSEC, 2024c). Reintegration policies have been fragmented, short-term, and blind to the compounded discrimination faced by women, CRSV victims, and families of the disappeared (K.C., 2025; Shrestha & Bleie, 2012; Pauls, 2023).

The credibility and impact of Nepal's transitional justice process will ultimately rest on its ability to move beyond symbolic gestures and respond to the lived realities of those most affected. A victim-centered transitional justice process in Nepal must reject elitist compromises in favor of structural accountability and gender-inclusive redressing. As Pauls (2023) and Kapur (2015) argue, any meaningful approach must be grounded in a feminist and victim-centered lens—one that values narrative truth, ensures psychosocial healing, and incorporates inclusive reparations designed through sustained consultation. The promise of transitional justice in Nepal remains unfulfilled unless the process addresses the layers of injustice, including the marginalization of victims of conflict-related sexual violence (CRSV), the dominance of elite political agendas, and the persistent reliance on symbolic rather than substantive engagement.

Conclusion

Nepal's transitional justice process remains mired in structural inequities, patriarchal state structure, and elite political bargaining, despite nearly two decades having passed since the signing of the Comprehensive Peace Accord. While formally framed as inclusive and victim-centered, the process continues to sideline women and structurally marginalized communities. From opaque commission appointments to trauma-insensitive procedures, the process has not only failed to deliver justice but has compounded harm for many victims, particularly CRSV, widows, female ex-combatants, and families of the forcibly disappeared .

Across all three terms of the TRC and CIEDP, the persistent exclusion of women from meaningful participation reflects deeper structural failures. Legal and institutional frameworks have privileged male-coded violations and binary understandings of conflict, overlooking the complexity of gendered and intersectional experiences. Women whose husbands forcibly disappeared continue to be denied legal recognition in the absence of death certificates, precluding access to property, citizenship for their children, and reparations (Kapur, 2015; Robins, 2014; Zahedi & Heath, 2023). CRSV victims are retraumatized by requirements for documentary proof decades after an incident and by procedures that ignore international standards on confidentiality, dignity, and consent (OHCHR, 2008; HRC, 2017; Amnesty International, 2025).

The amended TRC Act of 2024, while excluding rape and enforced disappearance from amnesty, continues to fall short. It permits mediation

for other serious violations and lacks provisions on confidentiality, trauma-informed protocols, and support services (TRC Act, 2014, §§ 22(1), 29(6)). Repeated recommendations from the Office of the United Nations High Commissioner for Human Rights (OHCHR, 2022), the Committee on the Elimination of Discrimination against Women (CEDAW, 2013), and the Universal Periodic Review (UN HRC, 2021) have emphasized the need for gender-sensitive legal definitions, independent commissions, and institutional safeguards for victims. These demands were echoed during the 2025 UPR national consultations held at the provincial and central levels, where victims and civil society actors called for inclusive reparations, stronger accountability frameworks, and the systematic incorporation of victim perspectives into policy formulation (OHCHR, forthcoming).

Reintegration and rehabilitation frameworks have remained similarly exclusionary. The DDR process and the UNIRP failed to account for the realities of female ex-combatants and disabled returnees (Bhandari, 2015; K.C., 2025; Shrestha & Bleie, 2012). Many were excluded due to restrictive definitions of combatant status or penalized for their caste, marital status, or motherhood (Goswami, 2015; Lamichhane, 2014). This marginalization is not merely logistical; it reflects a systemic reluctance to center gender-based harm to the justice process.

Furthermore, consultation mechanisms have often been tokenistic. Women's victim networks and civil society actors have repeatedly demanded representation in policy making, reparations design, and institutional oversight (Robins, 2012; Bhandari, 2023). Yet, victim participation, despite consistent civil society engagement in transitional processes, has rarely moved beyond symbolic gestures (Miall, 2004). Even when consultations are conducted, as in the 2025 UPR preparation cycle, their inputs are not consistently reflected in legislative or programmatic frameworks (OHCHR, forthcoming; UN HRC, 2021).

To move forward, Nepal's transitional justice process must be fundamentally restructured. Legislation must be aligned with international standards on gender-based crimes and enforced disappearance. Trauma-informed procedures, confidentiality protocols, and victim-centered mechanisms must be embedded across all institutions (Orentlicher, 2005). Commissions must include gender-balanced leadership and actively incorporate victims as participants in—not subjects of—the justice process. Reparations should reflect the lived realities of CRSV victims, widows, female ex-combatants, and persons with disabilities, through sustained access to psychosocial services, economic reintegration, and public acknowledgment of harm (INSEC & UPR Info, 2025). This requires disaggregated data collection, inclusive legal reform, and a shift in the institutional culture, away from elite negotiation and towards genuine accountability.

Ultimately, transitional justice in Nepal must be reimagined not as a means of political reconciliation but as a legal and moral obligation to those most affected by the conflict. Rethinking transitional justice through a feminist lens is not simply a normative aspiration—it is the only path toward building an inclusive, just, and accountable post-conflict society.

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Speech on Trial: Repressive Trends in South Asia's Online Space

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Abstract

The internet was once hailed as a space of empowerment and open discourse, where marginalized voices could be raised, debate could thrive, and power could be challenged. Today, the internet in South Asia is increasingly constrained by repressive cyber laws, state overreach, and digital censorship, threatening the fundamental right to freedom of expression. This article critically examines the growing disjunction between constitutional safeguards and their enforcement in Nepal, India, and Bangladesh, where vague and draconian legal frameworks, such as Nepal's Electronic Transactions Act and proposed Social Media Bill, India's Information Technology Act and Unlawful Activities (Prevention) Act, and Bangladesh's Digital Security Act and Cyber Security Ordinance, are weaponized to silence journalists, activists, and citizens. Grounded in the theories of shrinking civic space, John Stuart Mill's harm principle, and Jürgen Habermas' public sphere, the article uses doctrinal legal research and case analysis to explore how these laws violate international human rights standards, particularly Article 19 of the ICCPR. Key cases, involving journalist Dil Bhusan Pathak (Nepal), comedian Kunal Kamra (India), and activist Mushtaq Ahmed (Bangladesh), reflect a regional pattern of digital authoritarianism. Tactics such as internet shutdown, surveillance, platform censorship, and criminal defamation suppress dissenting voices. Often justified in the name of national security or public order, these measures normalize self-censorship and erode digital civic space. By mapping legal developments and converging authoritarian practices, including the criminalization of satire and suppression of dissent, the article underscores the erosion of press freedom and democratic accountability. It advocates for legal reforms, platform transparency, and sustained advocacy to protect online expression in South Asia.

Keywords: censorship, civic space, cyberlaws, freedom of expression, South Asia

Introduction

On June 10, 2025, an arrest warrant was issued against senior journalist, Dil Bhusan Pathak, under the controversial Electronic Transactions Act (2008) (hereinafter ETA). His alleged offense - hosting a YouTube episode of his investigative journalism show *Tough Talk*, which spotlighted financial irregularities linked to the family of a prominent political figure. The complaint, registered under the pseudonym "Cyber Bureau 59 (2081/082)," alleged Pathak of defamation and incitement of hate, citing threats to public

morality and misuse of electronic media. The public reaction was immediate and intense—civil society organizations, media representatives, and legal experts widely condemned the arrest as an assault on press freedom. For many, it symbolized a worrying pattern of state overreach in digital spaces (Digital Rights Nepal [DRN], 2025).

This incident is emblematic of broader trends in South Asia, where governments are increasingly using outdated cyber laws, with vague provisions on national security. In Nepal, Section 47 of the ETA is frequently invoked for politically motivated interpretations of defamation, serving as a tool to stifle critical speech. In India, journalists and activists are frequently targeted under anti-terror and sedition laws for social media posts for which CIVICUS Monitor rated India's civic space as repressed (CIVICUS, 2025) while in Bangladesh, the draconian Digital Security Act (DSA) (2018) has been widely used as a tool for online surveillance, arrests, and intimidation (Amnesty International, 2021). Between October 2018 to August 2022, over 1,109 cases were filed under the DSA, 2,889 individuals implicated and 1,119 arrests made (Riaz, 2023). The death of writer and activist Mushtaq Ahmed in custody in February 2021 – following 10 months of detention – underscores the severity of this repression. Together, these trends reveal an alarming trajectory where the internet, once hailed as a space of empowerment and open discourse, is being reshaped into an arena of control and suppression.

These regional trends point to a broader phenomenon: the transformation of the internet from a space of empowerment and open discourse into a domain of control, suppression, and surveillance. Central to this transformation is the growing practice of digital authoritarianism (Shahbaz, 2018) - the strategic use of digital technologies by state and non-state actors to undermine civil liberties, particularly freedom of expression. While terms such as "techno-authoritarianism", "networked authoritarianism", and "digital repression" are used across disciplines to describe related phenomena, they often lack conceptual clarity. Nevertheless, they collectively capture how digital tools, initially celebrated for enabling transparency and civic participation and empowerment, are now being weaponized to entrench state power and silence dissent (Roberts & Oosterom, 2024).

The normative foundations of free expression help shed light on the gravity of this democratic erosion. John Stuart Mill's harm principle posits that the only justification for restricting individual liberty- including freedom of expression, is to prevent harm to others (Mill, 1859). Mill's framework discourages censorship based on offense or disapproval alone and insists that restrictions be rooted in demonstrable harm. In the context of digital communication, this principle necessitates distinguishing between mere controversial and genuinely harmful content, such as incitement to violence or hate speech.

Furthermore, Jürgen Habermas' theory of the public sphere highlights the significance of open discourse in democratic societies. Social media—though commercially owned—serves as a contemporary public forum where individuals engage in debate, dissent, and democratic participation (Habermas, 1989). Curtailing speech on these platforms without due safeguards risks eroding the democratic function of digital communication and reconfiguring the public sphere as one of surveillance and control.

At the heart of this discourse lies the fundamental right to freedom of expression, enshrined in Article 19 of both the Universal Declaration of Human Rights (UDHR, 1948) and the International Covenant on Civil and Political Rights (ICCPR, 1966). This right enables individuals to speak freely, share ideas, challenge power and participate actively in civic space which encompasses three core tenets: the right to hold opinions without interference (freedom of opinion); the right to seek and receive information (access to information); and the right to impart information (freedom of expression).

The UN Human Rights Committee's General Comment No. 34 affirms the broad range of Article 19, which includes political discourse, commentary on personal and public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse (Human Rights Committee, 2011). Article 19(2) of the ICCPR stipulates that the

right to freedom of expression applies regardless of frontiers and through any media of one's choice. General Comment No. 34 further clarifies that this provision extends to internet-based forms of communication (OHCHR, General Comment No. 34 at n 4 at para 12).

In its 2016 resolution, the UN Human Rights Council affirmed (UNHRC, 2016) that "*the same rights that people have offline must also be protected online, in particular freedom of expression ...*", reinforcing Article 19's applicability in digital contexts.

Former UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye has said the internet is "one of the most powerful instruments of the 21st century for increasing transparency, access to information, and facilitating active citizen participation in building democratic societies" (Kaye et al., 2016). Freedom of expression not only enables individuals to participate meaningfully in democratic processes but also supports the development of informed and inclusive societies (The Global Expression Report, 2022).

However, this right is under siege. In the name of protecting national security, public order, or religious harmony, governments across South Asia are weaponizing legislation to silence dissent. These restrictions often fail to meet the strict criteria set under Article 19(3) of the ICCPR, which mandates that any limitations on free expression must be clearly defined by law, pursue a legitimate objective, and be necessary and proportionate in a democratic society.

In Nepal, the Constitution (The Constitution of Nepal, 2015) guarantees freedom of expression under Article 17, yet broad interpretations laws like the ETA allow authorities to initiate criminal proceedings for online speech deemed offensive or critical (Chhetri, 2019). Similar contradictions exist in India, where constitutional guarantees are undermined by frequent misuse of laws such as the Information Technology Act (2000) (IT Act), Unlawful Activities (Prevention) Act (1967) hereinafter UAPA, and sedition provisions. In Bangladesh, the Digital Security Act (2018) hereinafter DSA, has facilitated the arrest of writers, cartoonists, and students for expressing opinions deemed anti-government or "anti-state" (Reporters Without Borders [RSF], 2020).

Digitization has significantly transformed the public sphere. Social media platforms like Facebook, X(formerly Twitter), YouTube, and TikTok, and other digital tools now play a pivotal role in shaping public opinion, facilitating political participation, and enabling civic activism (Groth, 2022). Social movements - from feminist campaigns (#MeTtoo) to anti-corruption initiatives (Enough is Enough), and civic advocacy – have used digital tools to catalyze grassroots activism across the globe, including South Asia. For instance, the global #MeToo movement, which gained traction in South Asia through viral disclosures by survivors in India, Nepal, and Bangladesh, mobilized public discourse on sexual harassment (Pain, 2020). This shift from traditional "one-to-many" communication models to dynamic "many-to-many" interactions has fostered new forms of collective action and expression, and dramatically expanded civic space. Where once protest was limited to physical spaces, dissent now travels through tweets, hashtags, reels, blogs, and viral videos.

Yet, this very empowerment has provoked state anxiety. As digital dissent becomes more visible and organized, authoritarian tendencies increasingly adopt digital authoritarian practices to reassert control (Greene & Pisani, 2023). These include mass surveillance, censorship, internet shutdown, legal intimidation, state trials and targeted online harassment. The normalization of these tools of repression marks a dangerous departure from democratic principles, risks turning the internet into a digital prison rather than a forum for participation.

This article adopts a comparative case-study methodology, employing doctrinal legal research, media reports, and right-based frameworks to examine state responses to online dissent in Nepal, India, and Bangladesh. It examines how cyber laws are deployed to suppress freedom of expression, the institutional actors that facilitate repression, and the civil society resistance against this erosion of fundamental rights. The analysis is grounded

in the concept of shrinking civic space and legal standards on freedom of expression under Article 19 of the ICCPR.

At a time when digital platforms shape our democracies, economies, and communities, defending freedom of expression online is more critical than ever.

Digital Freedoms: Constitutional and Legal Frameworks in Nepal, India, and Bangladesh

Nepal: Constitutional and Legal Framework

The Constitution of Nepal (2015) embodies a firm commitment to democratic values, social justice, and human rights. The Preamble explicitly affirms the people's resolve to uphold civil liberties and press freedom, emphasizing Nepal's aspiration to establish a democratic nation founded on 'socialism based on democratic norms and values', while guaranteeing 'civil liberties, fundamental rights, human rights, adult franchise, periodic elections, full freedom of the press, and independent, impartial and competent judiciary and concept of the rule of law.

Article 17(2) (a) of the Constitution guarantees the right to opinion and expression, with restrictions pertaining to national integrity, social harmony, non-discrimination, defamation, public morality, and incitement to criminal acts. Article 19 further protects press freedom and communication rights and safeguards digital and electronic equipment against closure, seizure and deregistration due to the content published and broadcast.

Aligned with these constitutional safeguards, Nepal's has enacted various national legal and policy instruments to reinforce freedom of expression. For instance, the establishment of the Press Council Nepal aims to promote media ethics and resolve journalistic disputes. The National Mass Communication Policy (2016) encourages responsible media practices while the Right to Information Act (2007) reinforces the public access to information- an essential component for democratic participation. Nepal's ratification of international instruments, including International Covenant on Civil and Political Rights (ICCPR), reflects its formal commitment to uphold expressive freedoms.

However, a pronounced gap persists between constitutional guarantees and their practical enforcement in Nepal's digital landscape. The Electronic Transactions Act (ETA) (2007) – the primary law regulating online activity – has been morphed into a blunt instrument for silencing dissent and policing digital speech. Section 47 of the ETA criminalizes the publication of content deemed 'illegal', 'offensive', or 'contrary to public morality', yet fails to define these terms with legal precision. This ambiguity has enabled arbitrary enforcement, including against satirical content and social media commentary. In August 2024, for example, two youths were detained in Kailali for Facebook posts criticizing Nepali Congress President Sher Bahadur Deuba, accusing them of disturbing "social harmony" (CIVICUS Monitor, 2024)

The *U.S. Department of State's Nepal 2023 Human Rights Report* similarly identifies significant challenges to freedom of expression. The report highlights that although the government did not restrict internet access, it reportedly censored online content and relied on the ETA to penalize material deemed contrary to public morality or offensive (U.S. Department of State, 2024). The Act's failing to define these terms precisely has often resulted in punitive action against individuals exercising their expressive rights, exemplified by the case of journalist Dil Bhusan Pathak, who faced legal consequences for exposing financial irregularities associated with a political family.

In another instance, stand-up comedian Apoorwa Kshitiz Singh was arrested in August 2022 for allegedly offending by making culturally insensitive remarks about the Newa community during a comedy performance. Despite issuing a public apology and removing the video, he was held in custody for twelve days (Ojha, 2022). His arrest under Section 65 of the National Criminal Code (2017)—which prohibits acts prejudicial to public tranquillity—triggered national debate on the permissible limits of satire and artistic freedom.

Defamation provisions under Nepal's National Criminal Code (2017), particularly Sections 293–308, contain vague and subjective language—prohibiting expressions that "diminish personal or moral character" or provoke "contempt, disrespect, hatred, or ridicule." Such broad definitions provide avenues for discretionary enforcement and may be used to suppress journalistic investigations into corruption or public misconduct.

Recent developments further reveal a troubling pattern in which legal provisions are weaponized to curtail media autonomy and online dissent. In June 2025, two prominent news portals, *Nepal Khabar* and *Bizmandu,* were compelled to remove content deemed defamatory toward a government official (International Federation of Journalists, 2025). Additionally, politically affiliated individuals—such as the spouse of a former Home Minister—have filed defamation complaints against journalists reporting on alleged financial misdeeds (Nepal Khabar, 2024). These cases underscore the misuse of legal provisions to deter scrutiny of powerful figures.

Regulatory overreach has likewise intensified. In 2023, the government imposed a nationwide ban on TikTok, citing threats to 'social harmony' (Post report, 2023) — a decision reversed in 2024 following platform compliance with moderation protocols (Giri, 2024). During the 2022 general elections, the youth-led campaign *"No, Not Again"* was issued legal warnings under multiple laws, including the ETA, for allegedly disseminating "negative propaganda" (Pardhan, 2022). These actions exemplify a growing inclination to criminalize dissent and conflate opposition with unlawful behavior.

Government bodies such as the *Press Council Nepal* and *Nepal Police Cyber Bureau* have expanded digital surveillance and content regulation under the guise of combating misinformation and hate speech (Rastriya Samachar Samiti, 2024). However, in the absence of clear standards and independent oversight, such efforts risk functioning as instruments of censorship.

Moreover, proposed legislative measures – including the IT and Cyber Security Bill, the Social Media (Use, Operation, and Regulation) Bill (2025), and the Mass Communication Council Bill (2023) – have generated serious concerns regarding the future of digital rights in Nepal. These bills contain provisions granting wide discretionary powers to state authorities to license, censor, or penalize online platforms, often without adequate procedural safeguards or judicial review. The use of vague and expansive language heightens the risks of arbitrary enforcement and the suppression of dissenting viewpoints.

Taken together, these developments suggest not merely temporary regulatory tightening but a systematic erosion of online freedoms, executed through imprecise laws, unchecked discretion, and politically motivated enforcement.

India: Constitutional Protections and the Legal Landscape for Online Expression

Freedom of speech in India is constitutionally guaranteed under Article 19(1)(a) of the Constitution of India, which affirms every citizen's right to free expression. This encompasses the use of digital platforms—including social media, websites, and blogs—for expressing opinions, critiquing government policy, and disseminating information (Khatri, 2023). This constitutional protection serves as the cornerstone for journalists, civil society actors, and citizens to participate in democratic discourse, advocacy, and dissent.

Despite the robustness of these constitutional guarantees, a series of legislative instruments—often ambiguously worded or expansively interpreted—have increasingly been used to suppress online expression, particularly targeting civic spaces, journalism, and activism. These laws are frequently invoked under the guise of protecting public order, national security, or cultural harmony but are regularly employed to stifle legitimate criticism and shrink civic space (Howie, 2017).

The Unlawful Activities (Prevention) Act (1967) (UAPA) permits arrests and detention without trial for up to six months for engaging in "unlawful activities," a term criticized for its broad and ambiguous definition. The Act has

been used to target activists, journalists, human rights defenders, and critics. Human rights activist Gautam Navlakha, detained under UAPA in the Bhima Koregaon case for over three years, was granted bail in 2023, with the court citing lack of substantive evidence. In 2024, the Supreme Court denied an extension of his stay citing trial delays and unframed charges (NewsClick Staff, 2024). Similarly, in 2024, the Delhi government sanctioned prosecution of author Arundhati Roy, fourteen years after a public speech, under UAPA provisions (Biswas, 2024).

The vague definition of "unlawful activities" facilitates arrests based on online posts or advocacy deemed critical of the government. For instance, Kashmiri academic Sheikh Showkat Hussain faced prosecution for online advocacy that challenged dominant narratives (Kashmir Action, 2024).

Section 124A of the Indian Penal Code (1860) criminalizes speech that incites "disaffection" against the government – colonial-era provision frequently criticized for curtailing democratic expression. Although the *Supreme Court* in *Kedar Nath Singh v. State of Bihar* (1962) clarified that sedition requires incitement to violence, the provision continues to be invoked against online critics, including JNU students for social media posts. This practice undermines civic participation and deters public discourse on governance and rights.

Section 69A of the Information Technology Act (2000) enables the government to block online content in the interest of national security or public order. The platform TikTok was banned under this provision in 2020 (Kabeer, 2025). The *IT Rules (2021)* further compel platforms to swiftly remove flagged content, often without transparent review, thus opening avenues for arbitrary censorship (IndusLaw, 2021; Drishti IAS, 2022). In 2025, comedian Kunal Kamra faced multiple takedowns after mocking Deputy CM Eknath Shinde. His content was removed under copyright claims—a tactic increasingly used to suppress satire—and accompanied by a show-cause notice and political backlash (The Hindu Bureau, 2025).

Similarly, media outlets like *Mint* were reportedly pressured to take down content critical of alleged corporate-government linkages, following informal directives from government authorities and subsequent compliance by platforms under the IT Rules (Sombatpoonsiri & Mahapatra, 2024). Journalists such as Barkha Dutt have also faced account suspensions for publishing critical reports (Saberin, 2018). These developments—driven by ambiguous legal provisions and excessive platform compliance—contribute to a shrinking civic space and curtail political and journalistic expression in the digital sphere.

The PSA allows preventive detention without trial and has been extensively used to detain journalists and activists in the region (Verma & Kumar, 2020). In 2021 alone, Jammu & Kashmir experienced 106 internet shutdowns, disrupting access to information and inhibiting online mobilization (Access Now, 2022). Journalists like Fahad Shah were detained under the PSA for their reporting, and internet blackouts have substantially curtailed civic activism (Front Line Defenders, 2023).

India's criminal defamation laws under Sections 499 and 500 of the Indian Penal Code are frequently weaponized to suppress critical voices (Upmanya, 2020). These provisions allow individuals —including political and corporate figures—to initiate legal action against journalists under the pretext of reputation protection. Investigative journalist Paranjoy Guha Thakurta faced litigation for reporting on corporate misconduct (The New Indian Express, 2023). Similarly, comedian Kunal Kamra faced harassment from Shiv Sena supporters due to satirical performances (Upmanya, 2020). Such legal intimidation contributes to a chilling effect, deterring transparency and critical inquiry.

Beyond statutory mechanisms, the state increasingly utilizes informal methods of control, including surveillance through spyware (e.g., Pegasus), intimidation of RTI activists, and politically motivated First Information Reports (FIRs) (Shekar & Mehta, 2022). Enforcement asymmetry is notable: critics are aggressively targeted, while pro-government narratives remain largely unregulated—reflecting politicized

governance of the digital domain.

Between 2012 and April 2024, India executed 812 internet shutdowns, the highest globally (Access Now, 2024). In 2024 alone, 84 shutdowns were recorded, with Manipur accounting for 21 amid ethnic protests and civil unrest – a five-day ban in five valley districts in September 2024 and extensions in nine districts until December 9, 2024 (Smith, 2025). These shutdowns obstruct access to information and compromise democratic accountability, especially during periods of political mobilization.

One notable factor in India's civic space is the role of mainstream media —often described as "Godi media"—play a central role in legitimizing censorship and discrediting dissenting voices (Policy Circle Bureau, 2025). Their alignment with governmental interests contributes to narrative control and the erosion of independent journalism and pluralistic dialogue.

While Indian courts have occasionally asserted checks—such as the landmark *Shreya Singhal v. Union of India* (2015) ruling and the 2024 Madras High Court judgment against arbitrary takedowns—implementation of judicial safeguards remains inconsistent (Columbia Global Freedom of Expression, 2023). The persistent tension between constitutional guarantees and statutory repression continues to endanger India's digital civic space.

Bangladesh: Constitutional Protections and Contemporary Challenges to Online Expression

The Constitution of the People's Republic of Bangladesh guarantees the right to freedom of expression. Article 39 affirms every citizen's entitlement to freedom of thought, conscience, and speech, while permitting restrictions in cases where such expression threatens state security, international relations, public order, decency or morality, judicial integrity, personal reputation, or incites criminal activity.

Bangladesh is a State Party to the ICCPR and has enacted several policies promoting digital advancement and open governance. Yet, the central challenge lies not in the absence of normative frameworks, but in their implementation. Provisions designed to protect civil liberties are increasingly repurposed for surveillance and repression.

Enacted to combat cybercrime and misinformation, the DSA was repeatedly deployed to silence journalists, university students, and social media users. Vague and expansive language—such as "hurting religious sentiments" (§ 8(2)) and "damaging the image or reputation of the country" (§ 25(1)(b))—enabled arbitrary arrests and legal intimidation. Although the Cyber Security Act (CSA), 2023 replaced the DSA with the aim of enhancing cybersecurity and regulatory transparency, critics highlighted ongoing concerns. Despite relaxing certain non-bailable provisions, the CSA retained vaguely defined speech offences and allowed continued pre-trial detention without adequate procedural safeguards (The Daily Star, 2023).

Between January 2009 and August 2024—during the premiership of Sheikh Hasina—Bangladesh experienced a sustained erosion of press freedom and civic space (Human Rights Research, 2024). This period was marked by the passage of restrictive laws, intensified censorship, targeted harassment of dissenters, and the frequent use of police force against critics. As a result, pervasive self-censorship took hold across the media sector.

A significant political shift occurred on August 5, 2024, when the authoritarian government was ousted following nationwide, student-led protests. An Interim Government assumed power with a mandate to restore democratic governance and institutional accountability. Nevertheless, legal responses to online dissent remained repressive. On June 26, 2024, during quota-reform demonstrations, the police arrested an individual for criticizing the quota system via Facebook (The Daily Star, 2025). In another case, five individuals were charged for sharing satirical content and critical commentary directed at high-ranking officials, including the former Prime Minister (Islam, 2024). These incidents underscore the continuity of state-sanctioned retaliation against dissent.

As of July 2025, Bangladesh is governed under the Cyber Security Ordinance (CSO), 2025,

which repealed the CSA and introduced measures aimed at due process and the decriminalization of select speech offences. Sections 21, 24, 25, 26, 27, 28, 29, 31, and 34 of the CSA were formally omitted. The Ordinance stipulates that all ongoing investigations and prosecutions under these provisions are to be nullified, with no further legal action permissible (BSS Dhaka, 2025). Despite these reforms, rights organizations continue to voice concern over residual legal ambiguities that could be leveraged against journalists (Committee to Protect Journalists, 2025).

An illustrative case occurred in November 2024, when a corporate executive filed criminal defamation complaints against four journalists for publishing reports on labor rights violations (International Federation of Journalists, 2025). Though initiated under a transitional regime, the case reflects enduring structural vulnerabilities: the continued weaponization of defamation and imprecise digital laws to suppress media scrutiny and stifle accountability.

Taken together, these developments suggest that political transition alone is insufficient to secure online freedoms. Comprehensive legal reform, independent judicial oversight, and robust institutional safeguards are essential to ensure the meaningful protection of freedom of expression in Bangladesh.

Impact on Freedom of Expression in South Asia

Despite robust constitutional guarantees and binding international obligations, the right to freedom of expression in Nepal, India, and Bangladesh faces increasing constraints. Vaguely worded laws, regressive legislation, and discretionary enforcement have contributed to the steady erosion of online and offline speech. The *UN Human Rights Committee*, in its *General Comment No. 34 (CCPR/C/GC/34)*, has emphasized that any restrictions on expression must be precisely defined by law and meet the cumulative criteria of legality, necessity, and proportionality in a democratic society. Many of the laws examined herein fall short of these standards due to ambiguous terminology, excessive executive powers, and a lack of independent oversight mechanisms.

The effects of this deterioration are visible not merely in abstract legal theory, but in tangible patterns of arrest, content takedown, internet shutdowns, and the narrowing of civic discourse across digital platforms. These developments reveal several key impacts on freedom of speech in the region:

Chilling Effect on Expression

The most immediate consequence of a repressive legal framework is the chilling effect it produces. Vague and sweeping terms such as "offensive," "anti-national", "contrary to public morality", or "hurting religious sentiments" create uncertainty over what constitutes lawful speech. The absence of clear legal thresholds, combined with harsh penalties, discourages individuals from expressing dissenting or critical opinions online.

In Nepal, social media users often self-censor their posts due to fear of legal repercussions under the ETA or proposed Social Media Regulation Bill. In India, students, comedians, and activists have faced arrests or criminal proceedings for tweets, memes, or online campaigns. In Bangladesh, even after legal reforms, speech critical of the government officials has triggered surveillance, prosecution, and detention—particularly during politically sensitive periods.

Suppression of Political Dissent and Civic Activism

Digital platforms have become essential spaces for civic organizing, political mobilization, and youth-led activism. Hashtag campaigns, petitions, and viral content have allowed marginalized groups to challenge dominant narratives, advocate for transparency, and demand justice. However, rather than embracing these tools of participatory democracy, state authorities increasingly perceive online activism as a threat to public order or regime stability.

Governments have responded with securitized and punitive measures that delegitimize dissent, discourage political engagement—especially among young and first-time voters—and foster an environment in which digital activism carries substantial personal risk.

Expansion of Surveillance and Platform Censorship

Regressive laws have conferred sweeping powers upon state actors to monitor, censor, and penalize digital expression, often in coordination with private platforms. What was once a space for open dialogue is now increasingly subject to heavy regulation and covert surveillance.

Authorities in Nepal, India, and Bangladesh routinely demand content removals and access to user data using poorly defined concepts like *"immoral," "anti-national,"* or *"objectionable."* Such requests are frequently issued without judicial authorization or public transparency, and intermediaries are compelled to comply under regulatory pressure.

In India, the Information Technology Rules (2021) mandate content removal within 36 hours of government notification and require traceability, compromising encrypted communications and user privacy. Platforms such as X (formerly Twitter), YouTube, and Facebook have faced raids and sanctions for non-compliance.

In Nepal, directives such as the Guideline on Managing Social Media Networks require platforms to open local offices, respond to government requests, and register formally—effectively enabling preemptive censorship. The *Nepal Police Cyber Bureau* has intensified monitoring using surveillance technologies to track speech deemed politically sensitive.

This environment fosters a model of privatized censorship, wherein platforms function as proxies for state regulation. Content removal processes lack transparency, grievance redress mechanisms are either absent or inadequate, and affected users are frequently left uninformed and unprotected.

Surveillance has also intensified across the region, disproportionately targeting journalists, civil society actors, human rights defenders, and ethnic or religious minorities. Tools such as *Pegasus spyware* in India and metadata collection programs in Nepal undermine individual privacy, freedom of association, and freedom of thought. This surveillance culture contributes to widespread self-censorship and reduced digital participation.

Erosion of Press Freedom and Artistic Satire

Freedom of expression encompasses not only the right to speak, but also the ability to report, critique, and satirize. Across South Asia, press freedom and creative expression are under duress.

Journalists face defamation suits, criminal investigations, and arbitrary detention for exposing governmental or corporate malfeasance. Satirists and comedians—particularly in India and Bangladesh—have experienced harassment, takedowns, and coordinated intimidation campaigns. In Nepal, proposals to extend *Press Council Nepal* oversight to independent YouTube channels have raised concerns over political bias and regulatory overreach.

Such practices restrict the plurality of voices in the media, suppress critical humor, and reinforce sanitized public narratives that align with state interests.

Normalization of Censorship and Shrinking Civic Space

Legal, technical, and economic tools are increasingly employed to shape digital discourse. The normalization of censorship has long-term implications: it undermines democratic values, erodes public trust in institutions, and limits the range of permissible speech.

Platform bans, internet shutdowns, content removals, and punitive defamation laws collectively contribute to a constricted civic space. Citizens begin to self-censor—not because they accept the validity of restrictions, but because the risks associated with open expression are intolerably high.

In Bangladesh, such dynamics were prominent during the rule of Prime Minister Sheikh Hasina. In Nepal, the proposed social media Bill requires platforms to remove content deemed unlawful by the *Department of Information Technology*, raising concerns over centralized control and lack of accountability.

These mechanisms institutionalize censorship by coercing platform compliance with state interests, thereby suffocating the digital space.

In sum, the erosion of free speech in Nepal, India, and Bangladesh is facilitated by legal vagueness, technological control, and institutional complicity. Without substantive legal reform, independent oversight, and public accountability, digital spaces that once empowered civic participation risk becoming arenas of regulation, surveillance, and suppression.

Conclusion

The erosion of online freedom of expression in Nepal, India, and Bangladesh represents a profound threat to democratic values and civic engagement across South Asia. Through vague and repressive legal instruments – including Nepal's Electronic Transactions Act, India's Information Technology Act and Unlawful Activities (Prevention) Act, and Bangladesh's former Digital Security Act and evolving Cyber Security Ordinance – governments are systematically curbing dissent, silencing journalists, and stifling digital activism. These legal frameworks, often justified under the guise of national security, public order, or morality, fail short of international standards concerning necessity and proportionality, thereby undermining constitutional guarantees and international human rights obligations, such as those enshrined in Article 19 of the ICCPR.

Illustrative cases, including those involving Dil Bhusan Pathak in Nepal and Kunal Kamra in India, reflect broader patterns of censorship, surveillance, internet shutdowns, and legal intimidation. The cumulative effect is a chilling environment that discourages satire, contracts civic space, and reinforces self-censorship.

Nevertheless, resistance persists. Civil society actors, independent media institutions, and grassroots movements across the region continue to challenge repressive legislation and advocate for substantive reform. To safeguard the right to freedom of expression, it is imperative for governments to harmonize domestic laws with international human rights standards, incorporating precise legal definitions, proportionate limitations, and robust judicial oversight. Simultaneously, digital platforms must adopt transparent content moderation policies and resist undue state influence, while citizens and advocates must utilize digital technologies to amplify marginalized voices and demand accountability.

The internet remains a vital frontier for democratic participation, but its potential hinges on preservation of expressive freedoms. Without urgent and comprehensive reforms to counter the rise of digital authoritarianism, South Asia risks losing the vibrant civic space essential for sustaining its democratic aspirations. Defending freedom of expression online is not merely a legal obligation—it is a moral and political imperative for the region's democratic future.

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Shaping a Child-Centric Legal Doctrine: Evolving Judicial Trends in Nepal's Anti-Child Marriage Rulings

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Abstract

The judiciary, as the constitutional custodian of justice, is mandated to adjudicate with the Constitution, statutory provisions, and universally recognized principles of justice. Over the years, Nepal's judiciary has significantly played a transformative role in shifting the legal narrative on child marriage —from a culturally accepted, socially normalized, and legally ambiguous practice to a serious violation of fundamental rights. This doctrinal shift is evident in key jurisprudences, where the Court has progressively adopted a purposive, rights-based adjudicatory approach that centres on the victim and child, grounded in the principle of the "best interests of the child" and departing from rigid statutory formalism. The shift in the courts reflect a broader interpretive shift away from rigid legal formalism toward a more survivor-informed, context-sensitive adjudicatory framework. A defining milestone in this evolution is the Supreme Court's ruling in Government of Nepal v. Santosh Kumar Yadav, which reaffirmed core constitutional values—dignity, equality, and protection from exploitation—while operationalizing international child rights obligations. This article undertakes a doctrinal analysis of the decision, examining the Court's interpretive reasoning, its alignment with global jurisprudence, its adherence to constitutional and statutory mandates, and its application of international legal standards. Despite these advances and clear adjudicatory guidance, inconsistencies across various courts reveal persistent lack of doctrinal clarity and shared understanding within the judiciary – ranging from limited institutionalization of child rights-based practices to prevailing reliance on rigid, traditionalist interpretation of law that disregards liberal approaches grounded in established precedents. This article, therefore, underscores the need for doctrinal consistency, institutional alignment, and enhanced judicial education to ensure a coherent, uniform, and child-centered approach to justice. By tracing this evolving jurisprudential landscape, the article highlights both the normative progress made and the structural reforms still required to realize Nepal's constitutional mandates and international commitments to protect children's rights.

Keywords: best interests of the child, child marriage, doctrinal analysis, jurisprudence, survivor-centered

Introduction

The judiciary of Nepal, entrusted by the Constitution as the custodian of justice and fundamental rights (Preamble, Constitution of Nepal, 2015), increasingly asserted its role in confronting harmful traditional practices and

shaping progressive legal interpretations. As an institution central to legal reform, it holds the responsibility to interpret constitutional and statutory provisions in ways that is responsive to both evolving societal realities and align with Nepal's international human rights obligations.

Within this broader mandate, over time, the judiciary has demonstrated a transformative role in shifting the legal discourse surrounding child marriage. While national law defines persons under the age of 18 years as "children," it categorizes any marital union involving persons under the age of 20 as "child marriage". Once viewed as a culturally embedded and legally ambiguous practice, child marriage is now understood and adjudicated as a grave violation of the rights and dignity of children. The Court's jurisprudence has moved decisively from rigid formalism toward a purposive, rights-based approach – placing the child's best interest and well-being at the centre of legal reasoning.

This jurisprudential progression is evident in series of precedent-setting rulings that collectively shift the legal narrative from punitive formalism to a more child-centric rights-based approach. In *Laxmi Maya v. Government of Nepal* (2011), the Court interpreted minor's consent in marriage and equated it to statutory rape. *Sarita Adhikari v. Rajaram Adhikari* (2020) reinforced rights and welfare of minors post-marriage, including property rights and parental care, despite the invalidity of marriages. *Krishna BK v. Government of Nepal* (2017) went further by declaring all sexual relations within minor marriages as rape and as punishable conduct. Meanwhile, *Abhimanyu Ahir Yadav v. Government of Nepal* (2021) underscored the necessity of balancing the rights of survivors, highlighting due process as a complementary principle to victim protection. *Balaju 100* (2023) addressed the legal ambiguity surrounding consensual underage sexual relations and declined to assert such a case as rape, considering contextual factors like emotional ties and parenthood. *Bogatan, 70 (L)* (2021) reflected judicial sensitivity by deferring sentencing, recognizing the minor's vulnerability, though such provisions remain underutilized. *Bimal Shrestha et al.*, (2023) signalled a shift toward deterrence and accountability by convicting the accused in a child marriage-related suicide, reinforcing the judiciary's protective stance on vulnerable minors.

These doctrinal advancements culminated in the landmark ruling in *Government of Nepal v. Santosh Kumar Yadav* (2018) (herein after *Santosh Kumar Yadav*), where the Court addressed legal ambiguity around marriageable age. The Court's reasoning firmly grounded the adjudication in the "best interests of the child" (UNCRC, 1989, Art. 3) which requires that in all actions concerning children—whether undertaken by courts, legislative bodies, or administrative authorities—the child's welfare must be a primary consideration. The Court interpreted this not merely as a guiding value but as a substantive legal standard drawn from domestic constitutional guarantees – reflected in Article 39 of the Constitution of Nepal and operationalized through legislation such as the Act Relating to Children, 2018 – as well as Nepal's international obligations.

Collectively, these decisions mark a judicial transition toward a survivor-informed, context-sensitive framework that prioritizes child protection and dignity. They illustrates the emergence of a jurisprudential paradigm where the "best interests of the child" are not only central to legal reasoning but also instrumental in challenging regressive norms and ensuring substantive justice.

This article undertakes a doctrinal and normative examination of the judiciary's evolving approach to child marriage, with a particular focus on the *Santosh Kumar Yadav* decision. Situating this case within a broader body of jurisprudence, it analyzes the interpretive shifts that have culminated in a more consistent, rights-oriented legal response. Through the combination of close legal textual analysis and normative assessment, the article assesses how this judicial rectification has contributed to legislative clarity, enhanced institutional accountability, and improved justice pathways for affected children. In addition to mapping this jurisprudential trajectory, the article evaluates the normative influence of key judicial decisions in promoting doctrinal coherence and advancing systemic legal reforms. It incorporates a comparative jurisprudence section that situates Supreme Court reasoning in *Santosh Kumar Yadav*

alongside international case law, highlighting global alignment with the Court's purposive and rights-based approach. While acknowledging the normative gains achieved through these landmark decisions, the article also examines subsequent case law to reveal persistent challenges.

Judicial Progressiveness: Evolving from Formalist Statutory Interpretation to a Rights-Oriented and Liberal Interpretative Approach

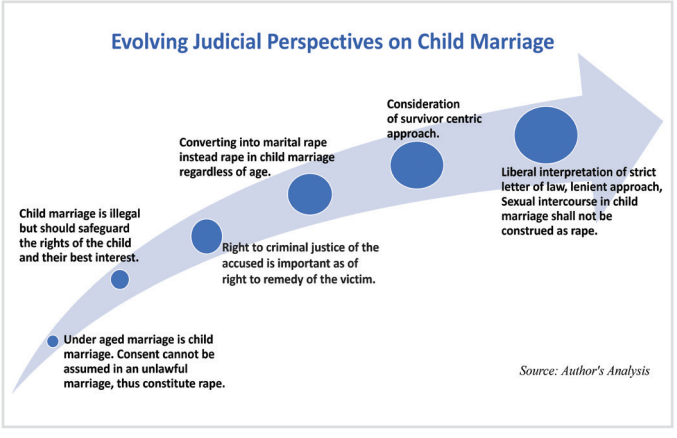
Over the past two decades, the judiciary of Nepal—particularly the Supreme Court—has demonstrated a marked shift in its interpretive stance concerning child marriage. The judicial approach to child marriage has undergone a significant transformation – rigid, literal interpretations of statutory provisions to a more purposive, rights-affirming framework grounded in constitutional values and international human rights obligations. This evolution reflects the growing recognition by Nepal's judiciary of its role not only as an arbiter of legal disputes but also as a key agent in the realization and protection of fundamental rights, particularly those of children.

Traditionally, judicial reasoning in cases involving child marriage was dominated by a formalist application of penal law, focused primarily on the elements of crime—age, consent, and statutory thresholds—without sufficient engagement with the broader human rights implications of the practice. Such an approach often holds insufficient to address the structural vulnerabilities faced by children, especially girls, and fails to account for the long-term impact of early marriage on their bodily integrity, autonomy, education, and economic security.

However, over the past decade, landmark judgments of the Supreme Court of Nepal have marked a gradual departure from this constrained interpretive paradigm. This progression is illustrated in cases such as in *Laxmi Maya v. Government of Nepal* (2011), the Supreme Court affirmed that in cases involving minors, particularly where the victim is under 16 years of age, consent to sexual intercourse holds no legal significance. The Court clarified that such marriages are void *ab initio*, and any sexual activity arising within them constitutes statutory rape. This ruling established a clear legal position that underage marital unions cannot serve as a defence against charges of sexual violence, reinforcing the primacy of child protection within Nepal's criminal justice framework.

In *Sarita Adhikari v. Rajaram Adhikari* (2020), the judiciary underscored the importance of safeguarding the rights and dignity of minors, even in circumstances where a child marriage has already taken place. In a significant decision, the Dailekh District Court reviewed the case of *Sarita Adhikari*, who was married at the age of 13 and divorced at 17. The Court declared the marriage legally void, as both the union and the dissolution occurred prior to the lawful age of marriage. In addition to annulling the marriage, the Court directed Sarita's parents to assume responsibility for her care, reinforcing principles of child protection. Notably, the Court also recognized her property inheritance rights despite the invalidity of the marriage, ensuring her entitlements were preserved within a rights-based adjudicatory framework.

In *Government of Nepal v. Krishna BK* (2017), the judiciary adopted a more nuanced stance by distinguishing between sexual relations arising within marital and non-marital contexts involving minors, while nonetheless reaffirming the legal invalidity of child marriage. The Makawanpur District Court convicted the accused of both child marriage and rape—findings that



were subsequently upheld in part by the Patan High Court and the Supreme Court. The Supreme Court emphasized the gravity of sexual violence, recognizing that sexual intercourse within an underage union constitutes marital rape and must be penalized in accordance with criminal law, irrespective of the purported marital relationship or the age of minor girl involved. This decision marked a significant step in framing child marriage as a non-exemptible excuse for perpetrators of sexual offences.

In *Government of Nepal vs. Balaju 100* (2023), the Patan High Court examined the legal ambiguity surrounding consensual sexual relations between minors. While the Kathmandu District Court had earlier convicted the minor male of rape, the High Court overturned the ruling, citing the absence of clear legal provisions addressing such situations under the juvenile justice framework. Taking into account that the minors had a child together and maintained a stable relationship before and after the incident in question, the court concluded that the act should not be legally classified as rape.

In *Government of Nepal v. Bimal Shrestha et al.*, (2023) the case involved a minor girl who assented into child marriage and suffered sustained abuse, ultimately leading to her suicide. While the Rupandehi District Court convicted Bimal Shrestha for child marriage, it acquitted him of abetment to suicide. However, the Tulsipur High Court overturned this acquittal on appeal, finding him guilty of abetment and sentencing him to two years' imprisonment, along with a fiscal penalty and compensation to the victim's family. The court emphasized the importance of balancing the rights of the accused, the victim, and public interest, underlining the deterrent value of applying abetment provisions to maintain public confidence in the justice system. This case highlights the heightened vulnerability of minors in child marriages—especially those formed without family support—who often face sustained abuse with limited avenues for protection or redress.

In *Government of Nepal v. Bogatan, 70 (L)* (2021), the Court invoked Section 36 of the *Act Relating to Children, 2018*, which mandates that, in determining penalties for juvenile offenders, courts must consider factors such as age, sex, maturity, the nature of the offence, and the surrounding circumstances. The provision allows the court to defer sentencing, conditionally or unconditionally, or to issue any other appropriate order in the interest of justice. Although this provision reflects a progressive and child-sensitive approach, it remains infrequently applied—particularly in cases involving child marriage, polygamy, and related offences. In the present case, the High Court initially imposed custodial sentences on a minor girl: one year for polygamy and one month for child marriage. However, acknowledging her age and vulnerability, the court ultimately deferred the execution of the sentence pursuant to Section 36. This represents a rare, yet significant, instance of survivor-centred adjudication. Given the potentially severe and long-term consequences of criminal punishment on children, it is essential that the judiciary adopt an interpretive approach that prioritizes the best interests of the child. While such instances reflect judicial sensitivity, a more proactive and rehabilitative orientation is needed. Courts must move beyond occasional leniency and consistently apply child-centred principles that prioritize recovery and reintegration over punishment.

In *Abhimanyu Ahir Yadav v. Government of Nepal* (2021), the Supreme Court reaffirmed the principle that the right to a fair trial for the accused is of equal constitutional significance as the victim's right to an effective remedy. The Court held that a conviction for rape cannot rest solely on the victim's testimony; rather, it must be substantiated through corroborative evidence to meet the standard of proof beyond reasonable doubt. This decision underscores the judiciary's commitment to maintaining procedural fairness while safeguarding the rights of both parties in criminal proceedings.

Jurisprudential Turning Point: *Government of Nepal v. Santosh Kumar Yadav*

A turning point in this trajectory is observed in *Santosh Kumar Yadav*, where Justices Anil Kumar Sinha and Kumar Chudal signalled a critical departure from rigid legal formalism.

Acknowledging legal inconsistencies, conflict of law and its impact on children, the court opted for a child rights-oriented interpretation of the law. The Court called upon the state to take affirmative legal, institutional, and policy measures to prevent child marriage – thereby reinforcing a linkage between judicial interpretation and broader governance obligations. While the leniency in sentencing remains contentious, the judgment's doctrinal contribution lies in its holistic engagement with the rights of the child, notably reinforcing the "best interests of the child" principle as a central adjudicatory standard.

Factual and Procedural Background

On 14 November 2022, a Division Bench of the Supreme Court of Nepal rendered a landmark judgment adjudicating upon the entrenched socio-legal issue of child marriage—an enduring practice that infringes upon the fundamental rights and welfare of minors. The case originated from an FIR lodged by the mother of a minor girl in Udaypur District, accusing Yadav of rape, abduction, and illegal detention. The facts of the case reveal that the girl—under the statutory age of 16 at the time and from a different caste—had eloped with Yadav after a prolonged romantic relationship. The couple subsequently appeared before the Udayapur District Court and affirmed their marital union.

While the District Court acquitted the defendant Santosh Kumar Yadav from the charges, the Biratnagar High Court (Okhaldhunga Bench) convicted him and imposed multiple sentences – 11 years' imprisonment for abduction and hostage-taking, and six years for rape along with a fine of fifty thousand rupees and further fifty thousand as compensation to the victim on the charge of abduction and hostage taking. Upon appeal, the Supreme Court reversed the High Court's judgment, acquitted Yadav of the more severe charges citing lack of evidence to meet the threshold of criminal culpability. However, it upheld his conviction for child marriage under prevailing statutory law, sentencing him to six months of incarceration and a fine of NPR 10,000.

Significance of the Judgment

The judgement rendered by the Supreme Court lies not just in its reduced sentencing but in the Court's doctrinal approach – setting a transformative precedent by framing child marriage within a broader right-based narrative. It undertook a comprehensive analysis of the legal, institutional, and normative complexities associated with child marriage. By invoking international legal principles, particularly the "best interest of the child" (UNCRC, General Comment No. 14), the court asserted a comprehensive, contextual understanding of child protection.

This judgment is particularly significant and contextual, as it addresses a growing legal trend in which child marriage cases are increasingly diverted and prosecuted under rape statutes or linked with other serious offences such as abduction and hostage-taking (OAG, 2024a). Despite the clear existence of legislation and legal mechanisms for reporting child marriages, actual reporting remains low (Shrestha et al., 2025). Instead, many incidents are often categorized and pursued as more severe criminal charges – including polygamy and marital rape (Shrestha et al., 2025) – raising serious concerns from a child rights perspective. While the underlying causes of this trend warrant further research, this dynamic reflects a problematic shift in legal practice. This section critically examines how the Supreme Court has analysed and addressed these issues in this case and explores its broader impact for the adjudication of the similar cases in the future.

Justice as a Search for Substantive Truth

The judiciary, as the constitutionally designated guardian of justice and public trust, must interpret law not merely by its letter but in accordance with its spirit and purpose. Article 128 of the Constitution confers the Supreme Court the authority as the final interpreter of law, thus entrusting it with the obligation to deliver justice grounded in substantive truth rather the procedural formalism. In this case, the court has embraced this interpretive philosophy, framing justice not in technical formalism but in substantive truth-seeking.

In the case, there was factual evidence establishing a marriage between two minors, which was also supported through statements from

the couple and the minor girl's mother in court. However, since the case was prosecuted under charges of abduction, hostage taking, and rape, the Court emphasized that such severe criminal offences must meet the evidentiary threshold of proof beyond a reasonable doubt. Referring to of the core principle of criminal justice – *in dubio pro reo* (the benefit of doubt goes to the accused) – the court held that any serious allegations like rape, abduction, and hostage taking must be substantiated with concrete and credible evidence and adjudicated along with recognized principle of criminal justice.

Further, the Court underscored the importance of safeguarding the right to criminal justice of the accused within the framework of fair trail guarantees and due process. These rights are enshrined in Nepal's Constitution such as right to justice, the rights of crime victims, right against torture, and protections under nationally and internationally recognized standards of fair trial. In doing so, the Court also reinforced the accountability of the state mechanism to conduct for fair and impartial, right-based investigations and prosecutions, particularly in cases of serious criminal allegations. Such procedural fairness is essential to uphold public confidence in the justice system (Chapagain, 2023) and ensure that severe criminal allegations are also adjudicated with due rigor and objectivity.

Offences like Abduction and Hostage Taking should be Proved Beyond Reasonable Doubt

The Supreme Court has consistently reinforced that any serious criminal offences must be proved beyond the reasonable doubt, a foundational principle of criminal justice both in domestic and international jurisprudence. In the *Santosh Kumar Yadav* case, the Court emphasized that the offences of abduction and hostage taking, which are generally considered forms of organized crime involving multiple individuals, must be supported by substantive and corroborative evidence. Prosecuting against any one with charge of such severe offence itself is not enough, rather it should be proved with the substantive evidence and beyond reasonable doubt. Merely alleging such offences on the basis of controversial evidence, ambiguity and suspicion does not meet the evidentiary threshold required for conviction.

The court reiterated that suspicion, no matter how strong, cannot substitute for legal evidence – a fundamental principle rooted in established legal doctrine. This doctrine, reflected in common law jurisprudence such as *Woolmington v. Director of Public Prosecutions (1935)*, holds that the prosecution must prove its case and that the presumption of innocence remains intact until guilt is established beyond reasonable doubt. In line with this, the Court underscored that a conviction cannot be based on inconsistent testimonies, evidentiary ambiguity or prosecutorial inference.

Consistent with Section 14(2) of the Constitution of Nepal (2015), which guarantees the right to a fair trial and aligned with Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR, 1966)—to which Nepal is a party—the Court further underscored that the burden of proof lies entirely with the prosecution, and in the absence of substantial evidence, the benefit of doubt must be extended to the accused. In the case, after careful scrutiny of the facts and evidence and in accordance with the fundamental principle of evidence and criminal justice, the court concluded that the evidence presented failed to substantiate the charges beyond reasonable doubt, and thus acquitted the accused of the more sever offences.

Distinguish between Sexual Intercourse in Child Marriage and Statutory Rape

The Supreme Court undertook a critical examination of the legal distinction between consensual sexual intercourse within child marriage and statutory rape. The Court referenced a judgment of the Supreme Court of India – S. Veradarajan vs. State of Madras (1965) – where the Indian judiciary adopted a contextual interpretation of marriage involving minors in a liberal manner to both, protect the rights of the child and to distinguish between rape from consensual sexual intercourse within child marriage (S. Veradarajan v. State of Madras, 1965).

This judicial reasoning highlights the court's role in balancing the strict letter of the law

with real-life circumstances of those individuals affected, thereby ensuring that legal outcomes are fair and contextually appropriate. It reflects a purposive interpretative approach – emphasizing that the law must not be understood and applied not solely by its letter, but in the light of its broader spirit and intended objectives. While age remains a determinative legal factor in statutory rape, the Court emphasized that *mens rea* (criminal intent) and *actus reus* (criminal act) are the measuring rods to distinguish sexual intercourse within the child marriage from rape.

The court explained that in case of statutory rape, the intention of the accused is primarily to commit sexual exploitation, whereas sexual intercourse within child marriage is often driven by social norms, physical needs, emotional connections, or perceived mutual consent, rather than criminal intent. There is substantial difference between these two and failing to distinguish them will ultimately undermine justice, because the punishment prescribed for a crime should be proportional to the seriousness of the crime (Ashworth, 2015).

By distinguishing between consensual sexual relations within unlawful marriages and actual instances of rape, the Supreme Court of Nepal established a context-sensitive framework that aims to uphold both, the rights of the child and the integrity of justice. This reasoning is consistent with broader international standards such as Article 3 of the CRC, which mandates that the best interests of the child be the primary consideration in all judicial decisions.

Judicial Recognition of Consensual Sexual Relations among Underage Individuals

In this case, the Supreme Court has shown leniency toward distinguishing between consensual sexual relations among minors and statutory rape, while upholding a strict legal position against child marriage convictions. The Court acknowledged that while child marriage is a violation of the law, consensual sexual activity between minors – particularly within the context of culturally sanctioned unions – must be examined with contextual sensitivity. It emphasized that age alone should not be the sole determining factor in characterizing an act as statutory rape; rather, the presence or absence of *mens rea* and exploitative circumstances must be considered alongside the *actus reus*.

The Courts often views sexual relations within child marriages as natural, differentiating them from statutory rape. This reflects a nuanced approach to child marriage complexities. Notably, the judgement referenced comparative jurisprudence such as the United States legal doctrine known as "Romeo and Juliet" laws, which offer *close-in-age exemptions* in statutory rape cases to prevent the criminalization of consensual relationships between adolescents (Kan. Stat. Ann. § 21-5503, 2005).

Through this interpretative lens, the Supreme Court affirmed consensual sexual activity among underage individuals, while still recognizing the serious implications of child marriage. The court recognizes sexual intercourse between a married couple as a natural occurrence, even in the context of child marriage. Such conduct may reflect prevailing social norms, emotional intimacy, or mutual consent rather than criminal intent. This distinction is critical to ensuring that the legal response remains proportional and consistent with both child protection principles and broader human rights obligations.

Sexual Intercourse within Child Marriage is not Statutory Rape

The Court delivered a landmark jurisprudence that provided a contextual jurisprudential shift to clarify the distinction between sexual intercourse within the child marriage and statutory rape. Departing from a strictly textualist reading of statutory rape provisions under Nepali criminal law, the Court opined that not all consensual sexual acts within child marriage should be considered as statutory rape, particularly when the marriage was acknowledged by both parties and their families, and lacked indicators of coercion or exploitation.

Under prevailing law, any sexual activity involving a minor – even consensual – is considered statutory rape, irrespective of consent (National Criminal Code, 2017, §§ 219–222). However, in practice, this has resulted in a troubling pattern

where child marriage cases are increasingly prosecuted as rape or combined with more serious crimes like abduction or hostage-taking and subjected to imprisoned (Shrestha et al., 2025). This rigid application risks criminalizing minors and young individuals for behaviour rooted in social norms, familial arrangements, or emotional relationships, rather than exploitation or violence.

The Court's judgment signals a more context-sensitive and purposive approach by affirming that *mens rea* (criminal intent) and social realities surrounding child marriage must be considered before characterizing such acts as statutory rape. In doing so, the decision resonates with international legal principles emphasizing proportionality and child protection. Comparative jurisprudence, such as the "Romeo and Juliet" laws in jurisdictions like the United States, similarly recognizes that not all consensual sexual activity between minors warrants felony-level prosecution (Kan. Stat. Ann. § 21-5503, 2005).

This precedent is therefore significant for the protection of children's rights. The judgment marks a pivotal moment for child protection, offering a more context-sensitive approach to handling child marriage while mitigating the risk of severe and potentially unwarranted legal consequences for minors. It acknowledges the complexities surrounding child marriages and discourages punitive approaches that may further harm victims in child marriages. Instead, it promotes a more equitable legal standard that takes into account the context, intent and the best interests of the child – aligning with Nepal's obligations under the CRC, particularly, Articles 3 and 19.

Court Going Beyond the Claims

Despite the factual establishment of the occurrence of child marriage, the case was prosecuted under charges of abduction, hostage taking, and statutory rape. This raised a pivotal legal question before the court: can the court go beyond the specific charges brought before it to ensue justice aligns with the broader legal and constitutional framework?

The Court opined in the affirmative, upholding that the judiciary, in its role as the guardian of the Constitution and justice, is not confined strictly to the pleadings or charges brought by the prosecution when those charges do not reflect the factual substance of the case. The Court invoked its inherent judicial authority to reinterpret or reframe charges, provided such interpretation adheres to the spirit of the Constitution, existing legislation and recognized principle of justice.

In justifying its position, the Court referred to precedent set in *Government of Nepal v. Ibrahim Miya & Others* (2009*)*, where the Supreme Court had recharacterized a charge of attempted homicide as battery based on the factual circumstances. Applying that precedent, the Court in *Santosh Kumar Yadav*, found insufficient evidence to convict the accused of abduction, hostage-taking, and statutory rape, and instead convicted him under the offence of child marriage in accordance with prevailing law (National Criminal Code, 2017, §173).

This approach underscores the Court's jurisprudential stance that justice must not be compromised on procedural technicities, and that substantive justice can require courts to look beyond the prosecution's framing when it is inadequately captures the nature of the alleged wrongdoing. In doing so, the Court reinforced its commitment to impart fair and impartial justice and reaffirmed the judiciary's duty to interpret the law in a manner consistent with both legal precedent and the spirit of constitutionalism.

International Jurisprudence as a Normative Guide for the Nepali Judiciary

The judgment in *Santosh Kumar Yadav* illustrates the Supreme Court of Nepal's shift toward a purposive, rights-based approach in adjudicating cases involving child marriage and related sexual offences. Notably, the Court's reasoning is not developed in isolation but finds strong resonance in comparative jurisprudence across multiple legal systems. These global precedents not only validate the Supreme Court's evolving doctrinal approach but also offer a valuable normative framework for navigating similarly complex socio-legal contexts.

Across jurisdictions, courts have increasingly recognized the importance of assessing

contextual consent in underage relationships. For instance, in *S. Varadarajan v. State of Madras* (1965), the Supreme Court of India distinguished voluntary elopement from abduction, affirming the importance of adolescent agency when no coercion or inducement is present. This perspective aligns closely with the Supreme Court's emphasis on understanding the lived realities of young individuals, especially in the context of socially sanctioned practices like child marriage. The Indian court's interpretation of agency and voluntariness aligns with the Supreme Court's emphasis on factual context over rigid legal formalism.

Equally critical is the affirmation of high evidentiary thresholds and due process. The European Court of Human Rights in *M. C. v. Bulgaria* (2003) underscored the need for credible and sufficient evidence when prosecuting sexual violence, along with safeguarding procedural rights. The Supreme Court's insistence in *Santosh Kumar Yadav* that serious allegations such as rape, abduction, and hostage-taking must be proven beyond a reasonable doubt, invokes this foundational standard—*in dubio pro reo*—thereby reinforcing the due process rights of the accused.

Other jurisdictions have also grappled with the risk of blanket criminalization of consensual adolescent relationships. The House of Lords in *R v. G* (2008) and the United States' "Romeo and Juliet" provisions recognize the importance of distinguishing between exploitative conduct and consensual teenage intimacy. These frameworks seek to protect minors without unduly penalizing non-exploitative behaviour. Similarly, the Supreme Court, by declining to automatically categorize sexual intercourse in child marriage as statutory rape, advocates for a measured, context-sensitive application of the law, particularly when predatory intent is absent. The Supreme Court, through its interpretation in *Santosh Kumar Yadav*, adopts a similarly sensitive approach by recognizing that underage sexual activity within marriage—though legally impermissible—may not always constitute criminal exploitation warranting charges such as rape or abduction.

Furthermore, comparative cases reaffirm the primacy of fair trial rights, even in matters involving vulnerable populace like minors. In *DPP v. Morgan* (1975), the UK judiciary emphasized the necessity of establishing both *actus reus* and *mens rea* in sexual offences—an approach also adopted by the Supreme Court. The Supreme Court similarly drew attention to the mental state of the accused, clarifying that criminal liability must be determined not solely by the act but by its underlying intent—a particularly critical distinction in child marriage cases, where cultural and emotional dynamics often inform behaviour.

Taken together, these comparative jurisprudential developments demonstrate that the Supreme Court's ruling in *Santosh Kumar Yadav* is not only contextually grounded but also globally aligned. The Court has laid the groundwork for a more balanced, humane, and constitutionally faithful approach to justice by prioritizing rights-based reasoning, evidentiary rigor, and child-sensitive jurisprudence over strict formalism.

Implications of the Judgment in Legal, Judicial, and Policy Reform

As the constitutional court of record, the Supreme Court of the Nepal plays a pivotal role in shaping the legal, judicial and policy landscape of the nation. Article 128 (4) of the Constitution affirms that decisions rendered by the Supreme Court constitute binding precedent and serve as authoritative references for adjudication for subordinate courts. Thus, the jurisprudence established in *Santosh Kumar Yadav* carries far-reaching implications beyond the immediate case.

Child marriage remains widespread yet underreported in Nepal (Shrestha et al., 2025), often prosecuted under more severe charges such as statutory rape and even associated with other severe nature of crimes such as abduction and hostage taking in many instances. In this context, the Supreme Court's nuanced distinctions – particularly its separation of sexual intercourse within child marriage from statutory rape, and its recognition of such intercourse in child marriage as natural occurrence and socially embedded phenomenon rather than a prima facie criminal act – mark a jurisprudential evolution toward a more context-sensitive, child-rights-based framework.

By interpretating the meaning of "sexual intercourse" in the context of child marriage and invoking the "best interests of the child" principle (as required under Article 39 of the Constitution and Article 3 of the CRC), the Court has laid an instrumental foundation that should inform both, future litigation and statutory reforms, from the perspective of child rights safeguarding. These developments underscore the judiciary's transformative function in aligning Nepal's legal regime with its international human rights obligations, and signal a need for corresponding institutional, prosecutorial, and policy adaptations to reinforce child protection without resorting to excessive criminalization.

Precedential Value and Guiding Reference for Future Adjudication

In recent years, there has been a noticeable increase in the prosecution of child marriage cases under statutory rape provisions and interlinking it with abduction and hostage taking. This prosecutorial trend has led to legal inconsistencies and raised concerns about the proportionality and contextual appropriateness of such charges – particularly when applied to consensual relationships between minors.

This judgment with a new dimension of interpretation of sexual intercourse in child marriage establishes a critical jurisprudential benchmark by distinguishing consensual sexual relations within child marriage from statutory rape, thereby offering much-needed doctrinal clarity. The subordinated courts have a statutory obligation to abide by the precedent set by the Supreme Court. Moreover, the Supreme Court itself is expected to maintain consistency by referring to its own prior rulings when addressing analogous legal questions, unless a compelling constitutional or legal ground justifies departure.

This precedent thus plays a pivotal role in harmonizing judicial reasoning across various levels of the judiciary and contributes toward establishing a more coherent, child-sensitive, and context-aware legal framework in cases of child marriage. As such, it reinforces the interpretive responsibility of the courts to uphold constitutional values and international child rights standards.

Policy Impact

The judiciary has critical role in shaping legal and policy reforms through its interpretative authority and landmark judgments. Under Article 133 (4) of the Constitution, the Supreme Court holds the power to issue necessary and appropriate directive orders, including writs, for the enactment of needful legislation to ensure fundamental rights and justice. When adjudicating cases involving systemic gaps or socio-legal complexities, the Court's jurisprudence or interpretation often serve as a directive tool to relevant state institutions, prompting legal or policy action.

This judgment was delivered in the context when child marriage incidents are prosecuted under the charge of statutory rape or in conjunction with other severe criminal offences such as abduction and hostage-taking. This practice, while addressing serious crimes, blurred legal distinction between consensual underage unions and exploitative conduct, raising concerns about proportionality and the best interests of the child.

In response, the Office of the Attorney General (OAG)– the authority responsible for criminal prosecution on behalf of the state – issued a directive (OAG, 2024b) instructing its subordinate offices not to prosecute cases solely as rape when they arise from child marriage, nor to unnecessarily link them with any other unrelated serious offences. This policy reflects a child-sensitive and reformative prosecutorial approach, aligning with the CRC and domestic child protection framework.

By prioritizing the best interest of the child and avoiding overcriminalization, the OAG's decision signifies a progressive step to safeguard the rights of the children and signals the need for parallel reform in the provisions governing marriage and sexual offences under the National Criminal Procedural Code to ensure prosecutorial clarity and doctorial consistency.

Consistency of Jurisprudence Remains a Challenge

Despite the Supreme Court judgment in the case marking a significant doctrinal advancement in the adjudication of child marriage, ensuring consistent application of this precedent across

similar nature of cases remains a critical challenge. As per established judicial norms, precedent set by the Supreme Court are binding on subordinated courts and are expected to guide future decisions of the Supreme Court itself, unless there are factual differences or the need for a different interpretation of prevailing legislation.

Despite this principle of vertical and horizonal judicial consistency, the jurisprudence developed in *Santosh Kumar Yadav* has not been uniformly reflected in other similar cases. For instance, in *Chetan Lawati v. Government of Nepal* (2018), despite the factual establishment of child marriage, the Supreme Court convicted the accused of marital rape. Similarly, in *Government of Nepal v. Raju Bishankhe Sarki* (2021), the Supreme court adopted a comparable approach, raising concerns over interpretive divergence.

These cases prompt two pertinent questions: first, whether convicting an individual of marital rape in the context of child marriage inadvertently legitimizes the child marriage itself; and second, whether the lack of reliance on the *Santosh Kumar Yadav* precedent undermines jurisprudential consistency. Given the similarity in facts, these cases could have drawn upon the nuanced interpretation of child rights, criminal intent, and proportionality outlined in *Santosh Kumar Yadav*, reinforcing a more child-centric, rights-based adjudicatory framework.

The inconsistent application of this precedent underscores the urgent need for doctrinal clarity and shared understanding within the judiciary to foster uniform interpretation in line with constitutional principles and Nepal's international human rights commitments. A bench book developed by the National Judicial Academy (NJA, 2019)—or a similar authoritative reference—could serve as a practical tool to support consistent, rights-based adjudication across all tiers of the judiciary.

Conclusion

The evolving jurisprudence on child marriage in Nepal reflects a decisive shift in the judiciary's orientation—from formalist interpretations rooted in traditional norms to a more progressive, rights-based framework that centres children's lived experiences and constitutional protections. Landmark decisions, particularly *Santosh Kumar Yadav* underscore the Supreme Court's growing commitment to embedding the best interests of the child, not as a symbolic gesture, but as a substantive principle shaping legal reasoning, evidentiary standards, and sentencing outcomes.

Yet, a close examination of post-landmark case law reveals persistent inconsistencies across court decisions. These gaps signal the continuing challenges of institutionalizing human rights-based adjudication, including weak application of child-sensitive approaches and sporadic reliance on progressive precedent. Such divergence underscores the need for doctrinal coherence and a unified judicial understanding of child protection jurisprudence.

To translate judicial vision into meaningful and consistent practice, structural reforms must accompany normative progress. This includes harmonizing conflicting legal provisions, institutionalizing child protection standards across the justice system, and equipping judges, prosecutors, and investigators with the tools – such as procedural guidelines, bench book and targeted training – to apply context-sensitive, survivor-informed, and legally coherent approaches. Additionally, enhancing inter-agency coordination and adequately resourcing child protection services are essential to ensure that court decisions are implemented effectively and have impact beyond the courtroom.

Ultimately, the judiciary has emerged as a key actor in reimagining child marriage as a violation of dignity, autonomy, and rights—rather than a private or culturally accepted matter. While important normative strides have been made, sustained and coordinated efforts are essential to ensure that these gains become embedded in everyday judicial practice. Only through a system-wide commitment to fairness, consistency, and child-centred justice - Nepal can fully realize its constitutional and international obligations to protect its most vulnerable citizens.

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The Need of a Climate Justice Oriented Approach to Safeguard Human Rights in the Context of Nepal: Opportunities and Challenges

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Abstract

Climate change and its adverse effects on human beings present a global challenge. As a Least Developed Country (LDC), characterized by mountainous terrain, and socio-economic vulnerability, Nepal is particularly at risk. It is imperative for Nepal to develop a comprehensive understanding to cope with the human rights implications of climate change, and to establish mechanisms for redressing harm, risk, and damage to its population. This paper discusses the urgent need to adopt a climate justice-oriented approach to respond to the deteriorating human rights violations resulting from climate change and its impact. Although limited studies have been conducted in Nepal that explicitly examine the overall human rights dimensions of climate change, the latest available information and sources indicate that rampant and increasing violations of human rights are occurring and that there may be more serious concerns about encroachments on human rights in future days. Similarly, the impact and consequences of climate change on human rights is highly unpredictable in terms of harm, risk, and long-term damage. Thus, through a desk review of existing literature, this paper aims to highlight the need for a comprehensive climate justice approach to human rights. Nevertheless, climate justice is a comparatively new phenomenon in human rights. However, its necessity is now unavoidable due to the outcomes and impacts of climate change on one of the world's most vulnerable countries in terms of geographical and other conditions. Thus, it is important to respond to climate justice issues from a multidimensional perspective, integrating legal, policy, environmental and human rights frameworks to ensure a just and inclusive response to the climate crisis.

Keywords: climate change, climate justice, climate justice litigation, human rights-based approach

Introduction

Climate change is one of the key areas that creates various threats and concerns to the dignified life of human being and human civilization across the world. In simple terms, climate change refers to the impact on and change in the atmosphere due to global warming. However, there are many factors that contribute to the deteriorating situation - including human activities themselves. One of the key challenges of climate change is its significant impact on the Earth's atmosphere due to greenhouse gases such as carbon dioxide, methane etc. (United Nations, n.d.). Climate change is affecting everyone's life directly and indirectly in a holistic manner, and the need to respond is pivotal to safeguard fundamental rights: the right to life,

environment, health, access to food, fair trial, justice, and others.

The United Nations has long recognized the urgency of climate action. After years of negotiation, the United Nations Climate Change Conference (COP21) in Paris, France, adopted the Paris Agreement on 12 December 2015 under the United Nations Framework Convention on Climate Change (UNFCCC). The agreement took effect on 4 November 2016. Nepal became a party to the Paris Agreement by signing and ratifying it in 2016 and thus bears a binding obligation to fulfill its commitments.

The Paris Agreement stipulates the need to tackle the permanent and irreversible impacts of human-induced climate change, particularly through its standalone provisions concerning loss and damage. The Paris Agreement aims to limit the increase in global average temperature to well below 2°C, and to pursue efforts to limit the temperature increase to 1.5°C in comparison to pre-industrial levels. However, the agreement lacks a clear pathway for emissions reduction and relies on a system of bottom-up, voluntary pledges from signatories. The absence of a mechanism to enforce actions or apply punitive measures for the failure to achieve these goals makes the agreement weak and raises doubts about whether the climate crisis will truly be resolved.

Specifically, the Paris Agreement provides a framework for financial, technical, and capacity-building support to countries that need it. Thus, it is important that, as one of the most vulnerable countries, Nepal makes a clear and strong claim to seek all kinds of support, backed by strong advocacy and negotiation skills, to safeguard the fundamental rights of its population as ensured by the Constitution and other legislation at national and international levels. The Paris Agreement also includes provisions related to climate finance, which means providing financial support to vulnerable countries to tackle climate change. However, no specific fixed targets have been mentioned. Apart from this, the Paris Agreement is not able to explicitly address the concerns of human rights violations and the climate justice approach, especially concerning vulnerable countries.

Domestically, despite several discrepancies, Nepal has taken notable initiatives such as promoting a clean, and sustainable environment, promulgating and implementing of Euro-6 vehicle standards, hosting the Sagarmatha Talk, and raising concerns about glacial melt in several international forums. Additionally, Nepal has also advocated for the recognition of the special vulnerabilities and needs of the Small Mountainous Developing Countries (SMDCs). However, we do not yet have a specific legal framework that categorically responds to climate change-related human rights violations or provides a clear approach to seeking justice. However, we do have various spread out legal frameworks that ensure different forms of fundamental rights, which also relate to climate justice concerns. Apart from legal adoption, there have also been other limited initiatives undertaken to respond to climate change concerns in terms of strengthening access to justice. These includes advocacy/lobbying, climate justice litigation, policy advocacy, and strengthening National Human Rights Institutions (NHRIs) among others.

For this paper, I have applied analytical, interpretative, and descriptive research methods; however, a personal self-explanatory approach has also been reflected based on my experiences on various issues. I focus on analyzing and clarifying the need for adopting of climate justice initiatives - including analysis of the human rights situation due to climate change, policy-level advocacy, policy reform, and maintaining data on the nature and forms of human rights violations to respond to related violations.

One of the key challenges in our context is the absence of a comprehensive, systematic, and scientific study with data that clarifies the nature and types of human rights of Nepali citizens at risk of encroachment due to climate change, and its impacts. I think that it is necessary to respond to human rights concerns related to climate change by establishing a robust climate justice approach, initiated through various context-specific initiatives that identify Nepal's specific needs and challenges.

Human Rights Concerns and Climate Change

Nepal only contributes around 0.027

percent to global greenhouse emissions; however, it ranks fourth among countries most vulnerable to the impacts of climate change (World Bank, 2021). These impacts include drought, excessive rainfall, floods, landslides, and the inundation of glacier lakes - hazards that disproportionately affect communities with poor socio-economic status (Ministry of Forests and Environment, 2021).

Climate change is increasingly undermining the free and dignified exercising of human rights in multiple ways. It contributes to hazardous environmental conditions, reduces biodiversity, increases health risk, and may lead to forced migration. The consequences can be severe and wide-ranging, particularly for the most marginalized groups.

In recent years, Nepal has experienced serious air pollution, especially in Kathmandu Valley. At several points during the year, Kathmandu ranked first among the most polluted cities in the world, and the overall air quality in Nepal reached dangerously unhealthy levels (IQAir, 2014). According to Nepal's approved air quality index (AQI) standards adopted by the Government, an AQI value between 151 and 300 is considered very unhealthy, and levels above 301 are deemed hazardous (Department of Environment, 2023).

Multiple national news outlets have repeatedly reported that the toxic air pollution poses serious health risks – especially to children, senior citizens, pregnant women, and individuals with pre-existing heart or respiratory conditions (MyRepublica, 2025). In response, the government has urged citizens to stay indoors and wear a mask when going outside. Hospitals have also reported an increase in patients seeking treatment for eye irritation, sore throat, headaches, and respiratory symptoms during peak pollution periods.

Despite Constitutional guarantees of the right to a dignified life, the right to a clean environment, and the right to health it is evident that people in Nepal continue to suffer the consequences of environmental degradation and climate-induced health risks. As an LDC, Nepal faces multi-faceted challenges, with climate justice at risk particularly for vulnerable populations.

Human Rights-Based Approach to Responding Climate Change

It is important to adopt a human rights-based approach in responding towards the concerns raised by climate change. Numerous international human rights instruments explicitly address human rights issues, including the Universal Declaration of Human Rights (1948), International Covenant on Civil and Political rights (1966), and the International Covenant on Economic, Social and cultural Rights (1966).

These instruments affirm that all human beings are born free and equal with dignity and rights, and emphasize principles highly relevant to climate justice. Key principles include:

- Distributive justice: Fair allocation of adaptation burdens, adverse health impacts, and other climate related effects, particularly in relation to vulnerable populations.
- Procedural justice: Ensuring fair and inclusive decision-making processes, with special attention to communities historically excluded and rendered voiceless.
- Intergenerational justice: Considering the long-term consequences of current decisions on future generations.
- Gender equity: Recognizing the differing abilities of women and men to adapt to or mitigate the challenges and impacts of climate change.
- Precautionary principle: Exercising caution when action or inaction may result harm to the population or the environment.

Human rights law and remedies specifically can be helpful tools to protect environmental interests, the right to health, and to reduce inequality, since these rights are widely recognized in both, existing international and national legal frameworks (UN General Assembly, 1948; OHCHR, 2015). The relevance of human rights obligations on climate change is now beyond dispute, and the systemic integration of these obligations is being increasingly adopted, both nationally and internationally (Knox, 2018).

There are also emerging good practices that show human rights-based initiatives can be mobilized to address climate challenges. In some of the countries, National Human Rights Institutions (NHRIs) are also working proactively to respond to human rights concerns from climate change. One notable example comes from the Philippines, where the Commission on Human Rights played a pioneering role in developing accountability for climate-related human rights harms.

In 2015, a coalition of national and international civil society organizations and individuals – led by Greenpeace Southeast Asia – submitted the Carbon Majors Petition to the Commission. The petition called for an investigation into the responsibility of the world's largest corporate greenhouse gas emitters (known as the Carbon Majors) for human rights violations or threats thereof resulting from the impacts of climate change (Greenpeace, 2015). The petition was filed following the widespread loss of life and harm to property and persons associated with increasingly extreme weather events in the Philippines. This initiative led to the National Inquiry on Climate change (NICC), which investigated the increasing frequency and severity of natural disasters and the resulting human rights impact in the Philippines. It marked a historic first-of-its-kind investigation, bridging the gap between environmental harms and corporate human rights accountability. The Commission released its findings in 2022, concluding that corporations can be held accountable for human rights violations stemming from climate change (Commission on Human Rights of the Philippines, 2022). The report established a crucial precedent in coalescing emissions with legal responsibility for rights-based harms.

Notion of Climate Justice

The climate justice movement has its historical roots in anti-globalization protests and the formation of the Durban Group for Climate Justice in 2004, which explicitly critiqued carbon trading. Later, the "Climate Justice Now!" network primarily allied itself with European activism through the "Climate Justice Action" campaign during the 2009 Copenhagen Summit (Bond, 2010). At its core, the climate justice movement frames climate change as a fundamental rights issue, one that affects lives, health, children, and access to natural resources.

The central argument is that the resource footprint, overconsumption, and fossil fuel dependence of the Global North has externalized environmental costs onto the Global South – effectively turning these regions into "social sinks" (Bond, 2012; Shultz, 2010). The climate justice approach calls for the repayment of this climate debt by wealthy nations of the Global North, in the form of reparations and by leaving ecological space for sustainable development in Global South nations (Schultz, 2010).

According to Brian Tokar, a noted climate justice advocate, climate justice evolved out of the anti-capitalist and global justice movements in resistance to institutions like the World Trade Organization, and the economic summits of the late 1990s and early 2000s (Tokar, 2014). He argues that the movement goes beyond environmental sustainability by emphasizing systemic injustice, power imbalance, and the historical responsibilities of industrialized nations.

The Center for Climate Justice at the University of California defines climate justice as a vision to dissolve and alleviate the unequal burdens created by climate change. It recognizes the disproportionate impact on low-income communities and those least responsible for the problem (University of California Centre for Climate Justice, n.d.).

The UN Women framework on Feminist Climate Justice similarly asserts that the climate crisis places a disproportionate burden on poor and marginalized communities, especially women. Addressing this requires dismantling fossil fuel corporate power, ensuring reparations, and achieving a fair distribution of global wealth (UN Women, 2022). Barbara Adams and Gretchen Luchsinger, explain that the notion of climate justice has emerged as a way of encapsulating the equity dimensions of climate change, linking environmental protection to social justice and human rights (Adams & Luchsinger, 2010).

Climate justice builds on a platform of equitable development, human rights, and democratic participation. It seeks to redress the injustice of global warming by reducing disparities in development and power that drive the climate crisis and perpetuate inequality. According to Dr. Jethro Pettit of the University of Sussex, marginalized communities are already invoking climate justice in rights-based language to identify actors responsible for climate harms, and to challenge systems that continue to reinforce vulnerabilities (Pettit, 2009). Pettit also argues that a climate justice approach can help expose and address human rights issues, inequality, and systemic injustice. It is essential, therefore, to explore how a climate justice approach can be used in Nepal to respond to climate-related human rights-based concerns and to apply a human rights-based framework to climate policy and legal mechanisms.

The Office of the United Nations High Commissioner for Human Rights (OHCHR), in its 2009 report, emphasized that the effects of climate change give rise to justiciable human rights violations. However, the report also identifies several technical and procedural obstacles to holding stakeholders accountable, including the challenge of finding judicial or quasi-judicial bodies willing and able to hear such complaints.

Advancing a Climate Justice Approach in Nepal: Imperatives and Strategic Pathways

A climate justice approach represents a critical framework that must be prioritized within the Nepali context. A central question that demands urgent consideration is: *How can the protection and promotion of fundamental human rights be ensured amidst escalating climate-related challenges?* Climate justice is inherently multidimensional, necessitating the coordinated engagement of diverse stakeholders—each bearing distinct roles, responsibilities, and accountability mechanisms.

Despite minimal contribution to global greenhouse gas emissions, Nepal is burdened with disproportionate climate vulnerabilities due to its mountainous terrain, fragile ecosystems, and socio-economic constraints. Consequently, adopting a climate justice lens is not only warranted but imperative to safeguard the rights of people least responsible for climate change, yet most severely impacted. To operationalize this approach, the following strategic interventions are proposed:

Promoting Climate Justice Advocacy

Effective advocacy is essential to raise awareness and build consensus on what climate justice itself entails and how it can be implemented. This includes informing key stakeholders – such as policymakers, legal professionals, civil society, and community leaders – about the normative principles and tools underpinning climate justice.

As a signatory to the Paris Agreement, Nepal must actively engage in international forums to secure increased climate financing, technical support, and stronger global commitments to emissions reductions. Such advocacy should reflect the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC).

Leveraging Human Rights Law

Human rights law serves as a powerful instrument for advancing climate justice. It provides a robust legal foundation for protecting environmental integrity, the right to health, and other rights adversely affected by climate change. These frameworks enable individuals and communities to demand accountability and seek redress of grievances when violations occur.

Policy advocacy must aim to integrate national legal instruments with climate justice principles and incorporate climate-related risks into broader human rights discourse. Existing human rights standards should serve as complementary fillers to ensure meaningful protection where environmental law proves inadequate.

Strengthening Climate Justice Litigation

Strategic litigation can be an effective mechanism for holding both state and non-state actors accountable for inaction or harmful practices related to climate change. Although climate litigation in Nepal remains nascent, it possesses significant potential for catalyzing systemic change.

In order to pursue this avenue, targeted capacity-building initiatives should be implemented for judicial actors—including judges, lawyers, prosecutors, and court personnel. These programs should focus on best practices in climate jurisprudence, strategic litigation techniques, and the interpretation of constitutional and human rights norms in the context of environmental harm.

Empowering National Human Rights Institutions:

Strengthening the mandate and operational capacity of Nepal's National Human Rights Commission (NHRC) is essential to institutionalize a climate justice approach. The NHRC can play a critical role in monitoring environmental rights, investigating climate-related violations, and issuing actionable recommendations for government accountability.

Furthermore, establishing dedicated redress mechanisms—either within the NHRC or through parallel institutional structures—would enhance public trust and facilitate access to remedies for marginalized and climate-affected communities. Such mechanisms should prioritize transparency, accessibility, and responsiveness to ensure effective climate and human rights protection.

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'Hindutva': Political Narrative in India and its Implication for South Asia

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Abstract

Indian's long-standing identity as a secular democracy is increasingly being contested by ascendance of far-right ideological narratives, particularly those associated with the concept of "Hindutva". With the electoral prominence of the Bharatiya Janata Party (BJP) and ideological influence of the Rashtriya Swayamsevak Sangh (RSS), 'Hindutva' has emerged as a dominant political discourse. The ideology envisions India as a fundamentally Hindu nation, wherein citizenship and national belonging are closely tied to Hindu cultural affiliation. In this framework, non-Hindu communities are expected either to conform to majoritarian norms or accept subordinate status. Political actors and affiliated organizations have strategically utilized mass media and discursive tools to foster communal polarization, often targeting Muslim and other minority communities. This has contributed to increased marginalization, socio-political exclusion, and incidents of communal violence. Moreover, such narratives have extended beyond national borders, contributing to the dissemination of exclusionary rhetoric within the South Asian region. Anti-Muslim sentiment promoted by certain Hindu nationalist factions has exacerbated regional tensions and reinforced militarized and nationalistic postures. There is a growing concern that Hindutva-aligned narratives may influence minority Hindu populations in neighboring countries, potentially catalyzing reactive mobilizations among other religious groups, including Muslim and Buddhist factions. This discursive spill over heightens the risk of reciprocal extremism, deteriorates inter-state relations, and intensifies communal tensions. Consequently, these dynamics pose a substantive threat to regional stability and minority rights across South Asia.

Keywords: communal violence, Hindu far-right, Hindutva, minority rights and Islamophobia, South Asia

Introduction

India has long been touted as the world's 'largest democracy' and often positioned as a model of 'functioning democratic' governance for postcolonial societies, particularly within the South Asia Region. This narrative has been emphatically promoted by segments of the Indian political establishment and widely embraced by receptive Western and regional audiences, including the media. However, prominent critiques – such as those by author Arundhati Roy – have challenged this perception, arguing that democracy in India is "only for the rich and the elite", and describing it as "the biggest publicity scam of this century. Holding

elections every five years does not necessarily mean that our country enjoys a democracy" (Roy, 2006).

The proliferation of far-right 'Hindutva' ideology has further complicated India's 'democratic' reputation, with scholars and observers documenting increasing instances of systemic marginalization and discrimination against Muslim and other minority communities (Wright, 2024; Dutta & Pal, 2024; Banaji, 2018; Shahzad et al., 2021). This article critically examines the regional implications of this ideological shift within South Asia, particularly as it relates to the rights, security, and social inclusion of the minority communities in neighbouring countries. This analysis draws on secondary sources and employs a content analysis methodology to examine the evolving political discourse and its transnational repercussions.

Hindutva and the Transformation of Political Discourse in India

In recent decades, the dominant political discourse in India has gradually shifted from democratic pluralism towards 'cultural-nationalist' and 'religious-nationalism', specifically manifesting in the ideology of 'Hindutva'. This shift has coincided with the rise of Bharatiya Janata Party (BJP), a far-right political party, and its ideological parent, the Rashtriya Swayamsevak Sangh (RSS) (Banaji, 2018). The concept of 'Hindutva', often translated as 'Hinduness', is distinct from religious Hinduism or the process of Hinduisation. Rather, it represents a form of exclusionary ethno-nationalist ideology that promotes a homogeneous Hindu cultural identity as the foundation of national belonging.

While V. D. Savarkar is widely credited for introducing 'Hindutva' in the 1920s, its ideological roots trace back to figures such as Swami Dayananda Saraswati, who formed the Arya Society in 1875 to reform Hinduism. Over time, the RSS and its auxiliary organisations, such as the Vishva Hindu Parishad (VHP), BJP, Bajrang Dal, Hindu Jagran Manch (HJM), Shiv Sena (lately one splinter group opposing BJP politically), Rashtra Sevika Samiti (Women's Volunteer Committee), and the BJP – collectively known as the "Sangh Parivar" (the Sangh Family), expanded the ideology's influence. Although 'Hindutva' remained a fringe idea until 1980s, the RSS successfully mainstreamed it through the political ascent of the BJP.

Central to the 'Hindutva' ideology is the assertion of a monolithic Hindu religion, Hindu culture, Hindu nation/identity, and Hindu state (Dutta & Pal, 2024). V. D. Savarkar argued that Hindus are the "true sons of Indian soil," due to the geographic location of their sacred sites, while Christian and Muslim holy lands lie beyond India's borders (Wright, 2024). This claim underpins a broader narrative of religious and cultural superiority that often marginalizes religious minorities – particularly Muslims and Christians – who are perceived as external or historically invasive (Datta, 2024) – as well as socio-economically marginalised groups such as Dalits and Adivasis (Siddiqui, 2024).

In traditional nationalism frameworks, allegiance to the nation-state supersedes communal identities. However, in 'Hindutva', loyalty to the Indian nation-state is "inextricably linked" to the "Hindu religious affiliation" (Wright, 2024, p. 7). As Banaji (2018) observes, the ideological construct of Hinduism favoured by 'Hindutva' adherents is a contemporary, narrow and rigid interpretation of the religion, which is repressive, high-caste, vegetarian and chauvinist in nature. The broader political goal is the realization of a 'Hindu Rastra' (Hindu Nation) through the mechanism of exclusion, intimidation, subjugation, or assimilation (into a subordinate status) of non-Hindu communities (de Souza, 2022).

Positioning Indian nationalism with 'Hindu religion' and centrality of the 'Hindu state' makes 'Hindutva' a fascist ideology which works through violent exclusion of others (Shahzad et al., 2021). It is not surprising that its prominent proponents such as M. S. Golwalkar and B. S. Moonje drew their inspiration from Nazi Germany and Fascist Italy for ideological guidance while Savarkar envisioned placing Indian Muslims in a subordinate position similar to that of Black Americans in the United States (Hindu Supremacy and the Multiracial U.S. Far Right, 2024). Banaji (2018, p. 335) describes it as "Indian fascism" or "Hindutva fascism" and adds that "the RSS is a Hindu fascist "grassroots"

organisation similar in its values to the Hitler Youth (with "Muslims" replacing "Jews" in their propaganda)". Dutta and Pal (2024) compared 'Hindutva' with the White Supremacist Alt-Right and Nazi ideologies, highlighting shared tendencies such as glorification of violence, militarism, notions of racial or cultural purity, and hostility toward the perceived 'others'.

As a fascist ideology, 'Hindutva' depends on creating fear and anxiety among the majority Hindu population through inventing threats for political gains. One of the key strategies of 'Hindutva' is disparaging religious minorities, particularly Muslims, and other marginalised groups in India; another is subjecting them to discriminatory practices at different levels (Wright, 2024; Dutta & Pal, 2024; Banaji, 2018; Shahzad et al., 2021). Their narrative portrays Muslims and other minorities as a threat to 'Hinduism', who may surpass 'Hindu population' – demographically and politically – through population growth, conversion, and migration, echoing the rhetoric of the 'Great Replacement' theory (Dutta & Pal, 2024; Desai, 2022; Bhat, 2021). The BJP/RSS have propagated the false narrative that Muslims have disproportionately high birth rate and Muslim women have higher fertility and bear more children, despite official government data indicating otherwise (Desai, 2022). A common narrative depicts Muslim men as lustful and dangerous (Desai, 2022), who strategically form romantic relationship with 'Hindu' women with the alleged intent of converting them and involving them in extremist activist – a concept widely referred to as "love jihad" (Dutta & Pal, 2024; Siddiqui, 2024; ISD, 2023). In addition, they are also presented as antinational through rhetoric, imagery, and hate speeches (Deshmukh, 2021), which generates polarization, anti-Muslim hate campaigns, and violence in India and beyond (Shahzad et al., 2021). Dutta and Pal (2024, p. 2) noted that, "the majoritarian Hindu narratives thriving on constructing the minority other as an obstacle to achieving ethnic singularity, planting seeds of genocide, and initiating communal pogroms".

The mechanism of 'Hindutva' propaganda politically works across multiple layers. Domestically, it first vilifies and 'otherwise' Muslims, other religious minorities, and marginal groups. Internationally, it selectively focuses on the treatment of non- Muslim minorities – particularly Hindus – in neighbouring countries, while showing little or no concern for persecuted Muslim populations such as Rohingya. This double standard is often accompanied by escalated tensions with Muslim-majority neighbouring countries, such as Pakistan and Bangladesh to stoke up fear and consolidate political support domestically, particularly during election periods. Along with it, 'Hindutva' propaganda messages promote the idea of "Mother India" or "Akhand Bharat" (whole or unified India), which is based on a mythologized and romanticised vision of undivided pastoral South Asia, and often visualised through maps of "Mother India" or "Akhand Bharat" including present-day Pakistan and Bangladesh (Brosius, 2005 in Banaji, 2018). At the centre of 'Hindutva' propaganda and narrative is the 'Otherising' of Muslims and Islamophobia (Siddiqui, 2024). Muslims (and Christians) have always been depicted as outsider invaders, inherently violent and intolerant to other faiths, thus a threat to Hindus, portraying Hindus as potential victims (Datta, 2025) to incite violence against the Muslims and to justify that.

The Hindu nationalists have been succeeded to expand their 'Hindutva' hegemony to such an extent that the other major political parties adherent to secularism, such as Congress, have been adopting a 'soft version of Hindutva' for political convenience.

Hinduisation, Hindu Nationalism in Nepal, and Hindutva

The historical trajectory of Hinduisation and nation building in Nepal offers a valuable framework for distinguishing between 'Hindutva', Hinduisation, and other expressions of Hindu nationalism. Within South Asia, apart from India, Nepal is the only country with a majority Hindu population. For a significant period in history, it was the world's sole officially recognised 'Hindu state' before transforming into a secular republic in 2007 following a decade-long civil war.

According to Lawoju (2025), the process of 'Hinduisation' in Nepal began during the Malla dynasty (1382-95 AD) and continued through the

Shah dynasty (since 1760-2008), and was formally codified in law under the Rana regime (1846-1951). During the century-long Rana regime, Hindu religious practices, values, and nationalism became deeply embedded in the socio-political order, shaping national identity and reinforcing Hindu-centric governance. Even after the country's transformation into a constitutional monarchy, the narrative of Hindu nation-building agenda continued through the mechanisms of democratic party politics.

Interestingly, Nepal integrated Hindu religious and cultural elements into state affairs for nation-building (though not a 'nation-state' in contemporary sense) for at least a century before the earliest notion of 'Hindutva' took root in India. In fact, Nepal served as both an inspiration and a model for the pioneers of 'Hindu nationalism' in India (Lawoju, 2025). While many Nepalis shared 'Hindu nationalist' sentiments with their Indian counterparts, they also tried to maintain a difference from Indian 'Hindu nationalism' (Lawoju, 2025). In Nepal, the term 'Hindutva' has not historically been used to describe the process of 'Hinduisation', 'Hindu nationalism' or Hindu nation-building. Nonetheless, these ideologies share notable similarities – both aim to supress diversity among population and enforce hereditary hierarchies through the use of Hindu religion and culture, thus making them coercive and inherently unequal in nature.

Yet, there are several distinctions between Indian 'Hindutva' and the process of 'Hinduisation' in Nepal. First, they evolved in different historical periods. In Nepal, Hinduisation originated in the fourteenth century, during a time when kings held sovereign power and could impose religious practices and social customs of their choice and legitimise it among their subjects relatively easily as sovereigns. These rulers gradually consolidated a hierarchical social order for their own strategic interests, organising society into vertically stratified but horizontally categorised groups.

By contrast, 'Hindutva' was introduced in India much later, in early twentieth century, when the concepts such as the 'nation-state', 'democracy' and 'citizenship' were relatively more familiar with the convening of first elections for the Imperial Legislative Council and Provincial Councils in 1920. Within this contested context of electoral politics and independence movement against British colonisers, 'Hindutva' relied upon glorification of 'Hinduism' and inventing binary opposition to consolidate support along religious lines.

As a result, the Nepali 'Hinduisation' was comparatively more cohesive and not overtly hostile toward Muslims or other religious minorities. 'Hindutva' promoted concepts of Hindu racial and cultural superiority, historical glorification, purity of blood, and invented threats of Muslims and Christians to increase and consolidate its support base among majority Hindus and was fundamentally divisive in nature.

In Nepal, the Hindu monarch and the institution of monarchy have historically been central to the idea of a Hindu Nation and are often considered as complementary to it – though not necessarily indispensable. Conversely, while 'Hindutva' idealises mythological kings (such as Ram) as epitome of rulers and regards Nepal as an ideal Hindu nation, it does not advocate for a monarchy in India. Furthermore, whereas, 'Hindutva' proponents were actively engaged in opposing British colonial rule, Nepal's Hindu nationalist elite did not antagonise the British, despite their ideological ties with Indian Hindu nationalists (Lawoju, 2025).

Propaganda Infrastructure, Media and Tactics

Indian far-right 'Hindu nationalists' use an elaborate information-sharing infrastructure – encompassing digital platforms, traditional media, and offline networks – to propagate their narratives and establish 'Hindutva' hegemony at national, regional, and global levels (Datta, 2025).

Christiane Brosius wrote about the evolution of 'Hindutva' propaganda mechanism - it was initially in-person discussions and reading of texts among the neighbourhood member groups. Since 1980s it was cassette and video tape based, when a lot of "quasi-fictional" "documentary" was produced around the Babri Masjid issue to stir up "militant Hindu consciousness" to

unify them. The visual communication symbols were saffron flag for Hinduism, iconic images of Hindu chauvinist leader or leaders preferred by 'Hindutva', Gods, and romantic portrayal of "Mother India" (Bharat Mata) encompassing whole of South Asia. Devotional songs and music were integral parts of this communication process and often accompanied the visuals (Brosius, 1999 in Banaji, 2018). Increasingly, the BJP/RSS used the symbols of power, masculinity and aggression to portray a "muscular religion" to build a new Hindu majoritarian "national subject," based on mythological belief, where loyalty to the BJP leaders would be the ultimate measure of citizenship and national belonging. By 2014, with the advent of technology, the BJP/RSS shifted to online platforms including comic books, social media, and YouTube, for their communication and outreach efforts. (Banaji, 2018).

Along with these ordinary communication methods, extreme violence, such as pogroms and massacres were also used as message delivery methods. According to Banaji (2018, p. 341), "Sarkar's "semiotics of terror" analyses the pogrom itself as a calculated performance of a spectacle of bloodletting, with which the perpetrators wished the minds of all Indian Muslims and secular citizens to be imprinted. Ergo, the spectacle of this incredible, genocidal violence was a call to arms for some, a final warning for others. It was part of the visual repertoire of Hindutva."

According to Reporters without Borders (RSF) (RSF, n.d.) most of the major media outlets in India are owned by a few wealthy people closely affiliated with the BJP, which has "signalled the end of pluralism in the mainstream media". The huge government spending in advertisements, the primary revenue earning source for many media houses, is also used as a tool to control it. In addition, draconian laws, extrajudicial use of force, imprisonment, intimidation, harassment, and even killings are used to silence critical journalists. The BJP/RSS affiliated 'Hindutva' mob is notorious for branding critics as "traitor" and "anti-national", launching coordinated and terrifying hate campaigns against them, including calls for murder on social media and violently targeting women journalists and disclosing their personal information on internet (RSF, n.d.). Journalists who cover the news of Kashmir are often targeted by authorities, with some subjected to prolonged "provisional" detention. The Indian media has been in an "unofficial state of emergency" since the BJP led by current Prime Minister Narendra Modi, came to power in 2014, the RSF stated. As Banaji observed, "the mainstreaming of far-right positions on a number of issues concerning Muslims in India have been only one of the ways in which mainstream media both in India and the West, have colluded to allow the rise of fascism" (Banaji, 2018, p. 340).

In addition to its near-total control over conventional or mainstream media, the BJP/RSS has developed an intricate network of far-right web-based news sites, social media networks, and more closed huge groups in messaging apps such as WhatsApp and Telegram. This ecosystem also includes NGOs, think tanks, social media influencers and extremist songs used to promote 'Hindutva'. The abundance of BJP/RSS-affiliated media has given rise to a new terminology – 'Godi Media' – used by critics to describe outlets perceived as lapdogs of Modi government. The term combines Modi and the Hindu words for Lap (Goad), referring to media that serves the BJP and the Hindu far-right in India (Siddiqui, 2024; RSF, n.d.; Husain, 2020). All of these work as echo-chambers, amplifying each-other's message, flooding the information space with pushed up narratives suitable to their own agenda, and suppressing diverse perspectives – ultimately creating a loyal myopic follower base, while marginalising different opinions.

Over the years, the communication or propaganda infrastructure of the BJP/RSS has grown significantly both in size and jingoistic attitude, as well as, by level of misinformation and disinformation generated. According to a 2019 report by EU DisinfoLab, a coordinated network of 265 pro-Indian fake websites and think tanks across 65 countries was involved in influencing decision making and anti-Pakistan lobbying in Europe, all of which were traced back to a single Indian company, Srivastava Group (Carmichael & Hussain, 2019). Scholars such as Mohan Dutta have also found links between 'Hindutva' and other

far-right groups, such as White Supremacist groups and affiliated media, in spreading Islamophobia and hate against Muslims (Dutta, 2025; Dutta & Pal, 2024). Islamophobia and hate against Muslims are the points of convergence that bring these groups together. The "Love Jihad" narrative is a global Islamophobic trope that has been used by 'Hindutva', White Supremacist and even Burmese Buddhist fascists in Myanmar, to perpetrate violence, even genocide against Muslims (Dutta & Pal, 2024).

Violence against Muslim and other Minorities within India

The real-life consequences of the 'Hindutva' narrative and propaganda on the Muslims and other minorities in India have been devastating. With the rise of the BJP/RSS and the growing mainstream acceptance of the 'Hindutva' ideology, the persecution of minorities in India has increased exponentially (WWG, n.d.). Since returning to power for a second term in 2014, the BJP – under the leadership of Prime Minister Narendra Modi – has been pushing forward the 'Hindutva' agenda, effectively relegating Muslims and other religious minorities and marginalised groups to second-class status. Ninety percent of religion-based hate crimes in India between 2009 and 2019 occurred after Modi's 2014 election (Wright, 2024). Hate speech increased nearly 500 percent from 2014 to 2018 compared with five years before BJP rule, with 90 percent of those speeches coming from BJP members. Not only that, 255 gatherings were documented in the first half of 2023 that spread hate speeches targeting Muslims – an average of one per day – with 80 percent of that taking place in states governed by the BJP, which was far higher than in previous years (Wright, 2024).

Meanwhile, attacks against Christians, Dalits and other minorities have also been increased sharply. According to the Evangelical Fellowship of India, anti-Christian hate crimes had doubled since 2014 (ISD, 2023). The BJP/RSS-affiliated 'Hindutva' mobs stormed churches, burned Christian literature, attacked schools, and assaulted worshipers. In one instance, a group was reportedly organising online to plan raids on church services through a WhatsApp group with 5,000 members (Gettleman & Raj, 2021).

Muslims being the largest religious minority group in India (14 percent of the population), are the primary target of 'Hindutva' fascists. A 2021 survey among Muslims in India revealed the extent of online hate they experienced on digital platforms. Thirty-nine percent of the respondents said they are being called offensive names; 40 percent reported they had been targeted on social media in the past 12 months because of their Muslim identity. Furthermore, 60 percent encountered digital content stating Muslim immigrants would take over India; 58.9 percent came across digital content accusing Muslims of targeting Hindu women for marriage; 55.3 percent had seen dehumanizing content depicting Muslims as animals and 59.7 percent had encountered digital content inciting violence against Muslims (Dutta & Pal, 2024).

The communal conflict and violence reached a new level in India with the ascend of the BJP/RSS regime. Since 1950, more than 10,000 people were killed in Hindu-Muslim communal violence, where majority of them were Muslims. In 1992, following the demolition of the Babri Masjid (Mosque) by militant BJP/RSS cadres, an estimated 3,000 people, mostly Muslims, died in communal violence (Maizland, n.d.). In 2002, Hindu extremists affiliated with the BJP/RSS led brutal attacks on Muslims in Gujarat, where between 1,000 and 2,000 people, mostly Muslims, were murdered in a year-long violence widely recognized as a pogrom (Brass, 2004). According to Banaji (2018, p. 341), "This pogrom—which included gang rapes of Muslims and women married to Muslims, Muslim foetuses ripped from bellies with swords, the castration, stabbing, beheading and burning to death of Muslims, and Muslim housing societies set aflame while cordons of Hindutva women and police refused to allow fire trucks to save anyone – (Sarkar, 2002; Ohm, 2010)". The then chief minister of Gujarat, Narendra Modi, was accused of inciting and condoning the violence. The authorities such as members of the BJP government, the police, and even members of the Indian Administrative Service (IAS), both at state and federal levels, were accused of colluding with the Hindu extremists in a methodical pogrom

(Brass, 2004), "enacted with precision and extreme brutality by persons and organizations" (Brass, 2004. para 7).

Other notable communal violence were 2013 Muzaffarnagar riots, the cow protection vigilante campaign against beef consumption intensified between May 2015 and December 2018, following the election of Prime Minister Modi and the 2020 Delhi riots (Wright, 2024). Very recently, Kashmiri armed groups fighting for the independence of Indian administered Jammu and Kashmir from India attacked tourists in Kashmir on 22 April 2025 killing 26, which was followed by widespread violence against Muslims and Kashmiris across India (Sharma, 2025; Mateen & Javeed, 2025). It was only the recent spate in ongoing violence against Kashmiri Muslims by Indian government agencies, including systematic killings, rape, disappearances, detentions, and collective punishments (Human Rights Watch and Physicians for Human Rights, 1993; 1993 ii, HRW, 2024). Even before that, communal violence had been rampant in Manipur since April 2023. The BJP/RSS linked groups and politicians were accused of inciting hatred and violence against minority Christian tribal population known as Kuki-Zo (Chakrabarti, 2024).

Dutta & Pal (2024) noted that disenfranchisement through citizenship registers that exclude a minority community is a critical element in the stages of genocide (Stanton, 2020, in Dutta & Pal, 2024)), as is the act of dehumanizing them as animals and propagation of the "love jihad" trope. Reflecting the gravity of the situation, India ranked 5th highest-risk country for experiencing a new mass killing in 2024 and 2025 by the Early Warning Project of the United States Holocaust Memorial Museum and has remained among the top 15 highest-risk countries for several years (The Wire, 2024). However, Brass (2004) mentioned that the Gujarat pogrom extended beyond the boundaries of riots, pogroms, and massacres and transgressed into the "zone of genocide".

Hindutva and Regional Foreign Policy

The interplay of fascist 'Hindutva' politics, the resulting jingoistic popular sentiment, the 'Hindutva' media network, and Indian foreign policy is most evident in recent developments involving Bangladesh and Pakistan.

In July 2024, a student protest against overwhelming reserve quotas in government services in Bangladesh morphed into a popular uprising against the dictatorial rule of the then Prime Minister Sheikh Hasina, who led a fascist regime for more than 15 years with active support from the Indian state. In response, Hasina unleashed party-affiliated thugs and security forces that resulted in the killings of more than 700 people. Eventually, Hasina was ousted by the popular uprising and fled to India on 5 August 2024, where she was cordially received. The support for the repressive regime of Hasina and its role in suppressing democratic practices in Bangladesh had made India unpopular among Bangladeshi population, which further intensified with the massacre of hundreds of protesters, mostly students, and India's granting her refuge. During and after the protest against Hasina, 'Godi Media' flooded the information space with the fake news and disinformation about supposed 'violence against Hindus' in Bangladesh (Mahmud & Sarker, 2024; Faridi, 2024; Prothom Alo, 2024; The Wire, 2024). They [and most other media, experts and policy makers] have been falsely portraying that Bangladesh was taken over by violent Islamists or 'quite military coup or there was external influence behind the uprising (Mahmud & Sarker, 2024; Mojumdar, 2024). However, they were completely silent about the repressions of Hasina and crimes she perpetrated against the unarmed civilian protesters. Besides, there were 'protests' for alleged 'violence against Hindus' in Bangladesh organised by groups linked with the BJP/RSS in different parts of India, including attack on the Bangladesh Assistant High Commission in Agartala (The Daily Star, 2024). There were also reported incidents of refusing hotel and hospital services to Bangladeshi visitors (Times of India [TOI], 2024).

It is not surprising that even the Indian 'secular' opposition congress leader Rahul Gandhi expressed support for the government, citing concern for 'minority safety' and raised question whether there was foreign interference (Hindustan Times [HT], 2024. The profound contradiction in Indian foreign policy is clearly visible in the

statements of another congress leader, Shashi Tharoor, who articulated "cardinal yardsticks" to guide India's policies towards Bangladesh: *"Two things I will stress: we should not do anything overtly or covertly that implies interference with the internal affairs of Bangladesh…"; "And, secondly, we should keep uppermost the interest of the people, the well-being of the people, of Bangladesh rather than conveying in any way the impression that we are more concerned about either a particular political party or a particular community."* (Tharoor urges India to prioritise Bangladeshi people, The Daily Star 11 February 2025, para. 12-13.) Yet, despite these words he 'undoubtedly' supported hosting of Sheikh Hasina, who is alleged for committing massacres against the citizens of Bangladesh and wanted for those crimes.

In another incident, on 22 April 2025, armed men opened fire on tourists in Indian-administered Jammu and Kashmir, killing 26 people. A little-known Kashmiri armed group, The Resistance Front (TRF), that demands independence of Kashmir from India, claimed responsibility for the attack (Al Jazeera [AJ], 2025). Without presenting evidence, India accused Pakistan for the attack. Pakistan denied involvement and called for an independent investigation; however, the Indian government demolished the houses of suspected gunmen without any trial – a form of collective punishment, often practiced by Zionist Israel against Palestinian resistance, and also applied increasingly against Indian Muslims. On 7 May 2025, India launched an aerial attack on Pakistan (AJ, 2025). Pakistan retaliated with its own missile and drone strikes in India and both sides continued until a ceasefire was agreed on 10th May through international diplomatic intervention. Prior to this, India had also carried out (or claimed to have carried out) cross-border attacks inside Pakistan - once in 2016 near the border (HT, 2016), and another in 2019 in Balakot, Khyber Pakhtunkhwa province (TOI, 2019).

However, what was particularly notable this time was the scale of the 'information war' – a battle of misinformation, disinformation, and competing narrative - conducted at an industrial level across both social and electronic media, especially from India (Kumar, 2025). According to Syeda Sana Batool, the Indian side portrayed "Pakistan as a terror factory: duplicitous, rogue, a nuclear-armed spoiler addicted to jihad. Pakistani identity was reduced to its worst stereotype, deceptive and dangerous." On the other hand, Pakistanis depicted "India as a fascist state: led by a majoritarian regime, obsessed with humiliation, eager to erase Muslims from history. Prime Minister Narendra Modi was the aggressor. India was the occupier. Their strikes were framed not as counterterrorism but as religious war" (Batool, 2025, para. 17-18).

Indian media's narrative framed the attack as "righteous", targeting "terror hubs" – emphasizing that the enemy was not Pakistan but terrorism, and that the strikes did not amount to aggression. In contrast, the Pakistani narrative positioned itself as "righteous victim" – peaceful, but when provoked, fearless, restrained, and resolute in its response, as if exercising divine right to respond against an enemy transgressing their sovereignty. Both sides claimed victimhood and moral superiority, while accusing the other of aggression (Batool, 2025).

It was evident in recent spate of tensions and conflict between India and its neighbours that, *"It was a war of narratives, orchestrated in headlines, hashtags, and nightly newsrooms. The battlefield was the media. The ammunition was discourse. And the casualties were nuance, complexity, and truth"* (Batool, 2025, para. 3). It was "discursive warfare". Media on both sides constructed the identity of the enemy as an 'idea' something that cannot be reasoned with; 'otherised' and reduced them to caricature. The innocent civilian who were killed and suffered on both sides had their stories lost under the noise of rhetorical escalation (Batool, 2025). In such situation, "*Diplomacy becomes weakness. Compromise becomes betrayal. And war becomes not just possible, but desirable"*, Batool (2025, para. 20).

In the weeks leading up to the conflict, Indian media primed the public with narratives of Indian military capability, valour, moral righteousness, expectation of triumph, and revenge-making conflict seemingly inevitable. Joyojeet Pal observed that the scale of the misinformation campaign far exceeded the usual nationalist

propaganda in India and Pakistan: *"This had the power to push two nuclear armed countries closer to war"* (Ellis-Petersen, 2025, para. 14). Again, the far-right 'Hindutva' groups and 'Godi Media' were at the forefront of this war of narratives (Kumar, 2025).

Regional Implications

The fascist 'Hindutva' ideology and its political narrative promoted by the BJP/RSS have significant regional implications.

The core tenets of 'Hindutva' – Hindu supremacy, the exclusion and subjugation of religious minorities (as well as Dalits and other marginalised groups), the justification of aggression through a victimhood narrative, and the demonisation of others (Dutta, 2025) – have created an extremely jingoistic support base. This base not only views Indian Muslims as adversaries but also extends that hostility to Muslim populations in the neighbouring countries. The plight of Hindu and other minorities – particularly during any violent incident, whether true or fabricated- in Muslim-majority neighbours such as Pakistan and Bangladesh, is often inflated and paddled among the domestic public to stir up hate and Islamophobia.

One of the important propaganda narratives of 'Hindutva', "Bharat Mata" ("Mother India") and/or "Akhand Bharat" (Undivided India), envisions an undivided India that includes not only Pakistan and Bangladesh (Brosius, 2005 in Banaji, 2018), but also the whole of South Asia encompassing Afghanistan, India, Nepal, Myanmar/Burma, Tibet, Bhutan (Organiser, 2020), even Sri Lanka (Sahu, 2023). This narrative is inherently imperialistic and expansionist (Sahu, 2023), and it cultivates hostility among its followers to those states and the majority Muslim population living there. India's historic conflicts with Pakistan is a dangerous additive to this combustible mixture. The historically imperialist expansionist policy of the Indian state (Shahzad et al, 2021)– evident since its inception through the annexation of Kashmir, Hyderabad, Junagadh, and other princely states – along with its increasingly hawkish foreign policy to its neighbours (e.g., military strikes in Pakistan and political interference in Bangladesh), and influence of 'Hindutva' on foreign policy (Siyech, 2024) further deepen regional tensions and mutual animosity.

In Nepal, the rise of BJP in India and failure of secular political parties to meet public expectations have emboldened the relatively weaker 'Hindu nationalist' forces. These groups have been demanding for the re-establishment of the Hindu Nation and monarchy. The Indian Hindutva camp, which was furious over the abolition of Nepal's Hindu nationhood, has also actively supported these efforts (Lawoju, 2025).

Besides, 'Hindutva' politics is also making its way in the Nepali political landscape. Allegations have surfaced that the pro-monarchist and Hindu nationalist party that made recent gains in elections has received funding and ideological support from the BJP (Siyech, 2024). In addition, a new party, the Nepal Janata Party (NJP), was formed in 2004 with the objective of re-establishing a 'Hindu Rashtra', which has uncanny visual, ideological, strategic, resemblance and engagement with the BJP/RSS (Siyech, 2024). Furthermore, Siyech (2024) also noted that, for India, deploying 'Hindutva' serves "both as an end and a means" to counter Chinese influence in Nepal.

The Indian state, which, in practice, has long been documented as discriminatory, hostile and repressive towards its own Muslim and other marginalized population (as previously discussed), regularly make official statements about the situation of Hindu minorities in neighbouring countries, which amounts to interference in their internal affairs. Meanwhile, the 'Godi Media' amplifies such narratives with a barrage of misinformation and fake news. In stark contrast, both the Indian state and media display indifference – or even hostility – towards persecuted Muslim population such as Rohingya facing genocide in Myanmar. Such selective outrage undermines communal harmony in the region (Mojumdar, 2024).

Another developing phenomenon, the 'Hindutva' ideology is spreading among the minority Hindu population in neighbouring countries in South Asia (Bhattacharya, 2024; Borham, 2024), which already has a significant presence among the Indian diaspora in the West.

There is an increasing risk of radicalisation, with early signs visible in the Western contexts (Dutta, 2025). On 17 September 2022, amidst communal tension between Hindus and Muslims in Leicester, England, around 200 masked men – some armed – gathered without authorisation and marched through an area with Muslim-owned businesses chanting "Jai Shri Ram"- the Hindutva militants and anti-Muslim violence in India (Dutta, 2025; Bhattacharya, 2024). The incident escalated into clashes, destruction, and further violence, which continued in following days (Dutta, 2025; Omer, 2022). Therefore, these radicalisations could further increase communal tension. Conversely, the far-right elements among the Muslim, Buddhist, and other religious groups in the neighbouring countries may be influenced by Hindu nationalists and replicate their strategy, if not already doing so, intensifying religious polarization. The perceived threat of 'Hindutva' dominance may press these groups to look for counter measures and degrade communal harmony severely.

In such a case, there is a potential risk of regional communal conflict and violence across South Asia. As evidenced during the recent India-Pakistan conflict and the uprising in Bangladesh – as well as from the fraught history of South Asia – ultra-nationalist rhetoric can create a very caustic environment across national, religious, and ethnic lines. These divisions often overlap, intersect and reciprocate with each-other, threatening already fragile regional stability, and leaving long-lasting repercussions for future generations.

Conclusion

The rise of 'Hindutva' as a dominant ideology in India has created an aggressive and hostile environment for religious and other minority communities, particularly Muslims, within the country. However, its impact is not only confined to India's domestic sphere – it extends beyond its borders, influencing regional communities and foreign policy (Siyech, 2024). This overlap, intersection, and reciprocity between domestic ideology and international relations have created highly contested atmosphere in South Asia. The prevailing narratives and rhetoric put religious and other marginalized groups across the region at increasing risk of exclusion, dehumanization, and violence.

As Sana Batool puts it so eloquently in the context of recent India-Pakistan conflict:

"In both countries, the media didn't mourn equally. Victims were grieved if they were ours. Theirs? Collateral. Or fabricated. Or forgotten.

This selective mourning is a moral indictment. Because when we only care about our dead, we become numb to justice. And in that numbness, violence becomes easier the next time." (Batool, 2025, paras. 15 & 14 from the bottom)

She concluded:

"Because in South Asia, the most dangerous weapon isn't nuclear.

It's narrative." (Batool, 2025, second-to-last para.)

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Bangladesh's Fragile Interlude: Revenge Justice, Mob Violence, and the Illusion of Reform

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Abstract

The ousting of autocrat Prime Minister Sheikh Hasina in August 2024, following a student-initiated mass uprising, marked a turning point in Bangladesh's political trajectory and raised hopes for a national unity. The appointment of Nobel laureate Dr. Muhammad Yunus as Chief Advisor of the Interim Government was termed as 'new beginning' for a country plagued by authoritarian rule, political persecution, and systemic corruption. Yunu's team elaborated their 'new beginning' – as one free from political persecution, discrimination, systematic corruption, and institutional decay. The Interim Government promised to initiate long-overdue legal reforms, political inclusivity, and bring an end to decades of authoritarian abuses. However, the promised transformation has largely failed to materialize. One year on, Bangladesh remains mired in cycles of revenge justice, mob violence, religious extremism, and fragile institutional governance. This article examines the limits of transitional reform process, arguing that the structural legacies of repression remain deeply embedded. Drawing on empirical development since the regime change, the article demonstrates how superficial political shifts have not addressed the entrenched practices of control and impunity. The article contributes to broader debates on transitional justice and democratization in South Asia by critically examining the illusion of meaningful reform in post-authoritarian Bangladesh.

Keywords: authoritarian legacy, Bangladesh, institutional reform, mob violence, revenge justice

Introduction

On July 1, 2024, a small but determined group of students gathered at Dhaka University's Teacher-Student Centre (TSC). This event sparked one of the most significant political uprisings in modern Bangladeshi history. Few anticipated it would lead to a massive movement to overthrow an autocratic regime that had ruled for over 15 years, suppressing political opposition, civil society, and dissenting voices, including intellectuals.

The students initially came together to protest the High Court's June 5 ruling (*Ohidul Islam and others v. The Government of Bangladesh and others*, 2021), which reinstated a controversial job quota system. This system, along with others included a 30 percent quota for children and grandchildren of freedom fighters in recruitment for first and second-class government jobs. As the demonstration progressed, it transformed into a larger movement that condemned systematic discrimination and authoritarian repression. Now

called "Students Against Discrimination," the protest moved beyond its original goal, igniting nationwide resistance against a regime known for over fifteen years of autocratic rule marked by mass arbitrary arrests, torture, enforced disappearances, and extrajudicial killings.

In the following 36 days, the country faced unprecedented state violence in its recent history. According to a fact-finding report by the United Nations Office of the High Commissioner for Human Rights (OHCHR), around 1,400 people may have been killed, with thousands more suffering serious injuries from the use of military-grade weapons (2025). Despite attempts to suppress the uprising, growing dissent within state security forces—especially the military—ultimately weakened the regime. On August 5, 2024, Prime Minister Sheikh Hasina fled to India, marking a sudden end to a long period of authoritarian rule and opening the door for a possible democratic transition.

Dr. Muhammad Yunus's appointment as Chief Advisor created widespread hope. He promised a "new Bangladesh" free from impunity and exclusion. The Interim Government pledged significant legal and institutional changes. However, one year later, these hopes had not materialized. Repression and structural exclusion continued, revealing persistent issues beneath the political facade.

Literature on transitional justice and democratization stresses that structural reform, inclusive governance, and accountability are essential for genuine political transitions (Teitel, 2000; Skaar, 2012). The political landscape in South Asia faces unique challenges, including entrenched patronage, ethnic and religious division, and weak institutions (Harriss, 2015; Jalal, 1995). In Bangladesh, recurring authoritarian tendencies and the politicization of legal institutions have been noted for a long time (Ahmed, 2020; Riaz, 2013). Repression during Sheikh Hasina's time in office raised ongoing international concern, particularly regarding human rights abuses and the decline of judicial independence (Human Rights Watch, 2024; OHCHR, 2024). Recent studies of Bangladesh's 2024 political turmoil suggest a complex mix of hope and disappointment stemming from the regime change (Khan, 2025; Mostofa, 2025).

Building on these analyses, this article examines the failure of the transition to bring about structural change. It engages with discussions on transitional governance, fragile states, and post-conflict institutional reform to explain why mere symbolic reform is inadequate for dismantling authoritarian legacies. The article argues that the August 2024 transition represents a fragile period rather than a true democratic breakthrough. Using interviews, human rights documentation, and media reports, it places Bangladesh's experience within broader discussions on democratization in South Asia. By exploring the gap between expectations and reality, it underscores the illusion of reform and the ongoing challenges facing democratic reconstruction.

The Political Transition and Disputed Reform Narrative

After Sheikh Hasina's fifteen-year regime ended on August 5, 2024, the Parliament was dissolved on August 6. An Interim Government led by Nobel laureate Dr. Muhammad Yunus assumed power on August 8, 2024. The new Advisory Council included the Chief Advisor, 22 Advisors, and three additional members with equal rank. This Council was tasked with guiding the country through a transition. However, unclear process for appointing the advisors raised early worries about legitimacy and representation. Unverified lists circulated in the social media, allegedly proposed by students, political parties, and military factions, but no official criteria or mechanisms were shared. In an interview with *Prothom Alo* on October 7, 2024, Yunus acknowledged that he began his leadership with 'unknown associates' after accepting the students' request to lead the government.

There were significant debates and controversies surrounding the advisor selections. Critics questioned whether some appointees—especially the one from the indigenous community—was genuine representative or just beneficiaries of the previous regime's support. Including three student leaders in the advisory

body sparked even more debate. This occurred in a context where other student activists from the same movement had formed a new political party, raising concerns about political co-optation. The exclusion of people with leftist political views and the appointment of a leader from Hefazat-i-Islam, a hardline religious group, increased scrutiny regarding the ideological balance and inclusivity of the advisory structure (WION, 2025; International Centre for Peace Studies [ICPS], 2025).

The Interim Government inspired high hopes of creating a 'New Bangladesh'—a nation built on equality, inclusiveness, and democratic accountability. This vision initially generated widespread optimism. Key to these hopes was a commitment to restoring the rule of law, unifying a divided society, and dismantling the legacy of authoritarianism. Yet, within months, the administration's actions revealed disturbing continuities. Instead of reducing unrest, the Interim Government leaned on mob violence, capitulating to the demands of extremist right-wing groups and failing to maintain law and order. Reports indicated they allowed revenge justice, which deepened societal divisions. Additionally, the new government was reluctant to confront dissent and seemed willing to replicate the previous regime's oppressive tactics, including limiting freedom of expression, making arbitrary arrests, using restrictive laws, and experiencing recurring custodial deaths (DW, 2024). This indicated a troubling continuity rather than a transformative break from the past.

The Interim Government's reform narrative has suffered due to its political convenience and structural limitations. Despite some symbolic gestures of change, the administration has repeated many of the coercive practices it promised to eliminate. The result is a fragile interregnum, where the talk of transformation hides the ongoing presence of authoritarian.

Mob Violence and the Rise of Vigilantism

In the aftermath, a troubling increase in mob vigilantism has emerged as one of the most visible signs of weak institutions. Between August 2024 and June 2025, mob violence intensified in both scale and audacity, often occurring in plain sight of law enforcement. According to Ain o Salish Kendra (ASK), at least 179 people were killed in mob attacks during this time; that averages nearly 18 deaths per month and marks the highest annual toll in a decade (Ask, 2025; The Daily Star, 2024). These incidents commonly targeted individuals accused of theft, blasphemy, or even dissent. In many cases, police either did not intervene or arrived only after public outrage surged on social media. One especially shocking case involved Abdullah Al Masud, a former student leader with a prosthetic leg, who was beaten to death by a mob in Rajshahi while trying to buy medicine for his newborn child. Despite his pleas and visible injuries, police reportedly did nothing as the attack took place (Prothom Alo, 2024; The Daily Star, 2024). This wave of vigilante violence shows a deeper issue—a weakened social contract and a culture of impunity so widespread that citizens no longer trust the formal justice system. When the state itself violates human rights norms, it indirectly legitimizes unlawful actions, encouraging citizens to take the law into their own hands.

Beyond individual acts of violence, mobs have attacked homes, media offices, heritage sites, shrines, and even disrupted cultural events and women's football matches (Asian News Networks, 2025; The Daily Star, 2025). These actions are not just spontaneous outbursts of public anger; they seem to be organized by powerful groups, including ultranationalists, religious extremists, and online influencers who want to shape post-uprising narratives and control public morality and dissent (Mostofa, 2025).

Political parties have mostly failed to condemn these actions and international accountability clearly. While some parties have distanced themselves from mob violence, framing it as public anger after years of oppression, others have justified it as a historical norm or rebranded mobs as "pressure groups" (Views Bangladesh, 2025). This mixed messaging from government advisors has further confused the issue, suggesting tacit acceptance and empowering vigilante actors (The Diplomat, 2025).

Ultimately, the rise of mob violence in post-

authoritarian Bangladesh highlights a worsening governance crisis. When the state itself engages in or tolerates rights violations, it validates unlawful actions. The result is a dangerous shift in how justice is perceived, where citizens—disillusioned with institutional solutions—turn to violence for retribution and control.

Religious Extremism and Targeted Attacks

Between August 2024 and June 2025, Bangladesh witnessed a sharp escalation in religiously motivated violence, disproportionately targeting minority communities and non-conforming Muslim sects. According to the Manobadhikar Sangskrity Foundation (2025), at least 241 violent incidents were documented during this period, including attacks on 20 Hindu temples, the killing of at least seven Hindus, and vandalism of over 100 Sufi and Ahmadiyya shrines. Additionally, 137 homes and businesses belonging to minority groups were ransacked, and 14 set ablaze, underscoring the scale and intensity of the persecution. This highlights the extent and severity of the persecution.

Government and law enforcement responses have been widely criticized for their passivity and inconsistency. Officials frequently described the violence as "spontaneous public anger", while Chief Advisor Muhammad Yunus publicly framed the incidents as political rather than religious in nature (The S. Rajaratnam School of International Studies [RSIS], 2025; Observer BD, 2025). Despite the severity of the attacks, very few people were arrested, and most were released on bail within days. In contrast, at least 20 Hindus remained incarcerated for allegedly 'hurting religious sentiment' (Observer BD, 2025; Connecting Nations, 2025). The lack of accountability and the arrest of victims rather than perpetrators underscores the state's failure to protect minority rights, contributing to a deteriorating human rights environment (Human Rights Watch, 2025).

Extremist groups such as Hefazat-e-Islam and elements within Jamaat-e-Islami, have remerged in rural areas, exploiting religious sentiments and political instability to expand their influence. Their return has included public rallies with ISIS-style symbols, calls for Sharia law, and threats against secular and minority communities (Dhaka Tribune, 2025; RSIS, 2025). The interim government's counterterrorism response has been fragmented and opaque, failing to address the ideological and organizational roots of radicalization.

The growth of religious extremism indicates not just a failure in law enforcement but also a deeper decline in Bangladesh's secular and diverse foundations. The acceptance of hate speech, selective law enforcement, and political support for hardline groups have created a situation where minority rights are increasingly at risk. Without a strong and inclusive strategy to combat extremism, Bangladesh may face further instability and condemnation from the international community.

The Promise — and Failure — of Legal Reform and Institutional Reform

In the wake of Bangladesh's political transition, the Interim Government pledged to overhaul legal and institutional reforms aimed at dismantling the authoritarian legacy of the previous regime. In two phases, ten reform commissions were established – public administration, judiciary, electoral system, constitution, police, and anti-corruption commission – in the first phase, followed by four commissions on health, mass media, labor rights, and women's affairs in the second phase (Observer BD, 2025). Despite the ambitious plans, concerns about exclusion and tokenism emerged quickly. Notably, only the head of the Women's Affairs Reform Commission was a woman, and there were no representatives from religious or ethnic minority communities on any commission (Prothom Alo, 2025).

On 29 August 2024, the government's accession to the International Convention for the Protection of All Persons from Enforced Disappearance (CED) was celebrated as a significant step. However, critics argue that the gesture was largely symbolic, as domestic legislation and enforcement mechanisms remain inadequate. The newly formed commission to investigate past disappearances has yet to deliver substantive outcomes, and victims' families

continue to face barriers to justice (Amnesty International, 2024).

The legal amendments introduced during the transitional period have faced significant criticism. On 21 May 2025, the government promulgated the *Cyber Security Ordinance, 2025*, repealing the widely condemned *Cyber Security Act, 2023*. While it removed nine contentious provisions, including those criminalizing criticism of national symbols, the new ordinance retained several sweeping clauses that continue to restrict freedom of expression. These include expansive powers for law enforcement to arrest, conduct surveillance, and censor online content with minimal judicial oversight (Prothom Alo, 2025; The Daily Star, 2025). Despite government claims of civil society consultation, the final ordinance has been widely criticized for failing to align with international human rights norms (Lexplosion, 2025).

The overall situation of press freedom and freedom of expression has worsened significantly. In the past 11 months, journalists have faced killings, death threats, arbitrary arrests, false charges, prolonged detentions, and other forms of intimidation. Media offices have been raided, accreditations revoked, and travel bans imposed. At least 10 journalists have been killed, 412 have been arrested in politically motivated or baseless cases, and 39 have been formally charged (Reporters Without Borders, 2025). The media now operates in a climate of fear, worsened by ongoing surveillance and harassment of both journalists and human rights defenders.

Meanwhile, the tribunals investigating the July violence still lack fair trial guarantees. The continued use of death penalty and concerns over political bias in evidence admission raise serious due process issues. Moreover, the "July Charter" — a proposed roadmap for political reconciliation and anti-corruption reform— remains stalled, with no substantive progress to date.

Similarly, the National Human Rights Commission (NHRC) became ineffective after all the commissioners resigned following the regime change. A December 2024 ordinance changed the selection process, allowing appointments without the Parliament's Speaker. However, the government missed a chance to improve the Commission's mandate, as recommended by the UN and civil society advocates (ETV Bharat, 2024; Amnesty International, 2025; Network Bangladesh, 2025). As of mid-2025, no new appointments have been made, leaving the Commission inactive and victims without institutional support. The failure to revitalize the NHRC underscores a broader reluctance to pursue meaningful reform and reinforces the perception that transitional governance in Bangladesh is more symbolic than substantive.

The Interim Government's legal reform agenda, while presented progressively, has been undermined by exclusionary practices, inadequate stakeholder engagement, and the persistence of repressive legal frameworks. The continued censorship, surveillance, and politically motivated arrests—particularly targeting journalists and activists—suggest that the promise of a "New Bangladesh" remains largely unfulfilled.

A Fragile and Dangerous Interregnum

Bangladesh today stands at a precarious crossroads. The post-2024 transition, once seen as a democratic breakthrough, now reveals a harsh truth. Ousting an autocrat does not dismantle the deep-rooted machinery of repression. It also does not heal the societal divides that have long fuelled intolerance, exclusion, and violence. Over the past year, the fragility of institutions, the persistence of authoritarian practices, and the limits of symbolic reform have become clear (Ahmed, 2024; Khan, 2025).

Minority communities still face threats, including mob violence, religious persecution, and institutional neglect. Political activists remain locked up without trial, and civil liberties—especially freedom of expression and assembly—are regularly restricted (OHCHR, 2025; Human Rights Watch, 2025). For ordinary citizens, the hope of a "New Bangladesh" has turned into disappointment. Economic instability, rising inflation, and a declining rule of law have deepened public frustration, especially among young people and marginalized groups (Raiser,

2025; Vivekananda International Foundation [VIF], 2025).

Religious extremism has surged, emboldened by the political vacuum and the Interim Government's inconsistent response. Hardline groups have reasserted themselves in public life, targeting secular voices, women's rights advocates, and minority communities with impunity (RSIS, 2025; Global Strat View, 2025). The rise of vigilante violence and moral policing shows a broader loss of public trust and a dangerous shift away from formal justice.

To move toward meaningful reform, Bangladesh must start a careful process of rebuilding institutions—one based on transparency, accountability, and citizen involvement. Civil society needs to be empowered to monitor abuses and advocate for inclusive governance. Structural changes should focus on judicial independence, accountability in law enforcement, and protections for minorities. International actors must remain alert and resist the temptation to accept mere words as true progress.

The global community has a critical role to play. Democratic governments and rights organizations must: insist on independent investigations into the July 2024 crackdown and subsequent mob violence; demand the repeal of vague, repressive laws that criminalize dissent and legitimate expression; monitor religious extremism and minority persecution with equal vigilance; condition development aid and security assistance on measurable human rights benchmarks; and support civil society groups who risk their safety to document abuses and advocate for justice.

The stakes are high. Failure to act decisively will not only betray the victims of last year's violence but will encourage both state and non-state actors to intensify their attacks on Bangladesh's fragile democratic aspirations. This interregnum must not become a smokescreen for repression reborn.

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Negotiating Feminism and Stigma in Nepal: Woman's Rights Perspective

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Abstract

This article discusses the impact of stigma on feminism through the approach of critical reflective inquiry. It adopts conceptualization of stigma as having social components by Link and Phelan (2001), in discussion of how stigma is created and Kleinman and Hall-Clifford's (2009) approach on combating it. Utilizing evidence of personal experiences, I argue that stigma brings self-censorship and often refrains people from accepting their true nature. Stigmatizing feminism resulted in a generation of women alienating themselves from the concept, while still fighting for equal rights of women. The article begins with a definition of stigma, followed by a brief history of global feminism and feminism in Nepal. Then it shifts to discuss how western feminism was introduced as a stigma in Nepal and how it shaped the thought process of multiple generations, impacting the women right's movement. I use my experience as an example of how stigma shaped my perception of feminism and how I was able to combat it. I conclude that stigma around feminism changed the discourse surrounding feminism from being a struggle for equal rights, to fight against male-privilege, thereby sidelining women from the discourse. An understanding of the inception of this narrative is important in combating the stigma.

Keywords: feminism, intersectionality, political identity, stigma, women rights perspectives

Introduction

While previous studies have analyzed the term stigma for over six decades, little is known about its impact on women's rights. Goffman (1963) defined stigma as an "attribute that is deeply discrediting" and one that reduces the bearer "from a whole and usual person to a tainted, discounted one" (p.2). Link and Phelan (2001) re-conceptualized the concept further by incorporating social dimension into individualistic definitions. This paper adopts the conceptualization of stigma by Link and Phelan (2001) and discusses how stigma around feminism was created, resulting in a generation of women and girls alienating themselves with the term "feminist". I argue that stigma created self-censorship and discouraged women to accept their feminist identities. Furthermore, it constructed division among the women's rights activists - therefore preventing any form of alliance between the two groups identifying themselves as 'feminist' and 'non-feminist' although the basis for their struggle was the exact thing: ensuring women's rights. In addition to this, it brought 'men' into focus sidelining 'women' from the 'women's rights movement'.

This year, I had the opportunity to participate in the 69th session of UN-CSW which took place from March 10 – 21, 2025 at the UN Headquarters

in New York. It is the UN's largest annual gathering on gender equality and women's empowerment. It had over six thousand participants, including in person and virtual attendance from all over the world over the period of two weeks. UN-CSW is a space for discussion, interaction and commitment between organizations, government bodies and individuals working to ensure the rights of all women and girls. A session that stuck with me was a panel discussion by a team of young feminist GenZ Māori women from New Zealand. They discussed the importance of indigenous identities in women's rights movements and how educating children in schools is the best way to normalize the practice for future generations. They shared their experiences of leading indigenous women's rights movements. Seeing these young women embrace feminism with pride encouraged me to reflect on my experience - which was completely in contrast with theirs.

Building on the concept of stigma as a social structure, I present my experiences as a case study in understanding how stigma is created, how it results in self-censorship, and the process of de-stigmatization. This paper adopts the method of reflective inquiry, whereby I critically analyze my perception and understanding of feminism shaped by everyday practices, stigma, education, and geographical discourse over the years. I believe this article will be able to identify the feminist stigma that infected multiple generations of women, the process of combating it, and hence, contribute to the formation of a feminist society. I start this essay with a definition of the concept of stigma, followed by a brief history of world feminism and feminism in Nepal. Next, I discuss how western feminism was presented as stigma in Nepal and how it shaped the thought process of multiple generations. I then use my experience as an example for positioning oneself in the world of feminism and the process of overcoming stigma.

Theoretical Framework: Stigma and Feminist Thought

Link and Phelan (2001) criticized previous interpretation of stigma had individualistic focus and the studies on stigma were being carried out by those who were not stigmatized. They attempted to conceptualize the term that differed from the then existing literature. In their process of conceptualizing stigma, they talked about convergence of multiple components existing around stigma. I consider these components described by Link and Phelan as steps, where the first is 'distinguishing and labeling human differences'; second, 'dominant cultural beliefs linking labeled persons to undesirable characteristics – to negative stereotypes; third, 'placing labeled person in distinct categories so as to accomplish some degree of separation of 'us' from 'them'; fourth, 'experience of status loss and discrimination by the labeled person'; and finally, 'stigmatization being entirely contingent on access to social, economic and political power allowing the identification of differentness, the construction of stereotypes, the separation of labeled persons into distinct categories, and the execution of disapproval, rejection, exclusion and discrimination' (Link & Phelan, 2001).

Building on this socio-structural conceptualization of stigma, Kleinman and Hall-Clifford (2009) added a moral and local attribute to the concept, stating that a moral standing of a person in a local context affects the 'transmission and outcome of stigma'. In addition to this, they talk about how understanding the unique social and cultural processes of stigma creation in the lived world of the stigmatized could be used to combat stigma. I have used this socio-structural conceptualization of stigma in explaining how the stigma around feminism was created, which encouraged multiple generations of women's rights activists and women's rights supporters to alienate themselves from the term. Taking my life experiences as an example, I try to explain how understanding the process of stigma creation could assist in combating it.

Global and Local Feminist Histories

Feminist movement in the west had started around as early as 15th-16th century while their demand for social and political emancipation dates to the 17th century (Pandey, 2016). The first wave of feminism saw feminist organizations working around suffrage, trafficking of women, equal educational opportunity and property rights (Moghadam, 2005), while the second wave in

1960 rose to demand equality in all spheres of life. It was during this decade that call for equal remuneration and equal opportunity was made by the International Labor Organization (ILO) which was a big achievement, however, the discrimination on social basis remained, giving rise to the concept of 'personal is political' which gradually resulted in the adoption of the Convention on Elimination of all Forms of Discrimination against Women (CEDAW) in 1979 by the United Nations (Pandey, 2016). Although the concept of 'the personal is political' cannot be traced back to one individual, it was made popular by Carol Hanisch, an American radical feminist activist, and it stirred conversations about issues such as sex, relationships, access to abortion and domestic labor – which were previously considered individual rather than systematic and political (Grady, 2018). During the UN Decade for Women (1976-85), clashes occurred between Global North feminists and Global South feminists as the former emphasized the need for legal equality and sexual autonomy while the latter focused on imperialism and underdevelopment as constrains for women's advancement. However, these differences started converging when feminists in the South started giving importance to issues of sexuality and personal autonomy, while those in the North began to see the significance of economic factors and forces in their lives (Moghadam, 2005). Furthermore, the UN offered global conferences on women and numerous regional preparatory meetings which became a means of networking for feminists across the globe, expanding transnational feminist networks. The Beijing Declaration and Platform for Action 1995 was one of the most important policy documents that emerged from these preparatory activities, conferences and concensus during the Beijing Conference.

The Beijing Declaration and Platform for Action 1995

In September 1995, the governments participating in the Fourth World Conference on Women, organized by the United Nations (UN) in Beijing, made a commitment to advance the goals of equality, address the constraints and obstacles hindering it, and enhance the advancement and empowerment of women all over the world. This conference resulted in the adoption of Beijing Declaration and Platform for Action, 1995 that has been endorsed by the United Nations and its member countries ever since.

The acceptance of women's rights as human rights, governments were convinced that women's empowerment and full participation in every sector of society including decision-making and access to power are the basic requirements for achieving equality, development and peace (United Nations, 1995). The declaration highlighted twelve critical areas that needed immediate attention and intervention. These are: a. women and poverty b. education and training of women, c. women and health, d. violence against women, e. women and armed conflict, f. women and the economy, g. women in power and decision-making, h. institutional mechanisms for the advancement of women, i. human rights of women, j. women and the media, k. women and the environment ,and l. the girl child.

The first and the second wave of feminism, however, were criticized for centering only on white women and gradually gave rise to the concept of intersectionality in feminism which is ongoing. While feminism in the Global North was going through distinct phases, the women rights movement was active in Nepal as well.

Feminism and Nepal: Historical and Contemporary Tensions

Nepal has a history of women who ruled the country dating back as early as the mid-1500s. Historian DR Regmi writes about Queen Gangarani, wife of Visvamalla, the fourth king of Bhatgaon who ruled from 1547 to 1560, as being the powerhouse behind the throne for many years during her son Trailokya Malla's reign (Rimal, 2022). Similarly, Queen Rajendra Laxmi acted as regent and ruled Nepal after the death of her husband Pratap Singh Shah (Rimal, 2022). Queen Lalita Tripura Sundari had enabled Prime Minister Bhimsen Thapa to sustain his power in court and start a campaign against the British (Rimal, 2022). Although these queens were powerful and influential, their power was limited to quenching their thirst to rule rather than working for the benefit of women of their time. They were more involved within the walls of the palace.

The history of the beginning of feminism in Nepal, however, is traced back to Yogmaya Neupane, a poet, teacher, and an insurgent. Yogmaya was a Hindu religious leader who composed poems against patriarchy, the caste system, and the autocratic Rana regime. Yogmaya launched an effective political campaign during the 1930s where she taught people about the injustice of the system through her poems and verses, which ended in 1940 with her death (Aziz, 2001). She, along with her sixty-eight followers, committed mass suicide by jumping into the Arun River following her ultimatum to Juddha Shamsher, the then Prime Minister of Nepal (Aziz, 2001). The government covered up the episode and banned any mention of her following the tragedy.

The movement for the right to vote in Nepal had started in the late 1940s. Many women were jailed for marching in support of democratic movement in the year 1950 (Rimal, 2022). It was only after democracy came to Nepal in 1950, women's groups became active demanding rights to education, property, and equality (Rimal, 2022). Tara Devi Sharma had an instrumental role in outlawing polygamy and ensuring the right to divorce (Rimal, 2022). She was followed by numerous women who worked for ensuring the rights of women and although they did not identify themselves as feminists, Rimal (2022) writes that they laid the ground for 'the feminist movement to come.' However, I would like to claim that feminism had already been present in Nepal, although not realized or accepted since the term is attributed to the result of Westernization. Feminism as a term may not have entered Nepal then but the stuggle for equal rights of women was already in practice, hence marking presence of feminist movements. I argue that the experiences of these women activitists shaped and informed political context and resulted in their political organization and mobilization (Narayan, 1997). The issues feminists in Nepal are politically engaged in are citizenship rights for women, birthright citizenship through mothers, right to inheritance, end of violence against women and right to equality. Although abortion rights are legalized in Nepal, sexuality and gender is still a taboo topic for free discussion. Feminist movement in Nepal is yet to embrace the intersectionality within women (Rimal, 2022).

Personal Narrative: Negotiating Feminism and Stigma

In the early 2010s, a male friend of mine called me a feminist. I remember not feeling happy about the 'label' he gave me. I wanted equal rights, but I was not ready to be called a feminist, who were popularly known as unhappy women who 'hated' men (Grady, 2018). Angst (2009) writes about feminists as independent thinkers, perceived as someone who "threaten the fabric of social institutions that traditionally seek to rein in individual, and especially female," (Angst, 2009:125). Moreover, it was at a time when women rights activists in Nepal did not call themselves feminists, even though their persistent advocacy for women's rights made them feminists (Rimal, 2022). Moghadam (2005) mentions women activists in some countries being skeptical about feminism as they considered it Western, bourgeois or excessively anti-male. This angry, man-hating and lonely image of feminists had become canonical, as the second wave of feminism began losing its momentum and still haunts the conversation around feminism presently (Grady, 2018). Western Feminism in Nepal was introduced with this meaning wherein feminists were considered as man-hating and homewrecking individuals.

Even though feminism has been attributed to Western curricula, it is not entirely a western concept. As Uma Narayan (1997), an Indian feminist scholar, explains in her essay, she did not become a feminist after getting educated in America, but rather listening to her mother, observing her, and learning about the experiences of females within the family made her realize the importance of women's rights. It was a similar experience for me.

I grew up in a traditional middle-class household in south-eastern Nepal where disagreeing with elders was perceived as 'disrespecting' them. I was an opinionated child which did not go well with my paternal grandparents. My ability to speak for myself was considered a result of

'being spoilt and pampered by maternal family.' For the first seven years of my life, I had stayed with my maternal grandparents as the only child in the house. As I came back to my parents' house, I suddenly graduated to being an elder sister to two younger boys. This graduation also came with rules for daughters in the family, such as helping with chores in the household as we grew up, and wearing certain kind of clothes.

My maternal grandparents did not have concerns with me at seven years old wearing 'western' clothes. These included clothes that went above knee length and did not have sleeves. However, my transition from my maternal to paternal household meant a transition in the types of clothes that I would be 'allowed' to wear. Except for my mother, who would not voice her opinion to maintain 'peace' in the family, my existing clothes were not preferred by senior members of the family, including my father. As an '*ateri'* (stubborn) child, I would still wear the clothes I liked - until wearing them in public started making me uncomfortable in a town where girls would mostly wear traditional attire or a long frock, and people stared at girls wearing shorter clothes. I switched to wearing pants from then on. For my grandfather, wearing short clothes was no different than running around naked and we would get into an argument each time I wore it until a male relative from Kathmandu (the capital city) told him that this was far better and decent than the tank tops girls were wearing in Kathmandu. Although this statement was always a major part of my argument, it was from this day that my clothes stopped bothering my grandfather. I realized that the clothes were not the problem, but it was rather the gender of the person wearing it, as men in my family would be in their undershirt and shorts all the time. My family was not used to listening to a woman's voice and me being opinionated and 'vocal' child did not help the case.

My journey into feminism had started as early as the age of ten without my knowledge of either the term or its meaning. I would always question any differences I noticed in the treatment of my brothers and me. I always had questions which would lead to arguments or discussions. I was always the cause of chaos as I always contested my culture, wherein my mother would ask me not to voice my opinion. She preferred 'peace' over her own comfort and ongoing injustice. Although my mother suffered mostly in silence, she was intolerant when it came to our wellbeing. My relationship with my mother was slightly different than how Narayan (1997) describes her own with her mother. My mother wanted me to have my education, stayed firm against getting me married until I completed my master's degree (because she could not complete her bachelor's degree post marriage) and wanted me to have a career. My father valued education and would not allow us to work until we completed our graduate degree. At the same time, he would expect me to have compliance, deference and submissiveness (Narayan, 1997), qualities deemed essential in 'good' Nepali women while my brothers were allowed to be loud and dominating. Until this time, I was unaware of the term feminism although I fought for equal treatment as my brothers everyday. My journey into feminism had started from home. Why then was I reluctant to accept being a feminist?

It was a lack of open dialogue and conversation on feminism and women's rights. My understanding of feminism was limited to radical feminism and as discussed earlier, resonated as anti-male. Therefore, I identified myself as an advocate of equality as I believed in equal opportunities and treatment of boys and girls. I was yet to understand that this idea I held so dear was the very foundation of feminism. Furthermore, I had not met anyone who liked to identify themselves as a feminist, and I, like the majority around me, stigmatized feminism, without realizing I was one.

In 2018, I had the opportunity to participate in a residential workshop on gender and sexuality conducted by the feminist organization CREA, where the concepts of feminism, women rights, equality, LGBTQ rights, and body politics were discussed. I learned about the basic concept of feminism beyond stigma and intersectionality within the women's rights movement in the workshop. My constant interaction with the feminist women's rights activists gave me confidence to take the first step towards 'becoming' a feminist.

Discussion: Intersectionality, Stigma and Political Identity

The 'Western, bourgeois and excessively anti-male' (Moghadam 2005) characteristic of feminism is rooted in its colonial history. The treatment of feminism as a Western concept strips intersectionality and agency of people from non-Western culture and disregards the multi-dimensional struggle for women's rights that have existed around the world. While feminism was started as a struggle for equal rights and treatment between sexes, it could not remain unaffected by pre-existing hierarchy and power dynamics. The power dynamics between feminists in the Global North over Global South had created a form of savior politics whereby the feminists in Global North took upon themselves the responsibility of emancipation of women - discrediting the agency of the people in Global South (Narayan 1997). Moreover, this colonization of feminism further stigmatized feminists in Global South as being 'anti-nationalist' and 'disloyal to culture' (Narayan 1997). Nevertheless, this savior politics is not limited to Global North-Global South but is also present between 'privileged-unprivileged Global South' (Whetstone & K.C., 2023). The privileged Global South women typically have little understanding of grassroots women's needs and interests, yet they seek to save these women (Whetstone & K.C., 2023). In Nepal, a similar practice has been identified and the term '*Dijju Feminism*' is used for the category of mainstream feminists who do not recognize intersectional feminist movements and struggles faced by the 'lesser privileged group' (Chhetry, 2022).

Narayan had recognized and demanded the need of decolonizing feminism (Narayan, 1997) by which it gets separated from being a result of Westernization - allowing space for feminists to question practices that are harmful and oppressive to women, without them being labelled anti-nationalist and disloyal to their native culture. It also gives agency to the people within the culture to question injustices they experience by leaving behind the practice of 'othering'[1] that the feminists from the West did when 'working' to improve conditions of women in Third-World countries (Narayan, 1997). However, despite the commonly held perception that emancipation of women has spread from the West to other parts of the world, the practice had always been multi-directional and the current international consensus around particular norms regarding women's rights among the Global North and Global South is the result of parallel feminist movements globally which have learned from one another (Tripp, 2006). Tripp (2006) further writes that this consensus combines development and human rights interests, engages advocates inside and outside transnational women's groups, and is a product of global dialogue and interaction. This practice also calls for recognition and acceptance of intersectionality among different groups, especially in a country like Nepal where inequality is layered based on ethnicity, religion, social and cultural position, caste, and class. While the feminist movement in Nepal has started acknowledging the ethnic, caste and class-based differences, it is yet to incorporate issues of trans women, and gender and sexual minorities identifying themselves as women.

Conclusion: Toward a De-stigmatized Feminism in Nepal

My experience of 'becoming' a feminist is an example of how stigma is created, how it affects acceptance and how one can combat it. I had followed through the components of stigma (Link & Phelan, 2001) as first, I distinguished and labeled feminists as someone different than myself, then I followed along with dominant cultural beliefs that linked it to the negative stereotype of being a home-wrecker and man-hater. I then went ahead and separated myself from 'feminists' and when my friend called me a feminist, I instantly felt insulted and small.

As I progressed through my shifting ambivalence and eventual alignment with a feminist identity and with feminism, I started my graduate course in Anthropology. It was here that I discovered how culture and society give meanings to actions and concepts. I started learning and understanding how the meaning of feminism was created in Nepal and how it shaped generations

1. Othering is a practice by which a group or individuals are treated as different and inferior from the dominant social group.

of women fighting against the label yet fighting in support of what it stood for - women's rights. This dichotomous struggle held them back, just like it held me back from combating the stigma for a long time. The stigma also changed the interpretation of feminism from being 'a struggle for women's rights, equal rights among the two sexes' to being a 'man-hating campaign.' It is ironic how the fundamental fight for women rights sidelined women and brought men to the center of the discourse. Furthermore, it created a division between 'feminist' and 'non-feminist' women's rights activists resulting in lack of coordination and alliance between them. It prevented them from accepting that both groups were fighting for women's rights and that their struggle was against the system and not with each other. This acted as a barricade against the movement in Nepal - where women are fighting against inequality even after over a hundred years from when Yogmaya started the feminist movement.

Understanding this social and cultural process of creation of stigma attached to being a feminist and locating my moral standing in the local context (Kleinman & Hall-Clifford, 2009), meant recognizing my privileges as a cisgender Brahmin urban female. This helped me finally combat the stigma and become a proud feminist. However, not every woman/girl of my generation had the same privileges. While there have been remarkable changes in the feminist movement and the concept of feminism in Nepal - many women of my generation, including me, are still struggling to unlearn and re-learn, and put our new learning into practice. It is through understanding and practice of an intersectional collaborative approach that the process of de-stigmatizing feminism can be achieved.

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Orphanage Trafficking in Nepal: Legal Gaps, Protection Failures, and Reform Imperatives

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Abstract

This article examines the increasing phenomenon of orphanage trafficking in Nepal – a practice involving the coercive separation of children from their families and placement into unauthorized care facilities under false pretences, often for financial exploitation. Although the term "orphanage trafficking" is gaining traction both locally and internationally, it remains absent form Nepal's formal legal framework. Employing a doctrinal approach, this paper evaluates relevant constitutional provisions, national child protection and anti-trafficking legislation, and international obligations to assess Nepal's compliance with its legal responsibilities. The analysis reveals significant gaps in constitutional and statutory protections, particularly concerning victim identification, unlawful removal from guardianship, and oversight of institutional care. These violations are frequently subsumed under the broad category of "violence against children", undermining their recognition and prosecution as distinct forms of trafficking and exploitation. The article critiques the limited capacity of oversight institutions—including the National Child Rights Council and local child protection authorities—to identify victims, monitor facilities, and enforce standards. Highlighting these legal and systemic deficiencies, the paper calls for the formal recognition of orphanage trafficking within Nepal's domestic law and stronger alignment with international standards. It concludes with targeted recommendations to address legislative shortcomings and enhance accountability for safeguarding vulnerable children.

Keywords: child rights, human trafficking, institutional care, legal reform, Nepal, orphanage trafficking

Introduction

The phenomenon of "orphanage trafficking"—defined as the unlawful separation of children from their families, placement into residential care facilities under false identities, and subsequent exploitation for profit—has attracted growing global concern. In Nepal, however, the term remains unrecognized within the domestic legal framework. While the concept is not widely understood among the general public or policymakers, it is increasingly employed in media and civil society discourse to describe practices such as falsifying children's identities to present them as orphans—a tactic commonly referred to as "paper orphaning" (Doore & Nhep, n.d.)—and subjecting children to sexual abuse, forced labour, begging, illegal adoption, or servitude (Setter, n.d.). In extreme instances, reports have emerged

of children being trafficked for organ harvesting or them disappearing altogether.

This article critically examines the concept and legal implications of orphanage trafficking, underscoring the need to formally define and address the issue within Nepal's legal framework. It assesses two key legislative instruments: the Human Trafficking and Transportation Control Act (2007) (HTTCA) and the Act Relating to Children (2018), both intended to combat child exploitation. In addition, the paper evaluates the extent to which Nepal's legal provisions align with international legal obligations. Through analysis of constitutional, criminal, procedural, and child protection legislation, this article explores how Nepal's legal system addresses—or fails to address—the unlawful transfer and trafficking of children, mechanisms for victim identification, oversight of residential care facilities, and systemic responses to gaps and inconsistencies in legal and policy frameworks.

By identifying critical legal and institutional gaps, the study aims to contribute towards ongoing reform processes and enhanced enforcement practices, with an emphasis on advancing child protection and safeguarding the rights and best interests of children.

Orphanage Trafficking: A Complex and Hidden Form of Human Trafficking

Orphanage trafficking involves the recruitment, transfer, and harbouring of children into residential care institutions under false pretences—primarily for purposes such as profit-making, forced labour, sexual exploitation, or illegal adoption. Unlike more overt forms of human trafficking, this practice operates under the guise of charitable or humanitarian activity, rendering it more difficult to detect and challenge. It manipulates the prevailing social perception of orphanages as benevolent and altruistic spaces.

Theoretically, the separation of children from their families, parents, or guardians—particularly under coercive or deceptive circumstances—constitutes a violation of the child's rights as enshrined in the *Convention on the Rights of the Child* (1989). Orphanage trafficking therefore amounts to a direct infringement on the human rights of children. Key rights—including protection from exploitation, the right to family life, and personal integrity—are compromised when children are treated like commodities and placed under institutional control.

This form of trafficking is rooted in structural violence. Systemic inequalities—such as poverty, limited access to resources and services, inadequate social protection mechanisms, and weak law enforcement—create conditions that heighten children's vulnerability to separation and exploitation. In line with Johan Galtung's argument, structural violence describes social structures that produce harm without direct personal aggression, a mechanism that aptly captures the invisible but entrenched dynamics underpinning orphanage trafficking.

The phenomenon of orphanage trafficking—which entails the recruitment, transfer, or harbouring of children into residential care institutions for purposes such as sale, forced labour, sexual exploitation, or illegal adoption—has increasingly come under global scrutiny. As Galtung (1969) observes, *"There may not be any person who directly harms another person in the structure. The violence is built into the structure and shows up in unequal power and consequently as unequal life chances"* (p. 171). This notion of structural violence is particularly relevant to orphanage trafficking, where systemic inequality and weak governance compound to place children at risk.

From a criminological perspective, "orphanage trafficking" relates to the "routine activity theory (Clarke & Felson, 1993)," which posits that crime occurs when motivated offenders encounter suitable targets in the absence of effective guardianship. In this context, traffickers, including corrupt orphanage operators, exploit vulnerable families in remote areas, encouraged by minimal regulatory oversight.

The transnational nature of orphanage trafficking further complicates its detection and prevention. Scholars and practitioners such as Punaks and Lama (2020) have documented the

involvement of state officials, adoption agencies, and even NGOs, with profit maximization driving operations masked by charitable narratives. This pattern echoes models of organized crime, where illicit networks operate under the façade of legitimate business interests.

While the Constitution guarantees special protection and facilities for children who are defenseless, orphaned, disabled, conflict-affected, displaced, or otherwise vulnerable (Art. 39(9)), significant gaps persist between legal commitments and real-world enforcement. The Act Relating to Children (2018) affirms the right to care and protection for children in vulnerable categories and prioritizes alternative care over institutionalization (§ 49). However, due to limited child protection infrastructure—particularly at the local level, where Local Child Rights Committees (LCRCs) are largely absent—institutionalization remains widespread.

As of July 2024, 10,882 children resided in 396 childcare homes across 46 districts (National Child Rights Council [NCRC], 2024). Between mid-July 2023 and mid-July 2024, the NCRC approved the establishment of 132 new childcare homes, with approximately 90% situated in major tourist destinations such as the Kathmandu Valley, Pokhara, and Chitwan (Better Care Network, 2024). Over half of these institutions were concentrated in Kathmandu Valley. Notably, in the first half of 2020, the NCRC rescued 80 children from various childcare homes, the majority of whom had living families, highlighting a troubling pattern of hazardous institutionalization and unnecessary separation (Dhungana, 2021).

The NCRC's 2020 status report indicated that, among 216 registered homes, 12 were in critical condition, 100 deemed satisfactory, and 102 classified as good (NCRC, 2020, p. 50). Conditions in unregistered facilities, however, remain poorly documented. The U.S. Department of State's Trafficking in Persons (TIP) Report (2020) estimates that more than 15,000 children reside across both registered and unregistered institutions in Nepal. Although terms such as *Children's Home*, *Child Care Home*, and *Orphanage* are used interchangeably (Next Generation Nepal, 2014), their legal and operational distinctions are not adequately defined.

Children institutionalized under the guise of alternative care are often compelled to perform manual labour, beg, or entertain visitors to solicit donations (U.S. State Department, 2020). Despite widespread internal trafficking of women, men, and children in Nepal (Kiss, 2019), there remains a notable absence of empirical research offering comprehensive data on children trafficked into orphanages.

Building upon this theoretical framework, the present article critically assesses Nepal's compliance with its international legal obligations concerning child protection and anti-trafficking, as detailed in the sections that follow.

Legal Framework Addressing Trafficking in Nepal

Nepal has enacted a range of legislative instruments to address human trafficking and exploitation, both explicitly and implicitly. The Constitution of Nepal (2015) establishes a broad commitment to combat trafficking and sexual violence. Complementary laws include: the National Criminal Code (2017), the National Criminal Procedural Code (2017), the Act Relating to Children (2018), the Human Trafficking and Transportation (Control) Act (2007), the Child Labour (Prohibition and Regulation) Act (1999), the Labour Act (2017), the Foreign Employment Act (2007), the Crime Victim Protection Act (2018), and the Directives for Protection against Economic and Sexual Exploitation of Women and Girls in the Entertainment Sector (2008). Collectively, these laws establish a multi-tiered system encompassing prevention, prosecution, protection, and rehabilitation efforts.

Trafficking-Related Offences under Human Trafficking and Transportation (Control) Act

The HTTCA defines and criminalizes two distinct yet overlapping acts: 'human trafficking' and 'human transportation'. The former includes sale or purchase of individuals; coercion into prostitution regardless of financial exchange; non-consensual extraction of organ; and solicitation of sexual services (§ 4(1)). The Act also adopts a

gendered framing, assuming male involvement as clients of female sex workers and penalizes such behaviour accordingly.

Human transportation, under the same section, encompasses domestic and cross-border movement using deception, coercion, or abuse of authority for exploitative purposes. Both. the buyer and seller involved in such practices are criminally liable (§ 3(1) & 3(2)). The Act consolidates various practices—including slavery, forced labour, bonded labour, and illegal organ trade—under the umbrella of "exploitation" (§ 2(e)).

Procedural safeguards are included to protect survivors, particularly women and children. These provisions include shifting the burden of proof to the accused (§ 9), requiring custodial detention during trial (§ 9), guaranteeing survivors independent legal representation (§ 10), permitting court-approved interpreters (§ 11), and exempting victims from repeated court appearances post-certification of testimony.

Victim Protection and Support Measures

The HTTCA outlines state responsibilities regarding support to survivors or victims and provides for the rescue of trafficked persons, including rescue operations (domestic and international) (§ 12), establishment of rehabilitation centres and reintegration mechanisms (§ 13), creation and administration of a Rehabilitation Fund (§ 14), compensation provisions allocating no less than 50% of fines to victims (§ 17), in-camera proceedings in sensitive cases (§ 27), and protection of confidentiality for both victims and informants (§ 20). These provisions aim to uphold the dignity and long-term wellbeing of trafficked individuals.

Legislative Gaps and Reform Priorities

Despite its strengths, the HTTCA and its accompanying Regulation (2008) require urgent amendment to comply with Nepal's 2015 Constitution and its international obligations under the UN Palermo Protocol. Priority areas for reform include expansion of extraterritorial jurisdiction (§ 1(3)), revision of trafficking definitions to match global standards (§ 2(e)), improved access to translation services (§ 11), enhanced provisions for victim rescue (§ 12) and rehabilitation (§ 13), and clearer operational mechanisms for the Rehabilitation Fund (§ 14). The shift to decentralized federal governance further underscores the need for a clarified delineation of roles across national, provincial, and local levels.

Provisions within the National Criminal Code

The National Criminal Code (2017) complements the anti-trafficking measures with several relevant provisions that intersect with orphanage trafficking and child exploitation. Key provisions include promoting or influencing prostitution (§ 119), incitement or conspiracy related to prostitution, pornography, or nudity (§ 215), prohibition of forced labour, slavery, servitude, hostage-taking, and bonded labour (§ 162–164), rape, including sexual acts with minors under 18 (regardless of consent) (§ 219), and sexual harassment, exploitation, and non-consensual unnatural acts (§ 224–226). These statutes provide prosecutorial tools to address abuses occurring in or associated with children's residential care institutions.

Institutional Responsibilities and Oversight

The *HTTCA Regulation (2008)* sets out mechanisms for implementing the Act, notably through the establishment of a National Committee to Combat Human Trafficking (NCCHT) (§ 4), tasked with formulating anti-trafficking policies and advising the Ministry of Women, Children, and Senior Citizens (MoWCSC). Additionally, it calls for the formation of District Committees (§ 7), responsible for local-level efforts to combat trafficking and transportation, including oversight of rehabilitation centres and the operation of facilities dedicated to physical and mental treatment, social reintegration, and family reunification of victims.

The regulation also underscores the importance of vocational training and psychological support as components of rehabilitation (§ 16), while limiting institutional care to a maximum of six months. Furthermore, it designates responsibilities for the local management and administration of the Rehabilitation Fund (§ 17).

Despite these formal provisions, implementation remains inconsistent. Monitoring

and enforcement mechanisms are weak, particularly concerning unregistered childcare homes, where children are at heightened risk of neglect, abuse, and exploitation in the absence of adequate government oversight.

Legal Gaps in Addressing Orphanage Trafficking: An Analysis of the Act Relating to Children, 2018

Scope of protection and prohibition practices

The Act Relating to Children, 2018 – which replaced the Children's Act, 1992 – defines a 'child' as any person below the age of 18 years (§ 2(j)). It significantly expands legal safeguards by enumerating forms of violence against children (§ 66(2)). Relevant provisions prohibit practices such as illegal confinement, detention, or house arrest; handcuffing (§ 66(2)(j)); cruel, inhumane, or degrading treatment including torture (§ 66(2)(i)); forced declaration or registration of a child as an orphan (§ 66(2)(k)); and placement in childcare homes without legal compliance (§ 66(2)(r)).

Although these provisions address harmful practices associated with orphanage trafficking, the Act does not expressly criminalize the unlawful removal of a minor from their legal guardian. Consequently, actions such as falsely registering children as orphans or placing them in institutions without due legal process fall outside the formal scope of human or child trafficking under Nepali law.

Interpretive link with human transportation

Despite this legislative gap, such practices may intersect with the *HTTCA*, which distinguishes between "human trafficking" and "human transportation." Under this framework, the removal of children from guardianship through coercion, deception, or abuse of authority for exploitative institutional placement could be interpreted as "human transportation." In practice, prosecution is possible under HTTCA if coercive means or intent to exploit are demonstrable.

Absence of Means-Based Requirement for Child Trafficking

Notably, the HTTCA does not explicitly require elements such as coercion or deception to establish child trafficking—allowing prosecutors to pursue charges based solely on acts of sale, transfer, or exploitation. This legal distinction means that child trafficking can be prosecuted solely on the basis of sale, transfer, or exploitation, whereas human transportation under the HTTCA requires proof of means such as coercion, fraud, or abuse of power—making it more complex to prosecute institutional actors unless such elements are demonstrably present. These definitional variances raise critical challenges in addressing institutional forms of exploitation, particularly where children are unlawfully transferred into residential care settings under seemingly voluntary or administrative arrangements.

Parental Authority and Legal Removal of Children

Nepali law currently lacks a legal framework for formally terminating parental rights as a prerequisite for child removal. The Act Relating to Children (2018) guarantees children's right to protection and prohibits abandonment or neglect by parents or guardians (§ 6). Under the National Civil Code (2017) both parents hold equal authority regarding child supervision and care (§§ 124–125), yet the law does not specify conditions under which parental rights may be revoked.

State Intervention for Alternative Care

Chapter 5 of the Act Relating to Children (2018) addressing "special protection and rehabilitation," enables state intervention when children lack adequate care due to parental incapacity or disability (§ 18(1)(c)). Although the Act provides for temporary separation in cases of abuse or neglect (§ 48(1)(g)), it does not empower authorities to permanently terminate parental rights.

Designated child protection entities—such as the National Child Rights Council (NCRC), Provincial and Local Child Rights Committees, and the Child Welfare Authority (CWA)—are mandated to arrange for alternative care when a child's welfare is at risk (§ 50). Even where parental powers remain intact, these agencies may intervene when parental duties are neglected. In case of emergencies, CWAs are authorized to

rescue children and place them under temporary protection (§ 52(2)).

Procedural guidance for these interventions is expected from local child protection rules enacted by municipal governments. However, as of 2024, only 408 of Nepal's 753 municipalities have issued guidance (NCRC, 2024). Likewise, only 372 municipalities have established Local Child Rights Committees, 390 have appointed CWAs, and only 286 have instituted Child Funds, leaving significant gaps in child protection infrastructure.

Sanctions for Rights Violations

The Act prescribes penalties for violations of child rights. Individuals or organizations breaching provisions outlined in Chapters 2 or 3 may be fined up to NPR 50,000 (§ 70(1)). If a parent, guardian, or family member misuses a child's identity or property, fines may reach up to NPR 100,000 (§ 70(2)).

Guardianship and Institutionalization in Nepal's Legal Framework

Nepali law does not explicitly provide for the formal revocation of parental rights. However, under specific circumstances, the act of removing a child from the custody of their legal guardian—particularly without due legal process—may be construed as an offence of human transportation, as defined in the HTTCA. Nevertheless, child protection authorities such as the National Child Rights Council, Provincial and Local Child Rights Committees, and Child Welfare Authorities are legally empowered to intervene and remove a child from their guardian when such action serves the child's best interests. This type of removal is treated as a temporary protective measure and does not require prior judicial revocation of parental authority. In contrast, if a child is removed unlawfully by non-state actors, the act may be prosecutable under HTTCA provisions relating to human transportation.

Guardianship of an abandoned, unaccompanied, or separated child

Nepali law imposes a clear obligation on parents and guardians to refrain from abandonment. Section 184(1) of the National Criminal Code (2017) criminalizes the abandonment of any dependent individual—such as an infant, child, disabled person, or elderly adult—where such action endangers their life or wellbeing. The Act Relating to Children (2018) classifies abandoned, unaccompanied, or separated minors as children in need of special protection (§ 48). In such cases, CWAs, in coordination with child protection committees and the NCRC, are responsible for securing appropriate care and legal guardianship. Section 42(2) of the same Act mandates that CWAs arrange for alternative care for children requiring special protection, particularly those separated from their guardians.

Criteria and procedure for institutional placement

Institutional care is legally intended as a measure of last resort. Section 49 of the Act Relating to Children (2018) outlines the hierarchy of alternative care options, beginning with placement with maternal or paternal relatives, followed by placement with willing families or individuals, foster care arrangements, and finally, residential childcare homes—only if no prior viable options exist. These principles are reflected in the Comprehensive Standards for Operation and Management of Residential Child Care Homes (2009), which mandate individual recordkeeping, health assessments, access to legal services, and psychosocial support for each admitted child.

Children's homes bear the responsibility of safeguarding children's property, maintaining confidentiality, and coordinating with government agencies. However, as the 2009 Standards predate the 2018 Act, a legal revision is required to ensure alignment with current child protection legislation.

Despite legal intent, institutionalization of children living with parents or extended family remains common, raising concerns about unlawful institutionalization and systemic misuse of residential care.

Reception and Retention of Children in Residential Care

Legal Justification for Admission

The Act Relating to Children (2018) outlines a comprehensive list of conditions under

which children may be deemed in need of special protection (§ 49). These include orphaned children; children abandoned in hospitals or public spaces with unknown parental identity; children deprived of appropriate care due to parental physical or mental incapacity; children in conflict with the law and referred to alternative care via diversion mechanisms; dependents of incarcerated parents; infants born of rape or incest whose guardians have formally declared an inability to provide care; children removed from abusive or neglectful households; children engaged in forced, bonded, or hazardous labour; children with substance dependencies or living with HIV; and children suffering from serious health conditions or disabilities whose families cannot afford treatment. Additional categories encompass victims of offenses against children, children harmed by disasters or armed conflict, children from marginalized Dalit communities, and others designated by ministerial notice in the *Nepal Gazette*.

The act stipulates that children qualifying under clauses (a) through (g) are specifically recognized as requiring alternative care, which may include placement in residential institutions or child care homes (§ 49).

Operational Standards and Admission Procedures

The Standards for Operation and Management of Residential Child Care Homes (2012) delineate criteria for the admission of children who are victims of abuse, torture, discrimination, or accidents; infants who have been abandoned; and children found in public spaces unable to identify their parents. The decision to admit a child rests with the institution's director or chief, who must act in the presence of at least two staff members and record the decision in an official register.

Upon admission, childcare homes are required to maintain and regularly update three key records for each child – a personal file containing legal documentation, health record file, and an educational record file for school-aged children. These records must be made available to relevant oversight entities, including the National Child Rights Council (NCRC), Provincial Child Rights Committees, and Local Child Rights Committees, upon request.

Need for Harmonization and Legal Update

It is critical to note that the 2012 Standards predate the enactment of the Act Relating to Children (2018). As such, they require comprehensive revision to ensure consistency with the updated legal framework and evolving principles of child protection and institutional care.

Relationship between Specific Offences and Orphanage Trafficking

Relationship Between Specific Offences and Orphanage Practices

Nepali legislation addresses several practices associated with orphanage trafficking, although the term itself is not explicitly defined under either the Act Relating to Children (2018) or the HTTCA. For instance, the Act Relating to Children (2018) criminalizes acts such as falsely registering a child as an orphan (§ 66(2)(k)) and placing children in institutional care without adhering to prescribed legal procedures (§ 66(2)(r)). These acts are classified as forms of "violence against children."

While orphanage trafficking may involve actions such as the sale or purchase of children, institutional exploitation, and placement through deception or abuse of authority, these are typically prosecuted under existing general trafficking provisions. The HTTCA defines human transportation to include the act of transferring individuals—using coercion, deception, or abuse of power—for exploitative purposes (§ 4(2)(b)). In practice, this definition can incorporate the removal of children from their family environments and their placement in childcare homes for monetary gain. However, due to the absence of a distinct offence titled "orphanage trafficking," enforcement responses remain fragmented and lack consistency.

For example, if a child is sold to an institution or used to solicit donations or labour, these practices may fall under the practical understanding of orphanage trafficking but are instead prosecuted under child protection laws as "violence against children." Likewise, the

admission of children who do not meet the legal criteria for institutional care constitutes an offence under Section 66(2)(r), though it is not treated as trafficking per se.

Sexual Exploitation and Institutional Abuse

The Act Relating to Children (2018) is the principal legal instrument for prosecuting crimes against children, including sexual abuse (§ 66(3)). Its definitions are comprehensive, covering a wide spectrum of exploitative conduct such as displaying obscene, vulgar, or pornographic materials to children, storing or disseminating child pornography, proposing, coercing, or threatening children into sexual activities, involving children in the creation or performance of sexual content, physical acts involving sexual contact with children, and exploiting children for sexual gratification or prostitution.

Crucially, these offences are prosecutable regardless of the setting—whether institutional, private, or public. If children are trafficked into care homes and subjected to sexual exploitation, these acts satisfy the criteria for child trafficking under Section 2 of the HTTCA, which defines child trafficking broadly, allowing prosecution regardless of where the exploitation occurs—whether in private homes, public spaces, or institutional care settings. If children are placed in care homes and subjected to sexual abuse, it qualifies as trafficking under the law, even if done under the guise of protection.

Ancillary offences under the Criminal Code and their relevance to Orphanage Trafficking

The National Criminal Code (2017) outlines several offences relevant to institutional child protection and potential abuses within residential care settings. Section 184 criminalizes the abandonment or desertion of individuals under guardianship, including infants, children, disabled persons, and elderly individuals, where such abandonment poses risks to life or well-being. Additionally, Section 211 prohibits kidnapping and hostage-taking, including acts involving children or individuals under shelter due to physical or mental incapacity. The provision specifies that forcibly relocating such persons without consent—or by way of misrepresentation—constitutes a criminal offence.

Reports have documented instances in which childcare homes in Nepal have used children in the act of begging- to solicit donations, including food or financial support. Section 126 of the National Criminal Code (2017) clearly prohibits soliciting alms in public and bans the use of children for begging under the guise of performances such as singing, dancing, or playing. The provision further criminalizes the employment of any individual for begging in exchange for money or wages paid by the offender.

While Section 225 prohibits child sexual abuse, prosecutions are frequently pursued under the Act Relating to Children (2018), which is regarded as the specialized legislative framework for offences against minors.

Importantly, Section 17 of the National Criminal Code (2017) provides that any act carried out "in good faith" for the benefit of a child—with the consent of a guardian—shall not be considered an offence. This clause remains controversial in child protection discourse, as it may be exploited by institutional caregivers to legitimize questionable or harmful practices. Such ambiguity introduces potential legal loopholes that could undermine safeguards for children in residential care.

Conclusion

Nepal's current legal framework does not explicitly recognize orphanage trafficking as a distinct and serious form of child exploitation. Although existing statutes—including general anti-trafficking and child protection laws—aim to safeguard children from abuse, their implementation remains inconsistent, particularly within institutional care settings. The absence of a cohesive legal and regulatory structure renders children residing in orphanages susceptible to violations that are frequently overlooked or inadequately addressed.

This study highlights significant gaps in Nepal's legislative and procedural landscape, especially in relation to interpretive clarity, protective safeguards, and oversight mechanisms.

These deficiencies impede Nepal's ability to fulfil its obligations under its international human rights obligations such as the Convention on the Rights of the Child and the Palermo Protocol. The absence of a legally recognized category for orphanage trafficking not only undermines the coherence of enforcement but also hinders targeted intervention and policy development.

To address these systemic challenges, it is imperative that Nepal formally integrates orphanage trafficking into its legal discourse. This requires the establishment of a standalone offence category consistent with international standards, coupled with robust monitoring, accountability, and enforcement provisions. Strengthening coordination among state actors—including law enforcement, judicial bodies, and child protection institutions—is essential for ensuring that exploitation within residential care settings is effectively prevented and addressed.

Ultimately, reforming Nepal's legal and institutional approach to orphanage trafficking transcends technical compliance with international norms; it reflects a fundamental moral responsibility. Safeguarding the rights, dignity, and welfare of children in alternative care demands unequivocal legal recognition, coherent policy frameworks, and accountability across all levels of governance.

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