

Violence against Women/Girls:
An Assessment of the Situation in Nepal
2014

For human rights and Social Justice
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Preface

The world marked 105th International Women Day on March 8, 2015 with the theme "Empowering Women, Empowering Humanity: Picture it!" Nepal as a member state of the United Nations has ratified various International human rights treaties and conventions related to women's rights which have explicitly pledged the commitment towards protecting and promoting the rights of women.

UN says that women in Nepal still earn 57% less than their male counterparts and nearly half (48%) of the Nepali women experience violence in their lifetime. Nepal ranks 112 of 136 countries in gender equality.

Patriarchal society and economic dependency on men are the grounds of male domination in the society. The witchcraft allegation, rape, sexual violence including rape and attempt to rape, polygamy, sexual harassment and domestic violence and trafficking of women and girls are some of the forms of violence against women occurring frequently. Documentation of Informal Sector Service Centre (INSEC) offers a trend of different forms of violence against women and girls in Nepal. In 2014, 3524 victims of violence against women and 864 girl victims are recorded. Similarly, records of police and other organizations too show the similar kind of trend.

Lack of effective laws, poor implementation and unaccountable governmental authorities are also contributing towards increase of the incidents related to violence against women. Many improvements and efforts are required to reduce the violence against women/girls in the country. The laws and policies drafted to enhance women participation on different constitutional, administrative and public service bodies are there but the deep-rooted religious, cultural and traditional malpractices and taboos created against women have always obstructed the path to equality.

Violence against women and girls is a stain to a progressive society. However, the significant increase in the violence against women and girls can also be linked to increasing awareness of these ills in the society.

We cannot ask the government to take care of every problem in the country. The insecurity of women and girls and the violence including killing, sexual violence witchcraft allegations, polygamy, domestic violence and women/girls trafficking can be reduced by the

combined effort of multiple stakeholders comprising of Government, Community Based Organizations (CBOs), Non-Governmental Organizations (NGOs) and International and Regional Partners.

The report tries to analyze the incidences of killing, rape, sexual violence, victims of witchcraft allegations, polygamy, domestic violence and trafficking of women and girls, based on the INSEC documentation for Nepal Human Rights Yearbook 2015. I believe it would be a helpful tool to get an idea of some aspects of violence against women and girls in Nepal and for the respective authorities to address these problems of the society.

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Subodh Raj Pyakurel

Chairperson

Abbreviations

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

Introduction

Violence against women is a sad reality in every country of the world as a common violation of human rights which also impedes to achieving gender equality. Whether perpetrated by the state or non-state actors, such kind of violence is unacceptable. States have an obligation to protect women from violence, to hold perpetrators accountable and to provide justice and remedies to victims. Eliminating violence against women remains one of the most serious challenges of our time. This requires clear political will, outspoken, visible and unwavering commitment at the highest levels of leadership of the State and the resolve, advocacy and practical action of individuals and communities.¹

It affects one in three women globally and is one of the foremost causes of death and disability for women. Crucially, gender-based violence is a major obstacle to social and economic development, and to the achievement of sustainable development goals.²

Extent of different types of violence against different depends on the economic, social and cultural structure of a society. Violence against women and girls exists in all societies, cultures, and socioeconomic groups throughout the world, and is gross violation of their fundamental rights. While domestic violence is an extremely common phenomenon, it tends to remain private, within a home. The secrecy that surrounds domestic violence means that incidents are very rarely reported.

In Nepal, domestic violence against women in its different forms as physical, sexual, psychological, emotional or economic occurs to different extent. Whereas sexual or physical violence is increasingly being reported and psychological to some extent, there has been little awareness about emotional or economic domestic violence. Emerging trend of violence by intimate partners besides husband has not been widely recognized.

According to a study by the Asia Foundation (2010) in Nepal close to half of women (48%) reported experiencing violence in their lifetime, and over a quarter had experienced violence in the past 12 months. Emotional violence (40%) was most commonly reported, followed by physical violence (27%), sexual violence (15%), and economic abuse (8%).

¹ U.N. Secretary General, *In-depth study on all forms of violence against women: Rep. of the Secretary-General*, ¶ 9, U.N. Doc. A/61/122/Add.1 (6 July 2006)

² Submission by Prof Rashida Manjoo, UN Special Rapporteur on violence against women, its causes and consequences

Women who had experienced violence reported that almost three-quarters of the perpetrators were husbands³.

The UNFPA study of the perception of men and women regarding various harmful practices including violence undertaken by the UNFPA Nepal stated that nearly one third men reported acceptance of one or the other harmful practices at the community level, i.e., 34% men accepted the restrictive practices – isolating them physically -- during menstruation, 27 % supported the idea of restricted freedom for women and girls in general, 16% thought it is all right to blame a woman as a witch and 10% accepted the practices of sex-determination of the fetus prior to the birth. Nearly 10% men claimed the prevalence of dowry related torture or killing of women and nearly 8% claimed that forced marriages were acceptable at the community level.⁴

It is in fact the leading cause of death among women of reproductive age in Nepal probably due to domestic violence from their husband and in laws as over eighty percent of them report experiencing domestic violence.⁵

Progress in the development of international legal norms, standards and policies has not been accompanied by comparable progress in their implementation at the national level, which remains insufficient and inconsistent in all parts of the world. Declaration on the Elimination of Violence against Women (1993) highlights the different sites of violence against women: violence in the family, violence in the community and violence perpetrated or condoned by the State.

Many of the laws in Nepal were codified keeping a view of a woman as a meek, helpless and silent creature but the laws have been unable to keep up with the time addressing the emerging issues. Marital rape, accepted as a rape in many countries including, attracts lesser punishment than non-marital rape while violence by intimate partner other than husband has not been brought into legal frame. Dowry violence and acid throwing now have been accepted as problems but there are no particular laws to address that crime.

Twenty-two percent of women age 15-49 have experienced physical violence at least once since age 15, and 9 percent experienced physical violence within the 12 months prior to

³ Asia Foundation Study on Violence against women (2010)

⁴ Engaging Men and Boys, Communities and Parents to End Violence against Women, Child Marriage and Other Harmful Practices in Nepal (Strategy Document for UNFPA Nepal), January 2014, pp.6

⁵ Joshi S K . Violence against women in Nepal: Role of Health care workers. Kathmandu university medical journal 2009;7(2):89-91

the survey. It is not common for women in Nepal to seek assistance from any source for violence they have experienced. Nearly two in three women have never told anyone about the violence they have experienced.⁶ A survey conducted in 2006 shows that 21% women think that a husband is justified to beat his wife if she neglects the children while 9.4% think assault upon them is justified if they go out without telling him and 7.4% think arguing with husband justifies her beatings by husband.⁷

Nepal has implemented the Domestic Violence (Offence and Punishment) Act (2066 BS) of 2009 and the Domestic Violence (Offence and Punishment) Regulation (2067 BS) of 2010. It has also implemented a national action plan (2010) against gender-based violence with the Prime Minister's declaration of 2010 as the gender-based violence free year (Office of the Prime Minister and Council of Minister, 2009) and introduced a hospital-based one-stop crisis management center in 15 selected districts (Ministry of Health and Population [MOHP], 2010d), with service centers established for victims of gender based violence (Department of Women's Development, 2009).⁸

The most commonly reported perpetrator of physical violence among ever-married women is the current husband (84 per cent), indicating a high level of spousal violence. Former husbands and in-laws are cited as perpetrators of physical violence by 7 percent and 6 percent, respectively, of ever-married women. Among never-married women who have experienced physical violence since age 15, the most common perpetrators of violence are siblings (38 per cent), fathers or stepfathers (36 per cent), and mothers or stepmothers (30 per cent).⁹

It is often stated that violence perpetuates violence. A family history of domestic violence is associated with a respondent's own experience of domestic violence. Among women whose fathers beat their mothers, 47 percent have experienced emotional, physical, or sexual violence, compared with 29 percent of women whose fathers did not beat their mothers.¹⁰

⁶ Nepal Demographic and Health Survey, 2011. pp. 223.

<http://dhsprogram.com/pubs/pdf/FR257/FR257%5B13April2012%5D.pdf>

⁷ Violence Against Women and Girls. Jennifer L. Solotraffoff and Rohini Prabha Pande. World Bank Group. Washington DC. 2014. pp 36

⁸ Nepal Demographic and Health Survey, 2011. pp. 223.

<http://dhsprogram.com/pubs/pdf/FR257/FR257%5B13April2012%5D.pdf>

⁹ Ibid. pp. 237

¹⁰ Ibid. pp. 243

Twenty years ago, violence against women was not considered an issue worthy of international attention or concern. Victims of violence suffered in silence, with little public recognition of their plight. At the international level, the issue of violence against women came onto the agenda in the context of women's rights activism at the United Nations. Some particular forms of violence against women, such as trafficking for forced prostitution, had been addressed before the founding of the United Nations.

The World Plan of Action for Women, adopted in 1975 at the World Conference of the International Women's Year in Mexico City, drew attention to the need for education programs and ways to resolve family conflict that ensured dignity, equality and security to each family member, but did not explicitly refer to violence. The 1980 Copenhagen mid - decade Second World Conference of the United Nations Decade for Women adopted a resolution on violence in the family. During the early 1990s, efforts by the women's movement to gain recognition of violence against women as a human rights issue gained momentum. For the World Conference on Human Rights in Vienna in 1993, women caucused and lobbied globally and regionally to redefine the contours of human rights law to include the experiences of women. They presented conference delegates with almost half a million signatures from 128 countries demanding that such violence be recognized as a violation of women's human rights, and ran a global tribunal in which women's testimonies, including cases of violence from around the world, were presented in a human rights framework.¹¹

Violence against women is also known as gender based violence (hereinafter GDV),¹² a violence as such was restrained within the four walls, in the past however with the time the suffering are being seen heard, and addressed.

1.2 Definition and Concept related with Violence against Women/Girls

The UN Declaration on the Elimination of Violence against Women (1993) states that "violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against

¹¹ U.N. Secretary General, *In-depth study on all forms of violence against women: Rep. of the Secretary-General*, ¶ 14-15, U.N. Doc. A/61/122/Add.1 (6 July 2006)

¹² Violence against Women refers to "any act of gender-based violence that results in, or is likely to result in, physical, sexual and psychological harm to women and girls, whether occurring in private or in public. The Declaration on the Elimination of Violence against Women (1993)

women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.”¹³ The United Nations General Assembly defines "violence against women" as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life." The 1993 Declaration on the Elimination of Violence against Women noted that this violence could be perpetrated by assailants of gender, family members and even the "State" itself.¹⁴

Furthermore, Gender Based violence is "any act of commission or omission by individuals or the state, in private or public life, which brings harm, suffering or threat to girls and women, and reflects systematic discrimination- including harmful traditional practices and denial of human rights because of gender.¹⁵ Violence against Women refers to "any act of gender-based violence that results in, or is likely to result in, physical, sexual and psychological harm to women and girls, whether occurring in private or in public.¹⁶ Within this definition other harmful acts are included such as early marriage, honor crimes and deprivation of inheritance rights. ¹⁷

"Domestic Violence" means any form of physical, mental, sexual and economic harm perpetrated by person to a person with whom he/she has a family relationship and his word also includes any acts of reprimand or emotional harm.¹⁸

World Health organization (WHO) define violence the intention use of physical force or power, threatened or actual, against oneself, another person, against a group or community, that either results in or has a high lively-hood of resulting injury or death, psychological harm, mal-development or deprivation. Each year, more than million people lose their lives, and many more suffer from injuries due to violence. Over all, violence is among the leading cause of death worldwide for people aged 15- 44 years (World Report on Violence and

¹³ [A/RES/48/104. Declaration on the Elimination of Violence against Women](#)

¹⁴ [United Nations General Assembly Declaration on the Elimination of Violence against Women\(1993\)](#)

¹⁵ Ruth Finnery Hayward, Breaking the Earthenware Jar quired from Reference Kit on Violence Against Women and Girls in South Asia, UNICEF, Kathmandu, Nepal, 2001, p 10

¹⁶The Declaration on the Elimination of Violence against Women (1993)

¹⁷Shelah S Bloom, Violence Against Women and Girls: A Compendium of Monitoring and Evaluation Indicators (in collaboration USAID East Africa Regional Mission in collaboration with the IGWG, MEASURE), p 12/13

¹⁸Clause 2 (A) of Domestic Violence (Offence and Punishment) Act, 2066

Health, 2002).Violence is a universal scourge that threatens the life, health and happiness of all human being. This includes threats, coercion and the arbitrary deprivation of resources is violence against women usually performed by a male partner (world Report, 2002).

1.3 Organization of the Report

This report is broadly divided into four chapters. The first chapter overviews the violence against women/girls in accordance with various concepts and definition related. In the chapter 2 statistical representations of the various forms of violation is presented in regards to women/girls. Descriptive analysis of violence against women is also presented in this chapter. This is followed by the existing International and domestic laws are presented in chapter 3. In the chapter four analyses is done, followed by conclusion and recommendation.

Chapter 2: Violence against Women/Girls

2.1 Forms and Incidence of Gender-based Violence (2014)

The INSEC documentation reveals an increasing trend of violence against women in Nepal. In 2014, a total of 3534 victims were documented as victims of women's rights violation¹⁹. Most of these women are the victims of domestic violence (2496), sexual violence (470) followed by polygamy (337) and women trafficking (125).

Domestic violence includes battering, mental torture, expulsion from home, threats of polygamy, not attesting women application for citizenship and not registering the marriage. INSEC has documented two women who were deprived for post-partum services. Though such victims are very common in rural and remote areas of the country and at times in urban areas, negligible victims have been documented.

The number of victims of VAW has gone up from 910 in 2011, 2348 in 2013 to 3534 in 2014. The sharp increase in the women's rights violation is due to the increased documentation of domestic violence.

In 2012, the number of victims of domestic violence was 447, in 2013 it was 1569 and in 2014, it was 2496. In 2012 and 2013 each, there were five women killed in dowry violence while this year, it was nine. On witchcraft allegation, 52 women were abused in 2012, 69 in 2013 and 89 women were subjected to abuse on the same allegation in 2014.

There were 222 women victims of sexual violence including 140 victims of rape, 39 victims of attempt to rape and 43 of sexual abuse in 2012. Similarly, in 2013, there were 215 victims of rape, 89 victims of attempt to rape and 52 of sexual violence. In 2014 where highest number of victims documented are victims of rape followed by attempt to rape (132) and sexual abuse (93).

The number of increase in the victims' number can be attributed to increased awareness among the women and the increase support from civil society and government measures as well as media.

Table 1: Different Types of Women Rights Violation

¹⁹ The women and girls killed after rape are not included in the data. They have been analyzed separately.

Types of Events	By State		By Non-State	
	Female	Total	Female	Total
Abortion			3	3
Domestic Violence			2496	2496
Witchcraft Allegation			89	89
Forced Prostitution			2	2
Polygamy			337	337
Pregnancy Services	2	2		
Rape			238	238
Rape Attempt			139	139
Sexual Abuse			93	93
Women Trafficking			125	125
Total	2	2	3522	3522

Table 2: Top 10 Districts with Women Victims of Violence

Kathmandu	508
Saptari	189
Morang	157
Kaski	150
Bardiya	138
Kailali	123
Surkhet	116
Solukhumbu	102
Rautahat	94
Khotang	87

2. 1.1 Victims of Homicide

Table 3:

Perpetrator	Female	Male	Total
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By State		7	7
Others	160	105	265
Unidentified	14	22	36
Total	174	134	308

INSEC documented the killings of 308 people in 2014 of which 174 were women and 134 were men. All the women were victims at the hand of non-state actors. The killers of 14 women could not be identified at the end of 2014 while 160 women were killed by diverse types of people including family members, neighbors, armed groups and criminal groups. The 174 also include nine women killed in dowry violence. Out of 174, 17 girls and women were killed after rape while nine women died due to dowry violence.

Najarana Khatun, 22, of Rajbiraj Municipality-7, Saptari died at around 11.45 pm on March 8 of the burn injuries inflicted upon her by her mother-in-law of the victim Bano Khatun, 44, and sister-in-law Nurjaha Khatun, 20. She was set on fire while she was sleeping at around 2 pm on March 8. Medical Superintendent of Zonal Hospital in Rajbiraj Dr. Shailesh Kumar Jha said that more than 80 percent of the victim's body was burnt in the incident. A mother of a one-year-old girl, Najarana died while undergoing treatment at BP Koirala Institute of Health Sciences after being referred by Sagarmatha Zonal Hospital, Rajbiraj. Najarana recorded her dying declaration against her mother-in-law and sister-in-law. Police arrested the accused on charge of trying to set her on fire. Husband and brother-in-law of the victim are working abroad. Rights activist have urged the District Police Office to take action against the culprits. Both of the accused were at the Saptari prison on remand since April 7, 2014.

Table 4: Killed After Rape

Event District	Eastern Region	Far Western	Mid Region	Western Region	Grand Total
Bara			3		3
Dhanusha			2		2
Gulmi				1	1
Jhapa	1				1

Kanchanpur		1			1
Kapilvastu				1	1
Kaski				1	1
Kavrepalanchok			1		1
Lamjung				1	1
Mahottari			2		2
Sankhuwasabha	1				1
Sindhuli			1		1
Siraha	1				1
Grand Total	3	1	9	4	17

2. 1.2. Killed after Rape

A total 17 victims of killing after rape have been documented by INSEC. Nine of them were women and eight were girls aged 17 or under. Two 6-years-old girls were killed after rape while a 59-year-old woman was also the victim of this crime. Of them, six victims were strangulated to death while sharp weapon was used to kill three victims and three were crushed with a stone to death. The weapon in two killings could not be known.

Riya Kumari Sah, 6, of Kaliya Municipality-7, Bara was killed after rape on April 10. The victim who was living at her maternal house was lured and murdered after rape near Barewa Palace. She was found unconscious by the police after the search. She died in the hospital while undergoing treatment. The police team was sent to the incident site for further investigation. Sanjeev Bikram Shah, 38, and Baiju Rawat Mestar, 28, of Kalaiya Municipality-7 were arrested by the police on May 8. The accused were remanded in custody by a court order on June 4. Mestar was released on bail deposit of Rs 5,000 soon after while District Court, Bara released Shah in January 2010 citing lack of sufficient evidence.

Table 5: Femicide Victims by Region

Victim Event Sub-Type	Eastern Region	Far-Western	Mid Region	Mid- Western Region	Western Region	Total
Total	61	11	57	20	25	174

Beaten to Death	26	3	19	5	7	59
By Using Sharp Weapons	19	1	12	3	6	38
By Hanging	3	2	3	1	5	14
Nature of Killing Unexposed	3		6	1	3	10
Hacked to Death	2	1	4	1		8
Striking Lathi			4	1	2	7
Setting Fire	2		1	3		6
Striking Khukuri	2	1		1		4
By Giving Poison		1	1	1		3
Killed by Firing	1	1				2
Slitting Throat to Death	2					2
Strangulated to Death	1	1	3	2	1	2
Crushing with Stone			3		1	1
Striking Hammer				1		1

2.1.3 Sexual Violence against Women

For the purpose of the report, INSEC defines a sexual violence as an act committed against someone without that person's freely given consent including completed forced penetration of a victim, completed or alcohol/drug-facilitated penetration of a victim. Attempt of these acts are defined as attempt to rape while unwanted sexual contact or harassment has been defined as sexual abuse.

The rape victims do not only suffer from this crime, but are re-victimized when justice is denied or their plight is aggravated by social stigmatization. Two victims of Dhading districts are instances of such.

A 27-year-old mentally ill woman was raped by Shyam Kumar Shrestha, 54, of Majhgaun, Salyantar VDC-7, Dhading on January 17. Police registered the case under Public Offence Act. On January 18, the victim underwent health checkup at District Hospital in the initiation of police. The accused was arrested by the police and presented to the District Administration Office after being charged Public Offence Act. He was released on bail amount of Rs 5,000 by District Administration Office on February 26. The case is under consideration at District Administration Office.

After the incident was made public, various Human Rights organizations including INSEC, WOREC, and Dhading-based Women Human Rights Network jointly conducted a fact finding mission on March 1. The study found that the police tried to settle the case exerting pressure on the victim's side. The WHRDs and journalists received threatening calls from DSP Ashok Singh of the District Police Office and others following the publication of the fact finding report public. The fact finding report was handed over to the secretary of Home Ministry drawing his attention.

A 27-year-old woman of Simkhadagaun, Dhola VDC-2 in Dhading district was given involuntary retirement by the management committee of local Bal Jyoti Primary School on March 23 on charge of not taking back the case of rape registered in the court. She was working as a helper in the school for the last seven years. The victim had registered a complaint of rape in the court against Sanjeev Simkhada, 24, on December 9, 2013. She underwent health checkup on the same day the complaint was registered. The victim complained that no action was taken against the accused by police and she was pressurized to take back the case. She was further expelled from the school after she did not give in.

The accused is at large after the incident. The victim who was working as a peon in the school is having a financial crisis after her expulsion. She demanded for the justice among the rights activists of the district. She was further displaced after receiving a series of threats on April 4 from the perpetrator and his supporters. Chief District Officer Bishnu Prasad Pokhrel said that the initiation will be taken to reinstate the victim by solving the issue. District Education Officer Dipendra Subedi said that a written instruction was sent to the school to reinstate her. The various rights organizations and alliances including INSEC of the district requested the CDO for her reinstatement in society and her job.

Her mother-in-law died in the morning of July 2, 2014. She called everyone in the village for participation in her final rites however no one attended. The dead body remained at her home of hours as no one helped her to carry it. The CDO and Police administration did not show any interest after she informed them. The final rite of the body was performed later after the people from other village came for her help. Even the priest was not allowed to come. Some of the funeral party returned from half way after they were threatened. After getting the information about this incident, through INSEC district representative, INSEC provided Rs 10,000, and Sahayatri Samaj provided financial support of Rs 5,000 and WOREC Nepal Rs 4,000 to the victim for funeral of her mother-in-law. The victim could not get any justice until the end of 2014.

Table 6: Top 16 Districts with Victims of Sexual Violence

Event District	Rape	Rape Attempt	Sexual Abuse	Total
Bardiya	11	3	28	42
Kathmandu	18	5	1	24
Kavre	10	4	3	17
Kaski	10	4		14
Makwanpur	10	4		14
Kailali	6	4	3	13
Morang	6	6	1	13
Chitwan	6	5	1	12
Saptari	5	5	2	12
Dhading	5	5	1	11

Nawalparasi	6	5		11
Rupandehi	6	5		11
Banke	4	1	5	10
Khotang	2	4	4	10
Sindhuli	7	3		10
Sindhupalchok	6	4		10

2. 1.4 Trafficking:

INSEC documented 125 victims of trafficking in 29 districts in 2014. This category includes women who were sold abroad mainly India and came back to report in 2014 while many were the victims of attempted trafficking stopped while crossing the border to India. Some of the victims are forced into flesh trade by their employers, mainly hoteliers. Some were taken to India in the pretext of marriage or finding a groom. Kathmandu has the highest number of victims recorded (17) followed by Kapilbastu (15), Bardiya (14) and Kaski (12). Two victims in Kailali have been documented primarily as victims of forceful prostitution which can also be totaled here. Most of the trafficking victims fall in 20-24 (54) age group followed by 15-19 (35) and 25-29 (22).

Radhika Devi Bishta, 27, Sher Bahadur Nath, 68, and Dhana Nath, 35, of Dekhatbhuli VDC-8 were arrested by District Police Office on December 5 for trafficking of a 25-year-old woman. The victim lodged a complaint at District Police Office on December 7. The District Court ordered to release all the accused after fining Rs 50,000 each. Although Radhika and Sher Bahadur were released after depositing the fine, Dhana was jailed after he could not submit the amount.

Table 7: Number of women victims of trafficking by district (2014)

Event District	Women Trafficking
Kathmandu	17

Kapilvastu	15
Bardiya	14
Kailali	13
Kaski	12
Morang	7
Nawalparasi	7
Sindhupalchowk	6
Kanchanpur	3
Banke	2
Chitwan	2
Illam	2
Lalitpur	2
Mahottari	2
Nuwakot	2
Panchthar	2
Parsa	2
Rautahat	2
Salyan	2
Sunsari	2
Baglung	1
Bhaktapur	1
Darchaula	1
Doti	1
Jhapa	1
Parvat	1
Sankhuwasabha	1
Saptari	1
Siraha	1

The family of Parbati Adhikari, 17, of Karkigaon VDC-1, Jajarkot lodged a complaint against Bhim Bahadur Mahatara, 37, of Sima VDC-9 at District Police Office, Jajarkot on

November 9 accusing him of her attempted trafficking in India on October 31 luring her with a promise of marriage. The District Police Office said that the accused was absconding until the end of the year.

Women Victimization as per region

Table 8: No. of Women victims of different violence by region

2. 1.5 Women Victimization as per region

Types of violence	Eastern	Mid	Western	Mid-Western	Far-Western	Total
Abortion	1	2				3
Domestic Violence	733	805	308	367	283	2496
For Practicing Witchcraft	25	39	10	13	2	89
Forced Prostitution					2	2
Polygamy	113	103	60	49	12	337
Pregnancy Services				2		2
Rape	53	94	48	35	8	238
Rape Attempt	43	44	25	16	11	139
Sexual Abuse	16	17	7	44	9	93
Women Trafficking	17	36	36	18	18	125
Total	1001	1140	494	544	345	3524

According to INSEC documentation, Mid Development Region is the most affected with maximum number of victims (1140) documented followed by 1001. Mid-Western

development region documented 544 victims while Western 494 and Far-Western region 345. By number, the Mid-Region seems most affected but most number of victims are documented are from Kathmandu district. Being the capital and the largest city and the most number of districts, it is only logical that it would record more number of victims of violence. Most of the documented female victims are the victims of domestic violence i.e. 2496 with Mid Region recording the highest at 805 victims or 32.21% of the total documented victims of domestic violence.

Eastern Region tops the number of women killed with 61 documented cases of killings of women out of 174. Most of the women are beaten to death. Sharp weapons as been used in killing of 38 women and 16 women have been documented as being killed by hanging or strangulation. Of 174, 17 women were killed after rape.

2.1.7 Domestic Violence

INSEC documented 2496 victims of domestic violence in 71 districts. Most number of domestic violence have been documented in Kathmandu (451) followed by Saptari (149) and Morang (128). Surkhet and Kaski also have the victims over 100 while nine districts have the victims over 50. Four districts have no documented case of domestic violence. The acts of domestic violence include physical and mental violence ranging from battery, pestering women in different pretexts and inflicting bodily or mental harm among others. Most of the documented victims of domestic violence are in Mid Region (805) and Eastern Region (733).

Saira Teli, 35, and her daughter Rubina Teli, 16, of Mohampur VDC-6, Bardiya were severely assaulted by her Saira's and girl's father Murau Teli, 40, on July 28 over a domestic dispute. Her daughter committed suicide by hanging when her severely injured mother had gone for treatment to the district headquarters.

2.1.8 Dowry Violence

Table 9: Women victims of dowry violence by districts

District	Killing	Domestic Violence	Total
Banke		1	1

Bara	1		1
Bardiya		1	1
Bhaktapur		1	1
Kanchanpur		1	1
Kapilvastu		2	2
Kaski		1	1
Kathmandu		8	8
Mahottari	2	1	3
Morang		2	2
Parsa	2		2
Parvat		2	2
Salyan		4	4
Saptari	1	7	8
Sarlahi	1		1
Siraha	1	2	3
Sunsari		1	1
Surkhet		18	18
Udayapur	1	1	2
Total	9	53	62

INSEC documented 62 victims of dowry violence in 19 districts. Nine women were killed and 53 were subjected to other types of violence. Of the total victims, 12 were the districts in Tarai. Among the nine deceased, eight were from Tarai districts. Kathmandu recorded the most number of dowry violence victims (8). All of them were subjected to domestic violence. Two women each were killed in Mahottari and Parsa. Four women were strangulated to death, two were beaten to death while one was poisoned. Cause of death of two victims could not be known.

Gitadevi Raut, 20, of Meghnath Gorahanna VDC-7, Mahottari was killed by her family members on October 12. The victim's relatives burnt the dead body near the farm at around 9.00 pm on the same day. The victim's maternal family members and other neighbors informed the

police while the accused were burning the dead body. Nathani Raut, 45, Punam Kumari, 19, and Bijeshwar Raut were arrested by police on October 19 for being involved in the incident. However, they were released on November 6 on general bail. The victim's father lodged a complaint on October 14 demanding severe action against the family members of the victims. The victim had got married to Nathuri Raut of Gorahanna VDC-7 on May 30. The victim's husband is now at Panjab of India. The case is yet to be decided at the end of year.

Anita Devi, 26, of Auraha VDC-5, Parsa was hacked to death by her husband and his family members on October 19 on charge of not bringing dowry in marriage. The victim's family filed a complaint against the accused family in district police office on October 23. The police filed a complaint at court against the accused Sikendra Patel, 28 including his family members. According to police, the accused remained absconding at the end of the year.

Rihana Sekh Dhapali, 25, of Laxmanpur VDC-8, Banke was severely injured after her husband Farid Dhapali, 26, and in-laws set her on fire by tying her hand on March 17. The incident was revealed after the victim's father lodged a complaint at INSEC Regional Office on May 4. The victim is living with her parents in Hiriminiya VDC after getting treatment at Bir Hospital. The accused were absconding until the end of the year. The case is pending until the end of the year.

2. 1.9 Elderly Women

INSEC documented 131 victims who are over the age of 60. Women made for 103 (78.6%) of the total victims. Of them, 84 (81.6%) are the victims of domestic violence. The domestic violence including expulsion from home by the son, daughter-in-law or relatives, mistreatment in the name of being witch or mistreatment by the family members. Out of 308 killings, 15 or nearly 5% are elderly women. The abused faced by elderly women and elderly population is also an acknowledged fact but very few of these incidents are reported because the elderly themselves consider family honor and names of their children over their own plight and in some cases, the elderly do not have enough confidence on the reporting mechanisms.

Table 10: Elderly women above 60 Victims of Violence

Victim Event Type	Female	Male	Total
Abduction		1	1
Arrest & Torture	1	3	4
Economic, Social Rights and Cultural Rights	1		1
Inhuman Behavior		3	3
Injured		3	3
Killing	15	15	30
Racial Discrimination	1		1
Right to Assembly	1	1	2
Threats		2	2
Women Rights	84		84
Grand Total	103	28	131

2. 1.10 Witchcraft Allegations

INSEC documented 89 victims in 33 districts who were subjected to inhuman treatment on the allegation of practicing witchcraft. Saptari had the highest number of such victims (12) followed by Siraha (7) and Dhanusha (6). Highest number of victims (15) is from age group 40-44 followed by 50-54 (13) and the age group 35-39 (12). There are two victims below 19 and 14 victims who are above the age of 60. Fourteen Tarai districts documented 55 victims while 17 hilly districts had 27 victims and two mountain districts had three. This shows that the practice of leveling the charge of witchcraft is widespread. One reason for higher number of witchcraft allegation victims in Tarai could be attributed to the relatively worse off social standing of women including elderly or widows and dalit women.

Table 11: Women abused on witchcraft allegation

Districts	Number
Saptari	12

Siraha	7
Dhanusha	6
Rautahat	4
Bardiya	4
Parsa	4
Sindhupalchok	4
Dang	4
Sarlahi	4
Mahottari	4
Kavrepalanchok	4
Nuwakot	3
Kapilvastu	3
Morang	2
Sindhuli	2
Arghakhanchi	2
Banke	2
Dolpa	2
Makwanpur	2
Kaski	1
Kanchanpur	1
Sankhuwasabha	1
Dhankuta	1
Udayapur	1
Sunsari	1
Jajarkot	1
Dhading	1
Bajura	1
Nawalparasi	1
Myagdi	1
Tanahu	1

Dolakha	1
Gorkha	1

Champa Devi Dhusani, 68, of Prempur Gonahi VDC-7, Rautahat was accused of being witch and assaulted by Munneshwor Hajara Dusadh, 45, Nandu Hajara Dusadh, 55, Jayapat Hajara Dusadh, 55, and Surtiya Devi Dushani, 40, in the morning of February 21. The perpetrators tried to feed her human excreta. The victim lodged a complaint at Area Police Office, Garuda on March 9. The police registered the complaint at District Court and the court fined each accused Rs 5,000 on October 16.

2.1.11 Polygamy

INSEC documented 337 victims of polygamy in 51 districts. Though, legally punishable, the practice of polygamy continues unabated as it is still socially not scorned and short term of imprisonment or fine does not change the status of second marriage. Most number of documented polygamy cases was in Khotang (20) followed by Kaski (19) and Kathmandu (16). Women traditionally remain economically depended on male family members, she needs husband's cooperation to obtain citizenship for her children and broken marriage leads to stigmatization of herself and her children. Because of these reasons, women tend to remain silent and choose to stay in wedlock even if husband takes another woman as wife. Highest number of women filing complaints of polygamy against her husband is from the women of age group 25-29 (99) followed by 20-24 (91) and 35-39 (66).

2.2 Violence against Girls

Violence against girls includes sexual violence including rape and sexual abuse, girl trafficking, child marriage, killing of newborns and child labors.

2.2.1 Violence against Girls

INSEC documented 940 victims of child rights violation in 2014 out of which 864 were the girls. Sexual violence including rape and sexual abuse counted for the highest, 525 and 216 survivors respectively. These figures do not include the girls killed after rape (8). Child trafficking is another child rights violation documented by INSEC (58) and child marriage

(33). Few victims of child labor (9) and killing of newborn babies (15) were also documented. Most of the time, the newborn babies killed are the ones given birth by women with no knowledge of availability or accessibility to safe abortion.

Though rampant across the country and commonly seen working as domestic helpers or at hotels, very few cases of child labor are reported as it get little attention and is justified as best way available for them to survive. Some cases of child labor in the form of kamlaris have also been documented.

In 2012, the total number of girl victims was 478, in 2013, the number was 700 and in 2014, it was 846. There were 300 girl victims of rape in 2012, 406 in 2013 and 525 in 2014. For girl trafficking, there were 49 documented victims, in 2013, it was 51 and in 2014, 58 girls were the victims of trafficking or attempt to trafficking.

Table 12: Number of Girl Victims by Region

Type of violation	Eastern Region	Far Western	Mid Region	Mid-Western Region	Western Region	Total
Total	260	63	262	104	175	864
Rape	152	30	174	60	109	525
Sexual Abuse	70	17	63	25	41	216
Child Trafficking	14	9	14	2	19	58
Child Marriage	10	6	4	12	1	33
Killing of Newborn Baby	10		3	1	1	15
Child Labor	1	1	4		3	9
Corporal Punishment	2			2	1	5
Deprived From Various Opportunitie	1			1		2

s						
Attempt to Kill				1		1

2.2.2 Sexual Violence against Girls

Rape of the girl as young as 2 years of age has been documented. Most of the girl victims of rape are of age group 12-14 (195) followed by 15-17 (132) and 9-11 (80). There are 76 victims of age group 6-8 while 76 girls are in 6-8 age group and 40 are in 3-5 age group. In most of the cases, the victims know the perpetrators also including fathers and step-fathers. Kathmandu recorded the highest number of girl rape (34), followed by Morang (27) and Kaski (23).

Attempt to rape or other types of sexual violence have been placed under the category of sexual abuse. A total of 216 girls were the victims of sexual abuse. As young as 2 years old girl has been victim of sexual abuse. Highest number of victims are from age group 12-14 (78) followed by 15-17 (58).

Police arrested a 14-year-old boy on January 25 on charge of raping a 6-year-old girl on January 22. The girl's grandfather filed a complaint on January 24 saying that the girl was raped when she was alone at home. Police filed a case of rape at the District Court on January 26 and on the same day was sent to the reform center in Biratnagar. Convicting him of the crime, he was awarded sentenced of 2 and half years. Currently, he is in reform center, Biratnagar.

Though highest in the victims of rape, sexually abused victims are not in similar trend. In Kathmandu, the number of victim of sexual abuse is 10 while in Morang is 11 and in Kaski, it is nine. Highest number of victims in this category is in Jhapa (20) and Rupandehi (14). Morang lies in third place in this category. INSEC has documented victims of sexual abuse in 58 districts with seven districts only having documented victims of sexual abuse of girls and no rape.

The numbers of rape of girls are reported more than the rape of the women. The girls between 12 to 17 years are more vulnerable. One reason can be that the by this age, the girls are left attended and are involved in domestic chores and economic activities allowed the sexual predators to have access to them.

INSEC documentation shows that younger girls are raped at home when they are alone

and left unattended. The perpetrators allure them with providing some attractive incentives as chocolate or noodles or some money. Rape or attempt to rape also occurs in the jungle or an area near home where the girls go to graze domestic animals or to collect fodder or fuel wood.

These incidents are underreported but it is likely that need for immediate medical attention and heinous nature of the crime prompt relatives to report the incidents to police. Very little attention has, so far, been paid to the process of medical and legal treatment of the victims.

Table 13: Top 10 Districts with Girl Victims of Violence

Morang	49
Kathmandu	46
Kaski	44
Jhapa	40
Bardiya	31
Nawalparasi	26
Siraha	26
Rupandehi	25
KavrePalanchowk	23
Makwanpur	23

2.2.3 Girl Trafficking

A total of 58 victims of girl trafficking have been documented by INSEC in 21 districts. Kaski has documented highest number of trafficking victims (10) followed by Morang (8) and Jhapa (5). 36 of the 58 victims were documented in Tarai districts. Most of the victims of child trafficking are the ones being stopped while being taken to India.

2.2.4 Child Marriage

There has been report that prevalence of child marriage in Nepal is 55% as Nepal ranks 9th among top 18 countries with highest proportion marriage by the age of 18 and 12th among 18 countries with highest proportion married by the age of 15.²⁰ INSEC documented

²⁰ Supra 4. pp 30-31

33 girl victims of child marriage in 20 districts. Girl as young as 11 year of age has been documented as the child bride. Child marriage is quite common in Nepal with the country being among the top on the list having child brides. In some places, it is so common that the practice is taken for granted. The legal age of marriage with the consent of guardians is 18 and without consent is 20 but it is not uncommon to see girls aged 13 or 14 married off or eloped. INSEC documentation show most number of girl bride are from age group 12-14 (40) and 9-11 (18).

Ghanshyam Bohora, 28, of Shivalinga VDC-3, Baitadi got married to a 14-year-old girl on April 17. The girl's uncle filed a complaint against Bhatta on October 27. Police arrested him on the same day and a case of child marriage was filed. He was released on the bail deposit of Rs 5,000 on December 2.

INSEC has documented 23 victims of domestic violence who are aged 15 to 17. But, even if they approach police with the complaints of violence by spouse or in-laws, no one considers their age as a matter. Marriage is taken as the girl's entry to womanhood. By the time a girl reaches puberty, she is socially considered ready for marriage though the legal age of marriage is 18 with prior consent of the guardians. Bardiya had the most number of child marriage (5) followed by Khotang (4). Religious beliefs, poverty, lack of education along with lack of counseling to teenagers are contributing to the incidence of child marriage.

In some cases of elopement, the girls' families press the charge of rape against the 'groom' of the girls. The girl's family files a case only when they are not happy with the marriage or the groom's family. In either way, the child marriage is taken quite lightly by people and local authorities.

Chapter III

3. Domestic and International Legal Mechanisms with Respect to Violence against Women/Girls

3.1 Existing Domestic legal mechanism in respect to Violence against Women/Girls

3.1.1 Interim Constitution of Nepal 2007

Interim Constitution of Nepal, 2007 has ensured the fundamental Rights to People. This constitution guarantees the right to freedom²¹, right to equality²², Right against Untouchability and Racial Discrimination²³, Right Regarding Publication, Broadcasting and Press²⁴, Right Regarding Environment and Health²⁵, Education and Cultural Right²⁶, Right regarding Employment and Social Security²⁷, Right to Property²⁸, Right of Women²⁹, Right to Social Justice³⁰, Right of Child³¹, Right to Religion³², Rights Regarding to Justice³³, Right against Preventive Detention³⁴, Right against Torture³⁵, Right to Information³⁶, Right to

²¹ Right to Freedom: (1) Every person shall have the right to live with dignity, and no law shall be made which provides for capital punishment.

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

²³ Right against Untouchability and Racial Discrimination: (1) No person shall, on the ground of caste, descent, community or occupation, be subject to racial discrimination and untouchability of any form. Such a discriminating act shall be liable to punishment and the victim shall be entitled to the compensation as provided by the law.

²⁴ Right Regarding Publication, Broadcasting and Press: (1) No publication and broadcasting or printing of any news items, editorial, article, writings or other readings, audio-visual materials, by any means including electronic publication, broadcasting and press, shall be censored.

²⁵ Right Regarding Environment and Health: (1) Every person shall have the right to live in clean environment.

²⁶ Education and Cultural Right: (1) Each community shall have the right to get basic education in their mother tongue as provided for in the law.

²⁷ Right regarding Employment and Social Security: (1) Every citizen shall have the right to employment as provided for in the law.

²⁸ Right to Property: (1) Every citizen shall, subject to the laws in force, have the right to acquire, own, sell and otherwise dispose of the property.

²⁹ Right of Woman: (1) No one shall be discriminated in any form merely for being a woman. (3) No woman shall be subjected to physical, mental or any other kind of violence; and such act shall be punishable by law.

³⁰ Right to Social Justice: (1) Women, Dalit, indigenous tribes, Madheshi community, oppressed group, the poor peasant and labourers, who are economically, socially or educationally backward, shall have the right to participate in the state mechanism on the basis of proportional inclusive principles.

³¹ Right of Child: (1) Every child shall have the right to his/her own identity and name.

³² Right to Religion: (1) Every person shall have the right to profess, practise and preserve his/her own religion as handed down to him/her from ancient times having due regards to the social and cultural traditional practices.

³³ Rights Regarding to Justice: (1) No person who is arrested shall be detained in custody without being informed of the ground for such arrest.

³⁴ Right against Preventive Detention: (1) No person shall be held under preventive detention unless there is a sufficient ground of existence of an immediate threat to the sovereignty and integrity or law and order situation of Nepal.

³⁵ Right against Torture: (1) No person who is detained during investigation, or for trial or for any other reason shall be subjected to physical or mental torture, nor shall be given any cruel, inhuman or degrading treatment.

³⁶ Right to Information: (1) Every citizen shall have the right to demand or obtain information on any matters of his/her own or of public importance.

Privacy³⁷, Right against Exploitation³⁸, Right Regarding Labour³⁹, Right against Exile⁴⁰ and Right to Constitutional Remedy⁴¹ as fundamental rights. Rights to Freedom, Rights to Equality and Rights of Woman genuinely mentioned about the rights of women and constitutional remedy in case of the violation of such rights. The provisions of fundamental rights guaranteed by the constitution have also paved the way for the establishment of acts, rules and regulations for the implementation of such rights through legal means.

According to obligations, directive principles and policies stated on Article 33 (h)⁴² and policies of the state stated on article 35(8)⁴³ ensures the right to health of women by preparing and implementing plans, policies and directives in progressive order.

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

Domestic Violence (Offence and Punishment) Act, 2066 (2009) and Domestic Violence (Offence and Punishment) Rules, 2067 (2010) have been enacted to stop any kind of violence against women which can occurred at home and by the family members, and to punish the perpetrators.⁴⁴ The act has clearly defined the terms domestic violence⁴⁵, physical harm⁴⁶, mental harm⁴⁷, sexual harm⁴⁸, economic harm⁴⁹, the victim⁵⁰ and the perpetrator⁵¹.

Section 2 (i) and 2 (j) of the same act has defined the police station and the court connecting it with section 4, that has directed the filing of complaint in case of domestic

³⁷ Right to Privacy: (1) Except on the circumstance as provided by law, the privacy of the person, residence, property, document, statistics, correspondence and character of anyone is inviolable.

³⁸ Right against Exploitation: (1) Every person shall have the right against exploitation.

³⁹ Right Regarding Labour: (1) Every employee and worker shall have the right to proper work practice.

⁴⁰ Right against Exile: (1) No citizen shall be exiled.

⁴¹ Right to Constitutional Remedy: The right to proceed in the manner set forth in Article 107 for the enforcement of the rights conferred in this part is guaranteed.

⁴² Ibid article 33(h): To pursue a policy of establishing the right of all citizens to education, health, housing, employment and food sovereignty;

⁴³ Ibid article 35 (8): The State shall pursue a policy of making the women participate, to the maximum extent, in the task of national development, by making special provisions for their education, health and employment.

⁴⁴ Preamble of Domestic Violence (Offence and Punishment) Act, 2066 (2009) : Whereas, it is expedient to make provision to respect the right of every person to live in a secure and dignified life, to prevent and control violence occurring within the family and for matters connected therewith and incidental thereto making such violence punishable, and for providing protection to the victims of violence; Now, therefore, be it enacted by the Constituent Assembly pursuant to Sub article (1) of Article 81 of the Interim Constitution of Nepal, 2063 (2007).

⁴⁵ Ibid section 2 (a)

⁴⁶ Ibid section 2 (c)

⁴⁷ Ibid section 2 (d)

⁴⁸ Ibid section 2 (e)

⁴⁹ Ibid section 2 (f)

⁵⁰ Ibid section 2 (g)

⁵¹ Ibid section 2 (h)

violence against women⁵² and has explained about the procedure of complaining, filing, the checkup of victims, security measures for the victims. The interim protection order sec. (6), proceedings to be held in camera sec. (7), summary procedure to be adopted sec. (8), compensation to the victim, service provided at the service center, penalty provisions to the perpetrators and the time limitation⁵³ for filing the case are some provisions incorporated within the act. The penalty provision for the perpetrators of victims seems lighter⁵⁴. In exercise of the powers conferred by Section 17 of the act, the Domestic Violence (Offence and Punishment) Rules, 2067 (2010) has been promulgated that has strengthened the implementation of domestic mechanism for the rights of women.

3.1.3 Muluki Ain (General Code) 2020

The provisions enshrined in Muluki Ain (General Code) of Nepal; under the chapters Husband and Wife, Partition, Women Property, Battery⁵⁵, Intention of Sex⁵⁶, Rape and Incest address the violation which can be occurred against women in different forms that shall be correlated with domestic violation cases. Chapter of “Kutpit” prohibits causing hurt or committing grievous hurt by using weapon or by any other means⁵⁷, which has provision of compensation to the victims⁵⁸.

Polygamy under existing Nepali laws is restricted and punishable. Muluki Ain 2020, chapter on Marriage, number 2 (9)⁵⁹, number 5⁶⁰, number 7⁶¹, number 8⁶², number 9⁶³, and

⁵² Ibid section 4 (a) Filing of complaint: (1) A person who has knowledge of an act of domestic violence has been committed, or is being committed, or likely to be committed, may lodge a written or oral complaint setting out the details thereof, with the Police Office, National Women Commission or Local body.

⁵³ Ibid section 14: Limitation: The complaint, for an offence committed pursuant to this Act, shall be filed within Ninety days of the commission of the crime.

⁵⁴ Ibid section 13. Penalty: (1) A person who commits an act of domestic violence shall be punished with a fine of Three Thousand Rupees upto Twenty Five Thousand Rupees or Six months of imprisonment or both.

⁵⁵ Number 1 of Hurt/battery chapter; If a person causes bloodshed (Ragatpachhe), wound, injury, grievous hurt (Angabhanga) or causes any pain or harm to the body of another person, the person shall be deemed to have committed the offence of hurt/battery.

⁵⁶ Number 1 of chapter of Intention to sex; If a person, without the consent of a woman, touches or attempts to touch her sensitive organ, puts off her inner clothes (under garments), takes her to an unusually lonely place, makes her touch or catch (hold) his sexual organ or uses vulgar or other similar words or indications or shows her such drawing or picture or teases or harasses her for the purpose of sexual intercourse, or treats her with any unusual behavior or holds her with intention of having sexual intercourse, he shall be deemed to have done sexual harassment, and the who commits such an offence shall be liable to the punishment of imprisonment for a term not exceeding One year and a fine of up to Ten Thousand Rupees. The victim of such an offence shall be entitled to a reasonable compensation from the offender.

⁵⁷ Muluki Ain, chapter of hurt/battery, number 1

⁵⁸ Ibid, number 2

⁵⁹ Number 9 (2) of Marriage Chapter; In case either a male or a female below the age of Eighteen years is married and no offspring has been born from the marriage, the male or female who is below the age of Eighteen years may get such a marriage declared void if he or she does not agree with such a marriage upon having attained the age of Eighteen years.....9

number 9 (A)⁶⁴ have provisions of voiding marriage as well as the conditions in which the husband can arranged second marriage. In the same chapter, number 10⁶⁵ and 11⁶⁶ has kept the provision of punishment for committing polygamy and statutory limitation for filing the case against such actions. Chapter on Husband and Wife⁶⁷ has also kept the provisions under which husband can divorce the wife and remarry. Likewise chapter on Partition of Property, number 4⁶⁸ and 8⁶⁹ provisions have directly emphasized the practice of polygamy existing in the society. The laws relating to polygamy is prevalent in Muluki Ain especially on the chapter "Marriage" and "Husband and Wife".

Interim Constitution however accepts the right to equality between men and women and special rights to women as fundamental rights which must be followed by any legislation, plans and policies of the country, but the same practices cannot be found in the society. The Muluki Ain provisions also accept the polygamy practices in Nepal. The customary practices

⁶⁰ Ibid Number 5; If a marriage is concluded with a female who is dumb, leprous, crippled, lame, blind of both eyes, devoid of the female genital organ, handicapped with her hand or leg broken, insane or epileptic, under the false representation that she is normal, such a marriage shall be void if the male spouse does not accept the marriage. One who has so concluded or arranged the marriage on such false representation shall be liable to punishment of a fine of up to Five Hundred Rupees.

⁶¹ Ibid number 7; No marriage shall be solemnized or arranged without the consent of both the male and the female parties thereto. If a marriage is solemnized or arranged by force without consent, such a marriage shall be void. One who concludes or arranges such a marriage shall be punished liable to punishment of imprisonment for a term not exceeding Two years.

⁶² Ibid number 8; If one arranges the marriage of a female, who is already married or a widow or divorcee with another person by representing a false fact that she is an unmarried girl or of a male who is already married or a widower or divorced, the marriage shall be void if the party who gets married under that false representation does not consent to the marriage. The persons having attained majority, out of the principal persons who have so arranged the marriage, shall be liable to punishment of a fine of up to Ten Thousand Rupees and that amount of fine shall be provided to the party being subject to such a false representation.

⁶³ Ibid number 9; No male shall, except in the following circumstances, marry another female or keep a woman as an additional wife during the life-time of his wife or where the conjugal relation with his first wife is not dissolved under the law.....1

If his wife has any contagious venereal disease which has become incurable.....1

If his wife has become incurably insane.....1

If it is certified by the medical board recognized by the Government of Nepal that no offspring has been born because of his wife-----1

If his wife becomes crippled, with being unable to make movement-----1

If his wife becomes blind of both eyes-----1

If his wife takes partition share from him pursuant to No. 10 of the Chapter on Partition and lives apart-----1

⁶⁴ Ibid 9 (A); While concluding a marriage pursuant to Number 9 of this Chapter, one shall take the consent of the wife except she has become incurably insane or she is living apart after taking her partition share.

⁶⁵ Ibid number 10; if any person concludes another marriage or keeps wife in contravention of the matters contained in Number 9 and Number 9A of this Chapter, such person shall be liable to imprisonment for a term from One year to Three years and to a fine of Five Thousand Rupees to Twenty Five thousand rupees. If a woman knowingly concludes such marriage or becomes wife, that woman shall also be accordingly subject to the punishment.

⁶⁶ Ibid number 11; If a suit is not filed within three months after the commission of any act mentioned in Number 7 of this Chapter and after the date of knowledge of the matter in the case of the other matters, the suit shall not be entertained.

⁶⁷ Muluki Ain, Chapter on husband and wife number 1, 2 and 4

⁶⁸ Chapter on Partition of property; No. 4: If there are co-wives, all of them are entitled to have their share from their husband's share in accord with law.

⁶⁹ Ibid number 8: A wife kept outside without making it public or a son born of her cannot claim their share in his property after the husband or the father is dead.

of polygamy existing in some parts of Nepal don't come under the legal provisions of the country.

Muluki Ain has clearly defined the Rape⁷⁰ and categorized the rape cases in accordance with the age group of the victims and punishment provisions enshrined within it⁷¹. It means that the punishment is high if the victims have minimum age. Similarly 12th amendment of the Muluki Ain has also included the marital rape as a crime and has kept 3 to 6 month punishment to the perpetrator⁷². The present Muluki Ain has also provisions of additional 5 year imprisonment in the cases of gang rape, rape against pregnant women, handicapped or physically disabled women⁷³.

Likewise, if HIV/AIDS infected person rapes someone with intention to transfer infection, then he will be charged with additional 1 year imprisonment.⁷⁴ However, Muluki Ain has not spoken about the case if any woman or girl welcomed the male partner for the sexual intercourse with the intention to transfer the infection.

Moreover, additional 1 year imprisonment provision is included in oral sex incidents.⁷⁵ No provision has been made for the compensation to the victim if the perpetrators are unable to pay that need to be addressed by the state by keeping additional provisions in law or by making effective mechanism. Similarly, Muluki Ain's chapter on Incest⁷⁶ has also categorized different punishment provision for the perpetrators according to the relation with the

⁷⁰ Muluki Ain, Rape chapter Number 1: If a person enters into sexual intercourse with a woman without her consent or enters into sexual intercourse with a girl below the age of Sixteen years with or without her consent shall be deemed to be an offence of rape.

⁷¹ A person who commits rape shall be liable to the imprisonment as mentioned hereunder: Imprisonment for a term ranging from Ten years to Fifteen years if the minor girl is below the age of Ten years.....1

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

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

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

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

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

⁷² *ibid*

⁷³ *Ibid* number 3 (A): One who commits a gang rape or commits rape with a pregnant woman or a disabled woman shall be liable to imprisonment for a term of Five years, in addition to the imprisonment mentioned in this Chapter.

⁷⁴ *Ibid* number 3 (B): Notwithstanding anything contained in Number 3 and Number 3A, if someone commits a rape upon knowing the fact that he is living with HIV positive, such an offender shall be liable to imprisonment for a term of One year, in addition to the imprisonment referred to in Number 3 and Number 3A. of this Chapter.

⁷⁵ *Ibid* number 9 (A): A person who commits or causes to be committed sodomy (any kinds of unnatural sexual intercourse) with a minor, it shall be considered to be an offence of rape and the offender shall be liable to an additional punishment of imprisonment for a term not exceeding One year as referred to in Number 3 of this Chapter, and the court shall make an order to provide appropriate compensation to such a minor from the offender, upon considering the age and grievance suffered by the minor.

⁷⁶ *Ibid* Incest chapter

victims. Similarly in the cases of attempt to rape⁷⁷, the punishment is half for the perpetrators as mentioned in the case of rape. Muluki Ain chapter on Intention to Sex⁷⁸ has defined the activities related to sexual intention and kept the provisions of punishment⁷⁹ to the perpetrator ranging from the punishment of imprisonment for a term ranging from six months to two years or a fine from Rs 500 to 6,000 or with both. The case related to offense of rape and sexual abuse can be tried in camera court. The time limitation for filing the case against the accused of rape, attempt to rape and intention to rape is very low i.e. of 35 days, which need to be changed.

Muluki Ain Chapter on Human Trafficking⁸⁰ has defined the commission of human trafficking and punishable by maximum 20 years of imprisonment. The same chapter number 3⁸¹ also affirms that keeping person as bonded labor or slave and Kamara, Kamari (sub-servant) as commission of crime that is punishable by law.

According to the Miscellaneous section 10(B) of the Muluki Ain of Nepal, anyone involved in mistreating a woman in the allegation of practicing witchcraft will be sentenced to anytime between three months to two years imprisonment or will be fined a sum ranging from Rs 5,000 to 25, 000.

⁷⁷ Muluki Ain, Rape chapter number 5: One who has made attempt to commit rape but has not succeeded in committing it shall be liable to the punishment which is half the punishment that is imposed on the offender who commits rape.

⁷⁸ Muluki Ain Intention to Sex chapter number 1: If a person, without the consent of a woman, touches or attempts to touch her sensitive organ, puts off her inner clothes (under garments), takes her to an unusually lonely place, makes her touch or catch (hold) his sexual organ or uses vulgar or other similar words or indications or shows her such drawing or picture or teases or harasses her for the purpose of sexual intercourse, or treats her with any unusual behavior or holds her with intention of having sexual intercourse, he shall be deemed to have done sexual harassment, and the who commits such an offence shall be liable to the punishment of imprisonment for a term not exceeding One year and a fine of up to Ten Thousand Rupees. The victim of such an offence shall be entitled to a reasonable compensation from the offender.

⁷⁹ Ibid number 5: If a person lures a woman to have illegal sexual intercourse with himself or with any other person or contacts and manages for prostitution, the person shall be liable to the punishment of imprisonment for a term ranging from Six months to Two years or a fine of Five Hundred Rupees to Six Thousand Rupees or with both.

⁸⁰ Muluki Ain chapter on human trafficking number 1: No person shall lure and take another person outside the territory of Nepal with intention to sell him or her nor shall sell another person outside the territory of Nepal. If a person, who is taking another person to sell him or her in a foreign country, is caught (arrested) before the sale, the offender shall be liable to the punishment of imprisonment for a term of Ten years and if the person is arrested after the sale, the offender shall be liable to the punishment of imprisonment for a term of Twenty years. In cases where the buyer is found within the territory of Nepal, the buyer shall be liable to the same punishment as is imposable on the seller.

⁸¹ Ibid number 3: No person shall make any other person a Kamara, Kamari (sub-servant), slave or bonded labor. A person who makes another person a sub-servant, slave or bonded labor shall be liable to the punishment of imprisonment for a term ranging from Three years to Ten years, and the court may issue an order for the provision of a reasonable compensation by the offender to the victim.

3.1.4 Some other Domestic Laws

Nepali laws scattered in different acts address the crime that can be occurred against women in the name of practicing witchcraft. Section 2⁸², 4⁸³, 5⁸⁴ 6⁸⁵ of Some Public Offence (Crime and Punishment) Act 2027 prohibits to perform inappropriate act in the public. Criminal Procedure Code 2071 prohibits discrimination on the basis of sex, religion, caste. Penal Criminal Justice system too prohibits any discrimination on the basis of sex, caste, religion, color⁸⁶, Furthermore it has prohibited committing any act in the name of witch⁸⁷ it has punishment provision of 3 years or fine of Rs 30,000 if torture is inflicted or inhuman, degrading act is committed⁸⁸.

National Health Policy, 2071 (2014)⁸⁹ has intended to bring about improvement in the health conditions of the people of Nepal. The primary objective of the National Health Policy is to extend the primary health care system to the rural population so that they benefit from modern medical facilities and trained health care providers.

Second Long Term Health Plan, 1997–2017⁹⁰ promulgated by Ministry of Health and Population of Nepal has also taken the objectives of improving the health status of the population of the most vulnerable groups, particularly those whose health needs often are not met-women and children, the rural population, the poor, the underprivileged, and the

⁸² Some Public (Crime and Punishment) Act 2027, Section 2 Prohibition to commit some public crime:

(1) No person shall commit

any of the following acts:

(a) To hinder or obstruct any public servant from discharging his/her official duty by committing battery or riot or by any other way;

(b) To break public peace by committing battery or riot in any public place;

(c) To break public peace or to make obscene show by using obscene speech, word or gesture in public place.

(g) To insult women in public place by committing molestation (Hatpat);

⁸³ Ibid section 4; Limitation to file a case: (1) Any case under this Act shall be filed within a period of Seven days from the date of the commission on an offence. Provided that, the adjudicating authority may, if he/she is satisfied with reasonable ground that the case cannot be filed within a period of Seven days from the commission of the offence, extend the limitation in order to file the case upto Thirty Five days from the date of commission of the offence.

⁸⁴ Ibid section 5; Adjudicating authority and procedure: (1) The Chief District Officer shall have the power of original jurisdiction to initiate the proceeding and adjudicate case under this Act. (2) The Chief District Officer shall, while initiating the proceeding and adjudicate a case, follow the procedure pursuant to Special Court Act, 2059. (3) An appeal against the decision made by the Chief District Officer pursuant to Sub-section (1) shall lie before the Court of Appeal.

⁸⁵ Ibid section 6; Penalty: (1) In a case tried under this Act, the Chief District Officer may upon depending on the gravity of the offence, impose a fine of upto Ten Thousand Rupees to the offender and order the offender to provide compensation to the victim as per the actual damage, loss, injury etc.; and issue an order of detention to keep the offender in a custody for a period not exceeding Thirty Five days if finds reasonable ground or cause in the course of investigation upon mentioning the cause thereof in the order. Such case shall be decided within a period of Three months.

⁸⁶ Section 158 Penal Code Bill

⁸⁷ Ibid 166 (1)

⁸⁸ Ibid 166 (2)

⁸⁹ See National Health Policy (Nepali) for details, also available at

<http://www.mohp.gov.np/images/pdf/policy/1%20National%20Health%20Policy%202071.pdf>

⁹⁰ http://www.mohp.gov.np/english/publication/second_long_term_health_plan_1997_2017.php

marginalized population. Moreover the plan has focused on pre and post-partum services to the women.

Human Trafficking and Transportation (Control) Act, 2007 section 3⁹¹ has stated about the commission or cause to commit the human trafficking and transportation as crime and punishable by law. Section 4⁹² has listed the different actions that come under human transportation and trafficking respectively. Section 5 has provided the mandate of reporting to any person to be known about the incident, section 9 has kept the provision of burden of proof in which the accused is liable to gather the proof. Similarly section 12, 13 and 14 has provisions of rescue, rehabilitation and reconciliation in which the Government of Nepal is responsible on overall actions and implementation of said provisions under this law. As human trafficking and transportation is grave offense and crime against humanity, the present act under section 15 has also strong provisions of punishment viz. maximum 20 years of imprisonment, Rs 200,000 fine and the abettor and inciter of the offense also liable for the half the punishment of offender. Section 17 of the act has provision of compensation to the victim; section 26 confirms the security of victims and witnesses and section 27 of the same act provides mandate of hearing the case in camera court. To support the effective implementation of present act; Human Trafficking and Transportation (Control) Rules, 2065 (2008) has been promulgated.

3.1.5. Criminal Code Bill 2014 and Anti-Witchcraft Allegation Bill

The proposed Criminal Code, which the government intends to bring into effect replacing the Muluki Ain, has some changes in existing punishment regarding rape. Section 126 includes the punishment that has been increased from the Muluki Ain while Marital Rape has been taken more seriously.⁹³ Similarly, section 171 has criminalized child marriage and voids any such marriage. Section 172 prohibits demanding any kind of movable, immovable property or dowry or harassing, hassling or behaving inhumanly or insolently towards the bride or her relatives for failing to provide such movable, immovable property or dowry.

⁹¹ Human Trafficking and Transportation (Control) Act 2007 section 3

⁹² Ibid section 4

⁹³ Section 216 (3) (a) The perpetrator would be sentenced to 10 to 15 years if the girl victim is under 10; (b) if the victim is 10 or over 10 and below 14, the perpetrator would get eight to 12 years; (c) if the victim is 14 or over 14 and below 16, then the perpetrator would get six to 10 years; (d) if the victim is 16 or over 16 and below 18, the perpetrator would get five to eight years; (e) If the victim is 18 or over, the perpetrator would get four to seven years of prison term. In case of marital rape, the perpetrator would be sentenced to five years in prison.

Section 173 (1) of the Penal Code Bill prohibits second marriage by married man and prohibits woman from marrying a man while being aware of his living spouse. Section 173 (4) of the Penal Code Bill voids such second marriage.

Bill on Witchcraft (Crime and Punishment), 2014

The Legislature Parliament unanimously passed a motion to consider the Bill on Witchcraft (Crime and Punishment) 2014. In case the Act is endorsed in the present form, it may be believed that it shall have a deterrent effect on the perpetrators of witchcraft charges. The Bill proposes for a jail term of 1-10 years and fine of Rs. 10,000-100,000 for the perpetrators.

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

3.2.1 Universal Declaration of Human Rights (UDHR) 1948

Universal Declaration of Human Rights (UDHR) 1948 in its preamble has clearly pronounced about the equality between men and women and assurance of fundamental rights as well as human rights for their social progress⁹⁴. Similarly the Article 1⁹⁵, 2⁹⁶, 3⁹⁷, 5⁹⁸, 8⁹⁹ and 17¹⁰⁰ have ensured the human rights, human dignity, freedom and equality, right to life, liberty and security, right against torture or to cruel, inhuman or degrading treatment or punishment. It means that any kind of inequality between men and women causing any kind of violations of rights of women are prohibited accepting the UDHR principles and the principles are morally obligatory for the member states of United Nations.

Various international human rights treaties have been adopted after the promulgation of UDHR in 1948. It recognizes the inherent dignity and, equal and inalienable rights of all

⁹⁴ UDHR preamble; "Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,"

⁹⁵ Ibid Article 1, all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

⁹⁶ Ibid Article 2; Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

⁹⁷ Ibid Article 3; everyone has the right to life, liberty and security of person.

⁹⁸ Ibid Article 5; No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

⁹⁹ Ibid Article 8; Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law

members of the human family as the foundation of freedom, justice and peace in the world¹⁰¹. UDHR has assured the human rights in these provisions:

1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.¹⁰²
2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, trust, non-self-governing or under any other limitation of sovereignty.¹⁰³
3. Everyone has the right to life, liberty and security of person.¹⁰⁴
4. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.¹⁰⁵
5. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.¹⁰⁶
6. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.¹⁰⁷
7. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.¹⁰⁸

¹⁰⁰ Ibid Article 17; 1. Everyone has the right to own property alone as well as in association with others. 2. No one shall be arbitrarily deprived of his property.

¹⁰¹ See Preamble of UDHR

¹⁰² UDHR Article 1

¹⁰³ Ibid article 2

¹⁰⁴ Ibid article 3

¹⁰⁵ Ibid article 5

¹⁰⁶ Ibid article 7

¹⁰⁷ Ibid article 8

¹⁰⁸ Ibid article 12

UDHR article 16¹⁰⁹ explicitly states about the equal rights of men and women to involve in conjugal relation without any discrimination along with their rights to freely choose their spouses. Article 1, 7 and 12 ensure the equality, dignity, equal treatment of law and protection from arbitrary interferences on privacy, family and home of every human being which also signifies to combat any unequal treatment and discriminatory practices happening against women.

Article 3¹¹⁰ states that everyone has the right to life, liberty and security of person. Similarly article 25¹¹¹ of the declaration ensures the right to adequate health services special attention should be given to motherhood and childhood conditions. Article 1¹¹², article 3¹¹³, article 5¹¹⁴, article 7¹¹⁵ and article 12¹¹⁶ ensure the right to dignified life, liberty and equal treatment by the law. It also confirms the rights against discrimination, personal and family privacy and security and rights against any cruel, inhumane and torturous treatment.

Article 1¹¹⁷, 2¹¹⁸ and 3¹¹⁹ has ensured the life, liberty, security and dignity of every individual and discard the any discriminatory provisions prevalent in any names. Article 4¹²⁰ of the declaration restricts any forms of slavery or servitude; slavery and the slave trade. Article 5¹²¹ protects the human being from any kinds of inhumane, cruel and degrading treatment, and article 12¹²² and 13¹²³ of the declaration protects the right of privacy and right to freedom of movements.

¹⁰⁹ UDHR, Article 16. (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

¹¹⁰ UDHR Article 3: Everyone has the right to life, liberty and security of person.

¹¹¹ Ibid article 25, (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

¹¹² UDHR article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

¹¹³ Ibid article 3: Everyone has the right to life, liberty and security of person.

¹¹⁴ Ibid article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

¹¹⁵ Ibid article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

¹¹⁶ Ibid article 12: no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

¹¹⁷ UDHR article 1

¹¹⁸ Ibid article 2

¹¹⁹ Ibid article 3

¹²⁰ Ibid article 4

¹²¹ Ibid article 5

¹²² Ibid article 12

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

International Covenant on Civil and Political Rights (ICCPR), 1966 Article 2 (1) states that no distinction would be made to enjoy the rights enshrined in the present covenant¹²⁴. Similarly Article 3¹²⁵ ensures the equal rights between men and women, Article 6 (1)¹²⁶ confirms the inherent right to life and Article 26¹²⁷ states about the equality before law without any discrimination.

The present covenant strongly confirms the equality between men and women enjoying the rights without any distinction as well as protects the right of life of the person. Its preamble recognizes that, in accordance with the Universal Declaration of Human Rights, the idea of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.¹²⁸ It protects and promotes human rights through these provisions:

1. Each State Party to the present Covenant undertakes to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.¹²⁹
2. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.¹³⁰
3. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds

¹²³ Ibid article 13

¹²⁴ ICCPR, Article 2(1). Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

¹²⁵ Ibid, Article 3; The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

¹²⁶ Ibid, Article 6 (1); every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

¹²⁷ Ibid, Article 26, all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

¹²⁸ See preamble of ICCPR

¹²⁹ ICCPR Article 2.3 (a)

¹³⁰ Ibid article 7

and in accordance with such procedure as are established by law. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.¹³¹

4. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence nor to unlawful attacks on his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.¹³²

5. All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹³³

Article 1 (1)¹³⁴, 2¹³⁵, 3¹³⁶, 17¹³⁷ and 26¹³⁸ of ICCPR states about the equality between the rights of men and women, non-discrimination, right to privacy, family, home and

¹³¹ Ibid article 7

¹³² Ibid article 17

¹³³ Ibid article 26

¹³⁴ ICCPR article 1(1); All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

¹³⁵ Ibid Article 2 (1) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (2) Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant. (3) Each State Party to the present Covenant undertakes:(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.

correspondence and equal protection against discrimination on any grounds. Moreover article 23¹³⁹ recognizes the family as the fundamental group unit of the society and provides the free will of intending spouses for the wedding. It means that free will of the husband and wife is basic criteria for the marriage purpose. Similarly equality of rights and responsibilities of spouses as to marriage, during marriage and its dissolution is ensured by present covenant. Article 3¹⁴⁰, 17¹⁴¹ and 26¹⁴² signify the equality of rights between men and women while enjoying their civil and political rights, similarly it also confirms right against any discrimination, right to equal protection by law, right against arbitrary interference on privacy and family life as well as ensures the dignified life of a person.

Article 1(1)¹⁴³ states about the right to self-determination, article 2¹⁴⁴ confirms the state responsibilities to prepare all administrative, legislative and constitutional measures to provide all the civil and political rights enshrined in the present article and article 3¹⁴⁵ explicitly ensures the equal rights between men and women without any discrimination. Article 7¹⁴⁶ protects the rights of people against any kind of cruel, inhumane and degrading treatment whereas article 8 (1)¹⁴⁷ and 8(2)¹⁴⁸ restrict from any kind of slavery; slavery and

¹³⁶ Ibid Article 3; The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

¹³⁷Ibid Article 17 (1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. (2) Everyone has the right to the protection of the law against such interference or attacks.

¹³⁸ Ibid Article 26; all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

¹³⁹ Ibid Article 23; (1) the family is the natural and fundamental group unit of society and is entitled to protection by society and the State. (2.) The right of men and women of marriageable age to marry and to found a family shall be recognized. (3.) No marriage shall be entered into without the free and full consent of the intending spouses. (4.) States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

¹⁴⁰ ICCPR article 3: The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

¹⁴¹ Ibid Article 17: (1.) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. (2.) Everyone has the right to the protection of the law against such interference or attacks.

¹⁴² Ibid article 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

¹⁴³ ICCPR article 1(1)

¹⁴⁴ Ibid article 2

¹⁴⁵ Ibid article 3

¹⁴⁶ Ibid article 7

¹⁴⁷ Ibid article 8(1)

¹⁴⁸ Ibid article 8(2)

the slave-trade. Article 16¹⁴⁹ of the present covenant recognizes the person everywhere before the law as a person and article 17¹⁵⁰ affirms the right to privacy of the person.

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

The International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 Article 1 (1)¹⁵¹ ensures the person's right to freely pursue their economic, social and cultural development. Article 3¹⁵² states about the equal rights of men and women while enjoying economic, social and cultural rights and article 6¹⁵³ states about the right of every individual to work and opportunity to work for gaining his life by work. Its article 1(1)¹⁵⁴, 3¹⁵⁵, 5(2)¹⁵⁶ and 15(1)(a)¹⁵⁷ provides the right to self-determination, equal right of men and women to the enjoyment of all economic, social and cultural and ensures the cultural rights of every individual. The provisions enshrined in the present article also ensure the equal rights of men and women and do allow free choice on enjoying economic, social and cultural rights. Article 10(2)¹⁵⁸ recalls the state responsibility to provide special protection along with paid leave during and after the child birth. Article 12¹⁵⁹ further ensures the every person rights to sustain highest level of physical and mental health particularly emphasizes the provision for

¹⁴⁹ Ibid article 16

¹⁵⁰ Ibid article 17

¹⁵¹ ICESCR, Article 1(1). All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

¹⁵²Ibid, Article 3, The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

¹⁵³ Ibid, Article 6 (1), The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

¹⁵⁴ ICESCR Article 1(1.): All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

¹⁵⁵ Ibid Article 3: The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

¹⁵⁶Ibid article 5(2.): No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

¹⁵⁷ Ibid article 15 (1.) (a):The States Parties to the present Covenant recognize the right of everyone: To take part in cultural life

¹⁵⁸ ICESCR Article 10(2.): Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

¹⁵⁹ Ibid article 12: 1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child.

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

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979 is the especial convention enacted to address the rights of the women. The preamble of this convention has set large background of necessity of present convention which has aimed to established the equality between rights of men and women as well as overall physical, mental, sociological, economical, psychological and political development of women who have been kept backward in the society due to many social, cultural, economic and religious reasons of the past.¹⁶⁰

Article 1¹⁶¹, article 2¹⁶², article 4¹⁶³, article 6¹⁶⁴, article 13¹⁶⁵, article 15¹⁶⁶ and article 16¹⁶⁷ of the present convention has explicitly addressed the repeal of discriminatory provisions

¹⁶⁰ See preamble of CEDAW

¹⁶¹ Ibid, Article I, For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

¹⁶² Ibid, Article 2, States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle; (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise; (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; (g) To repeal all national penal provisions which constitute discrimination against women.

¹⁶³ Ibid, Article 4 (1) Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved. (2) Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

¹⁶⁴ Ibid, Article 6, States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

¹⁶⁵ Ibid, Article 13 States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to family benefits; (b) The right to bank loans, mortgages and other forms of financial credit; (c) The right to participate in recreational activities, sports and all aspects of cultural life.

¹⁶⁶ Ibid, Article 15 (1) States Parties shall accord to women equality with men before the law. 2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals. 3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void. 4.

between men and women enshrined in different legislations, constitution and national mechanisms and promoting and binding state parties for the promulgation of legislation, constitution and mechanism to provide opportunity, participation and equal rights to the women. Furthermore the present convention has directed towards the safeguard of women rights of property, family life, marital health and any kind of exploitation can be happened legally, socially and economically. CEDAW in its preamble¹⁶⁸ recalls that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity. Thus, it guarantees the security of women through these provisions:

1. The term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.¹⁶⁹
2. States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: to embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not

States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

¹⁶⁷ Ibid, Article 16 (1) States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent; (c) The same rights and responsibilities during marriage and at its dissolution; (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount; (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights; (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount; (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation; (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

¹⁶⁸ See preamble of CEDAW

¹⁶⁹ Ibid article 1

yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle; to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise; to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; to repeal all national penal provisions which constitute discrimination against women.¹⁷⁰

3. States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.¹⁷¹
4. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.¹⁷²

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the international human rights instrument specially brought to protect the rights of the women, in its preamble¹⁷³ confirms the special rights to get relief from poor conditions of food, health, education and employment. And it also recognizes the women capacity of being mother and responsibility of both father and mother for upbringing and development of children. Article

¹⁷⁰ Ibid article 2

¹⁷¹ Ibid article 3

¹⁷² Ibid article 14.1

5(b)¹⁷⁴ , 10(h)¹⁷⁵, article 11(2)¹⁷⁶, article 12¹⁷⁷, article 14(2) (b)¹⁷⁸ and article 16(1)(e)¹⁷⁹ of the convention explicitly confirm the rights of women to secure all kinds of health services, education relating to family planning and maternity without any discriminations. Assurance of healthy environment without any kinds of physical and mental torture and equal opportunity on employment even after and before the pregnancy period has been guaranteed by the convention. Its preamble¹⁸⁰ ensures equal rights of women in comparison to men and protect against any discriminatory provisions, system, practices and culture existing in the world which directly and indirectly obstruct to enjoy the rights by women in broad sense. Article 1¹⁸¹ of the present convention identifies the discrimination that can be happened against women, article 2¹⁸² affirms states parties condemn discrimination against women in

¹⁷³See CEDAW preamble

¹⁷⁴ Ibid article 5 (b): Article 5 States Parties shall take all appropriate measures: To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

¹⁷⁵ Ibid article 10(h): Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

¹⁷⁶ Ibid article 11(2): 2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures: (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

¹⁷⁷ Ibid article 12: (1.) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.(2.) Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

¹⁷⁸ Ibid article 14(2)(b): To have access to adequate health care facilities, including information, counselling and services in family planning;

¹⁷⁹ Ibid article 16(1)(e): The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

¹⁸⁰ See preamble of CEDAW

¹⁸¹ Ibid article 1: For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

¹⁸² Ibid article 2: States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; (g) To repeal all national penal provisions which constitute discrimination against women.

all its forms, agrees to pursue by all appropriate means and without delay a policy of eliminating discrimination against women, article 5(a)¹⁸³ confirms to eradicate all discriminatory and stereotyped concepts existing in society and culture which dominates women, article 16(1)(b)(c)(d)¹⁸⁴ recalls about the free will of men and women to choose their spouses whereas 16(2)¹⁸⁵ rejects the child marriage and declares it illegal. The preamble¹⁸⁶ explicitly marks all discriminatory provisions existing in the world against women and take necessary measures to ensure the equal rights of women keeping the dignity and human rights of women in the world. Article 1¹⁸⁷, 2¹⁸⁸, 3¹⁸⁹, 4¹⁹⁰, and 13 (a)¹⁹¹ of the convention try to ensure equal rights of women by abolishing discriminatory provisions prevailing in laws, practices, cultures and structures which can provide free space for overall

¹⁸³ Ibid article 5(a): States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

¹⁸⁴ Ibid article 16: States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;(c) The same rights and responsibilities during marriage and at its dissolution;(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

¹⁸⁵ Ibid article 16(2): The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

¹⁸⁶ See preamble of CEDAW

¹⁸⁷ Ibid Article (I): For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

¹⁸⁸ Ibid Article 2: States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;(g) To repeal all national penal provisions which constitute discrimination against women.

¹⁸⁹ Ibid Article 3: States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

¹⁹⁰ Ibid Article 4 (1.) Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved. (2.) Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

¹⁹¹Ibid Article 13: States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to family benefits;

development of women equally with their co-partner men. Article 16¹⁹² of the convention strongly speaks about the equal rights of men and women regarding marriage, enjoying marital life, dissolution of marriage and choice of women equally with men to determine the birth of their children.

3.2.5 Convention on the Rights of the Child (CRC)

Convention on the Rights of the Child (CRC) article 1¹⁹³ defines the child. Article 6¹⁹⁴ confirms the right to survival and life of the child. Similarly, article 9(1)¹⁹⁵ affirms the best interest of child and provides them to be associated with their parents until and unless it is against child interest. Article 16¹⁹⁶ protects the dignity and honor of the child and provides protection from law if violation occurs. Article 19¹⁹⁷ assures the implementation of any legislative, administrative, social and educational measures to protect them from any kind of mistreatment including sexual abuse and urges government and judiciary to establish

¹⁹² Ibid Article 16 (1.) States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) The same right to enter into marriage;(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;(c) The same rights and responsibilities during marriage and at its dissolution;(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration. (2.) The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

¹⁹³ CRC article 1: For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

¹⁹⁴ Ibid article 6: (1.) States Parties recognize that every child has the inherent right to life. (2.) States Parties shall ensure to the maximum extent possible the survival and development of the child.

¹⁹⁵ Ibid article 9 (1.): States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

¹⁹⁶ Ibid article 16: (1.) No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation. (2.) The child has the right to the protection of the law against such interference or attacks.

¹⁹⁷ Ibid article 19: (1.) States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.(2.) Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

necessary mechanisms and for steps to deal with it. Furthermore article 34¹⁹⁸ explicitly advocates for the protection of children from any kinds of involvement in sexual activities. Supporting the present convention, the Optional Protocol on the sale of children, child prostitution and child pornography also strongly advocates for keeping the rights of child that could be violated from such activities and compulsions to be involved in the actions set forth in the optional protocol of CRC.

3.2.6 Other International Laws

SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution has emphasized that the evil of trafficking in women and children for the purpose of prostitution is incompatible with the dignity and honor of human beings and is a violation of basic human rights and recalling the relevant international legal instruments relating to prevention of trafficking in women and children, including the Convention for the Suppression of Trafficking in Persons and of the Exploitation of Prostitution of Others, 1949; Convention on the Elimination of all Forms of Discrimination against Women, 1979; International Covenant on Civil and Political Rights, 1966; and the Convention on the Rights of the Child, 1989¹⁹⁹ the present convention came into force in 2002. The present convention article 1²⁰⁰, 3²⁰¹ and 8²⁰² define the victims, offense and measures taken to combat with the offense of trafficking in regional level. The present convention has also provided care, treatment, rehabilitation and reintegration of the victims from the regional mechanism along with judicial and administrative mechanisms to fight with this problem.

The international legal instruments or the treaties and morally binding principles of UDHR discussed above create the obligation to the state party of the treaties to incorporate the enshrined provisions of the ratified international human rights treaties to the national legislations, constitution and national mechanisms to be abided and to make the national mechanism compatible with international treaties. Nepal Treaty Act, 2047 (1990) article 9

¹⁹⁸ Ibid article 34: States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials.

¹⁹⁹ Preamble of SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution

²⁰⁰ Ibid article 1

²⁰¹ Ibid article 3

²⁰² Ibid article 8

(1) states that in case of the provisions of a treaty, to which Nepal is a party upon its ratification, accession, acceptance or approval by the Parliament, inconsistent with the provisions of prevailing laws, the inconsistent provision of the law shall be void for the purpose of that treaty, and the provisions of the treaty shall be enforceable as good as Nepalese laws. Section 9(2) of present act states any treaty which has not been ratified, acceded to, accepted or approved by the Parliament, though to which Nepal is a party, imposes any additional obligation or burden upon Nepal and in case legal arrangements need to be made for its enforcement, Government of Nepal shall initiate action as soon as possible to enact laws for its enforcement. The provision of Nepal's Treaty Act has provided the mandate of acceptance the international treaties in national laws after the ratification. This means that the laws or national mechanisms must be inconsistency with international laws. The laws related with domestic violence prevailing in Nepal however mostly consistent with the international human rights treaties, but the practical implementation and understanding about it among concerned people are still lacking. The constitutional provisions, especial act and rules on domestic violence and scattered provisions of Muluki Ain can be taken in consideration while addressing the domestic violence cases that happens against women.

Chapter IV

Analysis

Nepal is ranked 98 with the Gender Inequality Index Value of 0.479. The discrimination against women on individual, social and religious basis has shaped the life of a woman in Nepal. Low literacy rate, discrimination in partition of property, inability to transfer nationality to her children, lower status in family or social structure etc. have resulted in limitation of space for women. Near invisibility of the women as individuals leads to several challenges for women in Nepal, violence against women and girls which is a component of Gender Based Violence being one of them. Violence against women and girls not only affects the physical and mental health of women; it affects the national target of achievement and the public dream of a peaceful and just society.

Even globally, the violence against women is a persistent challenge. In a developing countries like Nepal, besides social structure and government apathy, issues like poverty, property, lack of education and lack of consideration of women in policy formulation leads to direct and indirect violence. Some of the legal shortcomings as statutory limit in filing the case of rape and citizenship issues, the male perspectives dominate the arena. Calculating women's contribution to household work is not taken up by the society because they are seen working in menial work.

Government has adopted some pro-women laws and policies but their implementation status remain poor. Here, rather than rules and regulations, individuals' discretionary power decides the course. Nepal is state party to 24 international human rights conventions which include the State's commitment to protect women and girls. The Convention on the Elimination of All Forms of Discrimination against Women provides for specific protection from discrimination for women and girls. In its general recommendation No. 19 on violence against women, the Committee on the Elimination of Discrimination against Women noted that, by ratifying the Convention, States had undertaken legal obligations to prevent and eliminate violence against women, and clarified that gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention.¹⁹⁸

Nepal has also promulgated various gender friendly laws, and in special cases, has made gender specific laws for instance, Domestic Violence (Offence and Punishment) Act and Rules in order to promote justice, harmony, equality and to ensure dignified life for the women/girls. Along with international mechanism in regards to human trafficking, there are specific laws related to Human Trafficking in order to combat these problems. Laws have prohibited violence committed in the name of witchcraft. Rape and killing have been regarded as strict liabilities. The recently tabled Penal Code has amended provisions to suit the changing time and nature of crimes and the drafting and tabling of laws against witchcraft allegation and harassment at workplace is also a welcome step. The establishment of women and children service centers to the level of Area Police Office and Women and Children Office in districts are also praise-worthy steps. However, the government's commitment at international platform should be reflected on its district or grass-root level representatives.

INSEC documentation of the violence against women and girls show that there has been an increase trend in the number of victims. There is a possibility that the violence is indeed increasing but it could also be that more and more women are aware and emboldened to speak out. Civil society movements, increased human rights and women's rights awareness on existing protection mechanism and positive coverage from media can certainly be linked to this increase.

This year, most of the violation was related to domestic violence, followed by sexual violence including rape, then polygamy, witchcraft allegation, trafficking and attempt to trafficking. Polygamy is criminalized in Nepal but the second wife is not regarded as illegal and due to this loophole in law, this practice is rampant in Nepal. Women still are tortured and killed in witch hunting. The number of victims of domestic violence is also gradually increasing. A provision in the Act on Domestic Violence encourages both parties to compromise but misusing that provisions, some women are pressurized to agree for compromise. Her agreement for compromise can be due to emotional blackmail using children, her lack of enabling academic qualification and her economic dependency. The issue of compromise also needs to review as even the state case of rape or attempt to rape are settled out of court. Lack of witness and victim protection can also be linked to this practice of settling cases out of the court, leaving the perpetrators to escape with little or no reprimand.

Bills including Penal Code Bill and Anti-Witchcraft Bill have been tabled at the parliament. The Penal Code Bill includes some progressive provisions against violence against women. Similarly, the Anti-witchcraft bill once endorsed, hopefully, will be able to discourage the abuse of women in witch hunting. A majority of victims on witchcraft charges are women and even among them, those who are helpless, poor, Dalit, ethnicities, single women. So far, due to the lack of laws, except for murder, action has been taken under the Public Offences Act for all other tortures or a victim- offender compromise is made in the societies. Once persecuted in society on charges of witchcraft, it has a deep bearing on the family of victims so much so that any restitution or punishment also would not alleviate the suffering.

Even though the state cannot eradicate crime, it should have the responding agencies sensitive and trustworthy. A woman or girl victim of violence is already shaken and if they are not treated properly by police, medical examiner, lawyer or a judge, then the victim would be left as re-victimized. Lingering of such cases in police station or court also adds to the victim's agony. So, continuous hearing and fast track court could be an answer to alleviate a victim's pain.

The girls are also vulnerable in society. They should also be counseled about the potential dangers and falls lurking around them. Proper guidance by parents or teachers can stop tender-age marriage in the pretext of love marriage while awareness on their rights can enable them to protest when their rights are being threatened. Lack of employment opportunities for the women increases the risk of women being victims of trafficking as they are lured to well-paid job. The open border and weak implementation of laws are also the contributing factors for the occurrence of these types of incidents.

4.1 Conclusion

The existence of violence against women and girls is a fact in Nepal. The patriarchal society along which values the women next to none, reluctance to accept the women as equal force and chauvinism all are adding up insecurity for the women. Women and girls for that matter are always vulnerable. The protection mechanisms including reporting mechanism

are not effective enough as they are not being able to utilize the existing legal provisions and to reduce the loopholes.

The present report is limited to the interpretation of data derived from INSEC's quantitative data. However, the continuous monitoring of the overall human rights situation in the country has given it a position to see the other violence perpetrated on women. That violence can be due to legal shortcomings, apathy of the authorities, religious and customary norms and practices and poor use of discretionary power.

Nepal has ratified various international human rights instruments, making it obligatory to the norms and principles enshrined for the protection of the women. Various domestic laws too have been promulgated in order to protect the women. However, Nepal's inefficiency to implement the laws and to make stronger and effective mechanism in order to combat such violence against women and girls are leaving numerous women and girls as victims.

The perpetrators are allowed to be free with minimum sentences. In case of domestic violence or marital rape, the victims generally have to continue live under the same roof due to lack of rehabilitation options including economic independence. Even when the perpetrators are imprisoned, the victims have no one to turn to rebuild their lives. The limitation in stay at the shelters also does not help.

There have been some areas that need special attention. While kamlaris, mainly from Tharu community, have attracted attention of NGOs and the government has criminalized the practice, there has been little thought about girls working as domestic help. Similarly, date violence has not also got proper attention nor the honor killing.

Some forms of the violence are so ingrained in society that little thought is spared for them. It is a responsibility of the civil society organizations to highlight the issue and work for outlawing it. In the past, INSEC has spearheaded the campaign against witchcraft allegation and bonded labor of girls called kamlari practice. Similar campaign for creating equality between sexes, equal education and work opportunities and against the ills including child marriage and child labor are desired.

There is also a need to engage men more effectively in the work on preventing and eliminating such violence, and to tackle stereotypes and attitudes that perpetuate male violence against women.

4.2 Recommendations

1. The bills including against harassment at work place and Child Act along with Penal Code, Sentencing Code among others pending in the parliament should be endorsed and enacted as soon as possible
2. Witness and victim protection measures should be adopted.
3. Family Court should be established to deal with the issues of possible.
4. Fast track court, child bench should be established in all districts to hear the cases of violence against women and girls.
5. Ensure sufficient trainings to the medical workers dealing with sexual violence.
6. Proper counseling office should be established to deal the victims traumatized because of sexual violence or trafficking.
7. Transitional homes or facilities should be provided to recovering victims.
8. Ensure quality education to the girls and better job prospects.
9. Statute limitation in the cases of rape, attempt to rape and sexual abuse should be extended.
10. Ensure women participation in local to high level policy making.
11. Bring effective rules for progressive realization of creating gender-balanced workforce, at least in government offices.
12. Criminalize abetment to suicide.
13. Empower National Women Commission.
14. National laws should be amended to comply with the international treaty obligations
15. Public awareness campaign against superstitions and so-called witchcraft should be launched.
16. In camera court; still there is not any psychosocial counseling system in court of Nepal. So in camera court psychosocial counseling system must compulsorily be established focusing VAW victims.

17. VDC must make liable to inform police station or related organization of domestic violence cases as soon as possible.
18. Training and sensitization program for government, judges, political leaders, policy makers and medical officer is very essential.
19. In many district, women cell are not functional and the official in charge of women cell in area where they exist are not involve in investigation of rape or VAW cases.
20. In domestic violence case, victim must get immediate compensation as well as medical treatment and law must be amended for victim-friendly provisions.