

VIOLENCE AGAINST WOMEN AND ACCESS TO JUSTICE

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Abstract

Gender discrimination and violence are the most generalized forms of exclusion in Nepali society. Violence against women includes physical, sexual, and psychological violence that occurs within the family, domestic unit and the community. Nepal has traditional society and culture which dishonors woman's voice and encourages family pride. The Nepali societal culture is an introvert one, which shows aversion to changes and displays a keen instinct for retention and preservation of conventional ideas and traditions. This study comes across the fact that the very concept of virtue and family honor objectify women in our society. Any member of the family falling victim to sexual assault is a source of stress and anxiety for her family members.

The social structure of the country endorses the social stigma and self exclusionary sentiment among women. Violence against women is important to justice; women having problem to get justice is more so. The access to justice is a challenge in itself for many victims. For many victims, the justice does not exist at all. Against this background, the study explores the underling lapses, problems and opportunities of criminal justice system against woman violence. This study focuses upon the experiences of sexual victims and their families in Nepali society and the socio-economic condition of such victims.

The study has been conducted in the three districts of Lumbini zone—Rupandehi, Nawalparasi, and Kapilvastu. The field survey has studied twenty one sexual violence cases. The findings of the study suggest that there are limited reported legal cases of sexual violence against women in Nepal because of social stigma, indictment, and intimidation. The mere existence of formal judicial remedies is not sufficient to punish the culprits of women violence. There are cross cutting issues of social stigma, inhospitable society against women which discourages victims from reporting. Those who dare to do so; they are socially excluded by the families and societies.

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Acronyms and abbreviations

APF	Armed Police Force
CDO	Chief District Officer
CEDAW	Convention on Eradication of All form of Discrimination against Women
CJS	Criminal Justice System
CSW	Child Sex Workers
FGD	Focus Group Discussion
FIR	First Information Report
GBV	Gender Based Violence
HRD	Human Resource Management
IACHR	Inter-American Commission on Human Rights
ICCPR	International Convention on Civil and Political Rights
IGP	Inspector General of Police
JSMP	Judicial System Monitoring Program, East Timor
NIJ	National Institute of Justice
NP	Nepal Police
OCJR	Office of Criminal Justice Reform, UK
SIRF	Social Inclusion Research Fund
SNV	Stichting Nederlandse Vrijwilligers (Netherlands Development Organization)
SP	Superintendent of Police
SSP	Senior Superintendent of Police
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCHR	United Nations High commissioner for Human Rights
UNHCR	United Nations High Commissioner for Refugees
WHO	World Health Organization

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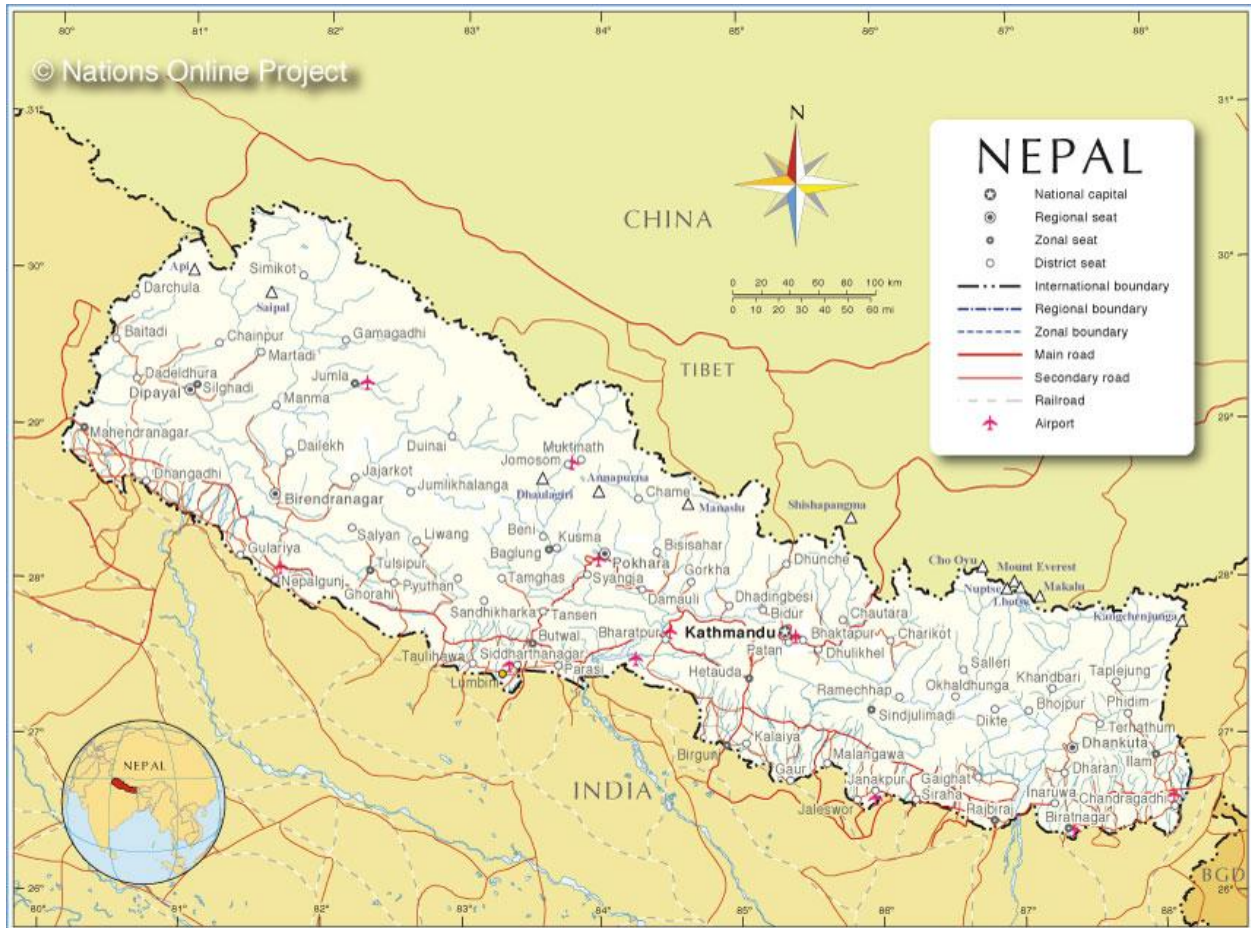
Calendar

Nepali Years BS	AD	Nepali Years BS	AD
2001	1944/45	2031	1974/75
2002	1945/46	2032	1975/76
2003	1946/47	2033	1976/77
2004	1947/48	2034	1977/78
2005	1948/49	2035	1978/79
2006	1949/50	2036	1979/80
2007	1950/51	2037	1980/81
2008	1951/52	2038	1981/82
2009	1952/53	2039	1982/83
2010	1953/54	2040	1983/84
2011	1954/55	2041	1984/85
2012	1955/56	2042	1985/86
2013	1956/57	2043	1986/87
2014	1957/58	2044	1987/88
2015	1958/59	2045	1988/89
2016	1959/60	2046	1989/90
2017	1960/61	2047	1990/91
2018	1961/62	2048	1991/92
2019	1962/63	2049	1992/93
2020	1963/64	2050	1993/94
2021	1964/65	2051	1994/95
2022	1965/66	2052	1995/96

Nepali Years BS	AD	Nepali Years BS	AD
2023	1966/67	2053	1996/97
2024	1967/68	2054	1997/98
2025	1968/69	2055	1998/99
2026	1969/70	2056	1999/00
2027	1970/71	2057	2000/01
2028	1971/72	2058	2001/02
2029	1972/73	2059	2002/03
2030	1973/74	2060	2003/04

Nepal follows the Bikram Samvat calendar. New Year in Nepali Calendar starts in April mid. The Nepalese Fiscal year starts in mid July.

Map of Nepal



CHAPTER 1: INTRODUCTION

1.1 Project context:

Human rights are universal, inalienable, indivisible, interconnected and interdependent. Every individual, without regard to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or status, is entitled to the respect, protection, exercise and enjoyment of all the fundamental human rights and freedoms. States are obliged to ensure the equal enjoyment of all economic, social, cultural, civil and political rights for women and men, girls and boys (UNHCR: 2003).

Acts of sexual and gender-based violence violate a number of human rights principles enshrined in international human rights instruments. Among others, these include:

- The right to life, liberty and security of the person.
- The right to the highest attainable standard of physical and mental health.
- The right to freedom from torture or cruel, inhuman, or degrading treatment or punishment.
- The right to freedom of movement, opinion, expression, and association.
- The right to enter into marriage with free and full consent and the entitlement to equal rights to marriage, during marriage and at its dissolution.
- The right to education, social security and personal development.
- The right to cultural, political and public participation, equal access to public services, work and equal pay for equal work.

Sexual and gender-based violence is a violation of human rights. This kind of violence perpetuates the stereotyping of gender roles that denies human dignity of the individual and stymies human development. The overwhelming majority of the victims/survivors of sexual and gender-based violence are women and girls. Sexual and gender-based violence includes much more than sexual assault and rape. Although it may occur in public contexts, it is largely rooted in individual attitudes that forgive violence within the family, the community and the State. The root causes and consequences of sexual and gender-based violence must be understood before appropriate programmes to prevent and respond to this violence can be planned.

Justice is a term used both in the abstract, for the quality of being or doing what is just, i.e., right in law and equity, and in the concrete for an officer deputed by the Sovereign to administer justice and do right by way of judgment (Britannica: 1937). Justice is inherent rights of a person. Every citizen is entitled for social, political, economic, cultural, and criminal justice. Sexual and gender based violence are the causes and consequences of discrimination. The victims of sexual assaults are victims of social injustice. They have rights to justice. Sometimes the fights for rights to justice put them to more adverse situation—social exclusion. One of the rape victims relates her feelings: “I feel lonely and isolated. I’ve always had so much to say, and I’ve never said it. What’s hindered me the most is being so skilled at being silent. Incest has had so much to do with being silenced and silencing myself” (Bass and Davis 1993:92). This research project is

aimed at studying the response of criminal justice system to the rights and needs of the victims of sexual violence in our societies. This study also ventures to understand the diverse attitudes and behaviors of societies towards these victims.

1.2 Rationale of the study:

The violence and crime can infringe rights of citizens. The duty of the State is to restore the loss and provide justice to victims of crime or violence. To ensure this, the legal system is the requisite part. The purpose of making laws is to provide an objective set of rules for governing conduct and maintaining order in a society. Law is a system of rules usually enforced through a set of institutions. Criminal justice is the system of, practices, and organizations, used by the federal, State and local governments, directed at maintaining social control, deter and controlling crime, and sanctioning those who violate laws with criminal penalties. The primary agencies charged with these responsibilities are law enforcement (police and prosecutors), courts, defense attorneys and local jails and prisons which administer the procedures for arrest, charging, adjudication and punishment of those found guilty. Criminal justice agencies are intended to operate within the rule of law.

The culture and power maintain social order (Smith and Kristine, 2005). Culture defines accepted ways of behaving for members of a particular society. Ethnic, caste, class, and gender inequalities are characteristics of social, political, cultural, and economic structures of Nepal. Some indigenous and aboriginal, and *dalit*—the untouchables—still face major hurdles in their quest for socio-economic-political-cultural justice. The women suffer from discriminatory attitudes, behaviors and actions. Gender discrimination begins with the sex-selective abortions. Quite often, people abort, discard, ditch, and snuff out the girl children at an early stage. In the male dominant society, women's social and economic positions are practically subordinate to those of men. The women face scores of hindrances and problems in the social, economical, and political spheres of their lives. In the cultural setting of insecurity, they have to “fight for their survival.”

The socio-economic-legal setting is further differentiated towards women that exacerbates the situation—especially in a patriarchal society. The criminal justice system is said to be not sensitive to “gender” and “cultural” issues. It is also not attuned and oriented to respect rights of women/victims. Access of women to justice is not properly safeguarded throughout the world. A study conducted by National Institute for Justice (NIJ, 2006) in USA revealed that only 19 percent of women and 12.9 percent of men who were raped reported the crime to police. Many women never see justice delivered in crimes they report to the formal justice system (JSMP, 2004). Subsequently, victims or their families often undergo severe pain, torture and other losses because of the offences perpetrated against them. The State simply forgets the victims after it charges someone with the offence committed against the victims. Whenever the victim is required to attend court to testify there is a tendency to treat them as “item of evidence” (Rossner and Wulf, 1984) and a “non person” (Shapland, 1983: 20).

As we can see, in such environment, many cases of violence and crimes just go undetected, unreported, and unresolved. Within this periphery, several questions arise: What does “justice” mean to the victims? Why do the criminal justice system, families, communities, and societies keep negative attitude and behavior

towards victims? How do these victims “negotiate their lives” with such unfriendly and violent environments in their lives? These and many other pertinent issues in this respect necessitate attention.

1.3 Research Problems:

The victims of sexual assault experience the victimhood in diverse manner. They suffer from three-fold situations—they are sexually assaulted or raped; they face indifferent, inhuman and unfriendly justice system; and on the other hand, they encounter stigma, indictment, and intimidation from the families and societies. This leads to further secondary victimization of the victims of sexual assaults and rape. As a result, these victims gradually feel secluded and excluded by their own families, communities, and the societies. In these situations, victims become more vulnerable and lose self-confidence and control. They lose access to political, social, and economic opportunities. For many the “justice” becomes a mirage only. For the reason of avoiding such appalling situations, many victims do not report the crime to the authorities. They burn themselves inside their homes. This tendency has increasingly promoted impunity in the society and further damaged the social harmony. The impunity seriously hampers the “rule of law,” “right-to-free and fair justice.” These environments further breed conflicts.

The culture of society is the way of life of its members; the collection of ideas and habits which they learn and transmit from generation to generation (Linton, 1945). Socio-cultural values regulate the human behaviors. Different value systems also underpin social exclusions (Levitas, 1998 in Miller, 2003). Nepali societies stand upon moral and cultural values. Any member of the families falling victims to sexual assault is a source of stress for Nepali societies. The relationship between the victims and family members and communities turn into stressful and often end up in disasters. Not only victims but communities also withstand the worst of being victims. The socio-cultural context to victimization is important in this respect. The societies stigmatize, intimidate, coerce and exclude these victims. In order to avoid all these situations, quite often the victims and communities do not report the crime to police. Even if they decide to do so for legal justice, they encounter multiple problems in this process.

This research has attempted to study the environment of the criminal justice system in relation to the victims of sexual assaults and rape in Nepal. In this course, it has also attempted to study the experiences of victimization—the “human meanings” of victimization. The study has covered the following key areas:

1. The general situation of victimization in Nepal;
2. The laws and policies to protect the rights and needs of the victims of sexual violence;
3. The criminal justice system’s capacity to address these;
4. Victims’ access to the criminal justice system and other support services;
5. Victims’ experience of victimization.

1.4 Objectives of the study:

The objectives of this research were to study the situation of the victims of sexual violence in the process of seeking legal justice. The specific objectives were:

1. To study the criminal justice systems in relation to the sexual violence in Nepal;

2. To study to what level the victims are satisfied with the criminal justice system;
3. To explore the societies' responses to the victims of sexual violence in Nepal.

1.5 Research Methodology:

The study is a qualitative research. It is therefore based on the qualitative research methods. The following were the research methodologies adopted:

1.5.1 Literature Review:

As the study is concerned with the legal rights of the victims of sexual assaults, and social exclusion, the literature on the socio-cultural setting, laws and policies, the criminal justice system and social behaviors were reviewed.

1.5.2 Field research:

This research studied the reported and unreported cases of sexual violence—sexual assaults and rape. The study team visited the victims at their places. This study emphasized on the nature, setting and socio-cultural context of the problem. The research was conducted in three districts of Lumbini zone—Rupandehi, Nawalparasi, and Kapilvastu.

1.5.3 Sampling:

Altogether twenty one cases of sexual assaults and rape were selected for the study. Non-random sampling strategy—judgmental and snowball—were used to select respondents. While selecting units of samples, the purposes of exploring, describing, and explaining particular situation were kept in mind. As many small children were found victims of sexual assaults and rape, this study selected only those victims on the basis of their capacity to contribute with accurate, rich and quality information for this study.

1.5.4 Research Tools:

More than one tools were be used for cross verification of the data. Intensive literature review was done. A story telling—narrative— method was used for collecting data. For that purpose, face-to-face depth interviews were conducted. Researchers organized group discussions with other key informants to complement the data. Audio tape recorders were used to record the interviews. Story telling or narrative inquiry and group discussion were the methods used for collecting primary data. Computers were used for data management.

1.5.5 Data collection and recording:

The research team conducted in-depth interviews—qualitative, context-specific, narrative, and open ended—with the victims, relatives, and other key informants. The interviews were face-to-face. Researchers maintained field notes and diaries to document all activities during field visits. They also took accounts of their experiences in the process of identifying sample units, locating, communicating, rapport establishing and finally reaching to the respondents—family members and community members. The team members also approached expert groups—social researchers, social workers, police, lawyers, judges—to

complement qualitative data. The researchers used discussion guides to carry out their interviews. Researchers also tried to find out letters, autobiographical and biographical writing, as well as documents which could relate their experiences. The non-verbal data—body posture; voice intonation; facial expressions; eye contact etc. were also recorded.

1.5.6 Data coding, organizing and analysis:

The data collected and recorded were coded and organized with the help of computer. The collected data were processed and analyzed as per requirement for qualitative data. NVIVO software program for data administration and archiving was also used. Adequate caution was taken to avoid methodological biases and distortions arising from use of certain software. Emphasis was paid to yield real meaning of the data not just the result.

1.5.7 Data Interpretation and reporting:

Social scientists were consulted to analyze and interpret data. Finally, research report was prepared on the basis of the analysis and interpretation of data.

1.6 Project organization:

This research project was completed in two years. Because of limited time and resources, this research was conducted in the three districts: Rupandehi, Nawalparasi, and Kapilvastu of Lumbini zone of West Nepal. Twenty one cases of sexual assaults and rape were studied. A core team for this research team was formed. The project hired research associates for field visits. The project selected research associates on the basis of their knowledge on the subject matter, experiences, attitudes, interpersonal skills, emotional maturity, and ability to engage with people and exhibit non-judgmental manner and skills in dealing with sensitive issues.

1.6.1 The team:

The composition of the team was:

1. Project team leader: Dr. Govind Prasad Thapa, Nepali from Magar community—one of the indigenous ethnic communities of Nepal. A retired police officer having extensive practical experience in the matters of security, law enforcement, and justice delivery;
2. Senior Research Associate: Ms Vishnu Thapa, Retired Education Officer. She assisted the project leader;
3. Research associates- Ms Dhana KC, Ms Jyoti Pun, Ms Iswori Poudel, Anju Thapa, and Shashikala Kandel;
4. Consultant: some social research consultants—socio-anthropologist, psychologist, political-economist, police, lawyer, and statistician—were consulted and hired as and when needed during the research;
5. The project team leader guided, supervised, monitored, controlled and evaluated the quality of data collection;
6. The project team—senior research associates and all other research associates collected, compiled, tabulated, and analyzed data;
7. The project team members were provided orientation on the theme of research and data collection methods prior to their departure to the field.

1.6.2 Selection of research associates:

The selection and recruitment of research associates were done on the basis of their gender, education, field experiences of working with different organization in remote parts of the country and their attitudes and behaviors. One senior research associate and five research associates were selected and recruited for the research work. Amongst them, the senior research associate was a retired education officer of Nepal government who had served in different capacities and who had had rich working experiences in the remote parts of the country. She had had the experiences of working with village level women organizations during her thirty-five years of experience. Dhana KC and Jyoti Pun were selected and recruited as research associates for Nawalparasi district. Similarly Iswori Poudel and Anju Thapa and Shashikala Poudel were selected and recruited as research associates for Rupandehi and Kapilvastu districts respectively. They were given training and briefings on the objectives of the research, methodology of research, code of conduct of researchers, and general instructions for conducting interviews. All of these research associates had previous experience of working with women in rural villages. Their experiences had made them confident. They faced problems with ease in the field.

1.6.3 Ethical aspects:

The research project took special measures to refrain from violation of individual human rights and protection of privacy and confidentiality. The project observed the following guidelines in this direction:

1. Tell the respondent about the facts and objectives of the research
2. Not to cause any feeling of guilt to a respondent
3. Conduct interviews in victim friendly setting and in privacy
4. Respect to the human rights of the individual victims
5. Cause no physical and psychological harm to victims
6. Preservation of confidentiality and privacy
7. Get consent from the interviewee
8. Not to violate a promise of confidentiality
9. Use coding system to protect the identity of the persons taking part in the research
10. Respect to the identity, culture and social practices of communities
11. No breach to the social harmony among various ethnic communities of Nepal
12. No misleading presentation of the data
13. No promises to be given which could not be fulfilled

1.6.4 Field visits:

The researchers had to make preparations for the field interviews. The researchers went to several organizations which were working in the district for the women's rights and justice. Information was also collected from different offices, groups, committees, and agencies active in the district. The research associates approached to the woman police cell, Nepal bar association, district attorney office, district court, district resource group, family planning clinic, paralegal committee, district and village development committee, and women development office in the district. They had to travel along the rural parts of the

district to meet the victims. Data of sexual violence expanding for three years were collected from the women police cell of district police office. These were later verified and selected for the case studies.

1.6.5 The access to the information:

Access to information was difficult. The field visits for data collection from the victims of sexual assaults were extremely challenging endeavors. The access to the information of crime records was not easy for researchers. Some of the victims could not be located. Others did not respond to the queries. Many were small children who could not say anything about the incidents. Even some policemen did not feel pleased to share data. It was very difficult for the researchers to actually meet and talk to the investigating police officials. The Police Women Cells helped the research associates in this regard. Most of the data on rape cases were received from these cells. But they also did not know about the full details of the progress of the investigation.

The accesses of researchers to victims were possible through the district woman police cell, community leaders, and social workers. They provided information about the incidents in their villages and also about the families of victims. It took the researcher/s days to locate the houses of the victims. Then, quite often, their parents and guardians were “obstacles” in between the researcher/s and the victim. They wanted to know about the research team, the purpose of visit, and the benefits of the research etc. The researchers had to convince the victims’ parties for an interview.

It was very difficult task to collect information from villages, especially related with sexual assaults, sensitive issues, which are not talked about in the society. Moreover, in the fluid socio-political environment, when people were suspicious and felt unsecured, one had to be very cautious and careful before entering villages. It was difficult for several reasons. The first one was always the personal safety and security of the researcher/s. Then they had to gain the confidence of the villagers and families of victims. The researchers had to introduce themselves and tell the villagers about their objectives of their visits. They had to give convincing reasons for visiting the houses of the victims. They had difficult time establishing rapport with the villagers first then with the families for victims. Therefore, in order to keep the matter (of sexual assaults) confidential, they had to be prepared with believable answers. For that purpose, quite often, they had to tell lies. They had to practice speaking “lies.”

It was only after several rounds of meetings that they were able to meet victims. At first, the victims were afraid. They were inquisitive to know as to who, why have they come? Was she going to abuse them? Or was she going to compromise with the offenders? They used to run away from them at the first sight at distance. Afterwards, only after their families’ encouragement only they were ready to meet and talk to the researchers. Sometime they had to take help of woman police cell to get in touch with the victims. The interviews took much time than expected. It was because such incidents used to happen in rural areas and people used to go to their farms during day time. It was difficult to meet the victims.

Therefore, interviews were very difficult in the first meetings with the victims. The first meetings with the victims were normally introductory sessions. It was difficult to take interviews in the second rounds of meetings also. Some victims did not wish to talk to the researchers in front of their guardians and adversary parties. These meetings were spent in gaining confidence of the victims. The researchers had to establish

rapport and prepare victims for the interview. In most of the cases, the interviews were possible in the third rounds of meetings only. The researchers had had difficulties to get the victims alone for the interviews. The victims were reluctant to talk to male researcher. The principal researcher had difficulties in reaching to the victims. He could reach and talk to one victim only.

Most of the time, the parents or guardians of the victims accompanied them during the interviews. These situations made victims uncomfortable. Some of them were very conscious of the recorders and felt uncomfortable to relate their stories. Some victims did not wish to record their interviews in the tape recorders. Therefore, the researchers had to rely upon their notes only. The researcher/s also approached to and interviewed other key informants, for example, police, attorney, private lawyers, parents, relatives, friends, and social workers. Occasionally, researcher/s had problems with the language of the victims. In such situations, they contacted and sought help of resource person, usually females.

The field visits were of typical experience for both—researchers and victims. The tasks were very risky and sensitive. It was not an easy task to talk about the incidents and explore the psychological feelings of the victims. Usually women victims of sexual assaults do not talk about the incident. One has to be very close to them. Therefore, winning their hearts and minds was important. These researchers have been successful to reach to the victims, win their confidence, and share feelings of violence amongst themselves. They were able to develop a family and friendly relationships with the victims. One of the researchers found this work one of the most exciting and learning experience of her life. She had earlier thought the rape victims would not talk to others and they are irritated and that their family members also would not cooperate, but it was very different experience for her. She found all the victims and their family members cooperative.

The other benefits of this research were for the victims themselves. Many victims were ignorant and unaware of several laws, policies and criminal justice systems. These victims got information on these matters from the interviewers. In such social environment where the society condemns and blames victims for the sexual assaults, these victims were particularly happy to see that there were some people who really cared for the rights and needs of the victims. These victims expressed their views that these kind of programs should be conducted in the villages to generate awareness about the precautions to be taken to prevent sexual violence and about the policy and procedures of the criminal justice system of the country. They were of the opinions that these kinds of program help prevent and reduce sexual violence in the society.

1.6.6 Problems encountered during field work:

Nepal is agricultural country. Most of the people have to depend upon the farming. The time period that the field visits were organized were felt somewhat unsuitable. People had to go to their farms for farming. Therefore, the victims were not found in their houses. The researchers had to look out for them in the farms, which certainly looked awkward and embarrassing for the victims. Moreover, the climate in those days was very hot. The temperature shot up to 40 degree Celsius at day time.

The researchers had to face many problems due to strikes, and roadblocks. They could not keep their appointments on fixed day and time. One day, the project leader and his team was stranded on the highway and later had to cancel the visit of Kapilvastu due to the roadblock.

The researchers felt that the victims had expectations for some immediate financial supports which they could not meet. The researchers also felt that they once again scratched the healing wounds of the victims.

Some victims tried to avoid the researchers. It was probably because of the frequent visits of people asking them the same questions over again and again. Some also thought that the researchers were there to play as a medium to compromise with the perpetrators' party and some of them thought that they were from Maoist party.

Many victims were reluctant to talk to the researchers on the first meeting. Only after several meetings they agreed to talk. Many of these victims did not allow using tape recorders during their interviews. Those who allowed were also overwhelmed by the existence of the equipments and therefore were very much afraid and hesitant to talk to the researchers. As a result, researchers had to remove the equipments and depend on note taking only.

The sixteen-hour-a-day power outage in the country also hampered the research works. It was an impediment for the recording and analysis. It delayed the research work and also increased the cost of the research unnecessarily.

CHAPTER 2: THE NEPALI WOMEN AND VIOLENCE

2.1 The socio-cultural setting:

Nepal is a country of great geographic diversity with a landmass descending from lofty Himalayan peaks to the green rice fields of the Indo-Gangetic plains. It borders India to the east, west, and south, and the Tibet Region of the People's Republic of China to the north. Ecologically, the country is divided into three regions: the high mountain region, with the Himalayas peaking at 8,839 meters above sea level to the north; the mid hill region, with altitudes ranging between 610 and 4,877 meters in the Mahabharat range and the Gangetic plains; and the Terai, ranging between 152 and 610 meters to the south. This topographical diversity is matched by climatic diversity, with climatic conditions ranging between those of the extremely cold tundra to those of the hot humid tropics.

Nepal's cultural landscape is extremely diverse and is composed of more than 90 known language groups and subgroups. These groups can be divided largely into two groups on the basis of the languages they speak, i.e., Indo-Aryan and Tibeto-Burman. As far as the social relations governing the status of women are concerned, however, there is a large variation within each of these groups. The politically and culturally predominant Indo-Aryan ethnic group lives mostly in the hills and the Terai. In terms of attitudes towards women, the Maithili and the Awadhi are the most conservative communities of the Indo-Aryan group, with the mobility of women outside the household being highly restricted in Maithili and other Terai communities. Women wear *purdah* (veil) and they may not mix freely with the opposite sex.

Although other subgroups within the Indo-Aryan culture do not all practice strict *purdah*, where it is practiced, it is considered proper for women to restrict their activities to the household. Sexual purity of women is extremely important for the Indo-Aryan group. Child marriage, a restriction on widows remarrying and arranged marriages are still followed widely. Property is inherited only through the male line and, therefore, women's economic status both in the household and in the community is lower than that of men. Similarly, due to restrictions on their mobility, women's access to education and training—and, consequently, modern avenues of income—are limited.

The Tibeto-Burman groups mostly live in the hills and the mountains. Women from these groups are free to engage in various income-generating activities or businesses outside the household, and they are respected for undertaking such activities. They travel widely for trading and business, and operate lodges and teahouses along the trekking routes and major roads and in tourist areas. Women have relative freedom in their choice of marriage partners, and premarital sexual relations and social mixing occur. Child marriages are rarer than with their counterparts in the Indo-Aryan group. In spite of this cultural diversity, land is universally inherited in all communities from father to son, with women lagging far behind men in terms of access to knowledge, economic resources, and modern avenues of employment.

Women are “universally disadvantaged target group” (Cecil 1996:143). Even in most of the world's religions women have played a subordinate role, excluded from participating in public rituals and often

barred from even entering places of worship. Many societies barely acknowledge women possessing souls and capacity for spiritual growth let alone allowed to achieve rank and status in religion (Puttick, 1997: 157-175). The insecurity and inequality together exclude women from many realms of the society. Women are subject to discrimination in social, economical, legal and political sphere to an extent that the “access to resources is also gendered” (Miller, 2003: 182). The women feel excluded from the “social rights of citizens” (Room *et al.*, 1992:14, cited in Hillary, 1994-1996: 566). De Haan (1998: 12-13) portrays women finding themselves in a “state or situation...a process ...a mechanism” which excludes them. Stewart (2006:4) points out lack of power, or unequal power relations, as the root of every types of exclusion.

Women's lives are framed by the social structure of patriarchy, which consists of male economic and social power, underpinned by the use of, or threat of, violence (Radford, 1992). Gender discrimination is probably the most “generalized form of exclusion.” It “cuts across most class, caste, and ethnic background” (de Haan, :10). Sometime we get puzzled whether women are “socially and culturally” discriminated for *being a woman* or anything else. The persistence of inequality between women and men is a problem that is sharper in Asia than in any other continent in the world (Sen, 2000:42). This begins with the sex-selective abortions. This practice has resulted in 163 million women “missing” in Asia (Zofeen Ebrahim, 2007).

The expected behavioral pattern of women which is marked by modesty and lack of articulation is often misinterpreted as incompetence and lack of professionalism (Adelman, 2003). Women have to fight “battles” for their identity through the “politics of recognition” (Taylor, 1994) and “politics of rights” (Habermas, 1994). Gender bias is reflected not only in actions of individuals but also in “cultural traditions and institutional practices” (Mahoney, 1999: 93-4) for example, the situation of low-caste women is more impoverished.

The political economy of Nepal is characterized by profoundly unequal distribution of economic and political power, and a fundamentally inequalitarian socio-religious ideology and social practice (Seddon, 1987: x, xi). Women in Nepal suffer from discrimination because of the cultural and traditional values. For example, the cultural system of Badi, Deuki and Jhuma of Nepal are typical example of such violence. The practices of these “cultural and traditional values” further promote “culturalization of violence” (Adelman *et al.*, 105) in the society. Many varieties of “gendered norms” exist in the politics of “developing Nepali women.” This is exemplified by the orthodox Hindu groups emphasizing the sexual purity of women, Thakali and Sherpa communities taking pride in the business acumen and marketing abilities of their women and Tibetan origin groups practicing polygamous marriage (Tamang, 2005:161-2).

In spite of women constituting about 51% of Nepal’s population, gender based discrimination and violence amounts to one of the greatest threats to women’s rights in Nepal. Across the cultural diversity, the majority of communities in Nepal are patriarchal—a woman’s life is strongly influenced by her father and husband—as reflected in the practice of patrilocal residence, patriarchal descent, and by inheritance systems and family relations. Such patriarchal practices are further reinforced by the legal system. Single women (owing to unmarried, widow, and divorce), migrant, physically and mentally disabled, refugees, child brides, tribal women, and women belonging to minority, untouchable lower caste, illiterate, ignorant, and poor are most weak and vulnerable sections who face victimization and violence. Others who are victims of cultural taboos are also potential victims of sexual violence. They are open to all types of violence—from

battering to trafficking, sexual assaults and rape, and murder in most deceitful manner. Some husbands do not even hesitate in staking and losing their wives in gambling in many societies (The Himalayan Times, 2007).¹ Others attempt to burn the woman alive for a simple reason that she had failed to bring enough dowry (Nepal, 2007; Kafle, 2007), and some husbands even murder their wives for the same reasons (Annapurna, 2007).

2.2 Gender-Based Violence:

In many societies around the world the recognition of women as individual is missing. Women are always seen in the perspective of their relationship with men. Their entity as an individual is simply not accepted. They are considered inferior and weak. Some societies consider them as valuable property-to be protected and presented to her husband. In many societies, “women's lives are framed by the social structure of patriarchy, which consists of male economic and social power, underpinned by the use of, or threat of, violence” (Radford, 1992). Violence is routine in their societies. It prevails in different forms and degrees. The violence is the cause and consequence of gender inequality (WHO, 2005).

The term “gender-based violence” is used to distinguish common violence from violence that targets individuals or groups of individuals on the basis of their gender. Gender-based violence has been defined by the CEDAW Committee as violence that is directed at a person on the basis of gender or sex. It includes acts that inflict physical, mental or sexual harm or suffering, threat of such acts, coercion and other deprivations of liberty. The term 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. Violence against women is a form of gender-based violence and includes sexual violence.

The Beijing Platform for Action defines violence against women as an obstacle to the achievement of the objectives of equality, development, and peace. According to it the GBV are, “acts of gender-based violence results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring public or in the private life” (Beijing Platform).

The United Nations 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. There are many forms of violence against women, including sexual, physical, or emotional abuse by an intimate partner; physical or sexual abuse by family members or others; sexual harassment and abuse by authority figures (such as teachers, police officers or employers); trafficking for forced labour or sex; and such traditional practices as forced or child marriages, dowry-related violence; and honour killings, when women are murdered in the name of family honour. The systematic sexual abuse in conflict situations is another form of violence against women (WHO).

2.3 Sexual and Gender-Based Violence during the life cycle:

The violence is dynamic. It can occur at every stage of life of a person. L. Heise, (1994) describes the forms of violence to which women can be subjected to during the different stages of their lives:

- **Pre-birth:** Sex-selective abortion; battering during pregnancy; coerced pregnancy.
- **Infancy:** Female infanticide; emotional and physical abuse; differential access to food and medical care.
- **Girlhood:** Child marriage; genital mutilation; sexual abuse by family members and strangers; differential access to food, medical care and education.
- **Adolescence:** Violence during courtship; economically coerced sex (e.g. for school fees); sexual abuse in the workplace; rape; sexual harassment; arranged marriage; trafficking.
- **Reproductive age:** Physical, psychological and sexual abuse by intimate male partners and relatives; forced pregnancies by partner; sexual abuse in the workplace; sexual harassment; rape; abuse of widows, including property grabbing and sexual cleansing practices.
- **Elderly:** Abuse of widows, including property grabbing; accusations of witchcraft; physical and psychological violence by younger family members; differential access to food and medical care.

The Convention of Belém do Pará” (1994) defines GBV as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere. Violence against women shall be understood to include physical, sexual and psychological violence:

- a) That occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse;
- b) That occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and
- c) That is perpetrated or condoned by the state or its agents regardless of where it occurs.

The Convention of Belém do Pará, drew the following most basic principles regarding the concept of violence:

The Convention expressly recognizes the relationship between gender-based violence and discrimination, and indicates that violence of that kind is a reflection of the historically unequal power relations between women and men, and that the right of every woman to a life free of violence includes the right to be free from all forms of discrimination and to be valued and educated free of stereotyped patterns of behavior;

It establishes that violence affects women in a variety of ways and obstructs their exercise of other basic civil and political rights, as well as economic, social and cultural rights;

The Convention stipulates that States Parties shall act with due diligence to prevent, investigate and punish violence against women that occurs in public and private, within the home or the community, whether perpetrated by individuals or agents of the State; It provides that States Parties shall take special account of the vulnerability of women to violence by reason of, among others factors, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration is to be given to women subjected to violence who are pregnant or disabled, of minor age, elderly, socio-economically disadvantaged, affected by armed conflict or deprived of their freedom.

The report of the Convention of Belém do Pará, asserts that family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality.

The report also adds that the traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to the low level of political participation and to their lower level of education, skills and work opportunities.

2.4 Sexual Violence:

Women suffer from various types of violence—aggression, hostility, fighting, brutality, cruelty, sadism, violent behavior, bloodshed, and sexual assaults and rape. Amongst them, the sexual violence is the most abhorrent. Sexual violence is simply any sexual act or contact that a person does not want. A person could be forced into these acts through force, threat, or intimidation. It is a violent crime and a frightening experience. It may include unwanted touching, kissing, oral sex, anal sex, vaginal sex, or other sexual acts. Sexual violence is a pervasive global problem with significant consequences for the physical and psychological health of victims yet in many places around the world; available services do not meet the needs of survivors.

Sexual violence, gender-based violence and violence against women are terms that are commonly used interchangeably. All these terms refer to violations of fundamental human rights that perpetuate sex-stereotyped roles that deny human dignity and the self-determination of the individual and hamper human development. They refer to physical, sexual and psychological harm that reinforces female subordination and perpetuates male power and control.

Definitions of sexual violence may be influenced by cultural values, social norms, human rights, gender roles, legal initiatives and crime and may evolve over time. While defining sexual violence advances our global efforts to identify and eliminate sexual violence, it must be recognized that all definitions are arrived at through cultural, socio-political, and geographic lenses. The Report attempts to build connections between communities and propel our solutions forward by offering the following definition of sexual violence:

“Any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work”(Jewkes, Sen, and Garcia-Moreno: 2002: 149).

Sexual violence, including exploitation and abuse, refers to any act, attempt or threat of a sexual nature that results, or is likely to result, in physical, psychological and emotional harm. Sexual violence is a form of gender-based violence. UNHCR employs an inclusive conception of sexual and gender-based violence that recognizes that, although the majority of victims/survivors are women and children, boys and men are also targets of sexual and gender-based violence (UNHCR: 2003).

Sexual violence can take place in different circumstances and settings. These include coerced sex in marriage and dating relationships, rape by strangers, systematic rape during armed conflict, sexual harassment, sexual abuse of children, sexual abuse of people with mental and physical disabilities, forced prostitution and sexual trafficking, child marriage, denial of the right to use contraception, forced abortion and violent acts against the sexual integrity of women, including female genital cutting and obligatory inspections for virginity (WHO, 2002).

Modern consumerism and drug use among youngsters have also lured young women of even middle class families into prostitution, as evident from the fact that the CSWs are not necessarily illiterate or from poor family backgrounds. Violence against girls and women on a large scale by husbands and other members of the affiance household, as well as occasionally by natal relatives — particularly uncles, brothers, and aunts — and members of the community especially, was identified as a major cause pushing women into prostitution, especially for those in low-caste households.

Trafficking of children for sex work also appears widespread. Most of the children involved are either sold forcibly or duped into the trade. According to the New ERA survey, almost 48 percent of the total 196 CSWs interviewed entered the trade between the ages of 10 and 15. Of these, more than 13 percent started sex work between 10 and 13 years of age, while 4 percent started even earlier, between 10 and 11. According to the interviews with Nepalese CSWs in India, more than one fifth of girls trafficked to India are currently between 12 and 15 years of age. Some groups of children, e.g., those whose mothers and sisters are CSWs, who work in *bhattis* (local pubs), lodges, and restaurants, and domestic servants, orphaned and low-caste children seem to face special risks, as most of CSWs seem to come from such groups.

Bhatti pasals (pubs), hotels, restaurants, and lodges play the key role as places for soliciting sex work, *dalali* (pimping), and trafficking. Owners/workers of these places, drivers, and professional pimps are reported to be the groups most heavily involved in *dalali* (pimping) and trafficking. Traffickers, in which all kinds of

escorts may be included as most of the girls are duped with promises of jobs and fake marriages even when going voluntarily, largely consist of locally known people, including friends, neighbors, close relatives, coworkers, and returned or visiting CSWs. The destinations of the traffickers were identified primarily as Mumbai, Calcutta, Delhi, and other big cities in India. Although very few CSWs or people in general thought about trafficking within Nepal, the duping and escort of girls to big cities in Nepal, with a job and various other promises of a good life and their eventual sale are widespread.

2.5 Types of sexual violence acts:

The sexual violence can be in various forms. These can be described in the following table:

Type of act	Description/Examples	Can be perpetrated by
Rape and marital rape	The invasion of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body by force, threat of force, coercion, taking advantage of a coercive environment, or against a person incapable of giving genuine consent (International Criminal Court).	Any person in a position of power, authority and control, including husband, intimate partner or caregiver.
Child sexual abuse, defilement and incest	Any act where a child is used for sexual gratification. Any sexual relations/interaction with a child.	Someone the child trusts, including parent, sibling, extended family member, friend or stranger, teacher, elder, leader or any other caregiver, anyone in a position of power, authority and control over a child.
Forced sodomy/anal rape	Forced /coerced anal intercourse, usually male-to-male or male-to-female.	Any person in a position of power, authority and control.
Attempted rape or attempted Forced sodomy/anal rape	Attempted forced/coerced intercourse; no penetration.	Any person in a position of power, authority and control.

Sexual abuse	Actual or threatened physical intrusion of a sexual nature, including inappropriate touching, by force or under unequal or coercive conditions.	Any person in a position of power, authority and control, family/community members, co-workers, including supervisors, strangers.
Sexual exploitation	Any abuse of a position of vulnerability, differential power, or trust for sexual purposes; this includes profiting momentarily, socially or politically from the sexual exploitation of another; Sexual exploitation is one of the purposes of trafficking in persons (performing in a sexual manner, forced undressing and/or nakedness, coerced marriage, forced childbearing, engagement in pornography or prostitution, sexual extortion for the granting of goods, services, assistance benefits, sexual slavery).	Anyone in a position of power, influence, control, including humanitarian aid workers, soldiers/officials at checkpoints, teachers, smugglers, trafficking networks.
Forced prostitution (also referred to as sexual exploitation)	Forced/coerced sex trade in exchange for material resources, services and assistance, usually targeting highly vulnerable women or girls unable to meet basic human needs for themselves and/or their children.	Any person in a privileged position, in possession of money or control of material resources and services, perceived as powerful, humanitarian aid workers.
Sexual harassment	Any unwelcome, usually repeated and unreciprocated sexual advance, unsolicited sexual attention, demand for sexual access or favours, sexual innuendo or other verbal or physical conduct of a sexual nature, display of pornographic	Employers, supervisors or colleagues, any person in a position of power, authority, or control

	material, when it interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive work environments	
Sexual violence as a weapon of war and torture	Crimes against humanity of a sexual nature, including rape, sexual slavery, forced abortion or sterilisation or any other forms to prevent birth, forced pregnancy, forced delivery, and forced child rearing, among others. Sexual violence as a form of torture is defined as any act or threat of a sexual nature by which severe mental or physical pain or suffering is caused to obtain information, confession or punishment from the victim or third person, intimidate her or a third person or to destroy, in whole or in part, a national, ethnic, racial or religious group.	Often committed, sanctioned and ordered by military, police, armed groups or other parties in conflict.

Source: UNHCR: 2003

2.6 The levels of violence:

Sexual and gender-based violence can occur anywhere, at any time. It is used as a weapon of war; it is perpetrated in the supposed safety of one’s home. Just as the laws and structures that govern a society influence the behavior of individuals, so, too, can individual attitudes influence the way families, communities and societies respond to certain types of behavior. Violence occurs at various levels:

At the individual level, the degree of knowledge, personal security, access to and control of resources, services and social benefits, personal history and attitudes towards gender can influence whether a person will become a victim/survivor or a perpetrator of violence.

The second level, relationship, represents the immediate context in which abuse can occur: between individuals, even within families. At this level, existing power inequalities among individuals begin to reinforce subordinate/privileged positions.

The community level represents the dynamics between and among people that are influenced by socialization within such local structures as schools, health care institutions, peer groups and work

relationships. For refugees, this structure is found in the refugee camp or setting, where the availability of and access to social services and the very layout of the camp can have a direct impact on whether or not incidents of sexual and gender-based violence occur.

Society includes the cultural and social norms about gender roles, attitudes towards children, women and men, the legal and political frameworks that govern behavior, and the attitude towards using violence as means of resolving conflicts. It is clear to see that changes in behaviors and attitudes in any one of the areas can have an impact on all of them. Interventions to prevent or respond to sexual and gender-based violence should thus target all levels. (UNHCR: 2003)

2.7 Effects of violence:

Acts of sexual and gender-based violence violate a number of human rights principles enshrined in international human rights instruments. Among others, these include:

- The right to life, liberty and security of the person.
- The right to the highest attainable standard of physical and mental health.
- The right to freedom from torture or cruel, inhuman, or degrading treatment or punishment.
- The right to freedom of movement, opinion, expression, and association.
- The right to enter into marriage with free and full consent and the entitlement to equal rights to marriage, during marriage and at its dissolution.
- The right to education, social security and personal development.
- The right to cultural, political and public participation, equal access to public services, work and equal pay for equal work.

2.8 Consequences of violence:

Sexual violence has profound immediate and long-term consequences on women's physical and mental health. These are:

2.8.1 Physical consequences: The associated mental, physical and social harms of rape and sexual assault are complex and multifaceted. These consequences can be both short and long term. The health consequences of sexual violence are numerous and varied. These include physical and psychological effects. In extreme cases these result in death. Mortality can result either from the act of violence itself, or from acts of retribution (e.g. “honor killings” or as a punishment for reporting the crime) or from suicide. In addition, rape victims are at an increased risk from:

- Unwanted pregnancy;
- Unsafe abortion;
- Sexually transmitted infections (STIs), including HIV/AIDS;
- Sexual dysfunctions;
- Infertility;
- Pelvic pain and pelvic inflammatory disease; and
- Urinary tract infections.

Besides these, genital injuries in women are most likely to be found in the posterior fourchette, the labia minora, the hymen and /or the fossa navicularis. The most common types of genital injuries include:

- Tears;
- Echhymosis (i.e. bruising);
- Abrasions;
- Redness and swelling.
- Non-genital physical injuries typically include the following:
- Bruises and contusions;
- Lacerations;
- Ligature marks to ankles, wrists and neck;
- Pattern injuries (i.e. hand prints, finger marks, belt marks, bite marks etc.);
- Anal or rectal trauma.

2.8.2 Psychological consequences: Post-traumatic stress disorder and depression or other serious effects such as suicide attempts. Crime takes an enormous physical, financial and emotional toll on victims. They suffer from the thoughts of shock, hatred, guilt, fear, anger, shame, depression, grief, and powerlessness. In spite of the laws, reporting the crime can be upsetting and emotionally draining. The decision to prosecute is an extremely difficult one and pursuing a rape case is a very stressful experience. Many victims do not report crimes and violence because of “fear of intimidation and “fear of retaliation.”

2.9 Approaches against violence: From proactive to reactive:

In many parts of the world the family poses threats to women's rights. The home is the most dangerous place for them. Societal cultures, constituting even victims' identity, largely influence behaviors. Women who suffer from sexual violence often experience stigma and face rejection by partners, husbands, families, and communities. Many cases of violence are not detected, not reported, not registered, and not investigated. Many of them which are investigated are either dropped or neutralized through negotiations.

The identification of the factors that contribute to and influence the type and extent of sexual and gender-based violence can help select appropriate and effective prevention strategies. The prevention strategy is aimed at potential perpetrators, potential victims/survivors, and those who may assist them. As with all programmes to combat sexual and gender-based violence, prevention strategies are most effective when all sectors, including refugees, are involved in designing, implementing and evaluating them. Effective prevention strategies will include actions that focus on five key objectives): Transforming socio-cultural norms, with an emphasis on empowering women and girls; Rebuilding family and community structures and support systems; Designing effective services and facilities; Working with formal and traditional legal systems to ensure that their practices conform to international human rights standards; and Monitoring and documenting incidents of sexual and gender-based violence (UNHCR: 2003).

Preventing sexual and gender-based violence involves identifying and removing those factors that make certain members of the weak sections vulnerable to this kind of violence and designing a range of strategies that improve protection for all refugees. These strategies will be most effective when they are designed,

implemented and monitored by all sectors involved in protecting and assisting refugee communities and by the refugees, themselves.

In order to develop effective prevention measures, it is essential to have a clear picture of the problem in a particular setting. Data on the incidence of sexual and gender-based violence should be compiled and analyzed regularly by one central agency. Protection strategy should take the lead in ensuring that data on these human rights violations are maintained in the same manner that data on other rights violations is compiled and stored. Information collected should include such relevant facts as the type of incident, location where the incident occurred, demographics about the perpetrator and the victim/survivor, and potential risk factors.

It is essential to understand the consequences of sexual and gender-based violence in order to design effective programs for supporting victims/survivors. These consequences vary, depending on the form of violence perpetrated. All members of the community should be aware of how and where to report incidents of sexual and gender-based violence. If the victim/survivor does not report the incident, adequate support cannot be provided. The community should take the lead in designing ways to support victims/survivors. Response actions include: developing community education and awareness activities; training actors in how to respond to victims'/survivors' needs; establishing referral, reporting, monitoring and evaluation mechanisms; empowering refugee communities to respond; developing a response to the health/medical needs of victims/survivors; planning to meet the psycho-social needs of victims/survivors; developing a security and safety response; establishing a legal/justice response; identifying the roles of other potential actors; and developing a plan to work with perpetrators. The guiding principles on confidentiality, physical security and respecting the wishes, the rights and the dignity of the survivors, should be upheld in every activity.

It is essential to identify and understand the consequences of the various types of sexual and gender-based violence in order to develop appropriate responses. These consequences can be grouped into four main areas: health, psycho-social, safety/security, and legal/justice. Responses to sexual and gender-based violence should therefore focus principally on these four priority areas.

CHAPTER 3: THE CRIMINAL JUSTICE SYSTEM

3.1 Criminal justice system:

Ensuring justice through protection of life and dignity of people at maximum level as possible and firmness of safety in the society is the prime goal of criminal justice system. Fair trial standards have universally been recognized under the administration of justice. They are considered as universal in essence and relative in modalities and as measuring factors of the appropriateness of operation of criminal justice system in countries across the world. Systems vary from country to country in their modalities, as there are vast diversities in the perceptions of the criminal justice system, traditions and cultural practices.

Criminal justice system is an integrated three-pronged process that begins with investigation, proceeds with prosecution and ends with adjudication. “Criminal justice is response to crime, but unlike the personal responses...., criminal justice is a formal and systematic response by agents of...government(s)” (Bohm and Haley, 1999: xvii). As there are different models of government, the corresponding operations on criminal justice would also be different. Though there are several models of operation of criminal justice system on grounds of their local realities, they can be divided into adversarial and inquisitorial models considering chief commonalities.

The protection of victims of crimes, especially the disadvantaged and vulnerable ones, and the witnesses is one of the fundamental aspects of criminal justice system. Fair and free trial standards are considered as meaningful tools to ensure proper administration of the criminal justice system which would be capable of addressing interests of victims by reparation and reintegration as well as rehabilitation of offenders through human friendly reformatory penal systems.

3.2 Victims of violence:

In November 1985, the United Nations General Assembly adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (the Basic Principles). The General Assembly noted that:

“... millions of people throughout the world suffer harm as a result of crime ... and that the rights of these victims have not been adequately recognized”. It added that: “... victims of crime ... and also frequently their families, and others who aid them, are unjustly subjected to loss, damage or injury and that they may, in addition, suffer hardship when assisting in the prosecution of offenders”. This Declaration recognizes that “the victims of crime and the victims of abuse of power, and also frequently their families, witnesses and others who aid them, are unjustly subjected to loss, damage or injury and that they may, in addition, suffer hardship when assisting in the prosecution of offenders.”

Further, it defines victims as: “Victims” means those persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within the State including those laws proscribing criminal abuse of power (Article 1). The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization (Article 2).

3.3 Victims' right to justice:

The right to justice for the victims is primary. This resolution has made provision for access to justice and fair treatment, restitution, compensation, and assistance. It has recommended that the victims of crime and power be 'treated with compassion and respect for their dignity' and has recommended for several victim based approaches. It has also appealed that the “States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses”(UN).

The Declaration, in Article 4, has made specific provision: Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanism of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered (Article 4). The Declaration also ensures that “Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms” (Article 5). (Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, General Assembly resolution 40/34, 1985). The rights of victims of crime are:

- to be treated with courtesy, respect, fairness and dignity;
- to offer information and to be heard;
- to receive information;
- to privacy and protection;
- to assistance;
- to an effective and efficient investigation of the crime; and
- to timely processing of criminal proceedings following the arrest of the accused.

3.4 Victims' access to justice:

The UDHR Declaration entitles all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (UDHR, 1948). The inherent dignity and of the equal and inalienable rights of members of all members of the human family is the foundation of freedom, justice and peace in the world (UDHR, 1948). Equally, ICCPR Article 2.3 (a), ensures 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 person acting in an official capacity; (b), ensures 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 for judicial remedy; and (c) ensures that the competent authorities shall enforce such remedies when granted (ICCPR, 1966). The protection of these rights and freedoms of a person is the duty of State.

Several international instruments specifically address sexual and gender-based violence against women and girls. The Convention on the Elimination of All Forms of Discrimination against Women adopted by the General Assembly in 1981, the United Nations Declaration on the Elimination of Violence against Women, adopted by the General Assembly in 1993, and the Beijing Declaration and Platform for Action, adopted in

Beijing in 1995, include all forms of discrimination as violence against women and girls and reaffirm States' responsibility to work to eliminate them. Most recently, the 1998 Rome Statute of the International Criminal Court defines rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation or any other form of sexual violence of comparable gravity as a crime against humanity. United Nations Security Council Resolution 1325 (2000) emphasizes States' responsibility to end impunity for crimes against humanity and war crimes, including sexual and other forms of violence against women and girls.

The Rights of Women of the Inter-American Commission on Human Rights (IACHR), report defines "access to justice" as de jure and de facto access to judicial bodies and remedies for protection in cases of acts of violence, in keeping with the international human rights standards. This report has held that for access to justice to be adequate, the formal existence of judicial remedies will not suffice; instead, those remedies must be effective for prosecuting and punishing the violations denounced and in providing redress. As this report will establish, an effective judicial response to acts of violence against women includes the obligation to make simple, rapid, adequate and impartial judicial recourses available, without discrimination, for the purpose of investigating and punishing these acts and providing redress, so that in the end these acts do not go unpunished.

The terms "access to justice" and "legal needs" have no precise definitions. They have been used in socio-legal research in a variety of contexts, often interchangeably, and generally without 'Access to justice' would refer to the explicit explanation of their meaning. desire for a form of 'justice' which may or may not be possible through the existing legal system, and therefore may involve a substantial reform of the actual system rather than merely the mechanisms for utilising it. In practice, however, the terms tend to merge, especially in the context of their functions. People do not need legal services in and of themselves. Their need is of the ends which legal services can bring about. This may be in the form of specific legal remedies, reconciliation with another party, or, quite simply, a sense of fairness or closure from some dispute. The term 'access to justice' is most commonly used in reference to the various mechanisms by which an individual may seek legal assistance.

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (the Basic Principles) has made provisions for the responsiveness of judicial and administrative processes. The Article 6 elaborates that the needs of victims should be facilitated by:

- (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;
- (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;
- (c) Providing proper assistance to victims throughout the legal process;

(d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

(f) Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims (Article 7).

The Declaration has also made provisions for the restitution, compensation, and assistance in the following Articles:

Article 8. Offenders or third parties responsible for their behavior should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.

- Article 9. Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.
- Article 10. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.
- Article 11. Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.
- Article 12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:
 - Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
 - The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.
- Article 13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.
- Article 14. Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.
- Article 15. Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.

- Article 16. Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.

In 1994, the Commonwealth Government appointed the Access to Justice Advisory Committee. That Committee stated that the concept of 'access to justice' involves three key elements:

1. Equality of access to legal services—ensuring that all persons, regardless of means, have access to high quality legal services or effective dispute resolution mechanisms necessary to protect their rights and interests.
2. National equity—ensuring that all persons enjoy, as nearly as possible, equal access to legal services and to legal service markets that operate consistently within the dictates of competition policy.
3. Equality before the law—ensuring that all persons, regardless of race, ethnic origins, gender or disability, are entitled to equal opportunities in such fields as education, employment, use of community facilities and access to services. Thus, the focus of this Committee was the goal of equal opportunity to participate in the formal justice system, both in terms of access to legal services and access to courts and tribunals. To achieve this goal, the matters targeted for particular attention included the funding and allocation of legal aid, the costs of legal services and legal proceedings, and the public availability of legal information.

However, a broad interpretation of the terms 'access to justice' will yield a number of possible perspectives on 'access to justice' that go beyond the focus on access to legal services. These include:

The equal ability of all in society to access the processes to enforce existing rights or laws (This perspective assumes that the rule of law provides an effective vehicle to achieving just or fair outcomes. Accordingly, such a perspective concentrates on equitable access to adjudication, conflict resolution institutions and intermediaries and legal remedies.)

The existence of widely accepted rights under international and regional laws that may not be protected through the domestic justice system (for example, the application of ratified international conventions)

Equal access for all minority groups to all legal rights enjoyed by the majority (This approach would not accept differential laws applying to, for example, asylum seekers vis-à-vis citizens, or homosexuals vis-à-vis heterosexuals.), and

The relative underdevelopment of the common law in areas associated with poverty law, due to the lack of access to litigation opportunities.

People need remedies to protect themselves from possible harm caused by others when involved in disputes or conflicts of interests. Remedies are measures that redress this harm, for instance through restitution or compensation. When remedies are guaranteed by law or by customary norms, they are called legal remedies. Justice remedies are legal remedies that typically involve a third party (the justice institution or mechanism), whose functioning is also regulated by norms, in settling the dispute. For instance, when an employer gives compensation to an employee in case of inappropriate dismissal, though he or she is giving a legal remedy, it is an economic remedy and not a justice one. However, if the decision to compensate was taken by a justice institution or as a result of its mediation, it becomes a justice remedy. Justice systems serve to recognize people's entitlement to remedies when these are in dispute. For this reason, they are

particularly important in the context of power inequalities, when people's inability to claim remedies through other means may put their well-being at risk.

UNDP defines "access to justice" as: The ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards. For the purpose of this research, the "access to justice" term will be interpreted to:

- Victims who wish to seek legal redress for the crimes committed against them can do so in timely manner;
- They are treated in equal, fair and impartial manner;
- They obtain legal assistance;
- They get restitution and compensation for their loss;
- They participate effectively in the legal system through access to courts, tribunals and alternative dispute resolution; and
- They obtain safety and security to exercise their rights.

3.5 Criminal justice system in Nepal:

3.5.1 The Constitutional provisions:

The Interim Constitution of Nepal, 2007 is a fundamental legal framework of the country. The constitution has, among others, guaranteed the rights such as- the right to live with dignity, rights regarding (criminal) justice, right against preventive detention, right against torture, right against exploitation, right against exile as the basic human security rights. The following Articles of the Interim Constitution have provisions to protect the legal rights of citizens: Article 13 has guaranteed the right to equality; The Article 24 guarantees rights regarding to justice; and Article 26 protects citizens from torture. The Parliament passes all the laws including the Constitution.

3.5.2 Public institutions:

Five public institutions are solely responsible for the formulation, maintenance and implementation of law and jurisprudence in the country. They are the Ministry of Law and Justice, the Ministry of Home, the Attorney General's Office, The prison and the Supreme Court. The Ministry of Law and Justice formulates legislation, and acts for reviewing and reforming matters pertaining to the administration of justice. The police department, which is stewarded by the Ministry of Home, is the principal law keeping force, and is responsible for the investigation of crimes. The ministry also manages the prison. The police organisation has a separate department solely devoted to the investigation of crimes. Under this department there are several sections, specialised in specific fields of investigation.

The Office of the Attorney General acts as the chief prosecutor of crimes. The Constitution of Nepal has invested the Attorney General with powers and duties as legal counsel to Nepal Government. It represents the government in cases and situations wherein the rights, interests and concerns of the government are at stake. The Attorney General makes the final decision for initiating investigative proceedings of cases, on behalf of the government. The Attorney General's office has branches in all the districts of the country. The

district attorneys discharge their responsibilities as representatives of the Attorney General in the districts. The Supreme Court is the apex court of the country. Its decisions set precedents in matters of legal policies and practices. The entire system of law and jurisprudence of the country runs in the following order with the Supreme Court as its fulcrum.

3.5.2.1 The Ministry of Law and Justice:

This ministry formulates legislation, and acts for reviewing and reforming matters pertaining to the administration of justice.

3.5.2.2 Police

Crime investigating is carried out by the Crime Investigation Department (CID), which is headed by an Additional Inspector General of police, under the Nepal Public Police Force, Nepal Police Headquarters. The CID has police officers across five regions, 14 zones, and the 75 districts in Nepal. The regional police offices are each headed by a deputy inspector general of police, and the Zonal Police Offices are under the command of senior superintendents of police. The district level police offices are under the command of superintendents of police or deputy superintendents of police. The District Police Offices are local investigating bodies with a mandate to investigate cases in their territory. They are the most widespread investigating units, however, not all the districts have separate CIDs. They may also lack experts and important resources for effective and immediate investigation. Regional Police Offices on the other hand are supervising and coordinating bodies that are not directly involved with investigations. They serve as the middlemen between district units and the Central Crime Investigation Department at Nepal Police Headquarters in serious cases.

3.5.2.3 Attorney General

The prosecution of crimes is the attorney general's constitutional responsibility. Article 135(2) of the Interim Constitution of Nepal 2007 states that the attorney general should represent the government in cases where in the rights, interests, or concerns of the government are involved. Attorney General has the power to make the final decision as to whether or not to initiate proceedings in any case on the behalf of Nepal's government in any court or other judicial authority. Article 134(1) states that the attorney general should be the chief legal advisor to the government and advise government officials in all matters regarding constitutional and legal affairs.

Section 17 of the State Cases Act 1993 confers on the power of deciding whether or not to initiate judicial proceedings against a suspect to the district government attorney. Therefore, the attorney general functions as the sole prosecutor in Nepal.

The Office of the Attorney General in Kathmandu is the highest authority. The Appellate Prosecutor's Offices correspond to the Appellate Courts, and the District Prosecutor's Offices work alongside the district courts. There are 16 Appellate Prosecutor's Offices, and 75 District Prosecutor's Offices to carry out the work of the attorney general.

3.5.2.4 Judiciary

Nepal does not have a separate criminal trial court or a criminal bench. According to the current interim constitution, the Supreme Court is the highest court; lower on the judicial hierarchy are the Appellate Courts and the District Courts.

The Supreme Court is a writ jurisdictional court whereby a single bench hears writ petitions and other subsequent hearings are heard by a divisional bench or a full bench as befits the gravity of the case. Decisions of the Supreme Court are final unless there is a flaw in the interpretation of the law or non-observance of past precedents whereupon any case disposed is subjected to review. The prime minister appoints the chief justice in the Supreme Court upon recommendation from the judicial council.

Appellate Courts hear cases as one body or in the form of a divisional bench. The Court of Appeal has the right to exercise and hear writ petitions (excluding writs of certiorari, quo warranto and prohibition). Like the Supreme Court, it does not have a large bench.

District Courts are courts of first instance. There is one for each district and all cases, whether civil or criminal, are subjected to hearing by a single bench. Section 7 of the Judicial Administration Act provides the District Courts with the first instance of jurisdiction on all kinds of cases within their territory. The jurisdiction includes the power to conduct a trial, take necessary proceedings and or make a judgment.

3.5.2.5 Prison system:

The history of prison system in Nepal begins from 1912, when the present Central Jail was established in Kathmandu (CVICT: 1998). The 1963 Prison Act governs the prison administration in Nepal. The Prison Regulation was adopted in 1964 to systematize the prison administration and management. There are seventy three prisons; each in seventy one districts but two each in Kathmandu and Dang.

3.6 Criminal Proceedings

3.6.1. Filing of First Information Report

The victim, the victim's relatives or any individual who is aware of a crime can lodge a case at the nearest police station to where the offence has been perpetrated or is likely to be perpetrated. The State Cases Act 1992 requires that the complaint, the First Information Report (FIR), be lodged with evidence and information about the alleged perpetrators. The FIR should contain the area and date of commission of the crime, the names of the actual culprits, their actions, evidence and other descriptions regarding the offense.

The State Cases Act provides that if a verbal report is made by anyone, the officer-in-charge of the police station should keep the record in the form of writing as narrated by the person. The police officer should then read out what he has written before the complainant and then keep it in the register book with the person's signature.

If police authorities refuse to file an FIR, the State Cases Act permits the complainant to approach a higher police authority if it exists in the place, or the office of the Chief District Officer (CDO). In the event that

the CDO also refuses to register the FIR, then a complainant can go to the Appellate Court or Supreme Court.

3.6.2 Initiation of investigation

The State Cases Act 1992, Clause 3 has cataloged the types of crimes that are regarded as State Cases. The law regards it as mandatory on the part of any person/persons possessing knowledge about the crime, to report the matter to the police and thereby assist the latter. The report can be submitted either verbally or in writing and should be supported by ample evidences. Reporting can also be done through telephone, mail, or in person, as the prevailing situation necessitates. The First Information Report (FIR) is formally submitted in a prescribed submission form as per the State Cases Regulation 1998,ⁱⁱ Clause 3(1).

Legal provisions for examination of the crime scene and collection of material evidences have been included within the country's legal provisions. Section 4.1 of the State Cases Act of Nepal and Rule 4.3 of the State Cases Regulations contain specific instructions pertaining to duties of policemen when a criminal act is reported. The police personnel are trained and directed to prevent crime, sterilize and seal the crime scene in order to safeguard material evidences, and adopt measures to arrest the offender.

The police can also exercise extra territorial authority beyond its jurisdiction in times of exigencies, especially while tracking down absconding criminal. According to Section 4.2 and Rule 4.3, police are entitled to seek the assistance of any individual or agency while carrying out its responsibilities. Section 5 of the Act has directives for the police to report any crime to the police station. This section also makes it compulsory for the informer to be physically present at the time of reporting.

Section 6.1 of the Act directs the police to send the preliminary report to the public prosecutor before initiating investigation. The subsequent proviso Section 6.2 directs the public prosecutor to issue directives to the police upon receipt of such a report.

Rule 4.1 of the Regulation has provisions for the appointment of an investigation officer to investigate a crime.

Section 7 mostly deals with the details of investigations such as, recording and documenting details of the scene of crime, collecting finger-prints and taking photographs. Section 7.5 provides for legal advice, which can be availed of from the public prosecutor.

Preliminary examination of the crime scene in the presence of witnesses is provided for in Section 8, while Section 9 provides for recording statement of the suspect in the presence of the public prosecutor.

Section 10 deals with the search of individuals, places and vehicles. The law also provides that women suspects should be searched either by a woman police or by any other woman under the supervision of police. Police officers right from an Assistant Sub Inspector up to the highest rank are authorised to conduct search. The police officer conducting the search has to tender a list of item seized/confiscated for examination.

Section 11 deals with the physical examination of the dead. The occurrence of death under suspicious or mysterious circumstances warrants autopsy of the corpse, which must be initiated by the police. If the body

is in an extremely decomposed and putrefied condition, the investigation officer can hand over the body to the relatives for cremation.

Rule 7 directs the medical experts to submit their post-mortem report within 24 hours from the time of initiating the examination, with the exclusion of the time required for transportation of the body.

Clauses 2 and 3 of the Muluki Ainⁱⁱⁱ concerning the Chapter on Homicide^{iv} contains provisions for prompt investigation of the cases. Detailed list of roles to be played by the local committees and the police, are specifically mentioned in these clauses. Clause 4 deals with handing over of the corpse to the next of kin, on completion of examination and verification.

Section 12 of the State Cases Act has legal provision for the requisition of evidences for forensic examinations. According to this proviso, a woman suspect must be examined by a woman police or by any woman under the supervision of the police or medical officer. Expert opinion may be sought in any cases where and when deemed essential. The opinion of experts is thus recognised by the law as an important testimonial. The Evidence Act^v also contains extensive provisions for the protection, collection, transportation and examination of evidences in crime investigation. It also specifies the things, which can stand as evidence of any crime.

3.6.3 Arrest and interrogation

The investigating police can arrest a suspect according to the information received. Article 24 of the Interim Constitution of Nepal 2007 reads that no suspect should be detained in custody without being informed of the grounds for arrest. Similarly, section 14(1) of the State Cases Act also states that an arrestee should be told why they are being put under arrest. Furthermore, clause 121 of the section on Court Management of the new Country Code of Nepal prescribes that the arresting officer deliver a notion of the grounds of arrest to the person before detention.

Every single individual has the right to life, liberty and security. However, deprivation of personal liberty has long represented the most common means used by the State to fight crime and maintain internal security. With the gradual elimination of other forms of capital and corporal punishment, imprisonment has gained significance over the centuries, and is likely to remain one of the most legitimate means of exercising Sovereign State authority.

Meting out punishment by way of arrest and solitary confinement is the most humane and logical way of bringing round a deviant person, and making him pay for his or her crime, possibly adding an element of sincere penitence to his or her conscience. The other forms of punishment like torture and execution do not leave any opportunity to the criminal to mend his or her ways to become a more responsible citizen of the country.

The State has to own up the basic obligation to define the situation and conditions which demand arrest and search before permitting its agencies to deprive any person of his or her liberty. The related procedure and application must be within the parameters of the law. In case of any arbitrary and outrageous move on the part of the law enforcing authorities, the Law should empower independent judiciary to award prompt remedial measures including compensation to the victim.

Deprivation of liberty can be defined in its broadest sense as the infringement of the liberty of movement. It includes the apprehension of minors, mentally ill persons, alcoholics, drug addicts, derelicts and vagrants, charlatans and so on, and it extends to situations where such deprivation is caused by private persons as well as public officials. The task of enforcing the law and maintaining public order may sometimes place law enforcement officials and the public on opposite ends in any given conflicting situation.

In most countries, law enforcement officials are invested with discretionary powers of arrest, detention and the use of force and firearms, to be exercised only during exigencies. Deprivation of civil liberties of the people is subject to procedures, which are established and adopted by the law.^{vi} It is clear that the reasons for an arrest, as well as the procedures for an arrest, must be in accordance with the laws of the State.

Those apprehended by the police and held in custody, have the right to contact with the world outside, to be visited by family members, and to communicate with any person in the presence of a legal representative. The law also provides that all persons deprived of their liberty shall be treated with humane kindness and dignity. According to the PDI principles^{vii}, all persons held under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the person. No detained or imprisoned person shall, even with his consent, be subjected to any medical or scientific experimentation, which might be detrimental to his health.

No person shall be deprived of his personal liberty save in accordance with the law, and no law shall be made which provides for capital punishment.^{viii} No person shall be held under preventive detention unless there is sufficient ground to suppose or doubt that his or her presence could spell an immediate threat to the sovereignty, integrity or peace of the Nepal.^{ix}

The legal provisions for conducting search as and when deemed necessary, are enshrined in the Local Administration Act^x (Section 6 B). Clause 172 of the Chapter on Court Management,^{xi} embodied in the Muluki Ain; and the State Cases Act (Section 10) have specific rules to be observed while conducting search. The search warrant or authority, and the methods and codes of ethics to be observed while conducting the search, are the essential components of the search Law. Arbitrary arrests are therefore prohibited.

No person who is arrested shall be detained in custody without being informed, as early as possible, about the grounds for the arrest; or shall be denied the right to consult and be defended by a legal practitioner of his choice. The State Cases Act of Nepal in Section 14 also restricts arbitrariness. Even the Police Act has clear directives in section 16^{xii} regarding the tendering of warrant before making an arrest except in specific situations as stated in Section 17 of the Act. Sections 15.1, 15.2, and 15.3 of the Police Act deal with the duties of police regarding search and arrest.

According to the Interim Constitution of Nepal, every person who is arrested and detained in custody, shall be produced before a judicial magistrate, within a period of twenty four hours from the time of the arrest, excluding the time taken for transportation of the arrested person from the place of arrest to the office of the concerned authority. No person shall be detained in custody, beyond the aforementioned stipulated period, except on the order of a competent authority.

The Police Regulation, 1999 (Rule 9), has the following provisions with regard to arrest and detention:

- Tender arrest notice upon arrest of a person
- Continue investigation to establish sufficient grounds for arrest
- Serve detention notice to the arrested person
- Any suspect arrested after the filing of case in the court must be produced within 24 hours of arrest before the competent authority.

Juveniles are to be separated from adults; women from men; and non-convicted persons from convicted persons.^{xiii} Upon the apprehension of a juvenile, her or his parents or guardians shall be immediately notified about the apprehension, and, where such immediate notification is not possible, the parents or guardians shall be notified within the barest possible time thereafter. A judge or any other competent official or body shall, immediately, consider the issue of release. Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case. Obviously, there is no such facility in Nepal.

The legal provisions concerning the criminal liabilities of children are also enshrined in the Laws of the land. If a child, below the age of ten years, commits an act of offence he or she shall not be liable to be punished; if the age of the child is ten years or above and below fourteen years who commits an offence which is punishable with fine under the law, he shall be punished with imprisonment for a term which may extend to six months depending on the nature and gravity of the offence; if a child who is fourteen years or above and below sixteen years commits an offence, he shall be punished with half the penalty which under similar circumstances, is imposed on a person who has attained maturity.^{xiv}

Juvenile delinquents or suspect are expected to be kept in Children's Correctional Homes, and not in any police custody.^{xv} There is no proviso specially meant for children in domestic legal matters, but international provisions demand their application through domestic legislation as well as other appropriate measures.

The State Cases Act, Section 14.4 has specific provision for the arrest of a woman.

The Muluki Ain Chapter 8 (Anomalous Detention)^{xvi} has specific provisions with regard to punishment for unlawful detention. The main features of the law are:

The detainee should be provided food

If any sick, aged over 60 years of age or children below 12 years are detained without food for three days and if any detainee dies due to such an inhuman act, the offender will be charged for homicide

Even if the detainee survives, the offender will be fined according to the number of days of detention.

3.6.4 Search and seizure

If an investigating officer has reasonable cause to suspect that the person interrogated may have material evidence in their possession, whether objects or another individual, the police officer can search for and seize the evidence. The law requires that only female police officers search women, or that they are

searched in the presence of another woman. According to section 10(2) of the State Cases Act, the investigating police officer must submit a written request to another police office to search and seize, and when searching a person or place must have present an official at least at the rank of assistant sub-inspector. The section also states that the police officer in charge of the search should prepare a detailed statement of all the material relating to the crime including the place and date of the search and make two copies: one of which must be given to the concerned person and one that should be kept in the office file.

Clause 172 in the section on Court Management of the new Country Code also states that there should be a probable cause to conduct search and seize and that the police officer needs to inform the person of the reason for the search. The search should also be conducted in the presence of two or more witnesses of good character. They may be independent and responsible residents of the area, or representatives from the concerned municipality or the village development committee. Upon completion of the search, the officer must make a list of all things seized and the places they were respectively found, with signatures from the witnesses.

3.6.4.1. Protection from unlawful Arrest and detention

Anyone who has been victimized with unlawful arrest or detention shall exercise his or her enforceable right to compensation.^{xvii} Any person held under preventive detention shall, if his detention was contrary to law or in bad faith, have the right to be compensated in a manner as prescribed by the law.^{xviii} Although there are provisions to safeguard against arbitrary and unlawful detention, there are no established procedures for compensation.

3.6.4.2 Extent of police power in performance of duty

The law enforcement officials have been invested with a wide range of legal powers and authority to discharge their duties effectively, ranging from arrest, detention, investigation of crime and use of force and firearms. Law enforcement officials are expected to be highly disciplined and required to discharge their duties with sensitivity and sincerity. There are also numerous provisions to check unwarranted misuse of power and authority by law enforcing officials. The Local Administration Act (Section 6.1) directs the police to adhere to the principle of minimum use of force and firearms.

In every democratic State the rights of a citizen must be respected and protected. The State Cases Act, Muluki Ain and the Traffic and Transport Management Act,^{xix} provide for relevant and adequate compensation to be given to victims for their loss resulting from police atrocities and arbitrariness.

3.6.4.3 Legal framework concerning evidence

Police have to prove the *mens rea* or the criminal intent and the *actus reus* or the action in order to prosecute a criminal. For these purposes, the investigation officer has to furnish evidences to establish a crime. Mere confession is not considered as proper evidence against the suspect. Moreover, extra judicial confession has no meaning unless supported by other corroborating evidences. The basic premises that factual evidences cannot lie, and that human beings are capable of doing anything under the sun, should be the guiding principle for investigators.

Oral evidences can be highly deceptive, hyperbolic, exaggerated and engineered, depending upon the actual observation, assimilation and reproduction of the event by the witness. This is because the witness can be subjected to modification by self-suggestions, external influences, descriptions and opinions of others. However, factual evidences do not suffer from these infirmities.

The Police require various evidences to prove the guilt. Scientific evidence, circumstantial evidence, witness evidence and other documentary evidences are required for this purpose. The enactment of the Evidence Act was the fulfillment of the long awaited demand for improvement in the criminal justice system. However, the concept has not been fully supported.

The Nepal police run a Central Police Laboratory. The rationale behind a separate forensic lab is to provide faster lab test results to field investigators.

3.6.4.4 Autopsy

Nepal has only a handful of autopsy experts due to which amateurs handle most of the cases. The legal provision, in State Cases Act, Clause 11(3), has directives allowing only government medical doctors to perform autopsy.

3.6.5 Prosecution

The State Cases Act 1992 is critical to the prosecution of suspects. The prosecution begins after the investigating police officers prepare reports of their findings and submit them to the concerned government attorneys. The police can request to terminate the investigation on the grounds that there may be a lack of adequate evidence with which to prosecute the suspect. However, the government attorneys make the final decision as to whether or not to prosecute. The police have complete responsibility to carry out the investigation related to crimes, while the office of public prosecutor has sole authority for prosecution on such cases (Pathak: 2008).

A charge sheet is framed after the prosecutor has compiled all the documents and evidence against the accused. Section 18(1) of the State Cases Act states that the prosecutor, upon examination of the case file shall if it is deemed appropriate submit the charge sheet to the competent judicial authority. If there are no reasonable grounds to justify the submission of a charge sheet, the prosecutor can return the case file together with the evidence to the police.

The charge sheet must state the specific allegation based on the evidence and cite appropriate laws and punishment sought. It must also include the name and residential address of the accused, details of the FIR regarding the crime, description of the crime, allegations made and evidence supporting them, and amount of compensation (if any) that should be given to the aggrieved party.

3.6.6 Adjudication

After the submission of charge sheet in the court, the process of trial starts. The adjudication proceedings are further conducted in three stages, i.e. bail hearing, post bail hearing and final hearing. Generally the trial of criminal cases is carried out by district courts except in special provisions made. The judicial process

begins only after the prosecutor has submitted the charge sheet to the court. Generally, the trial of a criminal case is carried out by the District Court of the concerned territorial jurisdiction. However, there are other provisions that allow quasi-judicial institutions to conduct trials and pass sentences. For instance, a custom office may proceed on the crimes underlined by the Import and Export (Control) Act. Many crimes under such legislation allow administrative offices to conduct investigations, prosecute and adjudicate simultaneously.

3.6.7 Trial

The main legal instruments governing the procedures relating to the trial of criminal cases are the section on Court Management of the new Civil Code, the Judicial Administration Act 1991, District Court Regulations, and Evidence Act 1974. The trial process can be divided into three parts: the bail hearing, post-bail hearings and final hearing.

3.6.7.1 Bail hearing

When the charge sheet is filed, the judicial trial process begins at once. The accused is produced and the charge sheet presented to the court. The charge sheet is registered and the statement of the accused is recorded before the judge. The judge then considers bail. This is the first time that bail is available for the suspect; there are no institutions in place that allow a suspect to be released on bail while in police custody.

The sitting judge rules whether or not to grant bail depending on the nature and severity of the charges, and a number of subjective factors. For any offence which is punishable by more than a three-year sentence, bail will be refused provided that the evidence submitted with the charge sheet provides grounds to reasonably establish the detainee's involvement in the crime. For lesser charges, bail may be offered at the discretion of the sitting judge. Typically bail will be granted with a bond of land, cash, or other property. In rare cases where the charges are not severe, bail may be offered without a bond. The amount of the bond is typically outside the means of many citizens, who either do not own property of sufficient value or are unable to appraise the value of the property they do own. Thus, only wealthy detainees are typically able to afford to be released on bail.

An accused that is not granted bail or is unable to produce the required bond is returned to custody to await the trial date. In the event that the accused is convicted of the crime, the days spent in custody while awaiting trial will be counted against the sentence.

3.6.7.2 Post-bail hearings

There are two provisions for re-evaluating a defendant's bail orders if bail was initially denied. If the original court, upon hearing witnesses testify to depositions made during the investigation, deems that depositions that affected the initial bail hearing were false then bail will be re-evaluated.

Alternatively, there may be a post-bail hearing in an Appellate Court, where the accused or representatives of the accused submit to the court a petition to reverse the order of the lower court. The higher court may review the decision of the lower court and correct a bail order if finding it defective. However, this happens

very rarely because many detainees are unaware of this provision and go to trial without being represented by a lawyer.

The exhibits are then confirmed and the testimonies of witnesses and expert witnesses are heard. Unlike courts in many other countries, witnesses in Nepal are heard before, not during, the final hearing. These hearings are often greatly prolonged by the difficulties of the prosecution in producing witnesses.

3.6.7.3 Final hearing

After all the witnesses have been heard, the final hearing is scheduled. It begins with the opening statement of the prosecutor wherein the charges against the accused are supported with facts and evidence and sentencing is demanded as per the charge sheet. Next, the defense offers supporting facts and evidence in favour of the accused person. The prosecution is entitled to a final closing argument, rebutting this defense. Finally, the court passes a verdict, deciding on both the facts of the case and the sentence. Since Nepal has no jury system, the judge is the sole arbiter.

If the accused is convicted of the crime the judge gives a sentence. There are very few formal regulations for sentencing. The judge is given great discretionary power to decide the type of punishment and length of imprisonment. In theory the judge considers the aggravating or mitigating circumstances, and background and culpability of the convicted person when determining the sentence. However, since there are no specific formulae, there is great inconsistency from one court to the next. But on the whole there are few judges who think in terms of reform of convicts and as such severe punishments are frequently imposed for relatively simple crimes.

3.6.8 Appeal

The law guarantees the right to appeal. An appeal must be registered within 70 days of the sentence. This right is exercised after virtually all convictions and so the appeal process is greatly prolonged by the overload of cases on the Appellate Courts.

CHAPTER 4: NEPALI LAWS AGAINST VIOLENCE

4.1 Background:

In its General Recommendation No. 19, the CEDAW Committee notes: Tradition attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks, and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them of equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.

The creation, development and implementation of a uniformed code of law and centralized administrative system took many years to be completed. Earlier, the governments under the Shah dynasty and latter the Rana family oligarchy focused on the extension of the political control and development of revenue through the co-option of regional political elite, the manipulation of the land tenure systems, the institution of novel tax system, institution of social order on the caste system and concept of inheritance and acquisition or ownership based on kinship system. As a result efforts to enact the common code to be applicable in whole kingdom resulted in the formation of a unified code of law known as the Muluki Ain (Country Code) was adopted during the reign of Rana Prime Minister Jung Bahadur in 1853. The Muluki Ain introduced a unified system of law despite the population being divided into more than a dozen ethnic and tribal communities.

While looked from the social perspective, one cannot deny the existence of domestic violence against women in our society, however it is a very new concept in the horizon of criminal law. Rather, till now it is still not perceived and considered as a matter which requires the attention of law. Domestic violence is considered as a matter within the family relationship where state cannot interfere as it will be the violation of individual's right to privacy. Therefore, to look back towards the history of development of law on domestic violence against women in Nepal is a very challenging task. However, attempt has been made to trace out the glimpses where this issue has been tried to dealt in the past.

As mentioned above till now, there is no specific legislation in our country addressing domestic violence against women. However, due to the various efforts and pressure of women rights activists and civil societies the government has drafted Domestic Violence (Control) Bill, 2057. This Bill was later improved and reformed by the Domestic Violence (Crime and Punishment) Bill, 2058 which was registered in the Parliament in February 22, 2002. This Bill was presented in the Lower House of the Parliament on March 26, 2002. After general discussion, the Lower House of the Parliament passed the Bill on April 12, 2002. The Bill was under the consideration of Upper House when the Parliament was dissolved on May 21, 2002. Due to the dissolution of Parliament the Bill was lapsed and it needed to be introduced once again in the next session.

In Nepal, the security-related legal measures and provisions related thereof can be studied in three fold basis (Acharya)^{xx}: first, fundamental legal framework and their related provisions; secondly, general legal framework and their related provisions; and thirdly, specific legal framework and their related provisions. This classification is based on the classification of Nepali legal framework (Acharya).^{xxi}

- Fundamental legal framework
- General legal framework
- Specific legal framework

4.2 Fundamental legal framework:

The Interim Constitution of Nepal, 2007 is a fundamental legal framework of the country. The constitution has, among others, guaranteed the rights such as- the right to live with dignity, rights regarding (criminal) justice, right against preventive detention, right against torture, right against exploitation, right against exile as the basic human security rights.

The Interim Constitution of Nepal has made provisions for the fundamental rights of a citizen. Article 12 has number of provisions to safeguard the rights to freedom:

- (1) Every person shall have the right to live with dignity, and no law shall be made which provides for capital punishment.
- (2) No person shall be deprived of his/her personal liberty save in accordance with law.
- (3) Every citizen shall have the following freedoms:
 - (a) Freedom of opinion and expression;
 - (b) Freedom to assemble peaceably and without arms;
 - (c) Freedom to form political party or organizations;
 - (d) Freedom to form unions and associations;
 - (e) Freedom to move and reside in any part of Nepal; and
 - (f) Freedom to practice any profession, or to carry on any occupation, industry, or trade.

Similarly the Article 13 has guaranteed the right to equality:

- (1) All citizens shall be equal before the law. No person shall be denied the equal protection of the laws.
- (2) No discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, sex, caste, tribe, origin, language or ideological conviction or any of these.
- (3) The State shall not discriminate among citizens on grounds of religion, race, caste, tribe, sex, origin, language or ideological conviction or any of these.

Provided that nothing shall be deemed to prevent the making of special provisions by law for the protection, empowerment or advancement of the interests of women, Dalit, indigenous ethnic tribes, Madhesi, or peasants, labourers or those who belong to a class which is economically, socially or culturally backward and children, the aged, disabled and those who are physically or mentally incapacitated.

(4) No discrimination in regard to remuneration and social security shall be made between men and women for the same work.

The Article 14 has provisions to protect from 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.

(2) No person shall, on the ground of caste or tribe, be deprived of the use of public services, conveniences or utilities, or be denied access to any public place, or public religious places, or be denied to perform any religious act.

(3) No person belonging to any particular caste or tribe shall, while producing or distributing any goods, services or conveniences, be prevented to purchase or acquire such goods, services or conveniences; or no such goods, services or conveniences shall be sold or distributed only to a person belonging to a particular caste or tribe.

(4) No one shall be allowed to demonstrate superiority or inferiority of any person or a group of persons belonging to any caste, tribe or origin; to justify social discrimination on the basis of cast and tribe, or to disseminate ideas based on caste superiority or hatred; or to encourage caste discrimination in any form.

(5) Any act contrary to the provisions of sub-clauses (2), (3) and (4) shall be punishable in accordance with law.

The Article 20 and 21 has guaranteed the right of woman and right to social justice respectively:

(1) No one shall be discriminated in any form merely for being a woman.

(2) Every woman shall have the right to reproductive health and other reproductive matters.

(3) No physical, mental or any other form of violence shall be inflicted to any woman, and such an act shall be punishable by law.

(4) Son and daughter shall have equal rights to their ancestral property.

Article 21 covers the right to social justice:

(1) Women, Dalit, indigenous tribes, Madhesi 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.

The Article 22 protects the right of child:

- (1) Every child shall have the right to his/her own identity and name.
- (2) Every child shall have the right to get nurtured, basic health and social security.
- (3) Every child shall have the right against physical, mental or any other form of exploitation. Any such an act of exploitation shall be punishable by law and the child so treated shall be compensated in a manner as determined by law.
- (4) Helpless, orphan, mentally retarded, conflict victims, displaced, vulnerable and street children shall have the right to get special privileges from the State to their secured future.
- (5) No minor shall be employed in factories, mines or in any other such hazardous work or shall be used in army, police or in conflicts.

The Article 24 guarantees rights regarding to justice:

- (1) No person who is arrested shall be detained in custody without being informed of the ground for such arrest.
- (2) The person who is arrested shall have the right to consult a legal practitioner of his/her choice at the time of the arrest. The consultation made by such a person with the legal practitioner and the advice given thereon shall remain confidential, and such a person shall not be denied the right to be defended through his/her legal practitioner.

Explanation: For the purpose of this clause, the words "legal practitioner" means any person who is authorized by law to represent any person in any court.

- (3) Every person who is arrested shall be produced before a judicial authority within a period of twenty-four hours after such arrest, excluding the time necessary for the journey from the place of arrest to such authority, and no such a person shall be detained in custody beyond the said period except on the order of such authority.

Provided that nothing in clauses (2) and (3) shall apply to preventive detention or to a citizen of an enemy state.

- (4) No person shall be punished for an act which was not punishable by law when the act was committed, nor shall any person be subjected to a punishment greater than that prescribed by the law in force at the time of the commission of the offence.
- (5) No person accused of any offence shall be assumed as an offender until proved guilty committed by him.
- (6) No person shall be prosecuted or punished for the same offence in a court of law more than once.
- (7) No person accused of any offence shall be compelled to be a witness against oneself.
- (8) Every person shall have the right to be informed about the proceedings of the trial conducted against him/her.
- (9) Every person shall be entitled to a fair trial by a competent court or judicial authority.

(10) The indigent person shall have the right to free legal aid in accordance with law.

Article 25 has provisions on 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.

(2) Any person held under preventive detention shall, if his/her detention was contrary to the law or was in bad faith, have the right to be compensated in a manner as prescribed by law.

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

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

Article 27 safeguards the citizen's 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.

Provided that nothing shall compel any person to provide information on any matter about which secrecy is to be maintained by law.

Similarly, Article 28 provides 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.

Similarly Article 29 protects the citizen from exploitation:

(1) Every person shall have the right against exploitation.

(2) Exploitation on the basis of custom, tradition and convention or in any manner is prohibited.

(3) Traffic in human beings, slavery or serfdom is prohibited.

(4) Force labour in any form is prohibited.

Provided that nothing in this clause shall prevent for enacting a law allowing the citizen to be engaged in compulsory service for public purposes.

4.3 General legal framework

Promulgation of New Muluki Ain 2020 BS (Country Code 1963): Nepal has gone through various phase that is divided by historians into Ancient Nepal (Kirata and Lichhavi period), Medieval Nepal and Modern Nepal. Nepal emerged as an unified modern state in the later third quarter half of the eighteenth century. The history of Nepal entered into a new phase during the second half of the eighteenth century when almost

all petty principalities and kingdoms were unified into a single Nepal. As before the unification Nepal was ruled by various rulers and there was various communities who came from different parts and had been ruled by their own culture, tradition and social system, after the unification the need of common law through out the kingdom has been realized. However, the unification of the legal and administrative systems had not achieved overnight.

In 1949, a popular movement overthrew the Rana regime. Subsequently, the people vehemently opposed the customs that prevailed for centuries. In the new perspective, the Muluki Ain was replaced by a revised code--New Muluki Ain-- in 1963. The new code introduced a secular system, yet it continued to perpetuate the gender segregation and is discriminatory against women. The New Muluki Ain still prevails as a general law in Nepal. The Section 4 of the Chapter on Preliminary Arrangement provides that the New Muluki Ain should prevail as a law if no special statute exists to govern the matter. Since no special statute is so far enacted by the Parliament in respect domestic violence against women thereof, the New Muluki Ain is enforced as a sole law in the matter of family and marital relationship. Since, the New Muluki Ain has not done away with the concept of gender segregation as a societal base, the discrimination against women continues in many matters.

Nepal does not have separate legislation on domestic violence nor is domestic violence a separate crime under the general law. There are provisions spread in the Country Code, 1963 (the Civil and Criminal Code of Nepal) and various laws that deal with violence against women:

a. Assault

Physical violence is dealt under the Country Code, 1963; which incorporates physical assault as a crime. The Country Code includes both ordinary to serious physical injury as assault and institutes a fine up to Rs. 10,000 and imprisonment up to 10 years, as the punishment, depending on the nature of the assault, its effect and weapons used.

The victims can also claim compensation. However, this Chapter on Assault does not have any provision regarding mental torture and verbal abuse.

b. Verbal abuse

Verbal abuse can be dealt under the Defamation Law. The State does not initiate the case; hence a victim has to go to the court by herself and follow the lengthy procedures. The role of police in these cases is limited only to the preparation of Case Report and the victim does not get any support from other government machinery this law.

c. Incest

Incest has been defined as a crime involving sexual intercourse between persons who are relatives within seven generations. Incest is strictly prohibited in Nepal. Marriage within the incest relation except under the customary practice is void. The punishment varies according to the distance of relation between the people involved in incest. Incest within the following relation is punished as follows:

- Having sexual intercourse with mother is punishable with life imprisonment.

- The crime of having sexual intercourse with sister of the same parents or with daughter is punishable with 10 years imprisonment.
- The crime of having sexual intercourse with women in the relation of father's ancestral lineage is punishable with six years imprisonment.
- The crime of sexual intercourse with other women of relation within seven generations of father or mother's ancestral lineage, other than those mentioned above is punishable with an imprisonment of two years. Incest law can be invoked only when there is intercourse between two people, however mostly, in this kind of offences it is women who get victimized by the law and society.

When a girl filed a case of incest against her uncle, the Supreme Court defined that the Country Code, 1963 had repeatedly made a mistake of not including an uncle's daughter's daughter under the definition of incest. In this situation they could not define the law which had been mistakenly enacted. The law, which was enacted 20 years before and has been amended from time to time, is the basis of the rule of law. Hence, any person outside such criteria is not justifiably considered as an offender.

d. Child marriage

Child marriage is prohibited under the Nepali law. According to the Chapter on Marriage of the Country Code both sexes have to be 20 years old to marry without parental consent. Men and women can marry at age 18 with the consent of their parents. If the marriage is contracted contrary to this provision, the principal offenders having attained majority, out of those committing the offense, shall be liable to the following punishment:

- (i) Where the marriage of a girl below 10 years of age is contracted/procured, punishment of imprisonment for a term from six months to three years and a fine of one thousand to ten thousand rupees.
- (ii) Where the marriage of a girl over 10 years and below fourteen years of age is contracted/procured, punishment of imprisonment for a term from three months to one year and a fine of up to five thousand rupees
- (iii) Where the marriage of a woman over fourteen years and below eighteen years of age is contracted/procured, punishment of imprisonment for a term not exceeding six months or a fine of up to ten thousand rupees or both (iv) Where the marriage of a woman or man below twenty years of age is contracted/procured, punishment of imprisonment for a term not exceeding six months or a fine of up to ten thousand rupees or both (v) Out of the priest, matchmaker and other abettors who knowingly performs the acts of marriage prohibited under the above-mentioned provisions, one having attained majority shall be punished with imprisonment for a term of up to one month and a fine of up to one thousand rupees (vi) In case where marriage has not yet been contracted but it has already been set after performing the rites and rituals, the principal who has arranged it shall be punished with a fine of up to five hundred rupees and the marriage set shall be invalidated.

However, the person who contracts or arranges marriage without knowledge that marriage is arranged or contracted lying that it is within the limitation of law is not liable to punishment. In case the marriage has

been contracted before the man or woman has attained the age of eighteen years and no offspring is born to them, the man or woman who has so got married before his or her age of eighteen years may, if he or she does not accept the marriage after he or she has attained the age of eighteen years, such marriage will be void.

e. Bigamy

Bigamy is punishable by law in Nepal, however law itself in certain circumstances allow men to practice bigamy. The recent amendment to the Country Code has increased the provisions of punishment for committing bigamy law. It has made provisions of imprisonment for a term from one year to three years and a fine of five thousand rupees to twenty-five thousand rupees, as well.

f. Assault and bigamy

Domestic violence against women has been given as a ground for women to seek divorce from her husband. If the husband marries another woman, or if the husband throws his wife out of their house, or if the husband assaults his wife causing grievous bodily harm women can ask for divorce. Further, if woman is not capable of earning her livelihood, she can claim alimony for the period of five years or until she remarries.

g. Laws relating to sexual abuse against women

Chapter on Indecent Assault of the Country Code, 1963 incorporate certain aspects of physical sexual abuse against women within and outside the domestic sphere. It prohibits touching any organ from head to foot of a woman above the age of 11 years except one's own wife with the intention to have sexual intercourse and prescribes a punishment with a fine up to five hundred rupees or imprisonment of up to one year. However, this law is not pragmatic as not a single case has yet been filed using the same provision.

h. Measures to control dowry related crime

In the context of increasing rate of crime relating to dowry, the Social Practice

(Reform) Act, 1986 has attempted to prohibit dowry related crime by limiting the cash and jewelry to be given to women in their marriage. It also prohibits the unnecessary expenses on marriage.

i. Women can ask for her share if ill-treated

A wife shall be entitled to get her share of property from the share obtained by the husband if she is abandoned without providing any maintenance by the husband alone or together with his parents, or if she is treated cruelly or if the husband has brought or kept a second wife. She should be given maintenance if she has been abandoned only by the parents of her husband.

j. Marital rape interpreted as crime

Recently in Meera Dhungana for FWLD vs. HMG/Nepal, the Supreme Court has interpreted marital rape as rape. This interpretation by the Court has recognized the right of wife to deny sexual intercourse to her husband.

k. Abortion

The abortion had been banned completely for any reason in Nepal. It was an illegal and a criminal act. The new abortion law was passed as the 11th amendment to the Civil Code, in September 2002. The objective was to ensure women's reproductive rights, and to prevent thousands of maternal deaths in the country resulting from unsafe abortions.

4.4 Special legal framework:

Government policy and the legal framework for gender-based violence in Nepal are far from complete. The area in which most progress has been made is girl trafficking, for which the Government initiated a new policy in 1997. The policy lays down that the Government will (i) initiate an extensive campaign against girl trafficking; (ii) promulgate laws to end discrimination against women; (iii) strengthen cooperation with non-government organizations (NGOs) and international non-government organization (INGOs) to implement programs for controlling trafficking; and (iv) initiate cooperation with other countries at bilateral and multilateral levels to control girl trafficking and acquired immune deficiency syndrome (AIDS). In addition, the Government committed itself to further actions, including increased compensation for the victims of sexual exploitation, the creation of a national commission on girl trafficking, and the building up of consensus among all political parties on the issue of girl trafficking, and on adopting appropriate measures for alternative employment. The Government has also promised the creation of family courts to resolve family disputes.

4.4.1 Domestic Violence (Crime and Punishment) Act 2065:

This was introduced in the Constituent Assembly (CA) in 2009 with various proposals for amendment. It has accommodated wider coverage of issues concerning such violence in the changing context of Nepali society. It is claimed that the Best part of the proposed bill is that it has gender neutral language, which means every perpetrator committing domestic violence is punished; be it a man or a woman. The Domestic Violence and Punishment Act 2065 passed defines physical, mental, sexual, financial as well as behavioral violence as domestic violence. The Act has a provision of slapping up to four months of imprisonment and Rs 6,000 fine on perpetrators of domestic violence, and half the punishment to accomplices. In case of physical or psychological injuries to the victim, the perpetrator will have to bear all treatment costs. The law says victim will have to file complaint at a police office, local body or Women's Commission within 90 days of facing an act of domestic violence. Hearings on such cases will be held in closed sessions. A person once found guilty of perpetrating domestic violence will face double penalties for each new act of domestic violence, the Act says. The government will establish service centers for victims to ensure security, treatment and rehabilitation. Such centers will provide victims with legal aid and psychological counseling, among other services.

4.4.2 Human Trafficking (Control) Act 2057:

Nepal also has adequate laws on human trafficking. It aims to stop the inhumane acts of human trafficking and immoral sex work; to rehabilitate the victims of such activity and to maintain the morality and proper conduct of the general public. This Act has number of provisions to control human trafficking. Clause 4 has provisions for prohibition against engaging in human trafficking:

- (1) No one shall commit or make others commit human trafficking.
- (2) If anyone commits or makes others commit any of the following activities, that person shall be deemed to have committed human trafficking.
 - a. To sell or buy a human being for any purpose,
 - b. To work as a prostitute or make others work as a prostitute,
 - c. To perform sexual acts on a child or make a child perform any kind of sexual act,
 - d. To traffic a child or mentally incapacitated person for the purpose of prostitution,
 - e. To engage in prostitution,
 - f. To attempt any of the activities mentioned above or assist others in carrying out any of the activities mentioned above.

Clause 5 has prohibition against operating a brothel:

- (1) No one shall run or make others run a brothel within the Kingdom of Nepal.
- (2) No one shall knowingly allow the use one's house, land, place or vehicle for prostitution, with or without profit.
- (3) Anyone committing a crime under subsection (2) shall be deemed to have committed a crime under this Act. If it is proved that profit is derived from such use or from causing others to do the same, that profit shall be deposited in the rehabilitation fund established under Section 22 of this Act.

Clause 11 has provisions for punishment:

Any person who commits the stated crime shall be punished according to the physical and mental condition of the victim and the situation at the time of the crime:

- a. If the crime is committed within Nepal under the section 4, subsection 2(a), the punishment shall be ten to 15 years in prison and a fine of Rs. 50,000 to Rs. 100,000. If the crime is committed outside Nepal, the punishment shall be 15 years to 20 years in prison and a fine of Rs. 100,000 to Rs. 200,000.
- b. If the crime is committed voluntarily under section 4, subsection 2(b), the punishment shall be one month to three months in prison. If the crime involves causing another to commit the crime, the punishment shall be five years to 10 years in prison and a fine of Rs. 100,000 to Rs. 200,000.
- c. If the crime is committed under section four, subsection 2(c), the punishment shall be up to three years in prison and a fine of up to Rs. 100,000.
- d. If the crime is committed under section 4, subsection 2(d) the punishment shall be up to three years in prison and a fine of up to Rs. 50,000.

e. If the crime is committed under the section 4, subsection 2(e), the punishment shall be one to three months in prison and a fine of up to Rs. 50,000.

f. If the crime is committed under section 4, subsection 4(f), the punishment shall be half of the punishment given in such crime.

g. If the crime is committed under the Section 5, the punishment shall be three to five years in prison and a fine of Rs. 50,000 to Rs 100,000.

Article 12 has additional punishment:

(1) If anyone commits a crime on a woman or child under his/her protection or a related woman, such person shall be punished according to Chapter 5 on Incest of the Country Code and shall be given an additional ten percent of the punishment provided in this Act.

(2) A person repeating a crime punishable under this Act shall be given an additional 50 percent of the punishment each time the crime is repeated.

(3) A person holding a public position that commits a crime punishable under this Act shall be given additional ten percent of the punishment provided in this Act.

This Act also has provisions to seize (1) Any movable or immovable property acquired as a result of a crime charged under this Act;

(2) Any house, land, place or vehicle used for a crime charged under this Act and proved to belong to the person or persons convicted of a crime under this Act.

4.5 Law Enforcement (with special reference to human trafficking):

The enforcement of law is poor in Nepal. It is so more with the sexual assaults and rape cases. Any single case can be taken as the bizarre situation. Following is a story from Amnesty International which tells us about the fact that the State mechanism is not competitive to respond to the sexual assaults and rape cases:

Dev Kumari Mahara is a colleague of Rita Mahato. In April 2007, she was called to a crime scene near her home. A neighbour was accused of the rape of the wife of a mute husband. The victim had been beaten, her blouse torn and her face swollen. The victim recognized her attacker. Due to her past experience of hostility from the police, Dev Kumari first contacted the women's human rights defender network. The police didn't turn up to the crime scene despite Dev Kumari's phone report, so she had to take the victim to hospital. There are no free medical services for rape victims in Siraha. The doctor who examined the victim did not file a rape report that could be used as evidence. According to Dev Kumari, the alleged rapist is from a rich family and was able to bribe the police and the doctor.

After Dev Kumari filed a formal complaint about the rape case, the accused contacted a group of supporters who started to harass her. When the women's human rights defender network tried to file a complaint about the rape and subsequent harassment, a gang of men gathered outside the police station. "They threatened to kill me, to chop off my legs, to rape me and burn me alive," said Dev Kumari. Despite

witnessing the threats, the police failed to challenge and investigate the incident. Dev Kumari said that the common way to settle rape charges in Siraha is for the rapist to pay a settlement for the victim's forgiveness. Amnesty International's research showed that instead of investigating incidents, women are pushed by police, family and community to accept traditional informal community justice where payment of bribes, discrimination and the lack of importance of the crime committed often prevent real justice. Women activists told Amnesty International that they are often humiliated when they attempt to report incidents to the police. Victims often turn to the quick fix of community justice solutions. Traditional dispute resolution systems are common across Nepal given the barriers to accessing formal justice mechanisms (Amnesty: 2009).

4.5.1 Detection, Reporting, and Registration:

Women are subject to criminal victimization, both inside and outside their homes. These usually include harassment, torture, abuses, and sometimes murder in most deceitful manner. Dowry atrocities, child prostitution, and women trafficking for sexual exploitation have been a disgrace for the society. Very large numbers of women and children are used for commercial sexual purposes every year, often ending up with their health destroyed. Sexual assaults and rapes are often unheard and unspoken in our society. They are so hidden under layers of guilt, shame and societal pressure, that it goes undetected and unpunished. But their victims live with the torment all their lives. Prostituted women and children are raped, beaten, sodomized, emotionally abused, tortured, and even killed by pimps, brothel owners, and customers.

The detections of sexual assaults and rape are difficult. The reasons for these are fear of social stigma, fear of perpetrators, threats, bribery, and personal guilt. Sometimes the lack of confidence in the law enforcement system for efficient and prompt delivery of judgment discourages reporting. In the courts, they have to revive the memory of their exploitation by narrating the sordid account several times in public. They are cross-examined and virtually grilled by the defense counsel to prove that they were not raped and that they had willingly consented to the affair. These parts of their ordeal are like adding insult to injury. It is often argued that almost all law enforcement practices in relation to prostitution are the control of the prostitutes rather than of the men who exploit them. Sordidly, victims are often treated as criminals.

Quick delivery of justice is what we pine for. It is easy to dream but difficult to attain. The fact is that it is easy to preach but difficult to enforce. The reasons behind this could be individual or institutional fallout. The court investigation might take years. The justice system is so leaky that even after going through the legal wrangles for fifteen years or more, there are scores of possibilities and ways for the perpetrator to go scot-free. Normally, these happen due to the corruptions and/or inefficiency of investigating officials. The adoptions of traditional investigation techniques without the know-how of modern scientific methodologies also are responsible for the inefficient justice system.

The non-reporting of cases are further elaborated by the fact that one hundred and twenty four women and children were rescued from Mumbai and put in various rehabilitation centres in the year 1996.^{xxii} According to Durga Ghimire, President of ABC Nepal, none of the twenty-eight rescued victims rehabilitated in her centre had filed cases against the perpetrators. In another study, out of one hundred and eighty rehabilitated

victims in Maiti Nepal, only twenty-six (14.44%) lodged complaints. When such a large number of victims in Kathmandu do not complain; the victims in remote areas cannot be expected to do so.

The mere existences of legal Acts will not infuse the victims with the required courage and determination to report their cases to the police and thereby help in apprehending the culprit. The easy access to justice and proper support system to protect victims and witnesses could result in an increase in the reporting of crime. In many places, people have successfully experimented with rewards, incentives and the community approach to encourage victims to voice out their indignation and protest.

Nepal police have established 21 Police Women and Children Service Centers in the country to help victims report and investigate such types of crimes. These Centers have also been found very useful for women in settling family violence cases. These Centers have specially trained women police officers. Apart from it, there are more than 80 community Centers established in conjunction with police to prevent and investigate crimes. These Centers have been very effective in bringing the quite often hushed-up cases into light.

4.5.2 False charges:

The environment of the crime and criminals and criminal justice system is very much putrefied. Even the the reporting of the incidents has to be fully verified by concerned agencies. Many cases have turned out to be false and framed up allegations. The following case is testimony to this fact:^{xxiii}

Sita filed a complaint against Pushpa Adhikari alleging that he, together with Padam Bahadur Katuwal, and Devi Katuwal, had trafficked and sold her in India. The trio showed her a fake letter written by her husband from Kathmandu asking her to go Kathmandu. She agreed to it. Instead of taking her to Kathmandu they took her to Saharanpur, India and sold out. At later stage, however, she withdrew her allegations. She admitted that she had gone to Saharanpur on her own will. All accused were set free.^{xxiv}

The case of Tara is yet another example when a case is withdrawn out of threat or bribe:^{xxv}Tara, a young *Badi* girl of 16 years, was married to a person from her own community. Since her husband worked in India, she stayed in her brother-in-law's house. One day, her uncle, aunt and her brother-in-law falsely informed her that her husband was in Delhi and wanted Tara to visit him. All of them took Tara to Delhi, but upon reaching Delhi they sold Tara to a brothel. Luckily, Tara was fortunate enough as the Indian police raided the brothel on the very next day of the incidence, and Tara was rescued along with other sex workers of the brothel. Tara lodged complaint against her uncle, aunt, bother-in-law, grandmother and brother for trafficking her. In her FIR, she clearly mentioned the names of the persons who took her or helped in taking her to Delhi and who sold her. The case was filed against the accused in the Banke District Court and all were remanded to judicial custody.

However, on the day of the final hearing, the case took an unexpected turn. The court received a letter from Tara in which she asserted that she was not trafficked by anyone and was also not rescued from the brothel. Instead she said that the Indian police arrested her when she was walking on the streets of Delhi. She blamed Maiti Nepal and the Nepal police for pressuring her to lodge a false FIR against her relatives.

Therefore, she requested the Court to release her uncle, aunt, bother-in-law, grandmother and brother, because they were all innocent.

4.5.3 Evidences: Physical and witness:

Evidence constitutes the key factor in investigation, prosecution and subsequent conviction of an offender. It is mandatory to prove the *Corpus Delicti* -- *Mens Rea* and *Actus Reus* meaning *total guilt* of the offender. The source of evidences can be the crime scene, the victim, witness, and the offender/s. Many cases of sexual assaults, rape and trafficking get nowhere in the absence of evidence in courts. Victims often cannot attend the court examinations. A request letter sent to the IGP of Nepal police by Maiti Nepal (Mumbai) may be relevantly quoted here: "*Since we regularly repatriate rescued victims to Nepal, we could not produce them in court for evidence and statement in the course of trial for legal action as and when required for prosecution of the criminals. Therefore trafficking agents, brothel keepers are acquitted by the court here and with this illusion they are free to activate again in trafficking of Nepalese girls and women.*"^{xxvi} Cases are lost due to lack of substantial evidences. This is also best reflected in the Tulasa case:

Tulasa was kidnapped in 1980 from Nepal when she was 12-years-old and thrice sold to different brothels. The prosecution's case was *weak*, as all the witnesses could not be produced. The judge expressed anguish over the handling of the case, as original records were missing from the police files and the JJ Hospital where Tulasa was treated for 20 months from 1982-84, for sexually transmitted disease and brain tuberculosis. Tulasa died sometime in 1998. Recently, the city session's court acquitted the alleged perpetrator of crime Abdul Hameed Abdul Kareem for want of substantial evidence. The Additional Sessions Judge K. U. Chandiwal ordered Kareem's acquittal, as the prosecution was not able to produce any direct evidence against him.

It is difficult to collect physical evidences especially in situations where the victims are ignorant and so innocent that they cannot even recollect the names of their traffickers, places and the *gharwali* (brothel owner) as well. The offenders exploit their ignorance and innocence. In a State Vs Salim Miya case, the court gave its verdict saying that "*the allegations against the accused could not be established*", and hence acquitted the suspect.^{xxvii} In yet another case, the confession made by the offender was annulled in the absence of supporting witnesses and other evidences.^{xxviii}

In situations when police cannot produce required evidences in the courts, quite often victim of sexual abuse and trafficking show frustrations over the demand for evidences even when they are physically present in the court.^{xxix} Parvati (named changed) was trafficked to Mumbai, India. She was sold out to one brothel. *Goondas* (henchmen) gang raped her when she denied prostituting. She managed to escape from the brothel house after one year. She filed complaint upon her return. The court asked to produce evidences to prove the guilt of offenders. She did not have any. "*What other big evidence can I produce than myself as the victim? What (evidence) can I give to the government?*" was her questions to the court during court investigation.^{xxx} Impassioned appeals of victims of sexual exploitation such as this usually fall on deaf ears.

In another similar case, Sita was allured, trafficked and sold in India by Bir Bahadur, Lahure, and Kanchha. Although all three were involved, Sita knew Lahure only. During court investigation Sita could not identify others except Lahure. She said "*I can identify only one of the accused and do not know others*" and the court had a

good reason to decide, "*the victim did not recognise Bir Bahadur*". Hence the accused was acquitted.^{xxxii} Innocence, ignorance, and/or incapacity of victims to explain and prove crime against them quite often result in acquittals of offenders.

Offenders who admit crime in police mostly turn hostile in courts. Bir Bahadur contended "*The police tortured me and while I was unconscious, they got my signature in the statement papers. That statement is false. I have not sold her. I do not know the victim and the other accused. The complain is fictitious, concocted by her for revenge.*"^{xxxiii}

In yet another decision, the district court of Sarlahi acquitted Panchamaya BK but punished Padam Bahadur Pathak even when both of them had confessed their crime in police. In the course of interrogation Panchamaya had even confessed of selling four other girls but Ganga alias Tulsi in India.^{xxxiii} The district court maintained "*...although Tulsi had accused Panchamaya and endorsed her document in the court, she did not appear in the court during the investigation. Panchamaya denied the accusations in the court. Padam Bahadur, despite his denial of the accusation, could not produce evidence to support his denial.*" Panchamaya got the benefit of doubt because Tulsi did not appear in the court during the investigations.

In State vs. Norsang Lama^{xxxiv}, fifteen girls were intercepted with their traffickers on their way to India. These girls were supposed to be taken to Saudi Arab. All of them wore the apparels of Buddhist nuns or *Bhikhhuni*. Later on, their passports were also found to be fake. However, the court released all the suspects on bail for the want of evidences.^{xxxv}

4.5.4 Victims' rights and needs:

Victims have a mixture of experiences with the national criminal justice systems. For many, the criminal justice system does not exist at all. Helpless women and children do not have access to justice. They do not simply have courage and confidence to approach to police. Even if they dare to do so, they are further insulted by the society. When the law is in place, there is often weak law enforcement. Victimized women and children are often treated as perpetrators of crime in certain circumstances. This leads to victims' apathy, distrust, and avoidance of the system. It is quite often found that duties and responsibilities make law-enforcing officials less concerned to human rights issues. Their duties sometime make them rude and insensitive to many human values. They do not attend to the humanitarian aspects of policing. They neglect the human factor of policing. The authority and power make them feel *great*. They turn blind eyes to the psychological state of mind of many sex victims. It is extremely necessary that we harmonize their duties, authority, and power with humanity. The humanity is missing in the law enforcement system.

On many occasions, the victim of rape or other forms of abuse is evidently a loner without any kith and kin. She could be either an orphan, or disowned by her family for fear of censor by the society. In the absence of government-run transit and rehabilitation houses, the law enforcers have to face the problem of transit or accommodating her till the termination of the investigation. The victims are normally innocent and young, ignorant about the names and whereabouts of the perpetrators. They cannot even fathom the gravity of their own precarious situation. Those who are just on the threshold of their puberty cannot correctly interpret the acts and relationship as abusive. The offenders tell them fake names and addresses. Perchance if they manage to escape from one brothel, they are caught and interned in another brothel, which

aggravates their suffering and humiliation. The longer the relay chains of illegitimate custody, the more difficult it is to investigate and arrest the culprits; the more malpractices.

4.5.5 Trial and prosecution:

Evidences and witnesses play an important role in facilitating efficient and accurate delivery of justice. The collection and presentation of evidences, whether of *Mens Rea* or *Actus Reus*, and witnesses, including victims, are important. In Nepal, one of the studies revealed that the public prosecutor did not produce the witnesses in more than half of the total cases in the court. The reasons could be various. However, the cooperation among, police, public prosecutors, and general public in this respect is questionable.

Quite often, judges doubt the veracity of the opinions and evidences presented by the experts, ostentatiously posing to know better than the experts. Such myopic and parochial outlook hinders delivery of the right verdict.^{xxxvi} Because of the prolonged and cumbersome court procedures, the witnesses tend to lose interest in the case. In 43 % of the past cases, the witnesses were summoned within 91 to 270 days, and 41% within 90 days.^{xxxvii} The study revealed that 31% of the cases took 361-720 days for disposal. Only 17 % of the cases were dealt with within 90 days.

There are also comments that evidences such as witnesses and material findings from the crime spot are not considered as important while delivering justice. The ruling of the Supreme Court is simply accepted as the final verdict. Whether the verdict is just or unjust is a secondary issue. Admission of guilt by the accused in police custody is accepted as the basis of criminal justice and even the private prosecutors treat this as the prime evidence for conviction.

CHAPTER 5: RESEARCH FINDINGS

5.1 Profile of victims

Anyone of these case studies would have been enough to describe the sorry state of victims of sexual violence in our societies. Out of twenty one sexual assaults and rape cases studied, twenty victims could be reached for the interview. One victim could not be traced out after the incident. However, her story is also included in this report. The participants of this research represent variety of women and girls victims in our societies. The victims' ethnicities included Brahmin, Chhetri, Magar, Gurung, Tharu, Dalit, Muslim, Terai etc. They ranged in various age groups—ranging from 14 to 63 years. Almost all of these victims belonged to poor class families. Most of the victims were victims to their acquaintances: three of them were raped by their own fathers, two by their close relatives and others by the neighbors and known and unknown persons. The study has found some important information on some of the key areas. These are: the socio-economic status; the human feeling of victimization; the access to the justice; and the societal culture and behavior towards victims and survivors. The following are the details of the findings. The names of all the victims have been changed for obvious reasons to maintain privacy and confidentiality.

1. Shanti is a twelve years old girl. She is from a very poor family. She is a Brahmin girl. She was raped by her neighbor Hira Poudel. Hira had kept her in his house for eleven days. His wife was also involved in this crime. They had planned to take her to Mumbai and sell out her. She escaped from their captivity. The villagers captured the culprit and handed over to the police. He is in jail.

Shanti felt very *dukh* (sad), and *naramailo* (unpleasant). She felt very angry with the boy (culprit).

She wished that the culprit should have never been released from the prison. She wished that he was *galaidinu* “weakened” by beating. In her opinion, she thought that she did not get justice. She said, “Such criminals who play with others’ lives must be hanged till death or kept inside the jail for the whole life—life imprisonment should be given.” She finds her family members supportive but the society “unfriendly.”

2. Tikuli is a fourteen years old girl. She belongs to Magar caste. She was raped by Manmohan, a teacher. Her neighbor Ratna was also involved in the case. The case was reported to the police. Ratna was released on bail while Manmohan is still in the jail.

Tikuli felt really bad going to the court. It was painful. She questioned to herself why it happened to her. Tikuli relates that much money was spent while going to the court of law. Her father too didn't have money so the community collected the money to meet the court expenditures.

The court has given verdict that she is entitled to half of his pension, half of his house (one room of his house) and half of his properties. However, she has not gone to take those *ansha*. The verdict has not been implemented. Nowadays she lives in her sister's house in Sunwal.

Tikuli has been treated well by her family members. She has not faced with any improper behavior in her home on part of family members. Her mother and father love her. She thinks that she had not made any mistake that is why no one has treated her badly. However, people talk about her. She no longer lives in

that village. She has gone to live with her *chhema* (mother's sister). She was studying in grade six but one day the headmaster of the school called her and said that she could not continue her study in that school. She could not join seventh grade and continue her education.

It is interesting to note how offenders behave with their victims later on. Ratna was released from the jail after seven months. She scolded her [victim] mother and sister whenever she saw them on the road and did not let fetch water in the tap too.

3. Saraswoti is a 19 year old school girl. She is Chhetri Thakuri. She was raped by Bombahadur Basnet, APF personnel, in the jungle. The police man has been suspended from the job. He was forced to pay an amount of rupees five lakh as compensation to the victim. He is still in the jail.

Saraswoti felt that it was her weakness to be a woman. She felt so bad. She really felt that something had happened to her. When asked how she felt while going to temples, she said, "I have been raped, so people consider me impure." She felt very embarrassed to go anywhere. She says, "I hated myself, why I am still alive, it would have been better if I had died on that day, I am just alive to give trouble to everyone. I felt so." Sometime she accused herself [for the incident]. She said that it was her weakness. She took the responsibility to herself. Even after reporting the case to the police, she had fears that he [offender] would chase her. She had to go to school through the vast forest. She was scared that he [offender] might attack her on her way to and back from school. She was very afraid to go out. Saraswoti felt that people still made comments. They said aloud, "She is the girl who was raped." While going to Chaumara, the police men she heard them gossip, "This is the only girl, she is a false girl and she is the prostitute."

Saraswoti also felt that even after all the money she got and the offender put inside the jail, she did not get justice. She said,

"I have lost my self-respect that's why he must get more pain. He had to quench his thirst so he did it. He should be hit with a knife plate rather than beat him with a rope. He should be given tough punishment and pain. He shouldn't be left out. He should be given punishment up to his lifetime otherwise we can follow the other process. If at that time if I was conscious then I would be happy if he was killed at the very time in front of my eyes but considering him as a human my *baba* and mummy left him alive."

Answering a question if she thought of doing anything to the rapist if she ever got chance or did she ever get annoyed, she said:

"No, I don't think so. I don't get annoyed because he is also human being. Although I got so much trouble he has already made a mistake. He should understand that he made a mistake and also think that now onwards doing that sort of trick would give trouble to anyone. It's my weakness that I am a woman. Nowadays to laugh, talk is also my mistake I feel so."

Saraswoti felt very upset. She wished that she had died. She had been receiving threats from the offender. She said that the culprit was trying to persuade her. She said, "He was trying to escape, persuade and repent for the crime he had done. That he wanted to persuade her and entrap her in his trick. He didn't want to marry her. If he had thought of this he would have never done that act to her." She was worried that either

he wanted to kill her or wanted to entrap and give trouble to her. Saraswoti wished to join army or police to avenge the crime.

4. Lalita is fifteen year girl. She is a Magar girl. She was raped by Kumar Khatri in the jungle. The case was reported to the police. He is in the jail. Lalita felt it was really painful, she felt really bad. She used to go crying [to the court] and return crying [home]. Lalita's family economical condition was not so good so they had no money. All the expenditure of to and from Butwal was met by her aunty.

Lalita felt that in order to see that she gets justice the culprit must be imprisoned for his lifetime. She wished that he would not be let come out of the jail for the lifetime.

Lalita has also not experienced any "bad" behavior in her home [after the incident]. She has also got the same behavior as before. Her friends have not done any bad to her. All of her friends treat her as they used to treat her before.

5. Makuri is a fifteen years old girl. She is a Tharu girl. She was raped by Bisnu Mahato. The case is reported to the police. The rapist is not yet arrested. He is in Qatar. Makuri felt bad. She wept. She could not sleep the whole night. She was afraid of some fear. Her mother also annoyed and rebuked her and badly beat her. She suffers from dizziness ever since after the incident. Makuri was verbally abused by her mother. She beat her. Her brother also abused her and beat her. He intimidated by accusing her for going to the well for washing dishes. She said that her classmates behaved well. Her neighbors were not friendly to her. They gossiped, "She is of that kind...she was given money." Makuri said, "Even after denying all these people talked about me like that."

Makuri was angry and she wished that the culprit should be kept in jail forever. She would have killed him by throttling if he was in front of her. He managed to go to Qatar for job. The relatives of the culprit were happy when he was successful in running away. Now these days the victim party has not been able to go to police for the "negotiation" of the case even after repeated calls from police because of village community's non-cooperation.

6. Suntali is eighteen year old Gurung girl. She was raped by Panchuram. He allured her to be his lover and wife. But he married another girl. She became pregnant. The case was reported to the police. Panchuram was forced to accept Suntali as his wife. Suntali was force-entered into his house as wife. She gave birth to a baby in his house. However, it died after three days. Because of the torture that Suntali had to suffer at the hands of her husband and family members, she went back to her parental home. Suntali was allured and raped by a neighboring boy on the pretext of love. She became pregnant. The boy married another girl. The community forced him to keep Suntali. She gave birth to a baby but it died after three days. The family scolded, beat, and drove her out of the house. She has gone back to her *maiti*.

Suntali was supported by the family and community. The perpetrator and his wife abused her and only wanted to quarrel with her. Due to the reason that she could not tolerate these abusive behaviors, she went back to her *maiti* (parental house) within a week time. She went back running to her *maiti*. As the door opened, her mother had exclaimed, "Suntali has come back!" Her youngest brother, who was angry,

snapped, “Why has she come back? Send her away.” Her *bhauju* (elder brother’s wife) comforted her, “You need not to stay in his house; you come and stay here at ease.”

7. Rita is a sixteen years old Nepali girl. She was raped by Rajan. The case is reported to the police. The rapist has been absconding since then. Rita was raped. The case is reported to the police. The rapist is not yet arrested. He is abroad. He sends money to his family. His family is happy. For justice, she wished she could kill him. She said that he spoiled her life, and he tainted her life. He kept her away from her near and dear ones.

Rita’s family members love her. She has not found anything bad feelings for her. However, the society looks at her differently; in a bad way. Whenever she is on the road, people point their fingers at her and talk about her. Even her close friends do not speak to her anymore. They are distancing from her. She finds it difficult to move in the society. All stare at her when she is alone. She said, “I feel bad whenever I move on road. All stare and point out at me. I wish I did not live in this earth. I wish I had died.” The incident further invited economic problem. “We were poor already.” Rita said. “This incident has incurred more expenditure. My father had to borrow money.”

The victim did not only suffer the pain of violence. Her whole family had to bear the brunt. Her elder sister, who is married, was also facing problem due to this incident. Rita’s sister also faced a cruel behavior from her husband. She had just given birth to a child and she was nursing a three days old baby. One night when her husband was fast asleep, thinking that she was alone inside the house, a drunken person came inside and tried to molest her. She awakened her husband and the drunken man ran away. Suspecting that she had deliberately invited the man at night her husband beat her. She suffered without her mistake. From that day on the family members do not love her. Her husband and mother-in-law gave her younger sister’s example whenever they scold and beat her. They say, “How can she be good when her family is bad.” Her mother-in-law deliberately instigates her husband to beat her. It is because of this reason that she wants to go to foreign country. However, the family has not allowed her to go.

8. Lati is mentally disabled fifteen year old Dalit girl. Her family had no land and no house of their own. The family lived in Dilmaya Bhujel’s property. Her mother had left her husband and went with other person. Her father, Dhanbahadur Nepali, had returned home from abroad after this news. He raped his daughter. She was not in a position to report to the police and the land owner took her to the police and reported the case. Lati has been handed over back to her mother. Her brother and sister have been sent to Maiti Nepal. Her mother and she could not be traced after the incident. Her father is in jail. This case is important in the sense that a mentally retarded person can be victims of violence and they cannot relate their narratives. Such types of victims are more vulnerable to the violence in the society. She has become more vulnerable than before.

9. Rekha is a fifteen years old girl. She belongs to Magar caste. She was raped by her step father, Lilbahadur. The perpetrator is in the jail. Rekha felt very bad. She didn’t know what to say, she felt just so uncomfortable when they looked at her. There were many people in the court. There were many elder people that were why she felt really shy. There were only the lawyer of one side and the officials of the court as it was the incident of the same family. She felt like they would repeat these things again. She felt

uncomfortable. She felt shy to take out her clothes for the medical examinations. She felt really bad at that time. Her father accepted his mistake that's why she had not to tell everything. Answering the questions was very difficult for her. She felt crying more because her own father had done it. She thought that the problem was not going to be solved. She wished that she was dead being alive.

She had not met her father since then. She did not like meeting him. She did not feel like looking at his face. She wished that she never saw him forever in her life. She wished that he spent all his life in the jail only and wished that he did not come out of the jail. Rekha had to go to the police and attorney's offices frequently and sometimes to the court. The financial condition of her home was not good. There was no money in her house so the villagers and Regional Police Station had helped her.

The victim is happy with the justice, "Yes, I got the justice. If possible such people should not be left from the jail and somehow if they are out of the jail then they should be shot dead. If such criminals or who attempt to commit such acts are shot dead then this sort of incident won't repeat again."

Rekha's family members also treated her well. She has not found any change in their behaviors.

It has been five months since she joined a Maoist camp. Her explanations for joining the camp was: "The villagers looked at me in a negative sense that's why I didn't feel like staying there. I am really feeling good now. I have got the opportunity to forget about the incident sitting here with the friends."

10. Nani is a thirty two years old Brahmin woman. Nani is a victim of marital rape. She underwent medical test but it was after twenty three days after the incident. All the injuries had recovered so no evidences were found. Her husband was arrested and investigated. But he has been released on bail. She believed that, "He surely will be kept for five years. Until that time my elder son will pass out S.L.C. and rest of the two sons will grow up. [They will] get peaceful environment to study. After that my sons will take care of me. I had these hope but my family members released him without informing me." She wished him not to return [home] because she had fears that his previous acts would repeat again.

In her opinion, the justice given by the state is not long lasting; we have to look for it. She blamed people who were in the court who took money and released the murderer, criminal, rapist etc. and also dismissed their cases. Her husband was released by the court on bail. The maximum imprisonment is of three years in such cases. So bail could be demanded in this case. Was it a justice for Nani? The police women also agreed that keeping Nani's husband in the jail for three months was not justice. As far as possible it is much better for a family to stay together.

For Nani, justice meant "investigating the crime and helping the victims... Justice is also to prevent any such crime in the society." For the advocate and lawyer, justice meant, "Work that eradicates the pain, fear, intimidation, threat of anyone is justice. Officially rescuing the victims and help punish the criminal as per country law is justice." Advocate Saraswati of Nepal Bar Association relates the story of Nani in this way:

"Nani thought that her husband will get imprisonment for several years. She had desire that during these years her children will be grown up. It didn't happen as desired. Her husband got only three months jail. He was released on bail. The fear that this will take her to different direction and ruin

her life annoys her. We cannot say that it was a justice for her. In a situation where there is no right given in the law, even if someone wants to do something, he cannot do. Even today the laws of our country are not so strong and not properly managed. Therefore, even if we want to give justice to the victims, we cannot do so fully.”

Nani usually called her neighbors for help when she had to bear the physical and mental torture of her husband. They used to come for her help. They treated her well but some of the women with a different feeling humiliated her by saying, “You are really brave that you sent your own husband to the jail.”

11. Dilu is a sixteen years old Tharu girl. She was raped by her neighbor Majari. Dilu was supported by her family but the villagers did not support her. After no one’s support, her father said, “I will go and report the case to Chandrota police station.” Hearing this, the villagers said that the matter should be settled in the village. Dilu relates, “They all came to beat us with *lathi* (sticks). It was quite late by that time. So, in order to be safe and secured, my father and mama decided to go to the police station. We went to the police station on the same night.” The police later arrested the offender and brought him to the station. They investigated the case. He was detained in the station for one month. The boy had admitted to the police that he had raped her.

The case was to be taken to Taulihawa district police station. In the meantime, the offender’s father fell so sick that he could die any time. Since the offender’s father was in dying state, he (offender) was released by the police. After the release of the offender her parents went to the house of the offender and proposed for the marriage. Her parents tried to settle the case by through marriage. Her mother also offered some dowry in return. However, the offender’s family did not accept the offer. They told that the boy had earlier been *chhekieko* (reserved) by another girl. However, she was ready to accept Dilu as co-wives for her son. Dilu rejected the idea of getting married to the rapist. She was angry that her parents did not consult her earlier in this regard. She remarked, that getting married with the person who did *khelwad* (joke) with her life was very difficult and unacceptable even if he was to marry her alone. Getting married to him as second wife was totally unacceptable to her.

After this incident, her parents began to worry much. Her mother fell very ill. She did not talk to anyone, she did not take food. It was only after one year that she recovered. The family no more talks about the incident any more. They were scared that the repetition of the incident would once again make her ill again. Her mother said, “After this incident, I got ill. Lot of money was needed. I am beginning to forget that incident now. Even today, whenever I remember this I suddenly feel weak and experience fits.”

Dilu had no “good experience” with the police. She felt very embarrassed when police asked her questions. She did not feel talking. Even after he [the boy] did all this, the police asked her repeatedly the same thing. At one moment she thought, “Even if I tell them everything, my prestige was not going to return. I felt very bad to myself.” She blames the hospital for the negative report. In her opinion there were several people from the boy’s side [during the physical examination in the hospital]. He had gone [to the hospital] with “clever” people. There was no one to speak for her. She suspects that he [offender] used money to get the negative report. If it was true [that the rape did not take place] then they should have been allowed to see the report. Her question was, “Why did the hospital conceal the report?”

People make comments while she is on the road. The family of the boy does not look at them well. His mother blames them for framing her innocent son to get herself married with him.

12. Mija is a twenty seven years old Dalit woman. She was raped when her house was robbed. S Mija is pregnant. he does not know the rapists. The case is reported to the police. No one is arrested. According to the social workers, Mija did not “cooperate” with them. According to them, all efforts to provide help and justice to Mija turned futile. They said, “It was so for her own behavior because she told she was raped by five men but in the medical report it was not seen.” Moreover the members of Women Cooperative; President and members of Paralegal Community; and the Backward Class People Association were committed to help her. However, she neglected them saying, “Everything is useless.” She did not like talking to others about it. She got angry quickly. Mija was rather angry with her interviewer. She was angry that people came to her to make enquiries. It only irritated her. She dismissed the interviewer by saying not to disturb her. She often quirked, “*Matra dhani lai kehi hundaina; dukha parchha ta garib lai*” (There is sorrow for poor only; nothing happens to the rich ones). She had become furious and irritated and she retorted to the question as to what kind of punishment should be given to the offenders. She said:

“.....I don’t know. If they are known they can be punished, how to punish unknown people...Yes! I don’t think that it has been the justice to come and ask me questions frequently about the incident. I should be given “freedom” to do my work. If I don’t care then why I am asked question so much and irritated each and every time talking about my past that I have forgotten. Please don’t cause a headache. You have come for two-three days. Now don’t come.”

Mija’s family treated her well. Her husband and the society also did not say anything. Everything was fine for her.

13. Gudiya is a thirty eight years old Muslim widow. She was allured and raped by Juman. Whenever she had asked Juman about her getting pregnant in future of his child then he always used to say, “Why do you even bother about this I will marry you.” She told Juman about her five months pregnancy. The moment he heard about this, he told her to abort the baby. The child was already five months and there was a great risk of her health to do abortion. She thought of everything and didn’t feel like aborting the child. She had told Juman that the fetus was already five months and it was impossible to abort and there was a risk for her health so she doesn’t want to abort the child. When she told this he told her that this is not his child. “You are a whore (prostitute).” He started scolding her, “You do sex business so whose child is this? How would I accept this child as mine and get married to you?”

When Juman discarded her and the child then she informed the village community about her case. Villagers were already aware of Juman and her relationship. At that time they did not object. Nobody told her that it was wrong or counseled her. At present when she was telling her problems and seeking help from them, they were telling her that it was her mistake and that they could not help her. The political leaders had also suggested her to go to the district police office. Accordingly, she went to the district police office and narrated entire story to them. The police arrested Juman. But after some time he was released for the want of evidence. He has been released by the court. The case was deferred until the DNA test of her child to establish the real father of the child. Gudiya was discarded by her “lover.” She said, “He is released from bail

and he has not even met me. Firstly, even if I file a case again, I don't even have money. Secondly I am eight months pregnant, my legs swell and it's difficult for me to walk. Therefore, first let me give birth to the child and after DNA test I will give a thought."

She blames the society:

"If you have got money you can buy even the Police administration. I don't have money, who will speak on my behalf. That's why whatever I had it was spent over while running here and there. In case of social problem, everyone will take the side of people who have money. Society people don't talk to me properly but they have not hit me and asked me to leave the village. Police administration did not see my pain that I went through. They didn't speak on my behalf and I didn't get any kind of support from there."

She was angry to see that Juman is not punished for rejecting her as wife and the child. She felt confident that her case had not finished. She was hopeful that after the child is born she will come to a decision. She was of the opinion that, "one should shoot and kill such culprit who troubles you so much."

She advises other women:

"Being a female one should not trust men. One should think a lot before taking any step. At present neither I can die nor live. At this stage whatever I do I don't have peace. That's why there is no faith on any male. Whatever they do now is ultimately to satisfy their selfishness. I want to say that don't trust men promptly like me to prevent this kind of incident."

Gudiya and all other family members used to stay together when her husband was alive. After seven months of her husband's death, her family came to know about her illegal pregnancy with Juman Darji. Because of this illegal pregnancy her mother-in-law asked her to cook separately for herself and she started living and cooking alone.

This author, together with other research associates, had visited her after six months of this interview. By that time the baby was born. She was carrying the baby in her arm. She seemed happy. We asked her whether she went to the police or not. She answered, "The police told me to go and live peacefully." Earlier, when I had asked the police about her case, the police had told me that she had not come again to the station.

14. Mandira is sixty three years old Dalit woman. She suspects Lata, a deaf and dumb, for the rape. Villagers came to her help. They took her to the hospital. Mandira related that she couldn't speak anything at that time of incident. She was calling out his name as *Latta* (dumb and deaf). There was huge bleeding from her hand so she fainted and collapsed. The next day the sub-inspector and inspector came from the Parasi district police station. They asked the villagers to district police office. Latta's son, daughter-in-law and two-three other people were also present there. The police asked both the parties to compromise and sign in an official paper of negotiation (*Milapatra*). So, they signed the paper. The police told her not to get scared and worry, they told her to be bold and go home. She feels that there should be strict rules and regulations.

Both Mandira and her husband did not wish to hear more things. She told the researchers not to record the interview in audio cassette recorder. She was disappointed and said, “An old woman like me had to face this trouble.” After the incident she was like a mental patient. Her head was not working. She didn’t eat, sleep for many days. She became restless and felt like crying loudly. Even if she tried to forget, she could not. She felt like staying all alone. She was lost that moment. She wished that no one goes through what she went through. She felt like being alone. She didn’t speak with anyone. Whenever someone asks her about the incident her mind becomes restless. She felt like crying loudly from inside. She thought, “Even if other people don’t say anything to you, it’s very difficult to work with head held high [with dignity]. You feel heavy in your heart and lots of questions do arise.” She further said:

“What do I say, if I tell you it will be insult of our own people; if I tell you the truth without lying, when I was awake I couldn’t see him from front. I could see him from behind. Don’t know whether he is the one or not but when I saw, it was like his body structure and I saw him from our wall moving towards the road. God knows! I did see him. May be some other person must have done the wrong and he was in the focus that’s why we suspected him. This might be just our suspicion don’t know what’s this? Nobody knows.”

Mandira said that the villagers called her a whore and that all bad things, got angry and later on they didn’t talk. But now everything is all right nobody says anything. Even her daughters who were married outside had not gone to visit her after the incident. It was painful for her to face such kind of thing in her old age. Her husband was very sensible and helpful.

15. Kunti is a fourteen years old Tharu girl. She was raped by Bhimkumar, her own *phupaju*-- husband of her father’s sister. She got pregnant. The fetus was aborted for her health ground by the medical doctor. The village women folk helped her. Her mother, father, brothers and other neighbours called and gathered other villagers. They interrogated the man [the rapist]. He also confessed. All of them then wanted to punish him. The village women helped her a lot after this incident. They went to various offices. Even though the Maoists threatened these women to release him [rapist], these village women out rightly challenged them, “You do whatever you can do; we will do whatever we can.”

Kunti felt difficulty to find cooperative feeling of all. People used to stand on the road, stare, gossip, and some even teased her whenever she used to go to school even after eight months [of pregnancy]. They would point their fingers at her. Even the Maoists threatened her family to release the perpetrator. Her *phupu* also rebuked Kunti’s mother for putting her husband in the jail.

Kunti opined that in order to see that she gets justice, the rapist should be hanged. She says, “He had done such things to her; he should not be released lightly. He should never be released from the prison.” She had no interest to look at the face of the sinner. She wished that she would kill him. Victim’s mother said that because of her daughter being very innocent and meek this [rape] had happened to her.

16. Purnima is a twenty five years old Dalit woman. Her father is missing since her childhood. She was raped by Prakash, her *phupu*’s (sister of her father) son. She was scared. She screamed at god, “Why did it happen?” She screamed at him [offender]. He had said, “I will marry you don’t get panic; we have already

made a mistake now you stay with me.” Prakash later married Purnima. She has one daughter. Her husband was in Malaysia for job.

Sometime later, she and her mother were raped by a group of “Maobadi”. At the time of interview, she was very scared. She frighteningly requested, “Don’t tell to anyone, because I won’t be able to live in this village [if people know about it] and stay in my home. Again I feel like crying, I really feel very bad.” This incident was not reported to police fearing that her husband might know about it and she will be ousted from the home. She was very much concerned about the safety of her child. Purnima thought if she reported the case to the police, everyone would know about the incident. She thinks that the culprit should be given such a tough punishment so that everyone would think before committing such bad acts.

17. Chameli is a fifteen years old Brahmin girl. Her mother died when she was very young. Her mother died when she was very young. She lived in her *mama’s* house ever since that time. Her father took back her to his home sometime back. Her family was very poor. They had only one room and only one bed. Her father slept outside and she slept inside the room. Whenever it rained they had to share the common bed.

Her own father, Bijaya Tiwari, raped her for several days. He is in jail.

Chameli was hurt because the person who had done it to her was not any outsider but her own father. She had not heard of anywhere else that a father could do such kind of action with his own daughter. She had not thought of it even in her dream. It was difficult and embarrassing to say that he was her father. The way her father treated her was so bad that even a husband would not do to his wife. She felt like he was not her own father, “No father would ever do this to his daughter.” She thought that when he would come out of the jail then her life will be worthless to live. She said, “In this world either I am dead or he is dead. I have promised that I won’t look at his face.” Answering questions was not difficult for her; the fact her own father did all this was difficult for her. She felt like a stone. She felt really bad when she thought that there was no one who faced such trouble in the world as she had to.

She was not satisfied with the justice even if her father was imprisoned for seventeen years. She wished that he is imprisoned for lifetime. She wished that he should not come out of the jail forever.

18. Asmita is a sixteen year old Chhetri girl. She was allured by Kamal who had raped her. The case was reported to the police. The culprit was later released on bail. He married Asmita later on. Asmita was mentally very disturbed, she was like mad, deeply injured and she was taken to Butwal [hospital]. Her experiences were that after the incident, she would be mentally disturbed. She felt like committing suicide. She thought that her self-respect had gone. She found the society “not good.” They humiliated her. She said, “Sometimes they scratch my past, at that time I get angry. I am still angry. But I don’t show it off, I want to forget all those things, I say I want to forget but also they humiliate me with my past, somewhere somehow some people show it in their behavior. They say it as a joke but I feel they have said it in real.”

Asmita thinks that her all wishes are fulfilled. Now her family members treat her well. Her husband loves her. He takes her along with him for eating, clothing, and roaming. There’s no sorrow in her life. She is happy. Asmita is of the opinion:

“We should never think negatively even if we are mentally disturbed or our self-respect has gone. Victims should also move ahead. If the man is good they should get married. Parents and guardians should give good advice to them. If that man is not good then don't let them marry otherwise that marriage will be like putting her to the death by hanging. I would like to say give her the opportunity to speak in the society.”

Asmita suggests that rape victims should be encouraged in the society. They should be given opportunity to move ahead. She said, “In every society we should create such an environment for her where she can express herself. She should get an environment where she would feel that though she is a rape victim she is not weak.”

19. Bhunti is a fifteen years old Terai girl. She was married in her early childhood. However, the *gauna* ceremony was not yet performed. She was raped by Triyog. The case was reported to the police. He is in jail. Bhunti had to relate so many things to the police again and again. She felt shy. She felt really uncomfortable. After some time the perpetrator's wife, daughter, mother-in-law and father-in-law were murdered by some unknown persons. Bhunti and her family members had to face police investigation in connection of the murder case.

Bhunti had to relate so many things to the police and attorney during the investigations. She felt really bad and uncomfortable. There were many people in the court. The lawyers from both sides, family members, and outsiders were also present there. They asked her to relate the incident in detail. She was afraid to tell everything in front of all those present. When asked about the kind of punishment the offender should be given, she said that based on the information she heard that he was going to be punished for eight years jail and monetary penalty of twenty five thousand rupees. She told that even the “eight years of jail and twenty five thousand rupees fine would not bring back my lost prestige.”

Sometime later, the perpetrator's wife, mother in law, father in law and a small child of that house (altogether four people) were murdered. His wife was raped and was murdered by some unknown persons. The investigation of this case is going on. In this process, the victim's grandfather was detained for nine days in the police custody of Kapilvastu. Later on he was released on written bond that he will present himself in the police on fixed days.

Bhunti's father really got hurt. She has left the village and has started living with her *mama* (maternal uncle). She went back to that village after one year. She did not feel like going there the place where her father's “nose was cut” [insulted]. No organizations have come to help her after the incident.

20. Nita is a twenty five years old Dalit woman. She was married when she was just ten years old. She has two children. She suffers from epilepsy. She is pregnant. She does not know the rapist. Her husband beats her. He has sold out all the land that they had. She lives alone. She is a poor woman. She has one thatch with two rooms. She has to earn her living by selling cooking fuel. She has not reported the case to police. She has not agreed to abort the fetus. Her husband beats her. She is repeatedly beaten by her husband accusing her for the adultery and pregnancy.

21. Tara is a fifteen years old girl. Her father's friend Baikuntha raped her. He is in jail. Tara came to maternal uncles' (*mama*) house after the incident. Her father was trying to hide this incident but Shanti reported to Maiti Nepal and police. After that, due to the pressure of the neighbors to take up an action, the case was taken further. Even after all these days, she is haunted by hallucinations and nightmares. Tara did not feel like staying in that place. She relates, "I feel dirty even if I remember that place. I get scared if I recall that day, I feel blank and alone....I can't forget the incident. At night I see frightening dreams... someone coming to catch me... someone trying to take me away. At that point of time I feel very scary...I cry... I get suffocated... I go and sleep with grandmother." Tara was happy. All the family members loved her.

She opines that the rapist should be hanged to death. She said that she would have hit him, beaten him, and broken his hands and legs.

CHAPTER 6: DATA INTERPRETATION

6.1 The victims:

Vulnerable groups are more exposed for sexual assaults and rape. Poor, illiterate, physically and mentally disabled widows, refugees, children and single women are potential victims. People belonging to some untouchable, tribal, and minority communities may also find difficulty in reporting the crimes. Poverty and illiteracy were found aggravating factors for the victims. Most of the victims were poor, illiterate, innocent and ignorant of laws and policies. They were very meek and weak. The victims were very meek, simple, keeping quiet, and innocent. Lati was a physically disabled girl. Some of them—Suntali and Kunti—were so innocent and ignorant that did not realize that they were pregnant even after several months of their pregnancy. The victims considered innocence as the main reason for the victimization. The victims were very depressing and discouraged after the incidents. Some victims have not been able to live any longer in their villages so they have changed their places to their relatives' houses. Some were staying in social institutions. The victims were very innocent therefore their parents or guardians had to relate their stories.

The victims were economically very poor. They had very little land. They lived in a small two room thatched huts. They had to work hard for their living. Some collected fire woods and sold them in the market. Sometime they had no money to buy *daal* (lintel) and *tarkari* (vegetables), so they took their food with only *nun-khursani* (salt and chilli). The victims had expected some help or money from the researchers which the researchers were unable to give. This had made them very uncomfortable.

Some families suffered from unexpected troubles due to the arrest and detention of the main breadwinner of the house. This resulted in multiple problems in the families. The home environment got wrecked. It was the mother who took care of all small children. Because of such incidents, the mothers got ill and suffered from psychological problems. Some victims could no longer live in their houses. Lati's mother had left her husband and gone with another person. She was handed over back to her mother by the community after her father was jailed. Her brother and sister were sent to Maiti Nepal for rehabilitation.

Victims had suffered from physical tortures from offenders when they were forced to sexual assaults and rape. The allurements, threats, promises, and deception were the tactics of the perpetrators. Some victims were threatened with dire consequences and they were virtually gagged and raped at the point of knife. Some victims did not know their rapists. Some of the victims were from "broken" families. For example, Purnima's father had gone missing and her mother was abroad for job. Lati's father used to go abroad for job and her mother had left her children and gone with another man.

6.2 Experiencing the violence

In our societies, the sexual relationships before the marriage are considered as *paap* (sin). After every rape case, the victim suffers from social stigma, indictment, intimidation, and insult. Any member of the family falling victim of rape is a cause of disruption of family environments. The family members have to go to different organizations' offices like police, attorney, hospital, courts. They are much worried about the future of the victims. The societies hate and condemn victims rather than love, sympathize, and cooperate.

Because of these attitudes, many victims become vulnerable to several risks in their life. Tikuli had to shift to her aunt's house and the school teacher had barred her from attending classes. Many other victims felt embarrassed to visit religious places and social gatherings. The neighbors and relatives looked at them with curiosity and animosity. The victims were very much hesitant to move around freely because on the way villagers used to tease them, point out at them, blame them and cut jokes on them.

Almost all victims suffered from both physical and psychological effects. All of these victims felt “bad” after the incident. They hated themselves and the offenders. Few minor victims did not have any feelings. Many victims did not allow using tape recorders because they did not like to repeat and remember the whole things again. Purnima did not report the rape fearing that this would lead to her husband knowing about it and that she was afraid that her husband would throw her out of the house. She was more concerned for her small girl child. She wanted to protect her future by keeping the incident secret. Some other victims were innocent and simple. They did not even know that they had become pregnant.

Victims' families have to go through economic problem after each case of rape. These victims felt bad to go around the hospital, police offices and courts. Some of the victims have changed their places because of the intimidation of the society. Some victims have stood strongly against any allegations and indictment. They seemed to be very confident of themselves. Some of the feelings of victims are accounted below:

The victimization resulted in social exclusion. Some victims changed their places of living. The sister of Rita also faced insult and humiliation from her mother-in-law. She was scolded, “How can she be good when her family is bad.” Similarly, Gudiya was asked by her mother-in-law to live alone and cook her food separately after knowing that she had had relationship with a man. Even the man aborted her after knowing that she was pregnant. He blamed her that she was a whore. He denied that he was the father of growing fetus.

Some victims told their relatives, mostly women at the first time, about the rape. But they were dismissed that such things should not be talked about. This happened especially with Kunti. She was threatened by the perpetrator that he would kill her if she told to anybody. She was raped repeatedly for four times by her *phupaju*. Kunti once reported the rape to her *phupu* (father's sister) but she was told to keep quiet. Finally she got pregnant and then the case was reported to the police.

Some perpetrators were protected by their family members and community members. The community members usually got together and discussed the matter. They sometime got divided themselves into two groups—one alleging another. Many times the political party activists got involved in the fray. In Kunti's case Maoists threatened the relatives of the victims to release the offender. The women group stood fast with the victim even after their threats.

In this study, most of the families supported victims. Some members rebuked the victims for their fate. The societies are also not very friendly to most of the victims. Many victims felt that they were not treated well by some family members. These family members somehow hid their inner feelings of disgust and anger for these victims. They sometime disclosed their feelings of anger and frustration. Friends and schoolmates pointed fingers, cut jokes and whispered, gossiped about the incident. It made the victims uncomfortable.

There were no outside help for them. Police and judiciary sectors have supported them in the prosecution. However, much needed legal and financial supports were not available to the victims. Nor were there any consultation with the victims and witnesses during the trial and post trial phases. Most of the victims have approached to the police. They look at police as the sole justice system. However, after the reporting and arrests of the suspects, they have not followed up. Many cases are abandoned. For many victims, justice meant only keeping the offenders inside the police custody. Even the police were found to commit mistakes. For example, the police did not pick up the case of Gudiya seriously. The police required the report of DNA test for establishing the relationship between Juman, the rapist, and the baby. The police did not follow-up the case. This researcher found that Gudiya had already given birth to a baby. The police had not re-initiated the investigation of the case. Moreover, the family of Gudiya was excluded her from the joint family kitchen after the case registration.

6.3 The impact of violence:

Victims adopt pervasive life style because of an experience of victimization. They feel a sense of helplessness and vulnerability, sense of incomprehension at what has occurred and a negative view of themselves and wider society. The individual's perceptions of the violence often differ variously by feelings of danger, insecurity, and self-questioning of one's own behavior (Janoff-Bulman, 1985). Some feel that the violence has completely ruined certain aspects of their lives. For example, rape may lead to lack of sexual desire that may cause relationship difficulties.

The victims of sexual assaults and rape felt lonely, helpless, dejected, and socially excluded in the process of seeking justice in the society. Saraswoti felt the suicidal impulse. She wished that she had died. The attitudes of victims towards the offenders were very negative. They wanted that there should be law for capital punishment and life imprisonment; that they are beaten and weakened inside the jail. They wished that the offenders were penalized with larger amount of money as compensation and lifelong imprisonment. The professionals' view of justice is different from that of victims. One of the participants in the FGD said, "If the victims are satisfied with the compensation then we can say she got the justice." But one woman participant objected to this and said that money is nothing in front of the prestige.

In group discussions, one of the district judges had said the victims were *niriha* or helpless people. Quite often they depend upon the perpetrators for the transportation and other expenditures. In such circumstances offenders can threaten and influence the victims; the victims turn hostile in the court. It was felt that there were no effective laws to protect victims and witnesses. The environments were not victim friendly. The discussion also raised the attitudes of victims and witnesses to keep quiet rather than go to the police, attorneys and courts. The participants of the discussion openly discussed about the practices of compromise in villages. The said that the victims forced the offenders pay money as compensation. It was also revealed that there were tendencies of not reporting the case, not filing the case in the courts, withdrawing cases from the courts, and negotiating cases through compensation. These kinds of practices were exemplified in this study also: Purnima, Nita and Mija have not reported the crime to the police; Dilu and Mandira had to compromise with their perpetrators; Suntali's case turned out to be a failed-arbitration.

6.4 Victim-offender relationship:

It was found that the ethnicity of the victims of sexual assaults and rape were diverse. It was across all the ethnic communities. Looking at the age of victims, it was found that there were many children victims in the police records. Many victims were raped by their own close relatives. In this study also, Chameli and Lati were raped by their fathers; Rekha by her step-father; Nani by her husband; Kunti by her *phupaju*; and Purnima by her *phupu's* son. Others were raped by “friends,” neighbors, teacher, father’s friend, bother’s friend, policeman, and other strangers. All the offenders were supported by their families. Their families blamed the victims and their families for framing their sons.

All victims expressed feelings of anger, anguish, and hatred against the perpetrators. They had had anguish and pain inside their heart. They hated the offenders for destroying their life. They did not wish to see their perpetrators in their lifetime. They did not want to hear about them. They did not want to shed tears by remembering the past incidents. They wished capital punishment, life-imprisonment or severe physical punishments for the perpetrators. On the other side, the perpetrators were not found to be apologetic or repenting. It is absurd; they blamed them for framing their sons to get married with them. Their adversaries suspected that they had also bribed the officials and did some kind of adulterations with the medical examinations reports. They also threatened the victims and their families.

One of the victims was determined to get herself enrolled in the army or police and take revenge with the offender. Some victims were suffering even after the incidents; they were receiving threats and “proposals” for marriage from the rapist’s families. The parents of victims were also very worried that their daughters’ prestige had gone and that their marriages would be difficult. Only two victims, Purnima and Asmita were married to their rapists later on. They suggest that other victims should be encouraged and supported by the families and communities.

6.5 The reporting of crime:

Sexual assaults and rape are victimless crimes; they are under reported in our societies. Out of reported cases, very small percent end with a conviction. In understanding the under-reporting of rape and sexual assault, one must recognize the unique position of the victim. The victim of a rape or sexual assault possesses a rare commodity, the knowledge of the crime (Allen, 2007). The social circles, career opportunities, and the general respect of society are at great risk when any victim decides to report the sexual assaults. In reporting a rape, victims are opening themselves up to society’s judgment and public scrutiny of their stories (Kahn-Lang: 2008). This might be the reasons that victims with higher quality of life, as measured by higher incomes and more years of education, are less likely to report their victimization. Similarly, sexual assaults and rapes are less likely to be reported when the perpetrators are partners, friends, coworkers, and relatives (Kahn-Lang: 2008). Even in this study, all the cases of sexual assaults and rape were not reported to the police. Of those reported, almost all victims belonged to poor socio-economic status.

Among several theories concerning the factors that affect a victim’s decision to report a crime, socio-psychology is the one. There are many psychological factors that can affect a victim’s decision to report. When facing the decision of reporting, the victim must also consider the psycho-social costs of this decision.

In other words, the victim must consider what social and emotional aspects of her life are likely to be affected by her decision to report. What makes the cost of reporting a rape so unique is the stigma attached to victims of rape, which is caused by the phenomenon of victim-blaming. Some victims choose not to report because they blame themselves for being raped and fear that other people such as family, friends, and the police will blame them as well. The victims consider what relationships, positions, and lifestyles they will be jeopardizing by going public with their story.

Many victims of violence and crime do not find the justice system useful and effective for them. They find faults with judges who do not provide justice; who only give decisions. They think that the existing system tends to focus on the rituals of justice rather than addressing the real needs and rights of victims. Many people understand the criminal proceedings as merely a means not having an inherent value. Still, some others find that the agencies of criminal justice system show inappropriate responses and their own family members and community are not friendly and supportive. They do not have confidence on the competency and impartiality of the courts and the criminal justice systems. They evaluate the cost and benefits of reporting the cases. In choosing whether or not to report a rape, the victim considers the direct costs of reporting. These costs include lawyer fees, time spent on the trial, and all other direct costs incurred by reporting a crime. Non-monetary direct costs include the pain of having to undergo a “rape kit” and the pain of having to retell their story. They have to undergo the numerous unfriendly situations during the criminal proceedings. They are afraid of being subjected to brutal testimony procedures, grilled by the insensitive defense counsels or repeatedly forced to face the abuser.

Sexual assaults and rape are not reported fearing social stigma and all sorts of long procedural fatigues and abhorrence. One of the rape victims in this study, Purnima, did not report the rape. She was more concerned for her daughter. She was afraid that the reporting and consequential investigation would let her husband (who was abroad at those days for job) know about the case and he would blame her and expel her out of the house which could ultimately jeopardize her daughter’s future life. Another victim, Nita, did not report the crime to police due to her physical health and financial conditions. She suffered from epilepsy. She was pregnant but she did not know about the perpetrators. She has to earn her living by selling firewood and fuel. She does not want to abort the fetus. She says, “*bachcha hurkaunu parla*” (will have to take care). For her the meaning of justice is: “*pidit lai thunaunu parchha*” (the perpetrator has to be detained).

Many researchers have theorized that the unique laws and rules of evidence pertaining to rape lead to victim’s unwillingness to report. They take it as a matter of insult and frustrating to go around the police offices, attorneys and courts to prove their victimization. The long and strenuous process becomes very arduous for them. The legal procedures are long and tiring. The victims have to repeat the story making them re-victimized again and again. Many victims do not want to register the case in police because of police misbehavior. Police behavior is not friendly with these victims. Police do not cooperate with them. Police insult victims. Police demean/belittle victims. In this study, Dilu had no “good experience” with the police. She felt very embarrassed when police asked her questions. She did not feel talking. Even after he [the boy] did all this, the police asked her repeatedly the same thing. At one moment she thought, “Even if I tell them everything, my prestige was not going to return. I felt very bad to myself.” She blames the

hospital for the negative report. Often, the offender kidnaps victim for long time to make sure that she is absent in the court for testimonial; other are forced to revoke the cases.

There are arguments that some sexual assaults and rape are not reported for the reason of possible retaliation on part of the perpetrators. Often the party politics become dominant. The participants of FGD observed that there were several cases of rape settled through negotiations. According to them, even if these cases were reported in the beginning, many victims came afterwards to withdraw the cases of sexual assaults. The reasons for these could be intimidation, pressure, threats, poverty, and fear. The offenders' parties threaten the victims' parties with dire consequences. This research study also came across with the cases when the victims had to compromise with the offenders. A kind of conciliation took place between the two parties. Mandira had to settle down with the *milapatra* in her case. Another victim, Dilu's perpetrator was released on the humanitarian reason—his father became very sick and was on the verge of death. There were questions during the FGD as to the issues of reconciliations or criminalization. What was better? Do these negotiated cases sustain for long time?

The innocence and ignorance of victims make them vulnerable to sexual assaults and rape. They are more exposed and easy prey to the perpetrators. Even after the crime these victims cannot express their feelings to others. Even if they do so, they are rejected by telling them to keep quiet. In this study Kunti was raped by her *phupaju*. Kunti reported this matter to her *phupu* (father's sister). However, she did not believe her. She scolded Kunti and asked her to keep quiet. Kunti got pregnant and then the matter became open and thus the case was reported to the police. This is typical example of the fact that the rape and incest are rarely reported in our societies. In such cases the decisions of the families become their (victims) decisions. The victims have no freedom to talk openly. The family members put questions: What are they going to get? Only disgrace to the family name? This research came across with the victims of rape who were quite young in age and could not realize that they were abused; their innocence exploited. Lati's rape would have never been reported by herself (she being disabled) had her neighbor not made it public.

There has been some research examining rape-reporting as an economic decision also. Many victims face hardships and have limited access to the criminal justice system. They face number of difficulties in the process of seeking legal justice. Some researchers have found that victims are more likely to report if they have strong social support systems and if there is a higher probability of conviction due to evidence and credibility. They cannot fight the case due to the lack of financial, legal and social supports. Almost all victims of this study had to face economic problems. They had no money to spend for their own cases. Gudiya had no courage to advance her case against the perpetrator because of the lack of money. One of the district judges made his observations during the FGD—victims have to depend on their own perpetrators to cover their expenditures—appear to be factual.

6.6 The access to justice:

What is “justice”? There goes a Nepali adage: *sanalai ain; thula lai chain*—the weak has to abide by law; rich not. In other words, justice is the trick of strong and powerful. Indeed the definitions of justice are not universal. The meaning of justice is different to different people. They differ from context to context; from people to people. Most of the victims were not satisfied with the “justice.” The victims were not satisfied

with the compensation and restitution, services, and penalties to the offenders. They were not safe and secure after the criminal incidents. They were continuously under threats. Some felt that the justice was trickery. Some found that telling the sufferings led to catastrophe in their life. It is indeed a difficult task to satisfy the victims with the proper “justice.” In the group discussions, attorneys and lawyers considered that the lawful arrest, detention, and imprisonment of offenders were not sufficient to be termed justice to victims. Some police provided their logic that the compensation to victims and punishment to perpetrators according to the given laws are “justice.”

Shanti is not happy with the justice system. For her the meaning of justice is simply the harsh punishment for the perpetrator. She wished that “he should be weakened in the prison by beating and never released from the prison.” The court has given verdict that she is entitled of half of his pension, half of the property, and half of the property of the perpetrator. However, she has not been able to take those *ansha*. It is difficult for her to live in the same house with her adversaries. Although the perpetrator is in the jail, the court’s verdict remains to be implemented. So it is difficult to say whether she got the justice or not.

In another case Saraswoti was raped by a police man. The society compelled the rapist to pay Rupees five lakh to her as compensation. She also feels that even after all the money she gets and the offender is put in the jail, she did not get justice. She said:

“I have lost my self-respect that’s why he must get more pain. He had to quench his thirst so he did it. He should be hit with a knife plate rather than beat him with a rope. He should be given tough punishment and pain. He shouldn’t be left out. He should be given punishment throughout his lifetime...I would have been happy if he was killed at the very time in front of my eyes.”

Lalita and Makuri felt that in order to see that they get justice the culprits must be imprisoned for their lifetime. Makuri said that she would have killed him by throttling if he was in front of her. Similarly, Suntali wished that she would kill her perpetrator. Lati appears to be in more difficult circumstances and more vulnerable than before.

Nani is a victim of marital rape. She offers a kind of restorative justice system for the justice. In her opinion, the justice given by the state is not short. They have to search for the long term solution for their problems. She blamed people who were in the court for taking bribe and releasing the murderer, criminal, rapist etc and also dismissing their cases. Nani’s husband was released by the court on bail. The police woman also agreed that keeping Nani’s husband in the jail for three months was not justice for Nani. The best justice for her would have been the restorative justice. The punishment is no “justice.” The loss can not be restored. Until the loss is restored, “justice” will not be sustaining for long time. The present system gives birth to new crimes and problems.

Dilu is a rape victim of her neighbor. Her case is not settled. The boy has denied the allegations. Gudiya condemns the society and the criminal justice system, “If you have got money you can buy even the Police administration. I don’t have money, who will speak on my behalf. That’s why whatever I had, got over while running here and there. In case of social problem, everyone will take the side of people who have money. Community people don’t talk to me properly but they have not hit me and asked me to leave the village. Police administration did not see my pain that I went through. They didn’t speak on my behalf and I

didn't get any kind of support from there." She was angry to see that Juman was not punished for denying her as wife and the child. She was of the opinion that, "one should shoot and kill such culprit who troubles you so much."

6.6.1 Adversarial versus restorative justice:

A study conducted by British Crime Survey also confirms that most of the victims, two-thirds, felt that the criminal justice system does not meet the needs of victims of crime (Shimshon, 2006). The adversarial, the retributive system, aggravates the conflict in society. It is failing to control the crime. Some people argue that "criminal justice cannot be achieved in the absence of social justice" (American Friends, 1971:16,' quoted by Bottomley, 1979: 112). They demand for an urgent need for a new paradigm based on "pure" restitution aiming at "*doing justice to victims*" (Barnett, 1977:296, his emphasis). Others criticize the current court process for "being too adversarial, formal, uncertain, slow and often inaudible; it may even, because of the stigma it imposes, be criminogenic" (West and Farrington, 1977, Cited in Wright, 1996).

The criminal procedures aim at determining guilt or innocence, with little or no thought as to whether the process is helping victims to recover, or offenders to consider the human consequences of their actions (Wright, 1996: p. 33). It is also questionable how much satisfaction victims achieve through the utilization of repressive responses to crime (Spalek, 2006). In such circumstances, many victims adopt various resistance strategies—personal, informal, and formal—against the violence (Bawker, 1983). The victims have been aggressive that once the case reaches to the courtroom, they often find that the traditional court procedures are not "victim friendly" (Wright, 1996:25). For example, in our Nepali societies, most people are inclined to disbelieve the sexually assaulted women victims that they were raped. They assume that the sex was consensual, and that therefore the women are sluts. The victims are intimidated for the rape. At the time of the need of support, the families do not quite often support the victims. The societies look at the sex victims as "*patit*"; vile, tainted. The judiciary is also no exception.

The retributive justice is a systematic infliction of punishment justified on grounds that the wrongful acts committed by a perpetrator has caused an imbalance in the social order that must be addressed by action against the perpetrator. Whereas restorative justice system is a systematic response to wrongdoing that emphasizes healing the wounds of victims, offenders, and communities caused or revealed by criminal behaviors. It is concerned not much with retribution and punishment as with making the victim whole and reintegrating the offender into the society.

Some victims were suffering from threats and intimidation from the perpetrators' families. It looked like that the adversarial justice system—which is in practice in Nepal—does not address the needs and does not deliver the "justice" to the victims. The victims faced many complications and problems even after the verdicts on their favors. Tikuli, one of the victims in this study, could not take half of the pension and property of the rapist for which she was entitled to following the court decisions. For her, the implementation of court decisions was difficult. It was difficult to live in half of the offender's house together with her adversaries. She was continuously scolded and threatened by the co-accomplice, Ratna. Other victims Saraswoti and Suntali, were also getting continuous threats from the families of the offenders.

The existing criminal justice system is criticized for failure to addressing the various needs and rights of victims. The victims do not get “justice.” This system has not been able to deliver even the minimum services to the victims; instead of this, the system behaves in a negative way. Besides this, the family, communities and society also find faults within the victims. They intimidate, hate and exclude them. This further victimizes the victims. Then, even if the offenders are punished, the question arises: what does “justice” mean to the victims? Their rights to justice remain unaddressed. Quite often disputes are settled with little reference to right and wrongs but more with the intention of restoring peace, equality, and justice in the society. Once the perpetrators are out of prison the tension between them and victim’s families restarts all over again; it keeps on going for generations.

The adversarial legal system is also criticized to concentrate on the “result” or the “verdict” with little or no regard to the effects of the process on its participants. This system tends to make one party the “winner” and the other “loser.” The relationship between the “winner” and the other “loser” worsens than before (Wright, 1996). In fact, the question arises: What does “justice” mean to the victims even if the perpetrators are convicted and penalized? Many rape survivors “suffer in silence” in the absence of suitable alternative system. How are these victims fighting injustice in their life? Spalek (2006:118) is critical of the developments taking place within victim policy. According to her, any changes being implemented are more to do with the pursuit of broader government-instigated goals rather than with directly helping victims. Thus, whilst victim and witness satisfaction are featured, the issue of victims need are not.

6.6.2 Law enforcing agencies:

Quite often, the law enforcing agencies take violence in a convenient and institutionally acceptable, and perhaps even encouraged, mechanism of culturalizing violence against women. Such approaches tend to perpetuate rather than challenge views about the inferiority of “other” cultures, including the portrayal of violence against women as endemic to minority communities. Violence against minority women, although acknowledged, then goes unnoticed, is minimized, or is tacitly accepted. Gender and ethnic/race biases tend to guide and determine routine operations of social control institutions with the blessing of both majority and minority communities. For minority women, the gains accomplished through the “politics of recognition” are easily lost through the “politics of exclusion” (Adelman *et al.*, 2003), as cultural sensitivity practices toward violence against women become a form of police neglect, at best, or oppression, at worst.

The police quite often readily accept retractions when dealing with closed communities, as they may be genuinely convinced that it is in the abused woman’s best interest to forgive and forget. Police may make women, doubly stigmatized by gender and as the “other,” feel irrelevant, or not in urgent need for police protection, particularly when the dominant society labels them as a member of the enemy community. For instance, research (Shalhoub-Kevorkian and Erez, 2002) has portrayed the uneasiness and discomfort that abused Arab women in Israel felt in reporting the battering to the police. One abused Arab woman recounted that while waiting to file her complaint, she was criticized by the officer who took her report and identified her as an Arab for her community’s recent confrontation with the police. She, as did other interviewees, reported being frustrated and aggravated about having to endure not only their husband’s abuse but also the burden of being part of the adversarial “other”(Adelman *et al.*: 2003).

The main struggle for the vast majority of untouchables is *the right to survive* (Khare, 1998:200, emphasis original). The situation of gender based violence and sexual assaults and rape amongst minority groups are prominent in some societies. The women of low-caste are vexed with the behavior of their high-caste sisters for supporting perpetrators of sexual assaults and rape against Dalit women and girls. A low-caste and untouchable woman's comment, "Upper caste, rich women cannot be our *true* sisters as long as they exclude and put us down," (Khare, 1998: 199) illustrates the image of our modern societies. To add more salt in such situations, sometimes the police behaviors are not impartial. The untouchable women rhetorically raise, often in despair, such questions:

"Who listens to us? Where do we oppressed women go to seek justice? What can we do in this men's world?...By being the lowest, poorest and socially most silenced and excluded, untouchable women are indeed India's genuine "twice subaltern"" (Khare, 1998; 202).

In this study, almost all victims showed apathy towards the criminal justice system. Some victims were in difficult situation—whether to report or not to report the crime to police. They were mostly overwhelmed by their families and communities. Some victims had to compromise and negotiate with the perpetrators. Still some had their frustration heightened due to the "ineffective police action." The compensation and restitution provided by the state was meager and insignificant. Almost all those victims (who could realize and understand the offence) expressed their views that the compensation cannot really compensate their loss. For them the justice has failed. For some other victims, the police responses—arresting and punishing—was justice. The actors of the criminal justice system, the police and district attorneys, were rather contented with the fulfillment of their part of job. Some victims wished their perpetrators were given capital punishments—hanged to death, shot dead, life imprisonment, etc.

In this study, the officials involved with the criminal justice system were found somewhat supportive. The woman police cell, attorney, judiciary, and Nepal bar associations, were sensitive and committed to their services. However, the police women cells lacked authority to investigate the crimes and resources. It appeared that these cells were deficient of trained man power and investigating skills. These were used or underutilized as contact points only. The human rights activists were also actively helping victims. The officials were trying to do their best.

CHAPTER 7: RECOMMENDATIONS

Sexual assaults and rape have existed discreetly under the carpet in the form of hidden epidemic. The degree to which rape and sexual assault exist within our society is masked by substantial under-reporting. In order to address this under-reporting, it is essential to understand the unique costs of reporting that the rape victim faces. As the analyses in this study confirm, rape and sexual assault victims consider the stigma that they are likely to suffer upon reporting. When these victims choose not to report, perpetrators go unscathed. Furthermore, the public remains uneducated on the prevalence and nature of the crime. Rather than merely encouraging victims of rape and sexual assault to report their victimization, policies and programs need to be instituted to debunk common misperceptions on the subject.

For unmarried women, sexual violence is so stigmatizing that most women prefer to suffer in silence than to risk the shame and discrimination that would result from disclosure. Educational programs portraying rape as a crime of control and aggression by the perpetrator, rather than a response instigated by the victim, would help reduce the tendency to blame the victim.

Educating the public on the phenomenon of victim-blaming may stimulate individuals' recognition of their own victim blaming tendencies.

There is a need for rethinking on the criminal justice system that we have adopted. The adversarial system is not going to address the loss of victims. These losses have to be restored and the victim-offender relationship maintained in the societies.

Judicial and administrative mechanism should be strengthened to enable victims to obtain redress through procedures that are expeditious, fair, inexpensive and accessible. The problem of social indictment, slighting, exclusion, and stigma of sexual and gender based violence cannot be handled single handedly; it requires integrated approach. We need to change the whole environment related to this problem. Some of the efforts in this direction could be (UNHCR; 2003):

Transforming socio-cultural norms: the causes of sexual and gender-based violence are rooted in socio-cultural norms of gender inequality and discrimination. Preventing sexual and gender-based violence thus requires changes in gender relations within the community - that is, the socially prescribed roles, responsibilities, expectations, limitations, opportunities and privileges assigned to persons in the community based on their sex.

Rebuilding family and community support systems: Community-based structures that determine moral and social standards and behavior are also often weakened or destroyed when there is insecurity and economic crisis. In these situations, sexual and gender-based violence can flourish. It is important, then, to try to re-establish, as quickly as possible, those structures and systems that uphold respect for the equal rights of all members of the community.

Creating conditions to improve accountability systems: Proper accountability and oversight mechanisms have to be developed to prevent and control the sexual violence. Persons with power include potential

perpetrators, those who are in a position to influence social and cultural norms, and/or those who provide assistance to survivors of sexual and gender-based violence.

Designing effective services and facilities: A carefully designed office layout and access to basic needs can help prevent sexual and gender-based violence.

Influencing formal and informal legal framework: The extent of sexual and gender-based violence within a community is sometimes influenced by the existence of laws that proscribe such violence or the extent to which laws in the country are enforced. The following conditions aggravate the situations: Laws and policies support gender discrimination and condone sexual and gender-based violence; There is limited legal protection for women's rights; There are no laws against sexual and gender-based violence; Poor administration of justice has resulted in a lack of trust in law enforcement authorities; Law enforcement and judicial practice reinforce gender-based discriminatory practices.

Monitoring and documenting incidents of sexual and gender based violence: Data on the incidence of sexual and gender-based violence should be regularly compiled and analyzed by one central agency.

Develop community education and awareness activities: Launch public information campaigns about sexual and gender-based violence that reflect the cultural sensitivities, ethics and particular circumstances that prevail in your setting.

Train actors in how to respond to victims'/survivors' needs: While engaging the community in discussions about sexual and gender-based violence and encouraging community members to report cases, the actors involved in responding to victims'/survivors' needs must be getting ready to provide a service.

Establish referral, reporting, monitoring and evaluation mechanisms: A clear referral system should be established in each setting so the victim/survivor knows where to go to receive assistance and receives that assistance in a timely manner.

Empower communities to respond: Working with the community is essential in developing sustainable programs and actions. Those programs developed jointly by humanitarian actors and communities have proven to be the most effective. **To engage the community:** Build knowledge and understanding of gender relations and sexual and gender-based violence within the refugee community through awareness campaigns.

Develop a response to the health/medical needs of victims/survivors: The type of violence and the length of time between the incident and the time the victim/survivor arrives at the health facility will determine the type of care that can be provided.

Plan to meet the psycho-social needs of victims/survivors: After an incident of sexual and gender-based violence, the victim/survivor may experience many different emotional and psychological responses, including fear, shame, guilt, depression and anger. She may adopt strong defense mechanisms, such as forgetting, denial and deep repression of the traumatic event she survived. Family members may also experience a variety of emotions and need to receive support during this traumatic period.

Ensure a security and safety response: In some cases, a victim/survivor and witness may be in need of a safe place to go after the incident. She may not be able to return to her home if, for example, the perpetrator is a member of the family, a neighbour or members of her community. The family and the community must take the lead in providing safe spaces and security for victims/survivors. Design strategies and options for the immediate protection of victims/survivors, such as relocation, establishing a safe zone in a locality and offering safe spaces. Creating safe houses should be a last resort, since, if located away from the community and run by operational partners, they can further isolate the victim/survivor.

Expedite legal/justice facilities: Expedite existing system with local authorities so that those victims/survivors who wish to seek legal redress for the crimes committed against them can do so in a timely manner. This involves creating and maintaining strong working relationships with local law enforcement agencies, such as the police, the judiciary, and public prosecutors. In addition, work with the community's traditional courts to ensure that victims/survivors receive appropriate redress.

Identify the roles of other potential actors: In addition to actors from the health, community services, security and protection sectors, other people have important roles to play in responding to the needs of victims/survivors. All those who work with refugees should know their own responsibilities and those of others involved in providing support to victims/survivors of sexual and Gender-based violence.

Develop a plan to work with perpetrators: Working with perpetrators of violence is difficult but necessary. Perpetrators' human rights, including their own safety, must be respected. If the perpetrator is also a foreigner, he deserves international protection. The multi-sectoral team should develop plans for working with perpetrators.

CHAPTER 8: CONCLUSIONS

Sexual and gender-based violence is a violation of human rights. This kind of violence perpetuates the stereotyping of gender roles that denies human dignity of the individual and stymies human development. The overwhelming majority of the victims/survivors of sexual and gender-based violence are women and girls. Sexual and gender-based violence includes much more than sexual assault and rape. Although it may occur in public contexts, it is largely rooted in individual attitudes that disregard violence within the family, the community and the State. The root causes and consequences of sexual and gender-based violence must be understood before appropriate programmes to prevent and respond to this violence can be planned.

Rape is an appalling crime that devastates the lives of victims and their families and inspires fear in our communities. Rape is sexualized violence, representing a physical as well as psychological violation. However, rape will always be a difficult offence to prosecute. The majority of rapes are perpetrated by someone known to the victim. Often there are no independent witnesses present and no forensic evidence available (OCJR: 2006).

Rape is a hugely traumatic, even humiliating experience for the victim, and reporting crimes and reliving events can add significantly to that trauma. Giving evidence in court can be a daunting experience for any victim of sexual assaults and rape. This can be particularly traumatic for victims of rape and other sex offences as the evidence they must give will be of a very personal nature. This can deter victims from wanting their cases to be taken forward. Because of the nature of these offences, there is a need for the recognition that there should be special measures to help victims.

Major obstacles continue to prevent most victims from seeking accountability. Sexual violence is particularly under-reported by both female and male victims. Many women do not report incidents, out of fear of reprisals, and are discouraged from reporting by the lack of redress for sexual violence. Some police stations refuse to register and investigate complaints of sexual violence. When cases are registered, police officials often do not vigorously investigate them. Immunity for members of the security forces and the interference of military and security officials in cases involving members of the security forces often cause indefinite delays in the examination of cases or lead to their outright dismissal.

Law enforcement agencies are important organs of the State, with an essential responsibility to determine the application of principles of international human rights laws, including relevant conventions at the national level. In this sense, the judiciary is vested authority to declare verdicts on the protection and promotion of women's rights. However, as with other social institution, the current justice system reflects and reinforces the patriarchal values and norms of a predominantly Hindu society. The reluctance in implementing international conventions in the national courts must be corrected. The fact that a majority of judges, lawyers and public attorneys are men, may also contribute to the indifference of the legal mechanism to address violations of women's human rights with adequate sensitivity. Legal processes are tedious, expensive and time consuming, requiring the passage of various layers and levels of the judiciary to

secure social justice. Furthermore, the inadequacy of appropriate legal aid and mechanism, limit access to justice to successfully establish women's human rights.

The conviction rates in rape cases remain unacceptably low. When cases do not get to the courts a relatively low percentage of conviction is the consequence. Increasing conviction rates is vital in terms of reducing the incidences of rape, both by preventing rapists from committing further offences and also by sending a powerful deterrent message to potential offenders. The majority of rapes are perpetrated by someone known to the victim, where it is normally one person's word against another. Often there are no bruises or forensic evidence available. Research indicates that many reported cases that do not proceed to conviction fall out of the process at the earliest stages, with between half and two thirds dropping out before referral to prosecutors. It is vital that these cases are prepared and delivered by police and lawyers who are trained on sexual offences, to ensure the best evidence is collected and presented.

In the case of rape, victims-blaming is very prominent behavior in our societies. The trauma, the humiliation, the indictment, the stigma, and the retaliation that the victims have to bear in their life are simply beyond imagining. In such an environment, the victims are less likely to report a crime. This points toward that the victims have more to lose than gain out of reporting the crime. Therefore, the complete solution of the problem of under-reporting of sexual assaults and rape, the low conviction of perpetrators, and the socio-cultural attitudes and behaviors of families, communities and societies lies in the inner core of heart than external activities. The criminal justice system can be redesigned; the legislation can be revised; the enforcement of laws can be improved; above all, first, the socio-cultural environments have to be changed rather than expecting victims to change.

Finally, hidden forms of victimization, through domestic violence and other abuses of vulnerable individuals and groups are in the spotlight. There are some strategies for preventive, control and protective programs: The first is to implement a framework to eliminate unaccountable, and inhuman conventional cultural norms by educating the public, especially women, through collaborative efforts among educational authorities, media, non-governmental organizations, legislators and judiciary. There is a need to change the whole mindset towards women and women victims of sexual assaults and rape. The second is strengthening individual capability of women and decreasing their vulnerability to violence. This can be achieved by intervention of state and non-governmental organizations to provide safe havens, adequate and efficient medical treatment and psychological support to women. The third one is the improvement in the laws, policies and the criminal justice systems that favor the abusers and discourages or obstructs the victims, the women and girls seeking speedy justice.

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Notes:

ⁱ Umashankar Chaudhary of Chaksaid village in Vaishali district of Bihar, India gambled his wife Sunani Devi to Manoj Singh of the same village. In another incident a married woman gambled herself in the game of dice during Durga Puja festival in a village in Banka district. The victor took her home. However, the community rescued the wife next day and handed over to the husband.

ⁱⁱ *Sarkari Mudda Sambandhi Niyamawali 2055 BS*

ⁱⁱⁱ Country Code 1964

^{iv} *Jyan Sambandhi Mahal of Muluki Ain*

^v *Jyan Sambandhi Mahal of Muluki Ain*

^{vi} ICCPR Article 9.1: Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.

^{vii} Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (PDI)

^{viii} *The Interim Constitution of Nepal 2007*

^{ix} *The Interim Constitution of Nepal 2007*

^x *Sthaniya Prashan Ain of 2028 BS*

^{xi} *Adalati Bandobast ko Mahal*

^{xii} *Prahari Ain 2012 BS*

^{xiii} ICCPR Article 10.2(a): Accused person shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. 10.2(b); Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

^{xiv} *Balbalika Sambandhi Ain 2048 BS*(Children Act 1992, Section 1)

^{xv} Children Act (Section 42/2.1, 2.2)

^{xvi} *Berit Sanga Thunda ko Mahal, Muluki Ain*

^{xvii} ICCPR, Article 9.5: Any one who has been victim of unlawful arrest or detention shall have an enforceable right to compensation.

^{xviii} *The Interim Constitution of Nepal*

^{xix} *Sawari Tatha Yatayat Byabastha Ain 2049 BS*

^{xx} A legal framework consists of the legal measures and provisions thereof. In this sense, the study of security related legal framework shall include the review of legal measures and provisions related thereof.

^{xxi} Apart from the international instruments to which Nepal is a party, the Nepali legal framework is composed of three prime pillars: the fundamental law, the general law and the specific laws. The constitution is the fundamental law of the land, the Muluki Ain is general law and laws which are made in specific areas or subjects are specific laws.

^{xxii} These were the ill-fated women and girls who were rescued by Indian police in 1996 from Mumbai brothels. ABC Nepal, 'Life in Hell: The True Stories of girls rescued from Indian brothels', p 3, 1998,

^{xxiii} Based on the interview, conducted by this author for the doctoral research, of 145 convicted criminals and/or detainees inside the three jails of Kathmandu valley- Nakkhu, Dillibazar and Central jail, Tripurewor in 2001.

^{xxiv} State vs. Pushpa Adhikari, 1995, one of the case studies selected for the research purpose by this author

^{xxv} Based on the report of Court Observation of Banke District Court, Conducted by Forum for Women Law and Development (FWLD), June 19, 2001.

^{xxvi} Letter dated 30 Sept. 2000, with an appeal to send the rescued girls to Mumbai when summoned by the courts.

^{xxvii} *Nepal Kanoon Patrika*, 1990, Section 31, No. 10, Verdict No. 3958, Page 1019

^{xxviii} State Vs Raju Tamang, *Nepal Kanoon Patrika* 1990, No. 4, Verdict No. 3788, p 390

^{xxix} 'Afai uviera betha pokhda sabud magne nyaya'(justice asking for evidence even when the victims relate the episode by herself), *Kantipur*, Sept 21, 2000 Year 8, No 216, p 1

^{xxx} 'Bechiyeko sabud ke diun sarkarlai'(what evidence of trafficking can I give to the government), *Himalaya Times*, Sept 28 2000, year 5, No. 271, p 8

^{xxxi} State vs. Bir Bahadur Biswokarma, *Nepal Kanoon Patrika*, Vol 3 No. 10, Verdict No. 4385, p618, 1991

^{xxxii} Ibid

^{xxxiii} State vs. Panchamaya BK, Case No. 103, 25 Apr 1992. It was found that the incident occurred on 13 Apr 1985. This case also proves the fact that many cases are registered several years after the occurrence of the crimes. Source-Sarlahi district police office, Nepal

^{xxxiv} State vs. Norsang Lama, Case No. 532, 1995, District Police Office, Kathmandu

^{xxxv} District Police Office, Kathmandu

^{xxxvi} Haribansh Tripathi, District Judge, "*Existing Modality of Criminal Trial System in Nepal: the Lacunae, Challenges and Prospective Reforms*", A paper presented in the National Workshop on Criminal Justice in Nepal: Existing Reality and Prospects for Reformation, 10-12 June 1997

^{xxxvii} *Analysis and Reform of the Criminal Justice Systems in Nepal*, Center for Legal Research and Resource Development, Kathmandu, 1999, p. 118